WatchDog

Guarding the Business of Print

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Printing Industries Association of Southern California
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2018 IRS Withholding Tables

The IRS has issued new withholding tables for 2018, reflecting changes made by the recent tax reform legislation. If you have not yet begun using these tables, you must do so by February 15th.

The good news is that the new tables are designed to work with existing W-4 forms. The bad news is that this is really only the case for those who have "simpler tax situations."

Some employees, especially those who itemize deductions, may need to elect additional withholdings to avoid being under-withheld under the new tables. While the IRS intends to revise both Form W-4 and their online tax withholding calculator to reflect the new tax laws, employees who rely on the existing W-4 forms in the interim can end up with an unpleasant surprise at tax time.

❗ Start using the new withholding tables immediately. When the new W-4 form and/or online tax withholding calculator become available, urge employees to recalculate their withholdings and/or consult their tax experts.

Paid Rest Breaks for Commissioned Sales

If you employ "commission-only" sales people, you may have assumed that their pay can legally be restricted to just commissions. Last year the California Court of Appeal ruled that this is not the case. Employees paid on a commission basis are entitled to separate compensation for California's mandated paid rest periods.

The law requires that non-exempt employees working at least 3.5 hours in a workday be provided with a duty-free paid 10-minute rest period for each four hours of work or fraction thereof. For commission-only sales people, these rest periods must be accounted for and compensated separately. Furthermore payment for these paid rest breaks cannot be included or averaged with commissions paid for productive time in order to satisfy applicable minimum wage requirements.

❗ Have experienced counsel review your pay policies for commissioned sales people. Ensure that, in addition to commissions, they are also being separately paid for California's mandated paid rest periods.

2018 Business Mileage Rates

Beginning January 1, 2018, the standard mileage rates that the IRS will allow taxpayers to use to calculate the tax-deductible costs of operating a car, van, pickup or panel truck for business purposes has increased one cent per mile, to $0.545 for every mile of business travel driven.

❗ Be aware that there are circumstances under which the business standard mileage rate cannot be used at all. Consult your tax professional for advice.

Obesity is a Disability

Is obesity a disability under California law? According to a December 2017 decision by a California Appellate Court, the answer is yes. In the past, courts have generally ruled that obesity is only a disability if there is a "physiological cause." In this case it was found that a "genetic cause" could qualify as a "physiological cause." Plus, the court rules that it was sufficient for the employee's doctor to find a genetic cause based on body mass index alone.

If an employee's body mass index is high enough for them to be "obese" from the medical standpoint, then it appears that this obesity is considered to be a disability under California law.

❗ Treat obese employees with sensitivity, and avoid any discriminatory words or actions based on their obesity.

Your Workplace Can Remain Drug Free

The recreational use of marijuana is now legal in California for adults over the age of 21. However, the new law explicitly allows "public and private employers to maintain a drug- and alcohol-free workplace." If your anti-marijuana policies include an explanation as to why the restriction promotes the legitimate business interests of your firm, you can still:

- Prohibit cannabis use, consumption, possession, transfer, display, transportation, sale or growth in your workplace
- Prohibit cannabis use by employees and prospective employees
- Drug-test employees and prospective employees, and discharge them or deny them employment if they test positive—even if they were using marijuana for medical purposes

Unfortunately, because this is all so new, there are a number of issues that are not yet crystal clear. For example, given the fact that TCH (the psychoactive component of marijuana) can stay in the bloodstream for days, drug testing during work hours can detect drug use that took place off the clock days before. Can you discharge someone who is obviously not inhaling during work hours but may have done so over the weekend? Can you have a policy that prohibits employees from using marijuana at any point in time?

Some readings of the law suggest the answers to these questions are yes, but the final answers may come from litigation and/or further guidance from the appropriate regulatory bodies.

! Careful consideration needs to be given to this area, and you may want to consult your attorney for guidance.

New Standards for Unpaid Interns

When is an "intern" actually an "employee" under the Fair Labor Standards Act (FLSA)? In the past, the Department of Labor (DOL) used an onerous six-factor test to answer this question for for-profit employers. Now, if you've been avoiding offering unpaid internships for fear that the position would not meet these standards, we've got good news for you. The DOL has now adopted the "primary beneficiary" test instead.

To determine if an intern should be paid, the "primary beneficiary" test focuses on the economic reality of the intern-employer relationship. This flexible test looks at a variety of factors. This includes the expectation of compensation, whether the training provided is similar to what would be given in an educational environment, the extent to which the internship is tied to the intern's formal education program (such as at a college), and more.

! Unpaid interns must be the "primary beneficiaries" of the internship program. To implement an unpaid internship program, be sure that the interns' work complements (not displaces) the work of paid employees, while providing significant educational benefits to the interns. Also, ensure that there is no expectation that a paid job will be provided when the internship ends.

Maximum OSHA Penalties Have Increased

Effective January 2, 2018, OSHA's maximum civil penalties for violations of OSHA standards and regulations have been increased to adjust for inflation. While these penalties only apply to Federal OSHA states, those states (such as California) that operate their own programs are likely to follow suit.

The 2018 maximum OSHA penalties are:

- Other-than-Serious: $12,934
- Serious: $12,934
- Repeat or Willful: $129,336

! As we reported in the September issue of WatchDog, Cal/OSHA's maximum fines are already almost at these levels. Let this be a reminder that your entire team needs to understand the potential financial consequences of non-compliance!

Are Your First Aid Kits in Compliance?

You purchased an "OSHA-compliant" first aid kit, so you've got "first aid kit compliance" covered, right? If you're in California, probably not.

To comply with the more stringent Cal/OSHA requirements, it's not enough to simply have adequate first-aid materials readily available for employees on every job. The specific contents of your first aid supplies must also be approved in writing by your consulting physician. Unfortunately, California employers have recently seen an increase in the number of citations issued for failure to comply with this aspect of the law.

! If you have not yet done so, ask your consulting physician to review and sign off on a list of the contents of your first aid kit. Then ensure that this list continues to reflect exactly what is in your kit on an on-going basis.

The NLRA & Your Employee Handbook

Under the National Labor Relations Act (NLRA), employers cannot set workplace rules or take employment action that restrains or coerces an employee from exercising their rights under Section 7 of the Act to unionize, engage in collective bargaining, or engage in other related activities. This has led to an on-going challenge. What happens when a facially lawful workplace rule appears to unlawfully interfere with an employee's NLRA rights—even if the rule does not actually restrict these rights?

In the past, the National Labor Relations Board (NLRB) generally found that a workplace rule of this nature was unlawful. This is because they were using what was known as the "Reasonably Construe" standard. If an employee might "reasonably construe" the language of the work rule to prohibit the exercise of their NLRA rights, the work rule was deemed to be unlawful.

Now the NLRB has established a new standard for evaluating the language in your Employee Handbook. This involves evaluating two things. First, what is the nature and extent of the potential impact on NLRA rights? And second, what is your legitimate business justification for the rule?

❗ Review your Employee Handbook. If you have any rules that might be "reasonably interpreted" as interfering with—but do not actually prohibit the exercise of—NLRA rights, be sure that your business justifications for the rules are clear.

2017 EEO-1 Report Due March 31st

The 2017 EEO-1 reports must be filed by March 31, 2018. These reports are required for private employers with 100 or more employees, as well as federal government contractors or subcontractors with 50 or more employees and a contract/subcontract of $50,000 or more. The data required for the 2017 EEO-1 report is identical to that required in 2016.

The snapshot period used to compile data for this report should be one pay period between October 1 and December 31, 2017. If you are a federal contractor it is recommended that you choose to use your December 31, 2017 data. This way you will be able to use the same employment data for the 2018 VETS 4212 report, too.

❗ To begin the filing process, click the login button at https://www.eeoc.gov/employers/eeo1survey/.

On Our Radar

Recently added to the list of proposed regulations and other issues that we're following:

- The U.S. Supreme Court has agreed to decide South Dakota v. Wayfair, regarding whether states and local governments can require retailers with no in-state physical presence to collect sales tax.
- The Trump Administration is laying the groundwork for mandatory use of the E-Verify system nationwide.
- California legislators have introduced a variety of new bills related to sexual harassment.

Upcoming Events

PIA Webinar: The Trump Effect—OSHA's 2018 Agenda
March 8, 2018
2:00 to 3:00 pm
http://bit.ly/TrumpEffectWebinar

This webinar will review OSHA enforcement activity, rulemaking and other developments to watch as the year unfolds. Learn about the top OSHA issues that employers should monitor and understand, along with what steps you will need to take to become compliant.

PIA Workshop: OSHA Compliance for Printing
April 25-26, 2018
PIA headquarters, Warrendale, PA
http://bit.ly/OSHAComplianceWorkshop

During this two-day hands-on workshop participants will:

- Gain an understanding of key OSHA regulations
- Dig deep into compliance strategies
- Learn the required elements of written programs
- Get insight on how to respond to an OSHA inspection
- And much more

Print & Packaging Legislative Summit
June 19-20, 2018
Washington, DC
www.printpackagingsummit.com

This signature government affairs event brings printers, packagers, suppliers and allied interests together for a powerful program of public policy and political education, issue advocacy, interaction with Members of Congress, and networking events on Capitol Hill. Recommended attendees are Presidents/CEOs and other C-Suite executives with responsibility for environmental/health and safety, human resources, legal, postal, tax, technology and/or sales.

Special Alert Section:

How the New Tax Bill Affects Employee Benefits

The new corporate and individual tax rates included in the recently-enacted *Tax Cuts and Jobs Act of 2017* have gotten a great deal of press. But this law also contains a number of less-noticed provisions that might impact your employee benefits programs. Here's what you need to know…

Deduction for employee entertainment eliminated – Beginning in 2018 you can no longer deduct any of the expenses associated with providing entertainment, recreational, social or similar activities primarily for the benefit of non-highly compensated employees. This is the case whether or not these activities directly relate to the active conduct of your business.

Deduction for employee meals reduced – Do you provide meals for employees and/or their spouses or dependents that meet the requirements for de minimis fringes and are provided for your (the employer's) convenience? Beginning in 2018, only 50% these costs will be deductible. This includes the expenses of operating an employee cafeteria on or near your premises. Then, starting January 1, 2026, this deduction will be eliminated completely.

However, the deduction for 50% of the food and beverage expenses associated with operating your trade or business will still generally be available. This includes employees' meals while traveling for business.

Deduction for transportation benefits eliminated – If you provide or pay for employee parking, and/or purchase transit passes for your employees, these benefits will longer create a tax deduction for you. They will, however, remain non-taxable to your employees.

A possible (although complicated) work-around to this change would be to sponsor a Qualified Transportation Compensation Reduction Plan whereby employees can elect to pay certain transportation costs on a pre-tax basis.

Bicycle commuting reimbursements now taxable – If you reimburse employees for the costs of commuting to work by bicycle, these payments are now considered taxable income for the employee.

New employer tax credit for paid family and medical leave – Beginning in 2018, if you offer at least two weeks of annual paid family and medical leave (as per the Family and Medical Leave Act) to all "qualifying" full-time employees, and a proportionate amount of leave for part-time employees, you may be eligible for a tax credit.

If you have questions about these provisions of the new tax law or any articles in this issue, please call Cheryl Chong at 323.728.9500, x218, or email cheryl@piasc.org.

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