

Welcome to the Spring 2008 edition of the HRS e-newsletter – *The HRedge*

This edition's contents:

- FREE Open Seminar on April 29
- New and Improved www.hrstndassociates.com
- FLSA Penalties reach record
- Change anticipated in FMLA Regs for clarification and re-definition
- No E-mail use allowed in union activities

Please feel free to talk to any of our consultants for clarification of any information provided and visit our website for details about HRS at www.hrstndassociates.com

FREE Seminar: Latest in the world of HR law, compliance and recruiting

On April 29, HRS will sponsor a seminar designed to provide you with the latest information and know-how on numerous recent changes in employment law and regulation. Our staff will detail many items including things you should know about FMLA, USERRA, ERISA, COBRA and several court decisions effecting HR practice.

We usually have three parts to our free seminar offerings and part two will cover the ever-challenging topic of recruiting and retaining in the present economy. We will offer tips and hints to enhance your recruiting efforts. Part three will give all participants the chance to ask any HR question to our panel of experts with a combined experience of over 200 years. Try to stump our pros!

The seminar will be held at Cabela's and will start at 9:00 am. Reserve your seat now by sending an email to hrguys@hrstndassociates.com

HRS/TND Associates just keeps growing, thanks to our terrific clients! We appreciate these new clients:

**Bailey Wood Products
Kalas Manufacturing
Perimeter Technologies
Seaman's Markets
Philadelphia Corporation on Aging
Utilities Employees CU
Chambersburg Waste Paper**

**Dasher, Inc.
Metropolitan Steel
Micro Tool, Inc.
Martin's Wood Products
Termaco, Inc.
Fibermark, Inc.
Coopersburg Kenworth**

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thanks to the outstanding work of our webmaster, Robert Rio of RFR Web Design, LLC. Rob took our design ideas and turned them into a super functional site, quite useful to our clients and the public alike. Contact Rob at 610.413.7109 or email him at info@rfrweb.com . See his site at www.rfrweb.com .

On www.hrstndassociates.com everyone can find links to important HR sites, back issues of this newsletter, and more! Check it out and let us know what you think!!! Interested in obtaining client access? Go to the [Contact Us section](#) of our site and we will set you up!

DOL breaks record in back wage recovery...

The DOL's Wage and Hour Division recovered \$220,613,703 for 341,624 workers in 2007 because of violations of the Fair Labor Standards Act ("FLSA")—the largest amount ever reported. This marks a 67 percent increase over amounts collected in 2001.

These are some of the most frequent errors employers made:

- Errors in maintaining detailed employment records for all employees
- Improperly classifying all employees as exempt or nonexempt;
- Failure in compiling accurate time records and paying employees for all actual "hours worked";
- Failure to clearly explain to employees when they are expected to work, particularly with regard to break time, meal time, and time immediately prior to or following their shifts;
- Failure to provide notice to employees of coverage under the FLSA;
- Designating areas outside work areas where employees should take lunch and other breaks;
- Ensuring that, if minors are hired, appropriate measures are in place to avoid violations of any restrictions on the amount or type of work allowed; and
- Neglecting to stay informed on changes in the FLSA and similar state wage and hour laws.

The upcoming HRS Seminar will detail many of the compliance areas within the Fair Labor Standards Act.

FMLA proposed changes affect covered conditions and certification...

The 15 year old regulation is up for a redo. The definition of "serious medical condition" is clarified under the proposal and it looks like a new DOL certification form will be created as well.

Although the DOL retained essentially the current definition, it proposed some modifications. It recommended modifying the "objective test" used for one of the six separate regulatory definitions of "serious health condition".

The objective test defines a serious health condition as a condition that results in continuing treatment. "Continuing treatment" is defined as a period of incapacity of more than three consecutive calendar days that also involves:

- Treatment two or more times by a health care provider, or

- **Treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the provider's supervision.**

The DOL proposed specifying that the two visits to a health care provider must occur within 30 days of the start of the period of incapacity, unless there are extenuating circumstances, instead of the "completely open-ended time frame under current regulations".

In other recommendations, the DOL observed that the current regulations define a chronic serious health condition as requiring periodic visits for treatment but do not define "periodic". The proposed rule would define "periodic" as twice or more a year.

The DOL proposed many changes to medical certifications, including:

- **Language that would clarify exactly when certification is incomplete.**
- **A notice requirement when an employer determines a certification is incomplete, requiring the employer to state in writing what additional information is necessary and to provide the employee with seven calendar days to cure the deficiency.**
- **A requirement that an employer notify an employee if the certification has not been returned in the 15-day time period and give the employee another seven calendar days to provide the certification unless that is not practicable.**
- **A revised WH-380 medical certification form.**

It is expected that after a period of public commentary that these changes will be implemented. If you have specific questions, sign up for our [April 29 seminar here](#). (thanks to SHRM)

NLRB Rules Employers May Prohibit Use of Company E-Mail for Union Activity

In a highly anticipated decision for both union and nonunion employers, the National Labor Relations Board recently ruled, in *The Guard Publishing Co.*, that an employer does not violate the National Labor Relations Act by maintaining a policy that prohibits the use of the company's e-mail system for "non-job related solicitations," including union messages.

Union and nonunionized employers that want to take advantage of the NLRB's new decision must carefully develop and consistently enforce their electronic communications policies. These policies, if properly drafted, may restrict union messages. Moreover, for nonunion employers to maintain their nonunion status, such policies serve as a simple check against the recent push by unions to increase their membership across the country.

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