



**Cut and Paste Post:
October, 2011**

**Postponed Rules...Proposed Rules...IRS VCSP...
a Cup of Java...
and a Beltway Roundup**

HR professionals must stay current on changes in laws, rules and regulations and be able to assess the impacts of changes on their organizations. There is A LOT going on in Washington DC and I hope this *Cut N Paste* is helpful as you go about risk management/compliance duties. (I included the Cup of Java because you probably need it!) ☺

Effective date of National Labor Relations Posting Rule Postponed

Last month's *Cut N Paste Post* highlighted a new National Labor Relations rule mandating the workplace posting of a notice of employee rights under the National Labor Relations Act. On October 5, 2011 the National Labor Relations Board (NLRB) announced that the new rule will be effective on January 31, 2012. The rule had been scheduled to go into effect on November 14, 2011.

According to an article on the SHRM website attributed to written by Jackson Lewis (see below), "The NLRB's stated reason for the postponement is to "allow for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses." The board cited confusion over which businesses fall within the jurisdiction of the statute. Unlike many other employment laws, coverage does not depend on a minimum number of employees, but the extent to which a company engages in interstate commerce. The thresholds, generally expressed in terms of gross volume of business for different industries, are very low. Almost all private-sector employers are subject to the act.

The Board states that "[n]o other changes in the rule, or in the form or content of the notice, will be made." The additional 11 weeks will help employers to prepare properly to comply.

Jackson Lewis represents management exclusively in employment, labor, benefits and immigration law and related litigation. For more information about this article, contact [Roger S. Kaplan](#), [Philip B. Rosen](#), [Jonathan J. Spitz](#) or [Thomas Walsh](#). Republished with permission. © 2011 Jackson Lewis. All rights reserved.

**DOL Proposes Rules Updating Child Labor Regulations;
Aims To Improve Safety Of Young Workers In Agriculture & Related Fields**

The U.S. Department of Labor is proposing revisions to child labor regulations that will strengthen the safety requirements for young workers employed in agriculture and related fields. The agricultural hazardous

occupations orders under the Fair Labor Standards Act that bar young workers from certain tasks have not been updated since they were promulgated in 1970.

The Department's Wage and Hour division is responsible for enforcing the FLSA, which establishes federal child labor provisions for both agricultural and nonagricultural employment, and charges the secretary of labor with prohibiting employment of youth in occupations that she finds and declares to be particularly hazardous for them. The FLSA establishes a minimum age of 18 for hazardous work in nonagricultural employment and 16 in agricultural employment. Once agricultural workers reach age 16, they are no longer subject to the FLSA's child labor provisions. The FLSA also provides a complete exemption for youths employed on farms owned by their parents.

The proposed rules would strengthen current child labor regulations prohibiting agricultural work with animals and in pesticide handling, timber operations, manure pits and storage bins. It would prohibit farmworkers under age 16 from participating in the cultivation, harvesting and curing of tobacco. And it would prohibit youth in both agricultural and nonagricultural employment from using electronic, including communication, devices while operating power-driven equipment.

The department also is proposing to create a new nonagricultural hazardous occupations order that would prevent children under 18 from being employed in the storing, marketing and transporting of farm product raw materials. Prohibited places of employment would include country grain elevators, grain bins, silos, feed lots, stockyards, livestock exchanges and livestock auctions.

Additionally, the proposal would prohibit farmworkers under 16 from operating almost all power-driven equipment. A similar prohibition has existed as part of the nonagricultural child labor provisions for more than 50 years. A limited exemption would permit some student learners to operate certain farm implements and tractors, when equipped with proper rollover protection structures and seat belts, under specified conditions.

To read and comment on these proposed rules, go to:

<http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=25360&AgencyId=14&DocumentType=1>

IRS Announces Voluntary Program To Resolve Independent Contractor Misclassification Issues

The IRS has announced a new program, the "Voluntary Classification Settlement Program (VCSP)" that allows taxpayers that have erroneously classified workers as independent contractors in the past to voluntarily reclassify their workers as employees for future tax periods for employment tax purposes. In a nutshell, the VCSP program will require the taxpayer to pay 10 percent of the employment tax liability that may have been due on compensation paid to the workers for the most recent tax year, determined under the reduced rates of section 3509(a) of the Internal Revenue Code. Under this program, the taxpayer:

- Will not be liable for any interest and penalties on the amount; and
- Will not be subject to an employment tax audit with respect to the worker classification of the workers being reclassified under the VCSP for prior years.

Eligibility

The VCSP is available for taxpayers who want to voluntarily change the prospective classification of their workers. The program applies to taxpayers who are currently treating their workers (or a class or group of

workers) as independent contractors or other nonemployees and want to prospectively treat the workers as employees.

- ***Now is the time to look at those folks who you are treating as "Independent Contractors" to make sure they meet the IRS requirements. If they don't this may be the time to resolve your IC issues!***

Resources:

- Read the IRS's Frequently Asked Questions on the [VCSP](#)
- Taxpayers may apply for the VCSP using [Form 8952, Application for Voluntary Classification Settlement Program](#)

BELTWAY ROUNDUP:

The last page of this *Cut N Paste* gives you an update (with links) of current federal legislative activities. Here's a status check on two bills that are of particular interest to the Society for Human Resources Management:

SHRM-Supported Legislation Moves in House

Good news for HR public policy advocates: Two bills strongly supported by SHRM advanced in Congress In September.

On September 15, the House passed H.R. 2587, the "Protecting Jobs from Government Interference Act." This was a response to the National Labor Relations Board's complaint against The Boeing Company for opening a new Dreamliner aircraft assembly line in South Carolina.

SHRM supported this legislation. It would amend the National Labor Relations Act to prevent the Board from ordering an employer to restore business operations, rescind a relocation or transfer, or make an investment at a particular plant, facility, or location.

On September 21, the House Judiciary Committee approved [H.R. 2885](#), the "Legal Workforce Act," which would phase out the paper-based Form I-9 and replace it with a modernized [E-Verify](#) system. SHRM has [supported](#) H.R. 2885 because it strikes an appropriate balance between a mandatory, federal system and the employer's role in the employment verification process. The bill would:



- Preempt conflicting state employment verification laws
- Indemnify employers from liability when using the E-Verify system
- Create an entirely electronic employment verification system, which would eliminate the Form I-9
- Require that only new hires be run through the E-Verify system, with some exceptions
- Establish a *voluntary* biometric pilot program, where an employee could "lock" their identity with a biometric marker.

Two other committees in the House are also considering the bill, which Pending consideration by the other two House committees, the Legal Workforce Act is likely to go before the full House later this year.

How Do You Take Yours?

Survey Reveals Which Professions Need Coffee the Most

Excerpted From the Ceridian 10/05/11 Abstract

According to a new survey commissioned jointly by Dunkin' Donuts and CareerBuilder®, scientists/lab technicians are the professions that need coffee the most, followed by marketing/public relations and education administrators. The survey results also show that coffee plays a major role in helping professionals perk up at work, as 34 percent need coffee to get through their workday, and 46 percent of those who drink coffee claim they are less productive without a cup of Joe.

According to the results, the professions with the highest proportions of workers stating they are less productive without coffee vary widely. Those who need coffee to get through the workday the most are:

- | | |
|--|---|
| 1. Scientist/Lab Technician | 9. Social Worker |
| 2. Marketing/Public Relations Professional | 10. Financial Professional |
| 3. Education Administrator | 11. Personal Caretaker |
| 4. Editor/Writer | 12. Human Resources Benefits Coordinator |
| 5. Healthcare Administrator | 13. Nurse |
| 6. Physician | 14. Government Professional |
| 7. Food Preparer | 15. Skilled Tradesperson (plumber, carpenter, etc.) |
| 8. Professor | |

CareerBuilder and Dunkin' Donuts also determined how various professionals prefer to drink their cup of coffee. According to the survey results:

- Professionals most likely to take their coffee black are hotel workers and attorneys/judges.
- **Professionals most likely to take their coffee with cream and sugar are human resources professionals and personal caretakers.**
- Professionals most likely to add flavor to their coffee include editors/writers, government professionals and teachers.

The survey also shows other ways that coffee fits into people's "daily grind" in the workplace. For example:

- *Make it a double:* Sixty-one percent (61%) of workers who drink coffee actually drink two cups or more each workday. Twenty-eight percent drink three cups or more.
- *The Northeast needs coffee to perk up.* Nearly half (46 percent) of workers claim they are less productive if they don't drink coffee. Geographically, workers in the Northeast stated they are the most dependent on coffee, with 49 percent of people claiming they are less productive without coffee, compared to the West at 47 percent, and Midwest and South at 45 percent.
- *Is coffee a boon to younger workers' careers?* Thirty-six percent (36%) of American workers aged 18 to 24 claimed that coffee has helped their career by providing an opportunity to network with other co-workers.

"It's interesting to see how coffee not only brings additional energy to the workday, but also provides opportunities to strike up conversations and build relationships," said Rosemary Haefner, Vice President of Human Resources at CareerBuilder. "The study shows one-in-five workers use coffee as a means to socialize and network with co-workers."

Beltway Roundup (continued):

Here is information on some key human resources-related bills that are winding their way through the federal legislative process. (While SHRM is currently monitoring 50 bills, these are key bills with recent action taken.)

Number:	US HR 321 - Updated (Status 10/04/2011)
Sponsor:	Cohen, Steve
Title:	Equal Employment for All Act
Abstract:	There was no abstract provided. However, among other things, this Bill would make it illegal to discriminate against a person because of his/her unemployed. In the spirit of no good deed going unpunished, this could backfire if employers become afraid to interview unemployed folks!
Status:	Referred to the Subcommittee on Financial Institutions and Consumer Credit. - 03/23/2011
Number:	US HR 1519 - Updated (Status 06/01/2011)
Sponsor:	DeLauro, Rosa L.
Title:	Paycheck Fairness Act
Abstract:	Directs the Secretary and the Commissioner of the EEOC jointly to develop technical assistance material to assist small businesses to comply with the requirements of this Act.
Status:	Referred to the Subcommittee on Workforce Protections. - 05/20/2011
Number:	US HR 1876 - Updated (Status 09/09/2011)
Sponsor:	DeLauro, Rosa L.
Title:	Healthy Families Act
Abstract:	Declares that nothing in this Act shall be construed to discourage employers from adopting or retaining more generous leave policies.
Status:	Referred to the Subcommittee on Workforce Protections. - 09/08/2011
Number:	US HR 2153 - Updated (Status 09/09/2011)
Sponsor:	King, Steve
Title:	Truth in Employment Act of 2011
Abstract:	Amends the National Labor Relations Act to provide that nothing in specified prohibitions against unfair labor practices by employers shall be construed as requiring an employer to employ any person who seeks or has sought employment with the employer in furtherance of other employment or agency status.
Status:	Referred to the Subcommittee on Health, Employment, Labor, and Pensions. - 09/08/2011
Number:	US HR 2346 - Updated (Status 09/09/2011)
Sponsor:	Woolsey, Lynn C.
Title:	Balancing Act of 2011
Abstract:	Directs the Secretary of Labor to conduct a pilot program in up to five states to raise awareness about telework among employers and to encourage them to offer telework options to employees.
PLEASE NOTE!	This Abstract doesn't even come close to describing this bill. The Bill's preamble reads: <i>"To improve the lives of working families by providing family and medical need assistance, child care assistance, in-school and after school assistance, family care assistance, and encouraging the establishment of family friendly workplaces."</i> Among other things, this would expand the coverage of the Family Medical Leave Act to smaller employers. <i>You need to read this bill!</i>
Status:	Referred to the Subcommittee on Early Childhood, Elementary, and Secondary Education. - 09/08/2011
Number:	US HR 2758 - Updated (Status 09/09/2011)
Sponsor:	Maloney, Carolyn B.
Title:	Breastfeeding Promotion Act of 2011
Abstract:	Amends the FLSA to provide for reasonable break times for breastfeeding purposes.
Status:	Referred to the Subcommittee on Health, Employment, Labor, and Pensions. - 09/08/2011
Number:	US HR 2885 - Updated (Status 09/29/2011)
Sponsor:	Smith, Lamar
Title:	Legal Workforce Act
Abstract:	Provides for the establishment of programs to: (1) block the use of misused social security numbers, and (2) suspend or limit the use of social security numbers of victims of identity fraud.
Status:	Referred to the Subcommittee on Immigration Policy and Enforcement. - 09/23/2011