



# Human Resource and Management Services

July 2008

## HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

### ◆ FROM HR COMPENSATION & BENEFITS ◆

#### “By the numbers”

\$1,419 average weekly wage in New York County, NY, the highest among the nation’s 317 largest counties.

7.5 million number of US workers who hold down more than one job.

- 28% of US workers who work more than 40 hours a week
- 8% of US workers who work more than 60 hours a week
- 3% of US workers who work the night shift (between 9pm and 8am)

### ◆ FROM PERSONNEL LEGAL ALERT ◆

#### “We couldn’t make this up if we tried”

It took less than one hour for a company in California to fire a female driver after she told her supervisor that she was pregnant. This snappy decision cost the company \$3.4 million for punitive damages, damages for economic loss and emotional distress, and attorneys’ fees under state law.

### ◆ FROM HR INSIGHT ◆

#### “Pop quiz – is that a disability?”

(Consider the ADA, the Americans with Disabilities Act):

1. Obesity is considered a disability. \_\_T \_\_F
2. Learning is considered a ‘major life function’ under the ADA. \_\_T \_\_F
3. If you believe and treat an employee as if she has a disability (if she’s ‘regarded as’ disabled), she’s covered under the Act. \_\_T \_\_F
4. A ‘cosmetic disfigurement’ can be considered a physical impairment covered by the Act. \_\_T \_\_F
5. An employee who suffers full-fledged but infrequent asthma attacks and whose symptoms can be controlled with medication is considered disabled. \_\_T \_\_F

Answers: 1.F 2.T 3.T 4.T 5.F

### ◆ FROM WORKFORCE MANAGEMENT ◆

#### “How lean is too lean?”

Q. What are some indicators to look for if our workforce has become too lean after our company went through a

workforce reduction two years ago? Last year we had an additional 27 people exit the company voluntarily. What signs should we look for to indicate the employees are overworked and stressed out?

- A. There are three reliable sources of information that can indicate how employees are managing with workload. First, there are behavioral indicators. Are more people taking sick leave now compared with pre-reduction? Are there more complaints, more team conflict? Is the loss of 27 employees higher than your previous turnover rate? What’s the conversation like in the break room—or do employees no longer have the opportunities to mix and chat? Are employees routinely working longer hours and weekends? Have leave applications slowed down? Have customer complaints increased?

To support these behavioral observations, your organization ideally would gather empirical data from former and/or current employees.

Employees who have decided to leave can provide reliable information about the impact of workload. Implement an effective exit interview process to enable the organization to understand the true causes of loss. For example, of the 27 who left last year, how many did so for reasons that your organization could have influenced? If those resignations reasons relate to overwork, then conduct a cost comparison: How much does it cost to replace staff and retrain new people to full productivity compared with how much it costs to reduce workload pressures through various means?

The third source of reliable information comes from current employees. Only if your organization is prepared to address overwork issues should you approach current employees to ask about their experiences of life at work.

### ◆ FROM HR INSIGHT ◆

#### “Dumped – you don’t have to come to work”

Some companies are getting creative with the extras they’re offering employees. After all, if an employer can’t help workers achieve better work-life balance by helping fund lavish vacations, it can give them a day off when they get dumped. That’s exactly what Tokyo-based marketing firm Hime & Co. does, claiming that heartache leave allows

employees to get all the crying out at the home and return to work recharged.

[24 yrs or younger – one day off to sob  
25-29 yrs of age – two days off  
30 and older – three days off]

... It's worth mentioning that Hime's staffers are all women (who also get 2 mornings off a year to go shopping). At other companies, would 'guys get to stay home and sob too, or just females?'

*(Editor's note – the article went on & on regarding the pros and cons of Heartache Leave. Oh well, life goes on! )*

#### ◆ **FROM EEOC WEBSITE** ◆

##### **“Dillard’s to pay \$½ million to settle”**

The U.S. Equal Employment Opportunity Commission (EEOC) ... announced it has settled its class sexual harassment lawsuit against the Dillard’s department store chain for \$500,000 and substantial remedial relief on behalf of a class of 12 female former employees who were sexually harassed by an assistant store manager in two states.

The EEOC maintained in its suit that assistant store manager Scot McGinness sexually harassed women at two Dillard’s stores. The EEOC said that Dillard’s knew that McGinness was sexually harassing young female subordinates at the Palmdale, Calif., store, but failed to take appropriate action to stop the misconduct. Instead, Dillard’s transferred him to a managerial position in its Westminster, Colo., store, and failed to notify the new store about McGinness’ history of sexual harassment.

Moreover, after a Colorado female associate complained to her store manager that McGinness inappropriately touched her, McGinness was given only a verbal warning regarding his conduct. Only 10 months later, when McGinness physically and verbally sexually harassed an 18-year-old high school senior and the Westminster police were contacted, did Dillard’s finally fire McGinness.

#### ◆ **A REAL LIFE SITUATION** ◆

**Situation:** An employee reported sick on her first day of work and within the first two weeks of her employment it became apparent that her abilities did not match her employer’s expectations. The decision, therefore, was made to terminate her at the end of her third week of employment.

After receiving a partial day of training, the employee was called into the manager’s office and terminated. After hearing the news, the employee became very offensive, began screaming, and refused to leave the premises without her final paycheck. Even after being told that her paycheck would be mailed to her within six days, she still refused to leave and her behavior escalated to the point that management felt that they and other employees were being threatened and their only recourse was to call the police, which they did.

**Observation:** Terminations are never easy and if done wrong, as in this particular case, can lead to some very unfortunate and unexpected circumstances. Let’s review what should have been done:

1. When the employee refused to leave without her final paycheck, every effort should have been made to get it to her right then and there.
2. The police should have never been called. She should have been given the opportunity to speak with other members of management to express her concerns and help calm the situation.
3. Always maintain the employee’s self-esteem.
4. End the conversation positively, and cordially wish the employee luck in their future endeavors.

#### **FEATURED SERVICE** **Wage and Hour Concerns**

HR&M can provide you with the answers you need when dealing with:

- Recordkeeping requirements
- Calculating overtime
- Mistakes that can result in audits, fines, and back pay issues
- Minimum legal requirements for benefits, vacation, breaks, etc.
- Classifying employees – identifying those employees that may be exempt from overtime and minimum wage.
- Definitions of FLSA terms

Many companies do not have a full understanding of the FLSA guidelines and court cases have contributed to the concern of correctly classifying an employee. As a result, employers are having a tougher time making these determinations. HR&M can help in these important decisions.

Contact HR&M for assistance.

#### ◆ **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**