



Newsletter January 2009

New California Legislation for 2009

A new California law effective January 1, 2009 includes certain protections for temporary workers. This new law applies to temporary staffing firms but can apply to other employers who have temporary employees on the payroll. Employers must pay temporary workers weekly and no later than the regular payday of the calendar week following the date the services were provided.

The new law also addresses termination or discharge of temporary employees and when final wages are to be paid. The end of an assignment for a temporary worker does not always qualify as a termination or discharge.

Note: final wages to regular California employees are not affected by this new legislation. Regular employees must receive their final wages immediately upon termination within 3 days of the employee's last day worked.

New I-9s for 2009

The US Citizenship and Immigration Services has amended the rules for the I-9 form. Employers can no longer accept expired documents for employment eligibility verification. The rule also resulted in changes to the list of acceptable documents.

Effective February 2, 2009 employees may no longer use Forms I-688, I-688A and I-688B. For certain citizens of Micronesia and the Marshall Islands foreign passports with specially marked machine readable visas may be used.

An information copy of the newly revised Form I-9 can be viewed online through the Federal Register located at

<http://frwebgate6.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=586470424086+20+2+0&WAIAction=retrieve>.

New Family and Medical Leave Regulations

The US Department of Labor (DOL) has issued new regulations effective January 16, 2009 related to the Family and Medical Leave Act.

One of the major changes provides guidance related to Military Leave and the definition of qualifying exigencies. These include:

- Short-notice deployment (seven days notice)
- Attending military events related to the call to active duty
- Arranging for childcare
- Attending school activities
- Making financial or legal arrangements
- Attending counseling
- Spending time with a covered military member on short-term temporary rest (up to 5 days) or leave
- Attending post-deployment activities (e.g. arrival ceremonies, reintegration briefings, etc. so long as within 90 days of active status)
- Additional activities, as long as the employee and employer agree to timing and duration of the leave

The new regulations modify the definition of "Serious Health Condition" to mean that the employee must have visited a health care provider on at least two occasions in the 30-day period from the onset of the illness. The first visit must occur within seven days at the onset. The second visit must be at the health care provider's request. The serious health condition still must result in three or more days of incapacity.

New FMLA Notification Requirements

New FMLA notice and certification regulations now require employers to a) display the FMLA poster (WH-1420), even if there are no eligible employees at the site, b) provide a general notice which includes the information on the poster to employees either in the employee handbook or as a stand alone notice at the time of hire, c) provide employees with an



explanation of how the employer determines the 12-month period.

Electronic posting of the poster is acceptable as long as all employees and applicants have access to the electronic posting. The recommended best practice to have the poster displayed in interviewing rooms and where all employees have access.

The employer must notify the employee requesting FMLA leave of their eligibility, rights and responsibilities within five (5) business days after the employee's request. The U.S. Department of Labor is providing a sample notification form (WH-381) on their web site that employers may use to meet the new requirements. The form is located at www.dol.gov/esa/whd/fmla/finalrule/WH381.pdf.

The employee has fifteen (15) days to provide the employer with the required medical certifications. After receiving the certifications, the employer has five (5) business days to provide written notice to the employee whether or not they qualify for FMLA leave. The U.S. Department of Labor is providing a sample notification form (WH-382) on their web site that employers may use to meet the new requirements. The form is located at <http://www.dol.gov/esa/whd/forms/WH-382.pdf>.

If the employee submits an incomplete medical certification, the employer can require the employee to provide a completed certification within seven (7) calendar days, unless it is not practicable under the circumstances.

Employers need to review their current FMLA procedures for compliance. FMLA notifications must comply with the new regulations.

Employers who have no formal written leave policies, and leaves are granted, the employer must create written policies and administer leaves consistent with the written policy.

Employers with written leave policies should review those policies for compliance with the new regulations.

SF HCSO Expenditure Rates Announced

Effective January 9, 2009, the Health Care Security Ordinance (HCSO) requires the following health care expenditure rates for 2009:

- Employers with 20 – 99 employees
\$1.23 per hour
- Employers with 100 or more employees
\$1.85 per hour

Employers should use these rates to calculate the minimum expenditure for the first quarter of 2009 (January 1 through March 31, 2009).

Quarterly Harassment Prevention Training

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

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