SEC Proposes CEO Pay Ratio Disclosure Rule

On September 18, the Securities and Exchange Commission (SEC) held an open meeting to consider whether to propose a Pay Ratio Disclosure rule for chief executive officers (CEOs). Following a presentation by SEC staff members, the SEC voted 3-2 in favor of the rule. It would require most publicly traded companies to determine: 1) the median total annual compensation of all employees (excluding the CEO); 2) the total annual compensation of the CEO; and 3) the ratio between the two numbers.

Keith F. Higgins, Director of the SEC Division of Corporate Finance, explained that the rule is designed to comply with the statutory (Dodd-Frank Act) mandate while at the same time addressing concerns about the costs of compliance. It provides flexibility with respect to the calculation used to comply with the disclosure requirement. “Given this flexibility, we believe that even a registrant with a large number of employees will be able to provide the disclosure in a relatively cost efficient manner based on statistical sampling, use of estimates, and a consistently applied compensation measure to identify the median employee.”

Christina L. Padden, Attorney Fellow in the Office of Rulemaking, Division of Corporate Finance, said the rule requires the inclusion of all employees and that “for purposes of the rule, employees would include full-time, part-time, temporary, seasonal, and non-U.S. employees employed by the registrant or any of its subsidiaries as of the last day of the registrant’s last completed fiscal year.” She said that compensation may be annualized for full-time employees hired during the year, but not for part-time, temporary, or seasonal employees. Further, cost of living adjustments for non-U.S. employees are prohibited. The ratio disclosure would be required “in any annual report, proxy or information statement or registration statement that requires executive compensation disclosure pursuant to Item 402.” Finally, the ratio must be updated when the entity files its “annual report for the last completed fiscal year or its proxy or information statement for its annual meeting with shareholders, provided that the information must be filed no later than 120 days after the end of such fiscal year.”

Craig Lewis, Chief Economist in the Division of Economic and Risk Analysis (DERA), focused on the potential benefit of statistical sampling. He said that DERA has reached a “preliminary conclusion that permitting registrants to use statistical sampling may lead to a reduction in the compliance costs as compared to other methods of identifying a median.”

SEC Commissioners and staff indicated that they welcome additional public comment concerning the proposed rule. The text of the rule and instructions for public comment are available at: www.sec.gov/rules/proposed/2013/33-9452.pdf.

Chicago, New York State Consider Action on Payroll Cards

News of Natalie Gunshannon’s lawsuit against a Pennsylvania McDonald’s franchise for requiring that she receive her pay on a payroll debit card reached Chicago (see “Inside Washington” for July 2013), where Aldermen Edward Burke (D-14th) and William Burns (D-4th) have introduced a resolution calling for a hearing on the use of payroll cards by Chicago employers [Chicago Office of the City Clerk, Resolution No. R2013-690, 7-24-13].

The aldermen believe a hearing is warranted due to the disturbing allegations in the lawsuit, which state that Gunshannon was deprived of choice in the method of wage payment and that the fees associated with the card drove her pay below the minimum wage.

Illinois law addresses payroll cards, and the state Department of Labor recently issued a public advisory regarding their use [www.illinois.gov/idol/Laws-Rules/FLS/Pages/debit-credit-cards.aspx]: employers may offer the cards on a voluntary basis only, may not require them as a condition of employment, must divulge all fees associated with the cards, and employees retain the right to alternative forms of payment.

APA’s Government Affairs Task Force Payroll Card Subcommittee is planning to participate in the hearing and will provide written testimony to the aldermen and the City Council Committee on Finance. The hearing is expected to take place on October 11.

Proposed legislation in New York

The lawsuit in Pennsylvania has also spurred New York’s Attorney General to request information from a number of (unidentified) large employers doing business in the state. It is reported that requests have been delivered to McDonald’s, Wal-Mart, and 18-20 other large employers,
and that a second wave of requests has been made to an additional 10 employers.

Currently, wage payment statutes in New York and Pennsylvania do not address the use of payroll debit cards. APA has encouraged both states to add such provisions. In June, we sent a letter to New York Assemblyman Joseph Morelle and Senator Patrick Gallivan encouraging them to support proposed legislation because confusion over the proper use of payroll cards can lead to compliance problems such as the one that occurred in Pennsylvania (http://info.americanpayroll.org/pdfs/gov/13g01-NY_APA_Letter_201306.pdf).

Ways and Means Subcommittee Holds Hearing on UI Integrity Issues

On September 11, the U.S. House of Representatives’ Ways and Means Subcommittee on Human Resources held a hearing on the integrity of the unemployment insurance (UI) system, focusing on H.R. 2826, the Permanently Ending Receipts by Prisoners (PERP) Act. The Act would prevent incarcerated individuals from receiving unemployment compensation by requiring state agencies to seek information from the Commissioner of Social Security on claimant eligibility. It would authorize the Secretary of Labor to withhold unemployment benefit payments from states that are not in compliance.

In his opening statement, Rep. David Reichert (R-WA) identified issues threatening the integrity of the UI system including improper payments and a “pay and chase” approach to the recovery of funds. He noted that over $58 billion in improper UI payments have been made over the last five years and that in New Jersey alone, 20,000 inmates have received over $24 million in benefits. Rep. Lloyd Doggett (D-TX), Ranking Member of the Subcommittee, said he supported the goal of preventing the payment of UI benefits to prisoners, but said that only about one quarter of improper payments are due to fraud; most are due to errors, often a result of underfunding. The Subcommittee then heard testimony from UI experts who offered various approaches to improving the system.

Testimony

Douglas J. Holmes, President of UWC-Strategic Services on Unemployment & Workers’ Compensation, indicated his support for the PERP Act and offered several suggestions for strengthening the UI system:

• use additional public and private databases to identify errors and fraud;
• require states to regularly provide a statement of account to employers that includes the full social security number of claimants;
• develop new performance measures and provide additional funding to states that implement effective systems;
• remind states that claimants who cannot meet the work requirements are not entitled to benefits; and
• verify that a claimant is actually seeking work.

Holmes also identified several ways to prevent identify fraud:

• check the addresses of claimants to make sure that none are foreign and that multiple applications have not come from the same address;
• ensure that multiple payments are not going to the same IP bank account;
• verify the proper employer account prior to paying benefits; and

• modernize the wage verification process.

Holmes said it was important for employers to work with the U.S. Department of Labor and with states when new systems are designed and implemented. He said that while employers acknowledge the importance of the UI system, they also expect “good stewardship” of funds.

Julia K. Hearthway, Secretary of the Pennsylvania Department of Labor and Industry, said that she had established an Office of Integrity (OI) to address fraud in government programs. The OI office instituted a cross-reference program with JNET, the Pennsylvania Justice Network, to prevent individuals incarcerated in state facilities from receiving UI benefits. She estimated that the program had saved Pennsylvania over $100 million in the first quarter of 2013.

Hearthway said that the state has taken steps to block UI applications from foreign IP addresses, thereby saving approximately $9.2 million in the first half of 2013. She also highlighted a Treasury Offset Program (TOP) that allows the state to intercept federal income tax refunds from those who must repay UI overpayments. Finally, she noted that Pennsylvania has offered an amnesty program to individuals and employers who owe funds to the UI system.

Scott B. Sanders, Commissioner of the Indiana Department of Workforce Development (DWD), outlined steps that Indiana has taken to improve the integrity of its UI system. The DWD partnered with the Marion County Prosecutor’s office to prosecute UI fraud. Previously, individual counties rarely prosecuted UI fraud because of a lack of resources. The DWD determined that Marion County has jurisdiction because the computer system through which UI claims are processed is located in Indianapolis. The DWD then provided resources to the county to aid in prosecuting UI fraud. The partnership has resulted in repayment orders totaling more than $450,000.

Sanders also noted the effectiveness of a requirement that UI claimants who have received benefits for four weeks report to a work center and show proper identification. He indicated that while the purpose of the requirement is to help individuals get back into the workforce, it effectively deters the continuation of fraudulent claims.

Valerie C. Melvin, Director of Information Management and Technology Resources Issues for the U.S. Government Accountability Office, commented on a study of nine states that are in various stages of UI program modernization. She identified common problems, including insufficient funding for modernization, a lack of technical expertise, and complications stemming from simultaneous operation of original systems while transitioning to new technology.