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**HR&M - Human Resource and Management Services**  
presents

## HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

### ◆ FROM YOU & THE LAW ◆

#### “Personality Tests: Yours May Now Be Illegal”

To qualify for promotions, three Rent-A-Center employees had to take the MMPI test, which included true/false questions such as “I see things that others don’t see” and “I hear voices.” All three scored low enough to disqualify them from promotion. They sued, alleging that the MMPI amounted to a medical test designed to detect depression, hypochondria and paranoia (all disabilities under the ADA). The federal appeals court ruled the test illegal under the ADA because it was designed to ferret out psychiatric disabilities.

#### “Disability Discrimination”

Susan Walker worked in a cubicle, in a large room with 25 other co-workers. She said that she suffered from asthma and allergies. Those maladies, she claimed, caused her to have coughing fits if she talked on the phone for more than two hours.

During particularly intense coughing fits, Walker would cough so long and hard that she had to vomit. Rather than go to the ladies room, she would simply vomit into her cubicle trash can.

The organization asked Walker to provide medical documentation for her condition. She didn’t do so, and she continued vomiting into her cubicle trash can. After the company fired Walker, she sued, alleging that she was disabled under the ADA and should have been given accommodations for her coughing fits.

The court dismissed her case, ruling that she had not proved her disability under either law. Both laws require independent proof of disability. An employee’s self-diagnosis is not enough.

### ◆ FROM PERSONNEL LEGAL ALERT ◆

#### “We Couldn’t Make This Up If We Tried ...”

A Houston man of Palestinian descent was fired from his job after the company found his website that featured his unreleased rap CD.

Calling himself the Arabic Assassin, he rapped on topics like: applauding the efforts of the 9/11 terrorists; encouraging future acts of terrorism; stating the U.S. government should be overthrown; and describing himself as a “crazy, suicidal Arabic ... equipped with bombs.” His rationale: Controversy sells; he was exaggerating to gain publicity for his rap career.

The job he was fired from: baggage screener at a major U.S. airport.

### ◆ FROM TEXAS EMPLOYMENT LAW

#### LETTER ◆

#### “Same-Actor Defense ...”

A Latino employee was hired in April and fired in August for alleged performance-related issues. He filed a discrimination complaint based on two facts: 1) he was the most profitable district manager in the region, and 2) he was the only non-Caucasian district manager. The company asserted the same-actor defense, since a regional vice president was responsible for both hiring and firing the employee. The employee argued that a VP fired him as soon as a Caucasian manager became available. A jury ordered the company to pay \$250,000 in damages.

### ◆ A REAL LIFE SITUATION ◆

**Situation:** During a recent freeze, all of the TV and radio reports stated that the roads were iced over and indicated that most major employers

would not be open for business until 10am or in some cases, even later than that.

One employer stated simply "Get here whenever you can and no one will be dinged for coming in late." So, throughout the day, some employees came in at the regularly scheduled start time, others came in at 9am, some at 10am, and quite a few did not make it until close to noon. *(These particular employees had the furthest commute)*

One employee lived in an apartment complex across the street from the office. She called and said she could not walk down the steps because they were frozen and the footing was extremely dangerous. This employee never made it to work all day.

The next day, the supervisor stated that even though the majority of the employees were late, no one missed the whole day. He made it clear that everyone made it to work and he wondered why she was not able to make it, especially living across the street from the office. After her explanation that the radio station said to stay home and being scared of the frozen stairs, she felt she would hurt herself by trying to go down the stairs and decided to stay at home and be safe.

The supervisor wanted to fire the employee.

**Observation:** This employee found a loophole. She knew that there would be no consequence for being late, so she took it a step further and pleaded for her safety.

The employee should not be disciplined, much less terminated. The employee should be told that in the future, should another similar situation occur, she should contact her supervisor on an hourly basis to determine if the conditions warrant staying at home. The supervisor in the meantime should be getting weather reports and any other information to determine what instructions to give to employees.

At the same time, this kind of behavior typically shows the lack of loyalty and lack of dedication already exhibited by the employee and more than likely, other behaviors that are more job related are probably in need of improvement and those are the things that need to be addressed.

## FEATURED SERVICE Consulting

The following are real:

- A long-term female employee suddenly shows up wearing a see-through blouse
- A brand new employee is asking for a loan
- Employees find feces on the legs of a supervisor's chair
- A terminated employee was packing personal belongings, one of which was a loaded rifle
- A manager had sex with his subordinate on his desk
- At an off-site, off-hours company holiday party, a male employee is inappropriately touching females on the dance floor
- A new hire wanted to get the same pay as the tenured employees because "I'll be doing the same thing as them!"
- A female employee who is being abused at home, comes to work bruised, crying, and tells all of the employees, yet when confronted, does not admit to any disturbance and says "We are in love"
- A long-term male manager has been stealing from the company for years to the tune of \$500K
- And the beat goes on!

These incidents, along with the usual performance and attendance issues, are no longer simple to address or fix. Outside factors such as privacy laws and employment laws all have an impact, and this is where HR&M can help.

HR&M has experience with today's employees that are challenging and well informed of their rights. HR&M can also help identify when an employee is no longer adhering to policies or procedures, and at what point did the employee feel that his/her behavior was acceptable and therefore applying discipline may be a problem.

### ◆ REMEMBER! WE CAN HELP!! ◆

Consulting on employee problems 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, from creating to updating
- responses to discrimination charges and unemployment claims
- on-line performance review forms and processes
- guidance on coaching, counseling, and disciplining in employee relations matters