



Human Resource and Management Services

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HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ FROM WORKFORCE ◆

“FedEx loses driver-classification legal skirmishes”

FedEx Ground has lost ground in recent weeks in its fight to define its delivery drivers as independent contractors rather than employees. A federal judge ruled that 19 state lawsuits against FedEx Ground can proceed as class actions.

◆ FROM HR HERO ◆

“Workplace bullying = \$325k”

In what may be the first workplace bullying case of its kind, the Indiana Supreme Court has upheld a verdict of \$325,000 against a [bully](#) of a doctor. The suit was filed against the doctor by a hospital operating room perfusionist (the person who operates the heart/lung machine during open heart surgeries).

The perfusionist sued the doctor for, among other things, assault. In Indiana as in most states, an assault is committed when “one acts intending to cause an imminent apprehension of a harmful or offensive contact with another person.” No physical contact has to occur, as long as a person is reasonably afraid that the contact will occur. The jury found that the doctor was guilty of an assault and awarded \$325,000 in damages.

◆ FROM HR SPECIALIST ◆

“The latest ADA disability-rights claim: I’m allergic to the internet”

... A group of residents in Santa Fe, NM, are arguing that the city is violating the ADA by limiting access to certain public buildings. Why? The residents claim they’re ‘allergic’ to the wireless signal from the building’s WiFi Internet system. They want WiFi banned in public buildings.

Some courts have given the green light to chemicals sensitivity cases involving perfume or other chemicals. But no courts have yet to consider so-called ‘electro-sensitivity’ to be a legitimate ADA disability.

“Sexual discrimination”

Cassandra Johnson was one of the few women working as crane operators at a construction site. When Johnson asked when she could take bathroom breaks, the answer shocked her: never. Supervisors allegedly told her to do what the men did – lean out and urinate over the side of the crane.

She refused, reasoning that her anatomy didn’t make that feasibly. She quit and sued for sex discrimination.

The court sent the case to trial, saying any rule that has a disparate impact on females could be the bases for a Title VII discrimination case. In this case, the company’s off-the-crane solution was unequal ‘given the obvious anatomical and biological differences between men and women and the unique hygienic needs of women, including those during menstrual cycles.’ (*Johnson v. AK Steel, No. 1-07-CV-291, SE OH, 228*)

◆ FROM WAGE & HOUR DIVISION ◆

“Labor Department recovers more than \$225,000 in back overtime wages for Hurricane Katrina workers”

ICF Emergency Management LLC, headquartered in Fairfax, Va., and Quadel Housing Services Inc., headquartered in Washington, D.C., has paid a total of \$225,275 in back wages to 399 current and former housing advisors. An investigation by the U.S. Department of Labor’s Wage and Hour Division found that these workers were not properly paid in the wake of Hurricane Katrina as required by the Fair Labor Standards Act (FLSA).

“The employer misclassified the housing advisors as exempt from minimum wage and overtime under the Labor Department’s regulatory administrative exemption. However, these workers did not exercise independent judgment and discretion in the performance of their duties and therefore were entitled to overtime compensation,” said Cynthia Watson, regional administrator for the Wage and Hour Division’s Southwest Region.

The investigations determined that these private contractors, hired by the state of Louisiana to administer recovery and rebuilding “Road Home” grants to property owners, misclassified the housing advisors and failed to pay the required overtime wages. ICF Emergency Management failed to pay 225 current and former employees \$194,880. Quadel Housing Services failed to pay 174 current and former employees \$30,395.

... The companies cooperated with the investigation and all back wages have been paid in full.

◆ FROM PERSONNEL LEGAL ALERT ◆

“Save money by stopping employee theft”

Many employees think, “It’s just one pack of adhesive notes that costs the company a few cents. What’s the harm in taking it home?” The harm is that they are not the only ones

who think that. A 2008 survey by Spherion found that 19% of the 2137 individuals polled admitted to taking office supplies for personal use in the past years. Of those, 66% took pens, pencils, or rulers; 57% took paper, adhesive notes, file folders, or calculators; 11% took staplers or tape dispensers; and 8% took laptops, cell phones, or personal digital assistants. Only 22% of those responders regretted their actions.

◆ **FROM SA EXPRESS-NEWS** ◆

“Execs at meatpacking plant charged in child-labor case”

The owner and managers of the nation’s largest kosher meatpacking plant were charged Tuesday with more than 9,000 misdemeanors alleging they hired minors and in some cases had children younger than 16 handle dangerous equipment such as circular saws, meat grinders and power shears.

They are the first criminal charges against operators of the Agriprocessors plant in Postville, where nearly 400 unauthorized immigrants at the facility were arrested in May in one of the largest single-site immigration raids in US history.

The complaint filed by the Iowa attorney general’s office said the violations involved 32 unauthorized-immigrant children under age 18, including 7 who were younger than 16.

...Charged are the company itself, plant owner..., plant manager..., HR Manager..., and ... management employees in the company’s human resources division.

◆ **A REAL LIFE SITUATION** ◆

Situation: A company wasn’t sure how it should handle the day after Christmas and New Year’s; since it’s a Friday and thinks that most businesses will be shut down that day.

The company normally has a skeleton crew for 1/2 day Christmas Eve and 1/2 day New Year’s Eve and then gives everyone off Christmas and New Year’s Day. Because the day following Christmas and New Year’s are not “paid” holidays in their employee handbook, management was thinking about having all the employees take a personal day rather than opening for work on those days.

Observation:

It sounds like that on Friday, December 26th, the company would typically be open for business and, if so, the company cannot make the employees take a personal day simply because it’s the day after a holiday and isn’t a paid holiday. This would be considered forcing the employees to take a personal day; which would not be a good idea.

In addition, if the company is open for business, and decides that most employees can take a personal day; what’s going to happen if no one shows up to work?

Another option would be to check with customers and determine for certain how many will be staying open on December 26th. The customers may be counting Friday as an

extra holiday. Based on the number of customers closing on Friday, this may force the company to also close for the day, since it would not make sense to stay open if the majority of customers are closed. If this is the case, and because of the current holiday schedule (i.e. half day pre-holiday and full day on holiday), this would then require everyone to either take leave without pay or use personal leave.

If, on the other hand, the company needs to remain open on Friday with a skeleton crew, then the number of employees requesting Friday off can be based on seniority or other means to ensure a minimum number of employees are on staff that day.

The day after New Year’s can be determined this same way.

**FEATURED SERVICE
ADAAA**

On September 25, 2008, the President signed the Americans with Disabilities Act Amendments Act of 2008 ("ADA Amendments Act" or "Act"), which makes important changes to the definition of the term "disability" and becomes effective January 1, 2009.

The ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment remains the same. However, the way that these statutory terms should be interpreted has changed in several ways.

HR&M has, therefore, developed a 1½ - 2 hour training session addressing all of the pertinent ADA changes HR professionals and management will need to know.

Call and book your ADAAA training session today.

◆ **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**