

Legislative Updates

Federal

Minimum Wage.The federal minimum wage rate increased effective July 24, 2008, from \$5.85 to \$6.65 per hour.

Pending Legislation on Paid Family and Sick Leave at the Federal and State Levels. For most employees, getting sick with a cold or flu is simply an inconvenience that means taking a few paid days off of work until they feel better enough to get back on the job. But for nearly half of all private industry workers that is not an option. According to 2007 data from the Department of Labor's Bureau of Labor Statistics, as many as 43 percent of private industry workers do not have access to paid sick leave. Sick leave legislation has been introduced at the federal level for both private and public employers. Several states have already passed or are considering bills to require employers to provide their employees with a minimum number of paid leave days each year.

US Citizenship and Immigration Services (USCIS) modifies the expiration date of the Form I-9. Companies need to start updating their new-hire packets because USCIS has modified the expiration date of the Form I-9. The primary change is to the form's expiration date since the prior version was set to expire at the end of June 2008. Now the Form I-9 expires June 30, 2009. Employers must start using the latest version of Form I-9 for employment verification and record retention purposes.

State

Immigration News

198 Employment-related Immigration Bills Introduced by State Legislators in the First Half of 2008. State legislators have introduced 198 employment-based immigration bills during the first half of the year according to a July 24, 2008, report released by the National Conference of State Legislatures. Eighteen of those bills have been enacted into law. The 13 state legislatures that enacted those 18 employment-related immigration bills during the first half of 2008 are Alaska, Arizona, Colorado, Florida, Idaho, Maryland, Missouri, Mississippi, Tennessee, Utah, Virginia, Washington and West Virginia.

Minimum Wage Increases

Numerous state minimum wage hikes took effect in July, as detailed below. Note that the federal minimum wage rate will prevail over less beneficial state rates.

Effective July 24, 2008, corresponding with the federal increase, minimum wage rates in the following states increased from \$5.85 to \$6.55 per hour: Idaho, Indiana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas and Virginia. District of Columbia's minimum wage increased to \$7.55 per hour.

Effective July 1, 2008 the following states also increased their hourly minimum wage rates:

Illinois, \$7.50 to \$7.75; Kentucky, \$5.85 to \$6.55; Michigan, \$7.15 to \$7.40; Nevada, \$5.30 to \$5.85 with health benefits, and from \$6.33 to \$6.85 per hour without health benefits; Pennsylvania (for small employers with 10 or fewer employees) increased from \$6.65 to \$7.15; and West Virginia, \$6.55 to \$7.25.

California

Keep Your Hands Off the Cell Phone! Effective July 1, 2008, California drivers need to take their hands off their cell phones, and drivers under the age of 18 are prohibited from using wireless telephones while operating a motor vehicle, even if equipped with a hands-free device, and from using "mobile service devices," such as Blackberries, pagers and laptops. Other states with similar laws: Connecticut, New Jersey, New York and Washington as well as the District of Columbia. In addition, New Jersey and Washington prohibit drivers from sending text messages while driving.

Connecticut

Jury Duty and Court Attendance Leave Law. Effective October 1, 2008, an employee who has served eight hours on jury duty in any one day will be considered as having worked a legal day's work and cannot be required by the employer to work past those eight hours.

Florida

Sexual Violence in Crime Victims Law. Effective July 1, 2008, private and public employers shall permit an employee to request and take up to three working days of leave from work in any 12-month period if the employee or a family or household member of an employee is the victim of domestic violence or sexual violence. This leave may be with or without pay, at the discretion of the employer.

Massachusetts

Triple Damages for Wage Violations. Wage and hour violations just became even more costly for Massachusetts employers as the Massachusetts legislature passed a bill mandating triple damages for all violations, regardless of employer intent. Senate Bill No. 1059 amends various provisions of the state wage statutes pertaining to damages. The new law went into effect on July 13, 2008. As a result, wage and hour claims are now more attractive to plaintiffs' attorneys, and employers can expect to see an increase in wage and hour litigation, particularly class action litigation.

Ohio

Military Status. The definition of "military status" has been amended to include the performance of duty, on a voluntary or involuntary basis, in a uniformed service, under competent authority, and includes active duty, active duty for training, initial duty for training, inactive duty for training, full-time national guard duty, and performance of duty or training by a member of the Ohio organized militia.

Washington

Medical and Parental Leave. The state has enacted a law extending employment protections to employees who are victims of domestic violence, sexual assault or stalking. Employees whose family members are victims of such crimes are also protected. The protection includes reasonable leave from employment to receive medical treatment or obtain other necessary services. This law was enacted and effective April 1, 2008.

Employment Protection for Crime Victims. The state has also enacted and made effective on April 1, 2008, a law extending employment protection to employees who are victims of domestic violence, sexual assault or stalking so that they may have a reasonable leave from employment to seek legal or law enforcement assistance of remedies to ensure the health and safety of the employee or employee's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking.

FAQ's Frequently Asked Questions

Q. What recommended approach would you advise for maintaining terminated employee records?

A. Every organization should have a policy to govern record retention and destruction processes for each functional area of business. This is especially true for HR records because federal regulations now require specific methods of destruction of reports received under the Fair Credit Reporting Act and control the maintenance of confidentiality of records under the Health Insurance Portability and Accountability Act. State laws also preserve the confidentiality of the employee data that HR and payroll departments maintain for employer benefit plans and government reporting purposes, and additional new laws require employers to give notice of data breaches.

A starting point is to determine the maximum length of time that terminated employee records will be maintained. A good rule to follow is to retain these records for a period equal to your state's statute of limitations for tort, contract and/or fraud claims. In most states, this does not exceed seven years. For some records, including I-9 forms and pre-employment records such as reference checks, credit reports and medical records, a shorter retention period will suffice.

The following retention periods are recommended for both electronic and paper-based records:

Personnel: 7 years

Medical/Benefits: 6 years

I-9 forms: Not more than 3 years

Pre-employment background checks: 2 years

Retain health and safety records as required by OSHA regulations.

If your organization is involved in an employment-related dispute with a terminated employee that has not yet been reconciled, continue to retain documents relating to that employee.

Note: When eliminating terminated employee records, be sure to create a destruction log, and destroy records by shredding to ensure that no confidential employee information is inadvertently released.

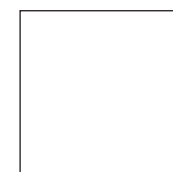
HR SERVICES UPDATE



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SW3 Suite 250
Cupertino, CA 95014

(800) 358-2163



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Editor: Maureen Marfell
hrservices@501c.com.

A Reminder:

The purpose of this update is to review the latest developments in human resource matters. The information contained herein has been abridged from numerous sources and should not be construed as legal advice or opinion, and is not a substitute for the advice of counsel.

The Dynamics of Generational Differences

by Steve Hanamura, President, Hanamura Consulting, Inc.

A senior executive was dismayed when a recent college graduate hire came into her office sporting several prominent tattoos and a pierced tongue.

A manager was taken aback when a young colleague asked for three hours off during the middle of the day to watch a World Cup soccer match with the promise that he'd work from home that night.

These and a host of other problems and miscommunications crop up regularly in today's workplace. In fact, there are four distinct generations in the workplace, and those four generations have different values and different approaches to working together and problem solving.

As a group, Veterans (1922-1944) are traditionalists; they shook off the great depression, fought a world war, and have a strong work ethic. They didn't have many options for employment, so they did what they had to do to provide for their families. They want to be valued by others for their experience and memory of history.

Baby Boomers (1945-1964) value results and being a part of a team. Many of them are responsible for creating the vision, values, and policies of the companies where they work. They want a positive work climate and are innovative about creating changes in the market place.

Many in Generation X (1965-1980) grew up in families affected by divorce. As a result, they learned how to adapt to change and become self sufficient. They are often known as the "latch key kids." Gen-Xers like immediate feedback about their performance and do not like meetings or "corporate speak."

Generation Y or Millennials (1980-2000) are high energy, love branding, and are great at multi-tasking. Being a part of a team environment is important to them, and they welcome being mentored. They challenge us to look at the importance of work-life balance, because they saw the impact long work hours, downsizing, mergers, and corporate scandals had on their parents.

Because of the differences among these four generations, there are a lot of misconceptions and misunderstandings. For instance, Veterans and Boomers think Generations X and Y don't have a strong work ethic and lack loyalty. Conversely, Generations X and Y feel that the Boomers and Veterans talk down to them, don't value the contributions they bring to the job, and treat them like a son or daughter.

Perhaps the first step in breaking down these barriers, so generations can work together more effectively, is to examine the different values that drive the groups.

Respect

For Boomers and Veterans, respect is associated with position, and with respect comes obedience and the belief that you don't question authority. Generations X and Y believe that respect must be earned — that authority needs to be understood and participative, and they want to be a part of the action.

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The Dynamics of Generational Differences

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Loyalty versus Flexibility

Boomers and Veterans struggle with why the younger groups do not appear to be loyal to the organization or to their work. Generations X and Y prefer to think of themselves as flexible. Alexis Herman, Secretary of the Department of Labor during the Clinton administration, said that in today's workforce, by the time someone is 32 years old he or she will have had a minimum of nine different jobs.

Success versus Significance

The Veterans and Boomers were taught to grow up and become successful. That meant getting a good job and raising a family. Generations X and Y value significance.

Bruce Tulgan, one of the premier people in the field of generational differences, says that these generations, especially Gen Y, feel they are already people of value when they show up for work. Education and feeling good about themselves through self-esteem classes have readied them for work. Therefore, they expect to be treated as workers who are ready to be in the top offices.

Boundaries and Expectations

To the Veterans and Boomers boundaries are fairly clear. For Generations X and Y it is not so much about boundaries, but about expectations. They expect to have what they want right now instead of working their way up the ladder.

Historical Contributions

In addition to the different values among the four generations, another factor to consider is significant events in history. During the World War II era, the people of the United States pulled together as "one nation" in respect for authority and government.

However, a sense of division began to arise in the 1960s with the Vietnam War and continued into the 1990s with the bombing of the World Trade Center, the dot-com industry's failures, and the Oklahoma City bombing. Furthermore, the three major events or trends that have impacted the early 21st century are massive corporate scandals, 9/11, and the war in Iraq. Historically then, it has become much more difficult to build a respectful atmosphere on the job.

Five methods to help your organization bring these four unique generations together include:

- * Create a positive climate
- * Converse with others respectfully — respect comes in different forms so it will be important to understand what respect looks like to the other person
- * Listen with empathy — we don't always know what past experiences may be driving why people do what they do
- * Recognize and appreciate different perspectives
- * Work together for the common good of the organization

Steve Hanamura contributed this timely article to the HR Services Update. Steve founded his firm in 1986 in Beaverton, Oregon. He brings more than 30 years experience to the consulting, training and speaking profession. He is widely sought after in the areas of leadership development, managing and leading diversity initiatives, building effective teams, managing personal and organization change and working with generational differences for both for-profit and non-profit organizations. He will be a keynote speaker at the SHRM Diversity Conference & Exposition, October 27-29, 2008 in Atlanta, Georgia. His presentation will be addressing how employers today can get the four generations now in the workplace to collaborate to reach positive results.

For Help With HR Questions, Call HR Services

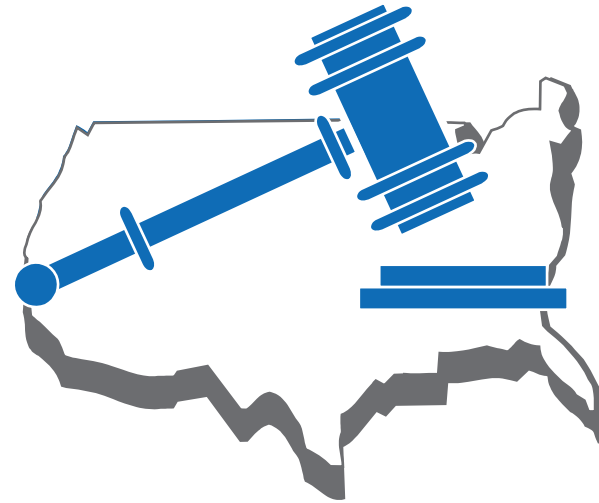


HR Services can answer your human resources questions and provide you with information. Our Human Resource professionals can be a sounding board to help you make important personnel decisions that can help limit your organization's liability. We can also provide you with written guidelines, sample forms, and sample policy language. Whether you need help defining HR policies or you just need a second opinion about an HR issue, please call us.

Contact Us If You Have HR-Related Questions

HR Services is an important benefit available to your organization. If you have any questions regarding any of these articles or any other HR-related question, please do not hesitate to call us at **800.358.2163** or send an email to: hrrservices@501c.com.

Legal Ruling and Decisions



Federal

EEOC: It's lawful to encourage applicants from protected groups, but not to seek them. Employers have not been held liable for using phrases in job advertisements such as "women or minorities are encouraged to apply," according to an EEOC informal discussion. But, using the term "seeking" in phrases such as "seeking stay-at-home-moms," denotes a preference for a particular group — in this case, a group protected under Title VII. Seeking applicants on a protected basis would violate laws enforced by the EEOC, the letter advises. The letter, dated April 8, 2008, was written in response to a request for guidance on the legality of particular terms used in newspaper advertisements so that individuals placing ads could be given assistance on effective non-discriminatory advertisements.

It may be necessary to encourage members of groups that are underrepresented in order to develop an applicant pool reflective of the demographics of the qualified labor force, wrote EEOC Senior Attorney Advisor James Cook. The EEOC knew of no case in which an employer was held liable for using language such as "women and minorities are encouraged to apply." On the other hand, using phrases in job advertisements like "seeking stay-at-home moms" implicates Title VII since it expresses a gender-based preference. Rather than just encouraging individuals to apply, it seeks a particular type of applicant and denotes a preference for that group. Seeking individuals on a protected basis, such as gender or race, would violate laws enforced by the EEOC. Cook advised that adding the phrases "or others" to the ad would probably not render it lawful.

State

California

Meal and Rest Periods.

On July 22, 2008, the California Fourth District Court of Appeal issued a decision concerning meal and rest periods in the case of Brinker Restaurant Corporation v. Superior Court of San Diego. The decision held that employers must make meal periods available to employees and cannot impede, discourage or dissuade employees from taking meal periods. However, once the periods are made available, the employer is not obligated to police the employee's use of that time by ensuring that the employee takes the meal period. This decision also pertains to rest periods.

California Governor Arnold Schwarzenegger issued a statement following the decision:

"We are pleased that the California Court of Appeal issued today a decision squarely addressing many of the central issues in dispute concerning meal and rest periods. The confusing and conflicting interpretations of the meal and rest period requirements have harmed both the employees and employers. Today's decision promotes the public interest by providing employers, employees, the courts and the labor commissioner the clarity and precedent needed to apply meal- and rest-period requirements consistently."

For more information, please call the HR Services hotline, **1.800.358.2163** or email hrrservices@501c.com.

New Jersey

Unemployment Insurance Law.

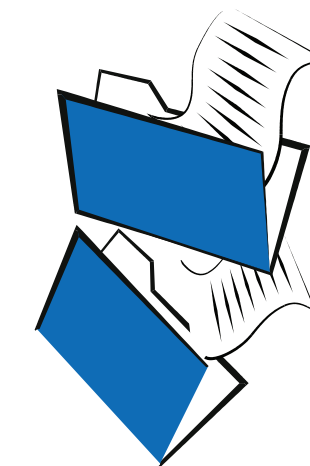
An employee who relied on public transportation to get to work due to a visual impairment that precluded him from driving was forced to resign after his employer changed the shift he had worked for 13 years and his bus line did not run when his new shift ended. At first, he was able to carpool with a coworker on the way home, but this option was foreclosed when he was assigned to work mandatory overtime. On these facts, a divided New Jersey Supreme Court found the employee's commuting problems were set in motion by the employer and thus were work-related, not personal; therefore, the employee resigned "for good cause."

As such, the employee was entitled to unemployment benefits.

Unemployment Claims Management

Q. What should we do whenever we receive a "Notice of Claim Filed" or a "Separation Request"?

- A.** Paul Fountain, Senior Client Relationship Manager/Director of National Trust Programs, says you should immediately fax any claim and all related documents to your Claims Consultant. In this case, immediately means the same day if at all possible.



Q. Why the urgency?

- A.** Paul says a delay of even a few days has the potential for costing your organization a considerable amount of money. "We must take the initial action on a claim in as little as five to fifteen days, depending upon which state is involved," he notes. "If we don't, you may not be able to contest the claim, no matter how unjustified it is."

Q. Suppose we get a claim but need a few days to gather other documents such as separation materials. Should we wait and send the claim after we've gotten the other materials together?

- A.** Absolutely not. Send the claim immediately so your Claims Consultant can meet the state's deadline. Then send the other materials as soon as possible.

Q. How do I contact my Claims Consultant?

- A.** Paul's and the Claims Consultants' toll-free number is (800) 955-4351. Please refer to Page 7 of the 2008 501(c) Agencies Trust Unemployment Program Manual to find the name, extension number, and fax number of the Claims Consultants and the states they represent.

HR Services Responds to a Recent Call

We recently received a call from an organization that was planning to terminate an employee. "What should we consider before making this difficult decision?" the caller asked.

We told the caller that before making a decision to terminate, it's important to do each of the following:

- Investigate thoroughly all the facts and events that lead you to believe termination is necessary.
- Review the personnel files of other employees who have had similar problems and make sure you handled their situations in a comparable manner. Remember, consistency is the best defense against a charge of unfair termination.
- Review whether or not the policy or procedure that was violated was adequately communicated to the employee. Was the employee properly trained?
- Consider the practical and legal consequences of termination.

Call the HR Services hotline, 1-800-358-2163. It's critical not to act alone. We can be a helpful sounding board in assisting with your decision.

