HR UPDATE

NorthEast Talent Solutions

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U.S. House Repeals the "Cadillac Tax"

If you are a business owner struggling with strategic planning and financial forecasting in today's climate, you are not alone. Planning may be especially difficult with respect to your company's healthcare and health insurance.

When the Patient Protection and Affordable Care Act passed into law in 2010, known popularly as the Affordable Care Act, it included a 40% tax on employer-sponsored health benefits when the annual cost of those benefits exceeded certain thresholds - $11,200.00 for individuals and $30,100.00 for families. This "Cadillac" tax applies to the portion of the premium in excess of the applicable cap.

The tax is levied on insurance companies, but lawmakers anticipated that insurance companies would ultimately pass the expense to employers and workers. The objective of the tax was to push healthcare costs down by incentivizing employers to move toward less expensive health insurance plans. Lawmakers also anticipated increased government revenues resulting from employers passing the savings from lower health insurance premiums on to their employees in the form of higher wages, which are and would remain taxable. At present, employer-provided health benefits are excluded from taxable income.

Congress has twice delayed implementation of the Cadillac Tax. The tax is currently scheduled to take effect in 2022, but it is looking increasingly unlikely that it will survive until then. This month the House voted overwhelmingly to repeal the Cadillac Tax. There is a companion bill pending in the Senate that has bipartisan support. It is unclear if or when the Senate will vote on the bill.

If you are an employer who already made the decision to reduce your employer-sponsored health insurance premiums in anticipation of the tax, or if you are an employer still evaluating how to proceed with respect to your company's health insurance program, stay tuned.

Outsourcing Leave Administration

Passage of paid sick leave in New Jersey highlights the ever changing landscape of employee leave laws and regulations at the local, state and federal levels. Administering company policies consistent with these laws is a challenge and the cost of mismanaging leave can be immense.

What is the solution to this problem? Many employers are outsourcing management of employer leave to third-party administrators. Family medical leave is the most common type of leave outsourced by employers today but they can also outsource management of a variety of leave categories including paid sick leave, maternity and parental leave, short and long term disability, and military leave.

There are a variety of benefits to outsourcing leave administration. One benefit is the ability to minimize personal or emotional discussions between employees and management. This also reinforces privacy between employees and employers. In addition, outsourcing leave administration decreases the burden on employers' human resources departments and, in theory, delegates leave policy practices and procedures to the experts.

Delegating a company's leave administration to an "expert" third-party administrator, however, does not absolve the company of liability for mistakes in the implementation of leave policies. Therefore, effective and continuous communication between an employer and third-party administrator is absolutely critical. An employer, despite the use of a third-party administrator, must remain engaged and involved in the implementation of its own leave policies.

Employers should remember this potential liability as they select a third-party administrator and make decisions about the structure and functionality of that business relationship.

Sweeping Sexual Harassment Reform in New York

The last volume of this newsletter discussed sexual harassment legislation passed in New York State and New York City last year. Just last month, however, the New York State Legislature passed additional sweeping legislation strengthening protections for victims of harassment and discrimination. The governor is expected to sign the legislation into law.

It is impossible to adequately detail all of the new legislative changes within the parameters of this newsletter but, among other things, the legislation broadened the definition of employer so that a larger population of employees now qualify for legal protection. For instance, the definition now includes New York State and its political subdivisions, regardless of size. In addition, the law now applies broadly to private employers in the state, including any person, company, corporation, or labor organization. Finally, independent contractors, vendors and consultants have expanded protections under the new law.

This legislation lowers the legal standard a victim of sexual harassment must meet to file a claim. Previously, New York State followed the federal standard which required a victim to show "severe or pervasive" behavior by an alleged harasser. Now, unlawful harassment will include any activity that "subjects an individual to inferior terms, condition or privileges of employment because of the individual's membership in one or more" protected categories.

New York State law will now prohibit harassment based on any protected characteristic, not just sexual harassment. In effect, employers are prohibited from subjecting any individual to harassment "because of an individual's age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, and domestic violence victim status or because the individual has opposed" forbidden practices.

The statute of limitations to file a sexual harassment complaint with the New York State Division of Human Rights will lengthen from one year to three years.

Mandatory arbitration clauses will now be prohibited for all discrimination claims and the use of non-disclosure agreements will be severely restricted.

The new law requires the award of reasonable attorneys' fees to the prevailing party. This was previously left to the discretion of the court. The new law also allows for punitive damages without limitation in all employment discrimination actions related to private employers, not just those based on sex discrimination.

The majority of these legislative changes take effect sixty days after enactment of the legislation, with the exception of the employer definition expansion which will take effect after six months and the extended statute of limitations which will take effect after one year.

What is the impact on employers? It is likely this new legislation will result in a higher volume of claims by employees and those claims have the potential to result in higher employer costs.

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