



Human Resource and Management Services

March 2009

HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ **FROM HR HERO** ◆

“New I-9 form effective April 3”

An important deadline is approaching for HR. On April 3, employers must start using the new I-9 form. Initially the change was set to happen in February, but the Obama administration delayed it and other unimplemented regulations to allow time for further agency review.

◆ **FROM TEXAS EMPLOYMENT LAW LETTER** ◆

“Man sentenced in unemployment fraud scheme”

In February, the TWC announced that a Dallas man has been sentenced to 11 years and 7 months in federal prison for his role in an identity-theft scheme in which he and other fraudulently obtained employment insurance benefits. Lonnie Oliver, JR., age 40, also has been ordered to pay \$119,236 in restitution.

Oliver and Albert Henson Jr., were convicted of obtaining names, social security numbers, and birth dates of individuals and then applying for unemployment benefits under false identities without the individuals' knowledge or authority.

◆ **FROM EEOC** ◆

“Young men who were sexually abused”

Hotel giant WorldMark by Wyndham will pay \$370,000 and furnish significant remedial relief to settle a sexual harassment lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today. The EEOC had charged that the company failed to stop the manager of its Birch Bay Resort in Blaine, Wash., from sexually harassing young male employees.

According to the EEOC's investigation, the resort manager, male and in his 40s, repeatedly subjected young male employees between the ages of 17 and 25 to unwelcome touching of a sexual nature, comments about their physical appearance, and sexually charged situations.

One of the former employees said, “I was humiliated by what was happening to me at work -- everyone knew and many people just laughed about it. It was really hard to talk about what happened to me, reporting it to the EEOC, but it was worth it. At least now I know it's not going to happen again to another teenager.”

... Under a consent decree filed with the federal court, WorldMark by Wyndham agreed to pay a total of \$370,000 to four former employees. The company also agreed to provide

anti-discrimination training for managers, supervisors and employees at Birch Bay Resort and to establish policies and procedures to address sexual harassment issues. Wyndham will also report any future discrimination complaints to the EEOC and allow agency to monitor the work site for the next three years.

◆ **FROM PERSONNEL LEGAL ALERT** ◆

“HR plays an important role before downsizing”

... The news should be delivered in person. If you have global offices and that's not possible, (Hacker) recommended delivering the news via telephone – not email.

When you deliver the news, utilize these best practices.

- Be honest and clear
- Don't make empty promises
- Explain unemployment compensation, severance pay, vacation accrual, and benefits
- Offer outplacements services
- Address references
- Be prepared to listen
- Allow employees to clean out their own spaces

◆ **FROM HR SPECIALIST: EMPLOYMENT LAW** ◆

“Can employees plead the fifth amendment during an investigative interview?”

- Q. Our company recently discovered some theft in our operation. We called an employee in for an investigative interview. He claimed to have consulted with an attorney and refused to answer our questions on the grounds that he could not be forced to incriminate himself under the Fifth Amendment of the US constitution. What are our choices?
- A. The Bill of Rights to the Constitution protects citizens from their government. The Fifth Amendment protection against self-incrimination is to prevent the government from coercing information from its citizens, who are presumed innocent until proven guilty.

The amendments are not applicable to protect one citizen (including a corporation) from another. Employees have a duty to cooperate in any lawful company investigation.

Therefore, you can terminate an employee who refuses to answer questions based on the Fifth Amendment or any other reasons. It is advisable, in such a situation, to explain to the employee that termination could be the

consequence of refusing to answer and failing to cooperate with the investigation.

◆ **A REAL LIFE SITUATION** ◆

Situation: In today's economy, employers need to be ever vigilant with any situation an employee may present. These are dangerous times. With layoffs and the credit crunch, many people have become desperate in their attempts to sustain their livelihood. In fact, since January 2009, we have been involved in three (3) separate situations where employees have called the police to file allegations against their employers. In one of these situations, the employee summonsed to police to escort her to work in order to confront her supervisor with her claim that she had been assaulted and attacked by him the day before.

Conclusion: Throughout the last 20 years, HR&M has handled grave situations such as these multiple times during any given year. These situations can be scary for employers, but with proper documentation, a confident HR support team, and a well-trained management team, even these situations can have a favorable outcome.

In this particular situation, the employee alleged that the employer verbally assaulted her by yelling, screaming, cussing, and physically attacked her by pushing her, grabbing her by the arms and shaking her. Because of her employer's alleged behavior, she felt she had no option but to call the police to accompany her to confront her employer and submit her letter of resignation. Upon questioning, the police found no physical evidence, no prior incidents, and no history of inappropriate behavior on the part of the supervisor. When asked if the employee wished to move forward with the charges, the employee decided to drop the assault charges and instead formally resigned.

Even though it appeared that the employer's liabilities left when the employee tendered her resignation, HR&M advised that an investigation be conducted as to the validity of these allegations and that all of the results be documented in the event the employee pursues other avenues against the employer. As a result, observations from other employees revealed no inappropriate conduct or behavior on the part of the supervisor and, in fact, the ex-employee had told several employees that she was trying to find a way to stay home to take care of her child.

And, as only real life can imagine, dropping the assault charges did not stop this ex-employee from filing for unemployment benefits and an EEOC charge claiming sex discrimination; both of which were denied and determined unfounded thanks to the investigation findings and documentation.

The real kicker, however, came when the ex-employee discovered that each one of her claims had been denied and, out of desperation, she once again contacted the local police department and re-opened the assault charges.

These situations are not as few and far between as they once were. With job scarcity and the prospect of not sustaining a

comfortable level of financial freedom, many once loyal employees are turning to extreme measures which have the potential of holding employers financially hostage.

Unfortunately there is no magic wand that can be waved that will ensure that these things cannot happen to your company. The truth is that all employers, management teams, and supervisors need to remain watchful and continue to be on their toes.

These are dangerous times, but HR&M will always be available and eager to assist should these situations arise. Take confidence that HR&M's knowledge and experience will guide you and stand beside you and your company every step of the way.

FEATURED SERVICE
Management Services

HR&M specializes in most of the major categories of human resources, ranging from issues involving harassment, discrimination, and Wage & Hour rules, to training, preparing Handbooks, and being an expert witness representing management in employment litigation.

This vast experience has also garnered expertise in strategic planning, forecasting, restructuring, career pathing, and most importantly, providing accountability where it belongs.

Being a small business itself, HR&M feels the same pain as other organizations in completing quarterly taxes, unemployment taxes, property taxes, payroll taxes, profit/loss statements and other accounting records, and various other reports that generate 'zero' revenue.

These are the little things that help HR&M relate to an organization's issues.

Contact HR&M for your assistance and additional information.

◆ **REMEMBER! WE CAN HELP!!** ◆

Consulting on performance, attendance, FMLA, Wage & Hour, management accountability, and other unique issues is just one of the areas of our expertise.

We also provide:

- **supervisory/management training**, ranging from brown bag luncheon training to ½ or full day sessions
- employee **handbook** development
- responses to **EEOC discrimination charges** and **TWC unemployment claims**
- **on-line performance review** forms and processes
- **guidance** and consultation on **coaching, counseling, and disciplining** in employee relations matters
- **succession** and **strategic planning** programs
- **consultation** on issues regarding attendance and performance and guidance on terminations
- development of OFCCP compliant **Affirmative Action Plans**