

# HUMAN RESOURCES 21

*Business Intelligence for 21st-Century Human Resources, Benefits and Compensation Executives*

## A foolproof formula for handling complaints

December 20, 2004

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◆ *The key: Make your company appear responsive*

**H**ow should HR handle employee complaints? You don't want to be perceived as unresponsive. After all, many complaints are valid and require your attention.

But you don't want to be seen as an easy mark who jumps every time an unhappy employee stops by your office to gripe.

Is there a strategy to manage this age-old problem? Can you create the perception that your company listens to its employees and responds to complaints – even when the economics of running a business prevent you from responding favorably most of the time?

Yes. Here's a three-pronged strategy:

### 1. MINIMIZE COMPLAINTS BY MANAGING EXPECTATIONS

The more complaints your company gets from employees, the more often you'll have to say no, and the more unresponsive your company will appear.

So minimizing complaints is a major strategy, and the key is managing expectations. The new employee who gripes that her cubicle is too small has a boss who didn't explain during the job interview that all employees start in cubicles and earn their way to larger digs.

*continued on page 2*

## HIPAA alert: New regulatory deadline is right around the corner

◆ **ARE YOU IN COMPLIANCE WITH THE APRIL '05 SECURITY REGULATIONS?**

**N**ow that HIPAA's privacy regulations have been implemented, many employers are moving toward the next phase of HIPAA compliance: security standards.

The compliance date for HIPAA's Security Standards for Individually Identifiable Health Information is April 21, 2005.

Employers who were required to comply with HIPAA's privacy regulations must also comply with the security regs, which are designed to protect health information stored on a company's computer system.

Similar to implementing the privacy regs, employers must appoint a "security official" to oversee compliance efforts.

The official's first task should be a security analysis to identify and understand potential vulnerabilities in the employer's system.

Experts say implementing the security regs will require more employer-specific customization than the privacy regs.

Therefore, employers who have not begun this process should consider getting started now. For additional information, Phoenix Health Systems offers a free online HIPAA primer at [www.hipaadvisory.com/regs/HIPAAprimer.htm](http://www.hipaadvisory.com/regs/HIPAAprimer.htm).

### BENEFITS, COMP & HR MISCUES

*In this regular feature we show how improper benefits, compensation and HR practices led to costly fines and lawsuits against companies.*

#### ◆ EMPLOYER SETTLES BIAS CHARGE FOR \$50 MIL

We may never learn whether it was loose-cannon managers or a racist culture run amok. But we do know a major retailer is paying a huge settlement because it allegedly didn't adhere to its own policies and procedures – not to mention the law.

Abercrombie & Fitch settled three separate lawsuits claiming the retailer gave white employees better assignments and better schedules than African-Americans, and that it fostered an "all-white" image.

In addition to paying \$50 million, the company hired a VP of diversity.

*Cite: EEOC v. Abercrombie & Fitch.*

#### ◆ SUDDEN NEGATIVE REVIEW TAINTS FIRM

Managers who let their personal

*continued on page 5*

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# HR MANAGEMENT

## Complaints

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The employee who whines about a mere 4% raise is an employee whose manager didn't conduct ongoing performance evaluation and inform the person he hadn't yet earned star status.

People complain when reality doesn't meet expectations. If you and your company's line managers communicate well up front – about benefits, work shifts, overtime, security, noise levels, heating/cooling, promotions, raises and all the other issues that create tension in the workplace – you'll get fewer complaints.

Which yields two important benefits:

- Fewer unfulfilled employees who spread dissent and hurt company morale
- More opportunities to say yes.

### 2. MAKE SURE PEOPLE KNOW THEY'VE BEEN HEARD

A single insight should drive your thinking about handling complaints:

*What employees care most about is that you understood their complaint. If they feel you heard them, they're much more likely to accept no as an answer.*

Military "brief backs" can be effective. Simply repeat back to the complainer what you heard him say. For example: "Charles, I'm hearing you say the quality of your work is suffering because of the poor lighting in your work area. And you get headaches every day. Is that correct?"

You still need to determine whether the problem is real or imagined. We strongly recommend formal or informal

surveys. In the Charles example, a quick-and-dirty survey might show that no one else perceives a lighting problem but they all feel Charles is a slacker who makes excuses for bad performance.

Or it might reveal that several others feel the same way as Charles.

**Action plan:** Show people you understand their complaint, then say no if you must, or resolve the complaint quickly and decisively.

### 3. CREATE THE PERCEPTION YOU'RE RESPONSIVE TO COMPLAINTS

One way to achieve this is to look for high-impact, low-cost solutions to legitimate complaints – and to celebrate those solutions publicly.

At one company a formal survey showed employees were unhappy about high benefits costs and inflexible work shifts, two problems the company had no economical solution for. But employees also complained about poor lighting in the company parking lot, icy sidewalks and inadequate seating in employee kitchens.

So HR took the initiative and persuaded top management to correct the latter problems – at a minimal cost. But HR didn't stop there. It launched a communications effort trumpeting the company's swift, decisive action in response to employee feedback.

A company-wide e-mail read: "Thanks to the employee input, we've installed lights at the back of the parking lot to improve security. We've purchased 100 bags of salt that Maintenance will spread on sidewalks to help avoid slips and falls. Finally, we're adding two new tables with six chairs each in all employee kitchens. Your safety and well-being are important to management. Thank you for your valuable feedback."

## Quiz: FIRST AID

How well do you know about OSHA's first-aid requirements? Can you answer the following true-or-false questions correctly? See answers below.

1. Under the law, most employers are not required to have a first-aid kit available for injured workers, though it is recommended.
2. Employers must provide first-aid treatment whenever outside medical assistance in near proximity to the workplace is unavailable.
3. OSHA has stipulated the bare minimum of first-aid supplies employers must maintain.
4. All employers are required by law to conduct workplace reviews to determine possible injuries as well as where first-aid kits should be stored.
5. OSHA has determined that where life-threatening or permanently disabling injury can be expected, a three- to four-minute response time (from time of injury until first aid is administered) is required.

## Quiz answers

1. False. OSHA requires covered employers to have adequate first-aid supplies readily available.
2. True. This rule applies to employers with at least one employee.
3. False. OSHA regs do not specifically state what first-aid supplies employers must keep on hand. But the agency does recommend a broad range of products to treat wounds, minor burns and eye injuries.
4. False. OSHA recommends these assessments, but does not require them.
5. True. And where a life threatening or disabling injury is unlikely, a 15-minute response time is acceptable.

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## HR LEGAL NEWS

# 'Oops – we forgot to change the job description!'

### ◆ HIRING MANAGER'S TACTICS CREATED FALSE EXPECTATIONS, DISAPPOINTMENT

When a hiring manager wants to hire a specific individual for an open position, make sure the job description fits that person's background.

When Joan Jenkins learned her supervisor was leaving, she applied for his job as VP of fund raising. The posted job description – which called for a degree in marketing, several years experience and good communication skills – seemed to be describing her.

### CANDIDATE WAS STUNNED

After Jenkins, an African-American, interviewed for the job, she was stunned to learn that it went to a caucasian male – and that the decision to hire him was made even before her interview. Jenkins

quit and filed a racial and gender discrimination lawsuit.

In court, the employer claimed the man who got the job was better qualified. But Jenkins showed he had less experience. Plus his college degree was in philosophy, not marketing.

In reaching its decision in favor of Jenkins, the court noted that to make her case, Jenkins's qualifications must "*leap from the record and cry out that she was clearly more qualified for the job.*"

**Lesson learned:** If ever you have a favored candidate for a position, take the time to craft a job description that describes the skills and background that attracted you to that candidate. Otherwise, as this company discovered, you leave yourself wide open to lawsuits.

*Cite: Jenkins v. Nashville Public Radio, U.S. Court of Appeals, 6th Circuit, No. 03-5392, 9/2/04.*

## Court: Employee who lied on workers comp application unlawfully fired

### ◆ A WORKERS' MISREPRESENTATIONS DO NOT GIVE EMPLOYER CARTE BLANCHE

Though employees are not allowed to provide false information on a workers compensation claim, employers may not summarily fire employees who do.

Gregory Bullard operated a forklift until he was sidelined with a neck injury. While out on workers comp, Bullard submitted a tuition receipt for a class he'd taken at a local college.

### SPOTTED ON CAMPUS

Bullard claimed he was taking a correspondence course. But when his boss learned that Bullard was attending class on campus, he accused Bullard of misrepresenting his physical condition.

"If you're well enough to go to class, you're well enough to report to work,"

said the boss. Bullard was fired for lying about his physical condition. He filed a lawsuit charging he was unlawfully terminated in retaliation for applying for disability.

A court agreed with Bullard, awarding him \$363,984. In reaching its decision the court noted that despite providing contradictory data to his employer about the nature of his class, Bullard should not have been expected to attend work simply because he could attend school. Sitting in a classroom is different from operating a forklift.

To the court, it looked as though the employer was looking for any reason at all to dump a worker with a debilitating condition instead of either accommodating him or supporting his claim for workers comp.

*Cite: Bullard v. Alcan Aluminum Corp., U.S. Court of Appeals, 6th Circuit, No. 03-5334, 11/03/04.*

## CASE – If You Were The Judge...

*Based on the facts presented below, how do you think the courts ruled?*

### ◆ GOOD MANNERS?

HR Director Bill Edison had two conversations this morning. The first was with Andy Bissell, who'd been the subject of a complaint by one of his subordinates, Alicia Crain.

"Where I come from, it's good manners to tell a woman she looks nice," Andy said. "I meant no offense whatsoever."

"Well Andy, that's not exactly what you did," said Bill. "Alicia claims what you said was, 'That outfit really accentuates your better points.'"

"Same thing, isn't it?" Andy asked.

"Not really. Alicia doesn't think so, and she says you've told some jokes that really upset her."

Andy protested again that he never intended to offend Alicia.

### 'You just don't get it'

An hour later Bill spoke to Alicia.

"Now Alicia, I understand you're upset, but let me ask you this: Did Andy in any way treat you unfairly? Did you get poor performance reviews? Did Andy ever even suggest that your job advancement or salary increases depended on sexual favors?"

"No, but so what?" exclaimed Alicia. "That's not my point at all. You guys just don't get it. As a woman I have every right to work in an environment free of sexual innuendo. I just want to be treated as an equal."

"Andy says he meant no offense," said Bill.

Alicia exploded. "I don't care what he thinks! What matters is that *I'm* offended by his attitude toward me as a woman and the things he says."

Bill told Alicia he'd speak to Andy and tell him to knock it off. As Alicia left his office, Bill was thinking that since Andy took no adverse action against Alicia, the company would be safe if ever Alicia sued.

A few weeks later Andy made another offensive comment, so Alicia resigned and sued.

Did she win?

*See the decision on page 8 to learn how the courts ruled.*

## HR TECHNOLOGY

# Keeping better track of your company's expertise

### ◆ INCLUDE EMPLOYEES' SKILLS IN A SEARCHABLE DATABASE

Expertise can be hard to find – even when it's right under our noses. But technology can help an HR department make the valuable information it collects available to those in the company who need it.

### A CHANCE MEETING

Consider the experience of a manager at a biotechnology firm:

“Early in the project, we needed someone with deep technical knowledge of a particular protein. We spent weeks looking for an expert – calling HR, asking around the office, scanning personnel records. Finally we concluded the expert didn't exist. Three days later, I'm in an elevator complaining about this to a colleague, when the woman

next to me turns and says, ‘I wrote my doctoral thesis on that protein. What do you need to know?’”

Such reliance on chance is unthinkable for corporate resources, but not for human ones. Yet, it needn't be this way. Most firms keep good records of what their employees know, where they trained and what they work on. Problem is, the information isn't easily accessible to someone searching for it.

Search engine technologies – developed in-house or purchased off the shelf from companies such as Google and Verity – can help employers identify their in-house expertise with remarkable efficiency and cost-effectiveness.

If this sounds intriguing, consider broaching the subject with your IT head.

Source: “Do You Know Who Your Experts Are?” by Michael Idinopulos and Lee Kempter, *McKinsey Quarterly*, 2003.

# Employee training: For best results mix online and classroom learning

### ◆ BENEFITS INCLUDE LOWER COSTS AND LESS TIME AWAY FROM WORK

In recent years, trainers have compared traditional classroom learning to e-learning – and have debated which is more effective. Now a new study suggests it's not one or the other – but both.

A blended approach is a business's best way to train the most people, with the most efficiency for the least amount of money, according to a new survey sponsored by the American Society for Training and Development (ASTD).

Employers who blend classroom and e-learning say there are five key factors contributing to the success of their approach:

- Employees spend less time away from their jobs. In fact, survey participants say this is the most important factor in deciding on what training program to

use.

- Blended learning is transferred back to the workplace better than either traditional or e-learning alone.
- Trainers spend less time training.
- Trainees' line managers are less involved in training.
- Blended training is usually delivered in a shorter time frame than either one or the other.

### A GROWING TREND

Today, blended learning accounts for 16.1% of all training in the U.S. According to the survey, this will increase to 29.4% in 2006.

Most companies (65.4%) that use blended learning characterize the approach as either “efficient” or “very efficient.”

Source: ASTD.

## HR Notes

### ◆ CRIMINAL EMPLOYMENT?

Say a candidate neglects to answer the criminal record question on your company's employment application – and he leaves the application's affirmation of correctness unsigned. You hire him anyway after a busy manager overlooks his omissions.

Three years later, you learn the employee is listed as a sexual offender. Can you fire him for intentionally omitting the relevant information on his job application?

Yes you may – according to a recent arbitration ruling – even if you were at fault for not following up on the application's glaring omissions.

In finding in favor of the employer, an arbitrator noted the employer had no prior knowledge of the worker's past criminal behavior, and that it acted as soon as it found out.

Smith v. Laidlaw Transit Services.

### ◆ TOWARD A LAWSUIT-FREE OFFICE ROMANCE

With people working longer hours and socializing less these days, it's not surprising that interoffice dating is growing in popularity – and that most U.S. workers say it's acceptable.

In a recent survey conducted by lawyers.com and *Glamour* magazine, 75% of workers aged 25 to 40 say interoffice dating is acceptable today and more common than it was 10 years ago. And 41% say they have engaged in a romantic relationship with a co-worker.

Firms that allow interoffice dating may want to consider:

- **A consensual relationship policy.** There was a time when an office romance was a fireable offense at many companies. These days, rules are easing. Employers who do not have a policy covering interoffice dating may want to include one in their employee handbook soon.
- **A consensual relationship contract.** Legal experts say a growing number of firms ask interoffice couples to sign contracts making it clear both parties understand the company's sexual harassment rules and will ensure the relationship will not negatively affect the workplace.

Source: www.lawyers.com

## EMPLOYEE BENEFITS NEWS

# Why employers are offering college savings plans today

◆ YOU CAN GET WORKERS A BETTER DEAL AND ENCOURAGE THEM TO SAVE

If you've ever thought about offering college savings plans to employees, here's why it may be a good idea.

Thanks to group rates and slashed fees, employers can often get their employees a better deal on college savings plans – generally known as 529 plans, after the section of the tax code that established them – than individual participants could get for themselves.

### FEES WAIVED FOR EMPLOYERS

Experts say most vendors waive front-end sales charges for plans that come through employers.

That front-end fee is typically about 5.75%. So, on a \$2,000 annual investment, waiving this fee saves the participant about \$115 a year.

College savings plans – were introduced in 1996. But they gained in popularity after a 2001 ruling made

qualified withdrawals for books, tuition, meals, board and other college costs exempt from federal taxation.

### ENCOURAGING FIRST-TIME SAVERS

Of course participants do not need their employers to get them involved in a college savings plan. But employers can help – even beyond waiving those front-end charges.

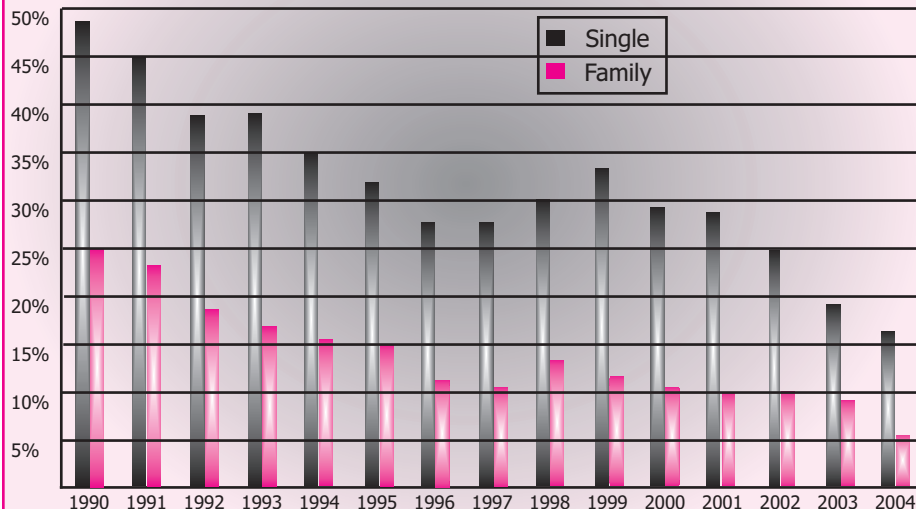
While workers can set up a plan through a local bank or online – even arranging for automatic payroll deductions and periodic contributions – an employer's sponsorship and frequent communications can help encourage first-time savers.

Offering a plan through the workplace also enables employers to negotiate enrollment fees, annual fees and other administrative costs associated with 529 plans.

If you're interested in offering 529 plans to employees, contact your financial services provider.

### PERCENTAGE OF U.S. EMPLOYERS WHO COVER THE FULL COST OF MEDICAL PREMIUMS FOR THEIR EMPLOYEES

The trend is decidedly downward since it rose in the late nineties, due in part no doubt to the Internet bubble and the largess it enabled at many companies. Companies feel less generous today; less than half of companies that paid full fare for individual employees in 1990 still do. And only a quarter of those who paid for families in 1990 continue that practice.



Source: Hay Group 2004

## Benefits, Comp & HR Miscues

continued from p. 1

opinions influence their business decisions are sitting ducks for a plaintiff's attorney.

A long-time employee with a sterling work record suddenly received a poor evaluation from a supervisor who had been on the job all of two weeks. Turns out the supervisor, who was an out-of-the-closet lesbian, had it out for the employee, who had made it known she was a convert to Catholicism.

Certain that her Catholic subordinate was anti-gay, the new boss went on the attack, writing up a bad review that effectively stifled her report's chances for advancement. When the worker griped, she got fired. Then, not surprisingly, she filed a lawsuit.

In court, the employer couldn't back up the bad review. Nor could it provide a legitimate business reason for terminating the employee.

A jury awarded her \$41,415.

Cite: *Firestine v. Parkview Hospital*.

### ◆ FIRM MISCLASSIFIED ITS SALES PROS

You may call an inside sales representative "Executive Vice President of Sales" or anything else your heart fancies. But you may not call her "exempt" unless she meets the FLSA standards for an exemption.

When DOL investigators looked into Homestore Inc.'s sales operations, they found 435 inside advertising salespeople who had been misclassified and denied overtime pay.

The employer agreed to pay \$1.2 million and reclassify the employees.

Cite: *DOL v Homestore, Inc.*

### ◆ SPOTLIGHT ON WAGE AND HOUR VIOLATIONS

With more accounts of wage and hour violations in the news, employers with low-wage workers would be wise to conduct a wage and hour self-audit.

Following up on complaints, DOL inspectors found a Nashville restaurant failed to pay overtime, garnished twice the legal limit in wages in one case and kept incomplete payroll records.

The employer was ordered to pay \$130,698 in back wages to 85 employees.

Cite: *DOL v. Las Palmas Mexican Restaurants*.

## HIRING & RETENTION

# Manager slip-ups can lead to negligent hiring lawsuits

### ◆ BACKGROUND CHECKS DO MORE THAN WEED OUT BAD APPLES

Under pressure to fill jobs fast, harried hiring managers may be tempted to skip reference checks.

They should resist the temptation. Reference checking not only helps weed out bad candidates, but it protects employers from negligent hiring lawsuits. Negligent hiring is when an employer is liable for an employee's crime because it didn't adequately investigate the worker's background or qualifications.

Generally, to establish a negligent hiring claim, a victim must:

- Show that the employer failed to exercise "reasonable care" in hiring. Usually that means talking with former employers.
- Show it would have been evident to

the average person on the street that the worker was dangerous.

- Show that the employer positioned the worker where he could cause harm.

### PUBLIC CONTACT IS A KEY

Most negligent hiring claims involve workers who have contact with the public – such as drivers and service personnel. That's why, as a rule of thumb, the greater the contact with the public, the deeper into an applicant's background a check should probe.

To prevent negligent hiring lawsuits:

- Make reference checking a policy and ask to see written documentation when hiring managers check references.
- Ask interviewees about job gaps.
- Train hiring managers in your state's laws on what an interviewer can and can't ask about criminal convictions.

# Study: father-friendly benefits boost retention, improve recruiting

### ◆ THOUGH RELUCTANT TO TALK ABOUT IT, DADS HAVE NEEDS TOO

Say "father-friendly benefits" and most of us think paternity leave – period. But employers who don't take a broader view may be missing a terrific opportunity to retain their workplace dads – and to attract candidates who have a commitment to their kids and home-lives.

### SATISFIED WORKERS STAY PUT

Workers with access to flexible work arrangements are significantly more satisfied with their jobs (65%) than those with little or no access to flexibility (30%), according to a survey by the Family and Work Institute.

The survey also found these satisfied employees are more likely to stay in their jobs (73% compared to 54%).

Aside from flex-time, what father-friendly benefits are employers offering?

- **Educational tools.** Programs include CDs and videos, childcare referrals and tip sheets for working dads.
- **Task forces.** Employers are forming men's task forces that explore issues faced by working fathers and makes recommendations to management.
- **Paid leave.** Some employers now offer men two weeks paid leave for the birth or adoption of a child.

Many men are still reluctant to speak up for their needs as fathers. But employers who offer these benefits say men are finally stepping up, taking advantage of the benefits and expressing gratitude to their employers for breaking the ice.

Source: *The Fatherhood Project*, [www.fatherhoodproject.org](http://www.fatherhoodproject.org)

## Office Life

### ◆ THE CUBICLE DWELLER'S 10 COMMANDMENTS

Okay, so these laws didn't exactly come from on high, but they *are* common sense guidelines for people who work in cubicles.

- I Thou shalt wear headphones.** In cube life there's no such thing as keeping the speaker volume low enough. Those who listeneth should gird themselves with headphones.
- II Thou shalt not constantly pop thy head up, nor talk through cubicle walls.** Unless neighbors mutually agree on it, cube dwellers should get up and walk around to talk with the person "next door."
- III Thou shalt not overwhelm thy neighbors' senses.** Stress moderation in all things, especially perfume and air freshener.
- IV Thou shalt set thy cell phones to vibrate.** Cubicle denizens – especially those who receiveth many personal calls – should keep their ring tones on low or vibrate.
- V Thou shalt not be tacky.** A personal touch is fine. But when workers decorate, they should consider who can see in and what the culture will accommodate.
- VI Thou shalt keep visitations to a minimum.** Some people are in the disruptive habit of dropping by a neighbor's cubicle on the way back from lunch. Rule of thumb: Don't drop by out of habit – wait until you have something to say.
- VII Thou shalt tone down thy computer sounds.** E-mail alerts can disrupt others, and can usually be replaced by silent visual reminders.
- VIII Thou shalt cleaneth what thou messeth up.** Cube workers should dispose of trash properly. Messes should never runneth over into a neighbor's cube.
- IX Thou shalt eateth away from thy cube.** Food and drinks don't mix well with computer hardware – not to mention what the person in the next cube has to say about the smell of your salami sandwich.
- X Thou shalt conduct thy personal conversations in private places.** Sound carries. Not everyone needs to know everyone else's private affairs.

To download a free copy of the *Cube Dweller's 10 Commandments*, visit [www.b21pubs.com/postings/hr309.htm](http://www.b21pubs.com/postings/hr309.htm)

## COMPENSATION NEWS

# Lost overtime opportunities amounted to adverse action

◆ EMPLOYER KNEW BIAS EXISTED, BUT FAILED TO ACT QUICKLY ENOUGH

If an employer suspects a supervisor of bias, but waits for an employee to complain – hoping the grievance process will fix the problem – the employer can get in trouble, even if the employee's grievance is satisfied.

### WORKER KEPT A RECORD

At a company where overtime was supposed to go to employees with the most seniority, one supervisor clearly favored white employees over Hispanics.

On about a dozen occasions in less than one year, he offered white workers overtime at the expense of Hispanics who had worked for the company longer.

The bigoted supervisor didn't think anyone would complain. And he certainly didn't imagine a disgruntled

worker would document each event. When the Hispanic worker complained, the supervisor relented and gave him overtime.

The worker filed a lawsuit. In court, the employer insisted it did nothing wrong. Sure, the worker had been denied overtime, but when he complained he was awarded it.

### EMPLOYER FAILED TO ACT

The court ruled in the employee's favor. In reaching its decision it noted that an adverse action occurs when an employer knows a worker is treated unfairly, but simply waits for the worker to use the grievance process. In this case, there was sufficient evidence to show the employer knew about the bias. But instead of proactively fixing it, it waited for the grievance process to work.

*Cite: Fonseca v. Sysco Food Services.*

## FLSA: Understanding the professional exemption

◆ CATCH YOUR CLASSIFICATION MISTAKES BEFORE THE DOL INSPECTORS DO

We see lots of cases where employers misclassify workers and fail to pay overtime. Even when the misclassification is an honest mistake and the employer does not face a fine, simply coming up with the back pay owed to misclassified workers can cause financial hardship.

With that in mind, here's a four-point test to determine if an employee qualifies for the tricky "professional exemption" under FLSA.

1. **Advanced knowledge.** Does the employee's primary duty require advanced knowledge gained by a *prolonged* course of advanced study? This may include law school, medical school or a four-year engineering or accounting degree – but not car mechanics or computer operation.

2. **Nature of the work.** Is the work primarily intellectual and non-standardized in its nature, and does the employee use discretion and independent judgment? For example, clerks who perform *routine* work that does not require judgment calls are not exempt.

3. **Time.** Is the time spent on non-exempt work not more than 20% of the employee's workweek? Under FLSA "mixed exemptions" are possible for workers who spend 80% of their time doing exempt work.

4. **Salary.** Does the employee earn at least \$455 per week? Under the old regs, that figure was \$170.

If there's ever any doubt about a professional employee, apply this test yourself – before wage and hour inspectors apply it for you.

*Source: www.dol.gov*

## Health Notes

### ◆ THE NEW COST OF CARE

A new survey has good news and bad news about the cost of employer-sponsored health care.

The bad news: Per-employee cost rose 7.5% in 2004. The good news: That was well below last year's 10.1% price hike and even greater increases in years before that.

According to the National Survey of Employer-Sponsored Health Plans 2004, the total cost of health benefits for active employees (for all medical and dental plans offered) rose from \$6,215 per employee in 2003 to \$6,679 in 2004.

This amount includes both employer and employee premium contributions, but does not include employee out-of-pocket expenses.

The survey also found that cost-shifting was more restrained this year than last, when employers sharply raised deductibles and co-payments, seeking relief after three years of double-digit increases.

### YOU'RE INVITED...

...to attend two live

### AUDIO CONFERENCES

#### The Seven Deadly Sins of an Employee Recognition Program

January, 13, 2 p.m. EST – 60 min

Award programs at many companies don't work as planned. Often they even backfire. One major survey shows 29% of employees believe their company's award system offers no incentive to practice company values. Another 21% say their programs actually contradict the values. Learn why do so many companies miss the mark, and what you can do about it?

*And*

#### How to Elevate HR to a Strategic Partner in Your Business

January, 20, 2 p.m. EST – 60 min

You've heard all the old saws about how HR needs to become a strategic partner with senior management. It's every HR person's goal but many HR professionals don't do the things they need to do to get attention from senior management. Our presenter, Marla Bradley, a frequent SHRM speaker, has taught thousands of HR pros how to expand their influence.

*To learn more about audio conferencing, or to register for this event, call 800-651-7916, or go to www.b21pubs.com*

## NEWS BRIEFS

### TURNOVER FOR RECENT GRADS LOWEST SINCE 1992

Got managers who are skittish about hiring people fresh out of college? According to common wisdom, brand new grads with no professional experience may lose interest and quit – after you’ve invested time and money training them.

These hiring managers may be surprised by statistics showing that new grads are significantly more likely to stick around for longer than they did before.

Job turnover for recent grads is at its lowest in more than a decade, with only 5.8% of new college hires leaving their jobs within a year, according to the National Association of Colleges and Employers (NACE). This is dramatically lower than the 9.6% 2000 turnover rate.

Source: NACE 2004 Employer Benchmark Survey.

### OFFER OF LIGHT-DUTY WORK DID NOT VIOLATE FMLA

After 12 weeks of unpaid FMLA leave are up, an employer is no longer required to keep a job open if the worker can’t perform it.

In a recent case, after FMLA leave, when an employee still wasn’t fit for duty, her employer offered her a temporary light-duty assignment, which she accepted.

At the end of that assignment she still couldn’t perform her job. No other job could be found for her, and she was terminated. The employee filed an FMLA lawsuit but lost. In reaching its decision, the court noted, “Whether on FMLA or light duty, an employee who is unable to resume her original position after 12 weeks has no further protection under FMLA.”

Cite: *Artis v. Palos Community Hospital*.

### HELPING YOUR WORKERS BECOME BETTER SAVERS

Here is some data that’ll give you ammunition to persuade workers to sock away more in their 401(k) plans and make smarter financial investments.

A new survey found that 39% of U.S.

workers who do not use a financial advisor listed themselves as the person they trust the most when it comes to making financial decisions. Next were financial advisors at 16%. However, respondents with financial advisors say they trust their advisors more than themselves to make sound financial decisions (41% to 31%).

Many financial services firms make advisors available to employees at no charge to employers. The survey results suggest that by promoting this service, employers can help workers save more for retirement and feel better about their financial decisions.

Source: *A.G. Edwards & Sons, Inc.*

### MORE WORKER COMPLAINTS, FEWER EMPLOYER PENALTIES

Employee complaints about being denied overtime pay, wages and job leave guaranteed by law rose this year to the highest level in four years, according to the DOL.

However, penalties for violations and awards of back pay fell to \$9 million in civil penalties in the past year, compared with nearly \$10 million in 2003.

The data suggest that complying with the law may not stop employers from complaining about perceived violations. In addition to compliance, good employee communications and an effective complaint process should help (see this week’s cover story).

Source: *DOL*.

### THE SEARCH FOR INTELLIGENT LIFE IN THE WORKPLACE

A computer programmer was fired after admitting he violated several policies when he used his employer’s computer servers to process data for an organization searching for extraterrestrial intelligence.

The programmer said he didn’t think tying up the system for hours at a time would be a problem, because he ran the program only on evenings and weekends. His employer disagreed. “I understand his desire to search for intelligent life in outer space,” said the space cadet’s boss, “because obviously he doesn’t find it in the mirror in the morning.”

## DECISION – If You Were The Judge...

Here’s the decision to the case discussed on page 3.

Yes. After other employees confirmed that Andy had said what Alicia claimed he’d said, the judge agreed that his comments created a hostile environment and sent the case to trial.

This case reveals two important lessons:

1. That courts will rule that sexual harassment occurred even if there was no “adverse action” taken against the plaintiff.
2. That the courts always view legal disputes from the *employee’s* point of view, not the company’s or the manager’s. The days of “no offense intended” are long behind us. Today’s employees are keenly aware of their rights, not only to fair pay and promotions, but to personal dignity. In this case, the court stood up for a woman’s right to feel comfortable in her work environment.

### It’s not just supervisors

And also beware that the offense need not be between superior and subordinate, as we saw here.

If colleagues are speaking or acting offensively to each other, and either HR or a line manager fails to intervene, your company can easily be found guilty of permitting sexual harassment and tolerating a hostile work environment.

Cite *Elliott v. Burlington Industries, No. 02-45344, 8th Cir. Fictionalized for dramatic effect.*

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