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What Do New Employment Laws Mean for Your Biz?

By Toddi Gutner

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Staying abreast of pending and recently passed legislation and regulations that affect small businesses can be a daunting task.

Indeed, most large companies have entire departments dedicated to such activities. But with the recent passage of a bill to help small businesses expand and hire new employees — by cutting taxes, creating a \$30 billion fund, and introducing the Employee Misclassification Prevention Act — entrepreneurs must be well versed in these issues as well, both to stay compliant and to access potential tax savings.

While it's impossible to do a deep dive on every new law that addresses small-business HR issues, we asked several employment-law experts to pinpoint the most important ones this year.

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It seems “most of the laws being passed are not beneficial to the employer on a federal level, and that there is an expanding amount of protection and penalties which are beneficial to the employee,” says Kenneth Winkler, an employment-law attorney with Berman, Fink, Van Horn.

The list below is designed to make you aware of this legislation and how it may affect your company.

PASSED:

Small Business Jobs Act of 2010

You'd be hard-pressed to find a small company that hasn't had trouble securing bank loans and credit during the Great Recession. In an effort to provide some relief to entrepreneurs, the bill creates a \$30 billion government fund that will be available to community banks to encourage lending to small businesses.

In addition, the new law gives eight separate tax cuts, including the following: a provision that increases to \$500,000 the amount of investments businesses would be allowed to write off this year and next; a temporary payroll-tax exclusion for companies that hire the unemployed; and a write-off of health premiums as business expenses for sole proprietors in 2010.

Hiring Incentives to Restore Employment (HIRE) Act

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This law, enacted earlier in 2010, provides two new tax benefits to employers that hire certain unemployed workers. The first — payroll tax exemption — means employers won't have to pay their 6.2 percent share of the Social Security tax on wages paid to qualifying employees through December of this year.

In addition, for each qualifying employee retained for at least one year, employers will be eligible for a general business tax credit — the “new-hire retention credit” — equal to 6.2 percent of wages paid to the employee over the 52-week period, up to a maximum credit of \$1,000. This is a temporary measure but no less valuable to small businesses, says Jennifer McClain, an attorney with Merhab Robinson & Jackson.

PENDING:

Employee Misclassification Prevention Act

Small businesses are avid proponents of independent contractors — a flexible workforce that is not entitled to the protections of wage and hour laws, employment discrimination laws, unemployment benefits and workers' compensation. A number of small businesses misclassify employees to avoid compliance with these laws, and this bill would help clarify who is an independent contractor versus an actual employee.

The IRS has begun to conduct intensive audits of employers in an effort to crack down on misclassifications. “There are harsh fines and

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penalties that can be substantial for a small business,” says Brian McPherson, a senior associate of the labor and employment law practice of Gunster. As a result, “small businesses will have to keep much more documentation,” he says.

Paycheck Fairness Act (PFA)

Under the current Equal Pay Act, once employees have provided evidence of sex discrimination, the burden of proof shifts to the employer to show that the difference in wages resulted from “any factor other than sex.” The PFA will require employers to find a “bona fide factor” other than gender for a difference in pay. “Small businesses are opposing this because it will restrict employers’ flexibility and it opens up class action possibilities,” says McClain.

Family and Medical Leave Enhancement Act

There are a number of potential changes with this act. For example, the current law affects only companies with 50 or more employees, while a proposed amendment would lower that minimum to 25 employees.

Furthermore, “If you have an employee out on leave for 12 to 26 weeks, you [would] have to hold their job for them — unpaid, but [the employee would stay] on the company’s insurance. That’s a long time,” says McPherson. It could be very difficult for a small business “to absorb the loss of employees for extended periods of time, and the costs that come in hiring and training someone new,” he says.

Even if you’ve religiously followed the nuances of these regulations, it’s best to contact your business attorney to make sure your books are in order.

Toddi Gutner is an award-winning journalist, writer and editor and currently a contributing writer covering career management issues for The Wall Street Journal.

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