Human Resources Update

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Same Song – 100 Verses

We have discussed numerous times in this newsletter the significant level of risk that organizations face for failing to comply with the Fair Labor Standards Act. The Department of Labor is very serious about this law and enforcement over the past few years has become relentless. Below are a few recent examples (courtesy of Audrey Mross, attorney).

- Staples (Office Supply) has agreed to pay $42 million to settle allegations that assistant store managers were misclassified as exempt and did not receive overtime pay.
- Best Buy will pay $900,000 to settle claims for failure to pay employees for time required to go through a security check at the end of each workday.
- Helicopter pilots for the Port Authority of NY and NJ are not professionals entitled to exempt status, but are "highly trained technicians," and must be paid overtime.
- Miami/Dade County, Florida and New Jersey have enacted heavier penalties for employers who do not follow FLSA.

These recent events underscore the need for employers of all sizes to insure that their job descriptions and their job classifications meet FLSA requirements. An ounce of prevention is worth many $$$$$ of cure!

And Another Agency Steps Up Enforcement!

The budget for the Equal Employment Opportunity Commission (EEOC) has been increased by a whopping $23 million for FY 2010. The Commission will use these funds to address the priorities announced in 2006 which include challenging employment practices such as hiring tests, credit checks, criminal background information, and medical tests that may have an adverse impact. A word to the wise says that employers should make their own priority list to review all recruiting, hiring and selection practices to insure that everything in the process is clearly related to the ability to perform the job. Can you prove that employees with a less than stellar credit rating perform at a lower level than those who have a higher rating (especially given the current economy)?

Even Small Qualified Plans Must Be Bonded – Is Yours?

In auditing Form 5500's (defined contribution plans with assets >$100,000 and <$250,000) and small 401(k) plans (3 to 8 participants), the IRS discovered that a common error was that plans were not adequately bonded as required by ERISA section 412. The bond must cover all persons, including fiduciaries, who handle funds or property of an employee benefit plan. Check with your broker or plan administrator to make sure your plan is properly protected.

When was the last time you conducted an I-9 self-audit?

One More Time – Maybe

On March 2, 2010, President Obama signed the Temporary Extension Act of 2010 that extended (again) the COBRA subsidy to March 31, 2010, for eligible involuntarily terminated employees. This extension also amended the definition of an Assistance Eligible Individual (AEI) to cover an individual who experienced a reduction in hours between September 1, 2008 and March 31, 2010, and were later involuntarily terminated. These employees may not have qualified previously – which adds a whole new group of employees to the list. These AEIs must receive an ARRA general COBRA notice within 60 days of their termination. The COBRA coverage date begins on the date of the reduction in hours; however, the premiums will not have to be paid until the date of the involuntary termination.

This Act also includes new penalties resulting from failure to comply timely with DOL determinations.

What's That Crawling Up Your Arm? Ahhh – a Tattoo!

Pew Research recently published survey results that revealed an amazing increase in the number of tattoos and piercings in our population. In those age 18 to 25 years old, 36% reported at least one tattoo; 40% of those 26-40 years old; those same age groups reported 30% and 22% respectively having a body piercing somewhere other than the ear(s). In the 40-60 year old group, more than 10% had tattoos and/or piercings (other than ears). While employers have pretty generous latitude in establishing a dress code, thought should be given as to why certain things are not appropriate for their particular workplace. Customer preferences must be considered, but so must sincerely held religious convictions. Not every work environment requires strict compliance with traditional business dress, nor with certain contemporary trends in attire or "body art." However, employers want to insure that their dress codes, even when body art is allowed, contain some limits. Offensive tattoos such as those that are graphically violent, sexually explicit, identified with inappropriate or illegal groups, or offensive to other employees or customers should be required to be covered.

Dress codes must also tread the delicate balance between eliminating those very creative folks critical to the business while protecting the sensibilities of other employees and customers. Requiring employees to cover tattoos and to remove visible piercings (other than earrings) is common practice and is a safe strategy, but only when consistently applied. Having a clearly written and published policy is immensely important.

Workers' Comp, ADA, and $6.2 million

The EEOC recently took on Sears, Roebuck, & Co. to the tune of a $6.2 million settlement. This was all because Sears terminated 235 employees after they returned to work following workers' compensation leave.

The EEOC alleged that Sears violated the Americans with Disabilities Act by not providing reasonable accommodations to these employees when they were released to return to work and instead simply terminated them.

Each affected employee will receive $26,300; this is the largest settlement in the EEOC's history. Sears also agreed to improve its workers' compensation leave process and posted notices regarding the decree, according to EEOC officials.

Human resources business solutions

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