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The "Total" Advisor

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Paid Leave Tops List of Employer-Provided Benefits in Private Industry

Access to paid leave remains high on the list of employer-provided benefits for full-time workers in the private sector, according to data from March 2012 which was reported by the U.S. Bureau of Labor Statistics in July.

- Paid vacation was available to 91% of full-time workers and 35% of part-time workers.
- 90% of full-time workers and 40% of part-time workers received paid holidays.
- Paid sick leave was offered to 75% of full-time workers and 23% of part-time workers.

The report, "Employee Benefits in the United States," is based on data from the National Compensation Survey, which provides comprehensive measures of compensation cost trends and incidence and provisions of employee benefit plans.

Additional findings included:

- 86% of full-time employees in the private industry had access to medical care benefits.
- Retirement benefits were available to 74% of full-time workers in the private industry.

More details and survey results are available in the report. To learn more about employer-provided benefits, visit our section on Employee Benefits.

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Employee Pay: 3 Common Mistakes and How to Avoid Them

The federal Fair Labor Standards Act (FLSA) sets some basic rules when it comes to paying employees minimum wage and overtime, but certain common pay practices can violate the law without employers even knowing it. If any of the following sound familiar, it may be time for a compliance check.

1. "All Our Employees Are Exempt - They're Salaried"
Don't assume that just because you pay your employees a salary, they are considered exempt (not entitled to the FLSA minimum wage and overtime pay protections). Similarly, giving an employee a high-ranking job title such as "manager" does not, by itself, determine the employee's status. In order for an exemption to apply, you must ensure that an employee's specific job duties and salary meet all the requirements of the law for the specific exemption claimed.

2. "We Don't Need to Pay Overtime - Our Employees Volunteer to Work Late"
Non-exempt employees must be paid for all hours worked, including time spent doing work not requested by the employer but still allowed (otherwise known as working "off the clock"). Employees generally may not volunteer to perform work without the employer having to count the time as hours worked. It is the responsibility of management to exercise control and see that work is not performed if the employer does not want it to be performed.

3. "Overtime Doesn't Apply - We Use Contract Workers"
While it is true that independent contractors are not entitled to overtime pay because they are not considered "employees" covered under the FLSA, the mere existence of a contract stating that a worker is an independent contractor is not sufficient to determine the worker's status. Analyze the underlying nature of each relationship in light of all relevant factors to ensure that each worker is properly classified.

Note that state wage and hour laws may also apply to employment subject to the FLSA. When both the FLSA and a state law apply, the law setting the higher standards must be observed. If you have any questions regarding permissible pay practices, please consult a knowledgeable employment law attorney. Our section on Employee Pay includes information on other issues related to employee compensation.

Does Your Employee Wellness Program Comply with HIPAA?

Encouraging employees to adopt healthier lifestyles--for instance, by offering an incentive to workers who quit smoking--can often be a win-win for both employers and employees, but be careful that your program does not violate the

federal Health Insurance Portability and Accountability Act (HIPAA).

Wellness Programs and HIPAA Nondiscrimination
HIPAA's nondiscrimination provisions generally prohibit group health plans from charging similarly situated individuals different premiums or contributions or imposing different deductible, copayment or other cost sharing requirements based on a health factor. However, there is an exception that allows plans to offer wellness programs. In general:

- **Programs that do not require an individual to meet a standard related to a health factor in order to obtain a reward are not considered discriminatory under HIPAA**, such as a program that reimburses employees for the cost of smoking cessation aids regardless of whether the employee quits smoking.
- **Programs that require individuals to satisfy a standard related to a health factor in order to obtain a reward must meet five additional requirements to comply with HIPAA**. An example of this type of program is one that requires an individual to obtain or maintain a certain health outcome in order to obtain a reward (such as being a non-smoker or exercising a certain amount).

In order to be subject to HIPAA's nondiscrimination requirements, a wellness program must be, or be part of, a group health plan. If an employer operates a wellness program as an employment policy separate from the group health plan, the program may be covered by other federal or state nondiscrimination laws, but it would not be subject to HIPAA's nondiscrimination regulations.

As with any employee program, check with a knowledgeable employment law attorney to ensure that your program complies with all applicable state and federal laws, including nondiscrimination laws other than HIPAA. Our Health and Wellness section contains valuable information for employers designing their own programs to improve employee health.

Additional Medicare Tax for High Earners Coming in 2013

The IRS has released Questions and Answers relating to the Additional Medicare Tax for high earners which goes into effect in 2013 as part of Health Care Reform. Below are five things employers should know about the tax.

1. The Additional Medicare Tax rate is 0.9% for taxable years beginning after December 31, 2012.
2. The additional tax applies to an individual's wages, other compensation, and self-employment income (together with that of his or her spouse if filing a joint return) over certain thresholds.
3. Employers are responsible for withholding the Additional Medicare Tax on wages or compensation they pay to an employee **in excess of $200,000** in a calendar year.
4. An employer has this withholding obligation even though an employee may not be liable for the Additional Medicare Tax because, for example, the employee's wages or other compensation together with that of his or

her spouse (when filing a joint return) does not exceed the $250,000 liability threshold for married filing jointly.

5. There is no requirement that an employer notify its employees when it begins withholding the additional tax, and there is no employer match for the Additional Medicare Tax as there is with the regular Medicare tax.

For More Information
You may review the Questions and Answers in their entirety on the IRS website. Be sure to check out our Summary by Year for other upcoming requirements related to Health Care Reform.

Quick Facts About the Americans with Disabilities Act

The federal Americans with Disabilities Act (ADA) recently celebrated its 22nd anniversary. Title I of the ADA prohibits private employers with 15 or more employees from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

Did you know . . .
Title I of the ADA also covers medical examinations and inquiries.

- Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions.
- A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs.
- Medical examinations of employees must be job related and consistent with the employer's business needs.

Medical records are confidential.

- The basic rule is that with limited exceptions, employers must keep confidential any medical information they learn about an applicant or employee.
- Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional. For example, an employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.

Employees and applicants currently engaging in the illegal use of drugs are not covered by the ADA when an employer acts on the basis of such use.

- Tests for illegal drugs are not subject to the ADA's restrictions on medical examinations.
- Employers may hold illegal drug users and alcoholics to the same performance standards as other employees.

ADA Resources for Small Businesses
In addition to a variety of formal guidance documents, the U.S. Equal Employment Opportunity Commission has made available a wide range of fact sheets, Q&A documents, and other materials related to ADA compliance on its Disability Discrimination website. Our ADA-Disability section has more information regarding employer obligations under the Americans with Disabilities Act.

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