



Your Advantage

News and information to help you and your business succeed

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Employer Advantage announces

Are you taking advantage of tax incentives and credits for your company?

Employer Advantage provides the forms and filing for the Hiring Incentives to Restore Employment (HIRE) Act as well as the Work Opportunity Tax Credit (WOTC).

The HIRE Act targets qualified employees who were previously unemployed for the 60 days immediately before you hired them and who did not work more than 40 hours during that time. Employers will be exempt from their portion of the Social Security taxes for the remaining year and employers can claim a business tax credit of up to \$1000 for each qualified employee who stays on payroll for at least one year.

WOTC allows businesses to claim federal income tax credits for wages paid to newly hired, eligible employees during their first year of employment.

Eligible employees are individuals who meet certain conditions, including:

- Receiving or having received food stamps, or
- Being released from prison in the last year due to a felony conviction, or
- Receiving or having received Temporary Assistance for Needy Families, or
- Having received SSI benefits that ended within the last 60 days, or
- Referred by Department of Veterans Affairs or by a rehabilitation agency

Employers who are interested in participating in these programs should contact Employer Advantage for more information.

Pre-Employment Screenings— Changes in the Future?

Companies that currently utilize credit checks as a part of the pre-employment selection process may have changes in the future.

Equal Opportunity Commission

Acting Equal Employment Opportunity Commission (EEOC) Chair Stuart Ishimaru, has called for new guidelines in the next 12-18 months on how to carry out background checks in a nondiscriminatory manner including the use of “empirical evidence” for the business necessity of certain screening and hiring practices.

The EEOC has also filed a lawsuit (EEOC v. Freeman Cos.) against Freeman Companies, a Dallas-based event planning company. The EEOC claims that Freeman used credit histories and criminal background checks to discriminate against a class of black, Hispanic, and male job applicants based upon their race, national origin and sex. EEOC is asking that Freeman be prohibited from using background screenings and to hire the previously rejected applicants with back pay. The cause of this action is based on the informal guidance from the EEOC that employers should not use a “blanket” policy of not hiring any applicant with an arrest or conviction record because it “excludes members of certain racial and ethnic groups unless the employer can demonstrate a business need for the use of this criteria.”

Congress

In addition, House Bill 3149, titled “Equal Employment for All Act” has been introduced to amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks against prospective and current employees for the purposes of making adverse employment decisions.

Current Practices

Currently, employers who use background screenings, including criminal background check, credit check, or motor vehicle records check, must follow the Fair Credit Reporting Act (FRCA) and have written permission from the employee/applicant. Employers should have a “business necessity” or business reason for performing background screenings and be selective about the positions on which to perform screenings.

Future of Background Screenings

Employer Advantage will continue to pass information along to clients as more information becomes available and assist with making changes, if necessary, to clients’ policies and procedures. If you have questions about the background screenings, please contact your Human Resources Professional for assistance.

Child Labor Laws

As summer approaches, many teenagers are considering jobs for the summer. Summer jobs are an excellent way for employers to expand their workforce to cover time off and for teenagers to earn money and learn about the working world.

The US Department of Labor and most State Departments of Labor have rules for employees who are under 18 years of age. If a state and federal rule are in disagreement, then the most conservative rule applies.

US Department of Labor Guidelines

- 16 and 17 year olds may work unlimited hours in any occupation other than those identified as hazardous by the Secretary of Labor.
- No employee under 18 may drive on the job, but 17 year olds who meet certain criteria may drive vehicles of less than 6000 pounds gvw for limited amount of time on the job. They may NOT make time sensitive deliveries (such as pizza delivery) and may not drive at night.
- Minors under 18 may not operate or unload scrap metal balers or paper box compactors.
- 14 and 15 year olds may not work more than 3 hours on a school day or more than 8 hours on a non-school day and are limited to working between 7 am and 7 pm from Labor Day to May 31 and 7 am to 9 pm from June 1st to Labor Day. They may not work during school hours when school is in session.
- When school is in session, employees who are 15 and under may not work more than 18 hours per week but may work up to 40 per week when school is not in session.
- Children, whose parents wholly own a business, may work at the business at any age as long the job isn't on the hazardous occupation list.

Work Permits

- Only 12 states do NOT require a work certificate. They are: AL, FL, ID, KY, MT, OR, SC, SD, TN, TX, UT, WY. (from US Wage and Hour Division updated January 1, 2010)
- Each state has its own requirements and employers who are interested in employment of teenagers under 16 should check with Employer Advantage to see what is required.

Hazardous Occupations - These jobs have been declared hazardous occupations by the Department of Labor Secretary and are not appropriate for youth under 18.

- manufacturing and storing of explosives
- coal mining
- power-driven woodworking machines
- power-driven hoisting apparatus
- mining, other than coal mining
- power-driven bakery machines
- manufacturing brick, tile, and related products
- wrecking, demolition, and ship breaking operations
- meat packing or processing (including the use of power-driven meat slicing machines)
- driving a motor vehicle and being an outside helper on a motor vehicle
- logging and sawmilling
- exposure to radioactive substances
- power-driven metal-forming, punching, and shearing machines
- excavation operations
- power-driven paper-product machines
- power-driven circular saws, band saws, and guillotine shears
- roofing operations and all work on or about a roof

Employers who want to ensure compliance with their state laws and a good working environment for youth should contact their Human Resource Representative for more information on child labor laws. Employer Advantage will assist clients in making the summer job a good experience for the employee and employer.

Taxation of Severance Pay

The U.S. District Court of Appeals for the Sixth Circuit held in *U.S. v. Quality Stores, Inc.* that severance pay paid in connection with a reduction in workforce is not subject to employer or employee FICA taxes. We are unsure what actions that the IRS or Congress may take in connection with this decision.

The decision represents potential refunds of FICA plus interest for severance pay from 2006 forward. We are filing protective claims for refund and this will ensure that you and your former employees will have an opportunity to receive these refunds.

Due to the high degree of uncertainty concerning this issue, normal withholdings and employer contributions for FICA will not be changed in our payroll tax system until there is further resolution.

For more information or questions on this decision, contact Richard Scott, CFO at 417 782 3909 or email richard@employeradvantage.com.

Health Care Fraud Schemes

With the passage of the healthcare reform laws, fraud schemes are starting to surface.

At least one insurance company, Medical Mutual Insurance of Ohio, is urging the American public to be careful with new health insurance policies. "They may try to tell you that, under the reform law, you will need to buy new health insurance," said Brien Shanahan, Medical Mutual's director of legal affairs. "They include fake coverage, where you end up making huge payments for a worthless piece of paper with totally worthless benefits. Some may even offer enticements such as 'medical discount' cards, which are also worthless."

In addition, Kathleen Sebelius, Secretary of the Department of Health and Human Services, has notified state officials about the newly emerging schemes and has promised that the Department of Health and Human Services will "vigorously monitor and crack down on new forms of abuse."

In the letter to state officials, she indicated that there will be new insurance options in the future, including a high-risk pool and new insurance protections beginning as early as September 2010.

Consumers, employers, and the public should be wary of any policies that are advertised as "required by the health insurance reform" according to Secretary Sebelius.

Employer Advantage will continue to assist clients and employees with health care questions and concerns as the reform laws begin to come into effect.

Children's Health Insurance Program Reauthorization Act

Under the CHIPRA Act of 2009, group health plans and group health insurance issuers must offer new special enrollment opportunities to employees and dependents who are eligible for, but not enrolled in a group health plan, to enroll in the plan when they lose eligibility for coverage under a State Medicaid or CHIP program, or become eligible for State premium assistance under Medicaid or CHIP. Employees must request group coverage within 60 days of being terminated from Medicaid or CHIP coverage OR within 60 days of being determined to be eligible for premium assistance.

The Act also requires employers offering group health plans to notify all employees of their potential CHIPRA rights to receive premium assistance. The notice must be sent annually, starting with the first plan year after February 4, 2010. For plan years from February 4, 2010 through April 30, 2010 the initial notice deadline is May 1, 2010. For plan years starting after May 1, 2010 the notice deadline is the first day of the next plan year. (For example, the deadline would be January 1, 2011 for calendar year plans)

Employer Advantage will comply with the notice requirements by distributing the initial notice to all clients with known group health plans by the May 1, 2010 deadline and in benefit packets we send out to benefit eligible employees throughout the year. Missouri clients will also receive a copy of the MoHealth Net brochure and employee application for assistance.

Employees need to contact their State's Medicaid or CHIP program to determine if they are eligible for either plan, and to see if their State will subsidize group health plans. They may also call toll free 1-866-444-3272 to speak to a Benefits Advisor.

The model Employer CHIP Notice and Federal Register are also available at <http://www.dol.gov/ebsa>.

Department of Labor Launches New Website

On April 1, 2010, Department of Labor Secretary Hilda Solis announced a new website to help workers who feel they haven't been paid correctly. The website <http://www.dol.gov/wecanhelp> and toll free hotline 866-4US-WAGE (487-9243) is designed to assist the lower paid workers with services from the Department of Labor.

The DOL will place a special emphasis on connecting with employees in construction, janitorial work, hotel/motel services, food services, and home health care and educating those workers about rights in the workplace and how to file a complaint with the agency.

"The nation's laws are for the protection of everyone who works in this country," said Secretary Solis. "It is appropriate and correct that vulnerable workers receive what the law promises, and that no employer gain a marketplace advantage by using threats or coercion to cheat workers from their rightful wages. I have added more than 250 new field investigators nationwide (an increase of a third) to help in this effort. If you are a worker in America, on this day, we promise you a new beginning and a new partnership to ensure you receive the wages you deserve."

The Human Resource Department of Employer Advantage is available if you have any questions on wage and hour issues. Fair Labor Standards Act audits can be done to ensure that your wage and hour programs are in compliance with current federal and state law.