



# HUMAN RESOURCES UPDATE

VOL 8, ISSUE 2

## ARE YOU CONFIDENT ABOUT YOUR 401(K) MANAGEMENT?

The US Supreme Court handed employees a major victory by allowing them to sue over mismanagement of their 401(k) retirement accounts. This ruling could affect more than 50 million employees with nearly \$3 trillion invested in popular plans.

The unanimous ruling reverses a lower court decision that had barred individuals from suing over losses related to mistakes and misconduct and thus had insulated employers from lawsuits even as more US workers rely on the savings accounts to cushion their retirement.

In the opinion, Justice John Paul Stevens recognized that the landscape of retirement investing had been reshaped since the high court's last ruling on related issues more than two decades ago. Since then, 401(k) accounts have mushroomed as employers moved away from defined-benefit plans.

As a result, Justice Stevens wrote, courts should interpret employee benefits law as giving individuals a green light to sue over administrative problems with their accounts, rather than limiting cases to those that affected an employer's "entire" retirement savings plan.

"[This] decision supporting our position is a huge victory for workers and retirees," said Labor Secretary Elaine Chao.

While using a third-party administrator to handle record-keeping for your 401(k) plan is strongly suggested, do not simply assume the TPA is doing their job. Audit all reports and contribution transactions on a monthly basis. Also ensure that you conduct at least annual reviews of the fund choices and consider including employee volunteers on that committee.

## NEW GUIDELINES FROM THE EEOC

Due to the rise of pregnancy-discrimination filings with the Equal Employment Opportunity Commission ("EEOC") in the past 10 years, the EEOC has issued new guidelines on job bias against working parents. The EEOC's examples of improper behavior include: (1) decisions based on stereotypes, *e.g., statements that a woman's job performance deteriorates after the birth of a child*; (2) decisions based on assumptions, *e.g., mothers are not interested in new jobs that require longer hours*, and (3) discrimination against fathers, *e.g., the belief that fathers do not need parental leave*.

Supervisors and managers need training on what constitutes discriminatory behavior. While anti-harassment training should be an annual event for all of your employees, management requires additional training, particularly since they may be found to be acting on the company's behalf in the event of a claim or lawsuit.

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**KAREN HOPKINS,  
PRINCIPAL, WILL  
BE SPEAKING AT  
THE RICHARDSON  
(TEXAS) CHAMBER  
OF COMMERCE  
SMALL BUSINESS  
ROUNDTABLE ON  
APRIL 17.**

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**HUMAN RESOURCES  
BUSINESS SOLUTIONS**

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## **ERNST & YOUNG'S 2008 RISK LIST**

This year's "Strategic business risk: 2008 – the top 10 risks for global business" report from Ernst & Young has been released (download the full report from their site [here](#)).

The new Ernst & Young report identifies the top 10 strategic risks for global business by analyzing the top risks identified for some of the world's most important industry sectors. It also highlights the five fastest-rising threats that could also have a significant impact over the next three to five years.

The top ten risks identified in "Strategic business risk" are:

- *Regulatory and compliance risk* [emphasis added]
- Global financial shocks
- Aging consumers and *workforce* [emphasis added]
- The inability to capitalize on emerging markets
- Industry consolidation/transition
- Energy shocks
- Execution of strategic transactions
- Cost inflation
- Radical greening
- Consumer demand shifts

The report was produced by Ernst & Young in collaboration with Oxford Analytica, and sought the views of more than 70 analysts from around the world and more than 20 disciplines.

Having a strong human resources function can reduce the risks that are emphasized above while supporting your strategic business plan.

## **OVERTIME PAY LAWSUITS**

A former nurse of Dallas County's Parkland Hospital has filed suit for back overtime wages. Angela Valcho alleges that Parkland had a policy and practice of "failing to pay overtime pay to its hourly nursing employees for all hours worked in excess of 40 hours per work week" and this was consistent throughout the seven years that Ms. Valcho was employed by Parkland. Her suit details, among other things, the practice of the time-keeping system to automatically deduct a half hour for lunch each workday, even if she was working through lunch.

The North Texas US District Court has seen an increase of 88% over the last seven years in overtime pay lawsuits. Ten suits have been filed thus far in 2008. In 2007, more than 311,000 employees nationwide collected \$163M in overtime back wages as a result of government enforcement action.

Remember that one of the most frequent overtime claims arises from employees who are misclassified as exempt (not eligible for overtime), yet should be classified as non-exempt (eligible for overtime). Recent statistics from misclassification of employees include: a Las Vegas firm fined \$1.2 million; a New Orleans company was fined \$185,000; and a small business in Houston sued for \$1.1 million.

Employers must follow federal and state pay laws, implement proper policies and procedures, keep excellent records including complete and proper job descriptions, and educate their managers and supervisors.