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FOCUS

Stowe Associates Insurance and Compliance Tips Newsletter



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During the economic downturn and resulting budget cuts, many employers are having difficulty funding all of their Risk Management and Human Resources functions and services. In this era of ever increasing employer liability it is more important than ever to comply with government regulations. Stowe Associates offers many complimentary compliance assistance services.

For more information or to request a no obligation demonstration contact your Stowe Associates representative or Alison Smith at asmith@stoweassociates.com or 770-451-6222.

EEOC Issues Final GINA Rules

The EEOC has issued final regulations for the Genetic Information Nondiscrimination Act of 2008 (GINA). The new rules are largely consistent with the proposed rules, which were issued on March 2, 2009.

One requirement of the new regulations is that employers specify that they are not requesting genetic information when collecting documentation for the purposes of compliance with other laws, such as the ADA or FMLA. Employers are now required to include a notice, when requesting medical information, which advises healthcare providers to avoid disclosure of genetic information. If this notification is not provided and the healthcare provider discloses genetic information, the disclosure is not covered under the safe harbor rule for incidental disclosures and could violate GINA.

There are also some changes to the rules regarding Health Risk Assessments (HRA) under wellness programs. It appears that employers are given slightly more flexibility under the final regulations than under the proposed regulations. Specifically, employers may ask questions regarding family medical history, as long as the employee is given the option of “opting out” of that section of the HRA, without forfeiting any inducement offered by the employer for completion of the HRA.

It is important to note, that this is not substantively different than the proposed rule, which prohibited an inducement for an HRA which requested family medical information. Effectively, employers still cannot require that employees provide this information, as was the case with the proposed regulations, but employee’s may voluntarily provide it, so long as it is not a prerequisite for receiving an inducement under the wellness program.

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US Department of Labor Recovers More Than \$485,000 in Back Wages for Employees of New York City Dollar Store Chain

The U.S. Department of Labor has recovered more than \$485,000 in minimum wages, overtime pay, liquidated damages and post-judgment interest for approximately 120 employees of several New York City-area dollar stores. The dollar stores and their owners agreed to two partial consent judgments resolving the department's lawsuit over alleged violations of the federal Fair Labor Standards Act, including the failure to pay minimum wages and overtime compensation to employees who worked in excess of 40 hours a week.

The department filed the suit following an investigation by the Wage and Hour Division which found that employees working at the companies' retail stores often were paid at hourly rates less than the federal minimum wage, and were required to work more than 40 hours in many weeks without being properly compensated. The investigation also found that the companies failed to maintain adequate and accurate records of their employees, wages, hours and other conditions of employment.

The FLSA requires that covered employees be paid at least the federal minimum wage of \$7.25 per hour, as well as one and one-half times their regular hourly rates of pay for every hour they work beyond 40 per week. The law also requires employers to maintain accurate records of employees' wages, hours and other conditions of employment, and prohibits employers from retaliating against employees who exercise their rights under the law.

The consent judgments, entered by the court, permanently prohibit the defendants from future violations of the FLSA's minimum wage, overtime pay, recordkeeping and anti-retaliation requirements. The judgments order the defendants to pay the total of \$485,607 owed in back wages and damages in accordance with a payment schedule. If any of the defendants fail to make any of the payments on time, the court can appoint a receiver with the power to seize and liquidate their assets to satisfy the order. The defendants also are ordered to install timekeeping systems in their stores and train employees in their use, and to inform their employees of their rights under the law.

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