



The Personnel e.bulletin

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2014 Employment Law Trends and Changes

Prepared for the PHCC Educational Foundation by TPO, Inc.

Every year employment law changes take effect and trends develop. This bulletin provides the highlights that will be most relevant to you; enough information to help you identify the areas of employment law that may need your attention.

Minimum Wage

Although the federal minimum wage was hotly debated last year, it remains unchanged for 2014 at \$7.25 per hour. However, thirteen states have announced a minimum wage increase effective January 1, 2014. They are:

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|----------------------------------|------------------------------------|
| 1. Arizona: \$7.80 to \$7.90 | 8. New York: \$7.25 to \$8.00 |
| 2. Colorado: \$7.78 to \$7.90 | 9. Ohio: \$7.85 to \$7.95 |
| 3. Connecticut: \$8.25 to \$8.70 | 10. Oregon: \$8.95 to \$9.10 |
| 4. Florida: \$7.79 to \$7.90 | 11. Rhode Island: \$7.75 to \$8.00 |
| 5. Missouri: \$7.35 to \$7.50 | 12. Vermont: \$8.60 to \$8.73 |
| 6. Montana: \$7.80 to \$7.90 | 13. Washington: \$9.19 to \$9.32 |
| 7. New Jersey: \$7.25 to \$8.25 | |

In addition, statewide minimum wage for California rises from \$8 per hour to \$9 on July 1, 2014, and grows to \$10 on Jan. 1, 2016.

Keep in mind that some counties and cities set minimum wages – stay current with your local laws!

Benefits

Affordable Care Act – Employer Mandate Delay and Extension of Grandfathering

Under the healthcare reform law, companies with 50 or more workers must provide affordable coverage to full-time employees or pay per employee tax penalties. Although the employer mandate was due to take effect January 1, 2014, this requirement has been delayed until 2015. If you are a large employer, this shift most likely does not alter your course to maintain health benefit programs in 2014. For small and mid-size businesses, the delay offers you more time to cement decisions around staffing and employee hours.

Responding to intense pressure from political adversaries and friends alike, President Obama loosened the grandfathering rules, which already permit certain existing health care plans to continue if they existed before the Affordable Care Act became law. Grandfathering will now be extended to include all existing health care plans for a one year period—including those plans that are noncompliant with the benefit upgrades required by the Affordable Care Act.

IRS, Treasury Department – Optional Flexible Spending Rollover Allowance

Effective in plan year 2014, if you offer FSA programs, you now have the option of allowing participants to roll over up to \$500 of unused funds at the end of the plan year. Under the current law, plan sponsors have the option of allowing employees a grace period of up to two and a half months after the year ends to use remaining funds for qualified FSA expenses. If you offer a grace period, you cannot offer a carryover – just one of the options or neither.

Note that the use-it-or-lose-it rule has often been identified as the biggest deterrent to signing up for an FSA.

Department of Labor – Reset on Annual 401(k) Disclosures

The federal Department of Labor announced this summer that it would allow 401(k) plans to reset the timing for distributing the annual investment comparative chart they are required to provide to plan participants. The shift will be better for your employees if you mail it out later in the year along with other disclosures. No more than 18 months may pass before participants receive their next comparative chart – but that will give you more breathing room on regulatory compliance.

U.S. Supreme Court – Defense of Marriage Act Struck Down

The Supreme Court ruled that the Defense of Marriage Act, a federal law defining "marriage" as "a legal union between one man and one woman," deprives same-sex spouses of the equal liberty that is protected by the Fifth Amendment. As a result, same-sex couples legally married under state law will now be treated as spouses under federal law, including the US tax code, the Affordable Care Act, COBRA and ERISA.

Since this ruling took place immediately, if you have not already, you need to review your employee benefit plans to be sure they do not discriminate between same-sex and opposite-sex spouses in either form or operation. Give special attention to the beneficiary elections of employees with same-sex spouses under qualified retirement plans, as an election naming anyone other than the employee's spouse now requires spousal consent. In addition, you may need to update your tax-reporting systems, enrollment forms, distribution-election forms and tax notices, revise plan documents and summary plan descriptions, and issue summaries of material modifications.

Family and Medical Leave Act – New Regulations

If you have not already, you must comply with the final Family and Medical Leave Act rule from the Department of Labor that went into effect for all U.S. employers last year. The new regulations include changes to the model certification forms and updates to the rules for calculating intermittent FMLA leave.

All employers must be using the updated FMLA notice and certification forms and posting the new FMLA poster in your workplace. In order to comply with these regulatory provisions, you should review your FMLA policy, forms, and internal processes to make sure they are not running afoul of the new law. The forms listed below can be found on the U.S. Department of Labor (DOL) website. You are strongly advised to familiarize yourself with these new forms and use them now.

Forms:

- WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition
- WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition
- WH-381 Notice of Eligibility and Rights & Responsibilities
- WH-382 Designation Notice
- WH-384 Certification of Qualifying Exigency for Military Family Leave (PDF)
- WH-385 Certification for Serious Injury or Illness of Current Service member -- for Military Family Leave
- WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

Poster: <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>

Note that an FMLA poster in Spanish is available.

Trending – What 2014 Has In Store for Employment Law

Health Care Reform

The Healthcare.gov website is improving. However, as history has shown with the roll out of other major social safety net legislation, it will take time to work through many issues and this will undoubtedly continue through 2014 – compliance issues and litigation will dominate.

Technology

Technology will continue to transform the workplace at a rapid pace. Privacy, data security, social media and safety issues, tracking non-exempt employees' hours working on their mobile devices, lawfully using social media in the hiring and internal investigation processes, and addressing the occupational hazards of new technology should all be on your mind.

As the use of wireless devices and mobile apps continues to grow, more businesses are adopting "Bring Your Own Device" or "Bring Your Own Technology" policies that allow employees to use their own mobile phones and tablets to conduct company business. Look for new regulations on how to balance employer software, productivity and data security demands with the privacy, ownership and compensation rights of the employee.

Unpaid Internships

Attacks on unpaid internship programs will continue, following in the footsteps of several high-profile lawsuits.

Lesbian, Gay, Bisexual, and Transgender (LGBT) Rights

Following the U.S. Supreme Court's decision in *United States v. Windsor* striking down part of the Defense of Marriage Act (DOMA), the expansion of LGBT rights will continue—including areas such as state leave laws and childcare laws.

Minimum Wage

Efforts will continue to be made at the federal, state, and local levels to significantly expand the minimum wage. California's governor recently signed the first \$10 state minimum wage law. The proposed Fair Minimum Wage Act would raise the minimum wage to \$10.10 across the nation. A number of local efforts will seek to make a much higher minimum wage in particular jurisdictions. Piece rate work and off-the-clock issues will also be hot.

Ban the Box – Background and Credit Checks

There will continue to be legislative efforts to limit employers' right to conduct background checks through "ban the box" legislation limiting the use of criminal background checks, as well as legislative efforts to ban or minimize the use of credit checks in the hiring process. In some states, these background checks are already illegal; be sure to check your state regulations.

Paid Leave

While remaining contentious at the federal level, more states will adopt paid leave laws—particularly sick and parental leave.

More Flexible Employee Benefits

More employers will do away with specific allocated amounts of paid vacation/PTO for exempt employees, providing more flexibility for employees who get their work done and minimizing exposure to claims for accrued/unused time. Using unique benefits will become more popular—paid community service time, employee-directed charitable donations, personal technology stipends, etc. These options will be used to help employers distinguish themselves.

Immigration and E-verify

Immigration reform very much remains on the radar of many in Washington. Highlights of proposed legislation that are of interest include mandatory E-verify requirements for all employers and the potential release in 2014 of a new version of the Employment Eligibility Verification Form I-9. The new Form I-9 is expected to contain enhancements designed to help employers maintain compliance with immigration laws.

If you hire foreign workers, be aware that changes are anticipated to H-1B visa procedures.

OSHA Enforcement

OSHA enforcement activity will increase with a growing use of criminal penalties. Rulemaking is anticipated to significantly lower a number of PELs (permissible exposure levels) for hazardous substances in the workplace.

IRS Priorities

The Supreme Court will begin hearing arguments in January to determine if severance pay should be taxable or exempt from FICA tax. If the court rules against the IRS, the agency will need to process retroactive refund claims submitted by employers and employees. The IRS has also announced its intent to more closely examine the taxation of service charges in 2014.

Retirement

Policymakers are considering several items that could lead to changes in 2014 for employers that offer retirement plans to their employees. Keep an eye on the possible attempt to amend retirement statements to provide lifetime income illustrations to 401(k) plan participants. These illustrations could include a projected monthly income stream based on predetermined variables such as account balance, current contributions and assumed interest rates.

Privacy and Data Security

A current trend that is expected to continue throughout 2014 is the implementation of additional measures on the state level to strengthen security and privacy regulations. It has never been more important for businesses of all sizes to protect the personal, financial and health information of both customers and employees, and to ensure they are adequately protected against the growing threat of cyber fraud.

Conclusion

The legal and regulatory environment is always changing. Keeping abreast of updates and making a good faith effort to keep compliant is essential. Knowing the trends and areas of focus by regulatory bodies can help you proactively address high risk areas for your business. Remember to round out your compliance plan by checking with the states where you do business for additional changes in employment laws and regulations. Be sure to work with an employment attorney as this article does not constitute legal advice. Always seek counsel from a local HR professional to help navigate situations and to help develop new policies and practices.

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