



HUMAN RESOURCES UPDATE

OCT 2004

VOL 4, ISSUE 4

USERRA – UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

This 1994 Act was designed to protect the jobs of our servicemen and women when they are called to active duty. Due to the war in Iraq, this Act is receiving more attention than usual.

Employers who have employees called to active duty must, under this law, do the following for those employees:

- Hold the employee's position for them when they return from active duty or
- Provide them with an equivalent position when they return

and

- Protect the employee's benefits and raises, as though the employee never left.

By the middle of August 2004, the number of complaints filed with the Department of Labor against employers for violating USERRA had increased significantly.

Employers who are eliminating positions due to budget cuts do not have to specifically protect the positions for employees called to active duty, however employers cannot single out those employees either. Also, positions that

are eliminated because of a facility closing or company closing are not protected.

Also, employers should carefully evaluate a returning employee's fitness for duty if the employee was injured while on active duty. For instance, a patrol policeman who lost his foot may not be fit for duty any longer. What are your disability policies and what accommodations can be made under the Americans with Disabilities Act?

Basically, although your personnel records may reflect the person is on military leave, remember to keep a record of promotion reviews, merit increases, bonuses, and other benefits that the employee would have been eligible for had he or she been at work.

Lastly, there are exceptions for length of leave and dishonorable discharges.

For an annual review, review the employee for work done up until they were called to active duty. If the quality of work warrants a merit increase, then make a note of that and when the employee returns, adjust their pay accordingly.

EEOC ADDRESSES EMPLOYMENT RIGHTS OF PEOPLE WITH INTELLECTUAL DISABILITIES

On October 20, 2004, the Equal Employment Opportunity Commission issued a new fact sheet regarding employment rights of people with intellectual disabilities (f/k/a mental retardation). The EEOC's new guidance addresses when an intellectual impairment qualifies as a disability under the ADA, when employers may ask applicants or employees about an intellectual disability, what types of reasonable accommodations may be needed by individuals with intellectual disabilities, how to address safety and conduct concerns in the workplace, and how an employer can prevent harassment of employees with intellectual disabilities.



WATCH FOR:

2005 LIMITATIONS ON EMPLOYEE BENEFIT PLANS, SOCIAL SECURITY INFO, AND MEDICARE INFO WILL BE PUBLISHED BY THE GOVERNMENT SOON. WE WILL PUBLISH THE INFO WHEN AVAILABLE.

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BUSINESS SOLUTIONS**

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(continued) The EEOC fact sheet provides several useful examples of workplace situations concerning the intellectually disabled. The examples include when and to whom an employer may disclose information about an individual's intellectual disability, as well as what types of reasonable accommodations may be required. Such accommodations can include: job restructuring, job training, a job coach, a modified work schedule, assistance in understanding job evaluations or disciplinary proceedings, acquiring or modifying workplace equipment, and work station placement. The examples also tell employers when they have an affirmative duty to ask someone whether he or she needs a reasonable accommodation.

While it is generally the employee's responsibility to request a reasonable accommodation, an employer should act proactively when the employer knows the employee has a disability, has reason to know the employee is having trouble due to a disability, or knows (or has reason to know) that the disability prevents the employee from requesting a reasonable accommodation. For more information, please go to www.eeoc.gov/facts/intellectual_disabilities.html.

DEPARTMENT OF LABOR ENFORCEMENT

For the fiscal year ended Sept. 30 (FY2004), the Department of Labor (DOL) reports huge increases in total monetary results for its enforcement efforts involving pension, health care, and other employee benefit plans. While DOL-initiated actions in civil, criminal and administrative cases continue to provide the lion's share of these results, voluntary "fix-it" actions initiated by plans themselves showed the largest leap, going from \$8.7 million in FY2003 to \$264.6 million in FY2004.

While unable to provide a precise breakdown between pensions and other kinds of plans,

Assistant Secretary of Labor Ann Combs said that the largest part of the results is attributable to pension plans. She also noted that the results do not take into account the very large sums involved in the Enron, Worldcom or other privately litigated cases.

Combs encouraged maximum use of the compliance assistance programs designed to help companies avoid enforcement actions. The Voluntary Correction Program saw a more than 98 percent increase and the Delinquent Filer Voluntary Compliance Program went up 19 percent in the last year.

SEX DISCRIMINATION AGAINST MEN

A family restaurant chain, Jillian's Entertainment Holdings, Inc., recently settled a discrimination suit filed by male employees who claimed sex discrimination in personnel decisions. The settlement went to a class of male employees who claimed the employer failed to hire or transfer them into better paying server positions based on their gender.

The Court has required that Jillian's enter into a Consent Decree and pay damages of \$350,000 to the approximately 100 males, \$10,000 to pay for advertisements throughout the country, prepare gender neutral job descriptions, train management on Title VII gender discrimination, maintain applicant tracking logs and report to the EEOC on any complaints of discrimination.

Although many civil rights laws were originally established to protect minorities and females, discrimination in employment decisions can

affect males and non-minorities as well. Even jobs that were traditionally female dominated positions must be kept open for males unless there is a *bona fide* occupational qualification (BFOQ) that requires the position be filled by a female. BFOQ positions are very rare; an example would be a ladies' room attendant being required to be female.

In order to maintain more control over personnel processes, human resources and senior management should periodically (at least annually) review and update job descriptions to ensure they are non-biased and actually relate to the job functions. Also, managers should be surveyed for any changes in the job duties to be sure the descriptions are current. The time spent is well worth the effort; many businesses cannot afford damages or fines of the size potentially incurred.