TOPICS POINTERS SOLUTIONS

IMPORTANT UPDATES FROM YOUR 401(K), ACTUARIAL, HUMAN RESOURCES, PAYROLL AND GROUP MEDICAL EXPERTS.

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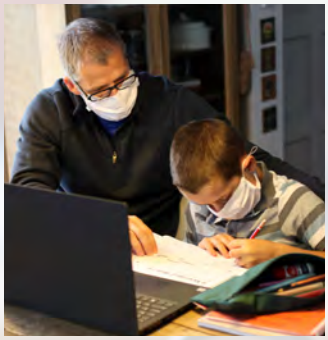
DOES THE FAMILIES FIRST CORONA VIRUS RESPONSE ACT (FFCRA) COVER DISTANCE LEARNING?





The Families First Coronavirus Response Act (FFCRA) provides for up to 80 hours of paid sick leave and 12 weeks of expanded FMLA Leave (the latter 10 of which are paid) for employees who are caring for their child(ren) whose school has been closed because of COVID-19 precautions.

The question of whether employees are entitled to take leave under the FFCRA for children who are distance learning this school year will depend on why they are distancing learning this year. Here are 3 scenarios:

1. **School is open for in-person learning and parents choose a distance learning option — No FFCRA leave**
2. **School is 100 percent remote — FFCRA leave**
3. **Children attend a mix of in-person and distance learning per a schedule established by the school — intermittent FFCRA leave (if the employer agrees)**

If I allow my employees to begin work, take several hours in the middle of the workday to care for their children whose schools have closed, and then return to work, do I have to compensate them for all of the hours between starting work and finishing work?

You don't have to if you don't want to, but you can permit employees to take paid FFCRA leave intermittently to care for kids whose schools have closed. You'll get a tax credit too.

This only applies to companies under 500 employees and to employees who haven't exhausted their EFMLA (Emergency Family and Medical Leave Expansion Act).

TPS GROUP

CONTACT US 1-855-828-2229

WHAT'S INSIDE THIS ISSUE

COMPLIANCE SHOULDN'T BE AN AFTERTHOUGHT

TIMING IS EVERYTHING

LATE 401(K) DEPOSITS REQUIRE EMPLOYER TO MAKE UP THE LOST EARNINGS PLUS ARE SUBJECT TO EXCISE TAX PENALTY IS EQUAL TO 15% OF EARNINGS ATTRIBUTABLE TO THE DEPOSITED FUNDS.

EMPLOYERS WHO WILLFULLY OR REPEATEDLY VIOLATE THE MINIMUM WAGE OR OVERTIME PAY REQUIREMENTS ARE SUBJECT TO A CIVIL MONEY PENALTY OF UP TO $1,000 FOR EACH VIOLATION.

While employers nationwide focus on reopening businesses amid the coronavirus pandemic, both the US Department of Labor (DOL) and Internal Revenue Service (IRS) continue to field questions and investigate employee claims. Pandemic challenges include missed payrolls and deposits. Some top claims include failing to pay overtime and travel time, misclassification of workers and late 401(k) contributions.

Fortunately, both agencies offer employer friendly solutions to "self-correct" compliance issues. Being proactive can spare your company significant IRS and DOL penalties, fines, and litigation fees. It is important to understand that these programs are only available in advance of employee claims, and program eligibility is limited once the claim investigation or plan audit process is started.

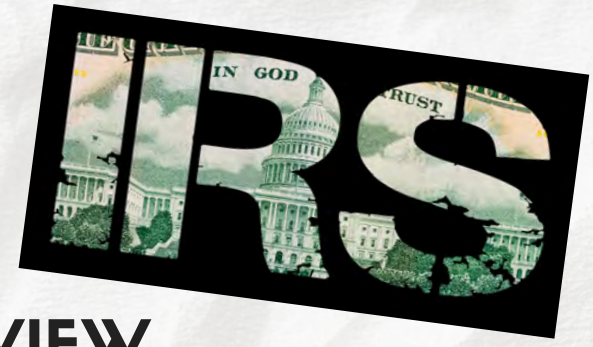
DOL PAYROLL AUDIT INDEPENDENT DETERMINATION (PAID) -

PAID provides employers with an important opportunity to work with the DOL's Wage and Hour Division (WHD) for resolution of potential overtime and minimum wage violations without paying the double damages, civil penalties, or attorney's fees allowed by the Fair Labor Standards Act (FLSA).

Employers can now conduct their own wage and hour audit and self-report violations to the WHD. The program resolves claim without litigation. Additionally, although WHD will still require payment of all back wages due, WHD will not require additional payment of liquidated damages or civil monetary penalties when employers choose to participate in the program and proactively work with WHD to fix and resolve the compensation practices at issue.

This program covers potential violations of the FLSA's overtime and minimum wage requirements. This could include, violations based on alleged "off-the-clock" work, failures to pay overtime at one-and-one-half times the regular rate of pay, or misclassification of employees as exempt from the FLSA's minimum wage and overtime requirements. For details **click here**

Even without PAID, self-audits to proactively avoid wage and hour issues are a great way to mitigate risk. **Do not hesitate to contact TPS's Compensation Analytics Team if you have any questions or to schedule a compensation review.**



EPCRS OVERVIEW

Employers can use the IRS Employee Plans Compliance Resolution System (EPCRS) to correct mistakes and avoid the consequences of plan disqualification. The method of correction should be like the one provided in the Internal Revenue Code and you should consider all facts and circumstances. Revenue Procedure 2019-19 is the guidance governing the EPCRS program.

Two ways to remedy mistakes under employee plans compliance resolution system are:

1. Self-Correction Program (SCP) - permits a plan sponsor to correct certain plan failures without contacting the IRS or paying any fee.

2. Voluntary Correction Program (VCP) - permits a plan sponsor to, any time before an audit, pay a fee and receive IRS approval for correction of plan failures.

SELF-CORRECTION PROGRAM:

• To be eligible for the self-correction program, the plan sponsor or administrator must have established practices and procedures designed to promote overall compliance with the law. A plan document alone does not constitute evidence of established procedures.

• Self-correction program is available to correct the following:

◦ Operational problems - the failure to follow the terms of your plan. The plan sponsor should follow general correction principles in Revenue Procedure 2019-19, Section 6. Some operational failures can be corrected under SCP by retroactive plan amendments to conform the written plan to the plan's operation if certain conditions are met.

◦ Certain problems with the plan document, associated with qualified plans under IRC 401

(a) and IRC 403(b), such as the failure to keep it current to reflect changes in the law if its discovered and corrected in a timely manner.

(b) Problems with participant loans—defaulted loans that weren't paid back in a timely manner, or where a participant received more loans than what was permitted by the plan's written policy or where spousal consent was not obtained as required by the plan's written terms.

• For 403(b) operational failures that occurred in 2008 and earlier years, employers need to follow the definition of an operational failure in Revenue Procedure 2008-50 Section 5.02. SCP is not available for the failure to adopt a written plan or to keep your written program current to reflect law changes.

• The plan sponsor should make changes to its procedures to make sure that mistakes do not recur in the future.

• A qualified plan sponsor (not including a SEP or SIMPLE IRA plan sponsor) may correct significant operational failures within two years of the end of the plan year in which the operational failures occurred.

• When using SCP, the plan sponsor must keep detailed records to demonstrate correction in the event of an audit of the plan.

VOLUNTARY CORRECTION PROGRAM:

• The plan sponsor must make a submission to the IRS via www.pay.gov. The following steps are outlined here:

◦ Plan sponsor includes completed Form 8950

◦ Identifies the mistakes.

◦ Use the general correction principles as a guide to propose corrections.

◦ The plan sponsor should make changes to its procedures to make sure that mistakes do not recur.

◦ May include Form 14568, Model VCP Compliance Statement, and Forms 14568-A through 14568-I (Schedules).

◦ The IRS issues a Compliance Statement detailing mistakes identified by the plan sponsor and the correction methods.

◦ The plan sponsor corrects the identified mistakes within 150 days of the issuance of the Compliance Statement.

◦ While the IRS is processing the submission, Employee Plans will not audit the plan, except under unusual circumstances.

FOR MORE INFORMATION

For details **click here.** Do not hesitate to contact our Retirement Plan Services Team with any questions. We are available to answer any questions about the ECPRS and to help navigate the guidance when plan document and operational failures are discovered.

Mistakes happen, but with the availability of these programs, the consensus is that both agencies will be tougher on violators who knowingly don't resolve compliance issues. Do not hesitate to reach out to us if you have any questions on the programs and how we can assist you.

7 TIPS TO MANAGE POLITICAL DISCUSSIONS AT WORK

It's simply not realistic to ask or expect your employees not to discuss politics five weeks away from the most consequential election of our lives.

It's one thing to encourage the debate, it's another not to discourage it. The reality is that these discussions will happen among coworkers, just as they happen among families and friends. Nothing you say or do will stop them from occurring. Thus, instead of trying to stop them, employers should be promoting ground rules that hold employees accountable for their behavior, focused around one key theme—civility. Political discussions are okay, as long as they are civil discussions. No one will yell, no one will talk over anyone else, no one will disparage anyone else, and we respect all people and all lawful (i.e., not racist, sexist, xenophobic, etc.) ideas.

So how do we promote this civil discourse around an issue that can (and has) brought out the worst in people?

1. **Remind employees of your expectation through general (and non-political) civility or respectful-workplace training.**
2. **Establish a clear differentiation between political opinions (tolerated) and unlawful harassment or other more generalized bullying (not tolerated).**
3. **Do not have an organizational position towards one candidate or another.**
4. **Consider keeping workplace televisions (such as in the lunchroom) tuned to something other than a news channel.**
5. **Limit political displays in the workplace (i.e., buttons, shirts, banners, signs, etc.). But, if you allow for one, you must allow for all.**
6. **Keep an eye on your state's laws, which may prohibit an employer from discriminating or retaliating against employees for political activities, political opinions, or political speech.**
7. **Also keep an eye on the National Labor Relations Act, which will protect political speech if it relates to terms and conditions of employment (i.e., wages, paid family leave, discrimination, safety, etc.).**

EMPLOYEE BACKGROUND CHECK REQUIREMENTS

In order for an employer to conduct a background check for employment purposes, the Fair Credit Reporting Act (FCRA) requires written permission from the applicant to authorize the employer to conduct a background check.

This written authorization:

- Must be a separate stand-alone document from the company's employment application.
- Should confirm that the applicant received the following, separate forms to include; Disclosure Information, Notice of Investigative Consumer Reports, Notice of Additional State Laws, and the FCRA Summary of Rights.

Disclosure Form: The Disclosure Form is required to grant permission to conduct a background search. The Disclosure Form explains to the applicant that the employer may obtain a consumer report (background screening report) from a Consumer Reporting Agency for employment purposes and informs the applicant what a consumer report is and what information may be part of the consumer report. The Disclosure should mention that the report may contain information about the applicant's criminal history, sex offender registry status, credit history, employment history, education history, driving history, professional licenses, and other information about the applicant. The Disclosure informs the applicant that the report may provide insight into their character, general reputation, personal characteristics, and/or mode of living.

Notice of Investigative Consumer Reports: There should also be a separate document informing the applicant that the employer may conduct an "Investigative" consumer report on them. This notice informs the applicant that the employer may conduct personal interviews with sources such as neighbors, friends, or associates. The form also lets the applicant know that in most cases, the common "investigative" purpose is to ask questions about the applicant's previous employment history. Once again, the Investigative Disclosure Form explains to the applicant that the purpose of the Investigative Consumer Report is to determine the applicant's character, general reputation, personal characteristics, and/or mode of living.

State Mandated Notices: A handful of states require a supplemental notice that notifies the applicant of different state laws related to employment screening. Employer's should verify if the state they are hiring in requires a separation notice when conducting background checks. If the State requires a notification, it should be included as a separate document.

FCRA Summary of Rights: Finally, as part of the background screening documents mentioned, the employer should provide the applicant with a copy of their FCRA Summary of Rights. This information provides the applicant with important informing concerning their legal rights regarding having a background check conducted on them.

Employers should not include any extraneous language in their disclosure forms that might confuse or misdirect the applicant as to the specific purpose of the background screening report.

DO THE NEW E-DELIVERY DEPARTMENT OF LABOR SAFE HARBOR RULES HAVE YOUR HEAD SPINNING?

Did you know that annual notices and disclosure are still required to be sent out terminated employees? Staying in compliance with the rules and regulations can be a daunting task when you have other priorities. There were recent changes finalized about how the annual notices and disclosures including the Summary Plan Description, Participant Fee Disclosure, Summary Annual Report, and Safe Harbor Notice can be sent out to your employees, and the TPS 3(16) Service team can help!

THE TPS 3(16) TEAM WILL:

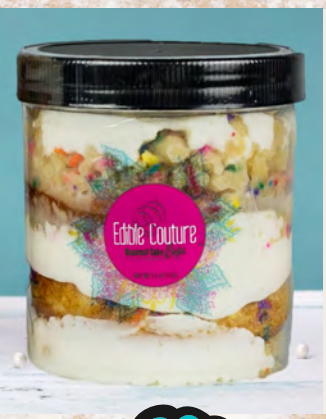
- Provide all necessary notices and disclosures to participants
- Review and maintain participant and beneficiary email and mailing addresses
- Use electronic methods of delivery to reduce paper waste unless option is unavailable

WHAT IS A 3(16) FIDUCIARY?

An ERISA Section 3(16) fiduciary acts as a plan administrator on a qualified retirement plan. The 3(16) administrator is responsible for managing the day to day operations of the plan. The duties of the plan administrator are set by ERISA and the terms of the plan document. Plan Sponsors can now hire TPS 3(16) Service to manage many of their responsibilities on their qualified retirement plan.

WHAT ARE WE UP TO RIGHT NOW?

While the 3(16) Team is busy preparing the required annual notices, we are also working on improving communication with participants to provide a deeper education of benefits included in the retirement plan.



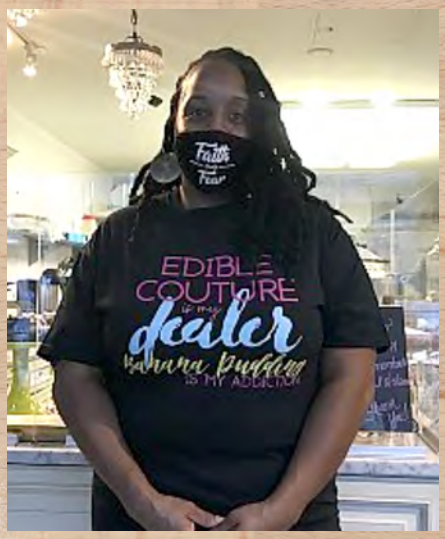
EMPLOYEE SPOTLIGHT

Letitia was a TPS employee for just over 5 years, and she worked in our Operations Department, primarily handling Accounts Receivable and Billing. She provided our monthly birthday cupcakes and “mental health” treats at some of our busier times. She has a great smile and an infectious laugh! Letitia is an amazing baker and cake decorator/designer who was running her business on the side while working for us. Then she went part-time with us as her food truck business picked up, until eventually she was so busy that she left us to pursue her passion full time. She now has a storefront in New Haven. Reach out to Letitia if you’d like some delicious treats!

DREAMS ARE COMING TRUE FOR LETITIA HUDSON

OWNER OF EDIBLE COUTURE

FROM A HOME CATERING BUSINESS, TO FOOD TRUCK, TO STORE FRONT



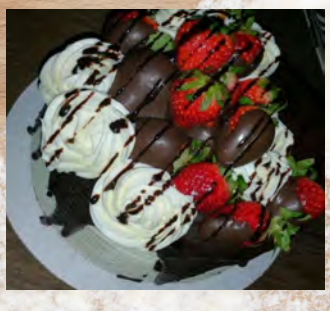
As a child I stayed in the kitchen baking with my grandmother. The love she had for cooking and baking lives in me. I have a passion for unique flavors and thinking outside the box. I took my grandmother's recipes and added my own twist. It wasn't until seven years ago when I had a dream of my deceased father that forever changed my passion for baking. Since that dream I created the banana pudding cupcake. Till this day it is the #1 selling item. Everyone just can't get enough of it!

Edible Couture is a "made to order" bakery who specialize in small desserts. Everything is made fresh. We use great quality ingredients that helps to achieve the best taste.

Edible Couture is about love, passion and commitment to give our clients the best dessert experience your mouth has ever tasted. No boring desserts in our kitchen.

“I was content with a truck,” Letitia said, “but my customer base wanted more.”

Edible Couture
tisha hudson
"SEE THE WEALTH, TASTE THE RICHNESS"



EDIBLE COUTURE WEBSITE