



Human Resource and Management Services

September 2008

HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ FROM WORKFORCE MANAGEMENT ◆

“More employees borrowing against 401(k) plans”

“Retirement plan participants are taking out loans on their investments at an accelerated rate jeopardizing their future assets” a leading Boston College researcher says.

The percentage of participants in 401(k) programs who have taken a loan from their investments rose from 9% in 2005 to 18% in 2007, said Alicia Munnell, director of the Boston College Center for Retirement Research.

◆ FROM HR SPECIALIST ◆

“Binge drinking doesn’t qualify for FMLA leave”

Krysstof Chalimoniuk struggled with alcoholism. His employer had a strict point-based attendance system. When Chalimoniuk went on a drinking binge that lasted for days, his wife arranged for him to enter a treatment program. But before he was admitted, he missed 3 days of work.

His employer fired Chalimoniuk for collecting too many absences under its point system. He sued, arguing that those last 3 absences should be excused as FMLA leave.

The court disagreed. It quoted the FMLA regulation that states while treatment time for substance abuse is covered, “absence because of an employee’s use of the substance, rather than for treatment, does not qualify for FMLA leave.” (*Darst v. Interstate Brands*, No. 04-2460, 7th Cir., 2008)

◆ FROM HR HERO ◆

“When your employees are also your family”

Employing family members inevitably leads to dynamic and interesting HR issues. But here's a new one: Three family members fired on the same day sued their former employer, claiming they were discriminated against because they're members of the same family. Unfortunately for them, the federal court of appeals for Oklahoma found that Title VII of the Civil Rights Act of 1964 doesn't cover discrimination based on familial status.

◆ FROM COMPENSATION & BENEFITS ◆

“Money trouble is the no. 1 stress point for employees”

What’s keeping your employees awake at night? For most it’s money woes and work/life balance. In a poll by work/life vendor LifeCare, nearly one-third of 1500 employees

surveyed said financial issues topped the list of their greatest challenges. One-quarter cited the struggle to balance work and family. Also in the running:

- Health and wellness matters (12%)
- Legal issues (12%)
- Child care issues (8%)
- Adult care worries (3%)

◆ FROM SHRM ◆

“No place for ‘big dog’ health concerns at Scotts Miracle-Gro”

Obesity and tobacco use are the “big dogs” of escalating health care costs that pose “a significant long-term threat to American business,” says Scotts Miracle-Gro Chairman and CEO James Hagedorn, and the company is taking aggressive, dramatic steps to shoo them away.

...While he thinks access to the health care system should be a right for every American, “unless universal health care comes with a nicotine patch and a treadmill, I don’t believe government will get very far in trying to control the cost of health care.” Only a wellness focus can change that, and U.S. companies are best positioned to create that focus, he said.

The company’s aggressive wellness culture ranges from a policy of not hiring nicotine users, to building a more than \$5 million wellness center that costs nearly \$4 million annually to operate, to a monthly financial penalty for employees who do not participate in the company’s free onsite health assessments and health coaching.

“As a company, we came face-to-face with the health care issue about six years ago when we were experiencing year-after-year of double-digit increases in our medical expenditures,” he said, noting those increases were “well above the national average” and approaching 20% of its net income.

A conversation about wellness prompted creation of an integrated wellness plan. The company’s first steps: changing the benefits plans, better leveraging its provider partnership to create a health coach program, and working with its other vendors. ...it penalized (employees) \$40 per month if they didn’t participate.

Based on the private assessment, workers deemed “high risk”—about two-thirds of its population—were enrolled into

the company's health coach program automatically. Employees could choose not to work with a health coach, but the consequence was a \$70 monthly company surcharge.

(Editor's note – this is another in a growing list of companies that penalize employees for not being healthy, or at least not even trying to be healthy.)

◆ **A REAL LIFE SITUATION** ◆

Situation: Recently, many calls have been received indicating employees are spending too much time gossiping, socializing, talking on their cell phone, and in general, doing everything except working!

For example, employees would constantly be talking about a husband being a bum; a wife always listening in on phone calls because she was very jealous; someone being in the hospital and wondering how they are doing; a son who had a DWI and was not guilty; and so on.

The majority of the calls we received were asking how to address these situations, especially if they cannot prove that the employee is talking about another employee, or cannot prove that the phone call was a personal phone call, or that the conversation with all of the other employees was not just a social visit.

So what, if anything, can be done about these situations?

Observation: Besides resorting to pouring water over employees' heads to get them to stop talking, the organization needs to focus on the real issue; and that issue is:

- Is the employee away from his/her desk?
- Is the employee not performing his/her duties?
- Is the employee bothering or interrupting the work of others?
- Is the employee being so loud or meddling that he/she is causing disruption?

If any of these are true, then that is the issue. And this is true whether the employee is constantly talking about other people, or is going to the bathroom or the soda machine every 15 minutes, or is going out for a smoke too many times, or is talking about a sick grandmother.

At some point, the employee became disruptive or non-productive, and that should be the focus of the discussion. The focus should not be in trying to prove that a phone call is personal, or that the conversations are inappropriate, or that the person is taking too many smoke breaks.

This focus is going to be a lot easier to address and a lot easier to apply disciplinary action if it becomes necessary.

FEATURED SERVICE **Dealing with Employee Personal Situations**

Addressing personal situations can become very tricky when dealing with employees who are constantly gossiping, socializing, or talking since it's hard to ascertain if these activities could lead to workplace problems.

In other words, trying to determine if employees talking with each other is normal, is a cry for help, or is just simply being difficult.

Additionally, an employee who is perceived as talking too much could be having a real life situation that may require help through an employee assistance program or, for more serious situations, may require workplace violence prevention measures.

HR&M can provide you with the answers you need when dealing with employee personal situations.

Call 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
- 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**