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UPDATED FORM I-9 FOR USE BEGINNING IN SEPTEMBER

The U.S. Citizenship and Immigration Services (USCIS) released a revised version of **Form I-9**, *Employment Eligibility Verification on July 17, 2017.* The Form I-9 is used to verify the identity and employment authorization of individuals hired for employment in the United States, including both citizens and non-citizens. Employers are required to have a completed Form I-9 for each individual on their payroll. While this form is not required to be submitted to the USCIS, employers are required to retain these forms for a minimum of three years following the date of hire, or one year following termination of employment, whichever is later.

USCIS made several revisions to the form – a complete list is available from their news release. Employers can use this revised version, or continue using Form I-9 with a revision date of "11/14/16 N" through September 17, 2017. Beginning September 18, 2017, employers are required to use the revised form with a revision date of "07/17/17 N".

In addition, USCIS released an updated ***Handbook for Employers*** which incorporates the changes to the Form I-9 to assist employers in completing these forms.

PAID FAMILY LEAVE UPDATES IN NEW YORK AND WASHINGTON

While the state of New York enacted a paid family leave law last year, the state's governing agencies recently released implementation guidance to assist employers with their compliance under the law, which takes effect on January 1, 2018.

On the other side of the coast, Governor Inslee signed a law to enact a state-wide paid family and medical leave program in the state of Washington.

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New York Paid Family Leave Law Update

Beginning January 1, 2018, all private-sector New York employers, regardless of size, must provide paid family leave to their full and part-time employees after 26 consecutive weeks of employment (for a summary of the law, see *New York Paid Family Leave, Benefit Beat*, 5/5/16). The paid family leave program provides for, ultimately, up to 12 weeks of leave for baby bonding, to care for a family member, or military exigency. The program is fully funded by employees through payroll deductions.

Because this law builds on New York's existing temporary disability insurance law, the paid family leave benefits may be obtained in one of three ways: through an insured disability plan or rider issued by a carrier authorized to do business in New York, a plan issued by the New York State Insurance Fund, or an approved self-insured plan authorized by the New York State Workers Compensation Board.

The amount of the employee contribution is set by the New York Department of Financial Services and is subject to annual indexing. Accordingly, the employee contribution for coverage beginning January 1, 2018 is set at 0.126% of an employee's weekly wage, not to exceed 0.126% of the state's average weekly wage, which equates to approximately $1.64 per week. An employer may, but is not required, to begin collecting these payroll deduction amounts on or after July 1, 2017.

It is important to note that if other state or federal leave law, such as Family and Medical Leave Act (FMLA), apply in a given situation, this paid family leave must be coordinated with such law.

Recently, both the New York Workers' Compensation Board and Department of Financial Services adopted final regulations implementing the paid family leave program providing details relating to eligibility, coverage, the phase-in schedule and claim procedures. Additional information about the program can also be found on the state's dedicated Paid Family Leave website.

Next Steps for Employers. The most important thing for an employer doing business in the state of New York is to contact its state temporary disability insurer to begin the process of purchasing a paid family leave policy, or pursue one of the other options described above. In this process, the employer should discuss what, if any, withholding it should begin collecting from its employees. The employer may choose to pay the full premium itself but it has the right to collect from its employees. Generally, if the benefit is made available by an insured product, the insurer is responsible for determining eligibility for leave available under this program.

Washington's Paid Family and Medical Leave Program

On July 5, 2017, Washington joined a handful of states mandating paid family and medical leave. The new leave law (SB 5978) is funded by both employers and employees, and employees will be eligible to receive benefits beginning January 1, 2020. While the Washington Legislature enacted a paid family leave program in 2007, the law was never implemented and then further postponed by subsequent legislative efforts.

Under the new law, all Washington employers, regardless of size, must provide for paid family and medical leave benefits; however, small employers employing fewer than 50 employees can opt out. Further, the law provides an option for certain small-sized employers the ability to request a grant of financial assistance from the state in order to pay the benefit.

Generally, an *eligible employee* is one who has completed a minimum of 820 hours in a qualifying period, defined as the first four of the last five completed calendar quarters.

Reasons for leave. A qualified employee is entitled to 12 weeks of family leave for the following events:

1. To attend to the employee's own or his/her family member's serious health condition;
2. Baby bonding; or
3. A qualifying exigency relating to a family member's military service, as defined by the Family and Medical Leave Act (FMLA).

The amount of combined family and medical leave is capped at 16 weeks per 12-month period, although, an additional 2-week leave period is available if an employee experiences a pregnancy-related serious health condition resulting in incapacity, for a combined total of 18 weeks.

For this purpose, *family member* includes child (biological, adopted, foster, or step or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent), grandchild, grandparent, parent, sibling, or spouse of an employee.

Job restoration. An employee returning from leave is entitled to be returned to the same or an equivalent position.

Benefits during leave. Generally, benefits accrued as of the date the leave begins must be restored upon return to work. To the extent that the FMLA applies, health benefits must be continued for the duration of the leave in accordance with the FMLA.

Amount of benefits and funding. To receive the benefit, individuals must file an application and would be subject to a one-week waiting period, except in the event of birth or adoption. The weekly benefit amount may be up to 90% of the employee's average weekly wage with certain other limits applying to higher earners and a maximum cap of $1,000 for 2020.

The premium for the program will be 0.4 percent in 2019 with the employer paying 37.5% and the employee paying 62.5%. Employers may seek a waiver of the premium requirement for certain employees located outside Washington or employed on a limited or temporary schedule.

Notice obligations. Employees are required to provide notice of their intent for the leave, whether foreseeable or not. In addition, employers are subject to a workplace posting requirement, and other notices upon an individual's need for leave.

Coordination with other leave laws. This leave runs concurrently with other permitted leave laws such as the federal FMLA.

As the effective date of this law approaches, regulations are likely to be issued further defining its implementation.

Uptick in Pregnancy Workplace Protections

There appears to be a growing number of states modifying their employment discrimination laws to provide additional protections to pregnant workers. Most recently, Connecticut and Massachusetts enacted laws similar to the Nevada law mentioned in last month's *Benefit Beat* (see *Nevada Expands Protections for Pregnant Workers,* 7/13/2017).

These state laws must be coordinated with other state discrimination laws, as well as the federal laws such as the Pregnancy Discrimination Act and the Break Time for Nursing Mothers Act.

Connecticut: Pregnant Women in the Workplace

On July 6, 2017, Governor Malloy signed a law (HB 6668, P. L. 17-118) concerning pregnant women in the workplace, which takes effect October 1, 2017. This law amends Connecticut's existing pregnancy discrimination statute by expanding the employment protections provided to pregnant women and requiring employers to provide a reasonable workplace accommodation.

Employers employing three or more individuals are prohibited from limiting, segregating or classifying an employee in a way that would deprive her of employment opportunities due to her pregnancy, or to refuse to make a reasonable accommodation for an employee or job applicant due to pregnancy, unless the employer can demonstrate that such accommodation would impose an undue hardship on such employer.

Examples of *reasonable accommodations* include the ability to remain seated while working, more frequent or longer breaks, periodic rests, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for expressing breast milk.

A reasonable accommodation cannot be imposed upon an employee nor can an employee be compelled to accept a reasonable accommodation if it not necessary or required. Further, employment opportunities cannot be denied if they are based on the employer's refusal to accommodate the affected individual.

Notice obligation. An employer is obligated to provide written notice of these rights to all existing employees by November 3, 2017, and within 10 days of learning that an existing employee is pregnant, as well as to new employees at the point of hire.

Massachusetts: Pregnant Workers Fairness Act

On July 27, 2017, Governor Charlie Baker signed the Pregnant Workers Fairness Act (H. 3680, Chapter 54), which takes effect April 1, 2018. This law expands upon the existing Massachusetts pregnancy discrimination law to ensure that pregnant workers or workers with pregnancy-related conditions receive reasonable accommodations and protection from discrimination and retaliation.

The law requires employers employing six or more employees to provide reasonable accommodations during an employee's pregnancy or related condition, unless such accommodation imposes an undue hardship upon the employer's business.

Examples of *reasonable accommodations* include allowing more frequent or longer paid or unpaid breaks, time off to recover from childbirth with or without pay, purchasing or modifying equipment or seating, providing a private non-bathroom space for expressing breast milk, assistance with manual labor, or modifying an individual's work schedule such as a temporary transfer to a less strenuous or hazardous position, job restructuring or light duty.

A reasonable accommodation cannot be imposed upon an employee nor can an employee be compelled to accept a reasonable accommodation if it not necessary or required. Further, employment opportunities cannot be denied if they are based on the employer's refusal to accommodate the affected individual.

Notice obligation. An employer is obligated to provide written notice of these rights to all existing employees by January 1, 2018, and within 10 days of learning that an existing employee is pregnant, as well as to new employees at the point of hire.

TREASURY WINDS DOWN MYRA PROGRAM

A couple years ago, President Obama directed the Treasury Department to establish a Roth IRA-type plan option, known as myRA, for employers of any size who do not currently offer a retirement plan. The myRA program allowed for employers to set up a payroll direct deposit process for employees to make contributions to their myRA accounts if they choose to participate. In addition, the Treasury Department established a dedicated website which included employer resources for employee communications and tools for setting up the program (see *MyRA Program: Website Tools for Employers, Benefit Beat*, 4/7/15).

According to a press release issued by the Treasury Department on July 28, 2017, the Department announced that it would begin to wind down the myRA program after finding that the program is not cost-effective, as well as lack of demand and interest of the program. Thus, no new enrollees will be accepted. Current participants have an option to move their existing account into another Roth IRA. The myRA website (www.myRA.gov) provides additional information for affected individuals.

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