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HR WORKPLACE SERVICES

"IT DEPENDS"

A Look at Gray Area HR Policies & Regulations

Most HR professionals will tell you the most difficult challenges the industry poses are those inevitable situations where reasonable actions and policy/regulations fail to conveniently meet. Even the savviest among us are tested by these "gray area topics." And as you might expect, they are brought to our advisory teams all the time. The answers to most of these questions typically begin with "It depends" and the conclusions are often supported with "the ruling exists, nonetheless."

We know, this all sounds cryptic but from an operational standpoint, quite necessary. Let's take a look:

SOME GRAY AREA HR ISSUES THAT'LL MAKE YOU GRAY TRYING TO SORT THEM OUT

Chronically Ill (Extended Family - Special Circumstances) - FMLA

Family dynamics can vary greatly from one employee to the next. You can put step children on your insurance plan and even your fiancée. So, what happens when an employee requests FMLA to take care of their sick uncle, who

raised them like a father? Well, it depends. By rule, the policy lists grandparents, parents, spouse and children. However, it is likely there would not be any serious ramifications if an employer chose to approve such a request. That said, the real trouble isn't this specific, one-time case, but rather, all the other non-inclusive case-scenarios that suddenly may be considered similar once word gets out - by the organization's OTHER employees. "But Nancy's was approved for her uncle ..." Queue disgruntled employee's labor attorney. The point being, there is always risk in every outside-the-lines decision. Keep in mind that what you do for one employee sets precedent for others.

Spouse Dropped from Health Plan During Open Enrollment - in Anticipation of Divorce

To begin, the employee is within their rights to do this. Once the divorce becomes final, only then would COBRA attach. What happens if the divorce takes years? How is the group supposed to know? What if the employer switched carriers?

While COBRA clearly must be offered in this scenario, the rule assumes: the employee makes mention; the employer provides

60-days' notice; the new carrier will assume such obligation. That's a lot of presumption. And a prime example of regulations and practical application playing in different ballparks. The stinger here is (perhaps qualified best by HRWS EVP of Advisory Services), "The rule exists nonetheless."

Qualifying Events, Consistency Rule

In most cases, a qualifying event and the request go unquestioned. Baby is born, baby added to health plan. Couple gets a divorce, spouse comes off the health plan, and so forth ... What happens if mom has a baby and wants to drop her vision benefit? Well, the carrier could easily deny. Why? Because of Section 125-4 Consistency Year rules. In other words, mid-year requests/additions/subtractions must be consistent with the qualifying event.

Exempt, Non-Exempt & Overtime

Did you know that suits regarding an employee's classification as exempt vs. non-exempt under the Fair Labor Standards Act (FLSA), as well as their entitlement to overtime pay, consistently ranks as the #1 issue heard in Federal Court? With so much nuance to these laws, many of

which contradict each other at Federal and State levels, it is understandable why there is so little clarity. This leads us into the next important consideration ...

Rules vs. Risk

When things are cut and dry, it is virtually always in an organization's best interest to follow policy guidelines to the nth degree. As we have just seen, however, there are some situations that are not so definitive and when people are involved, many times the heart attempts to usurp policy. Ultimately, many decisions are left up to the employer and often, right and wrong are difficult to determine. Typically the choice becomes one of risk. Sometimes the risk is small, so the decision seems rather easy. In other situations, ones with a seemingly "right thing to do message," can become complicated. Some actions that may prove ideal for one individual party could bring a great deal of risk ... ultimately leading to the compromise or even demise of the entire organization – even if it seems on the surface to be, as we said, "the right thing to do." Risk. Rules. Risk. Rules.

If you have any questions, we are available by phone at **866-691-7757** or simply **email us** for prompt service.

