HR Brief

Human Resources tips brought to you by
Brown & Brown Benefit Advisors

July 2015

DID YOU KNOW?

The Family and Medical Leave Act (FMLA) certification forms expired Feb. 28, 2015. Since that date, the Department of Labor (DOL) extended the expiration date of the forms by 30 days while the revised FMLA forms were under review with the Office of Management and Budget (OMB).

The DOL has now posted new model FMLA medical certifications and notices with an expiration date of May 31, 2018. The new forms are identical to the previous forms. However, the new medical certifications include instructions not to provide genetic information in accordance with the Genetic Information Nondiscrimination Act (GINA).

Supreme Court Rules on Abercrombie Religious Discrimination Case

On June 1, 2015, the U.S. Supreme Court ruled against Abercrombie & Fitch in a high-profile religious discrimination case. The Supreme Court ruled in favor of a Muslim woman who was denied employment with Abercrombie due to wearing a headscarf, or hijab, in violation of the company's "look policy."

The Supreme Court held that to prove a violation of federal law, an applicant must only show that the need for a religious accommodation was a motivating factor in the employer's decision. Whether the employer had actual knowledge of the need for an accommodation is irrelevant. An employer may not make an applicant's religious practice—confirmed or otherwise—a factor in employment decisions.

Samantha Elauf, a practicing Muslim woman, was determined to be eligible for employment at Abercrombie after her first interview. The assistant store manager asked upper management whether Elauf's headscarf, which she thought may be for religious reasons, conflicted with Abercrombie's policy against caps. The assistant store manager was told not to hire Elauf because her headscarf would violate Abercrombie's "look policy." The Equal Employment Opportunity Commission (EEOC) sued on Elauf's behalf, claiming violation of Title VII of the Civil Rights Act.

The question presented to the Supreme Court was whether the prohibition on discrimination under Title VII applies only when an applicant has informed the employer of the need for an accommodation. The Supreme Court disagreed with the Court of Appeals, holding that an applicant does not need to prove an employer had actual knowledge of a need for a religious accommodation. Rather, a job applicant can prove discrimination if he or she can show the need for accommodation was a motivating factor in the employer's decision.

The Supreme Court's decision confirms current practice for many employers. However, the ruling establishes a lower standard to prove discrimination. Employers should not base hiring decisions on an assumption that an applicant may require some form of accommodation. You should also consider whether you can accommodate applicant requests without undue hardship.

DOL Sends Proposed FLSA Regulations to OMB

In March 2014, President Barack Obama directed the Secretary of Labor, Thomas Perez, to revise the overtime pay provisions of the Fair Labor Standards Act (FLSA) to increase the number of workers who are eligible for overtime pay.

Over a year later, the DOL has sent proposed regulations that aim to "modernize and streamline the existing overtime regulations for executive, administrative, and professional employees" to the OMB for review. After the review, the proposed regulations will be made available to the public for comment.

The proposed regulations may affect the number of employees at your company who are eligible for overtime pay. In addition to staying up to date on the proposed regulations, you should assess your current workforce to prepare for possible changes.

For example, complete an audit to make sure your organization's job descriptions are current and accurately reflect the duties and required skills of each position. This will be a powerful tool when navigating the proposed regulations.

Brown & Brown Benefit Advisors
Collective wisdom. To your benefit.