

EMPLOYMENT, LABOR & BENEFITS LEGAL UPDATE



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Plan/Prevent/Protect – The New Strategy to Enforce Compliance with Federal Employment Laws

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On April 26, 2010, the Department of Labor (“DOL”) announced a new program to enforce compliance with federal employment laws. The program is one of President Obama’s initiatives.

The program, entitled “Plan/Prevent/Protect,” will allow the DOL to leverage its limited resources by shifting the burden of proving compliance to the employer. While this program has not yet been launched by the DOL, it will be implemented by regulatory actions enforced by the Occupation Safety and Health Administration (“OSHA”), Mine Safety and Health Administration, Office of Federal Contract Compliance Programs, and the Wage and Hour Division (“WHD”).

The DOL’s goal for Plan/Prevent/Protect is to encourage greater compliance by creating awareness of workplace rights among employees. Employees will be enabled to report violations that, according to the DOL, will allow effective enforcement of federal employment laws. The DOL says that “[e]mployers and others in the Department’s regulated communities must understand that the burden is on them to obey the law, not on the Labor Department to catch them violating the law. This is the heart of the Labor Department’s new strategy.”

The program will require employers to create compliance plans and processes, as well as designate people that will be tasked with achieving compliance in the work place. Employers will then need to implement the plans and evaluate their effectiveness in achieving compliance.

Plan/Prevent/Protect consists of three steps that employers must address. The “Plan” step consists of creating a compliance program to identify and solve any areas of risk in the workplace, including risks of legal violations and safety. The compliance program would be made available to employees so that they may help monitor compliance. To enact the second step, “Prevent,” the employer will need to implement the compliance program in a manner that will prevent legal violations and safety risks. To enact the third step, “Protect,” the employer will need to review the compliance program on a regular basis to ensure that it meets its objectives.

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Agencies under the DOL will enact regulations to implement Plan/Prevent/Protect. One specific action that will be taken by OSHA will be to require employers to develop and implement an injury and illness prevention program to avoid safety and health hazards in the workplace. OSHA may also enact regulations requiring employers to establish an employee infection control program to protect employees from contracting infectious diseases in places where employees would be at most risk. OSHA will begin to develop rules for its injury and illness prevention program in the spring and summer of 2010.

Rulemaking to implement Plan/Prevent/Protect will also be proposed by WHD to require employers to provide information to employees regarding their employment. One rule contemplated by WHD would require the employer to perform an analysis if it determines that an employee is excluded from Fair Labor Standard Act coverage. This analysis would then be provided to the employee. This requirement would affect those employers who retain independent contractors, as a classification analysis would need to be performed to show why the worker was classified as an independent contractor as opposed to an employee.

While Plan/Prevent/Protect is merely in the planning stages, employers need to be aware of these proposed rules so that they can be integrated into the employer's compliance efforts. 📌

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ABOUT RUDER WARE'S EMPLOYMENT, LABOR & BENEFITS GROUP

Ruder Ware's Employment, Labor & Benefits practice group works in tandem with private and public employers providing counsel on all aspects of human resource management. The breadth of services offered, unique for a law firm headquartered in Wausau, Wisconsin, includes counsel on highly sensitive issues such as workplace harassment, employee privacy, drug and alcohol testing, and disciplinary issues. In addition, attorneys design and assist with the development, implementation, and enforcement of policies and procedures relating to benefits, hiring practices, employee handbooks, state and federal discrimination laws, FMLA, FLSA, ADA, OSHA, and workers' compensation.

Attorneys in the group regularly represent public and private sector employers in collective bargaining, negotiations, union elections, unfair labor practices, and grievance arbitration matters in addition to guiding nonunion clients on maintaining their union-free status.

Actively involved in organizations with human resource professionals as the primary member base, our attorneys are in tune with the various sensitivities and complexities of the profession. Our attorneys often present seminars and in-house training on employment law topics both across the state and nationwide.

Areas of practice by the Employment, Labor & Benefits practice group:

- Employee Benefits & Executive Compensation
- Employment Law
- Labor Law

PLAN AHEAD WITH AN EMPLOYMENT LAW AUDIT

Countless lawsuits are filed in state and federal courts and with governmental agencies by disgruntled employees every year. Employers spend hundreds of thousands of dollars and many work hours defending against these lawsuits. Of course, there is no guarantee that any given employee will not file a lawsuit. Ruder Ware can help your company proactively detect "hidden problems" by performing an audit of your human resource operations. Tailored to your needs, an employment law audit involves a detailed review and analysis of all current employment-related policies and procedures. The goal of an audit is to ensure your company is in compliance with current employment laws so you are prepared if a lawsuit arrives. Employment law audits are available upon request. For a complete checklist of policies and procedures included within the audit or for an estimate for this service, contact any attorney within the Employment, Labor and Benefits group.



As part of a full-service law firm, our attorneys provide clients with a one-stop approach to their legal needs. Ruder Ware, the largest Wisconsin law firm headquartered north of Madison, also provides legal counsel in Business Transactions; Litigation & Dispute Resolution; and Employment, Labor & Benefits.