



HUMAN RESOURCES UPDATE

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FMLA POLICY V. CALL-IN POLICY

If you require employees to call in one hour (or some specified amount of time) before their shifts begin to say that they are unable to come to work may want to rethink how those policies are administered in light of a recent federal district court ruling that held that those policies may be impractical under the Family and Medical Leave Act (FMLA).

In a recent court case from U.S. District Court for Middle Alabama, an employee was terminated when he called in 54 minutes before his shift began to tell his employer that he had to stay home to care for his wife who was having complications related to her pregnancy. The employee sued, alleging the employer interfered with his right under the FMLA to return to work following FMLA leave.

Since the FMLA regulations dealing with foreseeable leave and unforeseeable leave each have provisions allowing employees to notify employers of their need for leave "as soon as practicable," it may not have been practicable for the employee in this case to report his inability to work more than one hour before his shift started, the court ruled. If the employee did not know he needed to stay home until it was nearly time to start his shift, then the employer's one-hour notice requirement would be impractical and would violate the FMLA, the court said.

Employers should remember to take their FMLA into consideration when disciplining an employee regarding absenteeism and tardiness.

STUDY IDS LEADING FACTORS FOR UNETHICAL BEHAVIOR

Managers and HR experts say the leading factor that causes unethical corporate behavior is pressure to meet unrealistic business objectives and deadlines, according to a survey commissioned by American Management Association (AMA) and conducted by the Human Resource Institute (HRI).

The survey included responses from 1,121 managers and HR experts from around the world.

Respondents ranked the desire to further one's career and to protect one's livelihood as the second and third leading factors.

"Laws and regulations are, and will remain, the most influential external drivers of corporate ethics, but legislation is no substitute for the presence of leaders who support and model ethical behavior," says Edward T. Reilly, president and CEO of American Management Association. "Corporate leaders need to communicate ethical values throughout the organization, but they must do more than talk the talk in order to establish and sustain an ethical culture."

Respondents said that the single most important ethical leadership behavior is keeping promises, followed by encouraging open communication, keeping employees informed, and supporting employees who uphold ethical standards. *Courtesy Business & Legal Reports 01/23/2006.*

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MINORITY V. MINORITY RACE BIAS

The *Wall Street Journal* reports that two recent employer settlements with the Equal Employment Opportunity Commission (EEOC) underscore a new trend in race discrimination: African-Americans who feel they're being passed over for Hispanics.

Last fall, EEOC reached a \$110,000 settlement with Farmer John Meats (Los Angeles) after seven black applicants were rejected for production jobs there. The EEOC found that the meat-packing company had been almost exclusively hiring Hispanics.

More recently, EEOC settled with Zenith National Insurance Corp. (Woodland Hills, CA), a workers-compensation specialist, for \$180,000. In that case, 10 blacks had applied for a mailroom job, but a Latino with no mailroom experience was hired for the position. A number of the black applicants had relevant experience.

Hispanics have become the second-largest population in the U.S., ahead of African-Americans and behind Caucasians. These cases, the *Journal* reports, "highlight mounting tension" between African-Americans and Hispanics as they compete for job opportunities. "There used to be a reluctance to bring cases against other minorities," said EEOC attorney Anna Park (who oversaw both the Farmer John and Zenith cases). "It's no longer a white-black paradigm. This is a new trend."

The *Journal* explains that workers from all backgrounds use networks within their ethnic groups to find employment, and that Hispanic workers often bring in other family members or neighbors to join them on a job. This can be helpful to employers in blue collar industries--such as construction--who can use their workers to recruit others.

The Farmer John case shows that such practices can open employers to lawsuits, however, if applicants from other races are being shut out as a result. EEOC said Farmer John had an all-Hispanic hiring staff and recruited new hires by word of mouth.

Some civil rights and community groups say that employer stereotypes are partially to blame for the trend, the *Journal* reports. For example, John Trasvina, vice-president for law and policy at the Mexican-American Defense League says some employers believe Latinos can be exploited because they assume many Latinos are immigrants who will accept lower wages and aren't as aware of their rights as blacks. "Employers sometimes pit one group of employers against the other," Trasvina says. *Courtesy of The Wall Street Journal.*

JUSTICE DEPT FILES CLASS-ACTION LAWSUIT AGAINST AMERICAN AIRLINES

The Department of Justice has filed a class-action lawsuit accusing American Airlines, Inc. of violating the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

This is the first class action complaint filed by the United States under USERRA.

The complaint, filed in US District Court in Dallas, Texas, alleges that American Airlines violated USERRA by denying three pilots employment benefits during their military service.

The complaint alleges that American Airlines conducted an audit of the leave taken for military service by American Airline pilots in 2001. The complaint further alleges that based on the results of that audit, American Airlines reduced the employment benefits of those of its pilots who had taken military leave, while not reducing the same benefits of those of its pilots who had taken similar types of non-military leave.

Remember that USERRA applies to all companies, regardless of your size.

DON'T FORGET TO COMPLETE AND POST YOUR OSHA 300A FORM. THIS IS REQUIRED FOR EMPLOYERS WITH 10+ EMPLOYEES. FOR ASSISTANCE, PLEASE CONTACT YOUR REP AT THE HOPKINS GROUP.

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