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Employers Granted Partial Relief from ACA Information Reporting Requirements

In early December, the Internal Revenue Service (IRS) issued Notice 2019-63 which extends the due date for certain 2019 information reporting requirements under The Affordable Care Act (ACA) as provided in sections 6055 and 6056 of the Internal Revenue Code from January 31, 2020 to March 2, 2020.

This relief is consistent with that provided in the past year, as well as new relief due to the $0 ACA individual mandate penalty changes.

Because 2019 is the first year that the individual penalty for not having health insurance is $0, individuals will not need the information in Form 1095-B to file their individual taxes. The relief does not broadly extend to applicable large employers that offer self-funded plans and use Form 1095-C to report coverage. Such employers must continue to issue Form 1095-C to all full-time employees.

The relief does apply to the requirement to issue 2019 Forms 1095-C to employees who are not full-time employees for any month in 2019.

The IRS has also extended the time to issue Forms 1095-B and 1095-C to full-time employees to March 2, 2020.

DOL Issues New Regulations Regarding FLSA “Regular Rate” Definition

The U.S. Department of Labor (DOL) has announced a Final Rule that will give employers more flexibility in offering perks and benefits to their employees by...
updating the regulations governing the definition of the term “regular rate” under the Fair Labor Standards Act (FLSA) regarding the forms of payment employers include and exclude in the FLSA’s “time and one-half” calculation when determining overtime rates.

The new rule clarifies which perks and benefits must be included in the regular rate of pay, as well as those which an employer may provide without including them in the regular rate of pay.

The list of excludable perks and benefits is extensive and includes certain payments made to employees, some payments made on behalf of employees by employers, and enumerated payments made to third parties. The Final Rule will be effective on January 15, 2020.

More information about the Final Rule, including FAQs and a fact sheet, is available on the DOL website.

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**NLRB Announces Modifications to Representation Election Procedures**

The National Labor Relations Board (NLRB) has published final rules that delineate 15 changes to current Board representation case policies and procedures. The modifications include clarifications to pre-election procedures that better ensure the opportunity for litigation and resolution of unit scope and voter eligibility issues.

The changes also permit parties additional time to comply with the various pre-election requirements instituted in 2014.

Some of the more significant changes impact the scheduling of pre-election hearings, the time for posting the Notice of Petition for Election, the time for scheduling a representation election following the date of the direction of election, and time for furnishing the required voter list.

The new rules are effective April 16, 2020.

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**NLRB Issues Three Decisions Favorable to Employers**

The National Labor Relations Board (NLRB) recently decided three cases that restore employer rights eroded by prior decisions.

In *Apogee Retail LLC d/b/a Unique Thrift Store*, the Board held that work rules requiring confidentiality
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During workplace investigations are presumptively lawful. The ruling overturns a prior decision that required employers to prove, on a case-by-case basis, that the integrity of an investigation would be compromised without confidentiality.

In **Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino**, the Board reestablished the right of an employer to restrict employee use of its email system if it does so on a non-discriminatory basis. Prior to this ruling, the Board had held that employees who had access to their employer’s email system for work-related purposes had a presumptive right to use that system on non-working time for communications protected by Section 7 of the National Labor Relations Act (NLRA).

The Board’s new policy states that employees do not have a statutory right to use employers’ email and other information technology resources to engage in non-work-related communications. Rather, employers have the right to control the use of their equipment, including their email and other information technology systems, and may lawfully exercise that right to restrict the uses of those systems, provided that in doing so, they do not discriminate against union or other protected concerted communications.

In **Valley Hospital Medical Center, Inc. d/b/a Valley Hospital Medical Center**, the Board ruled that an employer’s statutory obligation to check off union dues ends upon expiration of the collective bargaining agreement containing the checkoff provision.

The majority found that dues checkoff provisions are in the limited category of mandatory bargaining subjects that are exclusively created by the contract and are enforceable through Section 8(a)(5) of the NLRA only for the duration of the contractual obligation created by the parties.

In the majority’s view, there is no independent statutory obligation to check off and remit employees’ union dues after the expiration of the collective bargaining agreement, even where the contract does not contain a union security provision.