THE HOPKINS GROUP
HUMAN RESOURCES BUSINESS SOLUTIONS

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IDENTITY THEFT SERVICES AS AN EMPLOYEE BENEFIT

With identity theft on the rise, it won't be long before companies will have an employee devoting time to dealing with this crime, or are already facing this situation. Identity theft victims devote an average of 81 hours to dealing with resolving this very personal and stressful issue, according to a Nationwide Mutual Insurance Co. survey. And that is time that is typically during regular business hours.

Most businesses can't afford to lose that much productivity from an employee and there's the general reduction in productivity because the employee is stressed about the situation. What happens when employees do not have enough vacation or personal time saved up?

There are over 50 identity theft service providers out there and more will crop up. If you decide to offer one of these relatively inexpensive services as a benefit for your employee, here are a few things to consider in your research.

1. Is your company going to cover part or all of the cost of the benefit or will you simply research a service and offer the payroll deduction for the employees?
2. How long has the company been in business? The answer should be at least two years. Otherwise it has not been around long enough to have experience working through a complex resolution case.
3. Is the service managed or assisted?
4. Does it use former identity theft victims as resolution experts?
5. Does it operate a hotline that takes calls 24 hours a day, 365 days a year?
6. Does it have attorneys and investigators on staff or on retainer to assist with the most complex cases of identity theft? While many cases can be handled with calls and correspondence, there are a growing number of felony-related cases.
7. What is covered? It's important to know whether the program covers cases of identity theft not related to credit cards, loans and bank activity.
8. Does it include family benefits? Four percent of children age 18 and under are identity theft victims. If children are covered, what is the age cutoff and what exclusions are there? For example, are they covered if they live away from home?
9. Ask for client references.

OVERTIME PAY VIOLATION

The owner of fourteen northern Indiana and Illinois Dunkin Donuts and Baskin Robbins Ice Cream franchises has agreed to pay 213 low-wage workers $540,912 in back wages after the Department of Labor accused the stores of violating the overtime provisions of the Fair Labor Standards Act.

The department alleged that the owner of the franchises paid straight-time wages for all hours worked by employees engaged in baking, frying, food preparation, and customer service. Once the department notified the company of its findings, the employer immediately made policy changes and agreed to pay the back wages in full, according to the department.

Please remember that the FLSA requires covered employees to be paid the minimum wage for all hours worked and time and one-half their regular rate of pay for hours worked over 40 per week. Your state may have more stringent requirements than this, but this is a minimum requirement. The Department of Labor makes its determination about whether an employee is covered by the FLSA by the essential job duties of an employee, not their title.

H-1B Visa cap reached for Fiscal 2006. Exemptions for transfers, extensions, and applications for non-profits still are available. Please see your Immigration Counsel.

Human resources business solutions

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Hostile Work Environment from Non-Employees

The Defendant Central Park who owns twenty nursing homes in Washington, allegedly discriminated against black nursing staff members in assignments, terms and conditions of employment, and promotions on the basis of race, and, subjected them to a racially hostile work environment. *EEOC v. Central Park Lodges Long Term Care, Inc., d/b/a Linden Grove Health Care Center*, No. 04-5627 RBL (W.D. Wash.). The case was certified as a class action and the class of Plaintiffs received $370,000 in damages as well as $130,000 in attorney's fees and costs. The following summarizes the violations identified by the EEOC:

- The all-white care management team met with a white resident's family members and then prepared a care plan for the white resident incorporating the family's request that no "colored girls" work with the resident.
- Management also tolerated the frequent use of racial slurs by residents and other employees. When a resident's family member referred to one of the plaintiffs as a "slave" in the presence of the nursing supervisor, the supervisor did not take any action and told the black employee to ignore it.
- Management often assigned nursing staff to shifts by race with most blacks on the night shift and most whites on the more desirable day and evening shifts when most of the visitors came to the facility. Central Park ignored requests by black nursing staff members for day and evening assignments.
- Defendant also assigned black and white employees to separate lunchtimes and lunchrooms.
- One of the black employees applied twice for a promotion to a staffing position for which she had several years of experience and was highly qualified. Central Park denied her promotion on both occasions, once in favor of a white employee who had not applied for the job but was a friend of the hiring official.

Take immediate corrective action for allegations of harassment by clients in your business. Third party harassment is illegal under Title VII of the Civil Rights Act of 1964 and 1991, as amended. Allowing third parties to harass employees by using racial slurs or offensive innuendos based on race may set the organization up for liability. Additionally, segregating work shifts, lunch shifts or facilities is not taking corrective action and will only exacerbate any existing racial tensions or stereotyping between employees and clients and or other employees. Finally, discrimination in hiring and promotional opportunities may be inferred where a protected group member is qualified and a non-protected group member who is less qualified is selected due to favoritism. To avoid Central Park's fate, (1) Treat all discrimination complaints with urgency; (2) Train supervisors to recognize harassment by non-employees such as clients, customers, vendors and visitors in the workplace; (3) Have the Human Resources Department review all personnel actions such as hires, promotions, transfers and terminations and require that supervisors justify personnel decisions with a non-discriminatory reason for the selection. *Courtesy of Cindy Mattson, J.D.*

4th Circuit Rules on Waiver of FMLA Claims

Employers in certain mid-Atlantic states may want to rethink asking their employees to waive their rights under the Family and Medical Leave Act (FMLA) because of a recent decision by the 4th U.S. Circuit Court of Appeals.

In Taylor v. Progress Energy Inc., the employee, Barbara Taylor, was terminated after she repeatedly asked to take FMLA leave. At her termination, she signed a general release relinquishing all rights to litigate any possible employment claims in exchange for receiving additional compensation. The employee later sued, alleging violations of the FMLA.

The 4th Circuit -- whose jurisdiction comprises Maryland, North Carolina, South Carolina, Virginia and West Virginia -- held that the employer could not ask the employee to sign releases that would waive her right to sue to enforce her rights under the FMLA because an FMLA regulation prohibits employers from taking such action without prior approval from the U.S. Department of Labor or a court. Employers in the 4th Circuit need to review their release policies in light of the appeals court's decision, attorneys said. Remember that FMLA applies to employers with 50 or more employees within a 75 mile radius.