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The Schroeder Group, S.C., Attorneys at Law is proud to be named the winner of the following 2009 awards:

Top Milwaukee Workplaces
by *The Business Journal*

Family-Friendly Employer
by *Metro Parent*

Business of the Year
(Honorable Mention) by
Waukesha County
Executive Awards

Bruce Gill Executive
Volunteer of the Year
Award (Attorney Stuart
Schroeder) by *United Way*
of *Waukesha County*

Bravo! Entrepreneur Award
(Attorney Stuart Schroeder)
by *BizTimes Milwaukee*

Wisconsin FMLA Now Covers Domestic Partners

The budget bill signed by Governor Doyle amends the Wisconsin Family & Medical Leave Law (Wisconsin FMLA) to provide up to two weeks of family leave to employees to care for their domestic partners or to care for their domestic partners' parents. The law does not provide leave to care for the children of the domestic partner unless the children are legally adopted by the employee.

A "domestic partner" is defined as:

- (1) same-sex couples who register in their county of residence; or
- (2) same-sex and opposite-sex couples who are not required to register.

In order to be "registered," domestic partners must file a declaration of domestic partnership with the Register of Deeds in the county in which they reside, and must also satisfy the following conditions:

- (1) Each person is at least 18 years old and consents to the relationship;
- (2) Neither person is married to, or in a domestic relationship with, someone else;
- (3) The individuals share a common residence;
- (4) The individuals are not more closely related than 2nd cousins;
- (5) The individuals are members of the same sex; and
- (6) The couple is registered with the Register of Deeds in their county of residence.

If domestic partners choose not to register, they must satisfy the following requirements:

- (1) Each person is at least 18 years old and consents to the relationship;
- (2) Neither person is married to, or in a domestic relationship, with another person;
- (3) The individuals share a common residence;
- (4) Their partnership does not violate § 765.03 of the Wisconsin Statutes, which bans marriage between certain persons based on kinship and divorce;
- (5) The individuals consider themselves to be members of each other's immediate family; and
- (6) The individuals must have agreed to be responsible for each other's basic living expenses.

The DWD has issued a new Wisconsin FMLA poster and it can be downloaded from our website. Employers with 50 or more employees should immediately revise their policies and procedures to reflect these changes.

In addition, please keep in mind that the DWD requires employers who have 25 or more employees to post their leave policies. Please contact us if you have questions regarding your compliance obligations or require assistance in revising your FMLA policies and procedures.

Employer Can Be Liable for Discrimination by Independent Contractors

A federal court in New York recently concluded that an employer can be held liable for age bias perpetrated by independent contractors and other third parties if the employer actually or apparently authorized the third party's actions. The court decided that if "a company gives an individual authority to interview job applicants and make hiring decisions on the company's behalf, then the company may be held liable if that individual improperly discriminates against applicants on the basis of age."

Employers who use independent contractors should be careful to ensure that they are properly training those individuals and, that to the extent independent contractors are making employment decisions, those decisions are based on legitimate, non-discriminatory factors.

EEOC Attacks Employer's Leave Policy

The EEOC recently brought suit against UPS in federal court in Chicago for maintaining an inflexible medical leave policy that EEOC claims denies workers' rights under the Americans with Disabilities Act. The policy permits an employee to take 12 months of leave – and if the employee is not able to return to work after 12 months of leave, the employee is terminated.

EEOC called the policy "inflexible" and "arbitrary," and has alleged the policy violates the ADA because it fails to permit any reasonable accommodation for employees with disabilities. EEOC claims that a flat 12-month leave policy negates the "interactive process" between employers and employees envisioned under the ADA. A regional attorney for EEOC stated that "Policies like this one at UPS, which set arbitrary deadlines for returning to work after medical treatment, unfairly keep disabled employees from working."

With the ADA Amendments Act in place, and new regulations right around the corner, employers should review their leave policies and determine whether modifications should be made to avoid a claim that a similar policy violates the ADA.

Income Tax Withholding Changes for Wisconsin and Minnesota on January 1

Effective January 1, 2010, the tax withholding reciprocity agreement between Wisconsin and Minnesota will end. As a result, Minnesota employers will have to withhold Minnesota taxes from Wisconsin residents' wages and Wisconsin employers will have to withhold Wisconsin taxes from Minnesota residents' wages.



New Employment Forms on the Horizon

The IRS is set to release the 2010 version of its mandatory Federal W-4 form. All employers are ***REQUIRED*** to have the most recent version of the W-4 form available for employees.

The Department of Homeland Security has also recently updated the mandatory I-9 form. You must have a completed I-9 form for every employee. Failure to use the current form can lead to fines of over \$1,000 per employee.

Please check our website later this year for a copy of the new Form W-4 when it is available. The revised Form I-9 is already available from our website.

OSHA Updates Regulations for Personal Protective Equipment (PPE)

OSHA has updated the references to national consensus standards in the personal protective equipment (PPE) sections of its general industry, shipyard employment, longshoring, and marine terminals rules. The new rules allow employers to use PPE constructed in accordance with the most recent national consensus standards. **The new rules are effective October 9, 2009.**

Protective eye and face protection devices must comply with any of the following consensus standards:

- ANSI Z87.1-2003, "American National Standard Practice for Occupational and Educational Eye and Face Protection"
- ANSI Z87.1-1989 (R-1998), "American National Standard Practice for Occupational and Educational Eye and Face Protection"
- ANSI Z87.1-1989, "American National Standard Practice for Occupational and Educational Eye and Face Protection"

However, protective eye and face protection devices that the employer demonstrates are at least as effective as protective eye and face protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of the new rule.

Protective footwear must comply with any of the following consensus standards:

- ASTM F-2412-2005, "Standard Test Methods for Foot Protection," and ASTM F-2413-2005, "Standard Specification for Performance Requirements for Protective Footwear"
- ANSI Z41-1999, "American National Standard for Personal Protection--Protective Footwear"
- ANSI Z41-1991, "American National Standard for Personal Protection--Protective Footwear"

However, protective footwear that the employer demonstrates is at least as effective as protective footwear that is constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the new rule.



Head protection must comply with any of the following consensus standards:

- ANSI Z89.1-2003, "American National Standard for Industrial Head Protection"
- ANSI Z89.1-1997, "American National Standard for Industrial Head Protection"
- ANSI Z89.1-1986, "American National Standard for Personnel Protection--Protective Headwear for Industrial Workers—Requirements"

However, devices that the employer demonstrates are at least as effective as head protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the new rule.

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*This edition of the **Employment Law Update** has been authored by Attorney Sally Piefer. We welcome any questions regarding the topics covered or on any employment-related issue. Sally can be reached by telephone at (262) 754-1325, or by e-mail at sap@tsqglaw.com.*

The Schroeder Group, S.C., Attorneys at Law provides comprehensive services covering all aspects of employment, employee benefits and labor relations law to closely-held businesses and companies. Through aggressive representation and sound advice, we help our clients achieve their business objectives. We are regularly in direct and ongoing communication with labor relations, human resources and employee benefits managers, as well as business owners and senior executives, and are also sensitive to their business, cost management and relationship needs. Our priority is counseling and problem avoidance.

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