SSRA

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Leandra's Law Deadline Draws Near

Last year, the Legislature responded to the tragic death of 11-year-old Leandra Rosado, who was killed while riding in a vehicle driven by an allegedly intoxicated driver, by enacting what is believed to be the toughest anti drunk driving laws in the nation. The first part of "Leandra's Law," which makes it a felony to drive drunk with a child in the car, took effect last fall. The second phase – the so-called "interlock provision" – takes effect August 15.

Under this provision, when anyone is convicted of a felony or misdemeanor drunk driving offense the court will be required to impose – *in addition to any fine or jail sentence* – a term of probation or conditional discharge of at least six months. During this time, the offender will be required to install and maintain an ignition interlock device in any motor vehicle they own or operate. Before a vehicle's motor can be started, the driver will have to exhale into the device and if their breath alcohol concentration is higher than a certain level, the engine will not start which will make the roads safer for all New Yorkers.

PMPA Lawsuits In The U.S. Capital Region

We have contacted the attorney for the Washington, DC-Maryland-Virginia area and asked whether there were any cases currently active concerning the dealers loss of First Right of Refusal. We were told that the Washington, DC dealers assignment has been challenged by one dealer.

There is a unique situation that the dealer had a third party lease which was never terminated, but was allowed to lapse. Also, DC has a First Right of Refusal law which had passed last year. Unfortunately all laws passed by DC City Council must then go before Congress for an approval.While the bill passed the council it did not pass the Congress. The Lawsuit is challenging that the DC Council intent was to have the law retroactive to April 1st. Using the First Right of Refusal argument and the lease problem along with some PMPA claims, the lawsuit has been filed.

As far as the Maryland dealers are concerned, they originally asked for a temporary injunction against the sale of their stations. The judge threw out the case because the sale had not been announced. Several days after this case was dismissed ExxonMobil announced that it was selling the stations in Maryland and Virginia to Southland. The case has been refiled. Under Maryland law, a refiner cannot operate a service station with its own personnel. The dealers are claiming that because these stations have been sold to a distributor they lose their divorcement protection.

Virginia dealers met with attorneys and did not appear to have a cause of action worthy of a challenge. They had decided to allow the assignment to a distributor and if the distributor does not perform as expected to bring a lawsuit for constructive termination.

All these cases will have a direct bearing on how we make out in New York.

Shell, Motiva Win US Supreme Court Battle

The U.S. Supreme Court bolstered the ability of all companies to change their leases with independent service station owners ruling in favor of Shell Oil Co. and Motiva Enterprises LLC in a Massachusetts case. The Supreme Court ruled unanimously that a group of station owners can't press claims under PMPA. The station claimed that Shell and Motiva used rent increases to try to end their franchise agreements so the companies could take over operation of the stations. Writing for the court, Justice Samuel Alito said the federal law doesn't address that sort of dispute. "The PMPA was enacted to address the narrow areas of franchise terminations and non-renewals, not to govern every aspect of the petroleum franchise industry," he wrote.

The station owners at one point won a $3.3 million jury verdict. A federal appeals court upheld part of the award and both sides appealed to the Supreme Court. The high court ruling affected only the federal claims being pressed by the station owners and not other allegations under Massachusetts state law. The station owners sued under provisions in the federal law barring improper lease terminations. Shell and Motiva contended the station owners can't invoke those provisions because they accepted

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new lease terms and continued to operate their franchises. The case before the high court concerned eight of more than 50 Massachusetts station owners who sued. The station owners objected to Motiva's decision to phase out a rent subsidy that had been tied to gasoline sales and to begin calculating rent based on the value of the station's real estate.

A federal appeals court in Boston said the station owners could press claims for "constructive termination" even though they continued to operate their franchises. The court reached the opposite conclusion on the owners' allegations of "constructive non-renewal," saying they forfeited those claims by signing new leases.

NRDC Seeks to End Use of HFC-134a in Motor Vehicle Air Conditioners

The Natural Resources Defense Council (NRDC) petitioned the U.S. Environmental Protection Agency (EPA) on May 7 to remove HFC-134a from the list of acceptable substitutes for CFC-12 in motor vehicle air conditioning systems (MVAC) under the Significant New Alternatives Policy (SNAP) program. The petition further calls for EPA to remove 134a from the list for other end-use categories, such as aerosols and stationary refrigeration, where more benign alternatives are available. SNAP was put in place by EPA to ensure the health and environmental safety of alternatives for ozone-depleting substances. EPA had approved the use of 134a in vehicle air conditioning systems based on the fact that it did not deplete the ozone layer. However, 134a has a global warming potential (GWP) of 1300 and the NRDC petition points to new alternative refrigerants including HFO-1234yf, which has a GWP of 4 and which likely will soon be available. 1234yf is currently undergoing EPA review under the SNAP program, which is expected to be completed sometime late summer or early fall. If 1234yf is approved, NRDC requests that EPA "establish a schedule for rapidly phasing out the use of -134a in new vehicles and a schedule for subsequently phasing out its use in older vehicles. This approach will allow the auto industry to rapidly transition to 1234yf or other acceptable alternatives in MVAC systems." NRDC also called on the agency to analyze newly-listed alternatives in aerosol end-uses, stating that there are many other approved alternatives that would render 134a unacceptable as a substitute. EPA has 60 days to consider the petition. If the agency accepts the petition, it would need to undertake a rulemaking process in order to implement the 134a phase-out. The full NRDC petition can be found at http://docs.nrdc.org/air/files/air_10050701a.pdf

Fed Looking to Increase Lending to Small Business

According to Federal Reserve chairman Ben Bernanke's comments to community bankers, automotive suppliers and small business owners at a meeting in Detroit on June 3, the Fed is focusing on ways to boost lending to small businesses. Bernanke stated that small businesses were crucial for job creation and improving employment security, but noted that lending to small business has been declining, even during the economy's expansion in recent months.

Bernanke expressed the need for banks to avoid a "mechanical reliance on collateral value" in evaluating business' creditworthiness, instead looking at a company's opportunities for future cash flow. Small suppliers are often finding their assets valued at "forced liquidation value" rather that what they might be valued in an ordinary liquidation. The meeting was one of 40 scheduled to take place to help the Fed evaluate the needs of small business.

HIRE Act: Questions and Answers for Employers

Under the Hiring Incentives to Restore Employment (HIRE) Act, enacted March 18, 2010, two new tax benefits are available to employers who hire certain previously unemployed workers ("qualified employees").

The first, referred to as the payroll tax exemption, provides employers with an exemption from the employer's 6.2 percent share of social security tax on wages paid to qualifying employees, effective for wages paid from March 19, 2010 through December 31, 2010.

In addition, for each qualified employee retained for at least 52 consecutive weeks, businesses will also be eligible for a general business tax credit, referred to as the new hire retention credit, of 6.2 percent of wages paid to the qualified employee over the 52 week period, up to a maximum credit of $1,000.

The payroll tax exemption provides employers with an exemption from the employer's 6.2 percent share of social security tax on wages paid to qualifying employees, effective for wages paid from March 19, 2010 through December 31, 2010.

The frequently asked questions and answers for the payroll tax exemption HIRE provision are found below:

Q: Who are qualified employees?

A: Qualified employees are individuals who begin employment with a qualified employer after February 3, 2010, and before January 1, 2011, who have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins, who are not employed by the qualified employer to replace another employee of that employer, unless the other employee separated from employment voluntarily or was terminated for cause, and who are not family members of or related in certain other ways to the employer

.Q: *Does the payroll tax exemption apply to household employers?*

A: No. The payroll tax exemption applies only to wages paid to a qualified employee performing services in the employer's trade or business or in activities in furtherance of a tax-exempt organization's exempt purpose.

Q: *If an employer starts a new business, does the payroll tax exemption apply to wages paid to employees hired for the new business?*

A: Yes, if they are qualified employees.

Q: If an employee laid off in 2009 has been receiving COBRA premium assistance, for which the employer has been taking the COBRA premium assistance credit, and

the employer rehires the employee, can the employer take the payroll tax exemption under the HIRE Act for wages paid to the employee?

A: *Yes, if the employee is a qualified employee.*

Q: *Can a qualified employer both apply the payroll tax exemption and claim the work opportunity tax credit (WOTC) for the same employee?*

A: No, an employer may either apply the payroll tax exemption or claim the WOTC for an employee, but not both. An employer that wishes to claim the WOTC for a qualified employee may not apply the payroll tax exemption with respect to any wages paid to that employee from March 19, 2010, through December 31, 2010.

Q: If an employer applies the exemption to wages paid to a nonqualified employee, is the employer liable for the amount of employer social security tax on wages previously reported as exempt?

A: Yes, the employer is liable for the amount of employer social security tax on wages it erroneously reported as exempt, because the exemption is only applicable to wages paid to qualified employees.

Q: Do the qualified employees need to do anything to make it possible for their employer to claim the payroll tax exemption?

A: Yes, qualified employees must certify by a signed affidavit, under penalties of perjury, that they have not been employed for more than 40 hours during the 60-day period ending on the date they started employment. The IRS plans to issue a model affidavit that can be used for this purpose.

Q: *Can employers create their own affidavit or must they use IRS Form W-11?*

A: Employers can use their own affidavit as long as it includes the same information as IRS Form W-11, Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit, and is signed under penalties of perjury.

Q: *Must the signed affidavit (e.g., Form W-11) be notarized?*

A: No

Q: Should employers send signed employee affidavits, such as Form W-11, to the IRS?

A: No, the employer does not file or send signed employee affidavits to the IRS. The employer should retain these affidavits with other payroll and income tax records.

Q: *Is there a deadline for the employer to get the signed affidavit from the employee?*

A: Yes, the employer must have the signed affidavit by the time the employer files an employment tax return applying the payroll tax exemption. If the employer obtains the signed affidavit from the qualified employee after wages are paid to the employee, the employer can still apply the payroll tax exemption to determine its liability on these wages. In some cases this may require the filing of a corrected return for a prior quarter.

Q: *Does the payroll tax exemption apply to wages paid to a qualified employee hired to replace an existing worker whose employment terminated?*

A: The payroll tax exemption does not apply to wages paid to an employee who is hired to replace an existing worker, unless the existing worker terminated employment voluntarily or was terminated for cause.

Q*: Does the payroll tax exemption apply to wages paid to an employee who was previously laid off and then rehired by the same or a related employer after a 60-day period?*

A: Yes, an employer may apply the payroll tax exemption to wages paid to a rehired employee who is otherwise a qualified employee.

Q: *Does the qualified employee have to work a set period of time for the employer to be eligible for the exemption?*

A: No. Application of the payroll tax exemption does not require that a qualified employee be employed for a set number of hours or a set number of weeks.

Q: *Is there a minimum age for qualified employees? Will high school summer hires and interns be considered eligible employees?*

A: There is no minimum age requirement to be a qualified employee.

Details on New Small Business Health Care Tax Credit

The Internal Revenue Service issued guidance to make it easier for small businesses to determine whether they are eligible for the new health care tax credit under the Affordable Care Act and how large a credit they will receive. The guidance makes clear that small businesses receiving state health care tax credits may still qualify for the full federal tax credit. Additionally, the guidance allows small businesses to receive the credit not only for regular health insurance but also for add-on dental and vision coverage.

For tax years 2010 to 2013, the maximum credit is 35 percent of premiums paid by eligible small business employers and 25 percent of premiums paid by eligible employers that are tax-exempt organizations. The maximum credit goes to smaller employers — those with 10 or fewer full-time equivalent (FTE) employees — paying annual average wages of $25,000 or less. The credit is completely phased out for employers that have 25 FTEs or more or that pay average wages of $50,000 per year or more. Because the eligibility rules are based in part on the number of FTEs, not the number of employees, businesses that use part-time help may qualify even if they employ more than 25 individuals.

The new health reform law gives a tax credit to certain small employers that provide health care coverage to their employees, effective with tax years beginning in 2010. The following questions and answers provide information on the credit as it applies for 2010-2013, including information on transition relief for 2010. An enhanced version of the credit will be effective beginning in 2014. The new law, the Patient Protection and Affordable Care Act, was passed by Congress and was signed by President Obama on March 23, 2010.

What follows is some FAQ surrounding the credit.

Q. *Which employers are eligible for the small employer health care tax credit?*

A. Small employers that provide health care coverage to their employees and that meet certain requirements

("qualified employers") generally are eligible for a federal income tax credit for health insurance premiums they pay for certain employees. In order to be a qualified employer, (1) the employer must have fewer than 25 full-time equivalent employees ("FTEs") for the tax year, (2) the average annual wages of its employees for the year must be less than $50,000 per FTE, and (3) the employer must pay the premiums under a "qualifying arrangement" described below.

Q. *What expenses are counted in calculating the credit?*

A. Only premiums paid by the employer under an arrangement meeting certain requirements (a "qualifying arrangement") are counted in calculating the credit. Under a qualifying arrangement, the employer pays premiums for each employee enrolled in health care coverage offered by the employer in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the coverage.

Q. *What is the average premium for the small group market in a state (or an area within the state)?*

A. The average premium for the small group market in a state (or an area within the state) is determined by the Department of Health and Human Services (HHS).

Q. *Can premiums paid by the employer in 2010, but before the new health reform legislation was enacted, be counted in calculating the credit?*

A. Yes. In computing the credit for a tax year beginning in 2010, employers may count all premiums described above for that tax year.

Q. *How is the number of FTEs determined for purposes of the credit?*

A. The number of an employer's FTEs is determined by dividing (1) the total hours for which the employer pays wages to employees during the year (but not more than 2,080 hours for any employee) by (2) 2,080. The result, if not a whole number, is then rounded to the next lowest whole number.

Q. *How is the amount of average annual wages determined?*

A. The amount of average annual wages is determined by first dividing (1) the total wages paid by the employer to employees during the employer's tax year by (2) the number of the employer's FTEs for the year. The result is then rounded down to the nearest $1,000 (if not otherwise a multiple of $1,000). For this purpose, wages means wages as defined for FICA purposes (without regard to the wage base limitation).

Q. *Can an employer with 25 or more employees qualify for the credit if some of its employees are part-time?*

A. Yes. Because the limitation on the number of employees is based on FTEs, an employer with 25 or more employees could qualify for the credit if some of its employees work part-time. For example, an employer with 46 half-time employees (meaning they are paid wages for 1,040 hours) has 23 FTEs and therefore may qualify for the credit.

Q. *Are seasonal workers counted in determining the number of FTEs and the amount of average annual wages?*

A. Generally, no. Seasonal workers are disregarded in determining FTEs and average annual wages unless the seasonal worker works for the employer on more than 120 days during the tax year.

Q. *If an owner of a business also provides services to it, does the owner count as an employee?*

A. Generally, no. A sole proprietor, a partner in a partnership, a shareholder owning more than two percent of an S corporation, and any owner of more than five percent of other businesses are not considered employees for purposes of the credit. Thus, the wages or hours of these business owners and partners are not counted in determining either the number of FTEs or the amount of average annual wages, and premiums paid on their behalf are not counted in determining the amount of the credit.

Q. *Do family members of a business owner who work for the business count as employees?*

A. Generally, no. Thus, neither their wages nor their hours are counted in determining the number of FTEs or the amount of average annual wages, and premiums paid on their behalf are not counted in determining the amount of the credit. For this purpose, a family member is defined as a child (or descendant of a child); a sibling or step-sibling; a parent (or ancestor of a parent); a step-parent; a niece or nephew; an aunt or uncle; or in-laws such as son-, daughter-, father-, mother-, brother- or sister-in-law.

Q. *How is eligibility for the credit determined if the employer is a member of a controlled group or an affiliated service group?*

A. Members of a controlled group (e.g., businesses with the same owners) or an affiliated service group (e.g., related businesses of which one performs services for the other) are treated as a single employer for purposes of the credit. Thus, for example, all employees of the controlled group or affiliated service group, and all wages paid to employees by the controlled group or affiliated service group, are counted in determining whether any member of the controlled group or affiliated service group is a qualified employer.

Q. *How does an employer claim the credit?*

A. The credit is claimed on the employer's annual income tax return. For a tax-exempt employer, the IRS will provide further information on how to claim the credit.

Q. *Can an employer (other than a tax-exempt employer) claim the credit if it has no taxable income for the year?*

A. Generally, no. Except in the case of a tax-exempt employer, the credit for a year offsets only an employer's actual income tax liability (or alternative minimum tax liability) for the year. However, as a general business credit, an unused credit amount can generally be carried back one year and carried forward 20 years. Because an unused credit amount cannot be carried back to a year before the effective date of the credit, though, an unused credit amount for 2010 can only be carried forward.

Q. *Can the credit be reflected in determining estimated tax payments for a year?*

A. Yes. The credit can be reflected in determining estimated tax payments for the year to which the credit applies in accordance with regular estimated tax rules.

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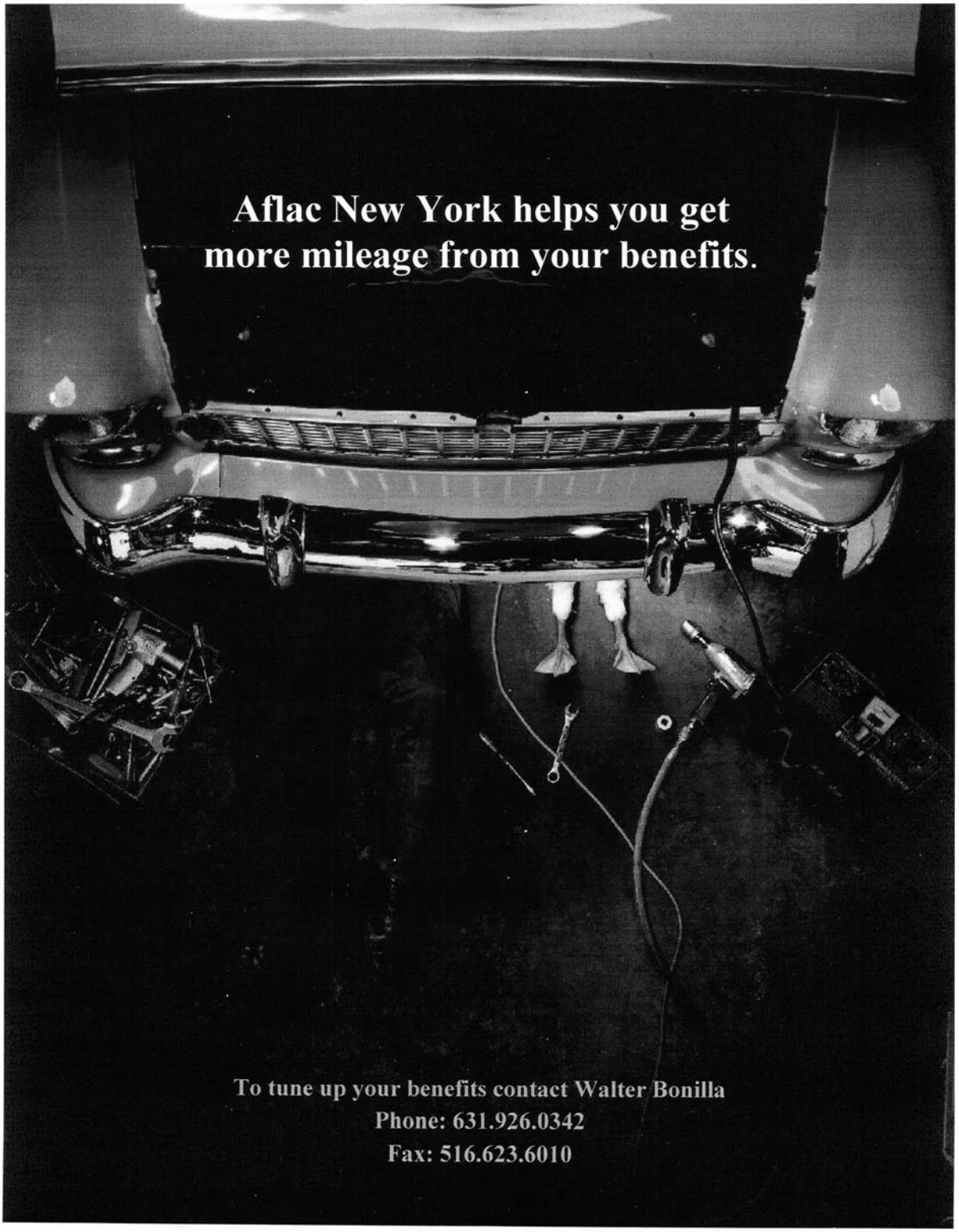
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