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HEALTH INSURANCE UPDATE

With the cost of health insurance becoming too expensive for many small businesses, one of the most important bills passed this legislative session was House Bill 1629, by Representative Frank Farkas (R-St. Petersburg) and Senator Durrell Peaden (R-Crestview). The bill, also known as the Affordable Health Care for Floridians Act, was developed from recommendations by Governor Jeb Bush's Task Force on Access to Affordable Health Insurance and the House Select Committee on Affordable Health Care for Floridians.

The bill provides an alternative to the current health insurance choices available in the market and allows consumers to shop for policies based on effectiveness, cost and convenience. Hospitals will be required to provide information on what they charge for various procedures, and this information will be published on the state's website. The website will allow link to performance measures for doctors and hospitals, as well as the retail prices for the 50 most frequently prescribed medicines.

The bill also requires health insurance companies and Health Maintenance Organizations ("HMO's") to provide a rebate of up to 10 percent of premium when the majority of a health plan's members participate in a wellness program.

By creating the "Small Employer Access Program," the bill establishes a small employer health insurance program for employers with 25 or fewer employees.

Most importantly, the bill requires insurance companies to offer small businesses a high deductible plan that meets federal requirements for a health savings account plan or health reimbursement account.

While these plans would not cover routine wellness visits to a doctor because of their high deductible, they could be a new and important way

for small businesses to provide their employees with access to health insurance for major illnesses and surgeries. A Health Savings Account ("HSA") is a savings account where the money is reserved for health care. Buying a qualified health insurance policy with a minimum deductible of \$1,000 (for singles) or \$2,000 (for a family) would enable a consumer to open an HSA, to which the employee and the employer can contribute up to \$2,600 (for singles) or \$5,150 (for a family) in pre-tax dollars each year. The money in that account would travel with the holder for life and be tax-exempt if the money is used for IRS-approved health care expenses.

This summer, Floridians for Health Care Choices will conduct a series of town-hall events across the state to educate Floridians on the benefits of HSA's and HRA's. Representatives of Florida's leading insurers will be on hand to provide information on specific HSA and HRA products offered in the area. All events are free and open to the public. Tentative event dates are:

- June 14 in St. Petersburg
9:00 – 10:00 a.m., University of South Florida - St. Petersburg Campus, Campus Activity Center
140 7th Avenue South
- June 14 in Orlando
2:00 – 3:00 p.m., Orlando Marriott Downtown
Ballroom B, 400 West Livingston Street
- June 21 in Duval County
- June 25 in Miami-Dade County
- June 30 in Palm Beach County
- July 14 in Broward County
- July 15 in Escambia County
- July 27 in Alachua County

For more details on the above meetings, check www.saveforyourhealth.com or call Floridians for Health Care Choices at 1-866-251-3403.

“HAPPY SHOPPER” DAYS ARE HERE AGAIN

After a two-year absence, tax-free “happy shopper” days are making a return appearance this summer. More items are going to be tax exempt this time around, however. For nine days, beginning July 24th and running through August 1st, all books, clothes, wallets, bags, purses, backpacks and diaper bags will be tax exempt if they have a selling price of \$50.00 or less. This will be the first year that books are tax exempt.

Also, during the same period, all school supplies selling for less than \$10.00 will be exempt. This is also the first year school supplies are exempt from sales tax. School supplies include pens, pencils, erasers, crayons, notebooks, notebook filler papers, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses and calculators.

Since this is the first time books and school supplies are included, many retailers who did not have to worry about complying with the tax-free days in the past must now be prepared for these tax-free days. The Florida Department of Revenue is currently working on guidelines to help retailers comply with the tax-free days.

CONSTRUCTION-RELATED ISSUES

- **Retainage:** During the legislative Session, bills sponsored by Senator Mike Bennett (R-Bradenton) and Representative Ron Reagan (R-Sarasota) prompted an agreement between the American Subcontractors Association of Florida, the Underground Utility Contractors of Florida, and the state’s community colleges and state universities to make sure that retainage is paid in a reasonable time to prime contractors and subcontractors for work they have properly completed. The agreement approves specific retainage provisions to be used in contracts between Florida’s community colleges and state universities and their general contractors, and to be used in contracts between the GC’s and their subcontractors. These provisions state that 45 days after a sub completes its work, the sub will be able to apply to the GC for release of all of its retainage. The GC must include the payment request in its next

payment application, and include retainage in its next payment. An exception is provided for contested items. GC’s and subs have 10 days from receipt of the funds to pay their subs for properly performed work. Next legislative session, you can expect another push to pass retainage legislation to require earlier release of retainage, modify payment down the line, and provide for a single punch list to create a dividing line between contract completion and warranty work.

- **Owner Controlled Insurance Programs (“OCIP’s”):** Senate Bill 2696 by Senator Jeff Atwater (R-Palm Beach), with assistance by Representative Don Brown (R-DeFuniak Springs) will limit the use of OCIP’s on public construction projects. OCIP’s may be used only if the estimated total cost of the public construction project is (1) at least \$75 million, (2) at least \$30 million if the project is for construction or renovation of two or more public schools during a year, or (3) at least \$10 million if the project is for construction/renovation of one public school. The OCIP must also make available, for additional premium, extended completed operations coverage to meet certain statute of limitations requirements. In addition, the bill requires that any bid specifications must include the details about an OCIP and must specify the minimum required safety standards.
- **Certificates of Insurance and Indemnification Requirements:** Although they did not pass during the Session, Senate Bill 1710 by Senator Paula Dockery (R-Lakeland) and House Bill 135 Representative Don Brown (R-DeFuniak Springs) would have addressed two problems that unfairly impact small contractors. First, the bills would have forced general contractors to accept or reject immediately the types of insurance maintained by their subcontractors. After subs have started or even completed their work, these companies withhold payment and tell their subs their insurance is not up to standards. These two bills said if the sub gives the general the certificate before work is started and the general allows the sub to do the work, the general cannot withhold proper payment after the fact until a new certificate is supplied.
On the issue of indemnification agreements, these two bills would have made it illegal to require those below you in the construction chain

to indemnify you for your own negligence. Some in the construction industry use these agreements to require subcontractors to pay for the general contractor's own negligence.

NEW OVERTIME PAY REGULATIONS

On April 23, 2004, the United States Department of Labor released new regulations to significantly revise which employees are exempt from getting paid overtime. Under the new rules, workers earning less than \$23,660 per year -- or \$455 per week -- are guaranteed overtime. **Employers must implement these new regulations by August 23, 2004.**

Non-exempt employees must be paid at least the federal minimum wage (\$5.15) for all hours worked and must receive overtime pay at time and one-half their regular rate of pay for all hours worked over 40 hours in a work week.

However, there is an exemption from the minimum wage and overtime requirements for employees who are bona fide executive, administrative, professional and outside sales employees. To qualify for an exemption, employees generally must meet certain tests regarding their job duties and be paid a salary not less than \$455 a week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the exemption.

The exemptions are:

Executive Employee Exemption:

- The employee must be paid a weekly salary of at least \$455;
- The employee's primary duty must be managing the enterprise or a managing a department;
- The employee must customarily and regularly direct the work of two or more full-time employees; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions as to the hiring/firing/promotion or other employees must be given particular weight.

Administrative Employee Exemption:

- The employee must be paid a weekly salary of at least \$455;
- The employee's primary duty must be the

performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and

- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Professional Employee Exemption:

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be paid a weekly salary of at least \$455;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes the consistent exercise of discretion and judgement;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Computer Employee Exemption:

- The employee must be paid a weekly salary of at least \$455 or, if paid by the hour, at least \$27.63 an hour;
- The employee must be a computer systems analyst, computer programmer, software engineer or other similarly skilled worker; and
- The employee's primary duty must consist of certain computer-related capabilities.

Outside Sales Employee Exemption:

- The employee's primary duty must be making sales or obtaining orders or contracts for services for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Exemption for Business Owners:

Under a special rule for business owners, an employee who owns at least a 20 percent interest in the company in which he or she is employed, and who is actively

engaged in its management, is considered a bona fide exempt employee and not subject to overtime payment.

Please review these new exemptions carefully – you may find that employees who were previously exempt from overtime under the old law will now be entitled to receive overtime. If you have any questions about these new exemptions, please call the FUBA offices and ask for Karen or Lance.

ARE YOU HIRING TEENAGERS FOR SUMMER WORK?

If you will have teenagers under 18 working at your business this summer (or at any time during the year), you must be aware of the state and federal laws regulating the types of jobs they can and cannot do, their minimum pay rate, their required number of breaks, and the number of hours they can work.

- The current minimum wage is \$5.15 an hour. [This applies to all employees, regardless of age.]
- Tipped employees (food servers, for example) must be paid a cash wage of at least \$2.13 an hour if their employer claims a tip credit against their minimum wage obligation. If an employee's tips combined with the wages paid by the employer do not equal the minimum wage of \$5.15 an hour, the employer must make up the difference. [This also applies to all employees, regardless of age.]
- With certain exceptions, **a minor must be at least 14 years old to work in Florida.**
- Once a teenager reaches 18 years of age, he or she is no longer subject to the child labor law.
- Special restrictions on driving for teens: Teenagers under 18 cannot drive automobiles as part of their job. The only exception is for 17-year-olds, who may drive cars during daylight hours and only under very limited circumstances.
- **During the summer, 14 and 15-year-olds:**
 - ❑ Can work up to 8 hours a day.
 - ❑ Can work no more than 40 hours per week.
 - ❑ Can work between 7 a.m. and 9 p.m.
 - ❑ Must be given a 30-minute, uninterrupted break after 4 consecutive hours of work. The break can be unpaid.
 - ❑ Can work in most office jobs and retail and food service establishments, but may not work in processing, mining, or in any workplace where goods are manufactured or processed.

- ❑ Cannot operate most power-driven machinery, including lawnmowers, lawn trimmers, and weed cutters.
- ❑ May operate most office machines and certain equipment in restaurants, such as dishwashers, toasters, milk shake blenders, and coffee grinders.
- ❑ May perform work like bagging groceries, office work, stocking shelves, cashiering, and light cooking performed in the full sight of customers.
- ❑ Cannot bake as part of their employment.
- **During the summer, 16 and 17-year-olds:**
 - ❑ Have no limit on the number of hours they may work each day and each week. [Please keep in mind, though, that they will earn overtime if they work more than 40 hours per week.]
 - ❑ Have no limit on the time of day they may work.
 - ❑ Can work only 6 consecutive days per work week.
 - ❑ Can work no more than 4 consecutive hours without a 30-minute, uninterrupted break. The break may be unpaid.
 - ❑ Cannot sell, prepare, or serve alcoholic beverages. [Exceptions to this rule are made on a case-by-case basis by the Florida Division of Alcoholic Beverages and Tobacco.]
 - ❑ Cannot drive automobiles as part of their job.
 - ❑ Cannot work on any scaffolding, roofs, or ladders above 6 feet.
 - ❑ Cannot perform electrical work.
 - ❑ Cannot work in or around toxic substances or pesticides.
 - ❑ Cannot use power-driven bakery machines or meat slicers.
- Employers are required to keep records to prove the age of all minors they hire. To satisfy this requirement, you can do one of the following:
 - ❑ Copy the minor's birth certificate.
 - ❑ Copy the minor's driver's license.
 - ❑ Get an age certificate issued by the School Board.
 - ❑ Copy a passport or visa that lists the minor's date of birth.