SDEA San Diego Employers Association

San Diego Employers Association

SDEA Newsletter | June 2014

Mid-Year Employment Law Update - June 18th

Is your company on track and up-to-date with 2014 Employment Laws? SDEA's mid-year employment law check-in will help you determine whether you are in compliance. This Employment Law Update will cover new legal developments that include wage and hour updates, discrimination and harassment claims, new leave laws affecting your organization now, and more.

Earn 1.5 hours HRCI units.

Wednesday, June 18th
8:30 a.m. - 10 a.m.

AMN Healthcare
12400 High Bluff Drive
San Diego, CA 92130

$75 Members | $95 Non-Members

What Are Your Pay Obligations During A Natural Disaster?

By Denise Brucker, Esp. of Paul, Plevin's Transactional Practice Group

With the massive wildfires currently affecting our region, many businesses have temporarily closed and those that have remained open have had difficulties maintaining regular operations as employees either cannot get to work or have personal obligations that keep them away. Employers may voluntarily choose to continue to pay all employees under these circumstances, but employers should be aware of the following minimum pay rules that apply:

Pay for Non-Exempt Employees

Employees who are not exempt from overtime need only be paid for actual hours worked. In addition, if you have to evacuate the workplace (or work is otherwise not available due to the fires) and you send non-exempt employees home after they have reported to work, you are excused from the "reporting time pay" premium that ordinarily would apply. This is because the Wage Orders include an exception to the "reporting time pay" premium when lack of work is caused by an Act of God (i.e., natural disaster).

Pay for Exempt Employees

If exempt employees are willing to work but unable to do so – for a matter of days, but less than a full workweek – because your business is closed or work is otherwise not available for them, you have to continue to pay their salary or else their exempt status could be jeopardized. However, if your business is closed and exempt employees are not otherwise working – for a full workweek – you need not pay their salary for that week.

If your business is open and work is available but exempt employees do not or cannot come to work, you may deduct from their accrued vacation or PTO bank in increments of half days (i.e., 4 hours) or full days. If the employees have no accrued time off, you may deduct from their salary but only in full day increments and only when the employees have not performed any work during that day.

If exempt employees report to work or work from home for less than half of a work day (e.g. 1 or 2 hours), you may only deduct a half day (i.e., 4 hours) from their bank of accrued time off. In this same circumstance, if the employees have no accrued time off, you must pay them for the entire day because you cannot make partial day deductions from their salary. Failure to follow these guidelines limiting deductions from pay could jeopardize the employees' exempt status.

New California Labor Commissioner Opinion Issued On Use Of Unpaid Interns

By Robert A. Jones, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

On April 7, 2010, the California State Labor Commissioner issued a 17-page opinion letter explaining how her office will be addressing the growing use of unpaid interns by employers in California. This opinion comes within only a few weeks of the U.S. Department of Labor's (DOL) announcement that the agency is stepping up its enforcement efforts against employers that are allegedly using unpaid interns to perform work that does not meet the requirements of the Fair Labor Standards Act.

The Opinion Letter confirms that California intends to follow the federal regulations with respect to this issue and that there is no basis in either statutory or case law to find that California has adopted any higher standard in making such determinations. Noting that the DOL, long ago, derived a six-factor test to be applied, the California Labor Commissioner found no justification for the state to continue to apply a unique 11-facotr test it had previously been using.

As one would suspect, this "new" Labor Commissioner interpretation is very narrow in its application of the specific facts of the case presented in the 33-page request letter that is posted along with the Opinion Letter at www.dir.gov/dlse_OpinionLetters.htm (2010.04.07). However, aside from the apparent adoption of the federal six-factor test, this Opinion Letter goes further in setting forth an interpretation of a particularly important one of the six factors. That factor is federal criteria number four which provides that "The employer derives no immediate advantage from the activities of trainees or students, and on occasion the employer's operations may be actually impeded."

The Labor Commissioner has determined that in making this required determination of "immediate advantage," in otherwise bona fide internship programs, the employer may offset any advantage of minor or occasional "non-integral" business work being performed, with proof of increased overall costs related to the internship program. These "costs" include the costs of additional "substantiated supervision" and other "impediments to the employer's operations in both time and economic costs."

Again, employers are cautioned to note the very limited application of this newly-issued position of the California Labor Commissioner to employer's use of any unpaid interns. It is strictly limited to cases in which there is a bona fide independently supervised, no-cost training program that is tied to formal education credits and in which the employers can show that the actual economic costs to them of providing these internships far outweighs any incidental perceived benefit the employer receives. Of course, the employer also must be able to show that it meets all the criteria set for the in the six-factor test.

It is important to note that while the DOL has not specifically stated that it intends to follow the same interpretation of the no "immediate advantage" factor that has been adopted by the California Labor Commissioner, there is support in both prior DOL Opinion Letters and federal case law for their interpretation.

Managing Cash Flow in Retirement

Contributed by Sean Ciemiewicz with Retirement Benefits Group

Detailed budgeting, frequent monitoring of income and expenses, and prompt action to address potential cash flow problems are essential elements of financial planning for retirees. Despite careful planning and reasonable assumptions about investment returns, inflation, living costs, and other variables, retirees are likely to face many developments affecting their cash flow over the years.

Expenses vary depending on individual lifestyles and health. Income may be affected by changes in investment performance and interest rates. Other factors bearing on cash flow include changes in tax rates and rules and alterations to Medicare, Social Security, and employer-provided retiree benefits.

Except for the fortunate few who don't have to worry about money, the ultimate goal for most retirees is making sure their assets last as long as they live. Once a person or household no longer can rely on earned income to pay the bills and save for the future, balancing income and expenses becomes the primary focus of financial planning. And because of increasing longevity, managing cash flow is more critical than ever. A typical American electing to retire in his or her mid-60s may expect to live 20 or more years after retirement. While many variables come into play depending on each person's mix of income, lifestyle, and health, there are a number of planning moves that can help retirees live within their means and make appropriate adjustments in response to changes in income and expenses.

Tools for the Task

If you are retired, or about to retire, you will need to gather and organize key information before you can tackle the ongoing tasks of monitoring and managing your cash flow in retirement. The purpose is to give you a clear and complete picture of your current financial situation, as well as of any significant changes you expect. Two sources will provide this information:

- An up-to-date net-worth statement, which provides a snapshot of your assets, debt, and cash reserves.
- Your monthly or annual budget, with itemized breakdowns of your income and expenses.

If you haven't retired yet, it's a good idea to prepare a projected budget of your retirement income and expenses. Be sure to account for all expenses, including those that occur infrequently, such as insurance bills, college tuition, membership fees, and investment management fees. They should be reflected in your monthly budget on a prorated basis. If you need assistance creating your net-worth statement and budget, you may want to consult a financial advisor, a book on the subject, or resources that might be available online.

Analyzing this information will reveal any major problems that you need to overcome, such as insufficient cash reserves for an emergency or an income shortfall compared with current or projected expenses. It may also point up areas for improvement. For example, you may be able to free up cash by reducing debt or eliminating nonessential expenses. (Continued on the next page).

Managing Cash Flow in Retirement - Continued

Regular Monitoring

Plans and projections are always subject to change. Even with reasonable assumptions about investment returns, inflation, and retirement living costs, it's likely you will encounter numerous changes to your cash flow over time.

Frequent monitoring of your income and expenses will detect changes that you can address in a timely fashion to prevent significant problems down the road. Experts often recommend a monthly review of your budget, as well as a comprehensive annual review of your financial situation and goals. While you can keep track of your situation with paper and pen, specialized software may make the task easier, especially if your finances are relatively complex.

What to Look For

What should you look for as you monitor your finances? Following are potential developments that could affect your cash flow and require adjustments to your plan.

- Interest rate trends and market moves may result in an increase or decrease in income from your savings and investments. For example, if interest rates decline, you may have to reduce your expenses if you are periodically withdrawing a fixed percentage from your investment assets. Alternatively, you might consider altering your investment mix to pursue other sources of income, aside from traditional fixed-income investments - equity dividend income investments, for instance.
- You may also encounter changes in federal, state, and local tax rates and regulations. This factor may come into play if you relocate after retiring. The state you move to may impose higher income or property taxes, for example. Other factors that could have a bearing on your retirement cash flow include changes in Social Security and Medicare benefits or eligibility, as well as those affecting employer-provided retiree benefits and private insurance coverage.
- Inflation and health care costs are two other variables that can have an impact on living costs and, hence, your retirement planning assumptions.
- Life events - such as marriage, the death of a spouse, and the addition or loss of a dependent - may also affect your cash flow. Cash flow is also a matter of personal preferences and decisions, and here you will be in control of the many small and large choices likely to be made over the course of retirement. How much you spend on travel, entertainment and recreation and whether you live in a lower or higher cost locale are examples of factors that can have a significant effect on cash flow - and how long your retirement assets are likely to last.

That's why it's worth paying close attention to cash flow, making sure you budget carefully, monitor income and expenses frequently, and take action whenever you see significant changes in income and expenses.

Points to Remember

1. Due to increasing longevity, managing cash flow has become a critical task for retirees seeking to ensure that they do not outlive their assets.
2. An up-to-date net-worth statement and monthly budget providing itemized breakdowns of income and expenses are the basic tools used to monitor and manage cash flow.
3. Interest rate trends and market moves may result in higher or lower income from savings and investments.
4. Other factors that can alter cash flow include changes in inflation, health care costs, tax rates and regulations, and Social Security and Medicare benefits.
5. Lifestyle choices - such as preferences for housing, travel, and entertainment - also affect cash flow.

Roundtable: Identifying "Legal" Independent Contractors

Friday, June 13, 2014
11:30 a.m. - 1 p.m. at SDEA

Too many companies are hiring workers as Independent Contractors when they should be employees. This is a hot button for California and a costly mistake you can easily avoid. Attend our Roundtable to learn:

- Who determines the legality of someone as an Independent Contractor
- How most companies are getting caught by EDD
- Why that worker is NOT an Independent Contractor
- Why having a contract isn't the solution
- How to confidently hire Independent Contractors
- Legal fines and penalties for misclassifying a worker

Roundtable led by Christopher Olmsted, Esq.
$35 Members | $45 Non-Members | Lunch is included
Register at www.sdea.com.

Upcoming Training Opportunities

June 10	Administering Leaves of Absence*
June 11	Exceptional Customer Service
June 12 & 18	Strategic Interviewing* (Half Day on 6/18 and Full Day on 6/12)
June 18	Mid-Year Employment Law Update*
June 25	Employee Orientation*
July 9	Effective Communication
July 16	Reprimand, Discipline & Discharge
July 23	Harassment Prevention Webinar

* Eligible for HRCI units | More classes available at www.sdea.com

Participate in SDEA's
San Diego Salary Survey 2014
and receive a free copy!
(a $450-$650 value)

San Diego Employers Association's San Diego Salary Survey details salary, incentive pay, and cost of living averages. The Survey includes salary information on positions in a variety of local industries including government, education, health, engineering, research and development, HR, biotechnology, manufacturing, retail, finance and insurance, among others.

Email surveys@sdea.com to participate. Participants who complete the Salary Survey by June 13 will be entered to win a $100 Visa Gift Card!

To learn more, visit www.sdea.com.

Participate by June 13th and you will be entered to win a $100 Visa Gift Card!

All participants receive a COMPLIMENTARY copy of the Salary Survey.

Did You Know?
SDEA Can Assist Your Company With Negotiations

One of the benefits of membership with SDEA is a discounted rate on negotiations in union contracts provided by Tom Puffer.

Recently, an excellent five-year labor agreement was reached between Humphrey's Restaurant (a segment of the Bartell Hotel Group) and the Hotel and Restaurant Employees Union Local 30.

The highlight of this new contract was the employer's ability to maintain his excellent management rights clause. By an amalgamation of the existing clause and another at Bartell Hotel's Island Palms, the employer maintained what negotiator Tom Puffer calls perhaps the best discharge clause in the United States. The clause states that when, as determined by the employer, discharge is warranted; the employer may do so as long as his action is not arbitrary or capricious. This occurred because of the employee's absolute trust in the fairness of owner Richard Bartell.

If you would like assistance with negotiations, email info@sdea.com or call 858-505-0024.

Save the Date: Strategic Leadership Series featuring San Diego Police Chief Shelley Zimmerman Wednesday, July 9 at 11:30 a.m.

San Diego Police Chief Shelley Zimmerman will be presenting at SDEA's Summer 2014 Strategic Leadership Series event on Wednesday, July 9th at the Crowne Plaza Mission Valley.

In this Strategic Leadership Series event, Chief Zimmerman will reveal her approach to leadership and her personal leadership philosophy. You won't want to miss this informative talk with practical leadership insights to apply at work and in life! To learn more and to register, visit www.sdea.com.

Chief Shelley Zimmerman was promoted to Chief of Police on March 4, 2014, and is a 31-year veteran of the San Diego Police Department.

Chief Zimmerman has worked many of the San Diego Police Department's patrol commands. Shelley also has extensive investigative experience. Some of Chief Zimmerman's prior assignments have included Vice, Narcotics, Internal Affairs, Multi-Cultural Community Relations Office, the Mayor's Executive Protection Detail, the Narcotics Task Force and the Field Lieutenant position.

20% off All In One State & Federal Posters through July 31!

The new minimum wage requirements will affect more than your payroll. The new minimum wage law, taking affect July 1, 2014, will mean new compliance posters for all California employers. This is a mandatory requirement and non-compliance could result in fines and penalties and even court action and civil action.

SDEA has the all-in-one federal and state compliance poster available for purchase. OSHA compliance posters, posters in various languages as well as mandated posters for other states are also available.

Now through July 31, **receive 20% off** your poster order with SDEA!

For more information and to order, email info@sdea.com or call 858-505-0024.

SDEA Helpline Q & A

Every month SDEA receives hundreds of calls. Here readers have the opportunity to learn from some of the most common HR questions received by our HR consultants.

Q. How long do I need to retain 1-9 forms for employees who no longer work for my company?

A. Employers must retain 1-9 forms for all employees who are no longer with the company for either three years after their start date or one year after their termination, whichever is longer. The U.S. Citizenship and Immigration Services produces a Handbook for Employers which includes information on completing and retaining I-9 forms. Page 27 of the handbook includes a form which can help employers keep track of how long I-9 forms must be retained. The handbook can be accessed using the following website:

http://www.uscis.gov/sites/default/files/files/form/m-274.pdf .

Q. Are there new COBRA notices as a result of the Affordable Care Act?

A. Yes, The U.S. Department of Labor recently updated the model notices which includes information on the Affordable Care Act. The updated notices states that individuals who are eligible for COBRA might also be eligible for coverage through the insurance marketplace. In California, the marketplace is Covered California and the website is https://www.coveredca.com.

The Department of Labor (DOL) website has several resources for employers including a frequently asked questions (FAQs) webpage. Of course, California employers are also subject to Cal-COBRA. As a reminder, Cal-COBRA applies to employers from two to 19 employees and as an extension of up to 36 months for employers with more than 20 employees. In summary, it is recommended that employers begin using the revised model notices immediately.

Advertising And Article Submission Information

This newsletter is published monthly by the San Diego Employers Association (SDEA). We welcome the submission of articles by our members on topics of interest related to HR. Date for submission of materials and advertising is the 15th of the month prior to publication on the 1st of each month. If you are interested in submitting an article or obtaining advertising rates, please email info@sdea.com.