CLIENT ALERT

Henry, McCord, Bean, Miller, Gabriel & LaBar, P.L.L.C.

Highland Rim SHRM

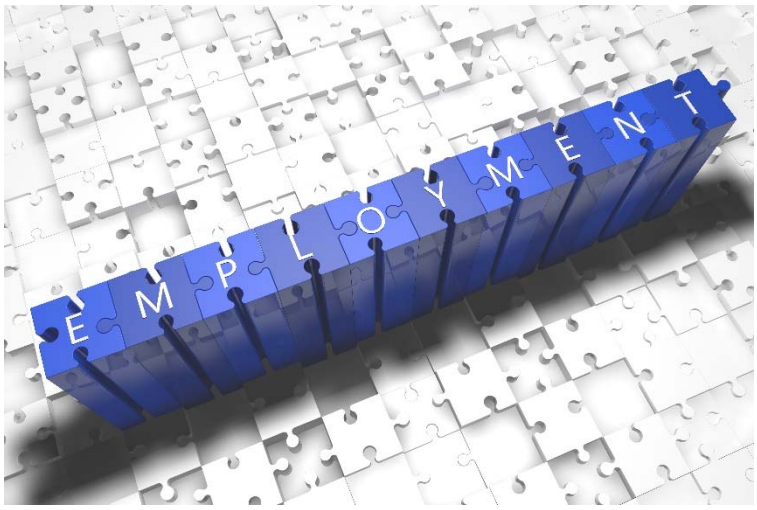
AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

HR TRENDS FOR 2018 – Highland Rim Society for Human resource management meeting

By: John R. LaBar

January 26, 2018

Wow! 2018. After the celebration ends and everyone gets back to work, a good question to ask, and the topic of this Highland Rim SHRM Presentation is: *HR Trends for 2018*. So, let's get down to it.



New Tax Act: On Jan. 11, the IRS released Notice 1036 which contains the updated income-tax withholding tables for 2018. Employers should begin using the 2018 withholding tables immediately (and most accounting software has updates available). The deadline for employers to start using the new tables is Feb. 15, 2018.

Revised Form W-4 in the Works: The new withholding tables are designed to work with the current Form W-4, *Employee's Withholding Allowance Certificate*, that workers have already filed with their employers to claim withholding allowances. Employers should continue to use the current W-4 until a new form is issued.

The IRS, however, is working on revising Form W-4 to reflect changes in the new law regarding available itemized deductions, increases in the child tax credit, the new dependent credit and repeal of dependent exemptions. The new Form W-4 is expected to be issued in the near future. While employers are not required to update their employee's W-4's, this is a good time to remind employees to let you know if they want their W-4 updated to reflect any increased exemptions.

E-Verify: Federal contractors and subcontractors subject to the E-Verify Federal Acquisition Regulation (FAR) requirement must enroll in and use E-Verify. Beginning Jan. 5, new federal contractors and subcontractors with a FAR requirement must provide their Data Universal Numbering System (DUNS) during the E-Verify enrollment process. Existing E-Verify employers designated as federal contractors with a FAR requirement do not have to provide their DUNS number, but will be prompted to enter it in E-Verify when they update their company profile.

As a reminder, E-Verify employers have until Feb. 28, 2018 to download case information from the "*Historic Records Report*" if they want to retain this information. After that date, all records over 10 years old will be purged.

Company Annual Reports: For companies who file Annual Reports with the Tennessee Secretary of State, companies should be on guard for solicitations for services which look official and which comes from businesses such as the "Tennessee Council for Corporations". These forms look like Government Forms and can trick people into thinking the services offered are a government requirement. These offers are the similar to the ones that the Tennessee Secretary State filed fraud actions against, except they have now changed the color on their envelopes, have added a small disclaimer, and have changed street addresses so that they are not on Rosa L. Parks Ave.

EEOC: The Employer Information Report EEO-1, otherwise known as the EEO-1 Report, is required to be filed with the U.S. Equal Employment Opportunity Commission's EEO-1 Joint Reporting Committee. Reports must be submitted and certified by March 31, 2018 at the latest.

All employers required to keep Form 300, the Injury and Illness Log, must post Form 300A, the annual summary of job-related injuries and illnesses, in a workplace common area by Feb. 1, 2018. This year's summary must include the total number of job-related injuries and illnesses that occurred in 2017. Form 300A reports a business's total number of fatalities, missed workdays, job transfers or restrictions, and injuries and illnesses as recorded on Form 300. It also includes the number of employees and the hours they worked for the year. If there were no recordable injuries or illnesses, a company must still post the form, with zeroes on the appropriate lines.

Tennessee Unemployment Premiums: On Jan. 1, 2018, Tennessee's taxable wage base decreased from $8,000 to $7,000. This has returned the rate to the level it was at before the Great Recession when in 2008, the State raised the based to $9,000. The Taxable Wage Base applies to all employers who pay quarterly state unemployment insurance premiums. Tennessee uses money from the trust fund to pay qualified claimants up to 26 weeks of unemployment insurance benefits.

United States Department of Labor: On December 5, 2017, the U.S. Department of Labor published an Notice of Proposed Rulemaking (NPRM) and request for comments regarding the tip regulations under the Fair Labor Standards Act (FLSA). The Department is proposing to rescind portions of its tip regulations issued pursuant to the FLSA that impose restrictions on employers that pay a direct cash wage of at least the full Federal minimum wage and do not claim a tip credit against their minimum wage obligations. This NPRM seeks the views of the public on the proposed rescission of those portions of the regulations.

The 30-day comment period for the NPRM was originally scheduled to end on January 4, 2018; however, the Department has extended this comment period for an additional 30 days, to February 5, 2018. The proposed rule would allow employers to distribute customer tips to larger tip pools that include non-tipped workers, such as cooks and dishwashers. This would likely increase the earnings of those employees who are newly added to the tip pool and further incentivize them to provide good customer service. The proposed rule would additionally provide employers greater flexibility in determining pay practices for tipped and non-tipped workers. It also may allow for a reduction in wage disparities among employees who all contribute to the customers' experience.

National Labor Relations Board: **'Microunits'**: On December 15, the National Labor Relations Board (NLRB) issued a 3-2 party-line decision reversing the 2011 *Specialty Healthcare* decision, which opened the door for unions seeking to organize "microunits." The December 15 decision involving PCC Structurals, Inc., reinstated the old community-of-interest standard for determining an appropriate bargaining unit in union representation cases. The NLRB ultimately is the decision making in a contested workplace as to whether a group of employees a union seeks to represent constitutes an "appropriate" collective bargaining unit. The *Specialty Healthcare* ruling was seen as a win for unions since it made it easier for them to target a small number of employees likely to look favorably on unionization. The new decision can be considered a big win for employers in the organizing process.

Confidential Information Policy: On Aug. 14, the NLRB issued a rare decision in which it upheld Macy's, Inc.'s "confidential information policy." The policy at issue provided, among other things, that employees could not use/divulge various types of confidential information, including marketing plans, pricing strategies, social security numbers, credit card numbers, etc. The United Food & Commercial Workers union challenged the policy on grounds that it allegedly "chilled" workers' rights, including by limiting employees' ability to appeal to the company's customers. In recent years, the NLRB has struck down similar confidentiality policies in various contexts. In Macy's, the NLRB ruled that Macy's confidential information policy was narrowly drafted and did "not interfere with the [employees' rights] insofar as they restrict the use or disclosure of social security numbers and credit card numbers, or to the extent they restrict the use of customer contact information obtained from [the company's] own confidential records."

Joint-Employer Standard "*Browning-Ferris Industries*": On December 14, 2017, the NLRB in a 3-2 decision overruled the *Browning-Ferris* decision, which broadened what could be considered a joint employment relationship. Under the *Browning-Ferris* decision, employers that had even indirect control over employees of another employer could be considered joint employers. The new ruling reinstates the old standard that was used for decades before the 2015 *Browning-Ferris* decision issued by the Obama-era NLRB. In all future and pending cases, two or more entities will be deemed joint employers under the National Labor Relations Act (NLRA) if there is proof that one entity has *exercised* control over essential employment terms of another entity's employees (rather than merely having reserved the right to exercise control) and has done so *directly and immediately* (rather than indirectly) in a manner that is not limited and routine. Accordingly, under the pre–*Browning Ferris* standard restored today, proof of indirect control, contractually-reserved control that has never been exercised, or control that is limited and routine will not be sufficient to establish a joint-employer relationship. The Board majority concluded that the reinstated standard adheres to the common law and is supported by the NLRA's policy of promoting stability and predictability in bargaining relationships.

Reissuance of Opinion Letters: On January 5, the DOL announced that it was reissuing 17 opinion letters from the Bush Administration. The move follows the DOL's announcement last summer that it was returning to the practice of issuing opinion letters, a practice that was discontinued during the Obama administration in favor of issuing "administrative interpretations" of the DOL's views on issues related to laws and regulations enforced by the department's Wage and Hour Division (WHD). Before making the change to administrative interpretations, the DOL would provide opinion letters in response to questions from employers about how laws such as the Fair Labor Standards Act (FLSA) applied to their situation.

If you have any questions about Human Resource or any Labor or Employment Law issues for your organization, John R. LaBar is available to consult with employers regarding a review of their Employment Law and HR needs.

John R. LaBar is a named member of Henry, McCord, Bean, Miller, Gabriel & LaBar, P.L.L.C. His practice includes assisting business and corporate clients in business/corporate, real property, tax, intellectual property, creditor bankruptcy, corporate litigation and all aspects of labor and employment law matters. He has served as an Adjunct Professor of Law at the University of Tennessee College of Law, is a frequent author in legal newsletters, and is often a speaker and acts as faculty for legal education seminars on employment law topics.