HR Brief

Human Resources tips brought to you by
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DID YOU KNOW?

Big and burdensome changes are coming to the EEO-1 reporting requirements. The EEOC will require covered employers (includes employers with 100 or more employees) to report employee pay and hours worked data.

The new EEO-1 reporting requirements will be effective for the 2017 form. The due date for the report has also changed. The 2017 EEO-1 report will be due March 31, 2018 (the current EEO-1 report was due annually by Sept. 30).

Covered employers should consider preparing now in order to satisfy these new, and significant, changes to EEO-1 reporting obligations.

Workers' Compensation Leave? Consider FMLA!

If you are an FMLA-covered employer, you should always consider whether an employee who requires time off of work due to a work-related injury or illness is eligible for leave under the Family and Medical Leave Act (FMLA) (and/or possibly leave under a state law).

Certain workers' compensation (WC) leaves may also be covered under the FMLA. An employee's FMLA leave may run concurrently with a WC absence when the injury is one that meets the criteria for a "serious health condition" under the FMLA (and the employee satisfies all other eligibility criteria).

It's important to note that, in general, an employer is responsible for designating an employee's leave as FMLA leave as soon as it has enough information to believe the employee's leave is covered.

Failing to designate this leave as FMLA leave may be a violation of the FMLA, and the employee may still be entitled to FMLA leave once the WC absence has ended.

Where an employee's WC leave is also covered by FMLA, the employer should run the FMLA leave concurrently (at the same time) with the WC absence. Doing so will help ensure the employer complies with all of its obligations. For example, when an employee's WC leave is also covered under the FMLA, the employer must maintain group health coverage for the duration of the employee's FMLA leave.

The employer is required to maintain the group health plan benefits on the same terms and conditions as prior to the employee going on leave. This includes the employee continuing to pay his or her required portion of the premium.

Also, offers of light duty may be affected when an employee's work-related injury or illness is covered by the FMLA. An employee may decline the employer's offer of a light-duty job, if it is not the same or is not an equivalent job to the job the employee left. However, an employee who turns down a light-duty job may lose WC payments, but is entitled to remain on unpaid FMLA leave until the FMLA entitlement is exhausted.

If the employee accepts the light-duty position in lieu of FMLA leave, the employee retains the right to the original or to an equivalent position.

If an employee is unable to return to work or is still in a light-duty job after the FMLA leave entitlement has been exhausted, the employee no longer has the protections of the FMLA. However, an employer must examine the workers' compensation statute and the Americans with Disabilities Act to determine if the employee has further protections.

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Dec. 1 is Near: Understand What's Changing

Under the federal Fair Labor Standards Act (FLSA), employees must be paid at least the applicable minimum wage for all hours worked. In addition, employees must be paid overtime compensation for any hours worked over 40 during the workweek.

However, an employee who satisfies the requirements under one of the FLSA's exemptions may be "exempt" from minimum wage and/or overtime compensation requirements. Conversely, any employee who does not satisfy an exemption is "nonexempt," or not exempt from the entitlement to minimum wage and overtime compensation.

The changes effective Dec. 1 (the "final overtime rule change") are specific to the FLSA's "white collar" exemptions. The final rule did **not** change how employers must compensate nonexempt employees. In addition, the final rule's main change is the more than doubling of the minimum salary threshold required under these exemptions.

Unless an employee currently classified as exempt under one of the white collar exemptions earns an annual salary that meets or exceeds **$47,476 ($913/week)** on Dec. 1, 2016, the employee must be reclassified as nonexempt.

Despite current efforts to delay the DOL's final rule on changes to the white collar exemptions, employers should prepare to be in compliance for a Dec. 1 effective date.