HR COMPLIANCE LIBRARY
Ideas & Trends

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INSIDE

AFFORDABLE CARE ACT

How to count hours of service and why it's important

How many full-time employees do you really have? Does your calculation include full-time equivalent employees? That determination is based on employees' hours of service, and that's something you need to know, because, for 2016, employers with at least 50 employees are applicable large employers (ALEs) and are, therefore, subject to the employer shared responsibility provisions of Code Sec. 4980H. Employees counted for purposes of determining liability for employer shared responsibility payments include full-time "equivalent" employees, as well as full-time employees.

Under Act Sec. 1513(a) of the Affordable Care Act, employers designated as ALEs must offer employees (and their dependents) health care coverage that meets ACA standards of minimum essential coverage or make an employer shared responsibility payment to the IRS. Employers must make a payment to the IRS if the employer does not offer minimum essential coverage to at least 95 percent of its full-time employees (and their dependents) and at least one full-time employee receives the premium tax credit for purchasing coverage through the health insurance marketplace, according to a tax tip recently issued by the IRS, reminding employers that it is important to review their ALE status annually.

For 2015, the shared responsibility provisions applied to employers with 100 or more full-time employees, and those with 50-100 employees could apply for transition relief. The transition relief is not available, however, for 2016.

Fines are steep. How much are these shared responsibility payments? If you have 50 or more full-time employees or full-time equivalent employees, based on hours of service, and you are an ALE for purposes of the employer shared responsibility provisions, and you do not offer them insurance or your offer of insurance coverage is not affordable or doesn't meet certain minimum standards, you are generally subject to penalties. You may owe a payment if at least one of your full-time employees enrolls in a plan through the Health Insurance Marketplace and receives a premium tax credit.

Unlike calculations for purposes of determining the amount of an employer shared responsibility payment that you may owe, you would only take into account full-time employees and not full-time equivalent employees. The fines are steep, however, and it is best to avoid them.

If you are an ALE and you do not offer coverage, or you offer coverage to fewer than 95 percent of your full-time employees (and their dependents), you could owe a payment equal to the number of your full-time employees for the year (minus up to 30) multiplied by $2,000, if at least one full-time employee receives the premium tax credit. (Remember

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that for purposes of this calculation, a full-time employee does not include a full-time equivalent).

If you offer coverage for some months but not others during the calendar year, the payment is computed separately for each month for which coverage was not offered. The amount of the payment for the month equals the number of full-time employees that the employer employed for the month (minus up to 30) multiplied by 1/12 of $2,000.

If you offer coverage to at least 95 percent of your full-time employees (and their dependents), but one or more of your full-time employees still receives a premium tax credit, the payment is computed separately for each month. The amount of the payment for the month equals the number of full-time employees who receive a premium tax credit for that month multiplied by 1/12 of $3,000. The amount of the payment for any calendar month is capped at the number of the employer's full-time employees for the month (minus up to 30) multiplied by 1/12 of $2,000.

Note that the employer shared responsibility provisions provide an inflation adjustment mechanism beginning in years after 2014.

Know hours for *all* employees. You must keep track of *all* your employees' hours of service for this purpose, not just full-time employees. According to the IRS, which of your employees is full-time is "based on each employee's hours of service" and the rule determining ALE status (although not employer shared responsibility payments) is based not just on the number of your full-time employees, but on the number of your full-time equivalent employees as well.

According to the IRS, an employee is "full-time" if he or she works an average of at least 30 hours per week. IRS final regulations provide that, for this purpose, 130 hours per month is considered to be the monthly equivalent of 30 work hours per week.

What about disability periods? The above seems simple enough, but what about employees on disability, either long-or short-term? Do you count the hours they would normally work, or the hours for which they are receiving disability? Those situations are more confusing, but in Notice 2015-87, the IRS addresses that dilemma.

The IRS incorporated into regulations under Code Sec. 4980H certain relevant provisions of ERISA regulation 2530.299b-2(a) to provide parallels between the two sections on the basic definition of hours of service and clear up any discrepancies, but it did not incorporate certain mechanical rules in the ERISA regulations that do not relate directly to the identification of which employees are full-time employees. These provisions incorporate the ERISA provisions to address situations in which payments are made or due under a plan that is just maintained to comply with applicable worker's compensation, or unemployment or disability laws to an employee for a period during which no duties are performed.

In those situations, for purposes of using hours of service to determine the full-time status of an employee, there is no hour of service, whether the employee is directly or indirectly paid. Likewise, the IRS says, incorporation of the ERISA provisions means that payments just reimbursing an employee for medical expenses that he or she incurred do not result in hours of service.

The IRS points out, however, that there is a mechanical limitation in the ERISA regulations on the crediting of those hours which is irrelevant to the definition of full-time employee and full-time equivalent employee. That means that there is no 501-hour limit on the hours of service that must be credited to an employee for any single continuous period during which the employee does not work, if the hours of service would otherwise qualify as hours of service.

Source of payments. The IRS regulations under Code Sec. 4980H incorporate some other provisions of ERISA Reg. Sec. 2530.200b-2 on the hours of service for which an employee is not performing any work duties. These relate to the source of the payments and are to be used to determine if an hour of service must be credited. For this purpose, a payment is considered to be made by or due from an employer no matter whether the payment comes directly or indirectly

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from the employer. This includes trust funds and insurers to which the employer might contribute or pay premiums, and it does not matter if the payments are made for a particular employee or for a group of employees.

So, in situations where an employee is not currently performing services for an employer for a certain period, but is receiving short-term or long-term disability payments during that period, these result in hours of service while the recipient employee retains status as an employee of the employer. The only exception to this is if the payments are made from an arrangement to which the employer did not contribute directly or indirectly.

Therefore, if the employee pays into a disability arrangement with after-tax contributions, that arrangement would generally be treated as one to which the employer did not contribute, and those payments would not give rise to hours of service. Similarly, for periods during which the employee is not working but is receiving worker's compensation wage replacement benefits provided by a state or local government program, there are no hours of service.

Counting methods. Finally, how exactly do you count hours of service even for your full-time workers? The IRS provides two methods for that. There is a default, monthly measurement period, during which an ALE would determine each employee's status as a full-time employee by simply counting the employee's hours of service for a calendar month.

The IRS has also provided an optional look-back stability period safe harbor to determine whether ongoing, as opposed to newly hired, employees are full-time employees. Under this method, an employer can determine an employee's status as a full-time employee during a future, or "stability" period, based on the employee's hours of service during a prior, or "measurement" period.

More specifically, an employer determines each employee's full-time status by looking back at a defined period of not less than three but not more than 12 consecutive calendar months, as chosen by the employer (standard measurement period), to determine whether during the measurement period the employee averaged at least 30 hours of service per week. This look-back method is only available to determine and compute liability for an employer shared responsibility payment, and not for determining if an employer is an ALE.

If the employee is determined to be a full-time employee during the measurement period, the employee is treated as a full-time employee during a subsequent stability period, regardless of the employee's number of hours of service during the stability period, so long as he or she remains an employee. For an employee determined to be a full-time employee during the measurement period, the stability period would be a period of at least six consecutive calendar months that follows the measurement period and is no shorter in duration than the measurement period.

If the employee is determined not to be a full-time employee during the measurement period, the employer is permitted to treat the employee as not a full-time employee during a stability period that followed the measurement period, but the stability period cannot exceed the measurement period. ■

Source: *"How do you count hours of service, and why is it so important?", written by Carol E. Potaczek, J.D., and published in the February 10, 2016 edition of Employment Law Daily, a Wolters Kluwer Law & Business publication.*

EXPATRIATE WORKERS

Western European cities top Mercer's annual quality of living ranking

Despite recent security issues, social unrest, and concern about the region's economic outlook, European cities continue to offer some of the world's highest quality of living, according to Mercer's 18th annual Quality of Living Survey. Safety, in particular, is a key factor for multinationals to consider when sending expatriate workers abroad, both because it raises concerns about the expat's personal safety and because it has a significant impact on the cost of global compensation programs.

Vienna continues its reign in the top spot for overall quality of living, followed by Zurich (2), Auckland (3), and Munich (4). Vancouver (5) is North America's highest ranking city, and Singapore is the highest ranking Asian city, holding 26th place. Mercer's survey also identifies the personal safety ranking for the full list of cities; it is based on internal stability, crime levels, performance of local law enforcement, and the home country's relationship with other countries. Luxembourg tops the personal safety list and is followed by Bern, Helsinki, and Zurich – all tied in 2nd place. Baghdad (230) and Damascus (229) are the world's least safe cities, according to the ranking.

Americas

Quality of living remains high in North America, where Canadian cities dominate the top of the list. Vancouver (5) is the highest ranking city, followed by Toronto (15) and Ottawa (17). In the United States, San Francisco (28)

ranks highest for quality of living, followed by Boston (34), Honolulu (35), Chicago (43), and New York City (44). In Mexico, Monterrey (108) is the highest ranking city. The lowest ranking cities in North America are Monterrey (108) and Mexico City (127) and for the Caribbean, Havana (191) and Port-au-Prince (227). In South America, Montevideo (78), Buenos Aires (93), and Santiago (94) remain the highest ranking cities for quality of living, whereas Bogota (130), La Paz (156), and Caracas (185) rank lowest.

Canadian cities all rank high for personal safety, with Calgary, Montreal, Ottawa, Toronto, and Vancouver sharing 16th place. Kingston (199), Tegucigalpa (201), and Port-au-Prince (211) have the lowest levels of personal safety in the region. In 96th place, Montevideo is South America's highest ranking city for personal safety; Caracas (214) is the lowest.

Europe

Despite economic uncertainties, Western European cities continue to enjoy some of the highest quality of living worldwide; they fill seven places in the top 10 list. Vienna continues to lead the ranking and has done so in the last seven published rankings. It is followed by Zurich (2), Munich (4), Dusseldorf (6), Frankfurt (7), Geneva (8), and Copenhagen (9). In 69th place, Prague is the highest ranking city in Central and Eastern Europe, followed by Ljubljana (76) and Budapest (77). The lowest ranking cities in Europe are Kiev (176), Tirana (179), and Minsk (190).

European cities also dominate the top of the personal safety ranking with Luxembourg in the lead, followed by Bern, Helsinki, and Zurich, which are tied for the number two spot. Vienna ranks 5th Geneva and Stockholm are placed jointly in 6th and Copenhagen, Dusseldorf, Frankfurt, Munich, and Nurnberg all share 11th place. A number of key or capital cities rank considerably lower as many suffered either terrorist attacks or social unrest in the last few years; examples include Paris (71), London (72), Madrid (84), and Athens (124).The recent political and economic turmoil in Greece, which resulted in violent demonstrations in Athens and other cities in the country, has undermined its safety ranking. Kiev (189), St. Petersburg (197), and Moscow (206) rank lowest for personal safety in the region.

Asia-Pacific

The vast region of Asia has considerable variation in quality of living. In 26th place, Singapore remains its highest ranking city, whereas Dhaka (214) is the lowest. Following Singapore in Southeastern Asia is Kuala Lumpur (86). Other key cities include Bangkok (129), Manila (136), and Jakarta (142). Japanese cities rank highest in Eastern Asia, with Tokyo in 44th place. Other notable cities are Hong Kong (70), Taipei (84), Shanghai (101), and Beijing (118).

For personal safety, the rankings for Asian cities again vary greatly. Singapore (8) ranks highest overall and is followed by five Japanese cities—Kobe, Nagoya, Osaka, Tokyo, and Yokohama—that are tied for 32nd place. Other key cities include Hong Kong (37), Taipei (78), Beijing (97), Seoul (115), New Delhi (142), and Jakarta (172). Following considerable political unrest and terrorist attacks in several tourist areas over the last few years, Bangkok ranked 173rd for personal safety.

New Zealand and Australia have some of the highest quality of living worldwide. Auckland ranks 3rd globally, Sydney 10th, Wellington 12th, and Melbourne 15th. For personal safety, Pacific cities also rank high, with Auckland and Wellington sharing 9th place. Canberra, Melbourne, Perth, and Sydney share 25th place.

Middle East and Africa

Dubai (75) continues to rank highest for quality of living across Africa and the Middle East, followed by Abu Dhabi (81) and Port Louis (83) in Mauritius. The South African cities of Durban, Cape Town, and Johannesburg rank 85th, 92nd, and 95th, respectively. Baghdad (230) ranks lowest regionally and worldwide.

Only a handful of cities in this region place in the top 100 for personal safety with Abu Dhabi ranking highest in 23rd place, followed by Muscat (29), Dubai (40), and Port Louis (59). The upcoming host of the 2022 FIFA World Cup, Doha, ranks 70th for personal safety. Regional geopolitics is highly volatile and characterised by safety concerns, political turmoil, and an elevated risk of terrorism. The lowest ranking cities in the region are Damascus (229) and Baghdad (230), both of which have witnessed continual violence and terrorist attacks that weigh upon the daily life of locals and expatriates.

About the survey

Mercer's survey is conducted annually to enable multinational companies and other employers to compensate employees fairly when placing them on international assignments. Employee incentives include a quality-of-living allowance and a mobility premium. The survey also provides hardship premium recommendations for over 450 cities throughout the world; this year's ranking includes 230 of these cities. ■

Source: *Mercer.*

CYBERSECURITY

DHS issues first guidance on Cybersecurity Act

Implementation of the Cybersecurity Act of 2015 has begun despite the law's being targeted for repeal by some members of Congress and the ongoing debate over how to deal with encrypted data. Title I of the Act, known as the Cybersecurity Information Sharing Act, or CISA, requires the Department of Homeland Security (DHS) and other civilian and intelligence community agencies to issue guidance on many topics over the next several months, including a first batch of guidelines on federal and non-federal entities, operational procedures, and privacy and civil liberties.

Sharing by non-federal entities. The CISA created a voluntary framework through which non-federal entities can share cyber threat indicators with the federal government. The law directed the DHS and the DOJ to jointly adopt guidance on these and other activities within 60 days after the December 18, 2015 enactment of the Cybersecurity Act of 2015, which was appended as Division N to the omnibus appropriations bill.

Definitions of key terms drive the sharing process. The CISA defines "non-federal entity" to mean private entities and non-federal governmental agencies, such as the District of Columbia and the Commonwealth of Puerto Rico ("federal entity" means a U.S. department or agency). The law further defines "private entity" to mean any person or private group, including various types of business entities. But "non-federal entity" and "private entity" omit foreign powers as defined by the Foreign Intelligence Surveillance Act.

Non-federal entities generally can share cyber threat indicators and defensive measures for a "cybersecurity purpose," that is, to protect an information system or information on that system from a cybersecurity threat or security vulnerability. According to the non-federal entity guidance, information can be shared only if it directly relates to and is necessary to identify or describe a cybersecurity threat.

Information sharing by non-federal entities generally enjoys liability protections, if done in accordance with the CISA. There are several ways to share information, including via the DHS's capability and process. Similar guidelines apply to the sharing of cyber threat indicators and defensive measures by federal entities.

Other guidance. The Senate debate on the bill that would supply the basic text of the CISA focused on how personally identifiable information could be swept up in the sharing of cyber threats and defensive measures almost as a form of surveillance. The enacted version of the legislation requires the DHS and the DOJ to issue guidelines on privacy and civil liberties for federal entities' information sharing efforts.

According to the guidelines, the widely accepted Fair Information Practice Principles that are part of the National Strategy for Trusted Identities in Cyberspace form the "primary guiding principle" underlying all CISA-authorized activities by federal entities. The CISA guidelines generally apply to cyber threat indicators and not to defensive measures, which likely will not contain personal information about a specific individual.

Still, the guidelines would apply to the extent a defensive measure includes a cyber threat indicator. Moreover, federal entities are "strongly encouraged" to follow the guidelines in dealing with defensive measures, to the extent appropriate, even if there is no explicit requirement to follow them. Sanctions can be imposed for the misuse of shared information.

A fourth set of guidelines contains interim procedures for the receipt by all federal entities of cyber threat indicators and defensive measures under the CISA. These procedures apply to both the DHS's Automated Indicator Sharing capability and to the receipt and processing of cyber threat indicators by non-automated means. ■

PAID LEAVE

Survey reveals inequality among those who do and don't have sick days

New analysis by the Institute for Women's Policy Research (IWPR) finds that four in ten workers in the United States lack access to paid sick days, and among those who do have access, only 55 percent of workers actually used any sick days in the previous year. Inequality in access to paid sick days exists within and across occupations, with supervisors more likely to have paid sick days than non-supervisors. Hispanic, low-wage, and food service and personal care workers are least likely to have access to this important benefit.

On average, workers with access to paid sick days take 2.1 sick days per year, compared with 1.6 days for workers without the benefit. This suggests that many people who do not have paid sick days are going to work sick.

"This new research shows how the lack of paid sick days contributes to inequality in our nation. At the same time, workers' use of paid sick days, when they have them, is incredibly modest overall. Generous paid sick days policies can

promote good health and cover workers in the rare instances when they need more than a few days off," said IWPR Vice President and Executive Director Barbara Gault, Ph.D.

The briefing paper also finds inequality in access to paid sick days:

- More than two in three supervisors (67 percent) have access to paid sick days, while less than half of non-supervisory workers (47 percent) have access.
- Four out of every five food service workers do not have access to paid sick days. Food service jobs have one of the largest disparities in access to paid sick days between supervisors and non-supervisors as well, with food service supervisors being more than twice as likely to have access to paid sick days as non-supervisors (40 percent for supervisors, compared with 18 percent for non-supervisors), underscoring the inequalities present within occupations.
- Three in four personal care workers do not have access to paid sick days. Both food service and personal care are jobs with frequent contact with the public.
- The lowest earners are the least likely to able to take a day off with pay when they are sick, yet they are least likely to have paid sick days. Only one in five (22 percent) of those earning less than $15,000 a year have access to paid sick days, whereas nearly nine in 10 (86 percent) of those earning $65,000 or more have access to paid sick days.
- Hispanic workers are much less likely to have paid sick days than white, Asian, or black workers: less than half of Hispanic workers (46 percent) in the United States have access to paid sick days, while two-thirds (67 percent) of Asian workers have access.
- Access to paid sick days among men and women is equal (60 percent), but access is particularly important for women, who are more likely than men to have family care responsibilities. A recent Kaiser Family Foundation study found that nearly 40 percent of mothers say they are solely responsible for staying home from work with sick children, compared with only 3 percent of fathers.

"These data indicate that workers least able to lose pay when they are sick are also the least likely to have employer-provided paid sick days," said Jeff Hayes, Ph.D., IWPR Program Director for Job Quality & Income Security. "And in the case of restaurant and personal care workers, this lack of access can have serious public health ramifications, including increased spread of contagion." ■

Source: *Institute for Women's Policy Research.*

HR QUIZ

For how long must employers keep employee benefit plans records?

Issue: *Spring is just around the corner, and you are ready to clean out the files. Which employee benefit plan records must you keep and for how long must you keep them?*

Answer: Under the *Employee Retirement Income Security Act of 1974* (ERISA), persons required to file any description or report or to certify any information necessary under the law's reporting and disclosure requirements must maintain records. These records must provide the details necessary to allow for information in the required reporting and disclosure documents to be verified, explained, clarified, or checked for accuracy and completeness. Vouchers, worksheets, receipts, and applicable resolutions should be kept as well.

Keep for six years. ERISA has a blanket record retention requirement of six years for information relating to plan documents, summary plan descriptions (SPDs), annual reports, summary annual reports (SARs), individual benefit statements, and any other certifications and reports that are required to be filed under its reporting and disclosure rules (or would be required to be filed but for an exemption). Thus, these records should be kept available for examination for at least six years after the filing date of the documents (or the date the documents would have been filed except for an exemption or simplified reporting requirement).

The six-year period begins on the date reports (such as 5500 forms) are required to be filed under ERISA (or if there is a small plan exemption, the date on which reports otherwise would have been required to be filed). Thus, ERISA-related records must be retained, for example, even for welfare benefit plans with fewer than 100 participants.

There are no specific requirements for disposal of employee benefit information; however, standard best practices for document disposal would clearly apply to any information with individual identifiers, and any personally identifiable health information would be covered under HIPAA privacy rules.

EBSA regulations, which require annual reports — such as the 5500 — to be filed electronically, do not affect the six-year record retention requirement.

Source: *ERISA Sec. 107.*

FAMILY AND MEDICAL LEAVE ACT

Fact sheet lays out joint employer responsibilities under FMLA

At the same time it issued its Administrative Interpretation on joint employment under the FLSA, the Labor Department issued sub-regulatory guidance on the joint employment relationship and the corresponding responsibilities of primary and secondary employers under the Family and Medical Leave Act. The guidance includes both an example and a chart to illustrate the specific responsibilities of primary and secondary employers under the FMLA.

Joint employer determination. The fact sheet, which was released in conjunction with Wage and Hour Division's Administrator's Interpretation No. 2016-1 on joint employment under the Fair Labor Standards Act (and the Migrant and Seasonal Agricultural Worker Protection Act), says that joint employment exists "when an employee is employed by two (or more) employers such that the employers are responsible for compliance with the FMLA." The analysis used to determine whether there is joint employment under the FMLA is the same one performed under the FLSA. The joint employer analysis under the FLSA is also fleshed out in a separate fact sheet also issued in conjunction with AI No. 2016-1.

In the FMLA fact sheet, the WHD notes the importance of joint employment in determining employer coverage and employee eligibility under the FMLA, because joint employers' responsibilities under the FMLA vary depending on whether they are the primary or secondary employer of the employee taking FMLA leave.

Is the employer primary or secondary? According to the WHD, where an individual is employed by two employers in a joint employment relationship under the FMLA, in most instances, one employer will be the primary one while the other will be the secondary employer. The fact sheet provides a list of factors that may be used to determine whether an employer is primary or secondary:

- who has authority to hire and fire, and to place or assign work to the employee;
- who decides how, when, and the amount that the employee is paid; and,
- who provides the employee's leave or other employment benefits.

In the case of a temporary placement or staffing agency, the agency is most commonly the primary employer.

Determining FMLA coverage. In determining employer coverage and employee eligibility under the FMLA, employees who are jointly employed by two employers must be counted by both employers, regardless of whether the employee is maintained on one or both of the employers' payrolls, the fact sheet states.

The employee's worksite is the primary employer's office from which the employee is assigned or to which the employee reports, for purposes of determining whether a jointly employed employee works at a worksite where the employer employs at least 50 employees within 75 miles. But where the employee has physically worked for at least one year at a facility of a secondary employer, that location is the employee's worksite.

Primary employer responsibilities. Under the FMLA, the primary employer is responsible for:

- giving required notices to its employees,
- providing FMLA leave,
- maintaining group health insurance benefits during the leave, and
- restoring the employee to the same job or an equivalent job upon return from leave.

The primary employer is also barred from interfering with a jointly employed employee's exercise of or attempt to exercise FMLA rights, or from firing or discriminating against an employee for opposing a practice that is unlawful under the FMLA. Primary employers must keep all FMLA-required records required with respect to primary employees.

The fact sheet makes the important point that a primary employer must meet all of its FMLA obligations, even when a secondary employer is out of compliance or does not provide support to the primary employer in meeting these responsibilities.

Secondary employer obligations. Whether or not the secondary employer is an FMLA-covered employer, it is prohibited from interfering with a jointly employed employee's exercise of or attempt to exercise FMLA rights, or from firing or discriminating against an employee for opposing a practice unlawful under the FMLA. Under certain circumstances, the secondary employer is responsible for restoring the employee to the same or equivalent job upon return from FMLA leave, for example, when the secondary employer is a placement agency client and continues to use the services of the agency and the agency places the employee with that client employer. Secondary employers also must keep basic payroll and identifying employee data as to any jointly-employed employees.

Secondary employers, of course, are also responsible for compliance with all FMLA provisions for their regular permanent workforce. ■

EEOC CHARGES

Retaliation charges filed with EEOC still most common, up 5 percent

In its fiscal year 2015, the EEOC received 89,385 charges of workplace discrimination, up from 88,778 in FY 2014. Retaliation charges were up nearly 5 percent (39,757 in FY 2015 vs. 37,955 in FY 2014) and continue to be the leading concern raised by workers across the country, according to the data released by the Commission on February 11. Disability charges increased by 6 percent from last year (26,968 in FY 2015 compared to 25,369 in FY 2014) and are the third largest category of charges filed. Race charges comprise the second largest category.

Charge data. Retaliation again was the most frequently filed charge of discrimination, with 39,757 charges, making up 45 percent of all private sector charges filed with EEOC, according to year-end data. The Commission noted that it is currently seeking public input on its proposed update of enforcement guidance addressing retaliation and related issues.

In FY 2015, the following number of charges were filed according to bases alleged (percentages add up to more than 100 because some charges allege multiple bases):

- Retaliation: 39,757 (44.5% of all charges filed)
- Race: 31,027 (34.7%)
- Disability: 26,968 (30.2%)
- Sex: 26,396 (29.5%)
- Age: 20,144 (22.5%)
- National Origin: 9,438 (10.6%)
- Religion: 3,502 (3.9%)
- Color: 2,833 (3.2%)
- Equal Pay Act: 973 (1.1%)
- Genetic Information Non-Discrimination Act: 257 (0.3%)

The EEOC additionally noted that charges raising harassment allegations, which span industries and affect the most vulnerable workers, made up nearly 28,000 charges, or 31 percent. Employees alleged harassment based on race, age, disability, religion, national origin and sex, including sexual orientation and gender identity. Calling it a "pressing issue," the EEOC pointed out that in March 2015, the Commission launched a Select Task Force on the Study of Harassment in the Workplace to address this issue.

Charge resolutions. The EEOC pointed to several accomplishments in FY 2015, including its resolution of 92,641 charges during its latest fiscal year. The agency secured more than $525 million for victims of discrimination in private sector and state and local government workplaces through voluntary resolutions and litigation. This included $356.6 million for victims of employment discrimination in private sector and state and local government workplaces through mediation, conciliation, and settlements; $65.3 million for charging parties through litigation; and $105.7 million for federal employees and applicants.

Nearly 15,000 charge resolutions were achieved through the agency's administrative processes—settlements, mediations, and conciliations—including 268 resolutions of systemic investigations, obtaining more than $33.5 million in remedies. The EEOC's mediation program achieved a success rate of almost 80 percent. The EEOC underscored the rate at which the agency successfully *conciliated* charges, which rose to 44 percent in FY 2015, up from 38 percent the year before, demonstrating a strong commitment to voluntary resolutions.

Lawsuits. The agency filed 142 merits lawsuits in FY 2015, up from 133 in FY 2014. The majority of those lawsuits alleged Title VII violations, followed by ADA violations. This included 100 individual lawsuits and 42 lawsuits involving multiple victims of discriminatory policies, of which 16 were systemic. Legal staff resolved 155 lawsuits alleging discrimination.

Important milestones. The EEOC highlighted these milestones for FY 2015:

- In the *Abercrombie* case, the Supreme Court held that an employer may not make a job applicant's religious practices a factor in employment decisions, even if the employer only suspects the practice is religious in nature.
- EEOC's updated pregnancy guidance [in light of *Young v. United Parcel Service, Inc.*] ensures that employers make reasonable accommodations for pregnant women who need them to keep working.
- EEOC's sexual harassment and retaliation case against New Breed Logistics resulted in the Sixth Circuit ruling for the first time that Title VII protects workers from retaliation for telling harassers to stop their harassment.

Sexual orientation and gender identity. The Commission also underscored its recognition, in Baldwin v. Department of Transportation, that discrimination against an individual because of his or her sexual orientation is necessarily discrimination because of sex and, therefore, prohibited under Title VII. The EEOC also found, in Lusardi v. Department of Transportation, that denying a transgender individual access to the restroom corresponding to his or her gender identity constituted harassment based on sex.

In one of its first lawsuits filed to protect transgender workers, the Commission succeeded in reaching a settlement with Lakeland Eye Clinic, which agreed to adopt a company policy prohibiting discrimination against employees who are transgender, transitioning from one gender to another, and/or not conforming to gender stereotypes. ■

HR NOTEBOOK

Real average hourly earnings increase 0.4% in January

Real average hourly earnings for all employees increased 0.4 percent from December to January, seasonally adjusted, the U.S. Bureau of Labor Statistics (BLS) reported February 19. This result stems from a 0.5-percent increase in average hourly earnings combined with no change in the Consumer Price Index for All Urban Consumers (CPI-U).

Real average weekly earnings increased 0.7 percent over the month due to the increase in real average hourly earnings combined with a 0.3-percent increase in the average workweek.

BLS reports CPI for all items unchanged in January as energy declines offset array of increases

The Consumer Price Index for All Urban Consumers (CPI-U) was unchanged in January on a seasonally adjusted basis, the BLS reported February 19. Over the last 12 months, the all items index increased 1.4 percent before seasonal adjustment.

An increase in the index for all items less food and energy offset a decline in the energy index to lead to the seasonally adjusted all items index being unchanged. The energy index fell 2.8 percent as all of its major component indexes declined. The index for all items less food and energy rose 0.3 percent in January. The increase was broad-based, with most of the major components rising, but increases in the indexes for shelter and medical care were the largest contributors.

Unemployment rate falls below 5% in January

Total nonfarm payroll employment rose by 151,000 in January, and the unemployment rate was little changed at 4.9 percent, the BLS reported February 5. Job gains occurred in several industries, led by retail trade (+58,000), food services and drinking places (+47,000), health care (+37,000), manufacturing (+29,000), and financial activities (+18,000). Employment declined in private educational services (-39,000), transportation and warehousing (-20,000), and mining (-7,000). Employment in other major industries, including construction, wholesale trade, and government, changed little over the month.

Both the number of unemployed persons, at 7.8 million, and the unemployment rate, at 4.9 percent, changed little in January. Over the past 12 months, the number of unemployed persons and the unemployment rate were down by 1.1 million and 0.8 percentage point, respectively.

Student loan repayment is a 'most desired' benefit among employees

While health-care and 401(k) programs remain the most important benefits to job seekers, student loan reimbursement has emerged as a highly desired offering. A new survey by Beyond found that an overwhelming majority of job seekers (89 percent) believe companies should offer student loan repayment as part of the benefits package, and 10 percent ranked student loan repayment higher than paid vacation as the "most important" benefit.

In a healthy economy with more job opportunities to choose from, those saddled with student debt are seeking out employers offering repayment to help offset costly monthly payments. More than 67 percent of those surveyed said they would "absolutely" be more willing to accept a job offer if student loan repayment was included in the benefits package.

"401(k) matching doesn't mean much if you are spending all of your money paying off student loan debt," said Joe Weinlick, senior vice president of marketing at Beyond, in a press release. "The hiring landscape is not as bleak as it was, and in a highly competitive market, companies offering innovative benefits such as student loan reimbursement may have a leg up on the competition. In addition, student-loan reimbursement could help retain Millennials, who have been famously less loyal and more likely to switch jobs than previous generations."

This concept of retention resonated with survey respondents, with 81 percent claiming that they would be more willing to stay with the company if leaving meant losing student loan repayment. But the survey also found that the method of doling out that repayment must be handled carefully. Among those interested in student loan repayment packages:

- 58 percent said receiving student loan repayment in small increments in each paycheck would be most enticing;
- 29 percent would choose to receive a negotiated amount at the end of each year; and
- 13 percent said they would prefer a lump-sum payment after a certain work anniversary. ■