Healthcare organizations across the United States are facing an unprecedented labor shortage. Many healthcare employers are moving quickly to implement creative solutions that will attract and retain a qualified workforce. Kaiser Health News reports that “after the pressure cooker of the past two-plus years led to staff turnover and a rash of early retirements, hospitals nationwide are focused on recruiting full-time nurses.”
While filling an ever-growing labor deficiency is a priority for many organizations, it is crucial to consider the legal implications of incentives and ensure they are designed and implemented in a compliant manner. As indicated in a recent report by Nurse.com, here are five prevalent employee incentives in healthcare, along with areas of employment law compliance that are sometimes overlooked.

1. **Loan Repayment and Tuition Advancement.**
   Consider: Is the repayment amount or tuition advancement taxable income to the employee? Employers may implement Educational Assistance Programs that allow for tax-free payments, but there are several specific requirements to qualify.

2. **Bonuses.**
   Consider: Does the bonus need to be included in an employee’s regular rate of pay for the purpose of overtime calculation under the Fair Labor Standards Act (FLSA)? Most bonuses must be included. Discretionary bonuses may be excluded, but there are specific statutory requirements. Examples of bonuses that may be excluded if they meet the statutory requirements include: bonuses for overcoming a challenging situation, bonuses for extraordinary effort, employee-of-the-month bonuses, and referral bonuses.

3. **Remote Work.**
   Consider: Employees who are not exempt from overtime payment under the FLSA must track and report all time worked – including those quick late-night emails. In addition, employers are often required to comply with employment laws in that state where a remote worker resides if different than the state where the employer is located, and may be subject to other requirements as a result of doing business in that state.

4. **Independent Contractors.**
   Consider: Does the relationship meet the current independent contractor test under the FLSA? The Biden Administration withdrew a narrower, more employer-friendly independent contractor analysis and has signaled intent to implement the “ABC test” currently in place in California. Also, keep in mind that many states have separate independent contractor tests.

5. **Focus on the Pipeline.**
   Consider: Scholarship and volunteer programs can be a great way to increase a qualified workforce. These programs can also be designed with a goal of increasing diversity. State laws in this area are ever-changing and it is helpful to work with counsel on compliant program structure.

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National Law Review, Volume XII, Number 136