



HUMAN RESOURCES UPDATE

VOL 8, ISSUE 5



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**HAPPY HOLIDAYS AND MAY YOU AND
YOURS HAVE A PROSPEROUS 2009,**

**YOUR FRIENDS AT
THE HOPKINS GROUP, LLC**

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The OFCCP ramped up onsite visits beginning in October. 7000 audit letters are scheduled to be sent to US businesses in 2009, with the first batch being sent out last month. One in every 50 audits will require an onsite visit in a random selection process. This is a change in OFCCP policy as most audits did not progress past the desk audit point.

The focus will continue to be on adverse impact in applicant flow and compensation equity analysis. In fact, if there is a complaint to OFCCP from an individual regarding a company's online application process, these will be investigated by OFCCP instead of referring to the EEOC.

THE OPTIONAL
STANDARD RATE FOR
BUSINESS MILES
DRIVEN IN 2009
WILL BE 55 CENTS
PER MILE, PER THE
IRS.

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HUMAN RESOURCES
BUSINESS SOLUTIONS

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ADA CHANGES EFFECTIVE 1/1/09

On September 25, 2008, the President signed into law the Americans with Disabilities Act Amendments Act (ADAAA), which unanimously passed Congress. The ADA Amendments Act was introduced to make legislative fixes in light of several court rulings that had limited the scope of protections offered under the statute. Key provisions include clarification of the definition of disability, exclusion of consideration of mitigating measures, expansion of the “regarded as” disabled prong and additions to the list of major life activities. The new law becomes effective on January 1, 2009. Companies should take a number of steps to prepare for the ADAAA, experts say. These steps include:

- Providing ADA training to supervisors and managers. Training should remind managers of their duty to accommodate not only employees with disabilities but also applicants with disabilities.
- Reviewing the interactive accommodation process. The informal discussion with employees about accommodations shouldn't be stilted and should reflect an employer's understanding of its need to be flexible, within reason and without sacrificing consistency. But the process shouldn't be ad hoc either. It should be well documented and overseen by HR.
- Re-evaluating policies to make sure that they comply, especially in the application and interactive processes.
- Making sure that job descriptions accurately describe what employers believe are the *essential* functions of the position, so here is yet another reason that having job descriptions is critically important.
- Developing internal protocols on how to approach situations. Internal protocols can help ensure consistent treatment and avoid other EEO claims of disparate treatment.
- Developing tools, forms, letters and processes to handle accommodation requests.

FMLA CHANGES EFFECTIVE 1/16/09

Barring any action on the part of Congress (which is not presently expected), the revised Family Medical Leave Act (FMLA) regulations are set to go into effect on January 16, 2009. The new regulations change and clarify some of the former interpretations, and renumber and reorganize certain provisions. Please make certain you update your existing FMLA policy documents.

The changes are far too numerous to outline in this brief space, so please check with your human resources professional or take the time to review these changes at the DOL's site <http://www.dol.gov/esa/whd/fmla/finalrule.htm>.

Very briefly, the revised regulations touch on the following topics:

- Employee eligibility
- Serious health condition definition
- Computing FMLA leave during a holiday week
- Substituting paid leave
- Perfect attendance and production bonuses
- Light duty
- Waiver of rights
- Employer *and* employee notice requirements
- Medical certification, including clarification and authentication, second and third opinions, and recertification
- Leave to care for an injured serviceman or for qualifying exigent circumstances