

Legislative Blast

January 2012

FEDERAL UPDATES

NLRB Postponed Notice Requirement

The National Labor Relations Board (NLRB) has again extended the implementation deadline for its **notice posting rule**, from January 31, 2012 to April 30, 2012.

Please note that this postponement does not affect the current requirement that certain federal contractors must post NLRA employee rights in their workplaces. That requirement was established by President Obama's Executive Order of January 30, 2009.

The required 11"x17" poster includes employee's rights under the NLRA as well as examples of unlawful employer conduct and a copy of the poster can be found at www.nlr.gov. You can also visit the SHRM website at www.shrm.org for additional information.

Union Election Rules Revised

"The National Labor Relations Board (NLRB) on Dec. 21, 2011, approved a set of sweeping revisions to the rules governing union election procedures. The change was designed to speed up union representation votes and possibly make it easier for organized labor to recruit and gain new members.

The final regulation will take effect on April 30, 2012. Mark Pearce, chair of the NLRB, has stated that the primary goal of the rule change was to reduce unnecessary and redundant litigation in union election cases.

A written statement released by the NLRB claims that the rule change focuses primarily on streamlining procedures for a minority of union representation cases in which the parties can't agree on certain issues—such as the eligibility of some employees to participate in the election. The final rule approved by the board is a scaled-back version of more substantial changes first proposed by the NLRB in June 2011. The approved version does not include two highly controversial provisions that would have required businesses to provide employee e-mail addresses and phone numbers to union organizers and that would have reduced significantly the time frame for employers to provide union organizers with a full roster of employees' names and mailing addresses.

When the final rule takes effect, the regional hearings will be limited to issues that are relevant to the question of whether an election should be held. Hearing officers will have the authority to limit testimony to these issues and to decide whether or not to accept any post-hearing briefs.

According to the final rules, appeals of a regional director's ruling will be consolidated into a single post-election request for review. Under the previous rules, parties can appeal regional director decisions to the board at multiple stages in the process. In addition, the final rule will make all board reviews of regional office decisions discretionary, which will leave more final decisions in the hands of the regional directors" (www.shrm.org).

Payroll Tax Extension

The discounted Social Security tax rate of 4.2% will remain until Feb. 29, 2012. "The Temporary Payroll Tax Cut Continuation Act of 2011 temporarily extends the two percentage point payroll tax cut for employees, continuing the reduction of their Social Security tax withholding rate from 6.2 percent to 4.2 percent of wages paid through Feb. 29, 2012. This reduced Social Security withholding will have no effect on employees' future Social Security benefits.

Employers should implement the new payroll tax rate as soon as possible in 2012 but not later than Jan. 31, 2012. For any Social Security tax over-withheld during January, employers should make an offsetting adjustment in workers' pay as soon as possible but not later than March 31, 2012.

Employers and payroll companies will handle the withholding changes, so workers should not need to take any additional action.

Under the terms negotiated by Congress, the law also includes a new “recapture” provision, which applies only to those employees who receive more than \$18,350 in wages during the two-month period (the Social Security wage base for 2012 is \$110,100, and \$18,350 represents two months of the full-year amount). This provision imposes an additional income tax on these higher-income employees in an amount equal to 2 percent of the amount of wages they receive during the two-month period in excess of \$18,350 (and not greater than \$110,100).

This additional recapture tax is an add-on to income tax liability that the employee would otherwise pay for 2012 and is not subject to reduction by credits or deductions. The recapture tax would be payable in 2013 when the employee files his or her income tax return for the 2012 tax year. With the possibility of a full-year extension of the payroll tax cut being discussed for 2012, the IRS will closely monitor the situation in case future legislation changes the recapture provision.

The IRS will issue additional guidance as needed to implement the provisions of this new two-month extension, including revised employment tax forms and instructions and information for employees who may be subject to the new “recapture” provision. For most employers, the quarterly employment tax return for the quarter ending March 31, 2012, is due April 30, 2012.” (www.irs.gov)

VETS-100 Filing Deadline Extended

The filing deadline for VETS-100 and VETS-100A forms for federal contractors has been extended to Jan. 15, 2012, the U.S. Department of Labor has announced. The deadline had been Dec. 30, 2011. The filing extension was attributable to problems with the VETS website. For additional information visit www.shrm.org or www.dol.gov.

STATE UPDATES

Wage Theft Prevention Act

Just a reminder that effective April 9, 2011 Section 195.1 of the Labor Law, requires all employers, other than governmental agencies, to give employees at the time of hire (before work is performed) and *on or before February 1st of each year*, notice of the following:

1. the employee’s rate or rates of pay
2. the overtime rate of pay, if the employee is subject to overtime regulations
3. the basis of wage payment (per hour, per shift, per week, piece rate, commission, etc.)
4. any allowances the employer intends to claim as part of the minimum wage including tip, meal, and lodging allowances
5. the regular pay day
6. the employer’s name and any names under which the employer does business (DBA)
7. the physical address of the employer’s main office or principal place of business and, if different, the employer’s mailing address
8. the employer’s telephone number

“While the law does not dictate the form of notice, the New York State Department of Labor (NYSDOL) has provided sample forms. In addition to English, the NYSDOL has provided sample forms in other languages, consistent with the requirement that the notice be provided in English and in the employees’ “primary language.” Failure to provide the annual notice constitutes a violation of the Wage Theft Prevention Act (Section 198(1-b)) and can carry a penalty of “fifty dollars for each work week that the violations occurred or continue to occur,” among other potential remedies.” (www.shrm.org, Jackson Lewis 2011)

Additional information on this ruling can be found at the NYS Department of Labor website: www.labor.ny.gov.

NYS Electronic Waste Recycling

“Beginning January 1, 2012, any organization engaged in the collection of solid waste for delivery to a NYS solid waste management facility (i.e. private or municipal solid waste haulers/transporters), businesses, private or public corporations, not for profit corporations and government entities are

prohibited from disposing of electronic equipment in landfills. Exceptions to the current law include individuals, or household consumers.

Electronic Equipment (CEE) under the NYS Electronic Equipment Recycling and Reuse Act from any person other than an individual, or household consumer, is prohibited from being landfilled. This includes any organization engaged in the collection of solid waste for delivery to a NYS solid waste management facility (i.e. private or municipal solid waste haulers/transporters), businesses, private or public corporations, not for profit corporations and government entities, etc.” (www.sunking.com).

For additional information on the above regulations, please visit the NYS Department of Environmental Conservation at www.dec.ny.gov.

NYS Blood Leave Law

A reminder that all employees must be informed of the NYS Blood Leave Law no later than January 15th of each year. Per the NYS DOL, the following notice and recordkeeping requirements shall apply to all leaves for blood donation:

- a. Employers must notify employees in writing of their right to take blood donation leave. Such notification must be made in a manner that will ensure that employees see it, such as by posting in a prominent spot in an area where employees congregate, inclusion of notice with employees’ paychecks, mailings, notices in employee handbooks, or other comparable method.
- b. Such notice must be provided to all employees within sixty (60) days after issuance of these guidelines, and shall be updated as necessary. If the employer provides written notice directly to the employee, it shall do so at the time of hire to new employees, and thereafter, to all employees on an annual basis, no later than the fifteenth day of January.
- c. The employer may require employees to give reasonable notice of their intended use of leave time governed by these guidelines. If leave is for off-premises blood donation, reasonable notice would consist of notice provided at least three working days prior to the day on which leave will be taken. If leave is for a blood donation leave alternative, reasonable notice would consist of notice two days prior to the day on which leave will be taken.
- d. In cases where the employee fills a position essential to the operation of the employer or necessary to comply with legal requirements, and three days notice is insufficient to allow the employee’s position to be filled during the donation, the employer shall require notice no longer than is necessary to feasibly fill the position, but in no case longer than ten working days. The employer shall notify all covered employees of this extended notice requirement in compliance with the notice requirements of these guidelines.
- e. Should the employee experience an emergency requiring that he/she donate blood for his or her own surgery or that of a family member, employers must provide reasonable accommodations for a shorter notice period.

Recordkeeping:

An employer may require employees making off-premises blood donation to show proof of their blood donation in the form of notice of blood donation or a good faith effort at blood donation from the blood bank or some other proof sufficient to the purpose.

For additional information on the Blood Leave Law, visit the NYS DOL at www.labor.ny.gov.