



# HUMAN RESOURCES UPDATE

VOL 9, ISSUE 1

## START THE YEAR WITH A CHUCKLE

- Yikes! Five residents of a home for people with disabilities were taken to a hospital after a worker spilled her prescription antihistamine pills into cake batter. The good news: All the residents were fine (and they aren't sneezing) and the employee is on leave.

- Mike Raymond was fired from the Polk County Highway Department after accidentally sinking a snowplow to the bottom of a river. Raymond was assigned to clear parking lots of snow and ice one day in December. Besides doing that, he tried to clear a path for ice fisherman on Red Lake River with the \$200,000 plow — actually a front-end loader. The loader slid into the water and sank to the bottom. Emergency workers fished him out of the water. County engineer Rich Sanders said Raymond was a good employee, but he clearly violated department rules and common sense.

- Victoria Institute of Teaching, Australia's top teaching watchdog says a teacher accused of swearing at 11-year-old students can keep his teaching license. The Victoria Institute of Teaching (VIT) did find the unidentified teacher guilty of incompetence for failing to adequately supervise students, maintain a safe environment or adequately protect students from harm. The teacher left the school where he had problems but found a teaching job elsewhere. Among the accusations against the teacher, he allegedly: permitted a Year 5 student to climb over a tennis court fence; failed to take action after a fight between two pupils; allowed students to wander off; and dropped the f-bomb twice in front of students.

Here's the best part: He also allowed students to wrestle in the classroom. His defense: He said he was showing his pupils the difference between real wrestling at the Commonwealth Games and fake TV wrestling. (TV wrestling is fake?)

The VIT panel found the teacher's wrestling explanation was plausible!

## OSHA 300A SUMMARY REPORT

It is the time of year when you are required to complete the 300A report for the prior year's injuries and post this at your business. The report is to be posted from February 1 through April 30 in a prominent area (such as your company's break room). This is simply the summary report of all your workplace injury/illness/incident reports from the prior calendar year.

Many industries are exempt from posting the 300A, although they are not exempt from tracking the incidents. Exempt industries are here: <http://www.osha.gov/recordkeeping/ppt1/RK1exempttable.html>. The types of businesses that are typically *not* exempt include manufacturing and construction-related industries. You will need to know your business's SIC code to verify whether you are exempt or not.

## FOOD FOR THOUGHT ...

Among all management gurus, Tom Peters is most associated with managing during bad economic times. His *In Search of Excellence* was published amid the sharp recession of 1982 and *Thriving on Chaos* debuted on Black Monday in 1987. On [TomPeters.com](http://TomPeters.com), he recently wrote about running a business in a time of "significant and sustained economic disarray." "Instant, mindless cutting of R&D or training or salesforce travel in the face of a downturn is often counterproductive - or, rather, downright stupid. Tough times are in fact golden opportunities to get the drop, and the longterm drop at that, on those who respond to bad news by panicky cross-the-board slash and burn tactics and moves that de-motivate and alienate the workforce at exactly the wrong moment."

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**NEW I-9 FORM  
SCHEDULED FOR  
USE ON FEBRUARY  
2<sup>ND</sup> HAS BEEN  
DELAYED FOR 60  
DAYS TO ALLOW  
FOR 30 DAYS OF  
PUBLIC COMMENT.**

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**HUMAN RESOURCES  
BUSINESS SOLUTIONS**

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## CLASSIFIED INFORMATION

The hit parade of large settlements stemming from misclassification of workers just keeps coming. A temp agency in Dedham, MA will pay nearly \$1.9M to 973 employees for overtime back wages, based on their alleged misclassification as being exempt from the FLSA. The jobs at issue included payroll systems analysts and accountants, project managers, business or project analysts, technical support, field and network engineers, technical writers, and systems and network administrators.

Even the HR department isn't immune, as evidenced by the \$4.9M settlement involving 1100 benefits analysts. *Herring v. Hewitt Associates* (D.N.J. 12-9-08). Job titles like "manager" and "engineer" sound pretty impressive, but if the duties *actually performed* by the individuals with those titles don't satisfy one of the FLSA and/or state exemptions, prepare to open your wallet.

Other misclassification settlements focus on the employee vs. independent contractor conundrum. A 10-year case involving 203 delivery drivers was settled for \$27M. *Estrada v. RPS, Inc.* (Cal. Super. Ct. 12-5-08). And three related construction companies will pony up \$600K to 99 workers. *U.S. Dep't of Labor v. Dipat Construction* (D.N.H. 9-17-08).

The feds have made their New Year's resolutions—they are out to get you for wage and hour violations. So, at the risk of sounding like a broken record, please review your job descriptions at least annually, including verification that the employee *actually performs* the duties described. Then compare this to the FLSA requirements for an exempt position. If the duties don't qualify for an exemption, the employee will need to be reclassified as a non-exempt and paid overtime, when the work hours warrant. To get you started, here are some of the jobs that the feds think are exempt (E) or nonexempt (NE) and their comments.

And if this isn't reason enough, with the changes to the ADA that went into effect January 1, 2009, your job descriptions are even more critical.

Note that these E/NE classifications are *not set in stone*, but they are a good starting point for your analysis.

**Executive assistant**—E. If working for a business owner or senior executive of a large business if the employee, without specific instructions or prescribed procedures, and has been delegated authority regarding matters of significance.

**Secretary**—NE.

**Human resources manager**—E. Assuming this person formulates, interprets, or implements employment policies.

**Personnel clerk**—NE. This person "screens" applicants to obtain data regarding their minimum qualifications and fitness for employment.

**Purchasing agent**—E. If the job includes the authority to bind the company on significant purchases, even if the employee must consult with top management officials for certain purchase commitments.

**Comparison shopper for a retail store**—NE. If the employee merely reports to the buyer the prices at a competitor's store.

**Certified public accountant**—E. And many other accountants who are not certified public accountants but perform similar job duties.

**Accounting clerk/bookkeeper**—NE. As well as other employees who normally perform a great deal of routine work.

**Driver who sells**—E. If the employee has a primary duty of making sales, all work performed incidental to and in conjunction with the employee's own sales efforts, including loading, driving, or delivering products, is exempt work.