

Presentation Overview

- Section 1** **Are we in compliance?**
The Employee Handbook and The Health Care Reform Act
- Section 2** **The Employee Handbook and the National
Labor Relations Act**
Top 10 Provisions that frequently implicate Section 7 Rights
- Section 3** **Employee Handbook: Tips and Strategies**
Should Your Employee Handbook Be Updated?

The Health Care Reform Act

Officially known as the
Patient Protection and Affordable Care Act of 2010
a/k/a the Affordable Care Act

The Health Care Reform Act

- Does the Act require lactation breaks for all employees that are nursing mothers?
- What is the definition of a full-time employee for purposes of medical benefits under the Act?
- Are waiting periods for medical benefits permissible?
- What is the definition of a “spouse” for purposes of medical benefits?

The Health Care Reform Act

- A health plan may not impose a waiting period that exceeds 90 days.
- Employer's that have a first of the month following 90 days definition will be out of compliance.
- The terms "spouse", "husband and wife", include an individual married to a person of the same sex, if the individuals are lawfully married under "state" law.
- "State" law includes foreign jurisdictions.

Include a Non-Detailed Employee Benefits Provision and a Contractual Disclaimer

(It's an Employee not Employer Handbook)

Define Full-Time Employees Separately For Purposes of Paid Time Off, etc.

- Fringe benefits are not required in Michigan
- If you elect to provide paid time off, be aware that you are not required to use the 30 hour definition of a full-time employee

Section 2

THE EMPLOYEE HANDBOOK AND THE NATIONAL LABOR RELATIONS ACT

Top 10 Provisions that frequently
implicate Section 7 Rights

National Labor Relations Act

- Section 7 of the Act gives Employees the right to engage in concerted activities for the purpose of mutual aid or protection
- Examples include discussing wages, working conditions, policies, discipline, complaints about supervisors and/or customers

Top 10 Policies that Implicate Section 7 Rights

- Social Media
- Audio/Video Surveillance
- Open Door Communication
- Off-Duty Conduct
- Solicitation/Distribution
- Computer Usage
- Harassment
- Arbitration
- Confidentiality
- Non-Disparagement

Contractual Disclaimer

(It's an Employee not Employer Handbook)

- Such provision is necessary to reduce the likelihood that an employee will sue an employer for breaching the terms and conditions of the Employee Handbook
- Employees should sign a separate contract agreeing to follow the Employee Handbook

Summary of Discussion

- Understand which provisions need to be specific in scope and which provisions need to be broad in scope

Examples:

- Definitions should be **SPECIFIC** enough so that they are not interpreted as “chilling” Section 7 activity
- Policies should be **BROAD** so the application of such policies equally applies to non Section 7 activity

Section 3

Employee Handbook Tips and Strategies:

Should Your Employee Handbook Be Updated?

Top 5 Employee Handbook Tips

- Include an At-Will Employment Policy
- Include a Contractual Disclaimer
- Identify protected classes in an Equal Employment Opportunity Policy (State/Federal)
- Remove Policies that violate the law
- Remove policies that are intended to govern pre or post employment conduct

Top 5 Methods to Update Your Employee Handbook

- Prepare a Social Media Policy
- Expand the Electronic Device Policy
- Include a Video and Audio Surveillance Policy
- Replace Outdated Terms
- Define Full-Time Employment

How Well Written Policies Save Employers Money

WAGE AND HOUR CLAIMS

DISCRIMINATION CLAIMS

NLRA CLAIMS

UIA CLAIMS

EMPLOYEE RETENTION

Hot Issues and Strategies to Manage UIA Tax Liability

1. EFFECTIVE OCTOBER 21, 2013, THERE ARE NEW STANDARDS FOR EMPLOYERS TO REPORT THE UIA AS REQUIRED BY THE - FEDERAL UNEMPLOYMENT INTEGRITY ACT AND THE MICHIGAN EMPLOYMENT SECURITY ACT-MCL 421.20
2. THE MICHIGAN UIA INITIATED 2ND PHASE OF SOFTWARE UPDATE - CLOSED FOR 1 WEEK IN DECEMBER: MI WEB ACCOUNT- ONLINE FILING STARTED FOR EMPLOYERS WITH 25 EMPLOYEES OR MORE IN 2013 - 6 OR MORE 2014, AND - ALL IN 2015
3. FORM UIA 1028 REPLACED FORM 1020 AND 1017 REGARDING QUARTERLY TAX REPORTS AND WAGE DETAIL REPORT
4. CHURCHES CAN BE EXEMPT PURSUANT TO MCL 421.43(o)
5. NON PROFIT COMPANIES CAN BE A REIMBURSING EMPLOYER AND REPAY DOLLAR-FOR-DOLLAR OF THE BENEFITS PAID OUT

Top '5' Tips for Employers to Challenge Claims for Unemployment Benefits

Challenging Claims for Unemployment Benefits

- Be Mindful of the Ten (10) Day Deadline
- Understand what Constitutes Misconduct
- Proving a “Voluntary Quit”
- Obtaining the Media File
- Appealing a Decision in Favor of Employee

Be Prepared...

- Maintaining personnel files of employees in a manner that accurately identifies job performance and reason(s) for separation, not only gives an employer the ability challenge a UIA claim, it can also be essential to defend any other claim that an employee may bring against an employer.
- Prepare an employee handbook and/or policy that requires employees to identify any work problems/issues in writing to minimize the employee's ability to claim that the employer had oral knowledge of the improper working conditions;