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TIME OFF FROM WORK FOR VOTING — WHAT'S THE LAW?

On November 2, 2004, millions of Americans will go to the polls to vote in the Presidential election. What are your obligations to your employees on election day? Do you have to give your employees time off to vote? Do you have to pay them for time spent at the polls? Can you require your employees to give you advance notice as a condition of granting them time off to vote? Can you tell your employees what part of the day they can take off to vote?

There are no federal law requirements, but several states have filled in the gap; some not only require employers to give their employees time off to vote but also prevent private employers from reducing a worker's wages for time spent away from work at the polls.

The law differs from state to state. Some states, like Louisiana and Florida, have no requirements, while others allow you to control what time your employees can take off, such as at the beginning or end of the work day. For example, Texas law allows employees to take time off to vote unless the polls are open for voting two consecutive hours outside their normal working hours. Other states require employees to give their employers advance notice before they can take off to vote. California and New York require employers to post notices to apprise their employees of their right to time off for voting. If you are concerned about what your obligations are in your state, you should consult your legal counsel.

NEW OVERTIME REGULATIONS CLEAR FINAL HURDLE

On August 23, 2004, the long awaited "section 541" overtime regulations finally became effective after avoiding last-ditch attempts in Congress to scuttle them. There are now no legal impediments to full implementation and enforcement of the new regulations, which clarify who's exempt and who's not exempt from the overtime pay requirements of the Fair Labor Standards Act (FLSA). So, if you've not yet evaluated your organization's compliance with the new regulations, there's no longer any reason to delay. For more information on the new regulations and what you need to do to comply, see *New DOL Overtime Regulations: Are You Ready?* in Jones Walker's August 2004 Labor Relations and Employment E*Zine.

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CONGRESS PASSES ELECTRONIC I-9 LEGISLATION

Before recessing for the upcoming election, Congress passed a new law that will allow employers the option of completing and storing I-9 employment verification forms electronically. Following are some questions and answers to help explain the new legislation that were included in a recent report published by the U.S. Chamber of Commerce.

Question: Does the new law require employers to use electronic I-9 forms?

Answer: No, it just gives employers an electronic option. Employers may continue to use paper forms if they prefer. Previously the law allowed only three forms of record retention for I-9 forms: paper, microfilm, or microfiche. The new law simply adds “electronic format” to the list. The new law also allows, but does not require, the use of electronic signatures by both employees and employers on the I-9 document so the I-9 verification process can be completed on line or on a computer. However, employers still must view the ORIGINAL documents presented by their employees to prove identity and work authorization, so the process cannot be completed remotely.

Question: When does the new law take effect?

Answer: Once the President signs it, the new law will become effective on the EARLIER of the date the Department of Homeland Security (DHS) promulgates final implementing regulations OR 180 days after enactment, whichever comes first. Essentially this allows DHS 180 days to publish regulations governing the electronic completion and storage of I-9 forms. If it does not, employers may do so anyway. However, once DHS issues regulations, employers may need to conform their storage formats to the new rules.

Question: Does the new law impact previously completed I-9 forms?

Answer: The new law will allow employers to transfer existing paper, microfilm, or microfiche records to electronic format but would not otherwise change the retention requirements for previously completed I-9 forms, which must be retained by employers for one year following an employee’s termination date or three years after his date of hire, whichever is longer.

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Question: What type(s) of electronic storage or signatures will the new law allow?

Answer: The new law does not specify standards for electronic storage or signature. Presumably DHS will include standards in its regulations.

Question: Will the new law make it easier for Immigration and Customs enforcement officials to audit employers' I-9 forms?

Answer: The new law is silent about I-9 or employer verification enforcement. The law does not change any of the existing regulations governing audits of I-9 forms by government officials. However, the regulations to be promulgated by DHS may be changed to allow enforcement agents to request and view electronic versions of the I-9 forms if they are stored in that fashion by employers, thus eliminating the need to print and present paper copies of the forms to enforcement agents. Presumably, electronic storage and indexing would make it easier for employers to meet document production demands during any investigation and, further, would allow employers more easily to ensure that only those documents under review are presented.

TAXATION OF ATTORNEYS' FEES IN EMPLOYMENT DISCRIMINATION CASES

The "double taxation" of attorneys' fees awarded to employees in employment discrimination cases or included in settlements of such claims — a tax code result long opposed by attorneys for employees — would be eliminated by a bill now under consideration in Congress. Under current law, attorneys' fees included in a judgment or settlement agreement are taxed as income to both the employee and his attorney. This "double taxation" sometimes can be an obstacle to settlement when employees and their attorneys insist on a higher settlement amount to cover the "double tax" and provide the employee with a higher net payment. However, if the bill becomes law, it won't provide any relief for litigants in cases pending or settled before its effective date, as the new law would apply only to new claims filed after it takes effect.

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MOST OVER-REACHING NEW STATE EMPLOYMENT LAW: MANDATORY SEXUAL HARASSMENT TRAINING

Sexual harassment prevention training is now mandatory for California employers. On September 30, 2004, Governor Arnold Schwarzenegger signed a law that requires employers to provide two hours of sexual harassment training and education to all supervisory employees by January 1, 2006. Employers will receive a credit for any training provided to supervisors in 2003. Following January 1, 2006, employers must provide training and education once every two years for all supervisors and within six months of hire or promotion for all new supervisors. The law applies to all entities that regularly employ 50 or more employees or regularly receive the services of 50 or more employees pursuant to a contract.

EASIEST NEW STATE EMPLOYMENT LAW TO GET AROUND

On November 1, 2004, a new law becomes effective in Oklahoma that will allow employees (other than convicted felons) to bring concealed weapons onto their employers' property as long as their firearms are kept in a locked vehicle. The law prohibits employers from "establish[ing] any policy or rule that has the effect of prohibiting any person, except a convicted felon, from transporting and storing firearms in a locked vehicle on any property set aside for any vehicle." However, the new law says nothing about employer policies that prohibit employees from bringing ammunition onto their premises.

FOR LOUISIANA EMPLOYERS: GOT POSTERS?

In July 2004, Louisiana's Department of Labor revised a few of the posters mandated for certain Louisiana employers. In addition, the legislature added two new required posters on the payment of wages and employment of minors. So, we thought it was the perfect time to remind you of your posting obligations and tell you where you can get a copy of the required posters.

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What Posters Are Required? Currently, Louisiana law requires certain employers to post information on ten laws affecting the workplace:

1. Genetic Discrimination

Employers must post information explaining Louisiana's prohibition of genetic discrimination and the legal limits on genetic testing of employees.

2. Timely Payment of Wages

A new law took effect on August 15th requiring all employers to inform their employees when hired how much they'll be paid, by what method, and how often. The law sets forth specific information that must be posted by each employer. Louisiana's Department of Labor created a poster to comply with this obligation.

3. Minor Labor Law Placard

Another newly required poster is the Louisiana Minor Labor Law Placard. This placard explains the hours a minors may work and which occupations are prohibited for minors.

4. Out-of-state vehicles

Employers must inform employees that they must apply for a certificate of registration for their vehicle within thirty days from the date they became employed in Louisiana. Louisiana's Department of Labor's newly revised poster provides the information required to be posted by each employer.

5. Sickle Cell Trait

Employers with 20 or more employees must post information explaining the prohibition of employment discrimination based on the sickle cell trait, which is considered a form of race discrimination. Louisiana's Department of Labor recently revised the poster setting forth the required information.

6. Smoking Policy

Louisiana law requires employers to adopt and post a written smoking policy. Of course, your policy can be that smoking is prohibited or restricted to certain times and areas. Louisiana's Department of Labor offers a newly revised poster which provides the information the written smoking policy must include.

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7. Military Leave Law

Louisiana's Department of Labor provides a poster informing members of the national guard, reserves, or active duty military of their protection from employment discrimination, right to military leave, and other rights and obligations.

8. Unemployment Insurance

Employers must post information about Louisiana's Employment Security Law (unemployment insurance). Louisiana's Department of Labor provides a poster that complies with your legal obligation.

9. Workers' Compensation Compliance

Employers must post information regarding their employees' obligation to give notice to their employer of an injury within 30 days. Louisiana's Department of Labor provides a poster that provides the required information, as well as other useful information about workers' compensation. If an employer fails to post this notice, the time in which the notice of injury must be given is extended to twelve months from the date of injury.

10. Equal Opportunity

Any employer who receives federal funds must post an equal opportunity notice. Louisiana's Department of Labor provides a poster that complies with this law.

Where Can You Get Your Posters? Although there are various services that charge for the posters, all of the posters explained in this article are available without charge from Louisiana's Department of Labor's website at www.ldol.state.la.us. In addition, you may be required to post information required by federal law. Louisiana's Department of Labor's website provides a link to the United States Department of Labor's website where the federal posters are available. Of course, where you find room to hang all of the posters is up to you.

The articles included in Jones Walker's October 2004 Labor Relations and Employment E*Zine were compiled, written, and edited by Jones Walker Labor Relations and Employment lawyers **Clyde H. Jacob III, Jennifer A. Faroldi, and H. Mark Adams.**

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