CUT AND PASTE POST
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USCIS Revises Form I-9

On July 17, 2017, the U.S. Citizenship and Immigration Services (USCIS) released a revised version of the Form I-9 (version 7/17/17 N). Employers have a 60-day grace period and may begin using the updated form (Rev. 07/17/17 N) immediately or continue using the previous Form I-9 (Rev. 11/14/2016 N) until September 17, 2017. However, ***effective September 18, 2017, employers must use the updated form for the initial employment verification for all new hires, as well as any applicable employment re-verifications.*** All prior versions of the Form I-9 will be invalid. The new Form I-9 has an expiration date of August 31, 2019.

The revisions to the Form I-9, and its instructions, are as follows:

- The enforcement agency was updated from the Office of Special Counsel to its new name, the Immigration and Employee Rights Section of the U.S. Department of Justice.
- The Form FS-240, *Consular Report of Birth Abroad*, was added as a new List C document.
- All certifications of report of birth issued by the Department of State (Form FS-545, Form DS-1350, and Form FS-240) are combined into one selection within List C, resulting in all List C documents (except for the Social Security card) being renumbered.

All these changes are also included in a revised Handbook for Employers: Guidance for Completing Form I-9 (M-274). ***Access the revised documents via these links:*** ***Form I-9*** ***and*** ***M-274***

ACA Doesn't Change, For Now

The Senate was unable to pass any bill to repeal the affordable care act before it went on its summer recess. Here are some possibilities for what's next:

- Nothing will change and Congress will move on to other issues.
- A bipartisan effort to craft modifications to the existing law. These parties may find some areas of agreement to revise specific items within the ACA. Typically, such work would begin in committees in the House and Senate.
- We may see some changes in how the ACA is enforced: The Departments of Labor (DOL), Treasury (including the IRS), and Health and Human Services (HHS), who all have a piece of the responsibility for regulating and enforcing the ACA, may take steps to change rules that the current administration considers too burdensome on businesses or individuals.

GVHRA will continue to monitor and report on ACA developments.

Inside

News Flash for Montana's Public Employers

HB 208, which makes it unlawful for Montana public officials or employees to retaliate against a person who alleges waste, fraud, or abuse is effective October 1, 2017. ***Are you ready***?

Department of Labor Seeks (lots of) Input on White Collar Salary Rule

Once again, the U.S. Department of Labor (DOL) has issued a Request for Information (RFI) seeking public comment on a wide variety of issues related to potential revisions of the Rule. The DOL has asked for comments on the following:

1. *Would updating the 2004 salary level for inflation be an appropriate basis for setting the standard salary level and, if so, what measure of inflation should be used?* Or, would applying the 2004 methodology to current salary data (South and retail industry) be an appropriate basis for setting the salary level? Would setting the salary level using either of these methods require changes to the standard duties test and, if so, what change(s) should be made?
2. *Should the regulations contain multiple standard salary levels?* If so, how should these levels be set: by size of employer, census region, census division, state, metropolitan statistical area, or some other method? For example, should the regulations set multiple salary levels using a percentage-based adjustment like that used by the federal government in the General Schedule Locality Areas to adjust for the varying cost-of-living across different parts of the United States? What would the impact of multiple standard salary levels be on particular regions or industries, and on employers with locations in more than one state?
3. *Should the DOL set different standard salary levels for the executive, administrative, and professional exemptions as it did prior to 2004* and, if so, should there be a lower salary for executive and administrative employees as was done from 1963 until the 2004 rulemaking? What would the impact be on employers and employees?
4. In the 2016 Final Rule, the DOL discussed in detail the pre-2004 long and short test salary levels. To be an effective measure for determining exemption status, *should the standard salary level be set within the historical range of the short test salary level, at the long test salary level, between the short and long test salary levels, or should it be based on some other methodology*? Would a standard salary level based on each of these methodologies work effectively with the standard duties test or would changes to the duties test be needed?
5. *Does the standard salary level set in the 2016 Final Rule work effectively with the standard duties test or, instead, does it in effect eclipse the role of the duties test in determining exemption status?* At what salary level does the duties test no longer fulfill its historical role in determining exempt status?
6. *To what extent did employers, in anticipation of the 2016 Final Rule's effective date on December 1, 2016, modify salaries or job duties*? To what extent did employers increase salaries of exempt employees in order retain their exempt status, decrease newly non-exempt employees' hours or change their implicit hourly rates so that the total amount paid would remain the same, convert worker pay from salaries to hourly wages, or make changes to workplace policies either to limit employee flexibility to work after normal work hours or to track work performed during those times? Where these or other changes occurred, what has been the impact (both economic and non-economic) on the workplace for employers and employees? Did small businesses or other small entities encounter any unique challenges in preparing for the 2016 Final Rule's effective date? Did employers make any additional changes, such as reverting salaries of exempt employees to their prior (pre-rule) levels, after the preliminary injunction was issued?
7. *Would a test for exemption that relies solely on the duties performed by the employee without regard to the amount of salary paid by the employer be preferable to the current standard test*? If so, what elements would be necessary in a duties-only test and would examination of the amount of non-exempt work performed be required?
8. *Does the salary level set in the 2016 Final Rule exclude from exemption particular occupations that have traditionally been covered by the exemption?* If so, what are those occupations? Do employees in those occupations perform more than 20 percent or 40 percent non-exempt work per week?

9. The 2016 Final Rule for the first time permitted non-discretionary bonuses and incentive payments (including commissions) to satisfy up to 10 percent of the standard salary level. *Is the 10 percent an appropriate limit or should the regulations feature a different percentage cap?* Is the amount of the standard salary level relevant in determining whether and to what extent such bonus payments should be credited?
10. *Should there be multiple total annual compensation levels for the highly compensated employee exemption?* If so, how should they be set: by size of employer, census region, census division, state, metropolitan statistical area, or some other method? For example, should the regulations set multiple total annual compensation levels using a percentage-based adjustment like that used by the federal government in the General Schedule Locality Areas to adjust for the varying cost-of-living across different parts of the United States? What would the impact of multiple total annual compensation levels be on particular regions or industries?
11. *Should the standard salary level and the highly compensated employee total annual compensation level be automatically updated on a periodic basis* to ensure that they remain effective, in combination with their respective duties tests, at identifying exempt employees? If so, what mechanism should be used for the automatic update, should automatic updates be delayed during periods of negative economic growth, and what should the time period be between updates to reflect long-term economic conditions?

Comments on the RFI are due by September 25, 2017. According to the RFI, "Electronic submission via *http://www.regulations.gov* enables prompt receipt of comments."

Wave of the Future: Microchipped Employees?

According to MSN, earlier this week Three Square Market, a Wisconsin firm that makes cafeteria kiosks, brought in a tattoo artist to embed microchips into 40 employees who volunteered to be chipped. The chips, which are not equipped with GPS tracking abilities, replace access cards and the need to log on to corporate computers. The company sees them as a way to increase convenience. The company would also like to see kiosks payments go cashless.

Globalism as well as advancements in technologies like bar codes and credit cards, periodically trigger concerns about the "mark of the beast" prophecy contained in the book of Revelation, which talks of a one government world and a cashless society.

In 2015, a West Virginia coal miner's belief in the "mark of the beast" won him more than half a million dollars in a workplace discrimination case. Beverly R. Butcher Jr., an evangelical Christian and minister, worked for decades in a mine owned by Consol Energy but was forced to retire when the company refused to accommodate his religious objection to its newly implemented biometric hand scanner. The scanner tracked employee attendance and hours worked by assigning a number to an image of a worker's hand. Citing the Book of Revelation, Butcher feared the number could link him to the Antichrist. An appeals court recently affirmed the federal court's 2015 decision.

Other "mark of the beast" cases have made their way into the court system, but they're not common, said Howard Friedman, who writes the Religion Clause blog about church and state legal issues. Religious workplace cases more often focus on employee clothing and work schedule accommodations. Friedman, who also is an emeritus law professor at the University of Toledo, doesn't anticipate the Wisconsin company's microchipping effort will end up before a judge.

"As long as they continue to make this voluntary, there isn't going to be much of a legal confrontation," Friedman said.

Are you ready to address this question if it comes up in your organization?