



Human Resource and Management Services

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HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ FROM CCH ◆

“Time going through security is extension of daily commute time, not compensable”

Employees who must go through sometimes lengthy security procedures when they arrive at their workplaces believe they should be compensated for the time the screening takes. Many spend time waiting in line for badge inspection and to go through metal, radiation or explosive detectors. They may then have to wait to take employer-provided transportation to their jobsites. Should they be compensated? Under the Portal-to-Portal Act, the answer is "no," at least in the two federal circuits that recently addressed the issue.

Employees of the Indian Point nuclear power station filed suit for payment for the time it takes them to go through required security procedures to enter the plant, as well as for suiting up. Before the nuclear plant employees can perform their work they must spend between 10 to 30 minutes a day passing through multiple layers of security (*Gorman v The Consolidated Edison Corp*, 2ndCir, May 30, 2007, 154 LC ¶35,296).

During the construction of the North Terminal at Miami International Airport, a secure site, construction workers had to pass through a single security checkpoint to the tarmac and then ride authorized free, employer-provided buses to their jobsites, where they would sign in and receive instructions for the day. They were not paid for time spent waiting for the bus or riding it (*Bonilla v Baker Concrete Construction, Inc*, 11thCir, May 30, 2007, 154 LC ¶35,297).

“Personal liability, liquidated damages upheld for wage-hour violations”

Personal liability for multiple minimum wage and overtime violations, including paying employees less than minimum wage, not paying for training or meetings held during non-working hours or paying in cash "off the books," and not paying appropriately for overtime, was upheld in a suit by the Secretary of Labor against a hotel. Additionally, the First Circuit agreed that liquidated damages were appropriate since the hotel's failure to keep adequate payroll records and intentional manipulation of the records it did keep were sufficient to show the hotel did not act in good faith or with a reasonable belief that it was in compliance with the FLSA (*Chao v Hotel Oasis, Inc*, 1stCir, June 28, 2007).

◆ FROM THE HR SPECIALIST ◆

“Don’t announce key policy changes via e-mail”

When a Massachusetts company was sued for disability bias, it tried to direct the case to arbitration, saying it had adopted a mandatory arbitration policy months earlier. Employees had been notified via e-mail. Not good enough, the court said, in allowing the suit to go to court. In some cases, policy notices sent by e-mail can be binding. But important policies in which employees surrender rights should be held to a higher standard. Bottom line: When in doubt, print it out.

“Height and weight bias: a growing protected status?”

Lawmakers in Massachusetts are debating legislation that would make the state just the 2nd (after Michigan) to prohibit job discrimination based on a person’s height or weight. The bill’s Democratic sponsor says weight and height are “the last physical aspects of people that you can acceptably laugh at.” But a Republican analyst was quoted as saying, “We might as well add colorblind, left-handed, allergic-to-cashews, and get it over with.”

◆ FROM WAGE & HOUR WEBSITE ◆

“DOL files suit against Dallas-based retailers for \$118,949 in back wages”

The DOL has filed a lawsuit against Merchant and Merchant Inc., Dollars R Us Inc., Merchant and Khoja Inc. and Hanif Merchant of Dallas, Texas, for allegedly failing to pay overtime to stockers, cashiers and drivers, as required by the Fair Labor Standards Act (FLSA).

The complaint was filed in U.S. District Court for the Northern District of Texas, Dallas Division. The lawsuit resulted from an investigation by the department’s Wage and Hour Division in Dallas, which found overtime, minimum wage and recordkeeping violations of the FLSA.

“These employers paid their employees a day rate or a straight hourly rate without overtime compensation for hours worked over 40 in a workweek,” said Cynthia Watson, the Wage and Hour Division’s regional administrator in Dallas. “Employees are entitled to receive the overtime wages they earn. In this case, almost \$119,000 is due to 27 workers.” ...The companies also failed to keep required records.

◆ **FROM SHRM** ◆

“Small companies help fuel rising use of EAPs”

The number of calls from workers turning to employee assistance programs (EAP) and help lines for help with mental, legal, and couple- and family-related issues increased significantly in the first half of 2007, says a national EAP and helpline provider.

... More smaller companies—those with 100 or fewer employees—are starting to offer EAPs as part of their benefits package, BDA national sales director Gus Stieber told *SHRM Online* ... Callers are feeling stressed, depressed and increasingly angry and they are “just trying to get things under control, seeing how they can cope better,” he said.

“The workplace is squeezing and squeezing all of us, and as [organizations] downsize and right-size, issues are starting to pop up. It used to be just [people] complaining to each other and now they don’t have time to even complain to each other,” he said, calling EAPs and help lines “a first line of defense for employees experiencing emotional issues.”...

◆ **FROM WORKFORCE NEWS** ◆

“McDonald's Faces Teen Labor Shortage”

The declining number of teenage job seekers presents a super-size challenge for McDonald's, where 40 percent of the top 50 managers—including CEO James Skinner—worked their way up from the cash register or fry vat, and which more than ever needs qualified workers to keep service from bogging down in an era of computerized cash registers and electronic ovens.

◆ **A REAL LIFE SITUATION** ◆

Situation: Several recent incidents have occurred in which an employee was suspected in being involved with a cash shortage, suspicion of drug use, or other infraction in which an internal investigation had to be conducted.

In some of these situations, the organization had compelling and convincing documentation and testimony to place the employee on indefinite suspension or indefinite leave. In some cases, employees were told to turn in keys and other organizational materials and property. In another case, the employee asked for the reason for termination and subsequently later filed for unemployment benefits and filed a discrimination charge. In one case, the employee filed a wrongful discharge lawsuit.

In all of these instances, the organization claimed that the employee was not fired, but was placed on indefinite suspension or leave. It was only after the employee turned in any organization property that the employee was considered to have resigned.

Observation: If something looks, walks, and quacks like a duck, then it probably is a duck.

So if an organization wants to place an employee under indefinite suspension or leave, it should only be done under extenuating circumstances. If the employee feels that he/she has been fired, then that is understandable; because the employee has indeed been fired.

Take a look at Michael Vick, the professional football player found guilty of having dog fights on his property and personally instructing to have certain dogs killed because they did not fight well. The NFL put him on indefinite suspension. His suspension will be without pay, so he will lose, literally, millions of dollars.

But did he turn in his keys and organizational materials and property? What if he asked “Am I being fired?” Could he file for unemployment benefits? Could he file a discrimination charge or a wrongful discharge lawsuit?

In the NFL world, it’s a little different with contracts and agents, but we are not the NFL. Michael Vick was fired. And that is how we need to record and document our files. Doing otherwise may appear that you are sidestepping the real issue or maybe even hiding the real issue as to why the action taken is not agreeing with what is written.

FEATURED SERVICE
Termination Consultation

Termination is the last step in a process that did not go well. Steps in the interview, training, or documentation process did not go well, or the organization changed its direction, or the employee’s behavior deteriorated. For whatever reason, the organization needs to let someone go.

HR&M can view previous steps or actions that led to this decision and provide guidance for further steps or if the employment-at-will doctrine can be used. HR&M can also provide a script on what to say during the termination.

Contact HR&M for any assistance in this very serious and potentially dangerous activity.

◆ **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
- responses to discrimination charges and unemployment claims
- on-line performance review forms and processes
- guidance and consultation on coaching, counseling, and disciplining in employee relations matters
- succession and strategic planning programs
- consultation on issues regarding attendance and performance and guidance on terminations
- development of OFCCP compliant Affirmative Action Plans