November 2012, Issue XI

ADP National Account Services
Outsourcing for HR, Benefits and Payroll

Tech Flex

ESSENTIALS

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CALIFORNIA RIGHTS TO INSPECT EMPLOYMENT RECORDS AMENDED

California Assembly Bill 2674 (AB 2674) titled “Employment records: right to inspect,” which will amend California Labor Code Section 226 has been enacted. The changes as summarized below become effective on January 1, 2013.

Existing law requires that every employer furnish to each of his or her employees semimonthly or at the time of each payment of wages either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized written statement showing specified items. Existing law requires an employer to keep a copy of the statement and the record of deductions on file for at least three years at the place of employment or at a central location within the State of California. An employee currently has the right to inspect the personnel records that his or her employer maintains relating to the employee's performance or to any grievance concerning the employee.

AB 2674 provides that the term "copy," for purposes of these provisions, includes a duplicate of the itemized statement previously provided to an employee or a computer-generated record that accurately shows all of the information that existing law requires to be included in the itemized statement.

AB 2674 further requires an employer to maintain personnel records for a specified period of time and to provide a current or former employee, or his or her representative, an opportunity to inspect and receive a copy of those records within a specified period of time, except during the pendency of a lawsuit filed by the employee or former employer relating to a personnel matter. In the event an employer violates these provisions, AB 2674 would permit a current or former employee or the Labor Commissioner to recover a penalty of $750 from the employer, and further permits a current or former employee to obtain injunctive relief and attorney's fees.

As amended by AB 2674, Section 226 of the California Labor Code would treat failures to provide the requested inspection as an infraction. Section 226 currently provides that an employer who fails to permit an employee to inspect the employee's personnel records is guilty of a misdemeanor punishable by a fine or imprisonment, as specified.

For a copy of California AB 2674, please click on the link provided below.

http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2651-2700/ab_2674_bill_20120930_chaptered.html

IRS PROVIDES TAX RELIEF TO VICTIMS OF HURRICANE SANDY

On Friday November 2, 2012, the Internal Revenue Service released IR-2012-83 which provides tax relief to victims of Hurricane Sandy. In summary, IR 2012-83 states that the tax relief postpones various tax filing and payment deadlines that occurred starting in late October. As a result, affected individuals and businesses will have until February 1, 2013 to file these returns and pay any taxes due. This includes the fourth quarter individual estimated tax payment, normally due January 15, 2013. It also includes payroll and excise tax returns and accompanying payments for the third and fourth quarters, normally due on October 31, 2012 and January 31, 2013 respectively. It also applies to tax-exempt organizations required to file Form 990 series returns with an original or extended deadline falling during this period.

In addition, the IRS is waiving failure-to-deposit penalties for federal payroll and excise tax deposits normally due on or after the disaster area start date and before November 26, if the deposits are made by November 26, 2012.

For a copy of IR-2012-83, please click on the link provided below.

http://www.irs.gov/uac/Newsroom/IRS-Provides-Tax-Relief-to-Victims-of-Hurricane-Sandy;-Return-Filing-and-Tax-Payment-Deadline-Extended-to-Feb.-1,-2013

For additional information on the IRS tax relief provided in relation to Hurricane Sandy, please click on the “Disaster Relief Page” provided below.

http://www.irs.gov/uac/Tax-Relief-in-Disaster-Situations

ARIZONA INCREASES MINIMUM WAGE

Arizona voters enacted the "Raise the Minimum Wage for Working Arizonans Act" in 2006. The voter initiative established an Arizona minimum wage and provided for an annual increase based on the increase in the cost of living. The cost of living is based on the federal Consumer Price Index for All Urban Consumers, United States City Average for all items during the 12 months ending each August 31 (CPI-U). The CPI-U is a national index covering the cost of goods and services. The CPI-U increased 1.7 percent comparing August 2011 to August 2012.

In an October 18, 2012 press release, the Industrial Commission of Arizona announced that the Arizona minimum wage will increase to $7.80 per hour effective January 1, 2013. This is an increase of $0.15 over the current rate of $7.65 per hour.

For a copy of the Industrial Commission announcement, please click on the link provided below.

http://www.ica.state.az.us/publicnotices/labor_minimumwagepressrelease_2013.pdf

CALIFORNIA AMENDS NEW HIRE NOTICE REQUIREMENT

California Assembly Bill 1744 (AB 1744) has been enacted into law modifying California Labor Code Section 2810.5 effective January 1, 2013**.**

An employer is currently required to provide each employee, at the time of hiring, with a notice that includes specified information, such as the rate and the basis, whether hourly, salary, commission, or otherwise, of the employee's wages, and to notify each employee in writing of any changes to the information set forth in the notice within seven calendar days of the changes unless such changes are reflected on a timely wage statement or another writing, as specified.

Section 2810.5, as amended by AB 1744, requires that any employer who is a temporary services employer, as specified, the notice include the name, the physical address of the main office, the mailing address if different from the physical address of the main office, and the telephone number of the legal entity for whom the employee will perform work, and any other information the Labor Commissioner deems material and necessary.

Section 2810.5 has been amended to add the following language:

"(3) If the employer is a temporary services employer, as defined in Section 201.3, the notice described in paragraph (1) must also include the name, the physical address of the main office, the mailing address if different from the physical address of the main office, and the telephone number of the legal entity for whom the employee will perform work, and any other information the Labor Commissioner deems material and necessary. The requirements of this paragraph do not apply to a security services company that is licensed by the Department of Consumer Affairs and that solely provides security services."

For a copy of AB 1744, please click on the link provided below.

http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1701-1750/ab_1744_bill_20120930_chaptered.pdf

PAY STATEMENT REQUIREMENTS AMENDED IN CALIFORNIA

California Assembly Bill 1744 (AB 1744) titled "Employee compensation: itemized statements" which amends California Labor Code Section 226 has been enacted. The change to California Labor Code Section 226 as summarized below will become effective on July 1, 2013.

Currently, every employer is required to furnish each employee with an accurate itemized statement in writing showing specified information semimonthly or at the time of each payment of wages. Existing law provides that a "knowing and intentional violation" of this provision is a misdemeanor.

As amended by AB 1744, Section 226 will require that, beginning on and after July 1, 2013, the itemized statement includes, if the employer is a temporary services employer, the rate of pay and the total hours worked for each assignment, with a specified exception.

California Labor Code Section 226(a)(9) will be amended to read as follows:

(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing… (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee **and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.** The deductions made from payment of

wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

For a copy of California AB 1744, please click on the link provided below.

http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1701-1750/ab_1744_bill_20120930_chaptered.html

CALIFORNIA UPDATES OVERTIME EXEMPTION DETERMINATIONS

The California Department of Industrial Relations has updated the overtime exemption determinations for computer software employees and for physicians and surgeons.

Computer Software Employees

Effective January 1, 2013, computer software employees will need to earn at least $39.90 per hour to be exempt from the California state overtime requirements.

In accordance with California Labor Code Section 515.5(a)(4) and effective January 1, 2013, the California Department of Industrial Relations has adjusted the computer software employee's minimum hourly rate of pay exemption from $38.89 to $39.90, the minimum monthly salary exemption from $6,752.19 to $6,927.75, and the minimum annual salary exemption from $81,026.25 to $83,132.93, reflecting the 2.6% increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers

For a copy of the California Department of Industrial Relations Memorandum, please click on the following link. http://www.dir.ca.gov/OPRL/ComputerSoftware.pdf

Physicians and Surgeons

Licensed Physicians and surgeons in California will need to earn at least $72.70 per hour to be exempt from the state's overtime requirements in 2013.

In accordance with California Labor Code Section 515.6(a), the California Department of Industrial Relations has adjusted the licensed physicians and surgeons employee's minimum hourly rate of pay exemption from $70.86 to $72.70 effective January 1, 2013, reflecting the 2.6% increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

For a copy of the State of California Department of Industrial Relations Memorandum, please click on the following link. http://www.dir.ca.gov/OPRL/Physicians.pdf

DISTRICT OF COLUMBIA AMENDS WITHHOLDING STATEMENT REQUIREMENTS

The District of Columbia (DC) has enacted the "Income Tax Withholding Statements Electronic Submission Emergency Act of 2012" (Act 19-506) which amends Section 47-1812.08 of the District of Columbia Official Code to include new requirements for withholding tax statements due after December 31, 2011.

Generally under DC law each employer or payor required to withhold income tax for an employee or a person who receives a payment subject to withholding must prepare a statement for each employee or payee. The statement must show, for the previous calendar year, any information required by regulation or guidance. An employer or payor required to submit such statements must submit one copy of the statement for each employee or payee to the Chief Financial Officer (CFO) annually by January 31.

Act 19-506 by the addition of a new subsection (n) to Section 47-1812.08 adds the requirement that if the number of statements that an employer or payor is required to submit is 25 or more, then the statements must be submitted in an electronic format to be prescribed by the CFO. However, the CFO may waive the requirement if the CFO determines that the requirement would result in undue hardship to the employer or payor.

In addition, Act 19-506 removes language from Section 47-1812.08 subsection (g)(1)(b) stating that a duplicate of the statement to be furnished to the employee, if made and filed in accordance with regulations prescribed by the Council of the District, will constitute the return required to be made in respect to the employee's wages.

Act 19-506 deletes the language struck below in Section 47-1812.08 subsection (g)(1)(b)

(g) Statement to be furnished employee.

(1) (A) Every person required to deduct and withhold from an employee a tax under this section, or who would have been required to deduct and withhold a tax under this section if the employee had claimed no more than 1 withholding exemption, shall furnish to each such employee in respect to the wages paid by such person to such employee during the calendar year, on or before January 31st of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made, a written statement showing the following:

(i) The name and address of such person;

(ii) The name and address of the employee and his social security account

number;

(iii) The total amount of wages as defined in this chapter; and

(iv) The total amount deducted and withheld as tax under this section.

(B) The statement required to be furnished by this subsection in respect of any wages shall be furnished at such other times, shall contain such other information, and shall be in such form, as the Council of the District of Columbia may by regulation prescribe. ~~A duplicate of such statement if made and filed in accordance with regulations prescribed by the Council of the District of Columbia shall constitute the return required to be made in respect to such wages.~~

(2) The Council of the District of Columbia may promulgate regulations providing for reasonable extensions of time, not in excess of 30 days, to employers required to furnish statements under this subsection.

Act 19-506 adds subsection (n) to Section 47-1812.08 as follows:

"(n)(1) Beginning for statements due after December 31, 2011, each employer or payor required under this section to withhold income tax for an employee or a person who receives a payment subject to withholding ("payee") shall prepare a statement for each employee or payee that shows for the previous calendar year any information that the Chief Financial Officer requires by regulation or guidance.

"(2)(A) An employer or payor required to submit the statements pursuant to paragraph (1) of this subsection shall submit one copy of the statement for each employee or payee to the Chief Financial Officer by January 31 of each year.

"(B) Except as provided by subparagraph (C) of this paragraph, if the number of statements that an employer or payor is required to submit is 25 or more, the employer or payor shall submit the statements in an electronic format, as prescribed by the Chief Financial Officer.

"(C) The Chief Financial Officer may waive the requirement that an employer or payor submit statements in electronic format if the Chief Financial Officer determines that the requirement will result in undue hardship to the employer or payor."

For a copy of Act 19-506, please click on the link provided below.

http://dcclims1.dccouncil.us/images/00001/20121019193452.pdf

MICHIGAN AMENDS EFFECTIVE LENGTH OF GARNISHMENT

Michigan House Bill 5592 amends MCL 600.4012 to specify that a writ of garnishment of wages, salary, commissions, or other earnings will remain in effect for 182 days. This change is in effect immediately.

Previously MCL 600.4012 stated as follows:

"Sec. 4012. (1) Except for garnishment of a tax refund under section 4061a, and subject to subsection (2), a writ of garnishment of periodic payments remains in effect for the period prescribed by the Michigan court rules."

MCL 600.4012 NOW states as follows:

"Sec. 4012. (1) Except for garnishment of a tax refund under section 4061a or garnishment of wages, salary, commissions, or other earnings, and subject to subsection (2), a writ of garnishment of periodic payments remains in effect for the period prescribed by the Michigan court rules. **A writ of garnishment of wages, salary, commissions, or other earnings remains in effect for 182 days".**

For a copy of MI HB 5592, please click on the link provided below:

http://www.legislature.mi.gov/documents/2011-2012/publicact/pdf/2012-PA-0304.pdf

MISSOURI INCREASES MINIMUM WAGE

On November 9, 2012, the Missouri Department of Labor and Industrial Relations announced that the state minimum wage will increase to $7.35 per hour effective January 1, 2013.

For a copy of the announcement, please click on the link provided below.

http://www.labor.mo.gov/DLS/WageAndHour/wage_hour_notices.asp

MINIMUM WAGE INCREASED IN VERMONT

Vermont law requires the Vermont minimum wage rate to be adjusted annually to keep pace with the rate of inflation. This year's increase of 1.7 percent is based on the change in the Consumer Price Index for All Urban Consumers between September 2011 and September 2012.

On November 9, 2012, the Vermont Department of Labor announced that the state minimum wage will increase to $8.60 per hour effective January 1, 2013. This is an increase of 14 cents per hour from the current rate of $8.46 per hour.

Once the new minimum wage is in effect, Vermont's minimum wage will be $1.35 higher than the federal minimum wage of $7.25 per hour.

Vermont currently allows employers to pay employees such as servers, bellhops, busboys, car wash attendants, hairdressers, barbers, valets and bartenders who customarily and regularly receive at least $120 per month in tips or gratuities a wage of $4.10.

On January 1, 2013, the new minimum wage for tipped employees will be $4.17 per hour.

For a copy of the Vermont Department of Labor announcement please click on the link provided below.

http://www.labor.vermont.gov/Portals/0/UI/Min%20Wage%20Press%20Release.pdf

For a copy of the revised Vermont Employer Poster please click on the link provided below.

http://labor.vermont.gov/Portals/0/UI/WH%2011%20Minimum%20wage.pdf

SAN FRANCISCO ANNOUNCES MINIMUM WAGE FOR 2013

Each year San Francisco adjusts the minimum wage based on increases in the regional consumer price index. The San Francisco Minimum Wage Ordinance (Chapter 12R, San Francisco Administrative Code) also protects employees who assert their rights to receive the San Francisco minimum wage from retaliation, providing that affected employees may file a civil lawsuit against their employers for any violation of the ordinance.

Effective January 1, 2013, the minimum wage in the City of San Francisco will increase to $10.55 per hour. This is a 31 cent per hour increase over the current rate of $10.24. The San Francisco minimum wage requirement applies to all adult and minor employees, including temporary and part-time workers, who work two or more hours per week.

Also, for city contractors subject to the San Francisco Minimum Compensation Ordinance (MCO), the minimum wage that must be paid to employees will increase to $12.43 per hour effective January 1, 2013. Currently the MCO requires that commercial businesses that contract with the city or that lease property at SFO pay a minimum compensation of $12.06 per hour to employees. The $11.03 per hour minimum wage rate applicable to nonprofit organizations will remain the same in year 2013. The MCO requires the minimum compensation rate to be adjusted annually each January 1.

For a copy of poster that San Francisco employers must post to inform employees of the minimum wage, please click on the link provided below. This poster is written both in English and Spanish.

http://sfgsa.org/modules/showdocument.aspx?documentid=9316

For additional information on the San Francisco minimum wage, please click on the links provided below:

http://sfgsa.org/index.aspx?page=411

http://sfgsa.org/index.aspx?page=403

CONNECTICUT SUPREME COURT RULES ON STATE LEAVE ACT

The Connecticut Supreme Court has held in Velez v. Commissioner of Labor, et al. (Velez) that employers in Connecticut are not subject to the provisions of the Connecticut Family and Medical Leave Act unless they employ at least 75 employees within the state.

By way of background, the Connecticut Family and Medical Leave Act ("CFMLA"), requires that employers provide to eligible employees "sixteen workweeks of leave during any twenty-four-month period" for numerous reasons, including: the birth of a child to an employee; caring for a spouse, child, or parent of employee because of a serious health condition; or because of a serious health condition suffered by the employee. "Employer" is defined in the CFMLA as "a person engaged in any activity, enterprise or business that employs seventy-five or more employees . . . ."

In the case before the Supreme Court, the plaintiff, Joaquina Velez, was employed as a full-time office manager of an apartment complex in Harford, Connecticut. Velez's employer employed more than 1,000 employees nationwide, but fewer than 75 employees are within Connecticut.

In April of 2005, Velez requested medical leave, and her employer approved her for 12 weeks of leave under the federal Family and Medical Leave Act. Approximately a month later, Velez requested that she be allowed to return to work doing "light duty." The employer informed her that light duty was not available. Upon expiration of her medical leave, Velez informed her employer that she was still unable to resume performing her essential job functions due to medical restrictions. Velez's employment was thereafter terminated.

Velez subsequently filed a complaint with the Connecticut Department of Labor ("DOL") alleging her employer had violated the CFMLA by refusing to allow her to return to work. The DOL hearing officer concluded that the employer was not subject to the CFMLA as it did not employ at least 75 employees in Connecticut. The Commissioner of Labor adopted the findings of the hearing officer.

Velez filed an administrative appeal with the Connecticut Superior Court. The Superior Court held that the CFMLA applied to employers that employ at least 75 employees anywhere in the United States. Because Velez's employer had more than 75 employees in total, the court held that it had violated the CFMLA. The defendants appealed the trial court's decision to the Connecticut Supreme Court.

The Connecticut Supreme Court reversed the Superior Court's decision, holding that the CFMLA applies only to employers that employ at least 75 employees in Connecticut. In reversing the decision, the Supreme Court concluded the lower court

had failed to accord proper deference to the Labor Commissioner's interpretation of "Employer" and its determination as to who is counted as an "employee" for purposes of the CFMLA.

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