



# Human Resource and Management Services

February 2009

## HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

### ◆ FROM EEOC ◆

#### “Sterling Jewelers sued for sex discrimination”

Sterling Jewelers Inc., the largest specialty retail jeweler in the country, violated federal law by discriminating against a large class of female employees at stores nationwide, the U.S. Equal Employment Opportunity Commission (EEOC) charges in a systemic lawsuit filed yesterday under Title VII of the Civil Rights Act.

In its suit, the EEOC asserts that Sterling Jewelers pays its female retail sales employees less than male employees performing equal work and denies female employees promotional opportunities for which they are qualified. Sterling Jewelers intentionally discriminates against female retail sales employees by maintaining a system for making promotion and compensation decisions that is excessively subjective, and through which Sterling Jewelers has permitted or encouraged managers to deny female employees equal access to promotion opportunities and the same compensation paid to similarly situated male employees, the EEOC states in its suit.

... The EEOC seeks monetary relief, an order requiring the company to implement new policies and practices to prevent discrimination, training on anti-discrimination laws, posting of notices at the worksite, and other injunctive relief.

### ◆ FROM HR SPECIALIST ◆

#### “Sex is a major life activity”

Most people probably think so already, but a court ruling in Colorado made it official: The ability to have sexual relations is a ‘major life activity,’ at least for the purposes of the ADA.

The case involved a former letter carrier who resigned after being passed over for promotions. He sued for disability discrimination, alleging that a back injury left him unable to perform two major life functions: working and having recreational sex.

The court found that the carrier was not substantially limited in the major life activity of working because he had gone on to find work performing activities that were beyond his alleged physical capabilities.

But the court did find that he was substantially limited in the major life activity of sex (Bondarenko v. Potter, No. 07-CV-01286, DC CO, 2008)

### ◆ FROM SAHRMA ◆

#### “EEOC, Salvation Army Resolve English-Only Firing”

The Salvation Army, as part of a settlement with the Equal Employment Opportunity Commission (EEOC), has agreed to end its policy of requiring its thrift store workers to be fluent in English...

The EEOC sued the organization in district court in 2007, alleging it discriminated on the basis of national origin by firing two Spanish-speaking workers at one of its thrift stores. Salvation Army attorneys said the workers were let go because they violated the Massachusetts store’s English language policy and failed to make a good-faith effort to acquire a better working knowledge of English during their six years on the job.

... In addition, the agency sought back pay and reinstatement of the workers.

... Attorneys for the EEOC and the Salvation Army said they were barred from discussing the specifics of the case with a reporter, including whether the fired workers wanted their jobs back.

Elizabeth Grossman, the EEOC’s attorney on the case, said that, in general, EEOC’s objective is to bring company employment policies into compliance with the law.

“In some cases, tweaking the language may make all the difference in the world.”

### ◆ FROM HOLLAND AND HOLLAND LLC ◆

#### “20% of workers allegedly steal”

... In a study concerning employee theft, conducted by a staffing and recruitment firm, the items stolen were usually office supplies such as pens, pencils, rulers, paper, post-its and file folders. Out of the \$2000 plus employees surveyed, only 21% said they were guilty and regretted doing it. When asked why they steal, the survey indicates: “The primary reason office supplies were taken for personal use was because they needed them (41%). Nearly 1/3 (32%) said it was because their boss/office manager said it was alright to do so, and 15% claimed the company will never miss them.”

... Employers are well advised to, at a minimum, prohibit management from participating and/or condoning this type of behavior.

◆ **FROM PERSONNEL LEGAL ALERT** ◆

**“WARNING to ‘faltering companies’: be proactive”**

If your company is in the unfortunate position of having to effect a mass layoff or plant closing, you must take into consideration the federal Worker Adjustment and Retraining Notification Act’s (WARN) 60-day notice requirement. The notification period may be shorter under these three exceptions:

1. faltering company
2. unforeseeable business circumstance
3. natural disaster

... The phrase “actively seeking” must be construed literally. The 3<sup>rd</sup> Circuit Court of Appeals has held that employers must be proactive in securing financing in order to use the faltering company defense.

◆ **A REAL LIFE SITUATION** ◆

**Situation:** A company was in a serious financial situation and was thinking about eliminating three (3) employees. Like most companies, many of the sales had dropped and the expenses continued to rise. Before making such a serious decision, the company called and asked if there was anything else they could do. The WARN Act was not an issue.

**Observation:** During economically hard times, companies tend to immediately focus on eliminating their biggest expense – payroll. It is unfortunate, but it is usually the first step taken.

But there are other ways to reduce expenses other than reducing staff. Perhaps some temporary approaches until sales increase or until sales are on more of a consistent basis could be taken, such as:

1. re-assigning employees, if other positions are available
2. implementing a wage/hiring freeze – postpone promotions and/or fill vacancies with employee transfers, restructuring positions, or job sharing.
3. utilizing temporary employees, whether through an agency or through direct hire
4. offering voluntary, unpaid leaves of absence (unpaid vacation, sick, PTO, holiday, etc.)
5. providing early retirement (using lawful incentives)
6. implementing temporary cuts in salaries by 5%, 10%, or 20%, or more
7. reducing a 40-hour workweek to 32-hour week or more

These steps may seem extreme, but most of your loyal and dedicated employees would understand and appreciate anything to avoid the alternative of losing their jobs. The employees themselves could meet and brainstorm other options and perhaps generate some other ideas that management hadn’t even thought about. It’s a possibility. It’s an option. We have nothing to lose and everything to gain.

**FEATURED SERVICE**  
**Leadership in Engaging Employees**

A Gallup Management Journal poll indicated that only approximately 27% of employees are actually engaged in their work. That leaves the remaining employee population of 73% disengaged. In addition, a survey of Fortune 500 companies reporting profitability in the lowest quartile also reported 50% fewer engaged employees compared to companies at the top quartile.

Disengagement has been found to, in fact, cost companies billions. With such a high number of disengaged employees, what is this saying about management and their abilities to develop motivated, productive, engaged employees to ensure company profitability?

HR&M has initiated a program to discuss ‘Engagement’ and how it affects the employees’ role within an organization, which in turn will have management asking, “Is our company really engaged?”

This presentation covers:

- \* defining engaged and disengaged employees
- \* causes contributing to employee disengagement
- \* company demographics of engaged/disengaged
- \* challenges in engaging employees
- \* and key drivers to engagement.

This 2 - 2 ½ hour program is a very educational agenda to learn and understand the benefits of a highly committed organization.

Call HR&M for more information or contact us to schedule a Leadership in Engaging Employees program 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**