



HUMAN RESOURCES UPDATE

OCT 2005

VOL 5, ISSUE 5

2006 COMPENSATION LIMITS

On October 14, the Internal Revenue Service (IRS) announced (Information Release 2005-120) increases of \$5,000 in the thresholds for defining "highly compensated employee" and "key employee" along with other changes affecting retirement plan administration for 2006. Some of the changes were specified earlier by legislation, but others, like the thresholds for the employee definitions, awaited final calculation based on a cost-of-living index. Also, the Social Security Administration (SSA) announced a rise in the taxable wage base for 2006 to \$94,200, up from \$90,000 for 2005, which is an increase of 4.1 percent.

For 2006, the bar for "highly compensated employee" rises to \$100,000 and that for "key employee" to \$140,000. These definitions affect testing for nondiscrimination and top-heavy status.

For 401(k) and 457 plans, the limit on employee pre-tax contributions (or elective deferrals) goes to \$15,000, up from \$14,000 for 2005. For employees age 50 and older, the limit on catch-up contributions in most plans

will be \$5,000, up from \$4,000. The cap for the combination of employee pre-tax and after-tax contributions plus employer contributions will rise to \$44,000, up from \$42,000. The compensation limit used in determining the amount that the employer can deduct will be \$220,000 per employee, up from \$210,000.

Effective January 1, 2006, the limit on the annual benefit under Code Section 415(b)(1)(A) will be \$175,000, up from \$170,000 for 2005.

For any employee in an SEP, the maximum compensation that can be taken into account when figuring the percentage-of-compensation contributions will be \$220,000 in 2006, up from \$210,000. The minimum compensation level, which defines the employees that must be covered by the SEP, stays the same at \$450.

In SIMPLE plans, the employer contribution limit remains unchanged for 2006 at \$10,000. The limit for added "catch up" contributions by employees who are age 50 or older goes from \$2,000 in 2005 to \$2,500 in 2006.

FLSA SALARY TEST VIOLATION

An employer that paid back wages to its exempt managers a week before the workers' Fair Labor Standards Act (FLSA) lawsuit went to trial could not use the salary basis test "window of correction" to preserve the workers' exempt status, a state appeals court recently ruled.

In *Wilkes v. J&J Enterprises Inc.*, the plaintiffs alleged that their employer violated the salary test when it regularly reduced the workers' salaries when their stores had cash shortages. A week before the parties were scheduled to go to trial, the employer gave the plaintiffs settlement checks and offered to repay the managers for all improper salary deductions. The employer also claimed that it had remedied its salary violations in accordance with the FLSA's "window of correction," which allows employers, in certain cases, to preserve employee exemptions by repaying employees for inadvertent deductions (29 C.F.R. §541.602).

Relying on the U.S. Department of Labor's interpretation of the window of correction provision, the appeals court found that the employer "was not entitled to the 'window of correction' defense, since [its] disciplinary policy created a significant likelihood of pay deductions from managers due to disciplinary infractions, and since they had an actual practice of making such deductions from managers." The court thus found that the plaintiffs were improperly classified as exempt executives. *Courtesy of The Thompson Publishing Group, Inc.*

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PREPARING FOR A DISASTER

While none of us want to even think of having our family or business affected by such disasters as Hurricane Katrina or Rita, the prudent-minded will at least try to plan for such events. Much more likely disasters are building fires or floods caused by a faulty roof. As an employer, you purchase a variety of insurances to protect your business. There are also several more actions that can help ensure that your company survives when, and if a disaster should strike.

- Remember to back-up all your computer data, including employee information, on a frequent and regular basis. Store these back-ups off-site in a fireproof and waterproof facility.
- Consider using a web-based, outsourced payroll service. This ensures your employee and payroll data are stored offsite and provides a backup. Make certain that the HR information system (HRIS) is populated with the correct data. This will assist you in contacting employees or their families.
- Develop an emergency closing and late open/late close policy outlining how communications with employees and the media will be handled. Make certain each manager has contact info for each of their employees. This policy needs to include how employees can check in, if necessary: emails, company websites, or phone numbers.
- Implement a business-wide disaster recovery plan. Because this activity is so critical to the survival of your business, an officer of the company should be responsible for this function. This includes where temporary operations are to take place; who is in charge of phones and computers; who supplies the data back-ups; who starts the employee contact trees; and how long will employees remain on the payroll if the business is inoperable.
- Every employee in your company should be required to attend a training session on the business-wide disaster recover plan at least twice a year. During recent disasters many companies had plans, but either the employees weren't aware of them or they had not received recent training on them.
- Conduct periodic safety drills for localized emergencies such as a building fire or a tornado. Fire drills should include a centralized location away from the building for all

BEWARE THE “ASSOCIATION” PROVISION UNDER THE ADA

A little known, but very important, provision of the Americans with Disabilities Act (remember this Act applies to employers with 15 or more employees) prohibits discrimination towards applicants and employees based on a known association with someone with a disability. This prohibition covers hiring, firing, and other terms, conditions, and privileges of employment. The intent is to prevent discrimination towards an applicant, for example, who during an interview, mentions having a disabled child. The hiring manager cannot decide not to hire that otherwise qualified applicant, for fear that the person might be away from work frequently, caring for the disabled child.

The Equal Employment Opportunity Commission mentions several other examples under this provision, including:

- Firing, refusing to hire, or denying any benefit or privilege of employment to someone because of concern that the employer's image will be negatively affected by an applicant's or employee's association with individuals with disabilities—for example, discriminating against an employee who provides volunteer services for people with HIV/AIDS or psychiatric disabilities is prohibited;
- Refusing to provide health insurance for an employee's family member with a disability when the employer generally provides health insurance for employee dependents; and
- Harassing someone based on the individual's association with a person with a disability.

Please make certain all your employees, not just your employees involved in the hiring process, are aware of this provision.

SUPREME COURT TO RULE SOON ON PAY TO EMPLOYEES FOR TIME “DONNING AND DOFFING” SAFETY GEAR. LOOK FOR AN UPDATE IN OUR NEXT ISSUE.

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