



LEGAL UPDATE - January 2013

UPCOMING COMPLIANCE DATES

- 1/31/2013 W-2 Employee Reports Due. Employers must provide all employees copies of Form W-2, reporting earnings and taxes for 2012, by January 31, 2013.
- 2/1/2013 OSHA Form 300A Accident Summary Posting. Employers must post OSHA Form 300A Accident Summary in public area from February 1 through April 30, for previous year's accidents.
- As a reminder for the entire year, click for the [2013 Compliance Calendar](#).

HOW FISCAL CLIFF DECISIONS IMPACT YOU AND YOUR EMPLOYEES

The fiscal cliff loomed large at year-end. As a result Congress made some decisions that will impact you and your employees and some that won't. [Click here for details.](#)

NEW IN-PLAN ROTH CONVERSION OPPORTUNITY

One more outcome of the newly enacted Fiscal Cliff legislation is a new opportunity to perform "in-plan" conversions of pretax dollars to Roth (after-tax) dollars of funds held in defined contribution retirement plans (such as Section 401(k) plans, Section 403(b) plans, and governmental 457(b) plans).

For plan years beginning after December 31, 2012, employers will have the option, but not the obligation, to amend their defined contribution retirement plans to add (or expand) the new conversion feature. An in-plan Roth conversion of pretax (non-Roth) plan assets causes the converted amounts to become taxable in the year of the conversion, but allows any future qualified distributions of the converted amounts, along with any accumulated earnings, to be provided tax-free to the participant. [Continue reading here.](#)

IRS ISSUES FURTHER GUIDANCE ON EMPLOYER HEALTHCARE

The Internal Revenue Service has released proposed regulations and FAQs on the shared responsibility provisions of the Affordable Care Act (ACA). These rules require large employers (those with a calculated total of more than 50 employees) to offer full-time employees and their dependents the opportunity to enroll in meaningful, affordable coverage under an employer-sponsored plan or pay a penalty. The rules are often referred to as the

employer mandate or pay-or-play requirement.

With a few new twists and clarifications, the proposed regulations, released on December 28, 2012, follow guidance issued in four earlier IRS notices on minimum value and reporting requirements and methods for determining employee status. [Read highlights here.](#)

NLRB SIDES WITH EMPLOYEES FIRED OVER FACEBOOK POSTS

In its second opinion addressing employee terminations resulting from Facebook posts, the National Labor Relations Board (NLRB) has ordered an employer to reinstate five employees terminated for posting Facebook comments in response to a co-worker's criticism. In a 3-1 decision, the NLRB determined that the comments were concerted activity protected by the National Labor Relations Act (NLRA or Act).

This latest decision reinforces that employers must exercise caution before terminating or disciplining employees as a result of their comments on social media. The NLRA makes it illegal to interfere with, restrain, or coerce employees in the exercise of their rights under Section 7 of the NLRA. This Section specifically grants employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activity for the purpose of collective bargaining or other mutual aid or protection." Employers should take note of the NLRB's continued focus on social media policies and its view of social media activity as akin to water cooler conversation. Employers should evaluate their policies regarding employee social media usage and speech outside the workplace, as well as train supervisory personnel on how to respond to the increased use of social media. [Read details of the case here.](#)

NLRB DECISION—CONFIDENTIALITY PROTECTION FOR INVESTIGATIONS

The National Labor Relations Board (NLRB) recently overruled its longstanding precedent that categorically protected confidential witness statements taken during internal disciplinary investigations from disclosure to a union. The case comes on the heels of a decision last summer that a blanket approach requiring confidentiality in workplace investigations violated an employee's right to engage in protected, concerted activity under the National Labor Relations Act (NLRA).

In light of the Board's recent approach to confidentiality, employers with union representation involved should be aware of the potentially limited benefit to the offer to keep witness statements confidential as a means of gaining cooperation in an investigation. Before making those assurances, employers will need to evaluate whether their confidentiality interests are "legitimate" and "substantial" enough to outweigh the union's competing representation interest in the grievance process. [Continue reading about the case here.](#)

NLRB RULES UNION DUES CHECKOFF LIVES ON

An employer that deducts union dues from employees' wages (known as "dues checkoff") under a collective bargaining agreement ("CBA") must now continue to do so after the CBA expires. According to a recent National Labor Relations Board (NLRB) ruling, the dues checkoff obligation continues after CBA expiration until the parties reach either a new

agreement or a valid bargaining impasse. The recent decision overrules 50 years of precedent to the contrary. Because of the previous long-standing precedent, the Board's decision will apply only prospectively. [Read more here.](#)

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STATE-BY-STATE COMPLIANCE ALERTS

--Review all **highlighted** states below where you have employees.

Alabama	Kentucky	North Dakota
Alaska	Louisiana	Ohio
Arizona	Maine	Oklahoma
Arkansas	Maryland	Oregon
California	Massachusetts	Pennsylvania
Colorado	Michigan	Rhode Island
Connecticut	Minnesota	South Carolina
Delaware	Mississippi	South Dakota
District of Columbia	Missouri	Tennessee
Florida	Montana	Texas
Georgia	Nebraska	Utah
Hawaii	Nevada	Vermont
Idaho	New Hampshire	Virginia
Illinois	New Jersey	Washington
Indiana	New Mexico	West Virginia
Iowa	New York	Wisconsin
Kansas	North Carolina	Wyoming