HR TRENDS
What’s Noteworthy?

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Disclaimer

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COBRA Poster Updated

What’s new at DOL:

Job Loss poster updated

Reminder

• **General Notice** – both employee and spouse must receive *(no later than 90th day of coverage)*

• **Election Notice** – changes due to ACA *(no later than 14th day after notified of qualifying event)*

http://www.dol.gov/ebsa/cobra.html
COBRA

If you have 20 or more employees you must notify your employees of their rights

COBRA

Consequences of non-compliance could be:

IRS Penalty $100 per day nondeductible excise tax per violation for employee, $200 per day for dependents
COBRA

Compliant COBRA Program:
• Properly trained staff
• Written COBRA procedures and policies
• Program that is designed and updated by competent professionals

COBRA

USERRA and Texas Military Statutes
- Just a reminder that under these two laws when an employee is deployed or has extended training, they have rights to 24 months of COBRA, not just the 18 months.

COBRA

Remember, the DOL does have the authority to do a COBRA audit and your plan may be subject to such an audit. The DOL can bring a lawsuit against the county.

FMLA

A few things to consider when administering FMLA in your county...

- FMLA paperwork is critical, including posters.
- FMLA requires 12 weeks of job protected leave.
- FMLA requires us to provide FMLA leave for a qualified child, even if they are over 18.
- DOL has announced more on-site FMLA Audits and Investigations.
FMLA Paperwork

- FMLA poster must be posted in locations employees and applicants are located
- FMLA Notice of Eligibility and FMLA Designation Notice must be completed for each qualifying event

http://www.dol.gov/whd/fmla/finalrule.htm
FMLA

FMLA requires 12 weeks of leave in a 12 month period.

• Count FMLA leave allotment in weeks or fraction of weeks
• To convert weeks to hours, you must take the number of hours worked in a typical week and multiply by 12 (Can be used for intermittent leave)

Example: Works 48 hours each week - 48 x 12 = 576 hours of FMLA available
   Works 35 hours each week - 35 x 12 = 420 hours of FMLA available
FMLA

Employees who want to take FMLA for children over 18 must meet the following conditions:

• Must be “incapable of self-care”
• Incapacity for self-care must be because of a mental or physical disability at the time FMLA is to commence
• Must have a serious health condition for which they need care
• Parent must be “needed to care for” the adult child
FMLA

Do not impose higher requirements of documentation on:

• Same sex couples
• Common Law marriages
• Proof of parental relationship
• Proof of marriage
FMLA

Example of Adult Child over 18:
Employee has 30 year old daughter put on bed rest because of high risk pregnancy. She also has sciatica that substantially limits her walking and lifting. She is incapable of self care due to that disability because she needs active assistance with cooking, cleaning and shopping.
FMLA and DOL Audits

The DOL has announced they will be doing more onsite audits and investigations for FMLA. What can you do:

• Conduct a thorough review of your policy
• Adhere to FMLA poster posting requirements
• Use compliant FMLA forms
• Use compliant FMLA correspondence
• Audit your FMLA practices and procedures
• Clean up your recordkeeping
• Train employees and supervisors
**JOB DESCRIPTIONS** - form the foundation for many important processes:

- Job postings
- Recruitment and selection
- Setting performance expectations
- Determining essential functions and physical standards prior to employee having a disability under the ADAAA
DOCUMENTATION

Documentation of issues is important to win unemployment and employment lawsuits.

For documentation to stand on its own you need:

- It to be written in a timely manner
- Factual
- Signatures
- Consequences of failure to comply
EEOC Issues

Enforcement Guidance for Pregnancy Discrimination and Related Issues

• Issued on July 14, 2014

http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm
EEOC Issues

Pregnancy Discrimination Act

- Employer may not discriminate on basis of pregnancy, childbirth, or related medical conditions; and

- Women affected by pregnancy, childbirth, or related medical conditions must be treated the same as other persons not so affected but similar in their ability or inability to work
EEOC Issues

Let’s look at some examples of PDA as described in guidance:

• Stereotypes and assumptions
• Discrimination based on intention to become pregnant
• Non-uniform application of leave policies
EEOC Issues

Let’s look at some examples of PDA as described in guidance:

• Equal access to light duty
• Forced leave issues
• Weight lifting requirements
EEOC Issues

Dress Code policies continue to be an EEOC issue:

- National Origin Discrimination
- Religious Discrimination
- Disability Discrimination
- Gender/Sexual Discrimination
Other Emerging Issues

DOJ is taking position that Title VII of the Civil Rights Act of 1964 protection extends to discrimination claims based on an individuals gender identity, including transgender status. EEOC also has taken this position.
Other Emerging Issues:

HARASSMENT
What to Watch For in 2019?

• DOL is again going to propose new regulations concerning the salary level for exempt status.
• Proposed salary around $32,000 – $35,000
• DOL also making changes to the rules for joint employment (staffing agencies)
• News coming soon (March 2019)
What to Watch For in 2019?

• I-9 Audits on the rise – ICE audits in 2018 were at record levels.
  • Do not attach copies of documents
  • Keep in separate files
  • Do a self audit
  • Purge I-9’s regularly
  • I-9 retention calculator and check list included with presentation.
SLEF AUDIT:

A self audit may bring to light important pay issues before your employees decide to complain...

Key Points to Address

- Misclassification – Exempt, Non-Exempt, Contractor
- Review timekeeping systems to assure all hours of work are being recorded
- Review how you round for overtime purposes
- Ensure all policies are up to date - Don’t forget to have an FLSA Safe Harbor Policy in place
- Train all supervisors on FLSA requirements
Questions
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