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FTC FURTHER DELAYS RED FLAGS RULE

Once again the Federal Trade Commission ("FTC") has delayed implementation and enforcement of the "Red Flags Rule" (the "Rule") until November 1, 2009. This short reprieve allows employers an extra three months to determine whether they are covered by the Rule and what they must do to comply. The Rule is an anti-fraud regulation designed to prevent identity theft. The FTC has provided some guidance to clarify what businesses are covered under the Rule that applies to "financial institutions" and "creditors." The "creditors" defined by the Rule includes any company that provides products or services and bills for the products or services at a later time. A company falling under this broad definition of "creditors," which includes professional services of accountants and lawyers, must assess whether it has any "covered accounts." A "covered account" is an account (i) that the company offers or maintains, primarily for personal, family, or household purposes that involves or is designed to permit multiple payments or transactions, and (ii) any other account that the company offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the company of identity theft, including financial, operational, compliance, reputation, or litigation risks. If the company has a "covered account," then the company must develop and implement an identity theft policy. The appropriate policy for the company depends on its size and complexity as well as the nature and scope of its activities and accounts. Compliance with the Rule will require an analysis of both customers and employees' accounts handled by a company and the adoption of a policy or program to identify warning signs of possible identity theft.

There is a helpful brochure available on the FTC's website at www.ftc.gov/redflagsrule that a company can use to help the company analyze whether or not it is actually covered by the Rule, and if so, how the company can comply. The Rule requires not only an assessment of any risk of identity theft but also a development of procedures to appropriately respond to any red flags that are detected to prevent and mitigate harm and ongoing, periodic review of those procedures.

In addition to the guidance currently available on the FTC website, the FTC promises new guidance to help small and low-risk entities by providing additional materials that will hopefully provide direction and further guidance regarding the Rule. Due to the severity of the penalty at $3,500 per violation and due to the breadth of the Rule itself, we encourage you to check out the FTC website and determine if your company falls under the Rule. If we can be of any help to you, please do not hesitate to contact us.

NEBRASKA NEW HIRE REPORTING ACT EXPANDED TO INCLUDE INDEPENDENT CONTRACTORS

The Nebraska New Hire Reporting Act (the "Act"), which has been in place since 1997, requires employers who hire or rehire any employee for any amount of compensation to report certain information to the Department of Health and Human Services, including the name, address and social security number for the employee, the employee's date of hire or rehire, and the name, address and federal tax identification number of the employer. This information must be transmitted within twenty days of hire or rehire or within one of two monthly transmissions if submitting electronically; either a copy of the employee's federal W-4 form or an approved form can be used. The Act was originally enacted pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act, which is intended to assist with the child support collection process.

Beginning January 1, 2010, employers will have additional obligations under the Act. A recent amendment expanded the reporting requirements to include independent contractors, which for purposes of the Act is "an individual who provides services to an employer as an independent contractor for compensation that is reported as income other than wages and who is an individual, the sole shareholder of a corporation, or the sole member of a limited liability company." The Nebraska State Directory of New Hires has been notifying employers of these new requirements, so it is likely you may have already received a notice containing this information.

Additional information on the Act and the approved form for reporting can be found at www.ne-newhire.com. If you have questions about a notice you received or would like additional information about complying with the Act, please contact a member of Koley Jessen's Employment, Labor and Benefits Group.

The Koley Jessen Employment, Labor and Benefits Group:

Margaret C. Hershiser
402.343.3711
margaret.hershiser@koleyjessen.com

Julie A. Schultz
402.343.3766
julie.schultz@koleyjessen.com

Leilani M. Harbeck
402.343.3767
leilani.harbeck@koleyjessen.com

Joan M. Cannon
402.343.3753
joan.cannon@koleyjessen.com

Richard D. Vroman
402.343.3810
richard.vroman@koleyjessen.com

Ryan J. Sevcik
402.343.3859
ryan.sevcik@koleyjessen.com