



Newsletter February 2009

New I-9s for 2009 Postponed

The US Citizenship and Immigration Services (USCIS) has postponed the use of the new Form I-9 proposed for use effective February 2, 2009 to allow additional time for public comment on the new form. Comments may be submitted on or before March 4, 2009.

The new Form I-9 is scheduled to take effect no earlier than April 3, 2009. Employers should continue to use the Form I-9 which expires June 30, 2009 and denotes the revision date of "Rev. 06/05/07 N" on the bottom right corner until the new form is approved for use starting April 3rd.

Department of Homeland Security Delays Use of E-Verify for Federal Contractors

DHS has delayed the requirement for Federal Contractors to use the E-Verify system until February 20, 2009.

Federal Contractors Required to have Codes of Conduct and Ethics Training

The Federal Acquisition Regulations (FAR) were amended on December 12, 2008 with detailed guidance for employers regarding the types of training and audit programs they must have to be compliant.

FAR 3.10, FAR 52.203-13 and FAR 52.203-14 Require companies doing business, directly or indirectly, with the federal government having contracts of at least \$5,000,000 requiring at least 120 days to complete to 1) adopt a code of ethics and conduct, 2) educate (train) all employees, including principals, so they understand the policy and provisions of the code.

The complete text and requirements can be found at the following links:

http://acquisition.gov/far/current/html/Subpart%203_10.html

http://acquisition.gov/far/current/html/52_200_206.html

<http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=09000064807a4de3>

Post Your OSHA Log 300

The OSHA Form 300 must be posted no later than Monday, February 2, 2009. The OSHA 300 Log is a list of any recordable work-related injuries and illnesses during the year 2008 that required medical attention beyond simple first aid. The Summary must be posted in a highly visible location so that employees have access to review the report. A good location is next to your required federal and state posters.

The OSHA recordkeeping system has five steps:

1. Obtain a report on every injury or job-related illness requiring medical treatment (other than basic first aid).
2. Record each injury or job-related illness on OSHA Form 300 (*Log of Work-Related Injuries and Illnesses*) using the instructions provided.
3. Prepare a supplementary record of occupational injuries and illnesses for recordable cases on OSHA Form 301 (Injury and Illness Incident Report).
4. Every year, prepare an annual summary using OSHA Form 300A (*Summary of Work-Related Injuries and Illnesses*). Post it no later than February 1, and keep it posted until May 1. A good place to post it is next to the OSHA Workplace Poster.
5. Retain these records for at least five years. Periodically review these records to look for any patterns or repeat situations. These records can help you to identify high-risk areas that require your immediate attention.

Basic OSHA recordkeeping requirements address only injuries and illnesses, so you might consider expanding your own records to include all incidents, including those where no injury or



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illness resulted. This information may assist you in pinpointing unsafe conditions and/or procedures

The employer is required to report to OSHA within eight hours of an accident, all work-related fatalities or multiple hospitalizations that involve three or more employees.

Ledbetter Fair Pay Act

Background: Lilly Ledbetter sued her employer, Goodyear Tire and Rubber, after learning she'd been paid less than males working in the same job.

The Court decided against her, because she missed out on the statute of limitations. The Court ruled she had to file her case within 180 days after the discriminatory decision was made — when she was hired 20 years ago.

The Fair Pay Act, S181 overrides the 2007 Supreme Court ruling that a person must file a claim of discrimination within 180 days of a company's initial decision to pay a qualified worker (usually female) less than another worker doing the same job.

Under the Fair Pay Act, each paycheck extends the statute of limitations for filing a discrimination lawsuit by an additional 180 days. This would give employees a new 180-day window to sue every time they get paid, receive benefits (e.g., pension plans) or other compensation.

The law states that an unlawful employment practice occurs when:

- The discriminatory pay decision is made
- An individual becomes subject to the discriminatory pay decision
- An individual is affected by the discriminatory compensation decision or other practice

Employers should audit their compensation and benefit plans to insure they do not inadvertently discriminate against employees doing the same job.

Michelle's Law

On October 9, 2008, President Bush signed H.R. 2851, also known as "Michelle's Law." This law amended ERISA, the Public Health Service Act and the Internal Revenue Code to extend eligibility as a dependent child under a group health plan for full-time students during a medically necessary leave of absence at a post secondary educational institution due to a serious medical condition for up to one year. The law is named in memory of Michelle Morse, a college student who maintained her full-time student load while receiving chemotherapy for cancer so she could continue the family health coverage because she could not afford the necessary COBRA premium to continue her coverage if she dropped out or reduced her class schedule.

The new law does not address how it will affect continuation coverage under COBRA.

In addition, California's SB 1168 ensures that seriously ill college students will continue to receive health care insurance through their family's health care insurance policy even if they are unable to maintain their full-time student status.

These laws are not identical. A comparison of the two laws is provided at the link below:

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Commuter Benefit Plans

The transportation fringe benefit is similar to the pre-tax flexible spending accounts available for medical expenses and dependent care. The transportation benefit does not include a "use it or lose it penalty," as is the case with

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medical/dependent care flexible spending accounts

Payment methods available:

1. Tax-free employer paid subsidy
2. Pre-tax employee-paid payroll deduction
3. Shared employer and employee (combination of employer paid subsidy and pre-tax employee payroll deduction)

Amounts allowed (2009):

Public Transportation (Bus, Train, Ferry or Registered Vanpool)	Parking
\$120 per month	\$230 per month

Combined Public Transportation and Parking	Bicycle*
\$350 per month	\$20 per month

* Bicycle benefit does not qualify for the pre-tax deduction plan.

How the plan works

Before the start of the Section 132 plan year, individual employees elect to set aside a certain amount of pre-tax salary to cover qualified costs incurred in commuting to work. The employee will designate an amount (up to \$120.00 per month) for mass transit expenses and a separate amount (up to \$230.00 per month) for parking expenses -- separate reimbursement accounts are maintained for each category, and funds cannot be commingled or transferred between accounts (for example, amounts cannot be transferred from the mass transit to the parking account).

As the employee incurs Section 132 expenses during the year, a request form may be submitted to the employer for reimbursement. If the employee does not use the full amount before the end of the program year, the left over amount is carried forward to the next year.

Who is eligible

As a general rule, the transportation fringe benefit can only be provided by employers to employees. Common law employees and officers of corporations are eligible. Sole proprietors, partners, independent contractors, and two-percent shareholders of S-corporations are not eligible for this transportation fringe benefit.

What expenses can be paid

Mass Transportation: Transit passes for mass transportation to and from work. Qualified amounts include costs of any pass, token, fare card, voucher, or other item that entitles the employee to use mass transit for the purpose of traveling to or from his/her place of work. However, when a transit voucher program is readily available, Federal regulations prohibit the use of cash reimbursement as a way to provide transit benefits. Section 132(f) (3) states: Transit Benefits can include cash reimbursement to an employee as long as the reimbursement is for any transit pass, and a voucher or similar instrument which can be used to purchase the transit pass is not readily available for direct distribution to the employee.

The mass transit can be a public system, or a private enterprise provided by a company/individual who is in the business of transporting people in a "commuter highway vehicle." Such a vehicle must have a seating capacity for six or more adults (not including the driver), and at least 80% of the of the vehicles' mileage must be from transporting employees to and from their place of work. Additionally, the vehicle must be carrying at least three passengers (not including the driver). Commuter highway vehicles may be owned or leased by an employer to be used by employees or a third-party provider for transportation purposes. Employees can also own and operate commuter highway vehicles.



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Parking: Parking expenses that can be paid with pre-tax dollars include the costs of (1) parking a vehicle in a facility that is near the employee's place of work, or (2) parking at a location from where the employee commutes to work (for example, the cost of parking in a lot at the train station so that the employee can continue his/her commute on the train).

Bicycle: The Bicycle reimbursements can be used for the purchase of a bicycle, improvement to the bicycle, repair and storage and cannot be used if employee is participating in any other qualified transportation fringe benefit program (i.e., public transportation).

Monthly Seminar News

Join us on February 26th for an insightful presentation by Steve Ziemkowski and Travis Day of Parkin Security Consultants on Background Checks. This presentation will focus on:

- Why perform pre-employment background checks
- Types of searches and requirements
- Federal regulations and other laws related to background screening
- What information can and cannot be used to make hiring/firing decisions
- Negligent hiring and negligent retention issues
- Applicant rights, record disputes

For more information and to register visit www.myohr.com, select the "Events" button.

Quarterly Harassment Prevention Training

Our quarterly "Harassment Prevention Training for Managers" sessions are scheduled for March 26th, June 25th, September 24th and December 17th.

MyOHR provides key Human Resources consulting and support for small, emerging and mid-size companies. Focusing on Human Resource Legal Compliance, MyOHR assists business in achieving operational efficiency by providing the infrastructure necessary to manage the workforce in compliance with State and Federal

requirements. MyOHR is cost effective for companies that have not budgeted for a full-time HR position. Contact Jaime Orendac, SPHR-CA
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