

# Work rules changes you need to know

## All employees must be legal residents

The start of 2009 brings with it several changes to laws that will affect your workplace environment, particularly in regard to certain personnel matters that will need attention in coming weeks.

First, if you have five or more employees, when you send 1099 Miscellaneous forms this year, you need to send copies to the Missouri Department of Revenue. Previously these were submitted only to the Internal Revenue Service.

Second, state law now specifically provides that no business in the state may knowingly employ or hire an unauthorized alien. The statute provides criminal penalties for an employer who does so, so be sure to obtain proof of residency (such as a driver's license and Social Security card) for every person you hire. I suggest you make a photocopy of any employee's proof of residency that you use as the basis for hiring and put that copy in the employee file that you keep.

You will need to enroll in the E-Verify program that the Federal Government's Office of Homeland Security has created in order to check the status of your new hires (and you can check your current employees, too, if you wish). To do that, go to the Homeland Security website at <http://www.dhs.gov/index.shtm> and click on the link under "Popular Searches" for E-Verify. You'll be directed to pages with more information about the enrollment and to a link where you can go to enroll so you have access to the program when you need to check Social Security information of employees.

The benefit of using this program

is that you'll have created a rebuttable presumption with the government that every employee you have hired is legally eligible for employment.

The second new law I want to tell you about is that the federal government has

made changes to the Family Medical Leave Act. Effective last month, if you have an eligible employee who has a relative (must be "nearest blood kin") which, oddly enough, eliminates spouses from coverage) who is a service-member in need of care due to injury or illness, your employee can take up to 26 weeks of leave in a 12-month period to care for that service-member.

Also, the law now provides that reasons for taking the standard 12 weeks of leave in a 12-month

period can now include what is called a "qualifying exigency" that arises because the employee's child, spouse or parent is on active duty or has been notified of an impending call or order to active duty.

In order to qualify for this leave, the employee must have been employed with you for at least 12 months (not necessarily consecutive) and must have worked at least 1,250 hours during the most recent 12 months prior to the leave being granted.

Treatment for several matters can allow you to group these 12 weeks together as one period of incapacity and you can require your employees to take this FMLA leave before they qualify for sick leave pay, if your employee manual requires employees taking more than a few days off to take their time off as FMLA leave rather than sick leave.

You can then have included in your policy a provision that allows an em-



Jean Maneke, MPA's Legal Hotline attorney, can be reached at (816) 753-9000, [jmaneke@manekelaw.com](mailto:jmaneke@manekelaw.com).

ployee taking FMLA leave to substitute a paid sick leave day for one day of FMLA leave, which will allow your employee to get paid for some of this leave, and also reduce the time you are required to hold a job open for the employee. I suggest you issue a letter to any employee seeking to qualify for such an absence indicating that you are designating the leave as FMLA leave rather than sick leave, to document the determination.

If you are in the midst of making layoffs within the company, you may include an employee on FMLA leave in your layoffs if you can prove that this person would have been included because of his job duties.

If you need to ask an employee on this leave to document his or her need for leave, you should use Form WH 380. It is available at <http://www.dol.gov/esa/regs/compliance/whd/fmla/wh380.pdf>. You can also ask your employee to sign a HIPAA release allowing you access to his medical information, and ask doctors to verify that the worker is ready to return to work.

There are posters available on-line which detail these changes for your workers. You should obtain these at no charge from government websites and post them in your offices.

Finally, there are changes to the EEOC's rules regarding the definition of a disabled worker. These changes could impact an employer if they include language in a performance review of an employee that indicates the employer believes the worker is unable to perform a job duty because he is handicapped mentally. Such a conclusion could be used by an employee as evidence that he is eligible for certain protections as a disabled person.

It is always important that evaluations focus on the required functions for the job and whether the employee is performing those functions. If an employee cannot perform those functions, then it is up to the employee to advise the employer of this disability and to suggest reasonable accommodation.

The employer is allowed to reject that suggestion as unsuitable for the required duties. You must be reasonable in making that decision.

If you have questions about these rules, please call.