

Legislative Blast

October 2011

FEDERAL UPDATES

NLRB Postponed Notice Requirement

The National Labor Relations Board (NLRB) has extended the implementation deadline for its **notice posting rule**, from November 14 to January 31, 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.nlrb.gov. You can also visit the SHRM website at www.shrm.org for additional information.

US DOL Memorandum of Understanding with the IRS

On September 19, 2011, Secretary of Labor Hilda L. Solis, hosted a ceremony to sign a memorandum of understanding with the Internal Revenue Service (IRS) that will improve departmental efforts to end business's misclassification of employees. In addition, Solis announced agreements for the Wage and Hour Division to enter into memoranda of understanding with the labor agencies of Hawaii, Illinois and Montana as well as with New York's attorney general.

The memoranda of understanding will enable the DOL to share information and coordinate law enforcement with the IRS and participating states in an effort to level the playing field for law-abiding employers and ensure that employees receive the protections to which they are entitled under federal and state laws. "In this new phase of our relationship, we will work together more efficiently to address worker misclassification issues and better serve the needs of small businesses and employees" (IRS Commissioner Doug Shulman).

These memoranda of understanding arose with the goal of preventing, detecting and remedying employee misclassification.

Electronic Filing for VETS-100 and VETS-100A

"The U.S. Department of Labor (DOL) has announced that the electronic filing system used by contractors to submit VETS-100 and VETS-100A forms will not be available until Nov. 1, 2011. Technology issues are preventing contractors from filing online. The department had delayed opening the online filing system for 60 days—from Aug. 1, 2011, to Oct. 1, 2011—but these issues have not been resolved. The department now anticipates the system to be online Nov. 1, 2011. Accordingly, the department is extending the filing deadline to Dec. 30, 2011. The department will not initiate enforcement actions against contractors for failure to file as long as the contractors file a report between Nov. 1 and Dec. 30.

The VETS-100/100A reporting requirement requires covered federal contractors to file reports with the DOL's Veterans' Employment and Training Service. These reports contain information on the number of covered veterans in the employer's workforce, as well as the number of covered veterans hired during the 12-month period preceding the date of completion of the report.

While single-establishment employers may file single VETS-100/100A reports, multi-establishment employers generally must file these reports for each separate hiring establishment of at least 50 employees, and must file either a separate VETS-100/100A form for each hiring location employing fewer than 50 employees or consolidated reports covering all hiring locations within a state that have fewer than 50 employees. Sample VETS-100/100A report forms are available from the Veterans' Employment and Training Service at www.dol.gov/vets/programs/fcp/main.htm.

Employers with federal contracts entered into prior to Dec. 1, 2003, may need to file both the VETS-100 and the VETS-100A report” (www.shrm.org and Jackson Lewis).

STATE UPDATES

New Reporting Requirements for Availability of Dependent Health Care Coverage

“New York employers must report whether employer-sponsored health insurance benefits are available to the dependents of their employees under new reporting requirements that took effect on July 15, 2011. Employers must report the new information to the New York State Department of Taxation and Finance on both their quarterly wage and new hire reports.

The act amended New York Tax Code sections 171-a and 171-h. Under section 171-a, employers are required to report the gross wages paid to each employee who resides or is employed in New York State on Form NYS-45 (the Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return). Form NYS-45 was revised to include a new entry for employers to check “yes” or “no” to indicate whether dependent health insurance benefits are available to employees. The form is at www.tax.ny.gov/bus/ads/efile_addnys45.htm.

Section 171-h, which requires employers to report each newly hired or re-hired employee, now additionally requires employers to disclose whether dependent health benefits are available to those employees and the date that the employee qualifies for benefits.

Employers may no longer meet the requirements of section 171-h by submitting the new hire reporting form (Form W-4) alone. Rather, they must disclose the availability of dependent health benefits using Form IT-2104 (Employee’s Withholding Allowance Certificate), available at www.tax.ny.gov/pdf/2011/fillin/wt/it2104_611_fill_in.pdf, or Form IT-2104E (Certificate of Exemption from Withholding), available at www.tax.ny.gov/pdf/2011/fillin/wt/it2104e_611_fill_in.pdf.

Alternatively, employers may report the information electronically at www.nynewhire.com” (www.shrm.org).

Mandatory Nurse Overtime

On September 27, 2011, the Department submitted rulemaking documents adopting a proposed rule governing mandatory nurse overtime. The rule will be effective upon publication in the October 12, 2011 edition of the State Register. For additional information and a version of the final rulemaking, visit www.labor.ny.gov/legal/mandatory-nurse-overtime.shtm.

For additional information on both State and Federal legislative updates, you can visit www.shrm.org. As a member of SHRM National, you can have access to a great deal of case rulings, trends and other types of law (i.e. compensation and benefits, retirement, recruitment, etc.). As a non-member of SHRM National you are still able to visit their site and have limited access to valuable material.