

EMPLOYMENT LAW BRIEFING

HOLIDAY 2006

Special Holiday Issue: In response to requests from many of our clients, we are again publishing a special issue of **EMPLOYMENT LAW BRIEFING** to address workplace questions commonly arising at this time of year. We welcome your suggestions. If you have a topic you would like to see addressed in this publication, please let us know. All of us at Whitford Law Offices LLC appreciate your support and extend our best wishes for the holiday season.

Check Your Handbook: If a recognized holiday falls on a Sunday, is the next day treated as a holiday? Is paid time off for a holiday included in calculating "hours worked" for overtime purposes? What happens when a holiday occurs during a scheduled vacation? Will employees be required to work on a holiday? Each of these questions should be addressed by clear language in your Employee Handbook. Since paid holidays are a voluntarily provided employment benefit, employers have broad discretion to establish the applicable terms and conditions. Incomplete or ambiguous policy language may lead to disputes, including claims for unpaid wages. In addition to answering the questions above, your published policies should reflect both your organization's intent and actual practices.

Overtime Adjustments for Bonus Payments: Many organizations have adopted a tradition of bonus payments during the holiday season. A bonus can be an effective way to reward a job well done and to encourage future effort. Problems may arise, however, when a current or former employee does not receive an expected bonus. Additionally, if a bonus is considered "non-discretionary" under wage and hour regulations, any overtime payments during the period covered by the bonus must be recalculated to reflect the addition of the bonus amount to the regular rate of pay. To avoid unexpected liability, employers need a clear written policy describing the purpose of the bonus program, the period covered, the process for determining the fund from which bonuses are paid, eligibility requirements and the date of bonus distribution.

Holiday Closures & Exempt Employee Pay: In order to be exempt from overtime, employees must both have qualifying duties and be paid on a "bona fide" salary basis. An exempt employee, who works any part of the work day, must be paid for the entire day. Similarly, if an exempt employee works only part of a designated workweek due to an employer action, such as a shutdown between year-end holidays, the employee must be paid a full week's salary. An employer with a 12:01 a.m. Sunday to midnight Saturday workweek, closing between Christmas and New Year's Day this holiday season, will need to pay full salary to exempt employees, off work during the closure, if any work is performed Sunday, on Christmas Eve.

Holiday Parties: Each year at this time, we get questions about alcohol at company parties. Our recommendations: **1.** Avoid providing or paying for alcohol - use a no-host bar. **2.** Make party attendance *voluntary*. **3.** Provide food and non-alcoholic beverage options. **4.** Prohibit excessive alcohol consumption. **5.** Discourage drinking and driving; **6.** Observe behavior and arrange alternative transportation, as appropriate. **7.** Check alcohol policy language.

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

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