



# Human Resource and Management Services

October 2006

## HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

### ◆ WORKERS' COMPENSATION LAW BULLETIN ◆ “Cell Phone Tolerance - Zero!”

A recent study by the University of Utah found that the reaction times of motoring cell phone users, with or without headsets, actually were slower than someone with a blood alcohol content of 0.08. Isn't it time your company looked into a “zero-tolerance” policy prohibiting cell phone use while driving?

#### “Bakery Employee's Kick Misses the Mark”

Medina was near his work area when he pretended that he was about to kick a co-worker. With a smirk on his face, Medina lifted his leg to kick, though the worker was standing too far away. Medina's other leg slipped, however, causing him to fall. He sustained a sprained wrist and hernia.

After a hearing, the administrative law judge awarded workers' compensation benefits to Medina, because the incident occurred right near his work area, was very brief, and it wasn't a complete abandonment of his employment

### ◆ FROM SHRM ◆ “California-Specific HR Certification Coming in 2007”

The Human Resource Certification Institute (HRCI), an affiliate of the Society for Human Resource Management (SHRM), will roll out a California-specific certification program in April 2007. The program was designed for professionals who are certified as Professional in Human Resources (PHR) or Senior Professional in Human Resources (SPHR). The exam will require test-takers to know California state law.

### ◆ YOU AND THE LAW ◆ “Pizza Snub Doesn't Equal Religious Bias, Court Says”

When a chief pharmacist bought pepperoni pizza for all employees one day, a Muslim employee felt slighted. She said the pharmacist knew her religious

beliefs about eating pork. The woman sued for religious discrimination, and the EEOC took her case. But the court didn't buy it, saying the pepperoni-snob didn't stack up to discrimination.

(Editor's Note: *I wonder what it cost to defend this frivolous case?!*)

### ◆ FROM CCH NETNEWS ◆ “Hi-Tech Service Provider Sued For Bias Against Near-Blind Applicant”

A Massachusetts-based technology service provider violated federal law when it rescinded a job offer to a legally blind applicant to work at its Rockford, Illinois facility because of his visual impairment, the US Equal Employment Opportunity Commission (EEOC) claimed in a lawsuit filed on August 23, 2006. (*EEOC v QualxServ, LLC*, NDIII, no 3:06-CV-50156)

According to John Rowe, the EEOC's district director in Chicago, the federal agency's pre-suit investigation revealed that QualxServ had decided to hire William Landram as a technician who would service its customers' computers and related equipment at the customers' locations. When QualxServ learned that Landram did not have a valid driver's license, the company withdrew the offer, the EEOC says, although Landram had offered to provide his own driver and car for travel to customer locations.

The EEOC seeks compensatory and punitive damages and an injunction prohibiting discrimination and retaliation in the future.

### ◆ FROM EMPLOYMENT LAW E-NEWS ◆ “Is Direct Deposit The Way To Go?”

According to NACHA, a nonprofit electronic payments association that represents 11,000 banks, direct deposit can save businesses thousands of dollars annually, and not just through automatic paycheck deposits. In addition to

helping preserve the environment by cutting down on paper usage, companies that also use direct deposit for expense checks, pensions, and bonuses may see savings of nearly a dollar per transaction in some instances because the cost to cut and process a paper check is between 50 cents and \$1.25, while direct deposit costs only 35 cents. That means a savings of \$2,000 a year for businesses with 25 employees; for larger employers -- those with 100 employees -- the savings is around \$7,000.

#### ◆ A REAL LIFE SITUATION ◆

**Situation:** A recently hired executive level employee classified as “exempt” under the Fair Labor Standards Act questioned the amount of his first paycheck. He began working on the 3<sup>rd</sup> day of the pay period, yet he believed that since he was classified as exempt under FLSA, he was entitled to a full paycheck for that week.

**Observation:** Although the employee is “mostly right”, he does not realize that there are exceptions to the “no pay-docking” rule, one of which states:

“A proportionate part of an employee’s full salary may be paid for time actually worked in the first and last weeks of employment.”

There are additional exceptions to the “no pay-docking” rule. The Department of Labor has mandated that pay can be docked from an exempt employee’s pay for the following reasons:

1. Absence from work for one or more full days for personal reasons, other than sickness or disability.
2. Absence from work for one or more full days due to sickness or disability if deductions are made under a bona fide plan, policy or practice of providing wage replacement benefits for these types of absences.
3. To offset any amounts received as payment for jury fees, witness fees or military pay.
4. Penalties imposed in good faith for violating safety rules of “major significance.”
5. Unpaid disciplinary suspension of one or more full days imposed in good faith for violations of workplace conduct rules.
6. Unpaid leave taken pursuant to the Family Medical Leave Act. This is the only time an employer can dock an exempt employee for a partial day.

### **FEATURED SERVICE** **Wage and Hour Workshop**

Need to brush up on your wage and hour knowledge?

HR&M will host a Wage and Hour Workshop on

Friday, October 20th  
9:00 a.m. to 11:30 a.m.  
at

North San Antonio Chamber of Commerce Building  
12930 Country Parkway  
San Antonio, TX 78216

Attendees Will Learn:

- Recordkeeping requirements
- How calculating simple overtime creates complexities resulting in audits, fines and back pay issues.
- Minimum legal requirements for benefits, vacation, breaks, etc.
- Recent changes to Wage & Hour laws identifying being exempt from overtime and minimum wage.

FLSA fact sheets, definitions of all Wage & Hour terms, and detailed handouts will also be distributed.

How to Sign Up

- Call us at 830-981-8723 or email us at [hrm@hrm-sa.com](mailto:hrm@hrm-sa.com) to reserve a seat.
- Cost for the workshop is \$79.00 per person.

#### ◆ 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