

2020 November Newsletter

Hello Friends, Clients, and Colleagues-

Along with cooler weather, November is also a time to be thankful. With Veteran's Day on the 11th and Thanksgiving on the 26th, we encourage you to take time to honor our veteran's and be thankful for family, friends, and country.

Our November newsletter includes proposed Employee or Independent Contractor guidelines, common unemployment questions and 2021 benefit plan limits. Please reach out if we can help with these or any other HR needs.

Employee or Independent Contractor?

The Department of Labor released proposed regulations to help employers determine if a worker is an "employee" under the Fair Labor Standards Act ("FLSA") or an independent contractor. If an independent contractor is determined to be an employee, the change of status will have an impact on the labor laws, payroll-tax requirements, income-tax laws, and laws governing employee benefits.

The proposed regulation would determine a worker's status based on if the worker is economically dependent on the employer for work or is in business for himself or herself. Two "core factors" being considered are;

- the nature and degree of the worker's control over work and;
- the worker's opportunity for profit or loss based on initiative or investment

Additional factors will be available if the core factors cannot make a determination. Additional factors may include (1) amount of specialized skill or training required (2) degree of permanence in the work relationship and (3) if the work is part of an integrated unit of production.

The Department of Labor is currently taking comments on the proposed regulations. An expected date for the final regulations is not available at this time, but once

finalized, employers should review all independent contractors to determine if they would be considered an employee.

Unemployment Notices – Don't Delay!

~~When a notice from the~~ ~~If a notice from the~~ Texas Workforce Commission (“TWC”) is received, ~~employers need to act quickly, do not delay reviewing the notice regarding unemployment.~~ The deadline to respond ~~can be very~~ is short and not responding by the deadline may have the TWC rule in the former employee’s favor. ~~so act quickly.~~ When responding, remember to;

- Be consistent, ~~in responses when completing the initial claim response and providing further information.~~—If an employer has different changes statements between the initial response and a follow-up response, the hearing officer may will become suspicious and the it could irreparably harm the company’s position. ~~employer could be put in a difficult position.~~
- Provide back-up documentation to support the response, whether it is a resignation letter or documentation of performance issues.

Is a terminated employee eligible for unemployment? If the employee was discharged, the most common mistakes employers make that cause difficulty in unemployment claims, according to the TWC, include;

- Failing to give a final warning prior to discharge;
- Inconsistent discipline between two similarly situated employees;
- Failing to follow the stated disciplinary policy;
- Telling TWC that the claimant was fired for an “accumulation” of incidents, instead of a specific final incident;
- Letting too much time pass between the final incident and discharge;
- Telling TWC that the claimant was “unable” to satisfy performance standards;
- Allowing the impression that the discharge was really based upon a personality dispute; and
- Failing to present firsthand witnesses and proper documentation when needed.

Because of the many Unemployment questions, we will be providing information in our upcoming newsletters.

Just Announced--New Benefit Limits for 2021---The benefit limits for Flexible Spending Accounts, Health Savings Accounts and 401(k) contributions have been announced for 2021.

Benefit	2021	2020
Health Flexible Spending Account	\$2,750	\$2,750
Dependent Flexible Spending Account, Married filing jointly or Single, Head of Household	\$5,000	\$5,000
Dependent Flexible Spending Account, Married filing separately	\$2,500	\$2,500
Qualified Transportation Benefits	\$270	\$270
HSA Contribution Limits for Employee Only	\$3,600	\$3,550
HSA Contribution Limits for Family	\$7,200	\$7,100
HSA Catch-up	\$1,000	\$1,000
401(k) Pre-Tax and Roth	\$19,500	\$19,500
401(k) Catch-Up Contribution (Over age 50)	\$6,500	\$6,500
<i>Note: 401(k) Plans have other limits that may apply based on plan designs.</i>		

Important Deadlines for November

- **November 1, 2020:** Clocks fall back an hour at 2:00 am on Sunday, November 1st, marking the end of Daylight-Saving Time.
- **November 1, 2020:** Open enrollment begins for Marketplace coverage provided through the Affordable Care Act (ACA).
- **November 3, 2020:** Election Day
- **November 2nd – November 6th:** National Veterans Small Business,
- **November 2, 2020:** Form 941 due for third quarter
- **November 11, 2020:** Veteran's Day (federal holiday)
- **November 26, 2020:** Thanksgiving Day

Human Resource Solutions, LLC

Someone you can lean on.

For help with any of your human resource and benefit needs, a free one-hour consultation or information on any of the above items, please contact info@humanresourcesolutionsllc.com

This newsletter is intended to provide general guidance about recent topics in Human Resources. It is not a legal opinion. For answers to your specific questions, please consult with counsel.