

EMPLOYMENT LAW BRIEFING

Summer 2008

Minimum Wage Increases: On January 1, 2009, the inflation-indexed minimum wage rates for Washington and Oregon will increase. The Washington rate will rise forty-eight cents per hour, to \$8.55, and remain the highest minimum wage in the U.S. Oregon's rate will increase by forty-five cents per hour, to \$8.40. In July, the federal minimum wage increased from \$5.85 to \$6.55 per hour. The federal rate will rise again, to \$7.25 per hour, on July 24, 2009.

Check Your Handbook: An appeals court decision earlier this year, in a case brought by the Equal Employment Opportunity Commission ("EEOC") against a Burger King franchisee operating more than thirty restaurants, provides another reminder that a typical policy on workplace harassment may not be enough. The case involved a sixteen year old employee, working in her first job, who had been repeatedly harassed by the restaurant manager. Although she complained to several teenaged supervisors, and the restaurant's assistant manager, she received no assistance and the harassment continued. The employee was eventually fired. The employer expected complaints to supervisors and the assistant manager would be shared with the manager who would then report himself. The Court held a policy without an effective mechanism for bypassing a manager accused of harassment was *unreasonable*, as a matter of law. The Court also noted that a policy which fails to properly communicate to the employees it is intended to cover, offers them no meaningful protection and held that such a policy will not protect employers from liability. Please call to arrange for a review of your harassment policy.

Best Practice Tip: If your organization faces a workforce reduction, protect against discrimination claims with a two-tier layoff policy and a procedure utilizing documented, objective criteria for selecting which employees are retained. Please call our office for a review of your current policy or assistance with documenting a layoff.

No-Match Letters: The Department of Homeland Security ("DHS") has released supplemental regulations intended to revive "safe harbor" guidelines for employers receiving no-match letters from the Social Security Administration ("SSA"). Implementation of the original regulations was blocked by a federal court injunction last October. Under current SSA rules, no-match letters are sent when a wage report reveals name and social security number discrepancies for at least eleven employees and more than five percent of an employer's workforce. It is a violation of federal immigration law for an employer to hire or continue to employ unauthorized aliens, or to fail to verify employment eligibility by properly completing I-9 forms. The DHS regulations offer guidance for what will be considered due diligence by an employer when the validity of information recorded on an I-9 is called into question by a no-match letter. The rules suggest efforts by both the employer and named employees to resolve any discrepancies with the SSA. If the discrepancies are not resolved within ninety days, the rules suggest that re-verification of employment eligibility, by properly completing a new I-9, will demonstrate sufficient due diligence to shield an employer from liability for immigration law violations based upon constructive knowledge of an employee's status as an alien not authorized to work in the U.S.

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

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