



# Human Resource and Management Services

March 2007

## HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

### ◆ REMINDER ◆

#### “Daylight savings time”

On August 8, 2005, President George W. Bush signed the *Energy Policy Act of 2005*. This Act changes the dates for Daylight Saving Time in the U.S. Beginning in 2007, DST will begin on the second Sunday in March and end the first Sunday in November. The Secretary of Energy will report the impact of this change to Congress.

DST begins at 2am  
March 11

DST ends at 2am  
November 4

Look for: computers with no software updates in the last 2 yrs may have to be manually changed; changing network servers, door locks and safes, phones, voicemail, etc.

### ◆ FROM PERSONNEL LEGAL ALERT ◆

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

One of the largest retailers of maternity fashion in the US was charged with refusing to hire qualified applicants because they were...pregnant! “It is shocking that a corporation whose market is pregnant women would refuse to employ them and then retaliate against a woman who complained about the practice,” said the EEOC. The company settled the claims for \$375,000.

### ◆ FROM COMPENSATION & BENEFITS ◆

#### “Raises projected to remain at 3.5% in 2007”

Employers report that they will be dishing out average pay raises of 3.5% to exempt and non-exempt employees in 2007. Employers project average pay hikes for executives at 3.8%. The US inflation rate is expected to be at 3.3% for 2007.

### ◆ FROM CCH NETNEWS ◆

#### “7<sup>th</sup> Circuit revives female nurse’s same-sex harassment claim”

... In (*Kampmier v Emeritus Corp*, 7thCir, 88 EPD ¶42,650), during her employment, she alleged that her female superior, who is a lesbian, made frequent offensive, sexually perverse comments. In addition to the verbal harassment, the nurse contended that her superior engaged in physical harassment, hugging her 50-60 times, grabbing her around the arms, jumping in her lap ten times, kissing her on the cheek and rubbing up against her. At all relevant times, her employer maintained a harassment prevention policy.

... The district court erred in granting summary judgment to the employer, concluded the Seventh Circuit, because the

nurse raised genuine issues of material fact under each prong of her prima facie case.

... A reasonable jury could find that the superior's alleged harassment, which the nurse complained about was unwelcome, concluded the Seventh Circuit. While the employer painted the superior as an "equal opportunity harasser," presenting evidence that she harassed both sexes, because what the nurse "endured was far more severe and prevalent than the alleged conduct endured by the male employees," she raised triable issues as to whether the harassment was because of her sex.

### ◆ FROM SA EXPRESS-NEWS ◆

#### “FMLA still controversial”

The DOL is reviewing more than 15,500 responses to its first call for comments on the 14-year old law.

[In summary, most of the comments center on]

#### Businesses Want

\*Must be sick more than 3 dys to qlfy

\*Require Dr’s note for intermittent leave

\*Reduce to 25 mile radius

#### Employees Want

\*Paid FMLA

\*Add coverage

to contract and

seasonal workers

\*Add definition

for non-

traditional

arrangements

### ◆ FROM SHRM HR WEEK ◆

#### “House sets up conference committee on minimum wage”

By passing a package of tax breaks and incentives for small businesses on Feb. 16, 2007, the House of Representatives has set the stage for negotiations to begin on forging a final agreement to raise the federal minimum wage by \$2.10 per hour. The tax relief bill will be combined with a minimum wage proposal that was approved by the House on Jan. 10.

The tax measure, as passed by the House, would provide small businesses with \$1.3 billion in tax relief over 10 years. According to political observers, the House approved H.R. 976 as a compromise to the much larger \$8.3 billion tax-break proposal, which was included in the Senate’s version of the minimum wage increase approved on Feb. 1.

Democratic leaders in the House originally opposed attaching any tax breaks to the minimum wage increase, saying they wanted to pass a “clean bill.” However, when it became clear

that Senate Republicans would block any minimum wage proposal that did not include tax relief for small businesses, the House Democrats countered with H.R. 976.

The House proposal passed with little debate and was approved by the overwhelming vote of 360-45. The quick passage of H.R. 976 sets up a conference committee made up of members of the House and Senate. The committee must reconcile the differences between the two versions of the tax package before a minimum wage increase can gain final approval in Congress.

#### ◆ **FROM CCH WORKWEEK** ◆

##### **“Tree service co. pays \$1.8m in back pay”**

ABC Professional Tree Services Inc. in Houston will pay \$1,801,507 in back wages after an investigation by the Department of Labor's Wage and Hour Division found the employer had violated the overtime provisions of the FLSA and that 2,501 current and former employees working in 16 states were not properly paid. *Editor's note – Ouch!!*

##### **“Can a nap save your life?”**

Harvard University ... published in the *Archives of Internal Medicine*, studied 23,000 Greek men and women ages 20 to 86 for an average of six years. After controlling for differences in body size, diet, exercise and smoking, subjects who napped three times a week for half an hour had a 37% lower death rate from heart disease. The effect on men was more pronounced than on women.

The conclusion seemed to contradict a study published in 2000 ... that ... compared approximately 500 Costa Ricans who had survived heart attacks with a nearly equal number of healthy people. Those who suffered heart attacks were 50% more likely to have taken a daily siesta.

Parsing the two contradictory conclusions, Martin Moore-Ede, a physiologist and the chief executive of Circadian Technologies, a research firm specializing in managing shift workforces, says: “Napping is a great solution if you are energetic and active and if you have adequate exercise during the day, but it's not a great solution if you are a couch potato.”

Whether or not napping reduces the risk of heart attack, during the past decade some employers have started promoting napping. This trend will only accelerate, Moore-Ede says, as the number of people with flexible work schedules who work on the road and who work outside the normal 9-to-5 hours increases.

#### ◆ **A REAL LIFE SITUATION** ◆

**Situation:** An employee, tired of his supervisor being so formal, told him “You know, if you smoked marijuana like I do, you wouldn't be so stiff. Smoke some at night or on the weekends and you'll be able to handle the stress a lot better. I know it works for me.”

The employee then returned back to his work station. The supervisor was stunned and didn't know what to do or say.

**Observation:** Although a number of options are available, one of the most effective options would be to call his bluff and have him drug tested right then and there. It would also help if you had a substance abuse policy in place that allowed for testing on the grounds of suspicion. But if you didn't, you could still do it depending on the safety issues associated with the individual's position. As in most cases in dealing with employees, if you do nothing, the employee is in control and you are not, and that is not fair to the organization.

#### **FEATURED SERVICE**

##### **Suspecting an employee using drugs or alcohol**

One of the misleading statistics today is the fact that there are less applicants failing pre-employment drug tests. In reality, what is happening is that once the offer is made, they take the required forms for testing, and they don't show up. Hence, fewer applicants are failing.

Unfortunately, drug and alcohol use is not declining. In the employment setting, drugs of abuse can be divided into three categories. The first category includes the most commonly abused drugs such as marijuana, cocaine, opiates, amphetamines, and phencyclidine. The second category is alcohol. The third category includes a range of club, designer, and other drugs of abuse. (*Source: Substance Abuse and Mental Health Services Administration*)

With such a problem, it is imperative that employers be aware of and have policies regarding substance abuse in pre-employment, random, suspicion, and post-accident situations.

Not only does substance abuse damage an employee's own and others' health and well being, but it also decreases productivity and contributes to absenteeism, accidents, injuries, death or violence in the workplace.

A workplace that tolerates or ignores employee substance abuse problems is not good business.

Contact HR&M for additional information.

#### ◆ **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 on coaching, counseling, and disciplining in employee relations matters