HR Brief

Human Resources tips brought to you by
The Alpha Group

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DID YOU KNOW?

The final rule on the Department of Labor's (DOL) proposed changes to the FLSA overtime exemptions may be published sooner than the anticipated July 2016 date.

On March 14, the DOL sent the final draft of the rule to the Office of Management and Budget (OMB), indicating a faster timeline than what was anticipated. The final rule could be published as early as May or June.

Because of the upcoming presidential election, there is pressure on the DOL to make the final rule effective shortly after it is published. Employers should understand how the overtime rule changes may affect current employee classifications and start planning for compliance.

Tips for Implementing Progressive Discipline

Progressive discipline is a system that provides increasingly severe warnings for repeated employee conduct that either disregards the employer's policies and procedures or fails to fulfill performance expectations.

Using a system of progressive discipline in reaction to poor performance or rule violations can help employers avoid employee legal claims (for example, employment discrimination, sexual harassment, unemployment insurance and wrongful discharge) and improve staff performance and attitudes.

A typical progressive discipline system will have five steps: a verbal warning (that is documented), a written warning, a final written warning, an unpaid suspension (during which time, termination may be considered) and finally, termination of employment.

Depending on the severity of the issue, an employer may decide to skip one or more steps of the progressive disciplinary process. It is important that employers provide themselves with the flexibility to do so. In addition, any escalation in the progressive discipline process should be done consistently among employees who may be viewed as similarly situated.

It is also important to clarify what is not appropriate under a system of progressive discipline.

The goal of discipline should be to change behavior and/or improve job performance so employees never reach the next step. Therefore, some employers attempt to be creative with disciplinary measures that they feel will motivate an employee to change the undesired behavior. However, an employer is limited as to the things it can lawfully do.

For example, an employer may **not** withhold an employee's wages (which may include earned vacation time or other paid time off) as a form of discipline. This would be illegal under the Fair Labor Standards Act (FLSA). An employer is required to pay an employee for all time worked. In addition to the FLSA, state laws may also limit the deductions that an employer may take from an employee's paycheck. An employer that violates the requirements of the FLSA can face civil penalties of up to $1,100 for each violation.

Progressive discipline can be effective in changing employee behavior and protecting an employer from liability. However, employers should be aware of the forms of discipline that will create liability.

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Continue to Use Current Form I-9

As many employers are aware, the expiration date on the current Form I-9 is March 31, 2016. The U.S. Citizenship and Immigration Services (USCIS) has not yet published a revised form. Employers may continue to use the current Form I-9 until further notice from the USCIS.

On March 28, 2016, the USCIS published a 30-day notice in the Federal Register inviting public comment on the proposed changes to Form I-9, Employment Eligibility Verification.

According to the USCIS, many of the proposed changes to Form I-9 were designed to reduce technical errors. Other key changes to the form include drop-down lists and calendars, embedded instructions for completing each field, requiring employees to provide only other **last names** used in Section 1 (rather than **all other names** used), and separating the instructions from the form.

The public may provide comments on the proposed changes until April 27, 2016. Employers must continue to use the current version of Form I-9 until the OMB approves the proposed version and the USCIS posts it on its website.

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