



Human Resource and Management Services

May 2009

HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ FROM WORKFORCE WEEK ◆

“COBRA worries cash-poor businesses: firms must pay now, wait for reimbursement”

... part of the recently approved federal stimulus bill - the American Recovery and Reinvestment Act - offers eligible terminated employees a 65% discount on COBRA coverage. Enacted in 1986, COBRA allows former employees to continue their health insurance coverage for up to 18 months after they are terminated. The catch for employers is that they must pay 65% of the COBRA premium and then file for reimbursement through a payroll tax credit. Employees pay the other 35%. Some companies are worried the federal requirement could cause cash flow problems because of the up-to-three-month delay for reimbursement, said Sue Mathiesen, director of research at McGraw Wentworth, a Troy, Michigan-based employee benefits and consulting company.

“The big concern right now is how many people will elect this and where the money will come from,” said Jennifer Kluge, COO of the Warren, Michigan-based Michigan Business and Professional Association. Kluge said cash flow problems could cause some financially strapped companies to lay off more employees, freeze or cut salaries, or eliminate group health coverage, dental, life insurance, disability and other benefits.

◆ FROM SHRM ◆

“60% of older workers delay retirement”

While the economic crisis is being felt by nearly every segment of the working population, one group of workers is faced with particularly tough decisions regarding their futures. 60% of workers over the age of 60 say they are putting off their retirement because of the impact of the financial crisis on their long-term savings, according to a survey by recruitment firm CareerBuilder. The survey was conducted among more than 8,000 full-time U.S. workers ages 18 and over between Nov. 12 and Dec. 1, 2008.

The findings are in line with a survey by NAVA (formerly the National Association for Variable Annuities), which found that more than half of all U.S. financial advisors indicate that their clients are changing or delaying their planned retirement age.

Depleted savings accounts attributable to the economic downshift are causing older workers to stay in the workforce longer to make up for their losses. One in 10 workers (11%)

over the age of 60 who are putting off retirement say that the decrease to their savings might cause them to never retire, while 73% think it will take them up to six years of extra work to recoup their lost savings. Nearly a quarter (24%) feel they can make their money back by working an additional year or two.

◆ 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.

◆ FROM HR SPECIALIST ◆

“It’s ok to set tighter rules on newly hired employees”

A new employee was told he couldn’t be absent or tardy during his first 30 days. He was fired after arriving late twice. The employee, who is black, sued for race bias, saying long-term white employees weren’t held to such a high standard. The court didn’t buy the comparison, saying he had to compare himself to newly hired white employees to prove bias. (*Lake v. Yellow Transportation*, No. 07-CV-03038, DC MN, 2009)

◆ FROM HR HERO ◆

“BlackBerry use may lead to overtime”

In today’s technological climate, it seems that almost every employee, from the CEO to the rank-and-file worker, uses

some type of personal digital assistant (PDA) or BlackBerry® device.

All of that has resulted in what could be deemed a "perpetual workplace" in which employees at all levels find themselves working harder and longer hours to stand out in the crowd. Many employees can't easily separate the time they're working from the time they aren't.

So if those hardworking employees are non-exempt workers under the Fair Labor Standards Acts (FLSA) is the time they spend on their PDAs compensable? Some say it is.

◆ A REAL LIFE SITUATION ◆

Situation: Many organizations are experiencing a down turn in terms of training. Shrinking training budgets are forcing a lot of companies to cancel classes, postpone or restrict training that involves traveling, and/or suspend training altogether during these tough economical times. And yet, panic is setting in with employees having to do more with fewer resources. How do we stay effective and competitive without training?

Observation: There is no doubt that companies need to make cuts in order to survive these days and typically, usually, normally, training is one of the first budget items to be placed on the chopping block.

Now, however, is when we really need these training dollars, especially with all the drastic changes being brought about to fix our bleak economy. New laws and regulatory changes have been signed into effect as a result of the passing of the Stimulus Package. Additionally, the DOL and Congress implemented amendments and updates earlier this year to several employment laws that have not been changed in 20+ years.

One idea is to follow the advice of President Obama and look at education (training) as a key to increasing and securing our future. Smart strong organizations know that during a recession one needs to invest more in their employees, not less. To get your people to work smarter towards lowering operating costs and increasing competitiveness, training budgets should be increased, not cut.

Another idea is to start thinking "outside the box" and collaborate with other organizations to pool training resources. For example, through HR&M's alliance with the Texas Credit Union League, we are now extending training opportunities to all of our clients which typically would be offered to league members only. Our next training seminar is on "The Basics of Employment Law" and is scheduled for June 11, 2009, from 9:00 – 4:00 at generations federal credit union's 6000 NW Loop 410 branch location.
(See attached for more details)

The opportunities available to provide quality training at an economic price are endless. Think about it; it's a thought worthy of your time.

◆ ONE WAY TO AVOID THE SWINE FLU ◆



FEATURED SERVICE Employee Relations

Whether companies are growing, downsizing, or are involved in a merger or acquisition, employees are usually the common denominator when asked about the most difficult challenges that employers face.

Statements such as "We're growing, and I'm asking that you be available at night and on weekends for the next few months", or "We're cutting back, so we need your ideas on how to save money and still serve our customers", usually bring complaints like "I already do all the work around here" and "I've answered your employee survey for the last 2 years and you haven't listened, so what makes me think you want my input now?"

HR&M can help in addressing these circumstances so that they do not culminate into higher and more serious claims of favoritism, inequity, and discrimination.

Call HR&M for additional information on how prepare for these situations.

◆ 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**