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Employment Eligibility Verification Form I-9

- On August 1, 2023, new revisions to Form I-9 were released by the US Citizenship and Immigration Services
- Make sure you are using the correct form
 - Form I-9 Edition 08/01/23 / Expires 07/31/2026
- All employees should complete the newly revised I-9 Form as part of their employment documents
- Last day to use the old Form I-9 is **Tomorrow**, October 31, 2023

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Misclassification of Non-Exempt Employees as Exempt



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Worker Misclassification

- Non-Exempt Status (Presumed)
 - Entitled to Overtime (pay or comp time for Appraisal District)
 - On Call Time
- Exempt Status
 - Employer Burden to Prove
 1. Salary Basis Test and
 2. Duties Test
 - Professional, Executive, Administrative exemptions
 - "Discretion and Independent Judgment"
 - Administrative doesn't mean clerical



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The New FLSA Exempt Status Regs: Where are we now?

- New Salary Basis Test (Proposed)
 - Increase from \$684/week without adjustment to \$1,059/week, \$35,568 to \$55,068, annually
- *Helix Energy Solutions Group, Inc. v. Hewitt, 598 U.S. 39 (2023)*
 - Actual Pay is irrelevant under “Salary Basis” test for exemption
 - Minimum weekly pay amount must be satisfied
 - Offer Letter should state classification and if exempt, state that employee shall be paid at least \$684 (as of today) per week without adjustment unless authorized by FLSA

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Misclassification: Rise In Independent Contractors: Are they really Contractors?



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Texas Test for Independent Contractor

1. Degree of control exercised by alleged employer
2. The extent of the relative investment of the alleged employee and employer
3. The degree to which the “employee’s” opportunity for profit and loss is determined by “employer”
4. Skill and initiative required to perform the job
5. The permanency of the relationship
 - Hourly Pay is a sign of an employment relationship

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More EEOC Enforcement



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Quiet Quitting

['kwi-et 'kwi-tin]

Doing the minimum requirements of one's job and putting in no more time, effort, or enthusiasm than absolutely necessary.

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Flexibility Fatigue

- EMPLOYERS HAVE GROWN TIRED OF WORK FROM HOME AND ALTERNATIVE SCHEDULES
- PRODUCTIVITY DROPPED BY AN AVERAGE OF 30% DURING COVID WORK FROM HOME PERIODS
- EMPLOYEES CONTINUE TO WANT MORE FLEXIBILITY
- FATIGUE IS LEADING TO MISTAKES RELATED TO LEGALLY MANDATED LEAVE REQUESTS AND REASONABLE ACCOMMODATION
- IF IN OFFICE IS ESSENTIAL INCLUDE IN JOB DESCRIPTION

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Suspicious Activity and Workplace Violence Act

House Bill 915 – effective September 1, 2023

Employers required to post Notice regarding an employee’s right to report workplace violence or suspicious activity.

TWC will promulgate the form of notice by March 2024, BUT NOTICE to be posted 9/1/2023



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Crown Act

CROWN ACT

CREATING A RESPECTFUL WORLD FOR NATURAL HAIR

The CROWN Act

prohibits discrimination based on hairstyles by extending statutory protections based on race to hair texture and protective styles in state Employment, Housing, and Education Codes

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Pregnant Workers Fairness Act (PWFA)



PREGNANT WORKERS FAIRNESS ACT (PWFA): WHAT SMALL BUSINESSES NEED TO KNOW

PWFA (effective June 27, 2023) requires covered employers to provide reasonable accommodations to worker’s known limitations related to pregnancy, childbirth or relating medical conditions, unless the accommodation will cause the employer an “undue hardship”

This applies only to accommodations.

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Pregnant Workers Fairness Act (PWFA) - continued

The bill declares that it is an unlawful employment practice to

1. Fail to make reasonable accommodations to know limitations of such employees unless the accommodation would impose an undue hardship on an entity's business operation;
2. Require a qualified employee affected by such condition to accept an accommodation other than any reasonable accommodation arrived at through an interactive process
3. Deny employment opportunities based on the need of the entity to make such reasonable accommodations to a qualified employee;
4. Require such employees to take paid or unpaid leave if another reasonable accommodation can be provided; or
5. Take adverse action in terms, conditions, or privileges of employment against a qualified employee requesting or using such reasonable accommodations.

Poster Required as of June 27, 2023

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Pump ACT



- Law effective April 28, 2023 makes several changes to the Break Time for Nursing Mothers law
- Closes the coverage gap for women of childbearing age without federal protection of their right to break time and a private space to pump during the workday
- Expands the legal right to receive pumping breaks and private space to nearly 9M more workers
- Makes it possible for an employee to file a lawsuit against an employer that violates the law
- Clarifies that pumping time counts as time worked when calculating minimum wage and overtime if an employee is not completely relieved from their work duties during the pumping break
- Remote workers are entitled to pump breaks too!

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Speak Out Act



Effective December 7, 2022, this act prohibits the judicial enforceability of a non-disclosure clause or non-disparagement clause agreed to before a dispute arises involving sexual assault or sexual harassment in violation of federal, tribal, or state law.

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Diversity, Equity and Inclusion



Diversity

Existence of individual and social differences that contribute to identity.



Inclusion

Intentionally fostering an environment in which each individual is valued and respected for their diversity, is empowered to engage and contribute, and is provided access to resources and opportunities.



Equity

Grounded in the principles of fairness, equity makes diversity and inclusion central to establishing policies and practices, creating opportunities, and ensuring each individual has the tools and support they need to achieve their individual success.


EEOC looks for DEI training and/or policies that embrace an environment of inclusion

To some, DEI has become political.
Push back from far right claiming religious freedom protection

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Counseling and Coaching Gen Z

- Gen Z is expected to constitute about a quarter of the global workforce this year
- Social skills weaker: more online interaction and less verbal communication. Less work stamina
- 51% say not prepared to enter the workforce



COACHING:

- needs to be focused and outcome-driven conversations by making them relevant and contextual
- Reskilling and upskilling are incomplete without coaching

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FMLA Intermittent Leave



Employees have the right to take FMLA leave all at once, or, when medically necessary, in separate blocks of time or by reducing the time they work each day

Reduced leave schedule is a schedule that reduces an employee's usual number of working hours per workweek or hours per workday.

Includes leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of months, such as for chemotherapy, or even leave taken by a pregnant employee for prenatal appointments or severe morning sickness

Number of FMLA hours available based on average hours of the specific employee requesting leave

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ANY QUESTIONS?

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