



Your Advantage

News and information to help you and your business succeed

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Employer Advantage announces

Employer Advantage offices will be closed on Thursday, November 25 and Friday, November 26 for the observance of the Thanksgiving Holiday. Clients are encouraged to submit payroll by noon on Tuesday of that week for Wednesday delivery of payroll.

The Risk Management Department of Employer Advantage is now scheduling Lead-Renovation, Repair and Paint (RRP) training. For more information, contact **Greg Francis** at 800-467-3909 extension 430.

Employer Advantage was recently chosen as the 2010 Best Places to Work in the tri-state area. The award, given out by the Joplin Tri-State Business Journal, was in the 25-100 employee category. Employer Advantage will be featured in the November 1st issue of Joplin Tri-State Business Journal.

Audits on the Increase

Hilda Solis, Secretary of Labor, stated in March 2009, "...let me be clear, there is a new sheriff in town." Since that time, several Federal agencies have been gearing up for increased audits.

Department of Labor (DOL) – The DOL has increased the number of enforcement officers by 200 in the last year and have budgeted for another 90 officers in the new fiscal year. In the recently released strategic plan, the DOL will be auditing businesses over the next five years to find misclassified workers and attain a 90% compliance rate in the agriculture, janitorial, construction, transportation and hotel/motel industries.

Occupational Health and Safety Administration (OSHA) – OSHA budgeted for 100 new worksite inspectors for the last fiscal year and 25 more in the current fiscal year. OSHA will also receive \$150 thousand to train OSHA inspectors on how to identify misclassified workers in addition to their regular worksite inspection duties.

Internal Revenue Service (IRS) – The IRS has implemented the "Employment Tax National Research Project" which will audit 6000 businesses over a three year period. In the audit they review: worker classification, executive compensation, fringe benefits and Form 1099 back up withholding. The IRS expects to publish a report of the study in 2014. (See the Article "Employment Tax and Worker Misclassification" for more information)

Department of Homeland Security - The Immigration and Customs Enforcement (ICE) has conducted more than 2,200 I-9 audits in FY 2010, up from more than 1,400 in FY 2009. During the same time frame, there has been a 500 percent increase in penalties from worksite enforcement actions.

Office of Federal Contract Compliance Programs (OFCCP) – OFCCP has eliminated the cap on compliance reviews and has projected to increase the number of investigations in a fiscal year by 20 percent. To accomplish the increase in reviews and investigations, they are hiring 213 additional compliance officers and other enforcement personnel.

Multi Agency Initiative – In the new fiscal year \$25 million was budgeted to create a multi-agency program to strengthen and coordinate federal and state efforts on misclassification. A Federal pilot program of \$10.9 million has been set aside to reward states that find and prosecute employers that fail to pay taxes due to worker misclassification.

Employers who want to take a pro-active stance will want to review any independent contractors as well as employee exempt and non exempt classification. By auditing classifications now, employers may have the opportunity to mitigate problems in the future. Clients who would like assistance in auditing should contact their Human Resources Professional for more information.

Employment Tax and Worker Misclassification

In response to requests by Congress, the Government Accountability Office (GAO) conducted a study on employee misclassification and issued its report in August 2009. While the GAO did not attempt to quantify the extent of employee misclassification, it concluded that “..it could be a significant problem with adverse consequences.” The GAO report acknowledged the complexities involved in enforcement of applicable laws and regulations and called for increased cooperation between Federal and State agencies. The two primary agencies charged with addressing the issue were the Internal Revenue Service (IRS) and Department of Labor (DOL) and both agencies generally agreed with the GAO’s findings.

IRS National Employment Tax Research Study

As a follow up to the GAO report and considerable publicity about the Tax Gap, the IRS announced its National Employment Tax Research Study (NRP) in November 2009. Prior to this announcement, the IRS’s last formal employment tax study was in 1984 when it estimated that 3.4 million employees were misclassified resulting in estimated revenue loss of \$1.6 billion.

The goals of the NRP are “To secure statistically valid information for computing the Employment Tax Gap and to determine compliance characteristics so IRS can focus on the most noncompliant employment tax areas.” Over the period of 2010 through 2012, the IRS will audit approximately 2,000 randomly selected taxpayers per year and will assign 200 to 300 of its most experienced personnel to conduct the comprehensive examinations. The IRS expects to complete the study and publish its report in 2014.

In addition to worker classification, each IRS examination will review executive compensation plans, fringe benefits, and Form 1099 backup withholding. Proper tax withholding and FICA taxation on deferred compensation plans will be one of the primary targets in the executive compensation area. The general rule for fringe benefit plans is that anything provided to an employee is taxable unless specifically exempted by an Internal Revenue Code Section. Backup withholding will be of particular interest for the 1099 MISC worker.

Internal Audits

Companies that currently have independent contractors (also known as “1099 workers”) must review the IRS criteria to ensure that the workers are properly classified. The three prong criteria are:

- Behavioral Control – whether the business has a right to direct or control how the work is done through instructions, training or other means. The more control the business has over a worker – the more likely the worker is an employee.
- Financial - whether the business controls the financial and business aspects of the worker's job. Does the worker has a substantial investment in tools, equipment, and supplies and does the worker shoulder the profit or loss from the job? If so, the worker is probably an independent contractor.
- Relationship - how the workers and the business owner perceive their relationship. Does the worker receive benefits while similar workers do not? Is the relationship ongoing? Or is there a contract with specific terms? Without a contract to establish the relationship, the worker may be an employee, especially if there are benefits involved.

Take Away

Before an audit notice arrives, a work-related accident occurs, or a worker files a Form SS-8 with the IRS, companies will want to review their business operations, including payment of workers and independent contractors, executive compensation plans, and taxability of benefit programs. If the review produces questions on any of the business operations, the company will want to consult a tax advisor for assistance.

Social Security Wage Base Remains at \$106,800 in 2011

The Social Security Administration recently announced that the 2011 social security wage base will be \$106,800, unchanged from 2010. As in prior years, there is no limit to the wages subject to the Medicare tax; therefore all covered wages are still subject to the 1.45% tax.

The FICA tax rate, which is the combined social security tax rate of 6.2% and the Medicare tax rate of 1.45%, remains at 7.65% for 2011. The maximum social security tax employees and employers will each pay in 2011 is \$6,621.60. This is unchanged from the 2010 maximum.

Advance Earned Income Credit

Advance Earned Income Credit (EIC) will no longer be in effect on January 1, 2011. Employees who previously claimed EIC will need to complete a new W-4 for their withholding.

Open Enrollment

Open Enrollment for the 2011 Employer Advantage Vision Plan and Cafeteria Plan is currently underway. The Benefits Department have sent notices to clients as well as putting stuffers in employees' paychecks. Along with these notices, the Human Resources Department is offering assistance with Open Enrollment with onsite meetings, phone and email assistance.

Employees who are not currently participating in the Vision Plan may elect to do so at this time. They need to complete the enrollment form and return it to the Benefits Department by November 30, 2010. The Vision Plan deductions and coverage will begin January 1, 2011. If an employee is already enrolled and does not wish to make changes, he/she does not have to do anything and coverage will stay as it is.

Employees who wish to participate in the Cafeteria Flexible Spending Accounts for 2011 need to complete the enrollment form and return it to the Benefits Department by November 30, 2010. Deductions and coverage will begin January 1, 2011. **If an employee is already participating in the Flexible Spending Accounts and wants to continue to participate, he/she will need to complete a new election form for 2011.**

Some changes have been made to the Flexible Spending Accounts for 2011. Beginning January 1, 2011, participants will need to have a prescription for over-the-counter medications. However, over-the-counter medical supplies will not need a prescription at this time. This rule also applies to any items purchased during the 2010 Plan Year grace period of January 1, 2011-March 15, 2011.

Employees are reminded if they have not used all of their Flexible Spending Account money that items may be bought or services incurred for the 2010 Plan Year through March 15, 2011. Receipts for reimbursement must be submitted by March 30, 2011 for the 2010 Plan Year.

If there are any questions about these benefits or any other benefit plans, please contact the Benefits Department at Employer Advantage by phone 800-467-3909 ext.760 or email benefits@employeradvantage.com.

New Shoes and Breakfast Can be Celebrations

I have a friend who is facing a life-altering health challenge. (Strange how what used to be a "disease" is now a "health-challenge") The medication did a lot to help her at first but now that she is being weaned to another medication, some things are a daily struggle. Things that we take for granted; getting out of bed in the morning; wearing professional looking shoes that still fit; or having enough energy for our families after a regular day of work.

When we talked the other day, she said she had been down in the dumps but another friend had told her that "her mind will heal her body" and that no matter how hard it seemed, she had to keep a positive outlook. So, with that, my friend has decided she needs to focus on getting well...and buying a new pair of shoes.

You see, it's hard to keep a positive outlook when you are so focused on the bad stuff. Sometimes we have to stop and give ourselves a reward for making it this far and break the habit of only looking at the bad.

Many of our workplaces have employees who carry around worries about jobs, healthcare, rising costs, kids, and the future. It's hard to stay optimistic when all we hear is the "bad" stuff on the news. Surprise your employees with a treat to celebrate how far you have come over the last year and ignite some optimism for the next few months. Think breakfast for the 8:00 am meeting, a cook out for lunch, or a sundae building contest on Friday afternoon. Small celebrations can get people out of the "doldrums" and make the workplace a better and happier place to be. Retired General Colin Powell said that "Perpetual optimism is a force multiplier" and what better way to help your employees get more out of their workday?

As for my friend, she's looking forward to celebrating her renewed optimism with her cute new shoes that fit.