HR Brief

Human Resources tips brought to you by
Touchstone Consulting Group

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DID YOU KNOW?

Employer fines for noncompliance with Form I-9 paperwork requirements have increased significantly. Effective Aug. 1, 2016, fines for Form I-9 paperwork violations, employment of unauthorized workers and unfair immigration-related employment practices have nearly doubled.

Prior to Aug. 1, the fine for a first offense Form I-9 paperwork violation ranged from $110 to $1,100 per violation. A first offense Form I-9 paperwork violation will now cost employers $216 to $2,156 per violation.

Employers may want to consider a Form I-9 audit in the near future.

Overtime and the FMLA Leave Entitlement

The complexity of administering leave under the federal Family and Medical Leave Act (FMLA) should not be underestimated. This can be particularly true when calculating leave entitlement and usage for an employee who is using FMLA on an intermittent or reduced schedule basis.

Most HR professionals know that, in general, the FMLA provides eligible employees with up to 12 weeks of unpaid, job-protected leave during any 12-month period. When an employee requires a block of time off, the 12-week leave entitlement is fairly straightforward.

However, for an employee that regularly works overtime hours and requires FMLA leave on an intermittent basis, the calculation of the employee's leave entitlement and usage can become more complicated.

An employee's actual workweek should be used as the basis for determining an employee's FMLA leave entitlement. For example, as stated in the FMLA regulations, if an employee who would otherwise work 40 hours a week takes off eight hours, the employee would use one-fifth of a week of FMLA leave. Similarly, if a full-time employee who would otherwise work eight-hour days works four-hour days under a reduced leave schedule, the employee would use one-half week of FMLA leave.

If an employee would normally be required to work overtime, but is unable to do so because of an FMLA-qualifying reason, the hours that the employee would have been required to work may be counted against the employee's FMLA entitlement. This is true only if the overtime hours are **mandatory**. An employer may not reduce an employee's FMLA leave entitlement for voluntary overtime hours that the employee was unable to work due to an FMLA-qualifying reason.

In addition, an employer will want to be sure that the mandatory overtime hours are included in the employee's initial FMLA leave entitlement calculation. The ruling in *Hernandez v. Bridgestone Americas Tire Operations LLC* highlights this point. In the case, Bridgestone was found to be liable for FMLA interference when it deducted missed overtime hours from an employee's leave entitlement (ultimately resulting in the employee's termination), but did not include the hours in the employee's overall leave allotment.

IRS ACA Penalty Assessments are Forthcoming

Applicable large employers (ALEs) should keep an eye out for letters from the IRS assessing pay or play penalties for the 2015 calendar year.

Many employers have already received notifications from the Health Insurance Exchanges notifying them of employees who received subsidized coverage through the Exchange. Unlike the letters that are forthcoming from the IRS, the Exchange notifications were **not** assessing penalties or notifying employers of their potential liability for penalties.

In addition, the letters from the IRS are targeted only to ALEs, and only to those that the IRS has determined may be liable for pay or play penalties. The Exchange notifications went to any employer (ALE or non-ALE) that employed an individual who received subsidized Exchange coverage.

ALEs may want to consider the process by which they will handle any forthcoming letters from the IRS notifying them of their potential liability for penalties. For example, consider the specific point person or department that these letters should be directed to, and the process for determining whether the ALE should appeal the penalty liability notification.

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