



Human Resource and Management Services

November 2006

HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ **FROM PERSONNEL LEGAL ALERT** ◆

“Employee Wants to Keep Social Security Number Under Wraps”

An employee claimed that her employer’s demand for her Social Security number put her “in dire jeopardy of having her identify stolen.” When she was fired for withholding the information, she sued for discrimination under the Civil Rights Act and for violations of her privacy and equal protection rights under the Fourth and Fourteenth Amendments of the Constitution.

A district court ruled that the company’s policy of requiring SSNs was not discriminatory because it was applied equally to all employees and was a necessary consequence of the company’s obligations under federal law. The court also held that the Constitution does not provide a right to privacy regarding an individual’s Social Security number. Finally, those who refuse to disclose their SSNs for fear of identity theft do not constitute a protected class under the Fourteenth Amendment. An appeals court agreed. (*Cassano v. Carb*, 2nd Cir., No. 04-6712-DV, 2006)

“We Couldn’t Make This Up If We Tried ...”

Many employees over the years have claimed to have suffered adverse actions, from termination to demotion to loss of benefits. But one 70-year-old claimed that her company subjected her to an adverse action by *not* firing her. One of her colleagues, whose position was eliminated, was offered a severance package. She wanted to retire immediately with the same package. Because the company continued to keep her employed, she sued. *Said a court*: Just because she didn’t get her preference, doesn’t make this an adverse action.

◆ **FROM WORKERS’ COMP LAW BULLETIN** ◆

“Employer Liability – Off-duty Employee Injured in Attempt to Nab Shoplifter”

The employee had gone home after work, but he returned

that night to do some shopping. He was outside the store talking to a friend when a supervisor ran out in pursuit of a shoplifter who had stolen a bottle of wine. The supervisor called to the employee and asked for help. The employee chased after the shoplifter, running beyond the store’s parking lot into a dimly lit area. He inadvertently ran off a small ledge, severely injuring his knee. The shoplifter got away.

The employee filed for benefits, but his claim was denied because his injuries did not arise in the course and scope of employment. The workers’ comp board ruled that he was not working at the time and he was hurt while performing a task that was not part of his normal job duties.

He sued the store for negligence. After a trial, a jury awarded him more than \$50,000 in damages, but the award was reduced by 41% due to his own negligence.

The appeals court upheld the damage award ruling that the store’s conduct was unreasonable and created a foreseeable risk of harm to the employee. Enough evidence showed that the supervisor called on an off-duty employee to engage in a potentially dangerous pursuit of a shoplifter into a darkened area to thwart the theft of a bottle of wine.

“Nurse Claims PTSD from Being Groped by Patient”

The nurse, Jones, was wearing a V-neck scrub top over a uniform skirt and lab coat. As she leaned over to prepare him for dialysis, the patient reached inside her top and grabbed her breast.

Jones removed his hand and yelled at him, telling him that he was not allowed to touch the nurses.

After she left work, she “broke down” in her car. She took time off and was diagnosed with depression and post-traumatic stress disorder (PTSD), which her doctor attributed to the incident.

Jones filed a workers’ compensation claim for benefits for a mental injury from being “physically violated by a patient.”

She alleged a mental injury from a physical assault that occurred at work – a traumatic incident that included the physical contact or impact of the patient grabbing her breast – not from work-related stress. Her claim is still under consideration.

◆ **FROM DOL WEB SITE** ◆
“Statistical Update”

The Wage and Hour Division concluded 34,858 compliance actions and recovered more than \$166 million in back wages for over 241,000 employees in fiscal year 2005. Back wage collections and the number of workers receiving back wages has steadily increased since 2001.

◆ **A REAL LIFE SITUATION** ◆

Situation: A full-time employee asked the organization if she could have some time available to go to school since she just enrolled as a full-time student. The organization, always willing to help an employee succeed and progress through his/her career, agreed to the arrangement. The employee, in a supervisory capacity, is now away from work a minimum of two half-days per week. The supervisory employee assured the organization that she could come after hours and on weekends to make up her time. The organization agreed to this as well.

Other employees are now wanting to have time off to care for their kids, to go to their kids’ schools for conferences, and one employee even wants time off to work part-time somewhere else.

The organization is now wondering how to tell them NO when their requests are not in keeping to have them progress in their careers.

Observation: The organization bent over backwards too much for the supervisor. Although assisting an employee with her career is commendable, and even though the organization may be paying for the school through a tuition reimbursement program, the employee’s primary responsibility is still with the organization. While this arrangement is definitely compassionate, the immediate direct reports do not have supervision during these two half-days, or, other disruptive arrangements have to be made.

Additionally, the employee needs to clearly see that the priority is with the organization and not with any other distraction. Although seemingly coming across as cold and callous, there has never been a question that any full-time employee’s priorities must be with the organization. This has always been true whether the employee has a part-time job elsewhere, children, elderly parents, or

school studies. If an employee cannot fulfill the requirements of the position, then the employee needs to go to school part-time, resign, or be terminated. This kind of arrangement can only work if the *position* is part-time, and there are very few instances where a supervisory position is classified as part-time.

And by the way, we’re not even talking about having a supervisor make up her time. That topic is for another newsletter.

FEATURED SERVICE
Working with Today’s Employees

Today’s employees are exposed to more than ever before. Additionally, there are now four (4) different generations working together:

- Traditionalists
- Baby Boomers
- Generation X’ers
- Generation Y’ers

Not only do today’s employees have different views of work ethic, benefits, and pay, but they sometimes also have different ways of dealing with teamwork, conflict, and authority. In fact, Baby Boomers are now reporting to Generation X employees, and Generation X employees are supervising other Generation X employees.

HR&M provides consultation and training on how to work with today’s employees so that the organization can continue to succeed even though it is being inundated with all of the social/political/economic/ethical pressures of the world all around.

Contact HR&M for help, tips, or training on how to address today’s employees.

◆ **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