Knoxville Bar Association

THE CONSIGLIERE

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Let us know your ideas and suggestions for *THE CONSIGLIERE*:

- **Call or email Paul E. Wehmeier at 546-7000 or Marsha Wilson at 522-6522 or mwilson@knoxbar.org.**
- **Submit an article for consideration.**
- **Give us your feedback on this newsletter.**
- **Tell us about CLE topics or networking events you would like the Section to sponsor.**

FROM THE CO-CHAIRS

By: Marcia A. Kilby
Director of Legal Services
DeRoyal

It has long been my opinion that I am very lucky to practice law in Knoxville. Not only is Knoxville located in a beautiful part of the country, but Knoxville attorneys are both passionate about their work and extremely friendly and professional while conducting it. So, when I attended the KBA's Bar Leaders Meeting back in January, I was not surprised to learn that the KBA leadership shared the following values:

- Professionalism (collegiality, diversity, respect)
- Fellowship (social events, service opportunities)
- Supportive Network (encouraging trust and collegiality, reaching out to new attorneys)
- Education (CLE, Mentor for the Moment)
- Resource for the Public (lawyer referral, access to legal services)

These five bullet points encompass a huge undertaking that extends well beyond the few examples I included; but, even so, I truly believe that the Corporate Counsel Section does a good job with the first four values. Admittedly, I was not sure how corporate counsel could serve as a resource for the public.

Fast forward to Friday, March 11. I attended a CLE at the Duncan School of Law on corporate counsel pro bono initiatives. Truth be told, I wasn't prepared to be swayed by this presentation, especially by lawyers with huge law departments compared to my two lawyer department. I thought of several barriers right away: I don't have insurance for this type of work. I am too busy to take on any more work. Who in the public could possibly need my knowledge on free trade agreements?

Further, the anti-bribery lawyers work closely with company auditors. Because The Coca-Cola Company regularly audits its global facilities for compliance with Company policy and the law, the anti-bribery team relies on the Company's auditors to monitor compliance with the Anti-Bribery Policy. The anti-bribery team regularly trains and consults with auditors to explain the law behind the policy and what auditors should be looking for. The anti-bribery team keeps auditors up to date on recent FCPA and UKBA enforcement and circumstances that may lead to a violation of either of these statutes. The auditors are encouraged to work consistently with the anti-bribery team lawyers.

Compliance work at a company as big as Coca-Cola is a complicated and difficult business. Though there is a team whose sole responsibility is the Company's compliance with the FCPA and UKBA, the anti-bribery team relies on many other departments and attorneys throughout the Company to ensure compliance. This only works because the anti-bribery team strives to maintain open communication and information sharing with these other departments and attorneys. Such openness requires the ability to both know the law and communicate it, often to non-attorneys, non-Americans, and non-English speakers. It also helps to have stellar externs to help out from time to time.

EMPLOYEE BENEFITS COMPLIANCE:

The ACA: What's New?

EMPLOYEE BENEFIT COMPLIANCE

By: Ashley N. Trotto
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The ACA: What's new?

The Affordable Care Act ("ACA") and its implementing regulations have created an ever-evolving, shifting, expanding piece of legislation that is nearly impossible for employers, and their lawyers, to keep up with. This article is meant to serve as your cliffs notes guide to what the Departments of Labor, Treasury and Health and Human Services (the "Departments") were up to in 2015.

Repeal of Automatic Enrollment

In late October 2015, the powers that be agreed to repeal a provision of the ACA that would have required employers with 200 or more full-time employees to automatically enroll new full-time employees in their health plans.

Penalties

As background: applicable large employers may be subject to an Employer Mandate penalty if they do not offer health coverage to at least 95% of all full-time employees (the "a" penalty) or if they do offer coverage but it is not affordable or does not provide minimum value to at least one full-time employee (the "b" penalty). Penalties do not apply unless at least one full-time employee receives a premium credit through the Exchange.

The original penalty amounts were $2,000 per full-time employee under the "a" penalty and $3,000 per full-time employee actually receiving a premium credit under the "b" penalty. These amounts are indexed annually.

In mid-December 2015, the IRS issued Notice 2015-87, clarifying that the 2015 adjusted penalty amounts are $2,080 and $3,120, respectfully, and announcing that the 2016 adjusted penalty amounts are $2,160 and $3,240.

The "Cadillac Tax"

In late December 2015, President Obama signed a comprehensive spending package that included a two-year delay of the "Cadillac Tax," giving employers a little more time to consider their options. The tax was originally set to take effect January 1, 2018.

Information Reporting

In late December 2015, the IRS issued Notice 2016-4, which extended the due dates for the 2015 information reporting (the most recent and sharpest thorn in the side of large employers). Employers now have until March 31, 2016, to provide required employee statements and until May 31, 2016 (June 30, 2016, if filing electronically), to file the applicable IRS Forms, generally Forms 1094-C and 1095-C, with the IRS.

If that news wasn't good enough, the IRS also announced that employers showing a good faith effort to comply with the ACA's reporting requirements will not be assessed any penalties for submitting incomplete or incorrect returns relating to offers of coverage during 2015. This means that employers pulling their hair out trying to figure out the dreaded "indicator codes" of Form 1095-C can breathe a sigh of relief. For this year only, if you try, you can't fail.

Nondiscrimination for Fully Insured Plans

Self-insured health plans are prohibited from discriminating in favor of highly compensated individuals. The ACA extended that prohibition to fully-insured plans, effective upon the issuance of IRS regulations. To date, no such regulations have been issued. Fully-insured plans are still legally permitted, but not encouraged, to be discriminatory.

EMPLOYMENT LAW

Employment Law:

Misclassification of Workers

By: Sarah R. Johnson
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Misclassification of Workers

The U.S. Department of Labor ("U.S. DOL") and the Internal Revenue Service (the "IRS"), along with Tennessee agencies, are cracking down on the misclassification of