



Human Resource and Management Services

May 2007

HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ FROM HR MAGAZINE ◆

“Job satisfaction falls quickly for most workers”

Most employees are full of enthusiasm when they begin a new job. Within 6 months, though, that enthusiasm wanes...according ...to ...Sirota Survey Intelligence.

And it has nothing to do with age. Employees of all ages who had been on the job less than a year registered a 70% satisfaction level with their work. After 2-5 years, job satisfaction dropped to 53%.

... “Company culture – or how management treats employees, and management’s attitudes and behaviors toward workers – determines how much of a downturn in enthusiasm there will be,” says Sirota President Douglas Kein.

◆ FROM WORKERS’ COMPENSATION LAW BULLETIN ◆

“Candidate for correction officer job dies during fitness trials”

A man who suffered a fatal heart attack during fitness testing for a job as a Corrections Officer was not an employee, so his family was not entitled to benefits, according to the state appeals court.

◆ FROM CCH EMPLOYMENT LAW ◆

“Privately made racial slur enough for race bias claim to go to trial”

A county board commissioner's racial slur, made privately about a month prior to an African-American employee's discharge, was sufficient evidence of race bias to avoid summary judgment, concluded a federal district court in Illinois. The employee, who was the director of finance for the Kankakee County Housing Authority, filed a lawsuit claiming among other things, that her discharge was racially motivated. (*Hypolite v Kankakee County House Auth*, CDIll, 89 EPD ¶42,681)

The employee alleged that a member of the county's board of commissioners called her a 'dumb n...' when they were alone in her office because he didn't believe she should destroy certain documents. Analyzing the employee's race bias claim under the direct method of proof, the district denied the county's motion for summary judgment.

First, the commissioner was a decision maker since he served on the board that voted to discharge the employee and although he alone did not make the decision, he was able to

influence other members. Further, the racial remark was made close in time to the employee's discharge. Even though the county presented evidence that the employee's discharge was justified by reasons other than her race, it failed to eliminate any doubt about whether race played at least a motivating role in the employee's discharge.

◆ FROM NETSCAPE NEWS ◆

“Wal-Mart terminates technician for unauthorized interception of telephone conversations and text messages”

Wal-Mart recently terminated a Wal-Mart systems technician for intercepting text messages and recording telephone conversations without authorization.

The disciplinary action is the result of an internal investigation that began on January 11, 2007 when an individual used the Wal-Mart open door policy to express concerns about the recordings. The audit committee of the company’s Board of Directors was notified on January 12th and on Saturday, January 13, attorneys for the company notified the U. S. Attorney for the Western District of Arkansas.

Wal-Mart’s internal investigation initially found that the systems technician had monitored and recorded telephone conversations between Wal-Mart Public Relations associates and a reporter from The New York Times. These recordings were made over a four-month period between September, 2006 and January, 2007. Wal-Mart notified The New York Times earlier today...

These recordings were not authorized by the company and were in direct violation of the established operational policy that forbids such activity without prior written approval from the legal department. No such approval was ever sought and, had such approval been sought, it would have been denied...

Wal-Mart has terminated the technician who conducted the recordings and intercepts. The company has also taken disciplinary action against two management associates for failure to carry out their management duties.

◆ FROM HRHERO ◆

“Class action against Wal-Mart moves forward”

Recently, a federal court of appeals allowed a sex discrimination lawsuit against Wal-Mart to move forward. Now the company faces a class-action lawsuit involving more

than 1.5 million current and former employees who claim sex discrimination in pay and promotions.

Increasingly, employers are facing class-action claims from employees, and this decision has some helpful reminders when it comes to pay and promotion practices.

(Editor's note – Poor Wal-Mart. They're getting hit again!)

◆ **FROM PLA E-LERT** ◆

“Supreme Court declines harassment case”

The U.S. Supreme Court declined to hear a teenage girl's sexual harassment case, leaving open the possibility that teen workers could receive greater protection against harassment in the workplace than adult workers. The teen is allowed to pursue her sexual harassment claim based on her supervisor's inappropriate sexual advances. She allegedly had consensual sex with him, and a district court dismissed her claim because the teen had "welcomed" the supervisor's behavior. The 7th Circuit (Illinois, Indiana, Wisconsin) said her views of the behavior were irrelevant because she is a minor. If she succeeds with her claim, it could mean that teens do not need to show behavior was unwelcome, a mainstay of sexual harassment claims.

◆ **FROM HR SPECIALIST EMPLOYMENT LAW** ◆

“Any ethnic stereotype, even a positive one, can trigger a job discrimination lawsuit”

When a professor chose Jin Zhao, a woman of Chinese national origin, to work on advanced biomedical projects, she hired her partly because she had a high opinion of Chinese scientists...

Zhao got the job, but apparently didn't live up to her boss's stereotype. She eventually was fired for alleged poor performance. She sued, arguing that there was no way she could live up to the stereotype held by her boss.

The federal court ordered a trial. It concluded that Zhao may have been hired because of her boss's positive view of her ancestry, but she also may have been harmed when she couldn't live up to the image. (*Zhao v. State University of NY, et al*, No. 04-CV-0210, ED NY, 2007)

◆ **A REAL LIFE SITUATION** ◆

Situation: A long-term employee had gained sufficient experience to be placed in a lead position. With that action, a decision was made to hire an Asst. to that Lead position, with the eventual outcome that the Asst. would eventually wind up as a Lead as well.

Observation: While working on these job descriptions, the thought quickly entered that if the Asst. is eventually going to be a Lead also, then what about the first Lead person? Is he/she going to be de-motivated? Why wind up with two Leads? Does the company really need two Leads? What about just hiring an Asst., because that is what the company needs, and not hiring an Asst. with future goals in mind.

What seemed like a simple process of developing job descriptions, the structure of the department came into light

because of potential morale issues, career path inconsistencies, and even salary issues.

While no one correct answer is obvious, it is clear that too many managers go through the motion of replacing employees without thinking as to the possibility of other options.

In this particular case, the suggestion was to not advance the long-tenured employee but to hire another individual doing the same duties, and eventually have the Lead position as a carrot for advancement. At that point, should the company's success continue, then both a Lead position and an Asst. may be necessary, but at that point, the business growth would justify the new positions.

FEATURED SERVICE

Management, as well as Human Resource consulting

Obviously, HR&M specializes in most of the major categories of human resources, ranging from issues involving harassment, discrimination, and Wage & Hour rules, to training, preparing Handbooks, and being an expert witness representing management in employment litigation.

But this vast experience has also garnered expertise in strategic planning, forecasting, restructuring, career pathing, and most importantly, providing accountability where it belongs.

Being a small business itself, HR&M feels the same pain as other organizations in completing quarterly taxes, unemployment taxes, property taxes, payroll taxes, profit/loss statements and other accounting records, and various other reports that generate 'zero' revenue.

These are the little things that help HR&M relate to an organization's issues.

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