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State Minimum Wage Increase—January 2008

Effective January 1, 2008, the Oregon minimum wage increased by 15 cents to \$7.95 per hour.

This increase is a result of the passage of Ballot Measure 25, approved by Oregon voters on November 5, 2002. Measure 25 requires the Commissioner of the Bureau of Labor and Industries to calculate an annual adjustment to the minimum wage each September for the following calendar year. The annual adjustment is based on any increase during the previous 12 months in the U.S. City Average Consumer Price Index for All Urban Consumers for All Items.

Under the new law, the minimum wage is to be rounded to the nearest five cents and to take effect on January 1 of the year following each adjustment.

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COMPLIANCE HIGHLIGHT

Is your Section 125 Plan Document Accurate?

How long has it been since you updated your Section 125 Plan Document? It's not a trick question. An out of date plan document may be a serious liability for a business. The problem for many businesses is that they do not know what to check for when reviewing their plan document.

Following are some of the most common issues that can necessitate a plan update or change.

PLAN YEAR

For various reasons, businesses may need to change their 125 plan year. The most common reason for a change in the Section 125 plan year is when the plan year of a fully insured health plan changes. Over time, an employer may make several changes to their underlying benefits which could cause the plan year for the 125 plan to diverge further and further from the plan years for the underlying benefits.

In such a situation, employees must make a one year irrevocable election under the 125 plan without knowing what the premium may be when the health plan renews mid 125 plan year. This

may cause problems for employees in the event of a major rate increase, because they now have few good options for changing their election mid plan year. Ideally, the 125 plan year and the plan year for all benefits offered under the plan should be the same. If they cannot all be the same, then at a minimum, it is advised that the 125 plan year be synchronized with the plan year for the health plan because typically the health plan is the most expensive benefit option.

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ELECTIONS

125 rules require that employers follow the election provisions within their plan document. If your plan document stipulates that you will hold a "positive" election prior to the beginning of the plan year, that is what you should be doing. If you are handling your elections in some other manner, an amendment to your plan document may be necessary.

COVERAGE OPTIONS

The IRS regulations state that a plan must describe each coverage option available under that plan. Some employers have plans that were adopted many years ago and do not include an

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ENFORCEMENT UPDATE

\$4.3 Million Settlement in National Origin Discrimination Case

The U.S. Equal Employment Opportunity Commission (EEOC) recently filed a complaint and entered into a consent decree in federal district court with B & H Foto and Electronics Corp., resolving a national origin discrimination case on behalf of Hispanic workers at one of the largest retail sellers of photographic, computer and electronic equipment in the NY metropolitan area.

The EEOC's lawsuit, filed under Title VII of the Civil Rights Act of 1964 alleged that B & H paid Hispanics in its warehouses less than non-Hispanic workers and failed to promote them or provide them health benefits based on their national origin.

The court-filed complaint is resolved simultaneously through the voluntary settlement of this matter by

consent decree under which B & H agrees to comply with the requirements of Title VII; equalize the wages of Hispanic employees to their non-Hispanic coworkers; and to work with the EEOC in a claims process to distribute \$4.3 million in monetary relief to individuals who were paid less, not promoted, or denied benefits because they are Hispanic.

The decree, in addition to proving for distribution of the multi-million dollar settlement fund, also requires employer training, notice posting, adoption of an anti-discrimination policy, reporting to the EEOC, and monitoring by the EEOC for the following five years.

Section 125 Plan Document (con't)

up-to-date listing of available coverage options. If a particular coverage is not listed in the plan document, it cannot be withheld on a tax-free basis through the 125 plan.

TYPES OF COVERAGE

A section 125 plan is a great way to help employees afford valuable insurance coverage. There are, however, some benefits which should not be included in a Section 125 plan, including life insurance in excess of \$50,000, disability, hospital income policies, cancer policies and long term care insurance. Employees who pay for this coverage through a 125 plan may incur a substantial tax penalty in the event that they ever collect on these benefits.

ELECTION CHANGES

What types of changes does your plan allow? The IRS permits certain types of changes besides those necessitated by FMLA or HIPAA but a plan may be more restrictive. An employer must follow their own plan document. If your plan document is more restrictive than what the IRS allows, you must follow those more restrictive rules, unless you amend your plan. Employers who allow participants to change elections for reasons other than those allowed by the IRS and the employer's own plan document may face stiff penalties and potential disallowment of their plan.

OSHA Announces Employer-Paid Personal Protective Equipment Final Rule

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) recently announced a final rule on employer-paid personal protective equipment (PPE).

Under the rule, all personal protective equipment, with a few exceptions, will be provided at no cost to the employee. OSHA anticipates that this rule will have substantial safety benefits that will result in more than 21,000 fewer occupational injuries per year. The rule was published in the Federal Register on November 15, 2007.

Assistant Secretary of Labor for OSHA Edwin G. Foulke Jr. states "This final rule will clarify who is responsible for paying for personal protective equipment, which OSHA anticipates will lead to greater compliance and potential avoidance of thousands of workplace injuries each year."

The final rule contains a few exceptions for ordinary safety-toed footwear, ordinary prescription safety eyewear, logging boots, and ordinary clothing and weather-related gear. The final rule also clarifies OSHA's requirements regarding payment for employee-owned PPE and replacement PPE. While these clarifications have added several paragraphs to the regulatory text, the final rule provides employees no less protection than they would have received under the 1999 proposed standard.

The rule also provides an enforcement deadline of six months from the date of publication to allow employers time to change their existing personal protective equipment payment policies to accommodate the final rule.

For more information, visit www.osha.gov.

E-Verify—Questions and Answers

E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers and is available in all 50 states. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

Q : Am I required to participate?

No. E-Verify is voluntary for all employers with very limited exceptions. (Some Federal government employers and violators of certain immigration laws may be ordered to participate.)

Q : Why should I consider participating in E-Verify?

E-Verify is currently the best means available for employers to electronically verify the employment eligibility of their newly hired employees. E-Verify virtually eliminates Social Security mismatch letters, improves the accuracy of wage and tax reporting, protects jobs for authorized U.S. workers, and helps U.S. employers maintain a legal workforce.

Q : How do I register for participation in E-Verify?

You can register at <https://www.vis-dhs.com/EmployerRegistration>, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you the employer, the SSA, and USCIS. An employee who has signatory authority for the employer can sign the MOU.

Q : After an employer registers, how does the program work?

Using an automated system, the program involves verification checks of SSA and DHS databases. The E-Verify MOU, User Manual and Tutorial contain instructions and other related materials on E-Verify procedures and requirements. Once the user has completed the tutorial, he or she may begin using the system to verify the employment eligibility of all newly hired employees.

Q : Can I verify the immigration status of a new hire that is not a U.S. citizen?

No. E-Verify verifies a new hire's employment eligibility, not his or her immigration status.

Q : What information is required to conduct an E-Verify initial verification?

After hiring a new employee and completing the Employment Eligibility Verification form (Form I-9), required for all new hires (regardless of E-Verify participation), the employer or agent must submit a query that includes information from sections 1 and 2 of the Form I-9, including:

- Employee's name and date of birth,
- Social Security Number (SSN),
- Citizenship status he or she attests to,
- A number or I-94 number, if applicable,
- Type of document provided on the Form I-9 to establish work authorization status, and
- Proof of identity and its expiration date, if applicable.