



# Human Resource and Management Services

July 2007

## HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

### ◆ FROM HR COMPLIANCE LAW BULLETIN ◆

#### “77-yr old applicant was unfocused during interview – age discrimination?”

A 77-yr. old applicant repeatedly tried to get a job. His application form was filled with spelling errors and he applied at franchise locations that didn't exist.

Nevertheless, he was interviewed. During the interview, he talked about the company's clients in a derogatory way, referenced them as 'ghetto folks', and strayed from the interview topics.

He was not hired and sued for age discrimination. The company was able to show, however, that although he was over 40, he wasn't qualified because of his inappropriate comments that indicated that he would not be able to interact with the customers and answer their questions effectively. The errors in his application were another indication of his inability to communicate and so his lawsuit was thrown out.

### ◆ FROM CCH ◆

#### “EEOC announces initiative highlighting race, color discrimination”

The EEOC launched an initiative to address race and color discrimination. Historically, race-based charges have been the most frequent type of filing with the EEOC's offices nationwide. The agency's E-RACE initiative acknowledges that the new face of racial discrimination in the U.S. workplace has become multifaceted—with color discrimination based on skin shade within races trending upward.

### ◆ FROM TEXAS EMPLOYMENT LAW LETTER ◆

#### “FMLA – break in employment”

Kenneth Rucker worked as a car salesperson for about 5 years in the 1990's. He quit in 1999, but was rehired in 2004. Approximately 7½ months later he ruptured a disc and needed medical treatment. He was eventually fired for excessive absences. He claimed he should have been under FMLA protection and he filed suit. Although Rucker had worked at least 1250 hours during these 7½ months, at issue was:

- The Regs state that the 12 months an employee must have been employed by the employer need not be consecutive months.
- The Regs on its face does not give any indication that two periods of employment, separated by a conceivably limitless amount of time, can be grouped to make an otherwise ineligible employee eligible.

- Having an employee meet the 12 month requirement could be read as referring to the most recent period of employment only or to all periods of employment by the same employer.

In a DOL opinion letter, the agency would not distinguish a 2-yr break in employment, as had previously been with a prior case, versus Rucker's 5-yr break in employment, so the lawsuit was allowed to proceed.

*(Editor's note – bottom line, re-hired employees may be eligible for FMLA as soon as they've worked 1250 hours, which makes no sense. Even though this is a DOL opinion, it still carries a lot of weight.)*

### “Manager who ordered strip search of employees acted outside scope of employment”

A restaurant escape(d) liability for an Assistant Manager's strip-search of employees who were suspected of stealing jewelry.

### ◆ FROM SHRM ◆

#### “Negative perceptions of female bosses slowly dying, survey shows”

The negative perception of female bosses dies hard, but gender stereotypes are changing, if a recent Work & Power survey of more than 60,000 people is any indication. Slightly more than half of the nearly equal number of men and women surveyed said it doesn't make a difference whether their boss is a man or a woman, while nearly one-third (30% of men and 37% of women) prefer working for a male boss.

### ◆ FROM HRHERO ◆

#### “Immigration 2007 survey results”

The results are in for the HR Hero Line survey:

- (90%) have a process for completing, reverifying, and maintaining I-9 forms and only a small number report being the subject of a U.S. Immigration and Customs Enforcement or U.S. Department of Labor audit.
- 40% of respondents received a "no-match" letter from the Social Security Administration regarding an employee or applicant.
- 53% have a process or procedure for responding to a no-match letter.
- 40% employ foreign nationals.
- 59% don't process any type of temporary employment visas on behalf of employees, but of the companies that do process visas, the majority are for H-1B visas.

◆ **FROM WORKFORCE MANAGEMENT** ◆  
“CFO Churn Hits a Three-Year Low”

Annual turnover among *Fortune* 500 chief financial officers is at its lowest rate in three years, although CFO burnout is playing a bigger role in resignations, according to a study by Russell Reynolds Associates.

...In spite of the overall decline in the churn rate among CFOs, the number of CFOs who have chosen to resign is up. The study found that CFO resignations were responsible for 45% of the turnover in 2006, up from 32% in 2005.

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

An office party gone awry has brought new meaning to the term “swing” dancing. A women’s boutique held the event at a local bar and restaurant. The husband of the owner of the boutique allegedly grabbed one of the employees on the dance floor, flipped her in the air, and dropped her on her head. The employee suffered a fractured skull and brain injuries. She claims she is the victim of “negligent dancing” and is suing the man for damages for medical bills and lost wages.

◆ **A REAL LIFE SITUATION** ◆

**Situation:** An employee was making several personal phone calls to doctors, family members, friends, and anybody else that would listen to her story of how and why she had to put her elderly father in a nursing home. After a considerable number of calls within a few weeks, and after being told to make those calls during lunch or after hours, the employee continued to make those phone calls and the supervisor wanted to fire the employee for excessive personal phone calls.

**Observation:** This is just one of many examples where the focus probably needs to be on the results rather than the action. In this particular case, we can ask ourselves, “What does the number of personal phone calls create?” The answer should be the same as with other similar situations, such as: The employee is

- socializing and visiting with other employees too much.
- spreading rumors and stories.
- wearing attire that is borderline appropriate, but everyone else is talking about what is being worn.
- speaking in slang terminology and clichés, and everyone else is constantly asking for clarification.
- going to the water fountain once every 15 minutes.

In these situations, addressing the phone calls, the gossip, the attire, and so on, may be appropriate, but the more effective way to address this would be to state that the actions, behavior, or attire are creating distractions and is disrupting the work environment.

Bottom line, the employee needs to be told to do whatever he/she can do to stop the disruption and distractions. If the employee says something like “You mean I can’t find out how my father is doing after his surgery?” then the response could be “No, I’m not saying that at all. But the number of phone calls that you have made has been excessive, and your

work is starting to fall behind, I’ve got others that are starting to do some of your work to help you catch up, and there have been questions that I have not been able to ask you because you have been on the phone. All of this has been very distracting and disruptive and it cannot continue. You are going to have to limit these calls during your lunch break or after hours or you may need to use your vacation time if you feel like you really need to tend to your dad’s post-surgery needs.”

By also focusing on the results of the employee’s actions (or inactions), the impact becomes more effective to have the employee understand better the consequences of what he/she is doing.

**FEATURED SERVICE**  
**Consultation**

Today’s environment has so many different situations that didn’t exist a few years ago that it creates a need to have other resources available to reach a sensible decision. As certain situations occur, and you feel you would like to ‘run it by someone’, HR&M is the right resource for that sounding board.

With over 20 years just in senior level human resource capacities alone, and with experience in virtually all different industries, HR&M is in a position to provide the proper guidance and direction to help answer even the most unique situation.

◆ **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, from creating to updating
- 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