



Your Advantage

News and information to help you and your business succeed

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Employer Advantage announces

Debbie Cash, CPP, Payroll Tax Compliance Specialist, attended the 29th Annual American Payroll Association (APA) Congress, May 25 through May 29, 2010 in Washington D.C. Debbie was awarded this opportunity by the National American Payroll Association in recognition of her efforts on public education on payroll. Debbie spoke to various high school and grade school classes regarding payroll and financial awareness.

Michelle Frost, Benefits Manager, attended a continuing education by Doerhoff Education Services. The seminar covered insurance information as well as the future of the health care reform. Michelle Frost holds the national certification of Professional in Human Resources by the Human Resource Credentialing Institute of Society for Human Resources as well as insurance property and casualty licenses.

Human Resource Professionals **Steve Chaquette** and **Suzanne Bowling** attended the Spencer Fane Britt and Browne Annual Labor and Employment Seminar, "Taking Stock and Moving Forward" on June 2, 2010. The seminar addressed compliance with recent law changes and an overview of anticipated future changes. Steve holds the national designation of Professional in Human Resources (PHR) and Suzanne holds a Senior Professional in Human Resources (SPHR) by the Human Resource Credentialing Institute of the Society of Human Resources.

Employee Misclassification Prevention Act

Changes in Independent Contractor Status in the Foreseeable Future

What do the "Employee Misclassification Prevention Act" and the "Taxpayer Responsibility, Accountability and Consistency Act" have in common?

Both address the federal government's perception that many employers are treating employees as "independent contractors" and the company's failure to:

- Pay appropriate taxes
- Meet FLSA standards of overtime or minimum wage
- Provide workers' compensation insurance
- Permit access to company provided benefits

A few of the many provisions in the bills include:

- Employers will need to keep records on the correct status of each worker. (both employee and non-employee)
- Employers who misclassify employees and don't pay overtime or minimum wage will be subject to "stricter sanctions" (IRS) and monetary penalties from \$1,100 for first time offenses and up to \$5,000 per employee for repeat violations (DOL).
- Employers will be required to notify their workers in writing of their classification. (employee or non-employee)
- States will have to report audit and investigation results to the Department of Labor.
- The current IRS "safe harbor" provisions will be eliminated and the new safe harbor rule will require either a written determination from the IRS or a concluded IRS examination of whether the individual should be treated as an employee or "non-employee".
- Sharing of information between the DOL and IRS regarding misclassification so both agencies will be involved with the corrective process.

Probably the greatest impact on employers' day-to-day operations will be the increased volume of recordkeeping concerning the non-worker. Currently, only employee records are required to be kept, but the Misclassification Act could require records to be kept on non-employees as well.

Both of these bills **have not passed** yet, but Employer Advantage encourages all clients to review all independent contractors to ensure compliance with current law and in preparation with future changes. The Human Resources Department is available to assist clients with checklists and audits on existing workers.

We will continue to monitor the Employee Misclassification Protection Act and the Taxpayer Responsibility, Accountability and Consistency Act and pass updates along to clients.

Flexible Spending Question

Will FSAs Cover Alternative Medicine?

Many people are turning to holistic or alternative healers due to expense, lack of confidence in the medical community, or a desire to only use natural methods of healing. Since many of these routes do not bill insurance and/or may not be covered by insurance, employees want to use their FSAs to pay for the services or supplements.

The IRS reviews non-traditional healing methods and medicines very closely when considering reimbursement from FSA. Treatments must be legal in the United States in order to be considered. Drugs or medicines must be recommended by alternative healer and must treat a specific medical condition to qualify for reimbursement. To show that the expense is primarily for medical care, a note from a medical practitioner recommending the item to treat a specific medical condition is normally required.

Food, substitutes for food and supplements would not be considered reimbursable expenses, especially if the person would normally consume them to meet nutrition requirements. The rule of thumb, "things that make you well" (treat a specific condition) are usually reimbursable, but "things that keep you well" are not usually reimbursable under the FSA. If you have specific questions, please contact the Benefits Department by email benefits@employeradvantage.com or phone 800-467-3909.

Voluntary Supplemental Benefits

It's not always possible to provide every kind of insurance that an employee requests. Business owners, who want to provide insurance for employees, often don't have the time to research supplemental benefit providers, and sometimes wind up with benefits that seem to take more time than they are worth.

Employer Advantage has done much of the supplemental insurance work for its business owners. The management team of Employer Advantage researched various benefit providers and selected Colonial Supplemental Insurance for the cost, customer service, and ease of administration for clients.

The process is simple: A Colonial Supplemental Insurance Representative visits with employees onsite to minimize work downtime. Employees may select the insurance products that will work best for their families. The Colonial Representative processes the enrollment, notifies Employer Advantage of payroll deductions and sends the requested insurance information to the employee's home.

Employees may select any of the following supplemental benefits:

- Accident Insurance
- Short Term Disability Insurance
- Cancer Insurance
- Critical Illness Insurance
- Hospital Confinement Insurance

The business owner, while providing these insurance benefits, doesn't have to enter or track deductions, reconcile bills, or solve any claim questions. Employer Advantage and Colonial Supplemental Insurance work together to eliminate this headache for business owners.

If you would like to learn more about the supplemental benefits offered through Employer Advantage, please contact Dale Washburn, Colonial Representative at dalewashburn@lvbw.net or by calling your Human Resource Representative or Benefits Team Member at 800-467-3909.

Accommodating Nursing Moms at Work

One of the changes from the Patient Protection and Affordable Care Act (known as "The Healthcare Law" by many people) involves workplace accommodation of nursing mothers.

Section 4207 amends the Fair Labor Standards Act (FLSA) with the requirement that employers must provide unpaid breaks and a private space for nursing mothers for up to one year after the birth of a child. The employer has the right to determine the number and length of breaks, but must keep in mind the Department of Labor (DOL) requires payment for short breaks (less than 20 minutes in duration) and exempt employees may not have deductions for break time.

The amendment further requires that the private space cannot be a bathroom, must be free from interruption and not in a public area.

This amendment applies to all employers, however businesses with less than 50 employees may be exempt from providing a private space if it would create a hardship due to expense or the nature of the company's business.

Employers in 24 states and the District of Columbia (AR, CA, CO, CT, GA, HI, IL, IN, ME, MN, MS, MT, NM, NY, ND, OK, OR, RI, TN, TX, VT, VA, WA, WY) are already subject to state laws regarding nursing mothers in the workplace. When the FLSA is amended, employers will need to follow the federal or state law that offers the most protection for the employee.

Since there isn't an implementation date in the amendment and specific guidelines have not been issued, the advice is to act on the basics (providing a room and unpaid breaks) of this amendment now. The Employer Advantage Human Resources Department will assist employers with questions about state and federal regulations concerning nursing moms in the workplace and continue to provide information on the amendment as it becomes available.