

The HR-Edge September Edition

New Kid on the Block

HRS welcomes Charles J. (Chuck) McCormick to our senior staff. In positions with Wyeth, Eastman Kodak and other major companies in the food, chemical and pharmaceutical industries, Chuck led HR organizations, not only domestically but on an international level. He brings outstanding talent in employment, staffing, training, compensation, and M&A activities. A graduate of the State University of New York and a licensed benefits broker, he has extensive knowledge of benefit plans and administration. A former board member of the Lebanon Valley United Way, he serves as President of the Lebanon Valley Management Club. Chuck can be reached at chuck@hrstndassociates.com or at extension 24 at 610 371 9505.

VOLUME 8, ISSUE 4, 9/26/08

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COBRA QUICK TIP

Are your COBRA notices going out on time?

Did you know you have 90 days to send out an initial general notice explaining COBRA rights? Do you know when that 90 days start? How about when the countdown for qualifying event notices start (you have 44 days total)?

When an employee first becomes eligible for COBRA-qualified benefits, you then have 90 days **starting from the date of eligibility to send the initial notice**. This means if a person is hired June 6 and becomes eligible for benefits August 1, you have 90 days from August 1 to send out the notice to the employee and any dependent(s) living in another location. However, it's not recommended that you take advantage of this time period. Remember, events could occur within those 90 days such as divorce or dependent child aging out of the plan. Without the initial notice, the employee does not know what their COBRA rights and responsibilities are.

Here they Come...

Employers are receiving Department of Labor audit notifications for the OFCCP's start of its official probe into companies' compliance with the Internet-applicant final rule. The mandate, which went into effect in February 2006, set standards in record-keeping practices for all federal contractors and subcontractors that rely on electronic data technologies to fill vacancies.

Experts say that the process of online recruiting—not just who gets hired—will be under the agency's microscope. The OFCCP's intent is to determine if systemic discrimination is unfolding in the workplace. Since electronic data technologies often have powerful filtering tools such as electronic résumé searches and data screenings that can shape the makeup of an applicant pool, the selection process is a key area of focus for the agency.

When a qualifying event occurs, you have 30 days to notify your plan administrator. The plan administrator then has 14 days to send out the notice. This time frame **begins the day benefits are lost**. Say an employee is terminated August 14. Coverage is carried over through the end of the month per company policy. The 44 day total time frame begins at the end of the month benefits were lost. If the company removes individual(s) from insurance the day of termination, then the timing **starts the day benefits are lost**. It is important to keep these time frames in mind. Failure to follow them can result in fines and penalties from both federal and civil areas. Stay tuned for our next newsletter where I go over election time frames.

Employers can prepare for a potential audit by understanding the OFCCP's three primary focuses. At the most basic level, the agency will try to determine whether an employer kept a detailed record of the applications they received via electronic data technologies, such as a job board. In addition, the OFCCP will take a critical look at the basic qualifications that a company sets forth for a job vacancy. Finally, the agency will scrutinize the data management technique an employer uses to select the résumés.

Auditors will investigate not just the pools of external job candidates, but also the list of internal applicants a company evaluates for a vacancy, which is why records need to be kept on both sets of applicants.

Inclement Weather policies... are you ready for the season ahead?

Question: Do you have to pay employees if the business closes for weather reasons? Answer: It depends.

You generally are not required to pay nonexempt employees since the FLSA only requires payment to these employees for time actually worked. Many employers grant nonexempt employees an authorized day off without pay when their offices are closed; others allow nonexempt employees to use available vacation or PTO. Some will even provide paid days off, though you are not required to do so.

Exempt employees, however, must be paid unless they are off for a full workweek. According to interpretations of the FLSA by the Wage and Hour Administrator, if you are closed because of inclement weather, you cannot make deductions for full-day absences from an exempt employee's salary, since the absences are considered to be 'occasioned by the employer'. If the exempt employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

On the other hand, the Department of Labor treats the situation differently when you are open for business. It has indicated in two opinion letters that if the employer is open for business and an exempt employee does not come to work, you may require the employee to use a paid vacation day. Further, if the exempt employee does not have any paid time available, you may dock the employee for a full-day absence. The DOL reasoned that the absence is a personal day since the employee chooses not to come to work.

Is your policy clear? Do you even have an Inclement Weather policy which covers all these contingencies? We can help you write one which is right for your organization.

New for 2009 -- ADA Expansion...

President Bush has signed legislation that will affect the core of the Americans with Disabilities Act (ADA) by expanding the definition of disability. The law will take effect January 1, 2009.

While the legislation (S.3406) maintains the definition of a disability as one involving a physical or mental impairment that substantially limits one or more major life activities, it makes changes to the meaning of major life activity under that definition.

The legislation states that major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

In addition, the legislation states that a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

The legislation also includes clarifications of other aspects of the law. For example, the legislation includes provisions that state:

- An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life

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

- ♦ Northeast Berks Chamber of Commerce
- ♦ Scotland Road Market
- ♦ Lancaster Dodge
- ♦ RPA Associates, Inc.
- ♦ Daniel Boone School District
- ♦ American Polarizer's, Inc.
- ♦ Broc Kitchen & Bath

Ruling will Increase Numbers & Success Rates of Race-Based Retaliation Claims

In a recent Supreme Court opinion (CBOCS West, Inc. v. Humphries), the Court held that plaintiffs may bring claims for race-based retaliation under Section 1981 of the Civil Rights Act of 1866. Retaliation claims already are available under Title VII of the Civil Rights Act of 1864, but that statute imposes significant limits on damages and requires plaintiffs to submit their claims for review by the EEOC before they may file suit. The CBOCS ruling will have substantial consequences for employers, including exposure to unlimited damages, and perhaps a longer time period for employees to file retaliation suits. Considering the prospect of unlimited damages under CBOCS alongside the Supreme Court's current, broad interpretation of what actions may give rise to a retaliation claim, it is absolutely imperative that employers have in place effective policies for addressing complaints relating to retaliation, harassment and discrimination in the workplace. How effective are your policies?

HRS Seminars

We had record-breaking attendance at our August seminar. Participants provided us with valuable input for future seminar topics, and so we are working on developing our next one. The date to pencil in is November 11 in the morning. Watch your in-box for your invitation.

In the meantime, HRS/TND will be speaking at the Lehigh Valley SHRM conference on October 20 and 21. If you will be there, come talk to us at our booth.

Some rare Good News...

The U.S. House of Representatives is mulling legislation aimed at making affordable healthcare coverage a reality for small businesses. Known as the Small Business CHOICE Act of 2008 (H.R. 6582), the measure was introduced by Rep. Nydia M. Velazquez (D-NY), who chairs the House Small Business Committee, and Rep. Joe Pitts (R-PA). CHOICE stands for Cooperative for Healthcare Options to Improve Coverage for Employees.

According to the lawmakers, the bill would also help curb the rising costs of health-insurance plans for entrepreneurs. And it would "lessen the volatility of premiums and add important incentives helping small firms expand coverage for working families." Noting that small businesses face "astronomical prices and little flexibility in the current healthcare system," Velazquez said the CHOICE Act "would keep small firms from having to choose between providing health coverage to their employees and keeping their doors open."

The measure would provide a refundable tax credit of 65 percent for small businesses that have up to 100 employees and that offer a small business wellness program. The legislation would minimize risks for insurers by letting small firms pool their

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