

SPRING NEWSLETTER

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THANK YOU!

The highest compliments our clients give us are the referrals of their family, friends and business associates. Thank you for your continued support, trust and referrals!

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BUSINESS & EMPLOYMENT LAW

COBRA PREMIUM REDUCTION UNDER ARRA EXTENDED UNTIL MAY 31, 2010

The American Recovery and Reinvestment Act (ARRA), signed into law by President Obama on February 17, 2009, provided individuals who were involuntarily terminated between September 1, 2008 and December 31, 2009 with assistance in paying their COBRA health premiums. Under ARRA, eligible workers paid only 35 percent of their COBRA premiums for up to 15 months. The remaining 65 percent was reimbursed to the employer, insurer or health plan as a credit against certain employment taxes. Since it was first signed into law by President Obama, ARRA has been extended several times to help millions of unemployed Americans and their families in affording and keeping their health benefit coverage. Most recently, on April 15, 2010 President Obama signed the Continuing Extension Act of 2010 (Extension Act), extending the COBRA subsidy eligibility period to include individuals who are involuntarily terminated on or before May 31, 2010. Congress is also currently considering a longer extension.

continues inside.



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BUSINESS & EMPLOYMENT LAW

EMPLOYERS, BE WARNED: DOL CRACKS DOWN ON MISCLASSIFICATION OF EMPLOYEES

Often the lines are unclear between employee and independent contractor. Workers are generally considered employees when someone else controls how they work. In contrast, independent contractors are generally in business for themselves, set their own hours, and control how their services are performed. Employers should be cautious about how they classify workers because federal and state officials are starting to aggressively pursue companies that wrongly classify employees as independent contractors. Employers can be subject to unpaid wages, back taxes, and stiff penalties. Since 2007, New York has identified more than 31,000 instances of misclassification and assessed \$11 million in unpaid unemployment taxes and \$14.5 million in unpaid wages. If you have any questions about how to properly classify a worker, please contact our office.

DOL ALSO CRACKS DOWN ON UNPAID INTERNSHIPS

Employers should be aware that many unpaid internships violate federal and state minimum wage and overtime laws. In order for an internship to be unpaid, it must comply with the six legal criteria set by the US Department of Labor. Among those criteria are that the internship must be similar to training which would be given in an educational environment, the internship experience must be for the benefit of the intern, and the intern cannot displace regular paid workers. As such, it is illegal to not pay interns for positions that involve mainly non-educational menial work. Recently, federal and state regulators have been cracking down on companies that fail to pay interns properly. Last year, the NY Department of Labor ordered investigations into several companies that offered unpaid internships. If you have any questions on whether an internship can be unpaid, please contact our office.

IMMIGRATION LAW

SUPREME COURT PROTECTS RIGHTS TO IMMIGRATION ADVICE

On March 31, 2010, the U.S. Supreme Court held, in *Padilla v. Kentucky*, that criminal defense lawyers must advise their non-citizen clients about the risk of deportation if they accept a guilty plea. This case involved a Vietnam War veteran who resided lawfully in the US for more than 40 years. *Padilla* pled guilty to trafficking marijuana in Kentucky after his criminal defense attorney incorrectly advised him not to worry about deportation because he had lived in this country for so long. The guilty plea made *Padilla* subject to mandatory deportation and *Padilla* was not allowed to withdraw his guilty plea upon learning of the deportation consequences. In its decision, the Supreme Court recognized that current immigration laws impose harsh consequences upon those convicted of certain types of crimes, which has dramatically raised the stakes of a non-citizen's criminal conviction. The Supreme Court's decision means that lawyers must now tell their non-citizen clients whether pleading guilty to a crime can lead to their deportation and paves the way for individuals to potentially reopen their criminal cases if they were given incorrect immigration advice upon pleading guilty.

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IMMIGRATION LAW

ARIZONA'S NEW IMMIGRATION LAW

On April 23, 2010, the Governor of Arizona signed a new law designed to crack down on illegal aliens. This controversial law makes it a crime in Arizona to be in the US illegally and gives police the broad power to question people they reasonably suspect are illegal immigrants during the course of a legal stop. Critics of the new law consider it racially discriminatory and are worried that it may target persons of Hispanic/Latino ethnicity. Further, opponents are concerned that the new law may affect aliens who have been granted deferred action by the federal government. Deferred action is granted to aliens whose status may be difficult to discern. Currently, the Justice Department and the Department of Homeland Security are reviewing the law, which is scheduled to take effect in late July or early August, and it is likely that the law will be challenged in court.

K&M NEWS & EVENTS

- K&M recently won a motion dismissing a lawsuit filed by a former consultant against our client, a prominent clothing manufacturer. The consultant claimed that he was misclassified as an independent contractor, and thus should be paid back taxes and benefits received by employees. We successfully argued that the consultant was unable to state a claim under the NYS Labor Law.
- K&M recently argued a case in the Appellate Division, Third Judicial Department that will affect thousands of former inmates in NY. The case, *Nazario v. State*, is one of many cases regarding former prisoners who were required to serve a term of post-release supervision that had been administratively (and illegally) imposed by the Department of Corrections rather than the sentencing judge. The Appellate Division will decide whether these individuals will be entitled to civil damages.
- K&M recently obtained a waiver under INA section 212(c) on behalf of our client, a longtime legal permanent resident, who was placed in removal proceedings following a criminal conviction. We successfully argued that he and his family would suffer hardship if he were to be deported to his home country.

Katona & Mir: Our Mission

We are a New York City based law firm focusing on personalized, cost-efficient service for our clients. Our clients include entrepreneurs, corporations, mid- and small-size companies and individuals from all over the world. Our primary practice areas are Immigration, Business and Employment, Criminal Defense, and Litigation.