

In this issue:


- Compensation Discrimination in Employment
- EEOC Settles Lawsuit on Behalf of Hispanic Employees
- Department of Labor Recovers Back Wages
- Medicare Secondary Payer Rules and Group Health Plans
- Administrative Rule Change to OFLA

Compliance Workshop Schedule - Summer 2006

OSHA Bloodborne Pathogen Compliance

Learn about OSHA's Bloodborne Pathogen standard, who it applies to, when training is required and the importance of compliance.

DATE & TIME:

 Wednesday, June 28, 2006
11:30am to 1:00pm

LOCATION:

Hilltop Conference Room
Portland, Oregon

Multi-state Employers

Learn about the exposures that multi-state employers have in regards to attendance and state and federal employment law issues.

DATE & TIME:

Wednesday, July 12, 2006
8:30am to Noon

LOCATION:

Eastmoreland Golf Course
Portland, Oregon

How To Register

Call: (503)244-0297
Fax: (503)244-0298
Email: info@golsanscruggs.com

Oregon Office

7320 SW Hunziker Street, Suite 320
Portland, Oregon 97223
(503) 244-0297 Phone
(503) 244-0298 Fax

Washington Office

1710 W. Main, Suite 219
Battleground, WA 98604
(360) 687-2288 Phone
(360) 397-0380 Fax

www.golsanscruggs.com

© 2006 Golsan Scruggs. All rights reserved.
Duplication not permitted without prior request.

RISK MANAGEMENT

Compensation Discrimination in Employment

Compensation discrimination in employment is prohibited by the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and Title I of the Americans with Disabilities Act of 1990, all enforced by the U.S. Equal Employment Opportunity Commission. Collectively, these statutes require employers to compensate employees without regard to race, color, religion, sex, national origin, age, or disability.

The laws against compensation discrimination include all payments made to or on behalf of an employee. All forms of compensation are covered, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits.

Equal Pay Act

The Equal Pay Act requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. It is job content, not job titles, that determines whether jobs are substantially equal. Specifically, the EPA provides:

Employers may not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment. Each of these factors is summarized below:

Skill - Measured by factors such as the experience, ability, education, and training required to perform the job. The key issue is what skills are required for the job, not what skills the individual employees may have.

Effort - The amount of physical or mental exertion needed to perform the job.

Responsibility - The degree of accountability required in performing the job.

Working Conditions - This encompasses two factors: (1) physical surroundings like temperature, fumes, and ventilation, and (2) hazards

Establishment - An establishment is a distinct physical place of business rather than an entire business or enterprise consisting of several places of business. However, in some circumstances, physically separate places of business

(Con't on next page)

CLAIM REVIEW

EEOC Settles Lawsuit on Behalf of Hispanic Employees

The U.S. Equal Employment Opportunity Commission (EEOC) has settled its national origin discrimination lawsuit against the successor of U S WEST Communications, Qwest Communications International Inc., for \$400,000. The EEOC achieved the settlement on behalf of a group of Hispanic employees who the EEOC alleged were denied promotions to management jobs at company's Portland, Oregon, facilities from 1998 through 2001. The company has denied these allegations.

The company agreed to a two-year consent decree in which it agreed to pay the group \$400,000. Qwest will maintain its annual employment discrimination training and continue to provide training to hiring

managers in Portland, Oregon. It will provide annual reports to the EEOC for the duration of the decree.

"We are committed to fighting discrimination in all its forms and in every jurisdiction. This settlement represents a fair and equitable resolution of the disputed issues in the case," said EEOC San Francisco Regional Attorney William R. Tamayo.

"Employers cannot make promotion decisions that discriminate on the basis of national origin," said EEOC San Francisco District Office Director Joan Ehrlich. "Employers should not only avoid discrimination, but should find ways to build on the assets diversity brings."

Compensation Discrimination (con't)

should be treated as one establishment.

Pay differentials are permitted when they are based on seniority, merit, quantity or quality of production, or a factor other than sex. It is the employer's burden to prove that these factors apply.

In correcting a pay differential, no employee's pay may be reduced. Instead, the pay of the lower paid employee(s) must be increased.

Title VII, ADEA, and ADA

Title VII, the ADEA, and the ADA prohibit compensation discrimination on the basis of race, color, religion, sex, national origin, or disability. Unlike the EPA, there is no requirement under Title VII, the ADEA, or the ADA that the employee's job be substantially equal to that of a higher paid person outside the employee's protected class, nor do these statutes require the employees to work in the same establishment. The basic theories of disparate treatment and adverse impact generally apply to compensation discrimination claims under these statutes.

Employers should evaluate their compensation systems to ensure that the compensation of employees is based on nondiscriminatory factors. Employers also should evaluate practices that may indirectly depress the compensation of employees in protected classes. For example, employers should make sure that promotion decisions, performance appraisal systems, and procedures for assigning work are non-discriminatory.

Department of Labor Recovers Back Wages

The U.S. Labor Department announced recently that Fidelity National Financial agreed to pay a total of \$778,392 in back wages to 1,895 workers after a Wage and Hour Division investigation found they had not been paid in accordance with provisions of the Fair Labor Standards Act (FLSA).

"This Administration is committed to protecting overtime rights and ensuring that workers receive all the wages they have earned," said Secretary of Labor Elaine L. Chao. "We have recovered more than \$778,000 in back wages for these workers. The employer has also changed the payroll system so that overtime will be properly compensated in the future."

Wage and Hour investigators found that calculations to determine overtime rates were incorrect because they did not include commissions paid to employees covered by the FLSA.

The company cooperated with the department and made changes to its payroll system nationwide to assure future compliance. The back wages have been paid to employees throughout the country.

Fidelity National Financial, headquartered in Jacksonville, is a provider of real estate, title, escrow, specialty insurance and financial institution processing and outsourcing services.

The FLSA requires that covered workers be paid at least the federal minimum wage for all hours worked and time and one-half their regular rate of pay, including commission, for all hours worked over 40 in a single work week.

Medicare Secondary Payer Rules and Group Health Plans

Faced with higher premiums and a perception of increased benefits under Medicare, some employers are attempting to shift older workers off of their Group Health Plan and onto Medicare. Employers should be aware of the restrictions placed upon them in regards to individuals eligible for Medicare and the potentially serious consequences of this practice.

Federal Law requires that employers offer to their employees age 65 or over the same coverage offered to employees under age 65. If the employer offers health care coverage to spouses, the same coverage must be offered regardless of age. This equal-benefit rule applies to coverage offered to full-time and part-time employees, or retirees.

Employers with 20 or more employees are required to offer the same (primary) coverage to their age 65 or over employees and the age 65 or over spouses of employees of any age that they offer to younger employees and spouses. This requirement is met if an employer has 20 or more full-time and/or part time employees for each working day in each of 20 or more calendar weeks in the current or preceding year. Where an employer does not have 20 or more employees in the preceding year, the employer is required to offer their employees and spouses age 65 or over, primary coverage when they have had 20 or more employees on each working day of 20 calendar weeks of the current year. The employer is then required to offer primary coverage for the remainder of that year and throughout the following year, even if the number of employees subsequently drops below 20.

Medicare beneficiaries are free to reject employer plan coverage, in which case they retain Medicare as their primary coverage. When Medicare is the primary payer, employers cannot offer such employees or their spouses a plan that supplements services covered by Medicare. An employer offering an enticement to move employees from their health plan and onto Medicare would be violating Medicare Secondary Payer rules.

Medicare Secondary Payer rules apply equally regardless of how an individual receives Medicare benefits, whether it be through traditional Medicare, a Medicare Advantage Plan or another Medicare Health Plan.

Group Health Plans which violate these rules are subject to recovery of claims plus penalties and interest. These amounts will most likely not be paid by the insurance company if the employer discouraged the employee from enrolling in the Group Health Plan or provided an incentive not to do so such as paying for Medicare supplement coverage.

Administrative Rule Change to OFLA

On March 24, 2006, BOLI added language to the Enforcement & Retaliation section of OFLA's administrative rules. This change emphasizes the significance of supervisor training as respects to OFLA compliance.

839-009-0320(4) "It is an unlawful employment practice for an employer to count OFLA leave against an employee in determining the employee's compliance with attendance policies or to count OFLA leave against an employee when determining eligibility for bonuses based on attendance. An employee is entitled to continue eligibility for a bonus based on attendance upon return from OFLA leave and may not be disqualified from the bonus as a result of taking OFLA leave."