



January 2013



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A Labor & Employment Law Update

New Year Employer Checklist

Polsinelli Shughart wishes a Happy New Year to our clients in 2013. The New Year is an appropriate time to conduct an employer checklist of your policies and procedures to help you achieve success. Our Labor and Employment attorneys have chronicled a list of the Top 5 items you should review early in 2013. With more than three dozen Labor and Employment attorneys, Polsinelli Shughart is positioned to help you usher in the New Year confident your systems are in place to reduce workplace issues. It's our business to understand your business.

New Health Care Mandates

- New Health Care Mandates
- I-9's for Immigration
- A Policies and Procedures Review
- Classifying Employees as Exempt or Non-Exempt?
- Awareness of National Labor Relations Board Current Climate

1. Health Care Mandates

by William Sweeney

With the Supreme Court's recent decision to uphold the Patient Protection and Affordable Care Act (PPACA), followed by the reelection of President Obama, employers must come to the realization that the health care reform measures are here to stay (at least for now). As a result, 2013 will be a year for compliance with several new mandates under PPACA, as well as a year of planning ahead for the "pay or play" mandates that will take effect in 2014 for certain employers that employ 50 or more full-time equivalent employees. Although we expect a flurry of guidance in 2013, employers should have already taken steps, or get prepared, to comply with many new requirements, including:

- \$2,500 limit on employee contributions to health flexible spending accounts (limit applies on an individual basis; effective for plan years beginning in 2013);
- Form W-2 reporting of the value of each employee's health coverage (employers that issue fewer than 250 W-2s in a prior year are exempt; effective for the 2012 tax year);
- Notifying employees of the availability of health insurance exchanges (guidance not yet released; intended to be effective March 2013);
- Analyze employee population to determine number of full time equivalent employees for purposes of compliance with shared responsibility payments beginning in 2014; and
- 0.9% Medicare payroll tax increase on high income individuals (withholding required for employees earning over \$200,000; effective for the 2013 tax year).

For more information contact William Sweeney in our Chicago office at wsweeney@polsinelli.com.

2. I-9's and Immigration

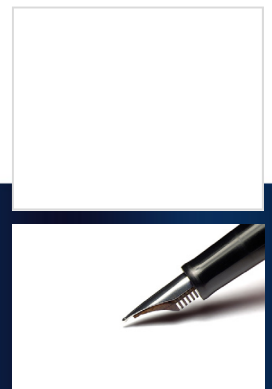
by Jeff Bell

Immigration worksite enforcement should continue to surge in 2013 under the current administration. This is no surprise as prioritizing criminal investigations of employers remains the stated policy of Immigration and Customs Enforcement (ICE), along with an increased emphasis on compliance.

Over the last several years I-9 investigations have grown 1,000%, and last year more than 3,000 companies received ICE audit notices. In 2009, employers paid \$1 million in civil fines for I-9 errors, and this amount has skyrocketed to over \$13 million in 2012. ICE has resumed issuing press releases with the names of the companies it has fined and the amounts paid.

The number of immigration related criminal prosecutions continues to rise. In 2012 nearly 300 owners, managers and human resources personnel were charged with committing immigration crimes such as harboring, conspiracy and knowingly hiring illegal aliens. As ICE often uses I-9 worksite investigations to build criminal cases, we expect this trend to continue in 2013.

For more information contact Jeffrey Bell in our Kansas City office at jbelle@polsinelli.com.



3. Policies and Procedures Review

by Jay Dade

Employers should review employment policies and practices periodically with outside employment counsel in order to conform to ever-changing local, state and federal laws. Compliance with applicable laws is a mandatory business practice. Keeping abreast of labor and employment laws, as well as pertinent government agency and court decisions, conducting periodic, if not annual, reviews of employment policies and practices and consistently applying those policies and practices can limit an employer's exposure to claims of unfair or discriminatory treatment by current and former employees.

For more information contact Jay Dade in our Springfield office at jdade@polsinelli.com.

4. Classifying Employees and Exempt or Non-Exempt

by Andrew Cripes

Review Exempt v. Non-Exempt job classifications and wage and hour policies and procedures to ensure compliance, protect against the risk of class action litigation and avoid an adverse audit finding in a year in which we expect increased Department of Labor audit activity.

For more information contact Andrew Cripe in our Chicago office at acripe@polsinelli.com.

5. NLRB

by Bradley Kafka

In 2012, the National Labor Relations Board (the "Board") issued decisions expansively interpreting the National Labor Relations Act ("NLRA"). Among other decisions, administrative law judges and the Board's

General Counsel determined that the traditional use of at-will language in employee handbooks, and the description of how at-will status can be changed, is often unlawful. Similarly, an administrative law judge determined that broadly phrased instructions to employees to keep internal investigations confidential are not lawful in all circumstances.

Given the present composition of the Board, we anticipate that there will be additional decisions and directives in 2013 that will affect the manner in which unionized and non-unionized employers routinely interact with their employees. Employers need to review their employment policies regarding at-will status and the confidentiality of internal investigations and contact labor and employment counsel to ascertain whether their present policies comply with new Board decisions.

For more information contact Bradley Kafka in our St. Louis office at bkafka@polsinelli.com.

For More Information



For more information about the Top 5 items for employers to be aware of 2013, please contact an attorney with the firm.

W. Terrence Kilroy
Practice Area Chair
816.374.0533
tkilroy@polsinelli.com

Anthony J. Romano
Practice Area Vice-Chair
816.360.4251
aromano@polsinelli.com

Carol C. Barnett
816.364.2117
cbarnett@polsinelli.com

Jeffrey S. Bell
816.360.4264
jbell@polsinelli.com

Gillian McKean Bidgood
303.583.8245
gbidgood@polsinelli.com

Jon A. Bierman
314.889.7045
jbierman@polsinelli.com

Jill M. Borgonzi
816.360.4182
jborgonzi@polsinelli.com

Jack L. Campbell
816.374.0568
jcampbell@polsinelli.com

Stacy A. Carpenter
303.583.8237
scarpenter@polsinelli.com

Andrew B. Cripe
312.873.2981
acripe@polsinelli.com

Jay M. Dade
417.829.3812
jdade@polsinelli.com

Robert E. Entin
312.873.3610
rentin@polsinelli.com

Sean R. Gallagher
720.931.1163
sgallagher@polsinelli.com

Karen R. Glickstein
816.395.0638
kglickstein@polsinelli.com

Mark D. Goldstein
314.552.6874
mgoldstein@polsinelli.com

Mark B. Grebel
314.622.6620
mgrebel@polsinelli.com

Elizabeth T. Gross
314.889.7037
egross@polsinelli.com

Robert J. Hingula
816.572.4469
rhingula@polsinelli.com

JoAnne Spears Jackson
417.869.3353
jjackson@polsinelli.com

Christopher L. Johnson
816.395.0652
cjohnson@polsinelli.com

Bradley G. Kafka
314.622.6623
bkafka@polsinelli.com

Jamie Zveitel Kwiatek
314.889.7088
jkwiatek@polsinelli.com

Alison P. Lungstrum
816.218.1286
alungstrum@polsinelli.com

Chris M. Mason
602.650.2017
cmmason@polsinelli.com

Latrice N. McDowell
816.218.1248
lmcowell@polsinelli.com

Adam B. Merrill
602.650.2313
abmerrill@polsinelli.com

Eric E. Packel
816.360.4249
epackel@polsinelli.com

William S. Robbins, Jr.
816.395.0637
brobbins@polsinelli.com

Erin D. Schilling
816.374.0559
eschilling@polsinelli.com

James C. Sullivan
816.374.0565
jsullivan@polsinelli.com

Christopher C. Swenson
314.889.7064
cswenson@polsinelli.com

Eric M. Trelz
314.889.7070
etrelz@polsinelli.com

Lynn G. Trevino-Legler
816.360.4353
ltrevinolegler@polsinelli.com

Johnny S. Wang
314.622.6699
jwang@polsinelli.com

Mark W. Weisman
314.622.6628
mweisman@polsinelli.com

Judy Yi
816.360.4149
jyi@polsinelli.com

Brian J. Zickefoose
816.374.0585
bzickefoose@polsinelli.com



About Polsinelli Shughart's

Labor & Employment Law Group

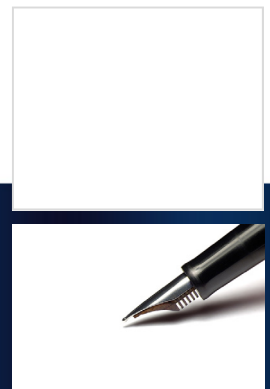
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As exclusively management counsel, our attorneys have extensive experience providing employers with cost-efficient advice and aggressive defenses on employment and labor law matters. We have represented *Fortune* 500 corporations and locally owned entrepreneurial firms. We have a broad range of experience, ranging from Affirmative Action to Wage and Hour issues, through Labor Relations, Workplace Safety and Union Avoidance.

With employment litigation and advocacy expertise as our strength, preventing legal problems from arising is our goal. We can provide you counsel on an isolated incident or be involved on a regular basis. We assist our clients across a spectrum of employment questions. We provide seminars and workshops for supervisors and managers on effective employment practices.

We assist a broad spectrum of employers, ranging from small family owned businesses to multi-national corporations, in establishing policies, writing handbooks, resolving employee disputes, handling terminations and successfully defending against legal claims. By providing practical advice, based upon review and analysis of a client's employment policies and practices, the law and the human experience our attorneys can often anticipate potential problems and assist clients in minimizing future claims and litigation.

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About

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