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EMPLOYMENT UPDATES

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I. Employment Law Updates

Summary: No major legal development, but new trends in the marketplace impacting and changing existing laws.



A. COVID-19 Updates

1. Mandates

2. Safety Standards



A. COVID-19 UPDATES CONT'D.

1. Mandates

a. Status of Law:

- i. Conditions of Participation Mandates
- ii. Federal Contractor

b. Exemptions:

- i. Reasonable Accommodations
- ii. Review/Oversight

c. Issues:

- i. Timing of Starts
- ii. Partially Vaccinated



A. COVID-19 UPDATES CONT'D.

2. Safety Standards

a. ETS:

- No longer governing; awaiting new standards.

b. OSHA:

- i. Audits
- ii. Oversights
- iii. General Duties

c. State Laws:



B. TRENDS IN THE WORKPLACE

1. Labor Shortages

2. Inflation



B. TRENDS IN THE WORKPLACE CONT'D.

1. Labor Shortages
 - a. Effects of pandemic burnout, etc.
 - b. Mental health challenges.
 - c. Work life balances.
 - c. Wage increases/opportunities elsewhere.
 - c. Generational and cultural changes.
2. Inflation



C. RECRUITMENT AND RETENTION PLAN

1. Consider Signing or Referral Bonuses
2. Retention Bonus
3. Student Loans
4. Review Benefits – Mental Health Benefits
5. Alternative Scheduling



D. LEGAL ISSUES ARISING FROM LABOR SHORTAGES

1. Fair Labor Standards Act
 - a. Take care with exempt workers.
 - b. Adjusting the schedules: 8/80.

2. Americans with Disabilities Act
 - a. More requests in schedule changes.
 - i. Review essential functions.
 - ii. Consistency.
 - b. Light duty granted more often.
 - i. Only if not essential function.
 - ii. Temporary clear.



D. LEGAL ISSUES ARISING FROM LABOR SHORTAGES CONT'D.

c. Leave issues.

i. Distinction between discretionary and ADA leave.

3. Family Medical Leave Act

a. Mental health issues.

b. Notifications during leave/triggers for leave.

c. Leave abuse: now typically seen as avoiding FMLA.



E. EMPLOYEE RIGHTS

1. National Labor Relations Board
 - a. Definition of covered employees grows
 - b. Recent rulings, discussed

2. Protected Speech
 - a. Political
 - b. Workplace complaints, wages



E. EMPLOYEE RIGHTS CONT'D.

3. Discrimination Claims

- a. Sharp increases in race and religious claims
- b. Gender identity issues
- c. Diversity and inclusion initiatives
- d. Pay Equity Act

4. Non-competes; disfavored



F. HIPAA/CYBER SECURITY

1. Professional Attacks
2. More common: employees violating the law
3. Accidental breaches



II. Health Law Updates



A. Main Laws

1. Anti-Kickback Statute (AKS)
2. The Stark Law (Stark)
3. Civil Money Penalty
4. False Claims Act (FCA)



B. Enforcement

1. FCA: Incorrect Billing
2. Opiates
3. Physician Compensation
4. Vendors



C. New Proposed Safe Harbors and Exceptions

1. Anti-Kickback Statute
2. The Stark Law



D. Risk Areas

1. Physician Compensation
 - a. Employment Agreements / Recruitment Agreements
 - Employment AKS Safe Harbor and Stark Exception
 - b. Other Compensation Arrangements
 - Personal Services AKS Safe Harbor and Stark Exception
 - c. Requirements
 - Fair Market Value, Commercial Reasonable, Business Necessity, and Varying Volume or Value of Referrals
 - d. Valuation
 - i. AKS and Stark Definition
 - ii. Practical Guidelines



D. Risk Areas (Continued)

2. Vendor Relationships
 - a. Discounts/Warranties/Compensation
 - b. Physician Relationship
 - c. Vendor Credentialing Recommended



III. Service Agreements



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1. Inflation and Cost Escalators
 2. Consider the Length of the Term
 3. Excluded Providers
 4. Consider Force Majeure Provisions

Questions?



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