Human Resources Update

January 2013

Back Wages Owed Under FLSA

According to a news release dated October 17, 2012, by the U.S. Department of Labor's Wage and Hour Division, Turf Specialties Inc. of Midland, Texas, has agreed to pay $106,818 in back wages to 70 current and former workers for violating the Fair Labor Standard Act's minimum and overtime provisions following an investigation conducted by the Department of Labor.

The investigation revealed several violations of the Fair Labor Standards Act (FLSA) including:

- Employees were paid a fixed, biweekly salary that in many workweeks amounted to less than the federal minimum wage of $7.25 per hour based on the actual number of hours worked during the workweeks;
- Non-exempt tmployees were not compensated at time and one-half their regular rates of pay for overtime hours, that is, those hours worked in excess of 40 hours in a workweek;
- Improper deductions from employees' paychecks for uniforms, broken tools, and equipment damage were taken;
- Several employees working as "crew leaders" were improperly classified as exempt from the FLSA's overtime provision and were consequently denied proper overtime compensation.

Wage and hour investigations by the Department of Labor are on the rise. Cynthia Watson, regional administrator of the Wage and Hour Division in the Southwest stated, "The Labor Department is committed to vigorously enforcing the law to ensure that all workers are paid for all hours worked, including any overtime compensation due."

There are several areas of compliance within the FLSA that employers should pay close attention to in order to prevent being subjected to a similar investigation:

- Employers of all sizes should review job descriptions and related FLSA classifications on an annual basis to ensure employees are classified correctly;
- Employers should track non-exempt time in accordance with the provisions established in the FLSA including, but not limited to, the tracking of exact start and end times and times in and out for unpaid break, if any, and lunch periods;
- Employers should have a written, legally-compliant policy and acknowledgement form regarding uniforms and other company property including specific provisions for deducting the costs from employee pay when allowed and in compliance with FLSA guidelines;
- Employers should calculate overtime based on the state law (for Texas, overtime is calculated for any hours worked over 40 in a workweek; your state may be different) including the proper calculation of overtime when commissions, bonuses or incentive pay are paid to a non-exempt employee.

In addition to the compliance issues noted above, there are a number of compliance factors related to the Fair Labor Standards Act. If you have questions or concerns regarding FLSA compliance, please contact The Hopkins Group for further guidance.

Don't forget to post your OSHA Form 300A from February 1st through April 30th. Remember that you must include temporaries on your log.

Affordable Care Act Exchange Notice Delayed

Last week, the Department of Labor officially delayed the Notice of Exchange/ Marketplace provision of the Affordable Care Act. Employers will not be required to comply until regulations are released for the Notice. The Department felt the delay was required to be able to coordinate its efforts with the other federal Departments' guidance on related provisions of the Affordable Care Act. It is anticipated the timing for the distribution of the notices will be late summer or early fall of 2013 which will coordinate with the open enrollment period for the Marketplaces (formerly called Exchanges). The initial open enrollment period for the Marketplace is October 1, 2013 – March 31, 2014.

Hold Off on Making Those NLRB Required Changes

On Friday, January 25, 2013, the U.S. Court of Appeals for the District of Columbia brought to a halt the NLRB's bargaining orders against a petitioning employer. The decision was based on a constitutional issue, not the NLRB order itself. This ruling raises some very real issues for the NLRB's short-term prospects for additional rulings – those now in court as well as those being planned. For employers, no need to rush into policy changes related to arbitration decisions. This may take a while!

Care of Adult Children Under FMLA

A U.S. Department of Labor administrator's interpretation (No. 2013-1) of the Family and Medical Leave Act (FMLA) this month means that employers can expect more requests from employees who are seeking protection under the act to care for their adult children who are unable to care for themselves.

FMLA leave is available to care for a child with a serious health condition who is under 18 or at least 18 and incapable of self-care because of a disability. The administrator's memo explains the four-part test for determining if an eligible employee (employed at least a year and has worked at least 1250 hours in the prior twelve months) of a covered employer (at least 50 employees within a 75 mile radius) may take FMLA leave to care for an adult child with a disability.

- The adult child must have an ADA disability as defined by the ADAAA.
- The age of the child at the onset of the disability is irrelevant.
- Adult children disabled due to military service may be eligible for more than 26 weeks leave.

Please see the DOL's site for the complete interpretation document: http://www.dol.gov/WHD/opinion/adminIntrprtn/FMLA/2013/FMLAAI2013_1.htm

Human resources business

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