

EMPLOYMENT LAW BRIEFING

SUMMER 2011

OFLA Exception: Employers with twenty-five or more employees in Oregon must grant up to twelve weeks of leave to eligible employees with a "serious health conditions" as defined by the Oregon Family Leave Act ("OFLA"). Employees may not use OFLA leave, however, if the serious health condition is the result of an on-the-job injury or illness. If a claim for Workers' Compensation benefits is accepted, after an employee has been placed on OFLA leave for the same condition, the leave must be canceled and the Employer must restore any leave time used.

Layoffs & Plant Closures: The Worker Adjustment and Retraining Notification ("WARN") Act of 1988 requires Employers to provide a sixty-day notice when a plant closure or "mass layoff" will result in an involuntary "employment loss" for fifty or more employees. In a decision earlier this year, the Ninth Circuit Court of Appeals held that employees who quit because of a pending closure have not "voluntarily departed," but must be considered among those entitled to notice due to an employment loss.

IRS Mileage Rate Increase: In response to sharply higher fuel costs, the Internal Revenue Service has announced a mid-year change in the standard mileage rate used to calculate the deductible costs of operating an automobile for business purposes. Many employers use this rate to reimburse employees for work-related travel in personal vehicles. The current rate, of fifty-one cents per mile, was increased by four and one-half cents, to **fifty-five and one-half cents per mile** on July 1, 2011.

Check Your Handbook: Employers with fifty or more employees are subject to the federal Family and Medical Leave Act ("FMLA"): Employees away from work, due to an on-the-job injury, may qualify for FMLA leave, based upon the employee's "own serious health condition." Employers may require employees to utilize available paid time off during a statutory leave and many handbooks include such a requirement. Unless there is also language limiting payments from all sources to the amount of regular pay, the possible combination of paid time off, Workers' Compensation time-loss payments and other disability benefits may exceed regular compensation and create a disincentive for returning to work. Please call us for a review of your statutory leave policies or other handbook concerns.

Best Practice Tip: Does your organization have an employee bonus program? If so, a written description of the program is essential. At a minimum, the intended purpose of the bonus, eligibility requirements, the period for which the bonus is paid, any conditions for payment and the date of distribution should be described. If payment is automatic so long as certain conditions are met, such as the achievement of sales or production goals, overtime payments for the bonus period must be recalculated to determine additional overtime due as a result of the payment. A carefully crafted written description of your bonus program will help to manage employees' expectations and avoid wage and hour disputes over bonus payments.

Please contact our office if you have questions about the material in this newsletter, or other employment law compliance concerns.

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