

Federal Law Alerts - December - January 15th

## **Replacement Sticker Extending Permanent Resident Card Validity and Form I-9**

On January 12, 2021, the U.S. Citizenship and Immigration Services (USCIS) [announced](#) that it is replacing the currently issued sticker that extends the validity of a Form I-551, Permanent Resident Card (PRC), or Green Card, with a revised Form I-797, Notice of Action, receipt notice of Form I-90, Application to Replace Permanent Resident Card. The revised notice will extend the validity of a PRC for 12 months from the “Card Expires” date on the front of the PRC. This change ensures that certain lawful permanent residents have documentation for completing Form I-9, Employment Eligibility Verification.

Employees may present their expired PRC together with this notice as an acceptable List A document that establishes identity and employment authorization for Form I-9 purposes. When completing a Form I-9, employers should enter the information from this document combination in Section 2, under List A:

- In the Document Number field, enter the card number provided on the expired PRC.
- In the Expiration Date field, enter the date that is 12 months from the “Card Expires” date on the expired PRC.
- In the Additional Information box, write “PRC Ext” and the I-90 receipt number from the Form I-797.

Employers who retain copies of documents should retain copies of both the PRC and Form I-797 with the employee’s Form I-9. Employers may not reverify Lawful Permanent Residents who present this document combination.

Read more about acceptable documents at [I-9 Central](#) or in [The Handbook for Employers, Guidance for Completing Form I-9](#).

## **FLSA Opinion Letters: Administrative Employee Exemption and Ministerial Exception**

On January 8, 2021, the U.S. Department of Labor announced the following new opinion letters that provide compliance assistance related to the federal Fair Labor Standards Act (FLSA):

- [FLSA2021-1](#): Addressing whether account managers at a life science products manufacturer qualify for the administrative employee exemption under the FLSA. The DOL concluded that the account managers were administrative employees because they met all three requirements, discussed thoroughly in the letter, necessary to qualify for the exemption (from the FLSA minimum wage and overtime pay requirements).

- [FLSA2021-2](#): Addressing whether the ministerial exception allows a private religious daycare and preschool to pay its teachers on a salary basis that would not otherwise conform with the requirements of the FLSA. The DOL concluded that the exception would allow the school to do so if the teachers qualify as ministers.

## **OSHA Penalty Amount Increases**

On January 8, 2021, the U.S. Department of Labor announced the following 2021 adjustments to the Occupational Safety and Health Administration (OSHA) [civil penalty amounts](#):

- Serious violations: minimum of \$964 per violation and maximum of \$13,653 per violation.
- Other-than-serious violations: minimum of \$0 per violation and maximum of \$13,653 per violation.
- Willful or repeated violations: minimum of \$9,639 per violation and maximum of \$136,532 per violation.
- Posting requirements violations: minimum of \$0 per violation and maximum of \$13,653 per violation.
- Failure to abate violation: \$13,653 per day unabated beyond the abatement date, which is generally limited to 30 days maximum.

These increases apply to penalties assessed after January 15, 2021.

## **Final Rule Clarifies Independent Contractor Status under the Fair Labor Standards Act**

On January 6, 2021, the U.S. Department of Labor, Wage and Hour Division announced a [final rule](#) clarifying whether an individual is an employee or an independent contractor under the Fair Labor Standards Act (FLSA). The rule:

- Reaffirms the “economic reality” test which determines whether an individual is in business for themselves (independent contractor) or is economically dependent on a potential employer for work (FLSA employee).
- Identifies and explains two core factors to determine whether a worker is economically dependent on someone else’s business (employee) or is in business for themselves (independent contractor):
  - The nature and degree of control over the work; and
  - The worker’s opportunity for profit or loss based on initiative and/or investment.

If those two primary core factors do not point to the same classification, then the rule identifies the following additional factors to determine status:

- The amount of skill required for the work;
- The degree of permanence of the working relationship between the worker and the potential employer; and

- Whether the work is part of an integrated unit of production.

The rule also:

- Identifies that the actual practice of the worker and the potential employer is more relevant than what may be contractually or theoretically possible.
- Provides six fact-specific examples applying the factors.

The rule is effective March 8, 2021.

## **COVID-19 Relief for Employers Using the Automobile Lease Valuation Rule**

On January 4, 2021, the Internal Revenue Service released [Notice 2021-07](#) which provides temporary relief in response to the ongoing COVID-19 pandemic for employers using the automobile lease valuation rule to value an employee's personal use of an employer-provided automobile for:

- Income inclusion;
- Employment tax; and
- Reporting.

Due solely to the COVID-19 pandemic, if certain requirements are satisfied, employers and employees that are using the automobile lease valuation rule to determine the value of an employee's personal use of an employer-provided automobile may instead use the vehicle cents-per-mile valuation rule to determine the value of an employee's personal use of an employer-provided automobile beginning as of March 13, 2020.

## **2021 IRS Forms**

On December 31, 2020 and January 5, 2021, the federal Internal Revenue Service released the following [new forms and publications](#), among many others, for use in 2021:

- Form W-4 – Employee's Withholding Certificate
- Form W-4P – Withholding Certificate for Pension or Annuity Payments
- Publication 531 – Reporting Tip Income