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THE HOWE & HUTTON REPORT

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TRENDING NOW

CARES ACT PROVIDES NONPROFIT RELIEF FUNDS - Congress has passed, and the President has signed into law, the Coronavirus Aid, Relief and Economic Security (CARES) Act, one of several new laws intended to address the damage done to the U.S. by the COVID 19 pandemic. The CARES Act contains provisions specifically applicable to nonprofit organizations, some for smaller nonprofits (having fewer than 500 employees) and some even for larger ones. For smaller nonprofits, assistance includes Small Business Administration (SBA) loans and loan forgiveness. Other assistance for smaller and larger nonprofits includes Emergency Economic Injury Disaster Loans and grants, an employee retention tax credit and deferral of payroll taxes. Nonprofits should reach out to their primary banks in order to apply for help, as they will be the agents for administering SBA loans. They should also contact their tax advisors. Some assistance can be used for payroll costs, mortgage/debt interest, rent and utilities. Applicants will have to certify that funds will be used only for approved purposes. *Relief funds under the CARES Act are available in limited amounts, but they may be increased under later legislation. These relief options only became available in April, and lenders are already swamped with applications. Some assistance is available to for-profits as well as nonprofits, which increases the number of eligible applicants and makes early application for relief an essential. For more information you can visit <https://home.treasury.gov/policy-issues/cares>.*

TRENDING NOW

CORONAVIRUS OUTBREAK SPAWNS FRAUD – Disasters always bring out frauds, as well as price gouging and hoarding. So has it been with the coronavirus (COVID 19). The Federal Trade Commission notes that there has been an onslaught of phishing emails promoting awareness and prevention tips, some purporting to come from a virologist or the Centers for Disease Control. They offer a link to fake information about exposure and quarantines. But the links may contain malicious malware or steal your data, or both. Crooks may deploy fake social media posts and official-sounding websites to take your money and get your personal information. Studies show that more than 4,000 new domains referencing either “corona” or “COVID” have been registered this year, and domains containing those words are 50 % more likely to be associated with phishing or malware than other domain names. *So, what can you do to protect yourself from these crooks? Don't click on links from email if you don't recognize the sender. Consult the Centers for Disease Control or World Health Organization websites directly for information on the COVID 19 outbreak. Ignore ads for prevention, treatment or cures, and don't send money to anyone sending you such ads. Don't send contributions for coronavirus research or relief unless they come from known charities such as Red Cross or United Way. Contact the Federal Trade Commission at www.ftc.gov if you run across any of these scams. The FTC is the federal agency designated to deal with them.*

GOVERNMENT CRACKS DOWN ON HOARDING AND PROFITEERING - President Trump has signed an executive order to combat price increases and hoarding during the coronavirus pandemic. The U.S. Department of Health and Human Services has been given the authority to designate items that can't be accumulated in more than reasonable amounts or sold at prices far above market value. This after reports that people have been hoarding toilet paper, bleach, meat and canned soups during the coronavirus outbreak. Amazon.com, ebay Inc. and other sites have also noted attempted sales of supplies such as cleaning products at vastly inflated prices. *The U.S. Justice Department is supposed to be investigating these now illegal activities. Attorney General William Barr says the Department won't arrest a family for having a big supply of bathroom tissue at home. But, he says, "If you have a warehouse of surgical masks, you'll hear a knock on the door."*

REGULATION

NO INSURANCE COVERAGE FOR SALE OF NONCOMPLIANT PRODUCTS – The U.S. Court of Appeals for the Seventh Circuit allowed an insurance company to avoid liability to defend under a liability insurance policy when a policy holder was sued for delivering products that allegedly failed to meet the requirements of the International Building Code, contrary to its contracts. The policy holder argued that the insurance company should have been required to defend under an insurance policy that covered “property damage caused by an occurrence that takes place in the coverage territory.” But the Court of Appeals concluded that the insurance company had no duty to defend because the underlying lawsuits against the policy holder did not allege an “occurrence,” which was defined in the insurance policy as an “accident.” Here, the policy holder was being sued for “negligent misrepresentation, fraudulent misrepresentation, deceptive business practices, false advertising, consumer fraud, breach of warranties and breach of contract.” *Watch the language of your insurance policies. They are drafted by attorneys for the insurers, and they will contain language that primarily benefits them.*

NON-PROFITS

EVENT CANCELLATIONS STIR INTEREST IN CONVENTION INSURANCE – As governmental action and COVID-19 fears caused cancellation of many events around the U.S., interest in convention cancellation insurance is growing, but too late for nonprofits operating some events this year. Such insurance can be expensive and come with exclusions that may limit coverage for cancellations caused by outbreaks of disease, among other things. *Nonprofits with major events that often contribute a significant portion of their annual income need to at least consider purchasing appropriate coverage after a careful review of policy provisions and a cost-benefit business decision.*

EMPLOYMENT

NEW EMPLOYEE SAFETY LAWS WILL SOON TAKE EFFECT IN ILLINOIS – Two new Illinois laws designed to provide for employee safety in accommodations. One is the Lodging Services Human Trafficking Recognition Training Act, which, beginning June 1, requires hotels, motels and casinos to provide employee training in recognizing human trafficking, as well as protocols for reporting such trafficking to authorities. The other is the Hotel and Casino Employee Safety Act, which, beginning July 1, requires each such business to (1) provide certain safety notification devices for employees assigned to work alone in a guest room or restroom, and (2) maintain and publicize anti-sexual harassment policies. Illinois is one of the foremost states in enacting laws for the protection of employees. *Similar laws may be coming soon throughout the U.S., and, eventually, they may not apply only to the types of businesses targeted by these two Illinois laws.*

EMPLOYERS CAN'T RELY ON PRIOR PAY TO JUSTIFY GENDER PAY DISPARITIES – Reaffirming an earlier decision by the same court, the U.S. Court of Appeals for the Ninth Circuit has again held that employers can't rely on prior pay history to justify gender pay disparities. In its new decision, the court dealt with a case in which a female math teacher discovered that she was being paid thousands of dollars less than a younger male colleague who did not have her level of education. She sued her employer under the federal Equal Pay Act, which mandates that all employees be paid the same for “work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions,” except where payment is made under certain specific enumerated circumstances or a differential is “based on any other factor other than sex.” However, the employer, admitting there was a pay disparity in its workplace, said it was based on “any other factor other than sex” because it was based on prior pay received by math teachers. “Bad argument,” the Court of Appeals effectively ruled, interpreting the “any other factor other than sex” exception in the Act to be “limited to job-related factors.” The Court of Appeals said that allowing pay discrimination based on employees’ prior pay “risks perpetuating the history of sex-based wage discrimination.” *Some state laws prohibit employers from even discussing prior pay with workers in negotiating job offers. But the Court of Appeals in this case specifically said “our opinion does not prohibit this practice.” In other words, the federal Act lets employers talk to workers about prior pay, but they bear the burden of showing a court that current gender pay disparities are not based on the salaries workers have previously received.*

OFFER OF CHANCE TO RETAKE TEST HELPS EMPLOYER AVOID LIABILITY – A federal district court in Virginia rejected an employment discrimination charge filed by a worker who failed a physical abilities test and then resigned rather than accepting the employer’s offer to let her retake it. The test was required of all new applicants for a job in law enforcement, and the court noted that it was for employees who might be assigned to “hazardous duty.” The employee said she was too tired to retake the test, which the employer required her to do within 24 hours of failing it if she wanted a “re-do.” But the court found that “her decision to resign rather than retake the exam and potentially fail a second time” was too speculative to support a discrimination charge. *Mandatory physical abilities tests must be job-related, and employers need to consider whether they would have an unduly adverse impact on any group of workers. But giving workers a second chance to avoid negative employment actions resulting from a test is normally going to reduce the potential for failing employees to bring a successful discrimination charge.*

ABSENCE NOTICES REQUIRED IF ABSENCES CAUSED BY DISABILITY – The U.S. Court of Appeals for the Seventh Circuit has held that a frequently absent worker could not successfully charge her employer under the Americans with Disabilities Act for failing to accommodate her disability resulting from a back injury. Evidence showed that the employee had repeatedly been counseled that she had to provide the employer with notice for an absence from work. But she kept missing work, failed to tell the employer when she would be absent, and was eventually fired for attendance and performance problems. In addition, she never requested the employer to provide her with an accommodation for a disability. All of these failures doomed her suit against the employer under the Act, because they demonstrated to the court that she wasn’t qualified for her job. *The court noted that this employee had documented attendance and performance issues predating her back injury, and erratic absences from work, for which no notice is provided, are not protected by the Act, even if caused by a disability. Further, the court said that employees “typically must request an accommodation” under the Act before claiming that they have been denied one.*

COMPANY FAULTED FOR NOT IMPLEMENTING ITS OWN SAFETY PROGRAM – The U.S. Court of Appeals for the District of Columbia Circuit has issued a decision that an employer violated the Occupational Safety and Health Act by not adopting feasible abatement methods to protect employees. The workplace hazard was an unusual one, since it involved violence by psychiatric patients against healthcare workers. Occupational Safety and Health Administration (OSHA) issued a citation against the employer based on an anonymous complaint that understaffing had caused the incidence of violence against staff members at the employer’s facility to increase. The employer defended with the argument that OSHA had failed to show there were additional steps it could have taken that would have materially reduced the threat of violence against its workers. But the court rejected that argument, pointing out that the employer had promulgated, but not implemented, steps intended to reduce patient violence against its employees. *The court characterized the employer’s “principal shortcoming” as being a failure to implement the policies it had on paper to prevent violence in the workplace, saying that the employer “can hardly object that it was blindsided by the utility of measures it had already embraced, at least on paper.” Employers should consider whether understaffing can create a hazard to workers under OSHA. Furthermore, they should review their policies to see if they have been practicing what they preached in those policies.*

TAXATION

IRS SAYS EMPLOYER MANDATE PENALTIES MAY LAST FOREVER – The Office of Chief Counsel for the Internal Revenue Service recently issued a memorandum saying that the Employer Shared Responsibility Payment of the Affordable Care Act (ACA), also known as Obamacare, is not subject to the Internal Revenue Code’s general statute of limitations. That’s bad news for employers thinking they could avoid such payments by filing Forms 1094 and 1095 with employees and the IRS and then waiting until the normal IRS statute of limitations expired in three years. The IRS is allowed to ignore that statute if they suspect fraud or willful tax evasion. But the Office of the Chief Counsel cited another reason for taking the Shared Responsibility Payment out of the general statute of limitations, saying that Forms 1094 and 1095 do not contain sufficient information for the IRS to determine whether employers are liable for the Payment. *Bottom line: the IRS may assess the Payment at any time, regardless of whether the employer has previously submitted Forms 1094 and 1095 or how long ago the forms were submitted to the IRS and employees.*

TREASURY DEPARTMENT WARNS OF TAX SCAMS – The U.S. Treasury Department has issued a new flyer warning taxpayers about fraudulent phone calls they may receive from crooks pretending to be employees of the Internal Revenue Service and demanding money for taxes and penalties owed. The IRS generally first contacts people by mail, not by phone, and if they do, they don’t demand immediate payment or request personal or financial information. In fact, if you receive such a call, the Treasury Department advises that you should hang up immediately and fill out the “IRS Impersonation Scam” form on the website of the Treasury Inspector General for Tax Administration at www.tigta.gov, or call the Department at 1-800-366-4484. *The Department says that more than 2.5 million people have reported IRS impersonation calls to the government, and more than 15,800 victims have reported that they paid criminal impersonators over \$80 million. Through January 31, 2020, 170 people have been charged with criminal activities involving IRS impersonation, and 93 have been sentenced collectively to more than 393 years’ imprisonment.*

IRS PLANS MORE EXEMPT ORGANIZATION EXAMINATIONS – The Internal Revenue Service is adding additional revenue agents to conduct more examinations of exempt organizations in 2020. Forty new hires were added to the Service for that purpose in the early days of the year, and more hiring is expected throughout 2020. In addition, the Service has said that they are going to be rolling out new strategies to discover potential noncompliance with the tax laws, focusing on underreporting of income, over reporting of charitable contributions, investments, nonmember income received by Section 501(c)(7) social clubs, organizations that were previously for-profits, organizations that may be providing unlawful private benefit to individuals (including groups donating to or paying expenses for individuals), organizations that improperly filed Form 1023-EZ instead of the regular Form 1023, and filers operating bingo and other gambling activities. *The IRS has reduced auditing of exempts in recent years. But it looks like that’s about to end.*

NEWS AND EVENTS



Jon Howe recently participated in the following webinars:

- March 23: Meetings in the Age of Coronavirus---Hotel/Venue Contracts and Cancellation Strategies
- April 7: Survive and Thrive: Covid-19 Survival Skills for Independent Planners and Small Business Owners

Jerry Panaro is participating in a webinar April 23 for Bankers on Line. The webinar is: *The FFCRA [Family Friendly Coronavirus Response Act] and Alternatives to Layoffs*.

This webinar will discuss options and alternatives to terminating employees due to the coronavirus pandemic. However, implementation of alternatives to layoffs will depend in part on whether an employee is classified as “exempt” or “nonexempt” under the FLSA. For example, can the bank ask an exempt employee to volunteer not to work one or two days a week without losing his or her status as an exempt employee? Can the bank reduce the exempt employee’s salary, without losing the exemption? Can a bank reduce the hours and/or the pay of a “nonexempt” employee?



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