



Human Resource and Management Services

July 2009

HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ FROM HR SPECIALIST EMPLOYMENT LAW ◆

“Ignore privacy protests: you can review detailed call records from company cell phones”

... Steelcase Inc. gave employee Patrick Morrissey two cell phones: 1 for business and 1 for personal use. Both billing statements went to his boss because Steelcase paid both bills. But the boss confronted Morrissey when he reviewed the bills and noticed Morrissey had made personal call on company time. The issue escalated and Steelcase fired Morrissey.

He sued, alleging invasion of privacy because the boss accessed his personal and business phone records. Morrissey also sued the cell phone company for releasing the information. The court rejected the claim, saying since Steelcase paid the phone bills; it had the right to read them.

◆ FROM HR COMPENSATION & BENEFITS ◆

“Is it time to stop tracking employees’ vacation leave?”

Among the latest examples:

- A tech giant IBM, each of its 355,000 workers earns three or more weeks’ vacation each year, but the company says it doesn’t officially keep track of the time off.
- Best Buy gives its 4,000 corporate employees the freedom to do their jobs without regard to the hours they put in.
- Netflix lets its 400 salaried workers take as much vacation time as they want, saying workers are evaluated on performance, not ‘face time.’

Some ... warn that ... such a plan typically can’t apply to hourly, non-exempt workers, (a problem); unlimited leave plans also could become a problem if a group of employees challenged their non-exempt status (a problem); and unlimited, untracked leave could make it difficult to monitor the true reasons behind employees’ absences, such as ADA, FMLA, W/C, or other disability benefits (a problem).

◆ FROM THE HR SPECIALIST ◆

“Ledbetter Act already spurring more pay cases”

Several female corrections officers sued, claiming Equal Pay Act violations. They argued their paychecks are smaller today because of a decision made 16 years ago to re-classify them from nurses to correction officers. The court would have tossed out the case due to the statute of limitations. But since President Obama signed Lilly Ledbetter...employees can file pay-bias suits reflecting decision made decades ago. (*Bush v. Orange County Corrections Department, MD FL*)

◆ FROM HR HERO ◆

“In states where unemployment rates rise, employer costs may follow”

State and regional unemployment rates continue their upward climb. 49 states and the District of Columbia reported unemployment rate increases, and all 50 states and D.C. have higher rates than they did one year ago. In fact, as of the end of March, seven states were reporting double-digit unemployment rates.

These numbers are certainly grim, yet their impact may be further felt by employers in the months to come. Unemployment systems are funded by employers’ unemployment compensation taxes, and each employer’s tax rate will increase or decrease depending on the employer’s individual “experience rating,” based in part on the number of previous claims filed against an employer.

◆ MINIMUM WAGE REMINDER ◆

The federal minimum wage increases on July 24th to \$7.25 per hour. If your state’s minimum wage is different, employees are entitled to the higher rate.

◆ FROM SHRM ◆

“The Healthy Families Act, what do you think?”

The Healthy Families Act has been introduced in the both the House (H.R. 2460) and Senate (S. 1152). Sponsored by Representative Rosa DeLauro (D-CT) and Senator Edward Kennedy (D-MA), the bill would require employers to provide employees with up to 56 hours of paid sick leave. Some believe a paid sick leave mandate as outlined in the Healthy Families Act would limit an employer’s flexibility in designing a benefits package that meets the needs of their unique workforce, resulting in significant costs for employers. How do you feel about this newly proposed Act? Go to <http://thomas.loc.gov/> and search “The Healthy Families Act” to get all of the facts.

◆ FROM WORKFORCE WEEK ◆

“Supreme Court puts burden of proof on plaintiff”

The Supreme Court has made it more difficult for employees to prevail in age discrimination suits. In a 5-4 ruling Thursday, June 18, the court held that in an age bias case, an employee has to prove that age was the only reason he or she was fired, demoted or suffered some other work setbacks.

The Supreme Court held that under the Age Discrimination in Employment Act, age cannot be one of many factors that led to an adverse employment action. That sets the statute apart from Title VII, the federal law that prohibits discrimination based on race, sex, color, national origin and religion.

In the Supreme Court case, Jack Cross began working for FBL Financial Group Inc. in 1971. By 2001, he was the Claims Administration Director. But in 2003 reorganization, when he was 54, FBL eliminated his position, reassigning Cross and giving his previous duties to a colleague. Cross alleged that FBL demoted him because of his age. FBL asserted that it put Cross in a job that was a better fit for his skills.

... But the Supreme Court held that the burden of proof never shifts to the employer in an age discrimination case.

◆ **FROM HR RESOURCE** ◆

“Three concerns when inquiring about applicants' past criminal convictions”

One useful facet in the use of employment applications is the ability of the employer to ask an applicant if he or she has a criminal history. Yet, many employers use language that is too narrow, too broad, or too ambiguous to successfully accomplish this.

Too Narrow - An example of a question that is too narrow is to only ask about felonies. Standard employment applications ask if an applicant was convicted of a felony. However, misdemeanors can be very serious. Also, many serious offenses are plea-bargained down to misdemeanors. Without the proper language, an applicant can honestly answer...

Too Broad - On the other hand, some employers ask questions that are too broad. There are some limitations under state and federal law concerning what an employer may legally ask concerning an applicant's/employee's criminal record...

Too Ambiguous - The third mistake is to ask an applicant, "Have you ever been convicted of a felony or serious misdemeanor?" or a similar question that calls for an opinion. The problem occurs when an applicant is called upon to make a judgment about his own offense...

◆ **A REAL LIFE SITUATION** ◆

Situation: An employee and a co-worker had been friends for years. Over the weekend, some problems developed and the two are no longer friends. One of the employees was so angry about the weekend tiff, that on Monday morning he went to HR to complain. HR looked into the matter and determined that one of the employees had conducted himself inappropriately and indicated that he would be fired if his conduct toward the co-worker continues. The co-worker then decided to file a grievance.

Observation: Sheesh. Since when is it HR's business to resolve out-of-office tiffs between two employees, let alone impose employment decisions on non-employment related issues?

This whole matter could have been easily handled by doing absolutely nothing. The employees were having some problems, on their own time, not in work or not during the work day. The complaining employee should have been told "HR cannot say nor do anything with the information that you have provided. It's after-hours, on your own time, and now you seem to have a personal grudge or problem with the co-worker. You have to resolve it yourself. There is nothing HR can do."

Unfortunately, HR has created a bunch of little problems now (which never should have happened) and there just isn't enough space to cover them all.

FEATURED SERVICE
Supervisory and Management Training

Supervisory/management training by HR&M can:

1. Provide your organization a competitive boost to its supervisors and managers;
2. Emphasize and clarify their authority in conjunction with an understanding of their liability to the company and to themselves;
3. Assist in preparing a proper and defensible documentation trail;
4. Increase productivity with more efficient use of time when dealing with employees;
5. Help prepare them for changes in the economy and environment which can alter the workforce composition and turnover rates; and
6. Keep them current on new and/or proposed laws and regulations to ensure compliance.

And the benefits?

- Turnover and employee complaints drop
- Fewer absences and work disruptions occur
- The company gains more competent and confident Leadership

Contact HR&M for detail or schedule your training session.

◆ **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**