

CUT AND PASTE POST NOVEMBER, 2016

Tred Carefully When Rescinding an Employment Offer

Lisa Warrington (Warrington) had worked for Benefis Hospital (Benefis) in Great Falls for about 20 years. On October 7, 2014, the Great Falls Clinic (Clinic) offered her a job as clinical manager. The next day Warrington accepted the offer of employment and gave two weeks' notice to Benefis that she was leaving its employ after October 24. On October 10, Warrington signed a written employment contract for an indefinite term with the Clinic, and both agreed that her start date would be October 27, 2014. On October 24, Warrington's last day at Benefis, the Clinic called and told her that it would not employ her after all.

Warrington brought an action against the Clinic for breach of contract, promissory estoppel, and breach of the covenant of good faith and fair dealing resulting from the rescinded employment offer.

The Clinic argued that it was protected under the Wrongful Discharge From Employment Act (WDEA), which allows employers to discharge an employee during the probationary period. The District Court found that the WDEA did not apply because Warrington had not yet started the new job. The District Court also granted Warrington's motion for summary judgment on the breach of contract claim. The Clinic appealed.

The Supreme Court affirmed the District Court's determination that the WDEA did not apply to the relationship between the Clinic and Warrington, and affirmed the District Court's order granting summary judgment to Warrington on the breach of contract claim. It ordered that the Clinic be assessed the costs for the court proceedings, and remanded the case back to the District Court for "further proceedings consistent with this Opinion and Order".

Professional Pointer - This case raises the issue of how you make and rescind employment offers. The best advise may be to make sure you've done your 'due diligence' before making an employment offer, that you carefully document all employment offers, including any conditions which must be met after a job offer has been made, and that prospective employees be cautioned not to resign from their current positions until every post offer requirement has been satisfactorily completed.

In case you're interested, the case is *Great Falls Clinic v. 8th Judicial District* – 2016 MT 245.

2017 Legislative Outlook

In two short months, the Montana Legislature will resume. A list of HR-related bill requests is provided below. Some appear to be repeats of bills that failed during the 2015 session. (No actual bills were available for review at the time of this writing.)

Inside this Issue:

- *Rescinding Job Offers*
- *2017 Legislative Outlook*
- *2017 Limits on FICA, HFSAs, and etc.*
- *OSHA-Recommended Practices for Safety and Health Programs*
- *Delay in Enforcement of OSHA Anti-Retaliation Provisions*

- Generally revise labor laws (6 bill requests)
- Generally revise disability laws related to wages
- Generally revise laws related to prevailing wage
- Generally revise commercial drivers license laws (2 bill requests)
- Revise Unemployment Insurance Laws
- Provide for primary enforcement of seatbelt laws
- Provide for a whistle blower act (possibly applies to public employees only)
- Establish employee safe work to travel and employee property right laws
- Establish benefits and retirement security task force



Things will start to pick up after the election, when all the contested seats have been filled. Stay tuned for updates as the Session proceeds.

2017 Limits for Social Security Payroll Taxes, and HFSA's and Other Benefits

- On October 18, 2016, the Social Security Administration announced that the maximum amount of earnings subject to the Social Security payroll tax will increase from \$118,500 in 2016 to \$127,200 in 2017. The adjustment is effective as of January 1, 2017. You may read the SSA's [Fact Sheet](#) here.
- On October 25, 2016, the Internal Revenue Service announced the annual inflation adjustments for more than 50 tax provisions. This includes an increase in voluntary employee contributions to healthcare flexible spending arrangements from \$2,550 to \$2,600 for plan years beginning in 2017.

Full information will be provided in [Revenue Procedure 2016-55](#), which should be published in early November.

OSHA Updates Recommended Practices for Safety and Health Programs

On October 21, 2016, the federal Occupational Safety and Health Administration (OSHA) released a set of *Recommended Practices for Safety and Health Programs*. These replace OSHA's 1989 guidelines and were updated to reflect changes in the economy, workplaces, and evolving safety and health issues. The *Practices* provide a step-by-step approach to implementing a safety and health program. The *Practices* focus on seven core elements: hazard identification and assessment, hazard prevention and control, education and training, program evaluation and improvement, management leadership, worker participation, and communication and coordination for employers, contractors, and staffing agencies.

Find the [Recommended Practices](#) here.

Enforcement of OSHA Anti-Retaliation Provisions Delayed

On October 18, 2016, OSHA extended the effective date of the anti-retaliation provisions in its final rule, *Improve Tracking of Workplace Injuries and Illnesses*, to December 1, 2016. There is a federal case pending which challenges the new rules' anti-retaliation provisions and OSHA's desire to limit the use of routine post-accident drug testing and incident-based safety incentive and recognition plans. This is the second delay in enforcement of these provisions: they were originally scheduled to be effective on August 10, 2016 but were first delayed until November 1, 2016.

Read the [Final Rule](#) and the [Judge's Order](#) which caused the delay in the enforcement.



ON NOVEMBER 8TH!