

## Laws to Watch for 2010

There have been a few new laws for 1-10, but they are so new the details aren't fully developed yet:

1. Civil Air Patrol Leave
  - Applies to employers with more than 15 employees.
  - Gives up to ten days of unpaid leave each year to employees who volunteer for the California Wing of the Civil Air Patrol.
  - Covers employees who are needed to respond to an "emergency operational mission" and who have been employed by the same employer for at least 90 days immediately preceding the leave.
  - Allows employers to verify the need for leave from the Air Patrol
2. National Defense Authorization Act
3. Cal-OSHA Emergency Preparations - Requires all employers to prepare for medical care in the event of a serious accident, by using one or more of the following:
  - a communication system to direct emergency services to an injured employee (e.g., telephone access to 911)
  - on-site treatment facilities
  - equipment for transporting injured employees
4. OSHA Personal Protective Equipment Standards
5. GINA
6. Stimulus Whistleblower Protection
7. HIPAA Privacy and Security Enhancements

## New Mileage Rate for 2010

The IRS announced the mileage rates for 2010. The mileage rate is down from 2009 which reflects lower transportation costs. Effective January 1 the standard mileage rates are as follows:

- 50 cents per mile for business miles driven
- 16.5 cents per mile driven for medical or moving purposes
- 14 cents per mile driven in service of charitable organizations.

## Top FLSA Mistakes 2010

The Fair Labor Standards Act (FLSA) is the federal law outlining when an employer must provide a minimum wage and pay overtime. A recent employment law publication provides a timely reminder of the most common mistakes made by employers under the FLSA. Here they are:

- (1) assume everyone who works for you is a professional and thus exempt from FLSA;
- (2) deduct missing equipment from an exempt employee's pay;
- (3) making employees work, without pay, during what is supposed to be a lunch break;
- (4) not paying non-exempt employees who frequently work after hours via technology, e.g. on a Blackberry;
- (5) don't pay employees for work at home even when you know they are doing it;
- (6) all knowledgeable computer people are exempt;
- (7) forcing inefficient employees to finish the job off-the-clock;
- (8) forcing tipped employees to share tips with employees who don't normally work for tips;
- (9) failing to get good legal advice on FLSA issues; and finally
- (10) refusing to change non-compliant ways just because others in your industry are non-compliant too.

This is a good list of common employer mistakes, but I would add two more to it: assuming that just because you pay someone a salary that he/she is exempt and failing to regularly audit your exempt/nonexempt jobs to make sure you have made the right classifications.

Pay close attention to these issues...FLSA litigation is one of the fastest growing types of employment litigation.

## One State Lowers Minimum Wage

Most of the states that have indexed their minimum wages to inflation will see no change in the state minimum wage rate in 2010. However, one state will have a lower minimum wage rate. Effective January 1, 2010, the Colorado state minimum wage will fall from \$7.28 per hour to \$7.24 per hour. The federal minimum wage is higher; hence, any employer covered by the FLSA is required to pay at least the federal rate of \$7.25 per hour. Virtually all employers are covered by the federal law.

## Texting and Privacy

A federal appeals court has held that employees have a privacy interest in personal text messages contained on a pager even though the pager was provided to an employee by an employer. Thus, an employer was held liable for accessing such messages. There are two lessons from this ruling:

- First, the law is continuing to evolve on employer/employee relations regarding new technology.
- Second, use of electronic equipment should be conditioned on employee awareness that the employer reserves the right to monitor **all** information on that electronic equipment.

If your employee handbook does NOT contain such language, contact us for a texting policy to review.

## IRS Marks EITC Awareness Day; Highlights Expanded Tax Credit

IRS WASHINGTON — An expanded Earned Income Tax Credit (EITC) means larger families will qualify for a larger credit, offering greater relief for people who struggled through difficult financial times last year, the Internal Revenue Service said today.

The IRS and the Treasury Department marked EITC Awareness Day as their partners nationwide worked to highlight the availability of this important tax credit. EITC, which is in its thirty-fifth year, is one of the federal government's largest benefit programs for working families and individuals. Last year, nearly 24 million people received \$50 Billion in benefits. The average credit was more than \$2,000.

"As part of the economic recovery efforts, there have been important changes to expand EITC to benefit taxpayers," said IRS Commissioner Doug Shulman. "Today, more than ever, hard-working individuals and families can use a little extra help. EITC can make the lives of working people a little easier."

Eligibility for EITC depends on earned income and family size, among other tests. However, single people and childless workers also are eligible, although for smaller amounts. For tax years 2009 and 2010, the American Recovery and Reinvestment Act created a new category for families with three or more children and expanded the maximum benefit for this category.

To qualify for the EITC, earned income and adjusted gross income (AGI) for individuals must each be less than:

- \$43,279 (\$48,279 married filing jointly) with three or more qualifying children
- \$40,295 (\$45,295 married filing jointly) with two qualifying children
- \$35,463 (\$40,463 married filing jointly) with one qualifying child
- \$13,440 (\$18,440 married filing jointly) with no qualifying children

The maximum credit for tax year 2009 is:

- \$5,657 with three or more qualifying children
- \$5,028 with two qualifying children
- \$3,043 with one qualifying child
- \$457 with no qualifying children

The maximum amount of investment income is \$3,100 for tax year 2009. For families, there are also certain requirements for child residency and relationship that must be met. Additional eligibility information is available in FS-2010-11 and on the Web at [IRS.gov/EITC](http://IRS.gov/EITC).

Another new provision adds to the definition of a "qualifying child:" The child must be younger than the person claiming the child unless the child is totally and permanently disabled any time during the year. The child cannot have filed a joint return other than to claim a refund. Also new for 2009, if a qualifying child can be claimed by either a parent or another person, the other person must have an AGI higher than the parent in order to claim the child for EITC purposes.

Historically, one in four eligible taxpayers fails to claim the EITC, which is why the IRS and its free tax preparation partners host an annual EITC Awareness Day. This year, there are 68 news conferences being held around the country. Community coalitions and IRS partners nationwide also are also issuing 128 news releases, writing letters to the editor and using social media tools to spread the word about EITC.

Typically, people who fail to claim the EITC include workers without qualifying children, people whose earned income falls below the threshold required to file a tax return, farmers, rural residents, people with disabilities and nontraditional families such as grandparents raising grandchildren. People must file a tax return to claim the EITC.

Free help is available to EITC-eligible taxpayers. There are nearly 12,000 free tax preparation sites nationwide. People who want to prepare their own tax returns can visit Free File on IRS.gov. This free tax software and free electronic filing program will walk taxpayers through a question and answer format and help them claim the tax credits and deductions for which they are eligible. EITC-eligible taxpayers also can seek assistance at the 400 IRS Taxpayer Assistance Centers nationwide. To assist EITC taxpayers, [167 IRS assistance centers](#) will offer Saturday service on Jan. 30, Feb. 6 and Feb. 20.

There is an online [EITC Assistant](#) also available on IRS.gov which can help taxpayers and tax

**These articles should not be construed as legal advice or as pertaining to specific situations. Consult with your legal counsel for further information.**

## Stay “In The Know” in 2010 –

### Educational Seminars

We have a variety of educational seminars planned for 2010. Most will be held at the office of our partner in Campbell:

Leavitt Pacific Insurance Brokers  
695 Campbell Technology Parkway, Ste 250  
Campbell, CA 95008

### February Educational Session

Join us for an informative update on Social Security Benefits with Tom Hinojosa on the Social Security Administration. Mark your calendar for Thursday, February 25<sup>th</sup> at 10:00 AM. This session will be held at the Leavitt Pacific Insurance Brokers Offices in Campbell. RSVP to [Social Security Update](#)

### OHR’s quarterly Harassment Prevention Training for Managers

As a service to your business we have a quarterly Harassment Prevention Training. Those sessions occur each quarter on the last Thursday of the month at 1:00 PM. Mark your calendars for March, June, September and December. We also do individual sessions for your offices, including Managers and Supervisors and non supervisory employees.

preparers determine eligibility. And, for tax preparers and IRS partners, there is [EITC Central](#) which has links to toolkits that include marketing products.

More than 65 percent of EITC returns are prepared by a third party. The IRS urges taxpayers to choose a reputable tax preparer to avoid problems that come with an inaccurate tax return. The agency also urges tax preparers to follow due diligence requirements when preparing an EITC tax return. More information is available at [irs.gov/eitc](#).

The next OHR Harassment Prevention Training for Managers session is scheduled for March 25<sup>th</sup> at 1:00 pm in Campbell, CA. To register please RSVP to [Harassment Prevention Training](#)

*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 at [Jaimeo@MyOHR.com](mailto:Jaimeo@MyOHR.com).*