

New York's new employment laws hit employers hard

Last year, while you were hard at work, so was the New York Legislature. Law-makers passed a record number of laws affecting employers in 2007. Some laws you may have read about, while others you may have missed. This month, *New York Employment Law* begins a two part series aimed at getting you up to speed on new state laws sure to impact how you manage employees in 2008 and beyond.

Contracts for commissioned salespeople

If you haven't done so already, make certain all your commissioned salespeople have a written contract outlining the terms of their employment. The contract must describe two things in detail—(1) how wages, salary, draws and commissions are calculated while the salesperson is employed *and* (2) what happens after termination.

This change to the New York Wage Payment Law (NY Lab. Law §191(c)) went into effect on October 16, 2007. The new provision also requires both the employee and the employer to sign the contract. You must keep a copy on file for at least three years and make it available for inspection upon request by the commissioner of labor.

What happens if you don't have a written contract spelling out compensation terms? If you can't produce one when the Labor Commission asks, there's a presumption that the terms are what the *employee* claims they are.

If you are unsure what you should include in the written contract, consult your attorney, who can help you come up with an agreement that meets your needs and satisfies the law.

Salary threshold for wage payment exemptions

Also coming your way courtesy of the Legislature is a confusing new salary threshold for determining who must be paid at least semimonthly. As of January 14, 2008, executive, administrative and professional employees earning less

New requirements for protecting Social Security numbers

If you haven't revamped the way you handle Social Security numbers (SSNs), you are behind the eight ball. Effective January 1, 2008, New York General Business Law § 399-dd forbids employers from publishing the SSNs in their possession and requires employers to take certain steps to keep SSNs confidential. The law prohibits:

- Publishing or making a person's SSN available to the public
- Printing the number on a card or tag required for the individual to access products, services or benefits
- Requiring a person to use his number over the Internet unless the Internet connection is secure and the number is encrypted
- Requiring a person to use an SSN to access a web site unless a password or unique personal identification number is also required to access the site
- Printing a person's SSN on any materials mailed to the individual unless state or federal law requires the number to appear on the mailed document.

This is a good time to get together with your information technology staff to see how your organization uses SSNs. For example, do you still assign SSNs as employee ID numbers? Must employees use only their SSNs to access their leave records? Your IT staff may be able to identify other uses that need to be modified.

than \$900 per week have to be paid at least semimonthly. The previous threshold was \$600 per week (NY Lab. Law 190(7)).

In addition, you must obtain written consent in order to pay them by direct deposit.

Why this new rule? According to the Legislature, raising the threshold will expand the New York State Department of Labor's jurisdiction (because it now covers more employees), thereby leading to more effective enforcement. How exactly this provision will do that is an open question.

The law does not raise the amount an executive, administrative or professional employee must be paid to qualify for the exemption from New York state overtime requirements. That cutoff remains at \$536.10 per week.

Nursing mothers in the workplace

New mothers gained new rights in 2007. Effective August 15, 2007, New York joined several other states in requiring that employers provide a reasonable amount of unpaid break time each day for a nursing mother to express breast milk. The Nursing Mothers in the Workplace Law also permits a

nursing mother to use paid break time or meal time to express milk. The benefit continues for up to three years following childbirth.

Employers must make "reasonable efforts" to provide a room or other location, in close proximity to the employee's work area, so milk can be expressed in private.

If an employer can prove that providing the break time would seriously disrupt operations, the employer need not provide the break time.

Because special interest groups pushed hard to get this law passed, chances are employers who try to claim the disruption defense may find themselves the target of protests or even boycotts. Before you dismiss setting up a break room, even in an industrial setting, consider the impact bad publicity may have on your business.

Consult your attorney for specific guidance on what may constitute disrupted operations.

More to come: Next month, we'll bring you up-to-date on seven more laws affecting employers and addressing criminal records, blood donation, military leave and others subjects. Meanwhile, be careful out there!