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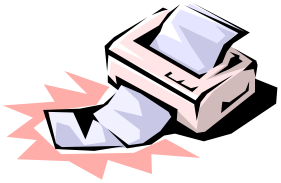

NO. 91 — February 2009

The New FMLA Regulations – Is your Company Ready?

By Attorneys Alec J. Beck and Emily L. Ruhsam

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New Family Medical Leave regulations became effective on January 16, 2009. The final regulations require new notice, time frames and forms for both employers and employees. Here are some of the highlights of the new requirements:

General Notice. The new regulations clarify that employers must give the following general notice of FMLA rights to employees:

General notice poster – must be posted either on a bulletin board or electronically (provided that all employees have access to the electronic posting).

Employee handbook – the information in the general notice poster must also be incorporated into the handbook or given to new employees upon hire.

Employee Notice. Employees are still required to give an employer a 30 day notice before taking any foreseeable leave. The regulations clarify that if the leave is for a medical reason and foreseeable, the employee must make reasonable efforts to schedule the leave so as not to unduly disrupt the employer's operations. If the leave is unforeseeable or, if the 30 day advance notice is not possible, the employee must give notice as soon as practicable while complying with the employer's normal call-in procedures.

Employer Notice and Forms. Once an employer receives the notice from an employee requesting FMLA leave, the employer must notify the employee as to whether the leave qualifies for FMLA. The notification must be given in writing on the designated form within five business days. The new designation forms can be found on the Department of Labor's website at www.dol.gov/esa/whd/fmla. These forms include:

Ÿ WH-380-E: Certification of Health Care Provider for Employee's Serious Health Condition

Ÿ WH-380-F: Certification of Health Care Provider for Family Member's Serious Health Condition

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Ÿ WH-381: Notice of Eligibility and Rights & Responsibilities

Ÿ WH-382: Designation Notice

Ÿ WH-384: Certification of Qualifying Exigency for Military Leave

Ÿ WH-385: Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave

Both an employee's rights to FMLA leave and an employer's obligations under the FMLA have become considerably more complicated with these new regulations. Now is an excellent time to review and update your handbook and policies to ensure compliance with the new rules. If you have any questions about the new regulations or would like to update your handbook and/or policies please contact the authors of this Lawfax or any attorney at our firm.

Are you ready for the Employee Free Choice Act? Just a reminder, that the Employee Free Choice Act ("Card Check") is labor's top priority for the new administration. If you need more information about how the EFCA would impact unionization in your workplace or want to plan training or communication for your employees, please contact the authors of this LawFax or any attorney at our firm.

Effective Dates Delayed – I-9 and E-Verify!

Ÿ I-9: The effective date for the use of the revised I-9 form has been delayed (from February 2) to April 3, 2009. Employers using the revised form prior to April 3 may be subject to monetary penalties and fines. Employers should continue to use the I-9 that is set to expire on June 30, 2009 (last updated on June 5, 2007) which can be found at: http://www.uscis.gov/files/form/I-9.pdf.

Ÿ E-Verify: The requirement that federal contractors use E-Verify has been delayed to May 21, 2009.

Seaton, Beck & Peters is pleased to be a member of the Worklaw® Network, and to offer our clients the upcoming

International Employment Law Webinar

When: February 24, 2009, 11:00 a.m. CST

Duration: 90 minutes

Cost: Complimentary

Presented by Simon Jeffreys (Partner, CMS Cameron McKenna, U.K.), Laura Lindner (Partner, Lindner Marsack, U.S.) and Erin Kuzz (Partner, Sherrard Kuzz LLP, Canada)

Many North American employers learn the hard and costly way what not to do when doing business in Europe. Join this webinar from your office and hear experienced labor and employment lawyers from the U.S., Canada and Europe discuss how your organization can avoid the most common and costly mistakes employers make when doing business in Europe.

Worklaw Network's first International Employment Law Webinar will cover the following topics:

-Business closure/Mass layoff -Business sale/Transfer
-Employment discrimination -Hiring and firing
-Privacy/Data protection -Workforce restructuring

HOW DOES A WEBINAR WORK?

Webinars are a convenient and cost-effective way to keep your organization up to date on recent developments in matters that can affect its legal and economic interests. Dial into the call and any number of members of your organization can gather together and listen in. Webinars are terrific for "lunch and learns" or any other way your organization provides educational opportunities to its members. The webinar will consist of a PowerPoint presentation followed by a question and answer session.

HOW DO I REGISTER?

Please go to: https://worklaw.webex.com/worklaw/k2/j.php?ED=118232247&UID=1049318447&FM=1.

After filling out a brief form, you will receive a confirmation e-mail that will provide the call-in number, meeting code and passwords needed to join the webinar on February, 24, 2009. If you have any questions, please direct them to Lindsay Hokenson (lindsayhokenson@schmidt-marketing.com).

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