

EMPLOYMENT LAW BRIEFING

November 2006

Minimum Wage Increases: On January 1, 2007, the inflation-indexed minimum wage rates for Oregon and Washington will each increase by thirty cents per hour. The new Washington rate of \$7.93 will remain the highest in the nation. Oregon's adjusted rate will be \$7.80. The federal minimum wage rate, which has remained at \$5.15 per hour for over a decade, is also expected to rise in 2007. Whitford Law Offices LLC will bring that news to you as it develops.

Precedent Setting: An excellent, long-term employee must resign due to a medical condition. Although your organization has never paid severance benefits, you would like to recognize her dedication. If you give her severance pay, doesn't that establish a precedent requiring payment of severance for future resignations? Not necessarily. Documenting the specific reasons for an action limits the scope of the precedent created. Discrimination issues arise when *similarly situated* employees are treated differently. Why do you want to give this employee a severance benefit? List the objective factors you identify in an internal memorandum to create a precedent for your approach if a similar situation arises in the future.

Personnel Records: Under Oregon law, employees have a right to inspect or receive a certified copy of their personnel records. Employers must retain personnel records for at least sixty days following separation and provide certified copies to former employees, upon request, for as long as such records are maintained. The personnel record consists of information related to "qualification for employment, promotion, additional compensation or employment termination or other disciplinary action." The personnel record is *not* limited to documents kept in an employee's official "personnel file." It includes supervisor's and manager's notes for use in performance evaluation, or discipline and documentation (notes/memoranda/correspondence/e-mails) of related interactions with others (management team members/human resources staff/non-employee consultants). A customer's letter of complaint, or commendation, is part of the personnel record. Similarly, an e-mail exchange with an outside HR consultant, regarding possible disciplinary action or discharge, should be included. The same exchange with legal counsel, however, is protected by the attorney/client privilege and should not be included. If you receive a personnel record request from a lawyer representing an employee, or former employee, it is advisable to respond through your employment and labor law counsel.

Check Your Handbook: Cellular phones have become a fact of life. Many organizations have adopted rules addressing placing or receiving calls, on personal cellular phones, during working time. Requiring cellular phones to be silenced, or switched off, in the workplace avoids the disruption caused by a cacophony of ring tones. If employees have driving duties, a comprehensive cellular phone policy should also restrict calls while operating a motor vehicle. Studies have shown repeatedly that engaging in a conversation, even with "hands-free" equipment, interferes with concentration and poses an unnecessary safety risk.

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

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