Employee Benefits Update

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Introduction

- Changes to FMLA coverage for same-sex spouses
- Pending cases regarding same-sex marriage
- Other employee benefits issues

Changes to FMLA

- 12 workweeks of unpaid, job-protected leave each year because of -
 - The birth of a child or the placement of a child for adoption or foster care, to care for an immediate family member who has a serious health condition, or because of their own serious health condition.
 - A "qualifying exigency" arising because a spouse, son, daughter, or parent is on active duty or call to covered active duty status in a foreign country (or has been notified of an impending call or order to covered active duty in a foreign country) in the Armed Forces.

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Changes to FMLA

•FMLA applies to -

- •Private sector employers with 50 or more employees
- •Public agency employers, without regard to the number of employees
- •Local educational agency employers, without regard to the number of employees.

Changes to FMLA

Initial DOL Guidance following <u>Windsor</u> –

FMLA leave based on the employee's samesex marriage only if the employee lived in a state that recognized same-sex marriage.



Changes to FMLA

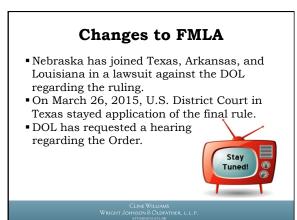
• 2015 Guidance (effective March 27, 2015):

- Eligible employees in a legally valid same-sex marriage will be able to take FMLA leave to care for a spouse or family member, regardless of the state where the employee lives.
- Includes same-sex marriages from foreign countries

Changes to FMLA

- 2015 Guidance (effective March 27, 2015):
 Eligible employees will be able to take qualifying exigency leave due to their same-sex spouse's covered military service
 - Eligible employees will be able to take military caregiver leave for their same-sex spouse.
 - Eligible employees may take FMLA leave to care for step-child of a same-sex spouse.

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Pending Cases

Waters v. Ricketts

- Oral Argument scheduled for May 12, 2015 in Omaha
- Case was consolidated with cases from Arkansas, South Dakota, and Missouri, which also found those states' bans to be unconstitutional

Pending Cases

- Obergefell v. Hodges
 - Oral Argument scheduled for April 28, 2015
 - Decision expected by June 30, 2015



Employee Benefits Issues

- Cafeteria Plan Change:
 - •Optional Carryover of up to \$500
 - Does not count against \$2,500 (indexed) annual limitation on salary reduction contributions
 - Consider the order of carryover amounts
 - Cannot have grace period and carryover

Employee Benefits Issues

• Carryover:

- What does employer presently do with forfeitures?
- COBRA issues?
- W-2 Reporting?
- Limit carryover to employees who elect to make new salary reductions?
- Pass-through TPA administrative fees?
- Minimum carryover?
- What about nondiscrimination testing?

Employee Benefits Issues

- New model COBRA notices:
 DOL issued updated model COBRA notices
 - Information about Exchange
 - Future model notices released from DOL's website: http://www.dol.gov/ebsa/ cobra.html
 - Appropriately completed model notice constitutes compliance with COBRA's notice requirements
 - Limited special enrollment period in Exchange following COBRA event

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Employee Benefits Issues

- Employers cannot reimburse premiums for individual insurance policies
- Notice 2013-54 says this violates ACA rules
 - Prohibition on annual dollar limitsRequirements for preventive services without
 - cost-sharingExcise taxes of \$100 per employee per day
 - (\$36,500 per year)
 - Notice 2015-17 Limited Transition Relief

Employee Benefits Issues

- Records Retention Income & FICA
 - In most (but not all) cases, IRS and Social Security Administration require 4-year retention of payroll records.
 - 4 years from the due date of the employee's personal income tax return



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Employee Benefits Issues

- Records Retention Fringe benefits
 - Code Section 6039D(b) employer required to keep whatever records are needed to determine whether the plan meets the requirements for excluding benefits from income.
 - Retain these records at least 4 years

Action Steps for School Districts

- 1. Change FMLA practices
- 2. Monitor Federal Court cases
- 3. Consider Cafeteria Plan Carryover
- 4. New Model COBRA Notices
- 5. Do NOT reimburse individual insurance policies
- 6. Consider records retention issues
- 7. Windsor Amendment to 403(b) Plans
- 8. Windsor Amendment to Cafeteria Plan





Employee Benefits

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