

2007 HR Developments ... and What To Look For in 2008

As we start a new year it's a good time to review workplace developments of 2007 and make sure that you've integrated applicable ones into your policies and practices. The following information highlights a few selected federal developments. Remember to check your state law as well. The states were very busy in 2007. In 2008 you can expect to continue to see a lot of activity on the federal and state levels that will significantly impact the workplace. Several possibilities are discussed below. In a slight modification of an old, trite saying: nothing is certain but death, taxes, and changes in HR law.

2007 Highlights

- **Minimum Wage Raised**

The first minimum wage increase in 10 years was signed into law on May 25. The federal minimum wage, which had been at \$5.15/hour, rose to \$5.85 on July 24, and will go to \$6.55 on July 24, 2008, and to \$7.25 on July 24, 2009.

- **New Computer Exemption "Help"**

The Department of Labor (DOL) issued a bulletin that attempts to explain "what they really mean" regarding the Computer Employees' Exemption. Currently there are two sections which address this, the traditional professional exemption which requires that a computer employee be paid on a salary and meet certain job tests and that which permits such employees to be paid on an hourly basis if paid more than \$27.63/hour.

www.dol.gov/esa/whd/FieldBulletins/FieldAssistanceBulletin2006_3.pdf

- **U.S. Supreme Court Pay Discrimination Case**

The U.S. Supreme Court's May 29th decision in *Ledbetter v. Goodyear* is a significant development in the HR world. The decision provides protection for employers against pay discrimination actions that took place outside Title VII's 180 day deadline for filing such claims (300 day deadline if the EEOC has a work relationship with state agencies.) Ledbetter had argued that she was paid less than comparable male employees because of discriminatory evaluations made years earlier. She contended that each paycheck was a new discriminatory act and so the 180 day clock had not expired. The Court disagreed, finding that forcing companies to defend decisions made years ago would put an unfair burden on business and basically eliminate the statute of limitations for such claims. The decision will certainly limit the number of pay discrimination cases, as in many instances an employee may not even be aware of a problem until years have passed. Note, however, that there have been rumblings in Congress to overturn *Ledbetter*.

- **EEOC Facts Sheets and Guidance**

New EEOC Fact Sheet For Health Care Industry

The EEOC published a Q&A fact sheet regarding how the Americans with Disabilities Act specifically affects employees and applicants in the healthcare field.

www.eeoc.gov/facts/health_care_workers.html

New EEOC Fact Sheet on Employment Tests and Selection Procedures

The EEOC issued a fact sheet regarding the application of federal anti-discrimination laws to employment tests and other selection procedures used to screen applicants for hire and employees for promotion. It is available at

www.eeoc.gov/policy/docs/factemployment_procedures.html

New EEOC Guidance on Family Bias Discrimination

The EEOC issued new guidance on a developing area of HR: work/family balance in the workplace. The concerns involve employment discrimination against parents and those who care for elderly parents or disabled relatives. Go to: www.eeoc.gov/policy/docs/caregiving.html

- **Affirmative Action. Final Veterans Regulations Issued for Government Contractors**

The Office of Federal Contract Compliance (OFCCP) published its final rule implementing Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) amendments. The threshold government contract which is subject to VEVRAA has been raised from \$25,000 to \$100,000. Additionally the amendments changed the categories of veterans protected and altered the required job listing requirements. For more information go to the OFCCP website at: <http://www.dol.gov/esa/ofccp/index.htm>.

- **2008 IRS Adjustments For Benefits & Retirement Plans**

The IRS has announced its 2008 adjustments to benefit and retirement plans limits. 401(k), 403(b) and 457 plan elective deferrals will remain at \$15,500, with the extra catch-up contribution for those 50 or over staying at \$5,000. The Section 415 limits will rise from \$45,000 to \$46,000 for defined contribution plans and from \$180,000 to \$185,000 for defined benefit plans. Contributions for SIMPLE plans will be set at \$10,500 with a catch-up limit of \$2,500. The 2008 Social Security wage base will increase from \$97,500 to \$102,000. The Medicare tax continues to apply to all wages without limit.

- **Immigration**

The U.S. Citizenship and Immigration Service (USCIS) issued a revised Form I-9, *Employment Eligibility Verification*, and M-274, *Handbook for Employers, Instructions for Completing the Form I-9*. Employers must begin using the new form on December 26, 2007.

- **National Labor Relations Board**

Confidentiality Rule In Handbook

In *Cintas v Corp v. NLRB*, a D.C. Circuit Court of Appeals upheld the National Labor Relations Board and found that an employer's confidentiality rule in its employee handbook violated federal law. The handbook stated: "We honor confidentiality. We recognize and protect the confidentiality of any information concerning the company, its business plans, its partners [which meant employees], new business efforts, customers, accounting and financial matters." The court found that the language interferes with employees' rights to discuss the terms and conditions of their employment (commonly called Section 7 rights under the National Labor Relations Act). This was found to be the case even though the company had never prohibited such activity.

Anti-Fraternization Policy In Handbook

Some organizations seek to restrict certain employee romances and relationships to help avoid harassment cases, morale problems, conflicts of interest, or concerns about security and productivity. A security guard company attempted to do so through its policy that prohibited employees from "fraternizing on duty or off duty, dating or becoming overly friendly with clients' employees or coworkers."

You might think the policy raised invasion of privacy issues or some claim regarding interfering with off duty legal activities. That would be a good guess, but the issue here was the National Labor Relations Act (NLRA) which prohibits policies that interfere with employees' rights to be involved in union and other concerted actions or their right to discuss the terms and conditions of employment. A federal appellate court interpreted the word "fraternize" broadly and ruled

that the policy could be interpreted by employees as prohibiting them from being involved in their fraternal union activities. [*Guardsmark, LLC v. National Labor Relations Board*, D.C. Cir.].

It's a common misperception that the NLRB and its rulings only apply to union environments. Therefore it's important for non-union workplaces to understand the issues as well. Check your handbooks for offending language and consult your attorney.

- **New Section 125 Regulations**

On August 3, 2007, the Internal Revenue Service (IRS) issued new proposed regulations on employee benefit cafeteria plans. For more information, go to the proposed regulations: <http://www.ustreas.gov/press/releases/reports/section125.pdf>.

What To Expect In 2008

- **2008 Elections**

The 2008 elections may have a greater impact on workplaces than all the year's court cases and legislation combined. The election may not only change the faces and parties in the White House and Congress it will also change the focus and priorities in Washington. A Democratic President and Congress could mean big changes from the Bush administration.

- **The States**

Look for the states to continue to take a large role in attempting to solve the major issues of the day. Continued attention will likely be given to minimum wage issues (continued raises above federal requirements), health insurance, identity theft, and immigration. While, at first glance immigration may appear to be a federal issue, there has already been much state activity surrounding benefits for immigrants, increasing fines for hiring illegals, and rewarding organizations who participate in state immigration programs with state contracts. More states are likely to become involved in family and medical leave and other paid leave issues. Workplace bullying and sexual orientation discrimination are also getting attention.

- **The Federal Government**

Healthcare & Retirement. We can expect lots of talk in this area as businesses who can't pay skyrocketing costs and consumers who fear losing coverage speak more and more loudly. The federal elections will definitely determine the course of the discussions regarding health insurance solutions, expansion of mental health benefits and other coverage, electronic health records and more flexibility for employees with Section 125 Flexible Spending Accounts. Retirement security is also a top issue given that the first baby boomers are entering retirement.

Leave. There have been numerous proposals to "clarify" as well as expand the Family and Medical Leave Act (FMLA). Proposed changes have included increasing the number of organizations that must provide leave (down from 50 employee organizations), to increasing the employees eligible, and allowing leave to be taken for school meetings, routine medical appointments, domestic abuse, and elder care. There have also been past proposals that would require paid sick leave.

Identity Theft. The states have taken the lead in this area, passing legislation regarding the use/protection of Social Security numbers, among other things and notification requirements if there are security breaches. The federal government is likely to take an increased role.

Immigration. This remains a hot topic for the nation and will continue to be a significant issue for employers. There likely will be more initiatives that impose additional work eligibility and identity verification procedures as well as increased penalties for employers who violate the rules. Concerns are growing that we need to continue to be able to attract highly skilled (aka technology and science) foreign employees. The U.S. Visa program may also receive attention.

Discrimination. Anticipate more discussion in the areas of genetic and sexual orientation discrimination.

Department of Labor and Equal Employment Opportunity Commission. FLSA (e.g., overtime) cases will continue to be in the news as large class actions cases will receive a lot of attention. The EEOC says it will focus on addressing retaliation, generational issues, disability issues (especially impairments relating to diabetes and obesity which disproportionately affect certain groups), pregnancy discrimination (such claims have been increasing), and caregiver discrimination. Video resumes and applicant screening software will get close attention as these fairly recent tools can be used to screen out certain types of applicants.

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