



HUMAN RESOURCES UPDATE

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JOIN US AT HR SOUTHWEST

Karen Hopkins, Principal, and Juanita Nañez, Senior Associate, will be presenting one of the conference workshops at this year's HR Southwest conference in Fort Worth, Texas. The workshop is entitled "Diversity Pays - With Interest!" and addresses the talent shortage and how organizations need to seek out talent anywhere it can be found – regardless of preconceived notions regarding who is a good/talented/reliable employee. Their session is Thursday, October 25 at 3:45p.m.

VIDEO RÉSUMÉS

With the variety of multi-media technology easily within our grasp these days, don't be surprised if your email in-box has a video résumé in it in the near future. You know you're not supposed to ask for a photo when you post a job, but what if the candidate voluntarily sends it – and more? Do you look? The *National Law Journal* says hit the delete button if you receive such a résumé.

The *NLJ* has major concerns about judging people based on an electronic self-portrait. Those concerns come down to multiple forms of possible discrimination:

- Discrimination based on appearance;
- Economic discrimination; and
- Educational discrimination.

Looking at the risks, attorney Cheryl Behymer of Fisher & Phillips in Atlanta, as reported on *Legalblogwatch.com*, advises employers to simply return video résumés without ever viewing them, with a request that they send a traditional version instead. "Just let them know 'We don't use video,'" she says on the website.

Phillip Thune, CEO of *HireMeNow.com*, a site on which jobseekers can post video résumés, summarized the case for employing the technique: "A video résumé allows a recruiter to assess a candidate's communication skills, how the candidate presents him/herself, the level of enthusiasm - those are all qualities that a recruiter may legally use to make a hiring decision. Yes, the recruiter could also see the candidate's age, sex, race, etc., but that is also true for the in-person interview, and nobody is suggesting we abolish those." Thune also says he's consulted with "top employment lawyers, and they believe a video résumé is fine."

The Equal Employment Opportunity Commission seems to be a bit on the fence over the issue. EEOC's E-RACE website cautions against the résumés for the reasons listed above. But other statements from the agency on the issue are more qualified. "The problem of video résumés potentially contributing to discrimination may always be a present issue," said the EEOC's Paula Bruner, in an interview with the SHRM publication, *HR News*, "unless there are some filters put in place." (Continued on next page.)

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HALLOWEEN IS FUN, BUT REMEMBER THAT YOUR EMPLOYEES NEED TO RESPECT EACH OTHER'S OPINIONS AND BE GIVEN THE OPPORTUNITY TO OPT OUT OF ANY FESTIVITIES.

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Incorporating Bruner's advice and that of others, here are some "filters" you might want to utilize if you do consider video résumés in hiring:

- Never make submitting a video résumé a requirement for applying.
- If you allow video résumés, look at every one that meets your qualifications criteria. Random viewing can be a form of discrimination.
- Do your initial screening based on traditional résumés before viewing any video.
- Have a solid business reason for hiring one applicant over others, and keep notes on why you accepted or rejected each candidate considered.

At this writing, there hasn't yet been a discrimination claims based on the use of video résumés. But stay tuned, because we'll keep watching.

LAWSUIT HALTS DHS CRACKDOWN ON UNAUTHORIZED WORKERS

The Department of Homeland Security's Immigration and Customs Enforcement agency (ICE) hit a roadblock on Friday, August 31, in its increasingly aggressive efforts to clamp down on the use of illegal workers. ICE had published a final rule to be effective on September 14 requiring employers who receive a "mismatch" letter from the Social Security Administration (SSA) to take specific steps to resolve the mismatch within a 93-day period. Under the rule, if the mismatch is not resolved and if the employer continues to employ the individual, then ICE could use the mismatch letter as the basis to find that the employer knowingly continued to employ an unauthorized worker in violation of Federal I-9 law. As a part of its enforcement strategy, ICE had arranged for SSA to send mismatch letters that week to more than 140,000 employers covering an estimated eight million workers.

On Friday, August 31, a Federal judge in California issued an order temporarily prohibiting the SSA from sending out the mismatch letters and, in addition, prohibiting DHS from using the mismatch letter—standing alone—as a basis for finding employers in violation of the Federal rules against hiring unauthorized workers.

Following a second hearing, held Tuesday, October 2nd, the judge extended for up to ten days the temporary restraining order. The order also stops the SSA from sending notices to employers informing them of the new rules.

The court indicated that it would rule within ten days on a preliminary injunction that would bar the new rules for an indefinite period—until the case went to trial or a higher court overruled the decision. The judge's comments during the hearing demonstrated an inclination to grant the injunction.

There has been a significant increase in worksite enforcement initiatives, from a resource as well as legislative perspective. Employers should ensure that their employment authorization verification policies and procedures are appropriate and sufficient and that they reflect best practices in this area. Moreover, employers who anticipate receiving numerous mismatch letters should begin planning now in order to be in a position to respond in the event that the temporary block against implementation of the new rule is lifted.