

EMPLOYMENT LAW BRIEFING

HOLIDAY 2005

Special Holiday Issue: In response to requests from many of our clients, we are 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 designated workweek beginning at 12:01 a.m. Sunday and ending at midnight Saturday, closing between Christmas and New Year's Day this holiday season, will not need to pay full salary for exempt employees off work during the Sunday through Sunday closure.

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.

If you prefer to receive future copies of **Employment Law Briefing** by FAX or e-mail, or if you have additions to, or deletions from our contact list, please let us know. Thank you. © 2005 Whitford Law Offices LLC



Whitford Law Offices LLC

1819 D Street NE Salem, Oregon 97301 Phone 503-365-8700 FAX 503-365-8701
www.TheEmployerAdvocate.com