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Employment Issues for 2011

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As an interesting 2010 comes to an end, human resource managers and employment lawyers are already preparing for the “hot” employee issues we will face in 2011. Based on recent trends, we believe the following topics will continue to vex and challenge employers in the New Year:

Health Care Reform: Because many health plans coincide with the calendar year, now is the time for employers to consider how the health care reform affects their health plans. Employers that choose to keep grandfathered plans may not be aware of notification requirements which impose an obligation on employers to inform employees in writing that their plan is considered a grandfathered plan. Other employers that are choosing to lose grandfathered status are learning that they will now have to comply with non-discrimination requirements that previously applied only to self-insured plans.

Recommendation: If your plan is a grandfathered plan, be sure to include a notification in your summary plan descriptions. For non-grandfathered plans, verify that the plan does not discriminate in favor of higher-income employees.

DFEH/EEOC Discrimination Complaints: Complaints based on disability (health problems) have skyrocketed over the last several years. Economic pressure, a shrinking work force, and limited inability of many employees to “upgrade” their positions has led to a proliferation of workplace “stress” claims and health-related absences and performance problems. As the work force ages and employers strive to increase productivity, age-related discrimination claims are likely to increase.

Recommendation: Train supervisors on the importance of understanding and being aware of the anti-discrimination laws and how their daily interaction with employees can create liability. Be aware of employers’ duties to “reasonably accommodate” disabilities under state and federal law.

Wage Claims: There will not be a slowdown in claims filed with the Labor Commissioner or court alleging unpaid overtime, missed meal/rest periods, misuse of “salary” exempt classifications and other wage violations. Employees who are laid off or terminated are flocking to administrative agencies and attorney websites to determine if they have been “cheated.” Costs of defense, penalties, and back wages create serious financial exposure for employers of all sizes.

Recommendation: Continually evaluate pay policies and practices to ensure compliance with the myriad of wage and hour laws; seek professional assistance when necessary.

Worker’s Compensation Claims: As employees lose health insurance benefits due to employer or employee cost-saving measures, worker’s compensation policies often become the “de facto” health insurance for many employees. Both legitimate and fraudulent injuries migrate from private insurers to employer-sponsored worker’s compensation policies, resulting in increased costs and decreased productivity.

Recommendation: Develop and implement strict injury-reporting policies, safety training, and supervisor documentation of injuries and incidents.

If you have any questions about these or other employment issues, KDG’s employment attorneys are ready to assist you.