

BUSINESS ENVIRONMENT

Top 10 Laws, Regulations Affecting Your Business

AS WITH every New Year, businesses are faced with a slew of new laws and regulations. We've condensed them into a list of the top 10 most likely to affect your operations.

1. New gender equal pay laws

A new state law adds teeth to the laws on gender pay equality.

Before SB 358, employees seeking to prove pay discrimination had to demonstrate that they are not paid at the same rate as someone of the opposite sex at the same establishment for "equal work."

Under the new law, the requirement of "same establishment" has been deleted, and the employee need only show he or she is not being paid at the same rate for "substantially similar work."

Substantially similar work, under the law, is a composite of skill, effort and responsibility, performed under similar working conditions.

Employment law attorneys say the employer has the burden to affirmatively demonstrate the pay difference being complained about is based

on any or all of these specific factors:

- A seniority system,
- A merit system,
- A system that measures earnings by quality or quantity of production, or
- Another factor, such as education, training or experience.

2. Minimum wage increase

On Jan. 1, the state minimum wage increased to \$10 an hour.

This is the last of two incremental increases. The first came on July 1, 2014, which moved the rate up to \$9 an hour.

3. Employer mandate part II

At the end of 2015, the Affordable Care Act reprieve for businesses with 50 to 99 full-time or full-time equivalent employees ended.

Employers of this size will be required to provide health insurance to at least 95% of their full-time employees and dependents up to age 26.

For employers who don't provide coverage, the fee is \$2,000 per full-time employee (minus the first 30 full-time employees). Companies

with 100 or more full-time employees were required to cover their workers, starting in 2015.

4. Avoiding frivolous lawsuits

Now employers have 33 days to fix technical violations on an itemized wage statement before an employee can pursue civil litigation under the Private Attorneys General Act.

The California Chamber of Commerce championed the bill, which took effect on Oct. 2, 2015, saying it will reduce frivolous litigation.

5. Health coverage reporting

Starting in 2016, employers with 50 or more full-time or full-time equivalent employees are required to make additional filings with the IRS, as well as supply their staff with forms.

Applicable large employers (with 50 or more full-time and full-time equivalent employees in the preceding calendar year) will use Form 1094-C and Form 1095-C to satisfy reporting requirements.

See "New Regs" on page 2

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WORKPLACE SAFETY

OSHA Nearly Doubling Fines as Enforcement Rises

JUST AS federal OSHA steps up its workplace inspection program across the nation, it is also on the cusp of nearly doubling the fines it levies on employers for violations.

The move to increase its penalties for serious violations by a likely 80% comes as the agency is stepping up its campaign of “naming and shaming” alleged violators of workplace safety regulations. However, the law allows for up to a 150% increase in penalties next year.

OSHA was directed to increase the penalties to account for inflation as part of the budget that President Obama signed in November of last year.

The adjustment must occur before August 1, 2016. This giant leap in fines is the result of a one-time “catch-up” provision in the budget that allows OSHA to increase its penalties by the amount of the inflation rate change since 1990, the last time penalties were raised.

In subsequent years, OSHA also will be allowed – for the first time – to adjust its penalty levels based on inflation.

While the exact amount of the catch-up adjustment remains unknown, it is believed that the initial increase will reflect the approximate 80% increase in the consumer price index from 1990 to the present.

As such, assuming an 80% increase, the maximum monetary penalties for OSHA violations effective August 1, 2016 will be:

- Other than serious – \$12,600 (increased from \$7,000);
- Serious – \$12,600 (increased from \$7,000);
- Repeat – \$126,000 (increased from \$70,000); and
- Willful – \$126,000 (increased from \$70,000).

But, these figures are what pundits expect and the final adjustment could be much higher. That’s because the Budget Act sets the maximum catch-up adjustment at 150% of the current penalty structure.

So, depending on how OSHA decides to calculate increases in the CPI, the penalties could increase to a maximum of \$17,500 for other-than-serious and serious violations, and \$175,000 for repeat and willful violations. ❖



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New Regs in Place on Use of E-Verify System

6. Family leave expanded a little

A school activities law gives employees the right to take protected time off from work when searching for a school or childcare provider.

The law, which applies to employers with 25 or more employees, requires employers to allow an employee to use eight hours in a calendar month, with a total of 40 hours in a calendar year, to find a school or a licensed childcare provider and to enroll or re-enroll a child, as well as time off to address childcare provider or school emergencies.

7. Inappropriate use of E-Verify

Effective Jan. 1, employers are barred from using the E-Verify system to check the work eligibility status of an existing employee or an applicant who has not received an offer of employment, as required by federal law, or as a condition of receiving federal funds.

8. Stiffer workplace safety penalties

Federal OSHA fines will increase for the first time in 25 years, with fines almost doubling from current levels.

The Federal Civil Penalties Inflation Adjustment Act of 1990 exempted OSHA from increasing its penalties to account for inflation. The new budget contains an amendment that strikes the exemption.

Now, OSHA is required to issue an interim final rule increasing its penalties to account for current inflation levels, which would raise proposed

fines by about 80%.

This would mean the maximum penalty for a willful violation would rise to about \$126,000 from the current \$70,000. The adjustment must occur before Aug. 1, 2016. In subsequent years, OSHA also will be allowed to adjust its penalty levels based on inflation (see story above).

9. OSHA’s new filing requirements

OSHA is expected to roll out a new rule that requires employers with 250 or more employees to electronically submit injury and illness records to OSHA on a quarterly basis.

Also, some smaller employers will be required to electronically submit their OSHA Form 300A, which summarizes their annual injury and illness data, on an annual basis.

10. Paid sick leave

This law actually took effect on July 1, 2015 and new amendments took effect on July 13. Under the law, California employees are entitled to one hour of sick leave for every 30 hours worked.

The changes included clarifying who is a covered worker; alternative methods of accruing paid sick leave, other than one hour for every 30 hours worked; clarifying protections for employers that already provided paid sick leave or paid time off before Jan. 1, 2015; and providing alternative methods for paying employees who use paid sick leave. ❖

ONLINE SECURITY

Seven Ways to Protect Yourself from Identity Theft

THANKS TO a stream of news reports, by now you should know that your personal information can be compromised—leaving you open to identity theft and your financial accounts vulnerable.

A recent report by Javelin Strategy & Research found that \$16 billion was stolen from 12.7 million US consumers in 2014, when there was a new identity fraud victim every two seconds.

Fortunately, there are ways to lower your risk of identity theft. *Bankrate.com* recommended the following in a recent blog:

Don't over-share on social networks

A 2011 Javelin report found long-time social networking users were almost twice as likely as those newer to social networking to become victims of ID theft.

Javelin recommends setting your privacy settings at the highest level on these sites and not sharing facts like your exact birth date, including the year, or information that could be used to answer your security questions, such as your mother's maiden name.

Use anti-virus and anti-malware software

The most common way malware and viruses enter your system is getting you to click on links or attachments in seemingly genuine e-mails. From there, they can record keystrokes to mine passwords, hijack online banking sessions and probe your PC for financial information.

Anti-malware software can detect such links and remove them before you click. And it can detect malware that's infected your computer. Another way to thwart any virus or malware that may infect your computer is to limit the amount of financial information you keep on your PC.

Handle financial documents with care

Keep your paper documents secure at home and, when you are purging credit card and bank statements, shred everything before putting it in the trash. Thieves can do a lot with those statements, which give them access to your personal information.

It's usually not worth the risk for thieves to break into your home for this information, but it's easy to fish out of your garbage can outside.

Create strong passwords

Once thieves have zeroed in on your e-mail address or account username, they'll often try to guess your password, either manually or using a computer program to try thousands of passwords until they find the correct one.

To keep from becoming a victim of ID theft, stay away from obvious passwords, like "11111" or "password." Mix it up. Use a combination of capital and lower-case letters, spaces, numbers and special characters, if possible.

Also, don't use the same password for different sites. Another good tactic is to decline every time a financial website asks to save your password when you're logging on.

Be careful with unsecured Wi-Fi

Criminals have become good at intercepting unsecured Wi-Fi communications, so you should avoid logging on to your bank account when using a coffee shop connection.

Also, make sure that your home Wi-Fi has a difficult password.

Don't bite on phishing scams

Phishing, or the practice of sending out fraudulent e-mails soliciting financial information or getting users to click on virus-laden links or attachments, is a growing identity theft threat.

One problem is that phishing e-mails have become increasingly convincing, thanks to growing information available to thieves about you to make the e-mails more persuasive.

To avoid becoming a victim, read e-mails carefully before clicking on links or attachments, especially if an e-mail comes from out of the blue or asks for personal or financial information.

Monitor credit and bank accounts

Checking your credit card and debit card statements online on a daily basis is a good way to keep tabs on any fraudulent activity.

Look at the accounts carefully because often, credit card thieves will make small purchases that most people may not notice. ❖



LONG-TERM ABSENCES

Run FMLA Concurrently with Workers' Comp



EMPLOYERS THAT run federal Family and Medical Leave Act benefits concurrently with workers' comp benefits have more leeway when employees are off work for an extended period of time, a state supreme court has ruled.

In the case of *Kings Aire Inc. vs. Jorge Melendez*, the Texas Supreme Court ruled that an employer who laid an employee off who had been out on workers' comp concurrently with FMLA, but had exceeded the 12 weeks away that is allowed by the law, was entitled to do so.

But regardless of the outcome of this case, employers need to be careful about terminating any workers that are out on workers' comp.

The case

Jorge Melendez filed a workers' comp claim after he injured his wrist in July 2009, cutting two tendons and the median nerve.

His employer informed him that while he was out on workers' comp, it would concurrently place him on FMLA leave, which allows eligible employees who cannot perform their jobs due to a serious health condition, to take up to 12 weeks of job-protected leave per year.

After 12 weeks, Melendez was unable to return to work and his employer sent him a termination letter. He later sued, accusing the heating and air company of retaliating against him for filing the workers' comp claim.

A local court and appeals court sided with Melendez, but the Texas Supreme Court reversed those decisions, saying that the evidence did not support the allegation that he had been fired for the workers' comp claim. Instead, the employer had rightfully signed him up for FMLA leave and he was terminated under the firm's policy, which the employer had enforced equally in other circumstances.

The lesson

If you foresee an employee missing a long period from work, you may want to put them out on FMLA leave to protect your interests, employment law attorneys say.

If you do not offer FMLA leave, your employee will still have those 12 weeks to use for other potential FMLA-approved leaves.

You also need to know that when provisions of both laws run concurrently, an employee may turn down workers' comp light duty.

If that happens, the employee may lose workers' comp benefits, but would retain FMLA rights to a continuation of job-protected leave.

Also: If an employee returns to work in a light-duty capacity under workers' comp, employers typically may pay a lower wage than that of the worker's normal position.

Under the FMLA, if an employee is transferred to a position that better accommodates recurring periods of leave, such a position must have equivalent pay and benefits.

Note of caution

According to the Department of Labor:

- If an employee is collecting workers' comp for something which is also a serious health condition under the FMLA, the employer cannot require the employee to substitute any paid vacation, personal, or medical or sick leave for any part of the absence.
- Similarly, an employee is precluded from relying upon the FMLA's substitution provision to insist upon receiving workers' comp and accrued paid leave benefits during the absence. But, the employer and employee may be able to agree to paid leave to supplement the workers' compensation replacement income. ❖