

## **Update 10-0101**

### **Title VII**

#### **1/29/09-Lilly Ledbetter Fair Pay Act**

Changes timing for statute of limitations. "an unlawful employment practice occurs not only when a discriminatory pay decision or practice is adopted but also when the employee becomes subject to the decision or practice, as well as each additional application of that decision or practice." In other words, each time compensation is paid.

#### **1/26/09-United States Supreme Court**

*Crawford v Metropolitan Government of Nashville and Davidson County, TN.*

Title VII anti-retaliation provision protects not only employees who report complaints of harassment/discrimination on their own initiative, but also employees who speak out about harassment/discrimination while answering questions during an employer's internal investigation of a harassment/ discrimination complaint.

### **ADEA**

#### **1/29/09-Lilly Ledbetter Fair Pay Act**

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### **Fair Credit Reporting Act**

**FTC Regulations effective 07/01/10** add the following to employer responsibilities:

- Employers that provide payroll or other information about employees to CRAs must comply with FCRA regs regarding furnishers of information
- An employees may now enter into "direct dispute" with an employer to challenge the accuracy of information in a CRA report
- Employers must conduct an investigation of direct disputes to ensure the accuracy of information, and if incorrect information was provided, must inform the CRA and submit corrections
- Employers are required to audit current policies and procedures they follow when providing information to CRAs. Specifically:
  - Use a system appropriate to employer's business operations
  - Standard reporting formats
  - Maintain records in accordance with applicable record-keeping requirements
  - Use appropriate internal control to ensure accuracy and integrity of information provided to CRAs
  - Train staff to follow the policies and procedures
  - Oversee any service providers whose information may be used in reports to CRA
  - Make sure information changes subsequent to a change in ownership do not result in inaccurate CRA information
  - Keep records current by updating or correcting information as changes take place
  - Investigate direct disputes appropriately
  - Ensure the integrity of technological reporting methods so that accurate information is reported

- Take steps to ensure the CRA is able to associate reported information with the appropriate employee
- Include in the procedures a system for periodic review of policies and procedures
- Policies and procedures ensure compliance with FCRA regulations

## **Update 10-0102**

### **Immigration and Nationality Act**

#### **H-1B Visa Reform Act of 2004**

- Employers may not displace any employed US worker within 90 days before and 90 days after petition date
- Take good faith steps to hire US worker for positions prior to seeking an H-1B worker; offer the job to any equally or better qualified US worker
- Employers must pay 100% of prevailing wage
- Provide wage surveys at 4 levels equal to experience, education and supervisory level of the position
- DOL investigative authority is expanded when employers willfully fail to meet LCA conditions (Labor Condition Application). In any 12 month period, engage in a pattern or practice of violations, or substantially fail to meet LCA conditions affecting multiple employees
- Added Good Faith Compliance Defense
- Make a good faith attempt to comply
- Voluntarily correct failures within 10 business days of notice by DOL
- Do not engage in pattern or practice of willful violations
- Industry Standards Defense is recognized when calculated prevailing wage is consistent with recognized industry standards and practices and fines are not assessed in these cases
- Adjusted application and penalty fees

### **Vietnam Era Veterans Readjustment Assistance Act**

- Any veterans who served during active duty during a war, campaign, or expedition for which a campaign badge has been authorized
- Any veteran during the one-year period beginning on date of release or discharge from active duty
- Affirmative action plans must be in place
- Contractors with 50+ employees and contract of \$50,000+ must have a written AAP; must demonstrate they follow the AAP, do not discriminate against any covered groups, and have actively targeted veterans for promotion opportunities

### **Americans with Disabilities Act of 1990**

#### **1/29/09-Lilly Ledbetter Fair Pay Act**

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## **Update 10-0103**

### **COBRA Subsidies Timeline**

#### **American Recovery and Reinvestment Act of 2009 ("ARRA") passed 02/17/09**

- COBRA subsidy effective for eligible employees including original federal COBRA continuation coverage, AND any group health plan coverage subject to continuation under federal or state laws

- Employers pay for coverage and receive reimbursement from the federal government by direct payment or through payroll tax credits for 9 months
- Eligible individuals are those involuntarily terminated between 9/1/08 and 12/31/09 and became eligible for COBRA during the same period.

#### **Department of Defense Appropriations Act (“DDAA”) passed 12/19/09**

- Subsidized COBRA eligibility extended through 2/28/10
- Extended subsidy to 15 months (thru May 2011)
- Allowed retroactive application of subsidy
- Employers must notify all eligible individuals using DOL notice models

#### **Patient Protection and Affordable Care Act (PPACA) passed 03/23/10**

##### **Employer Provisions effective in 2010**

- Effective on date of enactment, but pending issuance of DOL regulations, employers who currently offer coverage and who have more than 200 full time employees must automatically enroll new and current full-time employees in one of the plans they offer (subject to legally authorize waiting periods) and allow employees to opt-out of that plan.
- Effective for 2011, the combined cost of employer-sponsored coverage must be included on employee W-2s
- Small businesses with fewer than 25 FTEs providing coverage for employees whose annual wages are less than \$50,000 are eligible for a sliding scale tax credit. The full credit is provided to employers with 10 or fewer FTEs with average annual wage of \$25,000 or less. Eligible employers must contribute a uniform percentage of no less than 50 percent of total premium cost.
- Creates a temporary program for employers providing retiree coverage to individuals aged 55 to 64, not actively working or dependents of active workers who are not eligible for Medicare. Program reimburses employers 80 percent of claims between \$15,000 and \$90,000 made by individuals meeting the eligibility requirements.

## **Update 10-0104**

### **2010 EMPLOYER PAYROLL TAX RATES**

#### **Social Security/Medicare rates**

- FICA wage base: \$106,800 FICA rate: 6.2%
- Medicare wage base: no ceiling Medicare rate: 1.45%

#### **FUTA rates**

- FUTA wage base: \$7,000 FUTA rate: 6.2%

## **ERISA**

### **DOL Regulation Updates**

- Participants must receive SPD within 90 days of becoming a participant or within 120 days of initial coverage by ERISA
- Participants must receive a summary of material modifications (SMM) within 210 days after the end of the plan year in which the changes become effective.
- In the case of material reduction of covered services or benefits, the SMM must be provided within 60 days after the reduction is adopted.
- Copy of the SPD or SMM requested by participant or beneficiary must be provided within 30 days of the written request.
- DOL proposed changes to expand fiduciary definitions on 10/21/10 subject to a 60-day public comment period. The new definition includes broker-dealers who provide investment advice and are paid for that advice. This includes one-time or infrequent advisors.

- Employers must disclose to plan participants the fees paid for managing 401(k) funds and how those fees are calculated.

## **COBRA**

### **DOL Regulation Updates**

- General notice of COBRA rights must be provided within 90 days of coverage or when plan is subject to COBRA. The notice can be part of the SPD.
- Employers must notify plan administrators within 30 days of a qualifying event and provide an election notice to qualified beneficiaries within 44 days of loss of coverage due to the qualifying event
- Plan administrators must notify individuals when they deny requests for COBRA coverage within 14 days after receiving the request for coverage.
- Each qualified beneficiary must be able to elect COBRA coverage independently; employees and their spouses are allowed to elect coverage for other beneficiaries. Parents and legal guardians also must be able to elect coverage on behalf of minor children.
- Waivers of COBRA coverage may be revoked within the election period
- Early termination is allowed when employers cancel any group health plans, or when qualified beneficiaries begin coverage on a new group health plan, become Medicare eligible, or submit fraudulent claims. Employers must notify with the date of termination of coverage, reason for the termination, and any rights to elect alternative coverage.

## **FMLA**

### **DOL Regulation Updates**

- Expanded military exigency leave to include active duty family members being deployed to any foreign country
- Eligible employees who are the spouse, son, daughter, parent or next of kin of a covered servicemember or veteran are able to take up to 26 weeks of FMLA leave for serious illness or injury to provide care for medical treatment, recuperation or therapy for serious injury or illness. Veterans are covered service members if they were members of the Armed Forces, National Guard and Reserves during the five years preceding the date of medical treatment.

## **HIPAA**

### **DOL Regulation Updates**

- Group health plans must notify individuals and HHS of any breach of unsecured protected health information no later than 60 days after discovery of the breach. If the breach affects 500 or more individuals, HHS must be notified immediately. The notice must describe what happened, what PHI was breached, steps individuals can take to protect themselves, what the covered entity is doing to study the breach and reduce any harm caused to individuals and contact information.
- Pre-existing condition exclusions can only apply to conditions for which medical advice, diagnosis, care, or treatment was received or recommended during the 6 months prior to the first day of coverage or of any waiting period for coverage.
- If an employee had creditable coverage during all or part of the 6 month period, the exclusion period must be reduced by the number of days of coverage during that 6 months unless there was a significant break in coverage of 63 days or more; any coverage prior to the significant break are not required to be counted.
- A group health plan may not exclude a condition based solely on genetic information, but a diagnosis based on a condition related to genetic information may be excluded.
- Preexisting condition exclusions may not be applied to a child enrolled in creditable coverage within 30 days of birth or within 30 days of adoption.

- Pregnancy may not be considered a preexisting condition.

## **Update 10-0105**

### **VETERANS BENEFIT ACT OF 2010**

#### **Amends USERRA Requirements**

- Amends USERRS retroactively; applies to any violations that occur before, on or after the 10/13/10, the date President Obama signed it into law.
- Specifies that "wages or salary for work performed" is considered a "benefit of employment" (corrects original USERRA language)
- Creates a multi-factor test to determine if a "successor-in-interest" company can be held for USERRA violations of the previous company.
  - Does the new company use the same or similar facilities?
  - Does it use the same workforce?
  - Are the jobs and working conditions similar?
  - Are supervisors the same?
  - Are the machinery, equipment and production methods used the same?
  - Does the new company produce the same or similar products and/or services?

### **OSHA**

#### **Proposed Rule Changes**

- DOL has proposed a new standard for slip, trip, and fall hazards and related personal fall protection systems that would extend coverage of this standard to all employers (previously the standard was limited to construction and maritime employers). The final rule has not yet been published.
- DOL has proposed a rule to add a column to the OSHA form 300 to record musculoskeletal disorders. The final rule has not been published.