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Group Benefit Administrators of Connecticut is proud to present issue two of our quarterly newsletter. Our newsletters address issues pertaining to group health insurance and many other subject pertinent to our clients making the best choice for their group health coverage. GBAC hopes that you enjoy, and derive valuable information from these newsletters. We welcome any comments or suggestions as to what you, our client would like to see in the newsletter and you can contact us via phone call, fax or E-mail: joannem@gbac.com.

FEDERAL DEPARTMENT OF LABOR ISSUES NEW WHITE COLLAR REGULATIONS; SENATE VOTES TO AMEND

On April 23, the United States Department of Labor issued new overtime regulations governing under the Fair Labor Standards Act (FLSA). The new regulations will take effect on August 23, 2004.

The new rules are the subject of an intense national debate. The Senate voted 92-5 this week to amend the regulations. The amendment must still win approval from the House of Representatives and be signed into law by the President.

The US DOL estimates that 1.3 million white collar employees who do not currently receive overtime will become eligible under the new rules while another 107,000 employees, mostly highly compensated employees, will lose overtime. The new eligibility rules will add up to \$375 million a year to American employers' payroll costs, according to a DOL release.

What's Behind the Rules

Enacted in 1938, the FLSA was part of depression-era legislation, that was designed to create jobs,

that is to make it cheaper for an employer to hire a new employee than to have a current employee work overtime. The law provided that an employee must be paid the minimum wage and time and one half for hours over 40 unless the position was "exempt" from being paid overtime. Connecticut followed suit with its own wage laws in the 40's and 50's.

In order to be exempt, the position must be paid a minimum salary and have exempt duties. Under the federal law, the minimum salary was increased from time-to-time, but has been unchanged since 1975, until this most recent announcement of \$155 per week. Connecticut however raised the minimum test under the state law to \$475 per week and a "short test" for duties or \$400 per week and a "long test" for duties.

The US DOL determined that, under the current regulations, the minimum exempt salary of \$8,060 was so low that it had become irrelevant in the analysis of who was entitled to overtime and caused many lower-wage managerial jobs to be examined under duties tests that DOL called "confusing, complex and outdated" in the preamble to the final regulations.

What the New Regulations Do: An Overview

The Salary Tests.

The new regulations make it clear that employees earning less than \$455 per week (\$23,660 annually) will be non-exempt, that is, must be paid overtime. For some Connecticut exempt employees, those earning over the \$400 state salary minimum, but less than the \$455 federal minimum, the new rules will either bring a pay increase up to the new federal salary minimum (\$455) or give them the right to get overtime.

The final regulations raised the bar for the new, so-called “highly compensated” white collar exemption from the proposed \$65,000 a year to \$100,000 a year.

Duties tests modified.

In addition, the final rules altered the duties tests for executive, administrative and professional employees.

The executive duties test adopted a third requirement, employment authority. An executive is an individual whose primary duty is managing an enterprise, department or subdivision, who customarily directs the work of two or more employees and, in the new provision, has the authority to hire or fire other employees or whose recommendations as to employee status changes carry “particular weight.”

The test for administrative duties, which historically has caused the most difficulty for employers to apply and has generated considerable litigation, requires that the employee’s “primary duty includes the exercise of discretion and independent judgment” the very words that caused much of the uncertainty.


The Professional duties test makes specific reference to Nursery School Teachers, Personnel Clerks, Florists, Nurses and Financial Service employees in an attempt to define which employees in these groups may be considered exempt.

The Bottom Line

For Connecticut employers, the new regulations should not result in the reclassification of most employees. However, the regulations will require a re-examination of those positions which are most

questionable, particularly salaried employees whose earnings fall between \$400 per week and \$455. These are the most likely to see a pay or status change to conform to the new federal minimum.

Employers need to pay attention to the attempts to reform the regulations. Additionally employers should pay particular attention to working supervisors, lower level managers and those occupations specifically addressed in the regulations. Finally, employers should place job descriptions and analysis as one of the “to do” items in 2004.

For more information, see the US DOL website at the “Fair Pay” link, call the agency HR HOTLINE at 203-238-4011 and plan on attending the soon-to-be-announced client seminar. 

STATE CONTINUATION LAW AND COBRA: CORRECTION BILL FAILS

Last year Connecticut enacted Public Act 03-77, “An Act Concerning The Extension Of Group Health Insurance Benefits For Individuals Age Sixty-two And Over.” The act was designed to continue COBRA for employees who left employment at age 62 so that their group health coverage would remain in effect until they became eligible for Medicare.

Unfortunately, while the intentions for the bill may have been good, the drafting of the bill created a variety of issues. Some of those issues were summarized in a letter from Atty. Robert Noonan to the State Insurance Commissioner and, the commissioner responded and posted the response as a service to both the insurance community and employers.

In this just-concluded session of the Connecticut General Assembly, the Senator who introduced the original bill attempted to address some of the issues raised by introducing a new corrections bill. The Insurance Commissioner testified in support of the corrections. Oddly, the corrections bill did not pass.

The result, as the law provides that a person who is eligible for social security at the time of termination, that is Old Age, Survivor’s or Disability Benefits, will have a right of continuation under COBRA that will continue until the individual is eligible for Medicare.

In order for the continuation right to exist however, three conditions have to be present: First, the person must have been eligible for social security at the time of termination of employment or reduction in hours. Second, the insurance contract must have renewed after October 1, 2003. Third, the eighteen month period (or 36 months) must not have been exhausted prior to the renewal of the contract.

Here are two examples to illustrate the point:

A sixty-two year old employee quits work and goes on COBRA. The employee's COBRA period will run out in August of 2004. The employer's insurance contract renews in July of 2004. The result? The employee would have a right of continuation which would remain in effect until the employee attains Medicare eligibility.

Next example: Same facts as above, but in this case, the insurance contract does not renew until September, 2004. Result: The employee does not have a right of continuation since the COBRA period expired before the contract renewed in September.

The Final Analysis

In making the decision as to whether the employee is given the extension under the state law, the employee must:

- Determine when the insurance plan first renews after October 1, 2003.
- Determine if the employee qualified for Social Security at the time of the qualifying event. (For the most part, this means was the employee 62 years of age at the time of termination.)
- Determine if the employee was still on COBRA when the insurance contract renewed?

Note that Atty. Noonan's letter and the Insurance Commission's response can be found on the Department of Insurance website or call Bob's office at 203-238-4011 or e-mail robertnoonan@snet.net.




EEOC ABOUT FACE: ISSUES RETIREE MEDICAL RULING

The U.S. Equal Employment Opportunity Commission (EEOC) has proposed a rule that would allow employers to reduce health insurance coverage for retirees when they reach Medicare eligibility age without running afoul of the federal age discrimination law.

The proposed rule, which is subject to public comment until Sept. 12, would carve out a narrow exemption in the Age Discrimination in Employment Act (ADEA), which broadly prohibits bias against persons 40 and older. The change would replace an EEOC policy revoked in 2001 in which the EEOC said it believed that employers violated the ADEA when they reduced or eliminated the company paid portion of health coverage for former employees when Medicare or a state-sponsored retiree health benefit program kicked in for them.

The EEOC, in announcing the rule, said current law is confusing and prompts employers to reduce health coverage for younger persons rather than add it for older persons. The public interest, the EEOC continued, is not served by the current situation.

"Concern about the potential application of the ADEA to employer-sponsored retiree health benefits is adversely affecting the continued provision of this important retirement benefit," the commission stated in Monday's Federal Register in its notice of proposed rulemaking. The EEOC has authority to make exemptions to the ADEA under that law.

The commission said it based its decision on research into retiree health insurance trends as well as the legislative history of applicable laws and court rulings on the subject. A number of studies have shown a decline in the number of companies providing retiree health benefits as well as the extent of the coverage. 

Q & A's from the Consulting Desk

Each month the HR Hotline receives calls from employers on a wide variety of workplace issues. Here are just a few of the questions we received:

Q: One of our employees told us that we are supposed to give two ten-minute breaks and he said he called the Labor Board and they said we had to. What should we do?

A: Breathe easy. The employee is definitely wrong and not telling you the whole truth. First, there is no law which requires breaks other than the Connecticut meal break law which gives a 30 minute unpaid meal break for those employees working 6 1/2 hours. Second, there is no "Labor Board" that has jurisdiction in the matter. The federal law provides that if an employer does give a break and it is less than 20 minutes in duration, it must be paid. However there is no requirement to give a break.

Q: One of our employee's kids just graduated from college, can he continue under our group medical insurance?

A: Probably not, but there would be a right of continuation under COBRA. Check how your plan defines eligibility. Chances are that when no longer a full time student, the new graduate is no longer eligible as a dependent under your plan. The COBRA continuation period would be 36 months for this qualifying event.

Q: At what point does a company get a HR Department?

A: The number of Human Resources personnel to total employees depends mainly on the individual company's structure, actual size, and reliance on in-house staff vs. utilization of outside HR consultants, or out-sourcing firms. In an annual survey conducted by the Bureau of National Affairs with SHRM, employers are reported to have an average of 1.0 full-time HR professionals for every 100 employees in the workforce.

Next Edition: Fall 2004

- Connecticut Legislative Wrap Up • New Laws Affecting the Workplace
- Same Sex Marriages: What they mean to Employers?
- Smile, You're on your coworker's picture-taking cell phone!

Q: We're having a summer outing and the company president is concerned about two things, the softball game and beer. If someone gets hurt or has too much to drink are we liable under workers' comp? Could we get sued if someone is in an accident?

A: Workers' Comp does not apply to injuries sustained in voluntary recreational activity. Note the term voluntary. However generally speaking, comp will not apply. The matter of drinking has both a legal and more practical answer. Legally, what is called a "social host" does not have liability for the guest who drinks too much, it's different for a commercial establishment, a "dram shop" where there can be liability. The practical answer is that an employer can be accused of not having controlled a situation, so err on the safe side, control it or don't allow it. Watch the intake, stop the person who may be on the way to one-too-many, and have a designated driver plan.

Q: We encountered a problem with a sexual harassment matter involving one of our upper level managers. We wanted to use an outside person to investigate it for us, but we were told that we had to first give the employee a Fair Credit Report Act notice and give the person the details of the investigation including the name of the person who filed the complaint. Is that true?

A: Not anymore. You are referring to the position of the Federal Trade Commission that held that an investigation by an outside party of employee misconduct would be a "consumer report" under the Fair Credit Reporting Act and that the notices would have to be given. Fortunately, although the act was renewed a few months ago, that provision was not. The FCRA does not apply to your situation any longer.

Q: I have to give a safety presentation. How many workplace fatalities occur in Connecticut?

A: Unfortunately, too many. Generally between 35 and 40. In 2002 the latest, it was 39, in 2001, 37. Nationally about 5,500 people are killed at work. Transportation incidents are the greatest cause both in our state and nationally. Workplace violence, falls and harmful exposures are also contributors.