



COBRA Subsidy Extended to May 31, 2010

By Sally A. Piefer

On April 15, 2010, the President signed into law an extension to the COBRA premium subsidy. The prior subsidy period expired on March 31, 2010.

The new extension provides a COBRA premium subsidy for eligible individuals who are involuntarily terminated from employment ***through May 31, 2010***. In addition, the new law offers retroactive eligibility for individuals who lost their jobs after the prior COBRA subsidy expired on March 31, 2010.

Employers should ensure that anyone who was involuntarily terminated after March 31, 2010 and the present receive the appropriate COBRA notices and election forms.

HIRE Act Employee Affidavit Released by IRS

By Sally A. Piefer

President Obama signed the HIRE Act into law in March 2010. The HIRE Act provides employers with a tax credit and a Social Security payroll tax exemption for certain newly hired employees who begin employment between February 4, 2010 and December 31, 2010.

In order to qualify for the tax credit and tax exemption, the employees must certify on the new IRS Form W-11 that they have not been employed in excess of 40 hours during the 60 days prior to beginning employment. In addition, in order to be eligible for the tax relief, the employee cannot be related to the business owner, and must not have been hired to replace another employee – unless the employee separated from employment voluntarily or was terminated for cause.

A copy of the IRS Form W-11 is available on our website.

Break Time Required for Nursing Mothers

By Sally A. Piefer

The recently-passed ***Patient Protection and Affordable Care Act***, amends the Fair Labor Standards Act (FLSA) and requires employers to allow employees who are nursing mothers to take reasonable breaks to express breast milk for up to one year after the child's birth.

Employers must also provide a place that the nursing mother can use to express milk that complies with the following requirements:

- the location is not a bathroom;
- the location is shielded from view; and
- the location is free from intrusions by co-workers and the public.



Employers can, but are not required to compensate nursing employees for break times to express milk.

Employers with less than 50 employees are not required to provide the break times if doing so causes significant difficulty or expense. We believe that this exception will likely be interpreted narrowly by the courts.

Employers who must comply with the new law should review their policies and procedures to determine whether updated policies must be developed.

Milwaukee Sick Leave Ordinance to Be Decided by the Wisconsin Supreme Court

By Sally A. Piefer



On Wednesday, March 17, 2010, the Wisconsin Supreme Court agreed to hear the appeal on the Milwaukee Sick Leave Ordinance. The Metropolitan Milwaukee Association of Commerce (MMAC) opposed the enforceability of the law, and last Spring, the Milwaukee County Circuit Court concluded that the Ordinance was not valid.

The organization which was instrumental in getting the Ordinance passed, 9to5, appealed the decision. In February 2010, a panel of the Wisconsin Court of Appeals asked the Wisconsin Supreme Court to make a decision through the "bypass" process.

While the Wisconsin Supreme Court has decided to hear the case, the Court has not set a date for oral arguments from the parties.

Labor Department Issues New Regulations for Agricultural Guestworkers

By Sally A. Piefer



The Labor Department recently announced new regulations for the H-2A agricultural guestworker program. Key changes to the regulations include the following:

- Wage rate change – The new regulations base the wage rate on USDA wage surveys of farmworkers and farms.
- Wage deductions – The regulations prohibit an employer from evading the H-2A program wage rate by taking deductions out of wages.
- Transportation reimbursement – Workers' long distance transportation costs must be reimbursed. The prior rule only required employers to pay travel costs from the U.S. consulate in the foreign country.
- Inspections – The regulations require a pre-occupancy housing inspection of the premises where H-2A workers will be living, to ensure safe and healthy quarters.

- Disclosure of job terms – Job terms must be disclosed by the time the foreign worker applies for a visa, in a language the worker understands, so that the workers know what their job terms will be.
- Surety bond – A surety bond is required for farm labor contractor.
- Disclosures about the job – H-2A labor contractors will need to specify each specific location where work will be performed, as well as identify the grower and the period of work.
- Transparency and public information – H-2A applications will be posted on an electronic job registry so that US workers can learn about jobs and their job terms, without the need for FOIA requests.
- Labor certification – Employers must obtain a “labor certification” from the DOL stating that there is in fact a shortage of U.S. labor and that the job terms comply with the law and regulations.

The new rules took effect on March 15. A new poster has also been prepared which must be used by employers employing H-2A employees. The new poster is available from the DOL website.

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