Leaderschoice
INSURANCE SERVICES

Leaders News Alert

June 2013, Volume 3, Issue 6

Affordable Care Act

Feds Release Mandatory Employee Notices

THE U.S. Department of Labor has released new model notices that employers can use to comply with Patient Protection and Affordable Care Act requirements that employees are notified about public health insurance exchanges.

All employers must distribute these notices to employees before Oct. 1 this year, regardless of whether they offer their staff health insurance coverage. In fact, the U.S. Department of Labor has created two notices – one for employers who offer a health plan to some or all employees, and another for those who do not offer a health plan.

The model notices explain how exchanges will operate and that certain conditions will have to be satisfied for employees to obtain federal premium subsidies to purchase exchange-provided coverage.

The model notice for employers that already provide health coverage to their employees warns employees that if they purchase a health plan through a state insurance marketplace instead of accepting health coverage offered by their employer, then they may lose the employer contribution to the employer-offered coverage.

It also explains that employer and employee contributions are often excluded from income for federal and state income tax purposes. However, payments for coverage through a marketplace are made on an after-tax basis.

The notice also explains that if the coverage an employer offers meets the standards set for minimum levels, an employee that still wants to secure coverage from an exchange will be ineligible for any tax credits. Hence, the employee "may wish to enroll in [their] employer's health plan."

It goes on: "However, you may be eligible for a tax credit that lowers your monthly premium, or a reduction in certain cost-sharing if your employer does not offer coverage to you at all or does not offer coverage that meets certain standards. If the cost of a plan from your employer that would cover you (and not any other members of your family) is more than 9.5% of your household income for the year, or if the coverage your employer provides does not meet the 'minimum value' standard set by the Affordable Care Act, you may be eligible for a tax credit."

The language in the notice for employers that do not offer coverage is similar to the first notice, but also includes information on what an employee needs to get together if they are going to apply for coverage through an exchange.

Much to the relief of employers, the rules for these notices do not require them to provide contact information for the exchanges. Instead, they can provide a link in the notice to a Department of Health and Human Services website, *www.healthcare.gov*, which will contain the contact information for all state exchanges.

The sample notices are available at: *www.dol.gov/ebsa*. ❖

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Summer Interns

Taking on Interns? Be Mindful of Wage/Hour Laws

AS SUMMER draws near, many organizations may be pondering taking on interns for a number of months. Internships are a great way for college students to gain experience and for the companies taking them on to benefit from their assistance.

But, there is a fine line between having an intern and an employee and, if you cross that line, you could end up breaching the Fair Labor Standards Act (FLSA) or similar legislation in your state. The main question is whether your intern is entitled to minimum wage as well as overtime compensation.

The problem is that the FLSA, which governs overtime and minimum wages, applies only to "employees" and does not mention interns. An employee under those laws is "any individual employed by an employer."

There are some circumstances under which individuals who participate in private sector internships or training programs may do so without compensation.

The determination of whether an internship or training program meets this exclusion depends upon all of the facts and circumstances of each such program.

Fortunately, the U.S. Department of Labor has interpreted the FLSA and introduced a test for determining when interns must be paid federal minimum wage and overtime.

All six of the following factors must be met for the intern to be exempt from the FLSA's requirements

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and, on occasion, its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all of these factors are met, an employment relationship does not exist under the FLSA and the act's minimum wage and overtime provisions do not apply to the intern. This exclusion from the definition of employment is necessarily quite narrow because the FLSA's definition of "employ" is very broad. Some of the most commonly discussed factors for "for-profit" private sector internship programs are considered below.

Academic Focus

In general, the more an internship program is structured around a classroom or academic experience as opposed to the employer's actual operations, the more likely the internship will be viewed as an extension of the individual's educational experience (this often occurs where a college or university exercises oversight of the internship program and provides educational credit).

Also, the more the internship provides the individual with skills that can be used in multiple employment settings, as opposed to skills particular to one employer's operation, the more likely the intern would be viewed as receiving training. Under these circumstances, the intern does not perform the routine work of the business on a regular and recurring basis, and the business is not dependent upon the intern's work.

On the other hand, if the interns are engaged in the operations of the employer or are performing productive work (for example, filing, performing other clerical work, or assisting customers), then the fact that they may be receiving some benefits in the form of a new skill or improved work habits will not exclude them from the FLSA's minimum wage and overtime requirements, because the employer benefits from the interns' work. ❖

Risk Management

Employee Theft on Rise – Are You Protected?

THERE'S BEEN a spike in employee embezzlement since the recession, two recent studies have shown.

A study released by the Association of Certified Fraud Examiners found that the typical organization will lose an estimated 5% of its revenues every year due to fraud. The median loss among organizations both large and small was $140,000 per occurrence, and more than 20% of embezzlement losses were more than $1 million.

With those staggering numbers in mind, if you have not already done so, you need to take steps to reduce the possibility of employee theft – and also make sure you are adequately covered if they do steal from you.

Small organizations are especially susceptible to losses from employee embezzlement. These problems are often seen in cash-heavy businesses, or those with large inventories, but employee embezzlement is most frequently experienced in organizations lacking owner oversight of financial processes, usually due to placing far too much trust in employees and having no internal controls.

The new study by the fraud examiners association was released as another study, this one by professional security firm Marquet International, found that arrests and indictments for embezzlements had reached a five-year high in 2012.

Embezzlers are most likely to be a company bookkeeper, accountant or treasurer, who is female, in her 40s, and without a criminal record. The reason it's more often than not a woman is that they are typically in the three aforementioned jobs. The US Bureau of Labor Statistics reports that 90% of bookkeepers in the country are women.

How do they do it?

The most common ways of embezzling, according to Marquet, are:

- Bogus loan schemes, which include cases in which fraudulent loans are created or authorized by the perpetrator from which funds are taken for their own benefit.
- Credit card/account fraud cases, which involve the fraudulent or unauthorized creation and/or use of company credit card or credit accounts.
- Forged/unauthorized check cases, which are those in which company checks are forged or issued without authorization for the benefit of the perpetrator.
- Fraudulent reimbursement schemes, which include expense report fraud and other cases in which a bogus submission for reimbursement is made by the perpetrator.
- Inventory/equipment theft schemes, including those cases in which physical corporate assets were stolen and sold or used for the benefit of the employee.
- Payroll shenanigan cases, including all forms of manipulation of the payroll systems in order for the perpetrator to draw additional income.
- Theft/conversion of cash receipt cases, which involve the simple taking of cash or checks meant for company receipts and pocketing or converting them for one's own benefit.
- Unauthorized electronic funds transfers, including those cases in which wire transfers and other similar transfers of funds are the primary mode of theft.
- Vendor fraud cases, which include those where either a bogus vendor is created by the perpetrator to misappropriate monies or a real vendor colludes with the perpetrator to siphon funds from the company.

Thwarting embezzlers

Liability insurer CAMICO suggests that educating employees on the detrimental effects of employee fraud on the organization can reduce the likelihood of embezzlement. Also, if you implement a regular review of bank and credit card statements, you'll have a better chance of catching a thief.

Company owners should look at the cleared transactions to determine the legitimacy of payees, including examining actual cancelled checks.

Also, it's easy for transactions to be changed in the accounting system after the fact. An ill-intentioned bookkeeper could use this tactic to cover up their tracks. If you feel you do not have the time or expertise to oversee you finance department, you should contract with a qualified CPA to perform these checks and balances.

There are also inexpensive physical barriers that should be used to deter criminal activity. To protect cash, you can buy a $200 drop-slot safe to securely keep the night's deposit until it is taken to the bank.

Similarly, security cameras deter misbehavior and can be the source of valuable evidence in case an incident occurs. We recently had a customer install both a drop-slot safe and a hidden camera, only to learn that a long-time and trusted employee was stealing both cash and inventory after hours.

Finally, you should consider securing a crime insurance policy.

Most business insurance policies either exclude or provide only nominal amounts of coverage for loss of money and securities as well as employee dishonesty exposures.

But a crime insurance policy protects against loss of money, securities or inventory resulting from crime. Common crime insurance claims include employee dishonesty, embezzlement, forgery, robbery, safe burglary, computer fraud, wire transfer fraud, and counterfeiting. ❖

Workplace Safety

Cal/OSHA Issues New Rules on Abating Hazards

THE CAL-OSHA Appeals Board is streamlining the appeals process for employers charged by Cal-OSHA when issues regarding abating the hazard are on appeal or if the employer has not abated a hazard.

Although most employers voluntarily abate hazardous conditions after being cited, some fight the orders, which tends to put lives at risk at the workplace. Or if Cal-OSHA has ordered a part of a company's operation shut due to the hazard and the employer's unwillingness to abate the hazard, the company's revenue stream may get crimped.

The new rules, issued by the state Office of Administrative Law, require the board to expedite an appeal of a serious, repeat serious, willful serious, willful repeat or failure to abate violation where abatement is on appeal or has not occurred. This, the board expects, should result in appeals being resolved within five months of being filed.

The new regulations, which take effect July 1, were released at the same time as the state Legislature is moving legislation that would reverse the long-standing Cal-OSHA Appeals Board practice of staying abatement of serious hazards until a case is resolved. But the new measure, AB 1165, would instead require employers to abate serious hazards, but give them an option to request a stay during the appeal.

The Appeals Board would be required to stay abatement if it determines a "substantial likelihood" of success in the appeal and that the stay would not adversely affect the health and safety of the company's workers. ❖

Dual Wage Classes Subject to Annual Audits

EMPLOYERS WITH workers in dual-wage construction classifications should be aware of new audit requirements that have taken effect.

Under the new rules, which were approved by state insurance commissioner Dave Jones, policies for employees in any high-wage, dual-wage construction classification shall be "physically audited ... to ensure determination of proper payrolls," according to a bulletin issued by the Workers' Compensation Insurance Rating Bureau in April.

The changes to the California Workers' Compensation Uniform Statistical Reporting Plan require that policies with final premiums of $10,000 or more will be audited at least once a year for the high-wage, dual construction class categories.

And if the policy's final premium is less than $10,000 and payroll is developed under a high -wage classification, a physical audit of the policy is required unless the policy is a renewal and a physical audit was completed for one of the two immediately preceding policy periods.

A "physical audit" is an audit of payroll, conducted at the policyholder's location or at a remote site. It is based upon an auditor's examination of an employer's books of accounts and original payroll records (in either electronic or hard copy form) as necessary to determine and verify the exposure amounts by classification. ❖