



HUMAN RESOURCES UPDATE

VOL 7, ISSUE 2

DEPARTMENT OF LABOR INSPECTORS

There is word going around that the Department of Labor has sent twenty additional inspectors to the Dallas/Fort Worth area. Their goal is to find at least ten employers per week who are not in compliance with the Federal Labor Standards Act (FLSA).

The FLSA is the set of regulations that defines whether an employee is exempt or non-exempt. It is critical that your job descriptions, as we wrote about in our last issue, are up to date and correctly reflect the actual and essential job duties of your employees. Then it is imperative that you are paying those employees appropriately under the FLSA. A specific example would be not classifying an employee as exempt (from over-time) when the employee actually should be receiving over-time pay for hours worked over forty in a work week.

AGE DISCRIMINATION CHARGE

In a recent Texas case, Salvador Reyes sued AutoZone for age discrimination and won, even though he was terminated for sexual harassment. This case is an excellent example of why all managers and supervisors need to be trained about discrimination matters.

Sixty-two year old Reyes was a 20-year plus employee of AutoZone and was accused, along with Jim Alvarado, of sexual harassment. The female employee complained that both men greeted her with hugs and kisses.

Post investigation, Reyes was terminated. Alvarado decided to resign instead of being terminated and went to turn in his keys to his supervisor, Jesse Villareal. Villareal wouldn't accept Alvarado's resignation, telling him "Whoever needs to be punished has been punished," and that AutoZone was "Just trying to get rid of the old people" because "old ones have a certain way of working and AutoZone was trying to make changes." Alvarado told Reyes what Villareal had said and not surprisingly, Reyes sued the company for age discrimination.

A jury found in his favor and awarded him nearly \$2M in damages. The judge reduced the amount to a little over \$300K due to statutory limits required by law. AutoZone appealed, claiming that the evidence had been legally insufficient to support the jury's finding that age was a motivating factor in the decision to discharge him.

The court decided that Alvarado's testimony was direct evidence that age had been a

motivating factor in the discharge. It rejected AutoZone's argument that Villareal's reference to "old people" referred to time or experience as a manager and not to age. "Even assuming such reference could have carried that connotation; the statements themselves do not reveal such an alternative meaning, and the jury clearly found otherwise," the court said.

So, please make certain your supervisors and managers are trained to never refer to an employee's protected classification, be it a disability, age, race, sex, or any other classification. While AutoZone didn't end up losing too much in the judgment, the legal fees, time and lost work of those involved in the lawsuit, and the negative press can cost far more.

H-1B VISA CAP UPDATE

The USCIS has just announced that as of April 9, 2007, it has determined that approximately 119,193 of the H-1B petitions received on April 2 and 3 are subject to the FY2008 standard H-1B cap. Since the fiscal year limit was reached on the first day, USCIS will apply the "random selection" lottery as provided for in the regulations.

For the separate U.S. Masters degree H-1B count, the USCIS received approximately 12,989 cases on April 2 and 3. Accordingly, the USCIS has announced that the U.S. Masters degree cap of 20,000 remains open and it will continue to monitor these filings.

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SUMMER'S JUST AROUND THE CORNER, SO NOW IS A GREAT TIME TO REVIEW YOUR COMPANY'S DRESS CODE POLICY, ESPECIALLY HOW "SUMMER DRESS" OR "SUMMER CASUAL" IS DEFINED FOR YOUR COMPANY.

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**HUMAN RESOURCES
BUSINESS SOLUTIONS**

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OUTSIDE SALESPEOPLE

Please note that in several recent opinion letters, the Department of Labor has clarified the difference in "outside salespeople" and "outdoors salespeople" for the purposes of exempt classifications.

Salespeople who spend the majority of their time outdoors selling, for instance showing timeshare property, are not exempt from overtime provisions (opinion letter of February 14, 2007). However, salespeople who work for a builder or developer can be exempt from overtime (opinion letter also issued on February 14, 2007).

CREATIVE EXCUSES

Since we all need a good chuckle every now and then, here is a list of the more unusual excuses for not coming to work that managers heard in 2006 from a CareerBuilder.com survey:

- A buffalo that had escaped from a game reserve kept charging at the employee every time she tried to leave her house to get to her car.
- The employee's horses got loose and were running down the highway.
- A skunk entered the employee's house and sprayed all of his uniforms.
- The employee's mother-in-law poisoned him.
- The employee's mother was in jail.
- The employee was experiencing all the symptoms of his pregnant wife.
- One of the walls fell in the employee's house.
- The employee's wife said he couldn't come to work because he had a lot of chores to do around the house instead.
- Bad hiccups.
- The employee blew his nose so hard that his back went out.
- The employee was locked in a restroom stall and no one was around to let him out; he was calling on his cell phone.
- The employee's dog swallowed her bus pass.
- The employee was hit by a bus while she was walking.
- The employee broke his leg snowboarding off the roof while he was drunk.
- The employee was sad.

One unusual gem reported in CareerBuilder.com's 2005 survey was from an employee who didn't believe in alarm clocks and instead relied on a higher power to get up in time for work. "God didn't wake me," she reportedly explained when she called in.

Other gems reported from the 2005 poll included:

- "My cow bit me."
- "My boyfriend's snake got loose and I'm afraid to leave the bedroom until he gets home."
- "I was walking my dog and slipped on a toad in my driveway and hurt my back."
- "The ghosts in my house kept me up all night."
- "I'm too fat to get into my work pants."
- "I cut my fingernails too short, they're bleeding and I have to go to the doctor."
- "I accidentally drove through an automatic garage door before it opened."
- "I accidentally flushed my keys down the toilet."
- "I forgot I was getting married today."

So see, you really do have it good!