

# NEHS 2008 On-the-Radar Screen HR Issues

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# Overview

- Congress Expands FMLA for Military Leave
- DOL Proposes FMLA Regulatory Changes
- Fines Going Up Against Employers for Federal Immigration Violations
- Health Care Spending May Double by 2017

# Congress Expands FMLA-Military

- Bush signed new law that expands FMLA for military families
- 2 new qualifying events
  - *26 weeks for EEs who are caring for injured service member (who is a member of their family – spouse, child, parent, nearest blood relative)*
  - *12 weeks to spouse, child or parent of active duty member, or notified of impending call or order to active duty.*
- Effective 1/28/08

# New FMLA Law, What to do

1. Revise FMLA policy and forms/letters to reflect the 2 new types of leave coverage (family members covered, certification requirement, leave types and length)
2. Retrain supervisors, payroll, benefit specialists on new provisions
3. Be on the look out for a new FMLA poster from DOL
4. Participating in commenting on new regulations through PIA/GATF

# Revised FMLA Reg Released in Feb.

- In 2006 DOL requested general comments on FMLA issues
- Issued report in June
- New Regs are based on report, court cases, and DOL's own experience

# Proposed FMLA Regs...

- **Definitions:**
  - *Serious Health Condition* = no significant change
  - *Continuing Treatment* = 2 visits within 30 days of beginning of incapacity
  - *Chronic Condition* = can include serious conditions where incapacitated for less than 3 days (e.g., asthma and diabetes)

# Proposed FMLA Regs...

- *Medical Certification...* allow employers to contact healthcare providers directly for the purposes of *authenticating* or clarifying a medical certification. *(eliminates employer's health care provider requirement for making the request)*
- *Medical Recertification* ... employers may recertify every six months (rather than monthly)

# Proposed FMLA Regs...

- Break in Service Counts Up To Five Years
  - *First Circuit's opinion in Rucker v. Lee Holding, Co. (2006)*
- Allow “fitness-for-duty” evaluations for intermittent FLMA leave workers and are returning to jobs that could endanger self/others.
- Stop employers from charging FMLA time to employees who come back to work, but can only do “light” duty

# Employer Immigration Fines Go UP!

- **Dept. of Homeland Security** issued Federal Register notice on Feb. 26
- Fines generally going up by 25%
- Note: several states have recently enacted their own immigration laws
- AZ, AR, CO, CT, FL, GA, KS, IL, LA, ME, MA, MN, MS, MO, MT, NV, NH, OK, OR, TN, TX, UT, VT, VA, WV

# Immigration Fines

- **Knowingly employing undocumented workers**
- \$375-\$3,200 for each undocumented individual;
- \$3,200-\$6,500 for each undocumented individual, if the employer has previously been in violation; and
- \$4,300-\$16,000 for each undocumented individual, if the employer was subject to more than one cease & desist order.

# Immigration Fines

- **Antidiscrimination obligations**
- (1) not less than \$375, nor more than \$3,200 per individual discriminated against;
- (2) not less than \$3,200, nor more than \$6,500 per individual discriminated against for a **second offense**;
- (3) not less than \$4,300, nor more than \$16,000 per individual discriminated against for a **third offense**.

# Immigration Fines

- **Record retention**
- \$110 - \$1,100 per employee whose Form I-9 is not properly completed, retained, and/or presented.
- (fines unchanged in revised regulation)
- Note: new Form I-9 is out! [www.uscis.gov](http://www.uscis.gov)
- 5 documents removed, 1 added

# Immigration Fines

- **Document fraud (usually against individual)**
- Violators may be fined and/or imprisoned for up to 5 yrs
- (1) \$375-\$3,200 for *each* document used, accepted or created and each instance of use, acceptance or creation
- (2) \$3,200-\$6,500 for *each* document that is the subject of a violation where the person or entity was previously subject to a cease and desist order.

# Health Care Spending May Double by 2017

- Feds say HC Spending will be \$4.3 trillion (19.5% GDP) by 2017
- HC Spending approx. \$2.2 trillion in 2007
- Costs expected to grow on average 6.7% through 2017
- By 2017, Medicare spending is expected to account for \$884 billion, or one-fifth of all national health spending
- Private health care spending will peak at 6.6% in 2009 and slow to 5.9% growth through 2017
- Key factors: medical prices & utilization (somewhat baby-boomers)
- [www.healthaffairs.org](http://www.healthaffairs.org)
- Watson Wyatt Study (3/08) says health care spending expected to outpace inflation in majority of countries over next five years

# Questions?

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