



Health Care Reform



2015 Year in Review Part II: Human Resources

This article is the second of a series which highlights the key human resources, health care reform and retirement plan changes that occurred in 2015.

Did you see these key HR developments in 2015?

- The National Labor Relations Board isn't just for union employees anymore. Instead, new legal claims are being filed with the NLRB by non-union employees asserting that their employer has chilled their right to "concerted activity." In what circumstances does this occur? The answer is social media, and employee postings that are critical of the employer, a supervisor or managerial practices. Don't think it's safe to terminate an employee under these circumstances. Employee handbook rules prohibiting such conduct also need to be reviewed and possibly revised.
- And then you have the new claim for cyberbullying. One court recently held that cyberbullying can be the basis for a sexual harassment claim. So what's an employer to do when it disciplines an employee for harassing (cyberbullying) statements made on social media and then finds itself the recipient of an NLRB claim for interfering with concerted activity? Call HR.
- Minimum wage developments. Have you checked your state's (or city's) minimum wage requirements recently? Fourteen states now have a higher minimum wage requirement than the federal rate of \$7.25 per hour (including Missouri).
- Department of Labor's independent contractor initiative. The DOL is ramping up its investigations to determine whether employees have been improperly classified as independent contractors. Importantly, new DOL guidance narrows the definition of an independent contractor. The control element is de-emphasized, and more emphasis is placed on whether the individual is economically independent or is dependent on the employer-i.e., is your company the contractor's sole source of income? Misclassification can affect tax withholdings, unemployment compensation, pay/play penalties, benefit plan eligibility and a plethora of other employee rights.
- Pregnancy accommodation. The U.S. Supreme Court, in *Young v. UPS*, held that a pregnant employee should be given light duty if an employer provides light duty to other employees, such as employees on workers compensation or under ADA accommodations. Because light duty under the ADA may be a required reasonable accommodation in many instances, employers need to be mindful of this ruling for its pregnant workers.
- New overtime rules. The DOL issued proposed regulations that will drastically affect who qualifies as an exempt employee. Under the rule, an employee must earn a minimum of \$50,400 (in 2016) AND meet the "duties" test (executive/administrative duties) in order to be considered as an "exempt" employee. Have you audited your exempt employees recently?
- Religious Accommodation. The U.S. Supreme Court ruled, in an 8-1 decision, that a national retailer's refusal to hire an applicant violates federal non-discrimination laws, when the applicant's headscarf, worn for religious reasons, did not conform to the retailer's dress code policy. The late Justice Antonin Scalia wrote, "If the applicant actually requires an accommodation of that religious practice, and the employer's desire to avoid the prospective accommodation is a motivating factor in the employer's decision, the employer violates Title VII."
- New EEO-1 Report. The Equal Employment Opportunity Commission (EEOC) has proposed revisions to the annual EEO-1 Report (required for employers with 100 employees) to include pay data. According to the EEOC, the purpose of the new form "will assist the agency in identifying possible pay discrimination and assist employers in promoting equal pay in their workplaces." The EEOC has not stated whether the new form will be required in 2016.

Stay tuned for Part III of this series, which will provide a review of the 2015 retirement and pension arenas.

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