



Human Resource and Management Services

June 2008

HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ FROM SAN ANTONIO EXPRESS-NEWS ◆ “EEOC’s mistake won’t halt age suit”

The Supreme Court decided ... an age discrimination lawsuit to proceed against FedEx Corp. ... EEOC failed to notify FedEx that 14 employees had filed a complaint. Companies must be told about complaints before discrimination lawsuits can be filed, giving the parties an opportunity to engage in an informal dispute resolution process. The EEOC has acknowledged it erred.

... The court found that the EEOC’s failure to follow through on (the) complaint and to notify FedEx should not preclude the plaintiffs’ right to sue.

(Editors note – In last month’s newsletter, we found out that FedEx got hit by the IRS, ERISA, and by the state of California for misclassifying their employees as independent contractors. Now they’re going to get hit by an age discrimination lawsuit. You’ve got to wonder who’s running the shop over there!)

◆ FROM PERSONNEL LEGAL ALERT ◆ “We couldn’t make this up if we tried...”

A female employee won a sexual harassment lawsuit against her employer based on claims that her supervisor propositioned and fondled her. The supervisor retired. A year later, the employee found pornographic videotapes in a cabinet. She filed another sexual harassment lawsuit against her employer, claiming that the supervisor had left behind the tapes for her to find in order to continue to sexually harass her. *Ruled an appeals court:* Not only was the alleged harassment not severe enough to rise to the level of a hostile environment, but “it would be onerous to require employers to conduct a thorough search of the premises to make sure a retiring employee didn’t leave anything nasty behind.”

◆ FROM HR EMPLOYMENT LAW ◆ “Relying on the administrative exemption?”

A group of Colorado insurance claims analysts sued their employer, saying they were entitled to overtime pay were wrongly placed under the administrative exemption.

Their main complaint: They had no discretion on how they ‘adjusted’ claims. They simply used a computer program to calculate settlement amounts with insured clients and had no authority to negotiate changes to those figures.

A Colorado district court agreed, saying the employees didn’t use discretion or independent judgment in their jobs, so they were entitled to overtime pay. (*In Re American Mutual Insurance Litigation, No. 06-17430, DC CO, 2007*)

◆ FROM TX EMPLOYMENT LAW LETTER ◆ “Temple company to pay \$1.5 million in back wages”

Temple-based McLane Co., Inc. has agreed to pay \$1,559,316 in overtime back wages to 570 current and former retail merchandising specialists nationwide after an investigation by the U.S. Dept. of Labor’s Wage & Hour Division found that the company had misclassified employees and didn’t pay overtime wages required by the Fair Labor Standards Act (FLSA).

The wholesale distributor of food and grocery products erroneously regarded retail merchandising specialists as outside sales employees exempt from the FLSA. Also, the company didn’t keep required records of hours worked.

◆ FROM HR SPECIALIST ◆

“Power to fire doesn’t automatically qualify employees for the executive exemption”

Randy Jones worked as a Safety Supervisor... The company classified Jones as an exempt executive employee. Jones didn’t however, directly supervise other employees. When he wasn’t paid overtime, he sued, alleging he should have been classified as non-exempt hourly.

The company argued that Jones had the power to fire anyone for safety violations... But the court disagreed. Having the power to fire employees who don’t follow safety regulations is “a far cry from customarily and regularly directing their work” (*Jones v Riggs Distler & Co., No 6:07-CV-168, MD FL, 2007*)

◆ FROM TEXAS EMPLOYMENT LAW LETTER ◆ “News flash”

... an employee who proves discrimination can recover punitive damages (dollars awarded by a jury to punish the employer) even if the jury awards no compensatory damages (back pay, mental anguish, front pay). That means lawyers will now be tempted to take on cases even if the employee suffered little or no injury.

◆ **FROM HR&M** ◆
“**Minimum wage increase**”

The federal minimum wage will increase from \$5.85 to \$6.55 per hour on July 24, 2008.

This is the second phase of the three scheduled increases, which will end in 2009 with the final minimum wage rate of \$7.25 per hour.

◆ **FROM HR SPECIALIST** ◆

“**Study: big increase in wage-related lawsuits in ‘07**”

FLSA lawsuits outnumbered cases relating to employment discrimination and the Employee Retirement Income Security Act in 2007, and the trend will likely continue in 2008, according to an annual study by the law firm Seyfarth Shaw LLP.

The other noted trend: Employees are winning more money. ...States with the fastest growth in wage lawsuits: California, Florida, Illinois, New Jersey, New York, Pennsylvania, and Texas.

◆ **FROM HR COMPENSATION & BENEFITS** ◆

“**Back problems: the top workplace disability claim**”

It's smart to focus your health-prevention dollars on the ailments that cost your organization the most in employee absences, decreased productivity and increased health care costs. The top 5 chronic conditions that cause the most workplace disability claims, according to MetLife, are:

1. Lower-back disorders
2. Depression
3. Coronary heart disease
4. Arthritis
5. Pulmonary disease

◆ **A REAL LIFE SITUATION** ◆

Situation: An owner had casually mentioned that his company does not pay overtime. He also mentioned that during the summer, hours are cut short to a 30-hour workweek. He felt that since the workers had such a great deal, working 30 but getting paid for 40, that any overtime the employees worked the other part of the year was offset by the summer's shortened hours.

Observation: Even though the offsetting benefit may be true, this company is violating Wage & Hour rules. The rules are simple: non-exempt, hourly workers need to get paid for hours worked. Period. Comp time or whatever you want to call it during the other parts of the year is against the law. Period.

As a result:

1. Follow the law and pay the employees what they work.
2. Possibly do away with the 'work 30 but get paid for 40' benefit. As in bullet #1, pay the employees what they work.

3. Or, keep the benefit but manage the time better during the other parts of the year.
4. Or, keep the benefit but start planning for temps or part-timers during the other parts of the year to reduce overtime costs. (which will be higher than hiring temps or part-timers)

FEATURED SERVICE
Wage and Hour Concerns

HR&M can provide you with the answers you need when dealing with:

- Recordkeeping requirements
- Calculating overtime
- Mistakes that can result in audits, fines, and back pay issues
- Minimum legal requirements for benefits, vacation, breaks, etc.
- Classifying employees – identifying those employees that may be exempt from overtime and minimum wage.
- Definitions of FLSA terms

Many companies do not have a full understanding of the FLSA guidelines, and court cases have contributed to the concern of correctly classifying an employee. As a result, employers are having a tougher time making these determinations.

HR&M can help in these important decisions.

Contact HR&M for assistance.

◆ **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**