

EMPLOYMENT LAW BRIEFING

Winter 2008

FMLA Expanded: The federal Family and Medical Leave Act has been expanded. Covered Employers will now be required to provide up to twenty-six weeks of protected, unpaid leave for employees providing care to members of the armed forces seriously injured in the line of duty and up to twelve weeks for family members of military personnel and reservists with a “qualifying exigency.” Activities related to deployments, ranging from saying goodbye, to dealing with financial issues, to making childcare arrangements are expected to be considered qualifying exigencies. The Department of Labor has issued a Notice of Proposed Rulemaking to address some longstanding issues with the original Act and to provide implementing regulations for the new provisions. When the dust settles, Employers will need updated procedures, posters and policy statements to address the changes. A copy of the new “Military Family Leave” poster may be downloaded at <http://www.dol.gov/esa/whd/fmla/NDAAAmndmnts.pdf>

Wage Claims Rising: Claims against Employers for unpaid wages, particularly overtime pay, are on the rise. The recently enacted Oregon law making discrimination against an employee for filing a wage claim an unlawful employment practice may be exacerbating the situation. The most common error made by Employers is failing to pay overtime to salaried employees who do not meet the exemption standards. There are also problems when unauthorized overtime work is not paid and when unpaid work is performed during meal and rest periods. Employers must ensure that salaried employees are *also* exempt and monitor all work performed. It is also crucial to maintain complete and accurate records of hours worked. If an employee has filed a wage claim, or raised concerns about wages paid, Employers should take extra care if the employee is the subject of later disciplinary action or is considered for inclusion in a layoff.

Check Your Handbook: Workplace policies may help Employers limit exposure to liability from wage claims. Every handbook should include language designating a seven day workweek. If no workweek is established by policy, the workweek most favorable to an employee may be used if there is a wage claim. Employees should also be required to provide complete and accurate reports of all time worked. Overtime work should be prohibited without prior management approval. Unauthorized work during rest and meal periods should also be proscribed. Rules should also be published regarding removing Employer records, tools, or equipment and performing work at home. Please call our office for policy reviews or updates.

Domestic Violence Leave: Oregon Employers of six or more employees are now required to provide unpaid leave, for a “reasonable” period to eligible victims of domestic violence, sexual assault or stalking. Purposes for such leave include seeking legal or law enforcement assistance, seeking medical treatment or psychological counseling, obtaining services from a crisis center and relocating or securing a current home. Employees must have worked an average of 25 hours per week, during the 180 days prior to the commencement of leave, to be eligible. Employers may require certification of the need for leave and limit leave availability on the basis of undue hardship.

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

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