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Compliance Connection

May 2022

Federal Compliance Update

Federal: New FMLA Mental Health Resources

The U.S. Department of Labor's Wage and Hour Division (WHD) enforces the [Family and Medical Leave Act \(FMLA\)](#), which enables workers to take time off for mental health treatment for themselves or to care for family members. The WHD provides educational materials to assist in FMLA compliance along with the following new resources (released in May 2022) for workers, their advocates, employers, and their representatives:

- [Fact Sheet #280: Mental Health and the FMLA](#)
- [Frequently Asked Questions](#)
- [Press Release](#)
- [Blog - The FMLA: Essential for Mental Health-Friendly Workplaces](#)

The [WHD website](#) provides more information about the FMLA and other laws it enforces.

Federal Form I-9 Rule Flexibilities, One Ending and Another Extended: Compliance Reminder

DHS Ending Temporary Policy for Form I-9 Identity Documents

Beginning May 1, 2022, the Department of Homeland Security (DHS) is ending its temporary Form I-9 policy that allows employers to accept List B documents that expired on or after March 1, 2020.

DHS adopted the temporary policy in response to the difficulty of renewing documents during COVID. Since then, document-issuing authorities have reopened or provided alternatives to in-person renewals. Starting May 1, 2022, employers must return to only accepting unexpired List B documents.

Action Item

If an employee presented an expired List B document between May 1, 2020, and April 30, 2022, you need to update their Form I-9 by July 31, 2022, as follows:

- If the employee is still employed, they must present an unexpired document from either List A or List B. If presenting a List B document, it could be a renewed version of the document previously provided, or a different List B document. You should enter the document title, issuing

authority, document number, and expiration date in the “Additional Information” field of Section 2, and initial and date the change. USCIS provides an example of how to do this [here](#).

- If the employee is no longer employed, no action is needed.
- If the List B document was auto-extended by the *issuing authority* so that it was technically unexpired when it was presented, no action is needed.

Remote Form I-9 Document Inspection Flexibility Extended Until October 31, 2022

DHS has once again extended the policy that provides employers with flexibility related to in-person Form I-9 document inspection. This latest extension is in effect until October 31, 2022.

In March 2020, DHS began providing flexibility to certain employers who were hiring fully remote workers due to COVID by suspending the in-person Form I-9 document inspection requirement. This policy has been extended several times.

You can read the extension announcement [here](#) and keep an eye on [this page](#) for additional Form I-9 news.

Federal: 2023 Inflation Adjusted Amounts for HSAs and HDHPs Released; ACA Out-of-Pocket Limits

On April 29, 2022, the IRS released the 2023 Health Savings Accounts (HSA) and high deductible health plans (HDHPs) inflation-adjusted [amounts](#):

- Annual HSA contribution limitation:
 - Self-coverage only: \$3,850 (\$200 increase from 2022)
 - Family coverage: \$7,750 (\$450 increase from 2022)
- Annual catch-up contribution maximum
 - \$1,000 for HSA-eligible individuals age 55 or older (unchanged from 2022)
- Minimal annual HDHP deductible:
 - Self-coverage only: \$1,500 (\$100 increase from 2022)
 - Family coverage: \$3,000 (\$200 increase from 2022)
- Maximum annual HDHP out-of-pocket expenses (deductibles, copayments, and other non-premium amounts):
 - Self-coverage only: \$7,500 (\$450 increase from 2022)
 - Family coverage: \$15,000 (\$900 increase from 2022)

This applies to all HDHPs regardless of whether they're for essential health benefits.

These amounts are different from the Affordable Care Act (ACA) maximum out-of-pocket [limits](#) for 2023 (released by the Department of Health and Human Services in December 2021) for non-grandfathered health plans, which are:

- Self-coverage only: \$9,100 (\$400 increase from 2022)
- Family coverage: \$18,200 (\$800 increase from 2022)

Unlike the HDHP out-of-pocket maximums, the ACA out-of-pocket maximums apply to in-network essential health benefits.

State Compliance Update

California: State Supreme Court Rules Break Premiums are Wages and Subject to Penalties

On May 23, 2022, the Supreme Court of California ruled in [Naranjo v. Spectrum Security Services](#) that extra pay for missed breaks is considered wages under Cal. Lab. Code §§ 203 and 226 and must be:

- Reported on employee wage statements when they're working; and
- Paid in their [final paycheck](#) within legal deadlines. The default deadline for paying employees who resign is immediately when they quit if they gave sufficient advance notice and within 72 hours if they didn't give sufficient notice.

According to the court's analysis, "California law requires employers to provide daily meal and rest breaks to most unsalaried employees. If an employer unlawfully makes an employee work during all or part of a meal or rest period, the employer must pay [them] an additional hour of pay." This additional hour is the extra pay for missed breaks (missed-break premium) the court addressed and determined to be reportable and payable as wages under §§ 203 and 226.

The court continues: "Although the extra pay is designed to compensate for the unlawful deprivation of a guaranteed break, it also compensates for the work the employee performed during the break period. The extra pay thus constitutes wages subject to the same timing and reporting rules as other forms of compensation for work."

Subsequently, finding the missed-break premium pay as wages subject to California Labor Code's timely payment and reporting requirements supports § 203 waiting-time penalties and § 226 wage statement penalties, and employers can now be penalized for not reporting them on paystubs or paying them upon termination.

California: West Hollywood Amends its Minimum Wage and Leave Ordinance

On May 12, 2022, the West Hollywood City Council approved amendments ([Ord. No. 22-1180](#) summary) to and [regulations](#) for the city's minimum wage and leave ordinance. Some changes include:

- **Employee count calculation changed to per quarter:** For existing employers, employee count is calculated based on the employer's average number of employees per quarter (during the most recent calendar year to account for any employee fluctuation throughout the year). For new employers, an initial determination of employee count is based on the actual number of hires at the time they open. Thereafter, their employee count is determined by the average number of paid employees per week in the first 90 days.
- **New waiver available for leave provisions:** Employers that can demonstrate the leave requirements would cause them to declare bankruptcy, shutdown, reduce their workforce by more than 20 percent, or curtail their employees' total hours by more than

30 percent may qualify for a one-year waiver for the leave provisions. Employers that apply for a waiver need to let their employees know about it.

The new regulations also discuss:

- Guidance for payment of the citywide minimum wage, qualification of employers outside the city, and calculation of consumer price index.
- Guidance for the leave provisions and how employers can apply for a waiver.

The city's [website](#) provides more information.

Compliance Calendar

June

No reporting to discuss for June

July

No reporting to discuss for June

August

8/1 – Form 5500 Deadline (calendar year plans)

8/1 – Form 941 Filing Deadline (second quarter)

8/1 – PCORI Fee Deadline

8/1 – VETS-4212 Filing Open (federal contractor)

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