



Human Resource and Management Services

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HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ **FROM WORKLIFE LAW** ◆ “Family Responsibilities Lawsuits”

This report examines the growing trend in lawsuits filed by workers alleging they were discriminated against because of their family care giving responsibilities. The number of such cases has grown from a total of eight in the 1970s, when the first case was heard in U.S. courts, to 358 in the first half of the 2000s. In the last decade (1996-2005), the number of family responsibilities discrimination (FRD) cases filed grew nearly 400% from the previous decade, from 97 cases to 481.

The report describes where the cases are most prevalent, in which industries, amongst which kinds of workers, and in which parts of the country. It discusses case outcomes, as well as possible causes for increased filings.

Analyses show that rapid growth in FRD lawsuits began in the 1990s and continues today. Increases are correlated with media coverage of high-profile lawsuits involving maternal wall discrimination; growth in the number of employed mothers; diffusion of information about FRD cases amongst the legal profession; and changes in law making it more attractive to file discrimination lawsuits.

FRD lawsuits have now been heard in 48 of 50 States and the District of Columbia. More FRD cases have been filed by non-professional employees than by professionals, and plaintiffs are more likely to win FRD lawsuits than other types of employment discrimination cases. The average award is just over \$100,000; the largest award to date is \$25 million.

The lawsuits analyzed in this report make a strong case that companies' effective handling of workers' care-giving responsibilities is an issue of risk management; companies that mismanage their work/life programs tend to fare poorly in court. Amongst companies sued for discriminating against workers with family responsibilities are nearly 30 that have been designated as “Best Companies to Work

For” by *Working Mother* magazine or have been touted by *Fortune's* “Most Admired” list as amongst the best in the nation for treating employees well. Companies such as IBM, Wal-Mart and UPS have been sued multiple times.

◆ **FROM COMMUNICARE, INC.** ◆ “Shoddy Writing Can Trip Up Employees, Organizations”

The findings are based on a March e-mail survey resulting in responses from 528 Canadians. More than half (58%) of workers spend two to four hours daily reading e-mails, reports, memos, the Internet and intranet; 28% miss key information “often,” and 63% miss key information “once in a while,” the survey found.

“Since workers are diverted from key tasks, Canadian businesses have a major productivity gap,” MacMillan added. Weak workplace communication can be costly, according to Communicare, with 85% of respondents saying it results in wasted time, 70% citing lost productivity and 63% ascribing errors to poorly written communication. It's a common workplace complaint; 71% report hearing co-workers complain repeatedly about poorly written communications.

In another, earlier survey, workplace writing was seen as a “threshold skill” for hiring and promoting salaried employees. The National Commission on Writing for America's Families, Schools, and Colleges developed and administered the survey and found:

- Only 16% of responding companies report taking writing into consideration frequently or almost always when hiring hourly employees.
- Transportation and utility companies are least likely to take writing into consideration when hiring salaried employees.

- People who cannot write and communicate clearly will not be hired and are unlikely to be employed long enough to be considered for promotion.
- Half of all companies take writing ability into account when making promotion decisions.

◆ A REAL LIFE SITUATION ◆

Situation: An employee who has used ongoing intermittent Family Medical Leave for several years due to chronic back pain submits a physician's certification that states "employee may be late to work in the mornings due to condition." The employee holds a customer service related position that requires her to be at her desk promptly at 9:00 am to assist customers. Prior to renewing FMLA certification this year, she was counseled for arriving to work late several times in a two week period, and for failing to following company policy to call 30 minutes in advance so that a replacement could be found to cover the customer service desk. The employee arrives 20 minutes late to work. When the manager approaches her, she reminds him of the statement on the physician's certification. The manager is unsure of how to proceed, and is afraid of violating FMLA.

Observation: The manager may need to ask for further clarification from the physician on how the condition impacts the employee in the morning. It is also acceptable for a company to ask the employee to get a second opinion, as long as the company pays for the medical bills and expenses to obtain the second opinion.

Additionally, FMLA and the employee's track record of not following the call-in policy are two separate issues. The manager would not be violating any part of FMLA for counseling or disciplining the employee for not following the call-in policy; as long as the physician's certification doesn't state anything about her inability to make a phone call while in pain!

The best approach would be to have a private conversation with the employee after getting further clarification from the physician, and communicate:

- that she is being instructed to follow the call-in policy and that simply having a physician's certification stating she may be late to work, does not excuse her from following this policy;
- the call-in policy is in place due to the business necessity to ensure the customer service desk is staffed at the start of the business day;

- violation of the policy is grounds for disciplinary action for all employees, thus, she would also be subject to disciplinary action, including termination, for not following the policy.

FEATURED SERVICE Succession Planning

What do you have in place when a Supervisor, Manager, Director, VP, Sr. VP, or the CEO announces his/her retirement? What about accidents and death, whether through relationships or natural disasters? And what about resignations and terminations, whether voluntary or not and whether with notice or not?

When this happens, it is imperative that a transition be as smooth and as seamless as possible. And the only way to accomplish this transition would be to prepare for such a situation.

Succession planning is such a preparation. Succession planning would identify those current employees that are ready to 'step up to the plate', or, those that need to be in the minors for another year or so, and to identify those that will always be the bat boy.

HR&M can help your organization prepare such a program to assist in identifying short and long-term successors and identify those positions where there will be no successor at all.

Call HR&M to help you understand, design, and implement a Succession Planning Program.

◆ 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