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REMINDER THAT UNEMPLOYMENT TAXES WILL INCREASE JANUARY 1, 2010

On January 1, 2010, Louisiana employers will see an increase in the unemployment compensation taxes they pay. The state requires businesses to pay these taxes into the state's Unemployment Trust fund, which is used to pay benefits to unemployed workers. Each employer's tax rate is based on their individual experience of benefits paid to former employees.

Current law requires that the taxes are paid on the first \$7,000 of each employee's wages, which is commonly known as the "wage base." Effective January 1, 2010, the wage base will increase \$700 to \$7,700 per employee. Because the tax rate will be applied to a larger wage base, overall taxes will increase.

Notices of the new tax rates for 2010 should be sent to employers from the state within the next few weeks and the first quarterly payment of these unemployment taxes calculated at the new wage base will due April 30, 2010.

IMPORTANT FACTS ABOUT HOW TO HANDLE OVERTIME PAY AND VACATION TIME DURING THE HOLIDAY SEASON

Here is what you need to know about your rights and responsibilities for paying your employees during weeks with holidays.

- First, there is no federal or Louisiana law that requires an employer to provide paid vacation time to employees.

- Employers are only obligated to pay their employees for hours they are actually at work. You do not have to pay employees if your business is closed for a holiday (i.e., Christmas day).
- Employers are not required to pay extra to those workers who have to work on a holiday. There is no law requiring "holiday pay" of time and half for those employees working on a holiday.
- Unless they meet one of the federal exemptions from overtime pay, employees who work more than 40 hours in one workweek must be paid one and one-half times their regular rate of pay for each hour worked over 40. There is no limit to the number of hours an employee older than 16 may work in any workweek.
- Overtime is only calculated on the hours an employee actually works. If an employee is paid but is not actually working (for example, a paid holiday, paid sick leave, etc.), that time is not considered "work time" and is not counted towards the 40 hours for overtime purposes.
- If your business is closed on a holiday and you pay your employees as if they had worked that day, those employees can work up to 40 hours on the remaining days of the week and not receive overtime. The 8 hours of the holiday do not count as work, since the employees were given the day off and were not at work.
- Overtime must be paid in the same pay period it is earned.

Please call LSBA at 800-262-4483 if you have a wage and hour question.

IRS TAX CALENDAR FOR JANUARY AND FEBRUARY

January 1st: Stop advance credit of the Earned Income Credit for any employee not submitting a new W-5 Form.

January 12th: Tipped employees are required to report to you tips of \$20 or more earned during December 2009.

January 15th: Deposit Payroll Tax for December 2009 (if the monthly deposit rule applies).

February 2nd:

- Furnish Forms 1098, 1099, and W-2G to recipients you made payments to during 2009.
- Give Form W-2's to all employees who worked for you during 2009.
- Deposit FUTA tax (federal unemployment tax) owed through December if the amount is \$500 or less.
- File 2009 Form 940, 941, 943, or 944 (payroll taxes) if you did not deposit all taxes when due.

February 10th:

- File Forms 940, 942, 943, and/or 945 (payroll taxes) if you timely deposited all required payments.
- Tipped employees are required to report to you tips of \$20 or more earned during January.

February 16th: Begin withholding on employees that claimed extra withholding from their payroll tax in 2009 but did not file a W-4 to continue in 2010.

WHAT IS PAID TIME AND WHAT IS NOT?

The Fair Labor Standards Act requires employers to pay employees for time spent working. The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. "Workday", in general, means the period between the time of any

particular day when an employee begins his/her "principal activity" and the time on that day at which he/she ceases such principal activity or activities.

Waiting Time: Whether waiting time is hours worked under the law depends upon the particular circumstances. Generally, an employee may be engaged to wait (which is work time) or an employee may be waiting to be engaged (which is not work time). For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been "engaged to wait" and they should be paid under the law.

On-Call Time: An employee who is required to remain on call on the employer's premises is working while "on call" and should be paid. An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call.

Rest and Meal Periods: While rest or meal periods are not required for employees who are not minors, rest periods of short duration (usually 20 minutes or less) are common (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.