



# Human Resource and Management Services

April 2008

## HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

### ◆ FROM BLR COMPENSATION ◆

#### “The 10 “most overpaid” jobs”

... In his article, "The 10 Most Overpaid U.S. Jobs and the Little Effort They Require," Chris Pummer ... notes the following jobs:

- 1) Mutual fund managers
- 2) Washed-up pro athletes in long-term contracts
- 3) CEOs of poorly performing companies
- 4) Orthodontists
- 5) Motivational speakers and ex-politicians on the lecture circuit
- 6) Real estate agents selling high-end homes
- 7) Skycaps at major airports
- 8) West Coast longshoremen
- 9) Major airline pilots
- 10) Wedding photographers

### ◆ FROM SHRM ◆

#### “Employee’s care of grandparents not always covered under FMLA”

- Q:** We have an employee seeking time off to care for a grandparent who has a serious health condition. Does FMLA leave cover care-giving for a grandparent?
- A:** The FMLA itself defines the term “parent” as the biological parent of an employee or an individual who stood “in loco parentis” to an employee when the employee was a minor.

FMLA does not protect a leave of absence to provide care for grandparents unless the employee is able to demonstrate that the grandparent stood in loco parentis. The regulations define in loco parentis as having had the responsibility of providing day-to-day care to the employee as well as for financially supporting the employee in his or her childhood. FMLA does not require a legal or biological relationship to establish in loco parentis. As a result, unless the employee is able to demonstrate that the grandparent stood in loco parentis, the leave is not covered by FMLA.

### ◆ FROM EEOC WEBSITE ◆

#### “Jury awards \$110,000 against dry cleaners for sexual harassment of a teenager”

... The EEOC had charged that the owner of Bellair Cleaners, Inc., doing business as Park Avenue Cleaners, Bellair Cleaners, and Your Valet (Park Avenue Cleaners), harassed a female employee, then aged 19, and other women.

The jury found that the companies operated as an integrated enterprise and that their owner and manager sexually harassed the teenager and other women he supervised. The jury apportioned \$30,000 of the award for compensatory damages to the teenage victim and an additional award to her of \$75,000 for punitive damages.

... The EEOC’s lawsuit (*Civil Action No. H-06-3004 in U.S. District Court for the Southern District of Texas, Houston Division*) charged the owner with egregious misconduct and presented evidence at trial that the young female victim had been inappropriately touched by Nazir Ali, the company’s male owner, who besieged her with his offensive remarks, and kept her against her will during a long car ride while he graphically described his sexual appetites and intent to have sex with her against her will.

### ◆ FROM HR MAGAZINE ◆

#### “Office mating”

According to a survey by Vault.com, an online career center, 47% surveyed had been involved in an office romance, and another 19% would consider it. Of those individuals who had a romance, 11% had dated their bosses or another superior. 20% of those who had an office romance admitted to having a physical tryst in the office.

### ◆ FROM HR INSIGHT ◆

#### “Reward (and record) employees’ performance”

... Written evaluations become critical evidence in most employment discrimination cases. ... In 2006, the U.S. Supreme Court expanded the scope of retaliation claims. An individual “must show that a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have ‘dissuaded a reasonable worker from making or supporting a charge of discrimination.’”

*(Editor’s note – what this means is that a performance review, especially if it’s not a good evaluation, could be interpreted by an employee that he/she was given a poor evaluation because of a recent workers’ compensation absence, whistleblowing incident, or because he/she filed a harassment claim, regardless as to whether it turned out to be valid or not. This is another example of how, in the overall scheme of things, employment laws do not necessarily change that often, but the interpretations of those laws certainly change in their focus.)*

◆ **FROM HR HERO** ◆  
“Truth is stranger than fiction”

In the truth is stranger than fiction category, a recently re-discovered case showed that a Hooter’s waitress in Florida sued her employer for tricking her about a prize in a beer-selling contest. The waitress thought she would win a Toyota if she sold the most beer. However, after she won the contest, her manager blind-folded her; led her to the parking lot; and presented her with a plastic “toy Yoda” character from Star Wars. The manager claimed the prank was an April Fool’s joke. Funny, right? Apparently, the employee didn’t think so – she sued her employer, a Hooter’s franchisee, for breach of contract and fraudulent misrepresentation.

◆ **A REAL LIFE SITUATION** ◆

**Situation:** A 29-year employee, age 66, had continuously been a marginal performer. Through her 29 years, she had been under several supervisors, all of which mentioned performance deficiencies in her annual evaluations, however, her overall ratings were always satisfactory.

With the latest supervisor, he saw the same performance deficiencies and he saw the notations in her past evaluations that identified those deficiencies, but he also wondered why she received overall satisfactory ratings. He also wondered why she had not been fired in the past.

As he was noting her performance and advising her that her performance was not acceptable, he told her that if she did not improve to the level that was expected, that she would be jeopardizing her position.

Upon hearing this, she told her supervisor “Look, I’ve been here 29 years and you haven’t even been here 29 weeks. If you think you’re going to fire me, go ahead and try it. We’ll see who gets fired!”

**Observation:** Wow!!! Who’s in control here? And if the supervisor takes and re-gains control, he may wind up losing anyway. How? Why? Because the company has allowed her poor performance, ergo, it is acceptable. Too much time has elapsed and too many supervisors have come and gone so that if a good paper trail is in place, it will probably be looked at as the paper trail was purposefully initiated to get her out of the company because of her age.

Although this space is too small to list all of the various options available, the one that comes to mind is “You bought her years ago. Live with it.” Simply put, the company has indeed allowed this type of behavior and performance to continue, and now, to do something about it at her age will definitely be a significant obstacle to overcome. The company can still require certain expectations and can still coach and counsel her. But to eventually get to the point of firing her is going to be highly problematic.

Bottom line, the new supervisor is having to pay for the company’s failure to take action on an employee. This happens way too many times.

◆ **FROM HR&M** ◆  
“New FMLA poster”

The FMLA was changed by Congress in late January 2008, and the DOL is currently working on updating the regulations to address the new provisions. The new poster will be revised and will be available in the near future once the new regulations are issued. Until then, please go to [www.dol.gov/esa/whd/fmla/ndaaamndmnts.pdf](http://www.dol.gov/esa/whd/fmla/ndaaamndmnts.pdf) for the revised and free poster.

**FEATURED SERVICE**  
**EEOC Charges**

An organization receives a notice from EEOC that an employee or ex-employee has filed a charge of discrimination based on sex, race, or any other protected category.

The organization gets in touch with its attorney and the attorney then decides to either mediate or file a written response to the charge.

Immediate thoughts: Why? Why does the organization feel that the attorney is the only one that can respond to an EEOC charge? If the organization is big enough to have an HR professional on staff, why can’t the HR professional respond to the charge?

HR&M has been involved in mediation and in filing written responses to EEOC charges for 20 years. In those years, HR&M has helped HR professionals work on the responses so that they can respond to any future claims. HR&M has also taken the full responsibility of responding to EEOC charges when the organization did not have an HR professional on staff.

Attorney involvement is not necessary. You can do it. HR&M can help step you through it successfully.

◆ **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**