



# Human Resource and Management Services

February 2008

## HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

### ◆ FROM CCH EMPLOYMENT LAW ◆

#### “San Francisco ordinance requiring paid sick leave is now in effect”

... San Francisco became the first city in the country to require employers to give their workers paid sick leave. Proposition F ... requires all businesses to provide employees with sick leave, regardless of whether those employees are full- or part-time, permanent or temporary.

According to the Institute for Women's Policy Research, the ordinance provides paid leave to an estimated 115,000 workers who don't currently receive it. That's 23% of the city's private-sector workforce. Labor activists around the country are closely watching the law and hoping that other cities will follow San Francisco's lead.

... The ordinance has understandably raised multiple questions and the Office of Labor Standards Enforcement is working to answer them and will be posting a FAQ in the near future.

### ◆ FROM TEXAS EMPLOYMENT LAW LETTER ◆

#### “Growing number of older Americans choosing full-time work”

The percentage of Americans 55 and older choosing to stay in the workforce is growing, and the number choosing full-time, full-year jobs also is trending up, according to research from the Employee Benefit Research Institute (EBRI).

The report says those ages 55 and older in the labor force increased from about 29% in 1993 to 38% in 2006. For ages 65-69, the percentage increased from about 18% in 1985 to 29% in 2006.

### ◆ FROM HR SPECIALIST EMPLOYMENT LAW ◆

#### “Who pays for uniforms?”

- Q. We require employees to wear uniforms. Can we deduct from their paycheck the money to pay for the uniform or clean it?
- A. You can, but with caution. Under federal law, the payroll deductions – whether for the uniform cost, cleaning or both – cannot reduce an employee's wages below the minimum wage. Similarly, the deductions can't reduce the amount of overtime pay due to employees in any workweek. Note: some states require employers to foot the bill for uniforms.

*(Editor's note – Texas does not have such a requirement)*

### ◆ FROM PERSONNEL LEGAL ALERT ◆

#### “We couldn't make this up if we tried”

When a CFO in Kansas was fired for insubordination, the employer offered to pay her salary for another 6 months. She took the severance contract home, scanned it into her computer, and added a provision that would allow her to keep the severance even if the company sued her. The HR manager signed the contract, apparently unaware that it had been modified.

A month later, the company discovered that the CFO had embezzled over \$857,000. The company stopped paying the severance and sued to get back what it had already paid. A judge initially ruled that under state law, parties to an agreement are generally bound to it whether they read it or not. However, the company got off on a technicality: under company policy, only the CEO has the authority to execute such a contract. The ex-employee, who was sentenced to 7 years in prison, is planning to appeal.

### ◆ FROM HR HERO LINE ◆

#### “Tracking employees — legally.”

A decision by the New York City school system to terminate a carpenter supervisor provides a reminder of the benefits and risks of tracking employees.

As a supervisor, John Halpin was responsible for checking the work of the school system's carpenters, but apparently no one supervised him.

In 2005, Halpin was offered a school system cell phone. Unbeknownst to him, however, the school system could track the phone's whereabouts with a GPS system. Two years later, someone compared his self-reported work times with the times he and his telephone were at home. The comparison revealed 83 occasions on which he had been paid for working when he was actually at home.

### ◆ FROM EEOC WEBSITE ◆

#### “Supreme Northwest LLC to pay \$427k to settle discrimination suit”

The U.S. Equal Employment Opportunity Commission (EEOC) announced that it has resolved its national origin discrimination lawsuit brought against Supreme Corporation and Supreme Northwest LLC for \$427,000 and other relief.

The EEOC had charged the Indiana-based automotive manufacturer harassed and subjected 7 employees at its

Woodburn, Ore., facility to disparate treatment (demotion, discriminatory termination, and/or involuntary resignation) by the plant manager because of their national origin, Hispanic/Mexican. The EEOC's suit was filed in the U.S. District Court for the District of Oregon (*Equal Employment Opportunity Commission v. Supreme Corporation and Supreme Northwest LLC*, CV 07-1047 MO)... The EEOC filed suit after first attempting to reach a voluntary settlement.

◆ **FROM MANAGING HR TODAY** ◆  
◆ **“HR executives pessimistic about 2008”** ◆

Human resource trends in 2008 are expected to focus on reduced salary, benefit costs and improved productivity as many companies fear a slowdown in the economy. In a survey, ... Information Strategies, Inc. (ISI) has found a growing number of companies planning to reduce hiring while redeploying workers in anticipation of lower demands.

... 41% said they feared that the growing cost of energy and consumer caution will negatively affect their firm's sales.

... 51% of respondents said they were also planning to reduce salary hikes, some anticipating that they would cut these raises by as much as 50%.

Continuing a long-term trend, 62% of all respondents said they were planning to shift more of the healthcare benefits cost to employees in 2008 while 74% said they had done that for plans beginning January 1, 2008.

... Surprisingly, 24% of respondents with wellness plans said they were not satisfied with the results and expected to change them in 2008.

◆ **A REAL LIFE SITUATION** ◆

**Situation:** A company is moving Dept. A to another city within 3 months. As a result, the company is looking for things to do for these employees while the work is being transferred. In the meantime, Dept. B is overworked to keep up with the volume of business that the company is experiencing.

Although there are many challenges and issues in this situation, one problem that has surfaced is with Dept. B. The employees in Dept. B are now working 12-15 hours each day. Dept. A employees do not have the skill sets to help Dept. B, so the employees in Dept B have begun to complain that they should not work all of these hours and have threatened to go to the local Wage & Hour office and file a complaint. The President of the company wants to know if they have a legitimate complaint.

**Observation:** The short answer is ‘No’, they probably don't have much of a complaint because there is no maximum on the hours that an employee can work in this particular office environment, which is the case in this example.

The long answer, however, (and still trying to keep it short), is that Wage & Hour looks at excessive and continuous overtime as a penalty, meaning that if they see a company paying a bunch of overtime, they feel the organization needs to either hire

more staff or manage its operation more effectively and more efficiently.

A temporary dilemma in which one department is relocating to another city is typically not a red-flag, but a constant history of overtime for employees will trigger, especially with a complaint, a deeper investigation by Wage & Hour because they will assume that the company is not being run right, and so there are bound to be some Wage & Hour violations present.

Bottom line, keep overtime to an infrequent minimum and require overtime based on business needs only.

**FEATURED SERVICE**

Whether companies are growing, downsizing, or are involved in a merger or acquisition, employees are usually the common denominator when asked about the most difficult challenges that employers face.

Statements such as “We’re growing, and I’m asking that you be available at night and on weekends for the next few months”, or “We’re cutting back, so we need your ideas on how to save money and still serve our customers”, usually bring complaints like “I already do all the work around here” and “I’ve answered your employee survey for the last 2 years and you haven’t listened, so what makes me think you want my input now?”

If these feelings turn into claims of favoritism, inequity, and discrimination, then HR&M can help in addressing these circumstances so that they do not culminate into a higher and more serious problem.

Call HR&M for additional information on how prepare for and possibly prevent these situations.

◆ **REMEMBER! WE CAN HELP!!** ◆

Consulting on performance, attendance, FMLA, Wage & Hour, management accountability, and other unique issues is just one of the areas of our expertise.

We also provide:

- **supervisory/management training**, ranging from brown bag luncheon training to ½ or full day sessions
- employee **handbook** development
- responses to **discrimination charges** and **unemployment claims**
- **on-line performance review** forms and processes
- **guidance** and consultation on **coaching, counseling, and disciplining** in employee relations matters
- **succession** and **strategic planning** programs
- **consultation** on issues regarding attendance and performance and guidance on terminations
- development of OFCCP compliant **Affirmative Action Plans**