HUMAN RESOURCES & ADMINISTRATION
NEWS & BEST PRACTICES
Marshall & Sterling GROUP BENEFITS

February 2016

Have You Reviewed Your Employee Handbook Lately?

All employers should have well-drafted employee handbooks. However, those handbooks should be updated at least annually to ensure that they are in compliance with recent federal, state and local laws that have been passed.

Please reach out to **Marshall & Sterling** to better understand important protections that your employee handbook needs to contain to best protect you in 2016 and what recent legal issues require revisions to your employee handbook.

To learn more about our Employee Handbook services, **email Cindy Nichtberger**, HR Services Specialist at Marshall & Sterling Insurance **or call 914-962-1188 x2482.**

In This Issue…

OSHA Summary of Work-Related Injuries & Illnesses Must Be Posted

5 Quick Facts About COBRA

Additional Guidance on Retroactive Increase for 2015 Monthly Transit Benefits

New Guidance: Joint Employment Under the Fair Labor Standards Act

How to Handle Employee Attendance During Bad Weather

OSHA Summary of Work-Related Injuries and Illnesses Must Be Posted from February 1 - April 30

Employers subject to the recordkeeping requirements of the federal Occupational Safety and Health Act (generally those with **more than 10 employees**, except for employers in certain low-hazard industries) are reminded to post OSHA Form 300A, *Summary of Work-Related Injuries and Illnesses*, from February 1 to April 30, 2016.

The Form 300A lists the total number of job-related injuries and illnesses that occurred during the previous year and **must be posted even if no work-related injuries or illnesses occurred during the year**. The summary must be certified by a company executive, and should be displayed in a common area where notices to employees are usually posted so that employees are aware of the injuries and illnesses occurring in the workplace.

Revised List of Exempt Industries and Effect on State Plans

As of January 2015, a final rule created a new list of industries that are partially exempt from keeping OSHA records. The rule maintains the exemption for any employer with **10 or fewer employees**--regardless of its industry classification--from the requirement to routinely keep records of worker injuries and illnesses.

However, please note that certain "state plan" states may not have formally adopted the new classifications. As such, establishments located in states that operate their own safety and health programs should check with their state plan for the implementation date of the requirements.

More information about employer responsibilities related to worker safety and health is available in our section on Safety & Wellness.

5 Quick Facts About COBRA

Understanding your responsibilities when it comes to COBRA compliance is the best way to prevent expensive mistakes. The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a federal law that requires certain-sized employers with group health plans to offer employees, their spouses, and their dependents a temporary continuation of health coverage if they lose coverage due to certain specified events.

If you need a refresher, the following are five key points:

1. **COBRA generally applies to group health plans maintained by employers with at least 20 employees on more than 50% of typical business days in the prior year.** Each part-time employee counts as a fraction of a full-time employee, equal to the number of hours the part-time employee worked divided by the hours an employee must work to be considered full-time.

2. **Only qualified beneficiaries are entitled to COBRA continuation coverage.** Generally, qualified beneficiaries include employees, their spouses, and their dependent children who are covered under a group health plan on the day before a qualifying event. In addition, any child born to or placed for adoption with a covered employee during a period of COBRA coverage is automatically considered a qualified beneficiary.

3. **Qualifying events are events that cause an individual to lose group health coverage.** Voluntary or involuntary termination of a covered employee (other than for gross misconduct) or a reduction in hours of work are qualifying events for the employee and his or her spouse and dependent child. Additional qualifying events for a spouse and dependent child include the covered employee's death, divorce, or entitlement to Medicare.

4. **The type of qualifying event determines the amount of time the plan must offer qualified beneficiaries COBRA continuation coverage.** When the qualifying event is the covered employee's termination of employment (other than for gross misconduct) or reduction in hours of work, qualified beneficiaries must be provided **18 months** of continuation coverage. (In certain circumstances, this period may be extended due to disability or the occurrence of a second qualifying event.) For other qualifying events, qualified beneficiaries must be provided **36 months** of continuation coverage.

5. **Group health plans must provide qualified beneficiaries with specific notices explaining their COBRA rights.** One way to avoid mistakes is to use the Model General Notice and the Model Election Notice provided by the U.S. Department of Labor, filling in the blanks with your plan information. Other notices, such as the Notice of Unavailability of Continuation Coverage and the Notice of Early Termination of COBRA Coverage, should be sent to qualified beneficiaries as necessary. COBRA rights must also be described in the plan's summary plan description (SPD).

Keep in mind that many states have enacted what are commonly referred to as "mini-COBRA" laws, which typically require continuation of group health plan coverage provided by employers with **fewer than 20 employees**. Employers of all sizes should check to see if a state mini-COBRA law applies to their plans and if so, how the law differs from federal COBRA. Be sure to consult with a trusted employment law attorney or benefits advisor if you have any questions as to how COBRA and/or mini-COBRA apply to a particular plan or your obligations under the law.

Visit our section on COBRA for additional information regarding compliance, including step-by-step guidance, FAQs, and model notices and forms.

Additional Guidance on Retroactive Increase for 2015 Monthly Transit Benefits

IRS guidance on how to apply the retroactive increase for monthly transit benefits in 2015 is now available for employers. As announced in December, the monthly exclusion for combined commuter highway vehicle transportation and transit passes was increased from $130 to $250 (equal to the exclusion for qualified parking), retroactive to January 1, 2015.

The guidance provides a special administrative procedure for certain employers that treated "excess transit benefits"--i.e., in excess of $130 and up to $250--as wages and **did not yet file** their fourth quarter Form 941 for 2015. Employers that **already filed** the fourth quarter Form 941, or that **have not repaid or reimbursed** employees prior to filing the fourth quarter Form 941, must use Form 941-X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund*, and normal procedures (described in the guidance) to make an adjustment or claim a refund for any quarter in 2015.

The guidance explains both the special administrative and normal procedures in more detail, and provides employer instructions for Form W-2.

For more on employer-provided transportation benefits, please visit our section on Fringe Benefits

New Guidance on Joint Employment Under the Fair Labor Standards Act

The U.S. Department of Labor has issued new guidance concerning joint employment under the federal Fair Labor Standards Act (FLSA). Under the FLSA, it is possible for a worker to be employed by two (or more) joint employers who are both responsible for compliance. This is because joint employment is included in the law's definition of "employment," which was written to have as broad an application as possible.

Determining When Joint Employment Exists

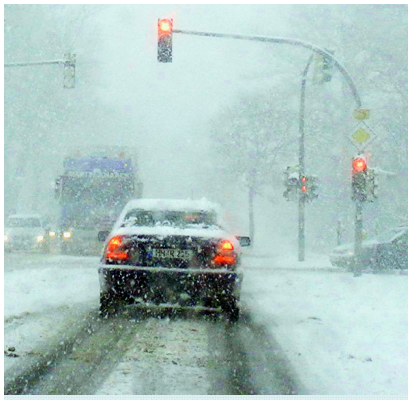
The most likely scenarios for joint employment are:

1. **Where the employee has two (or more) technically separate but related or associated employers.** Joint employment exists where two or more employers benefit from the employee's work and they are sufficiently related to or associated with each other. The focus of this type of joint employment--sometimes called horizontal joint employment--is the degree of association between the two (or more) employers.
2. **Where one employer provides labor to another employer and the workers are economically dependent on both employers.** Joint employment also exists where a worker is, as a matter of economic reality, economically dependent on two employers: an intermediary employer (e.g., a staffing agency) and another employer who engages the intermediary to provide workers. The focus of this type of joint employment--sometimes called vertical joint employment--is the employee's relationship with the other employer (as opposed to the intermediary employer).
3. **Responsibilities of Joint Employers**
   - Joint employers (whether vertical or horizontal) are responsible, both individually and jointly, for compliance with the FLSA.
   - Each of the joint employers must ensure that the employee receives all employment-related rights under the FLSA (including payment of at least the federal minimum wage for all hours worked and overtime pay at not less than one and one-half the regular rate of pay for hours worked over 40 in a workweek, unless an exception or exemption applies).
   - Joint employers must combine all of the hours worked by the employee in a workweek to determine if the employee worked more than 40 hours and is due overtime pay.
   - Additional resources, including Fact Sheets and Q&As, are available on the DOL's website.

More information on employers' responsibilities under the FLSA is featured in our section on the Fair Labor Standards Act.

How to Handle Employee Attendance During Bad Weather

Snow and slippery conditions during the winter months may make it difficult for your employees to travel to work. Consider the following guidelines that can help your company be prepared when bad weather strikes.



For more issues related to employee compensation, including guidelines for determining the exempt or non-exempt status of your employees, visit our section on Employee Pay.

1. When an employee misses work due to bad weather conditions, whether the employee is entitled to be paid for the absence may depend on the employee's exempt or non-exempt status.

Under the federal Fair Labor Standards Act (FLSA), employers are not required to pay non-exempt employees for hours they did not work, including when the office is closed due to bad weather. Exempt employees generally must be paid their full salary amount if they perform any work during a workweek. However, an employer that remains open for business during a period of bad weather may generally make deductions, **for full-day absences only**, from the salary of an exempt employee who chooses not to report to work because of the weather. Deductions from salary for less than a full-day's absence are not permitted.

If the business is closed for the day as a result of inclement weather, the employer **may not deduct the day's pay** from the salary of an exempt employee. The general rule is that an employer who closes operations due to a weather-related emergency or other disaster for **less than a full workweek** must pay an exempt employee the full salary for that week, if the employee performs any work during the week. This is because deductions may not be made for time when work is not available.

2. Some states require employers to pay employees for showing up even if no work is available or there is an interruption of work and the employee is sent home.

Although payment for time not worked may not be required for non-exempt employees under federal law, **some states do require that employees be paid for a minimum number of hours for reporting to work**, even if there is no work that can be performed (such as when the office is closed) or the employee is sent home early, for instance, due to an impending storm.

Often called "reporting time pay," these laws may apply to specific industries (e.g., manufacturing) or certain employees only, so it is important to check with your state labor department for requirements that may apply to your company before implementing any policy.

3. Plan ahead to let your employees know what is expected of them and to help minimize disruption to your business.

Make it a priority to notify all of your employees, both exempt and non-exempt, of your company's policy regarding employee attendance and pay during periods of inclement weather. Your policy should include information on how your employees can find out whether the office is open or closed, such as by email, radio broadcast, calling in to hear a recorded message, or other methods that all employees can access. Be sure to apply your policy consistently and fairly to all employees.

It's also prudent to remind employees to use their best judgment and not to put their safety at risk when it comes to traveling to work during or after a storm. If possible, see if you can arrange for employees to work remotely from home on days when the weather makes travel dangerous.

Marshall & Sterling Insurance will continue to provide you with updates and information regarding important issues. Should you have specific questions or need more information, please contact us.

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