



Human Resource and Management Services

December 2007

HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ FROM USCIS ◆

“New Employment Eligibility Verification (I-9) Form”

On Wednesday, November 7, 2007, the USCIS released a revised Employment Eligibility Verification Form (I-9), which is now available for use and can be obtained from <http://www.uscis.gov/files/form/i-9.pdf>

It is a Federal requirement that employers complete an I-9 form for all employees within the first three days of employment and retain the form for one year after termination of employment *or* three years after hire, whichever is longer.

Please note the following changes to the Form I-9 process (*as noted on the USCIS website*):

- Five documents have been removed from List A - List of Acceptable Documents:
 1. Certificate of U.S. Citizenship (Form N-560 or N-561)
 2. Certificate of Naturalization (Form N-550 or N-570)
 3. Alien Registration Receipt Card (I-151)
 4. Unexpired Reentry Permit (Form I-327)
 5. Unexpired Refugee Travel Document (Form I-571)
- One document was added to List A - List of Acceptable Documents:

Unexpired Employment Authorization Document (I-766)
- All Employment Authorization Documents with photographs have been consolidated as one item on List A:

I-688, I-688A, I-688B, I-766
- Instructions regarding Section 1 of the Form I-9 now indicate that the employee is not obliged to provide his or her Social Security number in Section 1 of the Form I-9, unless he/she is employed by an employer who participates in E-Verify.
- Employers may now sign and retain Forms I-9 electronically. See instructions on p. 2 of the Form I-9.

◆ FROM HR SPECIALIST EMPLOYMENT LAW ◆ “You can request new medical certification at the beginning of each FMLA year”

A U.S. Labor Department opinion letter makes clear that you can require an employee to provide new medical certification – not just recertification - for his/her first FMLA absence in a new ‘FMLA year’.

...The Labor letter clarifies that once an employee’s FMLA year expires, you can request an entirely new medical certification, not just a recertification, from the employee’s doctor.

◆ FROM WORKERS’ COMPENSATION LAW BULLETIN ◆

“Fatal heart attack during break-time basketball game”

...During their 30-minute breaks, employees were paid for their time and strongly encouraged not to work. The employer did not allow them to leave company property during breaks... With knowledge of the employer, a group of workers chipped in for a basketball hoop and had it installed at work. (Employees) played basketball 3-4 times a week; sometimes supervisors joined them.

Gooden (an employee) was playing basketball with a group of co-workers during a break. After playing 20-30 minutes, Gooden collapsed and died of a sudden heart attack.

Gooden’s death was (considered a legitimate workers’ compensation claim) because:

- The employer knowingly permitted employees to play basketball on their breaks
- The games occurred 3-4 times a week
- Supervisors sometimes participated
- The games occurred on the employer’s premises
- Employees were not permitted to leave the employer’s property during breaks

The employer’s acquiescence, combined with the frequency of the games, made the games a regular incident of employment.

◆ FROM PERSONNEL LEGAL ALERT ◆ “We couldn’t make this up if we tried”

An oral surgeon thought it was funny to temporarily implant fake boar tusks in his assistant’s mouth while she was under anesthesia, take pictures, and circulate them. The assistant found it so unfunny that she quit and sued him. His insurance company refused to cover the claim, and he ended up settling out of court for \$250,000.

He went back to court, though, and sued his insurance company, which was ordered to pay him \$1million, including the settlement. Said the judge: “The practical joke was an integral, if odd, part of the assistant’s dental surgery and

could ‘conceivably’ trigger the professional liability coverage of his insurance policy.”

(Editor’s note – Huh?)

◆ **A REAL LIFE SITUATION** ◆

Situation: There have been situations in which an employee has been arrested for DWI while partying on the weekend. In these instances, only one of the employees drove as part of the job. The other employees did not drive as part of their job description. However, in all cases, the question was raised, “Can we fire this employee?”

Observation: With the employee that drives as part of the job, this is much easier to answer. With a DWI, most organizations can very quickly point to the safety policies in place, with the insurance requirements, and with the likelihood that the driver’s license of the employee was taken away. With all of these to consider, the employee would be in violation of safety and insurance policies and that would be sufficient to terminate the employee. Add to this that the employee no longer has a driver’s license, and the decision is pretty much clear cut.

With an employee that does not drive as part of the job, the answer is not as easy. Things to consider that would possibly prevent the organization from doing something would be:

1. it’s not part of any duty of the job description, therefore, it is a non-issue
2. it was during off-hours and off-site and there was absolutely no connection between the employee’s poor judgment of drinking and driving and the employee’s ability to do the job at work
3. even if the driver’s license was taken away, discrimination laws prevent asking an applicant or an employee as to how he/she plans to get to work. The hours are simply from 8-5, M-F, and that would be the focus. If the employee does not come in or is constantly late, then the focus would be on attendance and not on the DWI.

However, things to consider that would possibly help in disciplining or terminating the employee would be:

1. if the employee is in a supervisory or management position. These individuals should be at a higher level of expectation, and the organization’s image or reputation could be damaged if word got out. The Employment-at-will doctrine is still alive and well in Texas in these types of unique situations.
2. if other employees find out and start talking about it. There is too much talk going on and the gossiping is getting out of hand. Because of the DWI, there is now all sorts of commotion and as a result, disruption has now occurred. Although this is a personal and private matter, the disruption has now made it the organization’s business, and the disruption has to be addressed and fixed.

FEASURED SERVICE
Training on Workplace Bullying

The recent story about a Missouri teenager who, in 2006, took her own life after being harassed by an elaborate hoax on MySpace that was orchestrated by the mother of a neighborhood friend is an unfortunate example of a serious side-affect of bullying.

The local and state laws dealing with cyber harassment where this incident occurred require a continuing pattern of abuse and found that the messages rose to the level of bullying on the day that ended with this young girl’s suicide. However, the abuse was not considered criminal because no charges could be applied under current law. The case remains open, though, and the family of the girl that committed suicide continues to hope that criminal charges can be filed under a federal law passed in January 2006 that prohibits online harassment.

There are currently 12 states considering a bullying bill. There is even a “Workplace Bullying Institute” that has their own web site called Bullybusters.org that encourages healthy workplace legislation for their own state legislatures.

Bullying takes the form of intimidation, giving someone the silent treatment, having mood swings, gossiping all the time, being angry, having tantrums, humiliating others, frequently giving undesirable work assignments, and so on.

Supervisors/managers need to not only ensure that bullying is not taking place at work, but also to ensure that they are not guilty of being bullies themselves.

HR&M can provide the right approach and the right direction in addressing a situation that is unfortunately escalating to a point that the government thinks it may have to step in and have a law to cover this type of behavior.

Contact HR&M for 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 discrimination charges and 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