



LEGAL AND LEGISLATIVE UPDATE: SEPTEMBER 2006

KEVIN M. GOLD, ESQUIRE, LEGISLATIVE DIRECTOR

NEW FLSA OPINION LETTERS

Recently, the Department of Labor issued two opinion letters that provide guidance on the interpretation of recurring issues under the Fair Labor Standards Act. In the first letter, the DOL found that employers who dock the pay of their exempt employees for damage to company equipment, such as cell phones and laptop computers, are jeopardizing the exempt status of their employees. The DOL determined that deductions for lost, damaged or destroyed company property would be a deduction relating the quality of work the employee performs, for which no deductions are allowed. Making deductions in such circumstances would violate the rule that an exempt employee be paid on a salary basis, meaning their compensation is not reduced by changes in the quality or quantity of work.

The second letter permits an employer to require exempt employees to work in excess of 40 hours in a work week and make up for lost work time involving personal absences of less than a day. The DOL approved an employer's ability to require both, provided an employees' salary is not reduced if either rule is violated. The letter makes clear that, under the new overtime regulations, an employer can require exempt employees to record and track hours and work a set schedule without jeopardizing their exempt status.

Although Pennsylvania's own regulations concerning the exemptions from overtime have not changed with the recent regulatory changes under the FLSA, Pennsylvania employers should be able to rely upon these opinion letters in managing their exempt workforce.

GREATER PROTECTION FOR SOCIAL SECURITY NUMBERS IN PA

On June 29, 2006, Governor Rendell signed legislation regarding the use and disclosure of social security numbers. S.B. 601 generally applies to Pennsylvania businesses, unless they are subject to an exception, such as financial institutions, and prohibits public posting or printing of an individual's social security number.

The goal of the new law, which will take effect in December, is to provide greater protection for social security numbers from theft and improper usage. Employers should review their policies and practices concerning the use of social security numbers in anticipation of this new law. Employers can still ask for social security numbers on printed employment

applications, however, those employers who use on-line application forms and ask for social security numbers will need to make certain the internet site is encrypted to protect the individual's social security number.

LATEST ON PROPOSED FMLA REFORM

The long-awaited proposed regulatory revisions to the FMLA, initially planned for May, 2003 but which were most recently announced for publication by June, 2006, are now expected by the end of this year. The regulations will address the issue of when an employer delays notice of its designation of FMLA and many employers are also hoping for clarification with respect to what constitutes a serious health condition and the administration of intermittent leave.

For more specific guidance on these issues, you may reach Mr. Gold at (717) 237-6702 or by email at kgold@rhoads-sinon.com.