



HUMAN RESOURCES UPDATE

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THE USERRA UPDATE

As mentioned in our last issue, there are now new disclosure and posting requirements that went into effect on March 10, 2005 for the Uniformed Services Employment and Reemployment Rights Act. The Veterans Benefits Improvement Act of 2004, signed into law in December by President Bush, added these requirements.

The new notice requirement is for USERRA rights to be distributed to all your employees. This can be accomplished by simply hanging the poster where your business has the typical payroll, FMLA, OSHA, and other required

postings. You can download a free poster at the Department of Labor site or by [clicking here](#). You may also distribute the notice via email or US Mail to your employees.

Please be certain to read the posting, so that you are clear on the rights of your employees.

Also, don't forget to update the Summary Plan Description for your benefits plan to reflect the 24 months of continued coverage available for employees on military leave (a change from 18 months). Please see your broker or plan administrator for additional information.

TECH WORKER UNHAPPINESS

With the big technology boom over and the days of stock and options exploding in value with it, tech workers around the country are looking for changes in quality of life and pay, reports a recent New York Times article.

Often, these employees can be and are classified as "exempt" per the FLSA rules (thus not eligible for overtime pay). However, with lower or non-existent stock values not benefiting their compensation package, many of these employees are asking to be reclassified as "non-exempt" employees so they can receive overtime pay. This is a major money proposition for these companies whose employees who often work 60 to 80 hours a week, especially near the release date of a new software package.

"This tears at the employment model that Silicon Valley was built on," Rusty Rueff, the director of human resources for Electronic Arts, tells the newspaper. "[Overtime pay will move game developers] out of a culture that emphasizes entrepreneurialism and ownership and into a clock-watching mentality."

Electronic Arts, a video-game maker that employs 5,800 workers, says it is responding to

employee pressure by changing stock options and bonuses. The workers who receive overtime pay will be ineligible for stock options and bonuses.

It is most important if you employ high tech employees to make certain you keep abreast of what the market in your area is doing regarding compensation. However, don't let yourself be caught by surprise. If half your workforce walks out on you over compensation issues that you were unaware of, the cost to your business could be even greater than some pay practice changes.

As an alternative to higher pay, your employees may be satisfied with simple things like flexible work schedules or telecommuting. The only way to know is to stay in communication with them.

If you haven't completed an employee satisfaction survey in a number of years, now is the perfect time.

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**THIS ISSUE'S TIP:
DON'T USE SOCIAL
SECURITY
NUMBERS AS
EMPLOYEE ID
NUMBERS,
ESPECIALLY ON
SECURITY BADGES.
CHOOSE A
NUMBERING
SCHEME THAT IS
COMPLETELY
UNRELATED.**

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**HUMAN RESOURCES
BUSINESS SOLUTIONS**

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FINAL HIPAA PORTABILITY RULES

HIPAA's (Health Insurance Portability and Accountability Act) recently finalized portability rules require significant changes in the administration of group health plans, especially regarding the notices that must be provided to beneficiaries.

For example, "there are a number of notices with changes," including the certificate of creditable coverage, the notice of a pre-existing condition exclusion, the notice of the individual's amount of creditable coverage and the notice of special enrollment rights. Other procedural changes include a new requirement that procedures for handling certificate requests be in writing.

HIPAA's final portability rules, issued Dec. 30, 2004 (69 Fed. Reg. 78719), by the U.S. Departments of Labor, Health and Human Services and Treasury, replace the 1997 interim rules on pre-existing condition exclusions, creditable coverage and special enrollment for plan years beginning this July 1.

Additional information can be found at the [Health and Human Services site](#).

EFFECTIVE TERMINATIONS INCLUDE HUMAN RESOURCES

Frequently employers believe that human resources is there to help with the hiring and firing and that's all. While that is not the case, including your HR department, be it internal or outsourced, can go a long way in making effective hires and terminations.

At a recent workplace law symposium sponsored by Jackson Lewis, attorneys Sheila Owsley and Edward Richters provided a number of pointers for employers concerning effective terminations.

To begin with, an effective termination situation is one where the employee is not completely surprised. It is one where the employee doesn't feel so wronged or humiliated that they turn around and sue the company. It is one where the affected employee is treated like a human being. It is one where your company policies have been followed and handled the situation the same way that similar situations have been handled in the past. So, some basic steps to keep in mind:

1. Is there someone outside the chain of command (typically HR) who is responsible for assessing the company's ability to defend the termination?
2. This person should conduct their own investigation into the situation and ask tough questions. Take the appropriate, complete documentation of your investigation and meetings.
3. View the manager's documentation on the affected employee and the situation. Does it follow your company's progressive disciplinary process? If not, why not?
4. If there is inadequate documentation or the situation is not clear-cut, then delay the termination temporarily. If the employee is that bad, they'll screw up again or they'll shape up and get with the program.
5. Juries expect employees to have been given fair warning and a chance to improve. Did this employee get that, particularly if it is part of your progressive disciplinary process?
6. Does the punishment fit the crime? Is the punishment consistent with treatment of other employees with similar behavior in the past?
7. Will there be surprise problems because the employee is a member of a protected class or will this be viewed as retaliation because the employee has filed a grievance or an EEO complaint?
8. Are there alternatives to the termination?

Remember, if this ends up before a jury, you need to have credible explanations supported by company documentation and the actions must be consistent with policies and precedent.