

Trusted compliance advice for Pennsylvania employers

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In the News . . .

PA law restricts employers' use of Social Security numbers

Pennsylvania employers must remember to go to greater lengths to keep employees' and customers' Social Security numbers (SSNs) private in the wake of a state law that many employers have overlooked. The law prohibits anyone from disclosing someone else's SSN to the public.

Businesses that use SSNs to identify their employees or customers for reasons other than tracking payroll taxes would have to change the policy. Employers also can't publicly display or post SSNs, print SSNs on employees' badges or timecards, or require people to use their SSNs to access a website. Violations are punishable by fines of \$50 to \$500, and from \$500 to \$5,000 for second offenses.

Target learns cost of ignoring an abusive manager: \$775,000

Retail giant Target shelled out \$775,000 to settle an EEOC lawsuit over the treatment of 13 black workers at its Springfield store.

The employees sued for race discrimination and retaliation, claiming a white store manager berated them.

When one of the black employees complained, he said the company retaliated against him. As a result, he suffered health problems and resigned. The EEOC charged that the store

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Prevent FMLA abuse with periodic check-ins

Sometimes, an employee's request for FMLA leave just doesn't "feel right." Maybe it's a Monday/Friday pattern of sick leave, or some other suspicious reason. Well, we have good news: Reining in FMLA abuse is now easier for Pennsylvania employers.

Why? A ruling in the 3rd U.S. Circuit Court of Appeals, which oversees Pennsylvania, says you can call and check on employees to make sure they're resting at home during FMLA medical leave. Or, you can require them to contact you whenever they leave the house during sick leave.

"This case is an important one for Pennsylvania employers," says Jonathan Landesman, a partner at the Philadelphia firm of Cohen, Seglias, Pallas, Greenhall and Furman. "It makes clear that

employers have the right to police their employees and minimize fraudulent FMLA leave."

Make sure such check-in procedures apply to employees on FMLA leave as well as those on regular sick leave.

The case: An employee took lots of time off for stress from his Philadelphia city maintenance job, so the city added him to its "sick abuse" list and

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Free report How to Wipe Out Fraud and Abuse Under FMLA

For an 11-step process to prevent fraud by employees inclined to "work" the system, download our free three-page primer, *How to Wipe Out Fraud and Abuse Under FMLA*, at www.theHRSpecialist.com/whitepaper.

You can be sued for investigation comments

When discussing hiring, firing or discipline decisions with senior execs, make sure you can back up any claims with documented proof. And impress upon others involved in such discussions to do the same. Otherwise, you could face a defamation lawsuit.

Under state defamation law, you can be sued for slander if you make false and defamatory statements during internal investigations. And that liability also can be personal, hitting your own pocketbook.

The case: When a University of Pennsylvania instructor applied for a tenured position, the university interviewed other professors. One professor told the hiring committee that he believed the instructor had misused grant money and lied about it when she received her doctorate.

The instructor sued the professor, alleging defamation. The 3rd Circuit let her case go to trial, saying that no immunity exists for statements made

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Prevent FMLA abuse

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required a doctor's note for all sick days. He eventually was approved for three months of FMLA leave.

The city's policy required sick employees to stay home, except for doctor appointments. Sick employees had to call a sick-leave "hotline" when leaving home. Plus, the city checked up on sick employees with calls and personal visits.

The employee was caught away from home twice without having called the hotline. When he returned from leave, the city suspended him. He sued, claiming he had a right to be "left alone" while on FMLA leave. A federal court tossed out his case, saying "nothing in the FMLA prevents employers from ensuring that employees who are on leave from work do not abuse their leave." (*Callison v. City of Philadelphia*, No. 04-2941, 3rd. Cir.)

Investigation comments

(Cont. from page 1)

to internal employer committees. (*Overall v. University of Pennsylvania*, No. 04-1090, 3rd Cir.)

Bottom line: When conducting investigations, remind employees to limit their testimony to facts from their personal knowledge. Defamation requires making a false statement, so truth is the best defense against a defamation claim.



'Company Records: What to Keep, What to Dump'

Your subscription includes access to several online advisory reports. Our latest report, *Company Records: What to Keep, What to Dump*, explains how long to retain more than 200 different kinds of business records. It's free with your paid subscription at www.theHRSpecialist.com/whitepaper.

You can be *personally* liable for payroll errors

If you're a decision-maker in your organization and you exercise that power to withhold wages from an employee, you could find yourself personally liable to that employee if you get it wrong. That means the employee could sue you *personally*, tapping into your bank account and assets.

This situation could happen, for example, if a business downturn occurs and you recommend that promised bonuses or other wages be withheld until business picks up.

The Pennsylvania Wage Payment and Collection Law (WPCL) makes employers liable for wrongful withholding of wages due and agreed upon. Because the law defines an employer as "any person, firm, partnership, association, corporation ... and agent or officer ... employing any person in this Commonwealth," employees who take an active role in the decision to withhold wages can be held personally liable for those unpaid wages. If the business fails, employees may try to collect the money from *you*.

Recent case: Stephen Hirsch worked for EPL Technologies. When the firm ran into financial trouble, its board decided to temporarily withhold wages. That meant Hirsch didn't earn about \$400,000 that he otherwise would have been paid.

He sued both the company and the CEO personally under the WPCL. The Superior Court held that those who exercise an active role in the decision-making can be liable. Because the CEO actively participated in the pay-reduction plan, he could be personally sued. (*Hirsch v. EPL Technologies and Devine*, No. 2618-EDA, Superior Court of Pennsylvania)

Related note: Other Pennsylvania laws also allow for personal liability for employment decisions. For example, while the federal ADA doesn't hold individuals liable for disability discrimination, the Pennsylvania Human Relations Act does.

In short, it's more dangerous to be an HR professional in Pennsylvania than in many other states.

Focus on duties, not title, to decide overtime eligibility

Managers are exempt from overtime, right?

Wrong. The term "manager" means different things in different organizations. That's why it's important to look at each employee's duties and responsibilities when deciding whether he or she is eligible for overtime under the Fair Labor Standards Act (FLSA).

That's especially true in certain industries that have enjoyed overtime exemptions for years. Most are based on unique jobs with special requirements. But attempts to stretch these industry-specific exemptions to other jobs often fail and result in retroactive overtime pay.

The case: A dozen drivers sued the Pittsburgh Transportation Co. (PTC), a private bus company that provides transportation for the disabled. The drivers routinely drove more than 40 hours per week. But PTC didn't pay overtime,

arguing that the drivers were exempt because the Motor Carrier Act excludes many truck drivers from the FLSA.

That law, however, refers to drivers involved in interstate commerce or moving goods across state lines. PTC bus drivers transported customers to doctor appointments.

The court asked the company to prove that its drivers were engaged in interstate commerce (such as driving people to airports). PTC couldn't, so it had to pay overtime. (*Packard v. Pittsburgh Transportation Co.*, No 03-3-88, 3rd Cir.)

Free checklist Exempt or not?

To help make the classification decision for any employee, access our free self-audit tool: "FLSA Checklist: Exempt vs. Nonexempt Status," at www.theHRSpecialist.com/checklist.



How much employee misconduct eliminates unemployment liability?

Employees who commit “willful misconduct” aren’t eligible for unemployment compensation after they’re fired. But what counts as willful misconduct? Part of that definition in Pennsylvania (*see box, right*) includes the “disregard of standards of behavior that you can rightfully expect.”

As a recent court ruling shows, you don’t have to put up with a whole lot of yelling and bullying from employees to deny them unemployment insurance (UI) after they’re fired, especially if those employees have a history of belligerent behavior.

The case: Kimberly Deal, an employee at an East Butler metals company, became alarmed when she read the warning label on a product she’d been using. She was convinced that she’d been breathing a dangerous dust. She wouldn’t listen to her supervisor’s explanation about the lack of danger. Instead, she became combative. It wasn’t the first time she’d flown into a rage.

The company fired her the next day. When Deal applied for unemployment, the company denied that it was liable because Deal’s behavior constituted willful misconduct. The state court agreed. (*Deal v. Unemployment Compensation Board of Review*, No. 32 C.D.)

Online resource Access a Pennsylvania Labor & Industry Department online brochure on UI eligibility at www.dli.state.pa.us/portal/server.pt/community/l_i_home/5278.

Definition of ‘willful misconduct’

In Pennsylvania, willful misconduct is considered “an act of wanton or willful disregard of the employer’s interests, the deliberate violation of rules, the disregard of standards of behavior that an employer can rightfully expect from an employee, or negligence that manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer’s interests or of the employee’s duties.”

State job-bias law may extend to even the smallest employers

Small employers with four or fewer employees probably believe they’re immune from job-discrimination claims under state law. But they may be sitting on a false sense of security.

The Pennsylvania Human Relations Act (PHRA), which prohibits job bias, applies to organizations that employ four or more people. But as a recent ruling shows, a court could cite a “public policy” exception that would allow claims to proceed against even smaller employers.

The upshot: Employers with fewer than four employees should make sure they comply with anti-bias laws and stamp out any sex, age or race discrimination. Also, larger employers that are, for some other reason, exempt from job-bias statutes should pay attention to this ruling because it could also make them subject to a public-policy exception under state discrimination laws.

The case: An office manager quit her job and filed sexual-harassment and constructive-discharge claims under the PHRA. A lower court tossed out her claim, saying her employer didn’t employ the minimum number of people to be considered an “employer.”

But the state superior court reversed and let her case go to trial. It acknowledged that Pennsylvania doesn’t usually recognize common-law claims against employers for terminating at-will employees. But this court created an exception when a clear public policy (preventing harassment) would be subverted by not letting the case proceed.

The court said the PHRA’s four-employee threshold should not be construed “as a tacit endorsement of sexual discrimination against their employees.” (*Weaver v. Harpster & Shipman Financial*, PA Superior Ct., No. 394)

Employees may sue for alleged pay promises

You may not have to pay employees for every task they perform while getting ready to start their shifts. But if those employees can prove you told them they would be paid for that time, you may be liable.

Recent case: A group of FedEx employees sued, alleging the company told them they would be paid from the moment they punched in on the time clock until they clocked out at the end of their shifts. In reality, their paid time began when they first activated their portable task scanners. FedEx said its practices were legal under the Fair Labor Standards Act, but the employees insisted the company had promised to pay them.

The court sent the case to trial. The employees will have to prove the company led them to believe they would be paid from clock-in to clock-out. (*Masterson v. FedEx*, No. 07-CV-2241, MD PA)

Pa. law allows OT class actions that federal FLSA doesn’t

Pennsylvania quickly became a go-to state for class-action lawyers after retail giant Walmart lost a big case here. Don’t be vulnerable to high-dollar claims—have your attorney review your wage-and-hour rules now to avoid getting slammed by a class-action suit.

Recent case: Robert Zelinsky and Jeff Loughner worked as assistant managers for Staples. They sued the office supply chain under Pennsylvania law, alleging they had been improperly classified as exempt management employees. They claimed they routinely spent more than half their time on nonmanagerial tasks. They sought to make it a class-action suit.

Staples argued they should have sued under the federal Fair Labor Standards Act, which makes it harder to sue on behalf of all similarly situated employees. But the court disagreed, and let the case move forward under Pennsylvania law. (*Zelinsky, Loughner v. Staples*, No. 08-684, WD PA)



USERRA: Handling pay and benefits for returning service members

The ongoing war in Afghanistan continues to rely heavily on “citizen-soldiers” who serve in the military reserves and the National Guard.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the rights of reservists and National Guard troops who need temporary leave from their civilian jobs to serve in the military.

The law prohibits companies from benefits discrimination based on an employee’s military obligations. All companies, regardless of size, must comply with USERRA.

Retroactive pay raises

Returning service members are entitled to all general across-the-board pay raises that they would have received if they weren’t away on military duty.

When you base pay raises on factors such as increased skill, qualifications or merit, you may have to extend raises to absent reservists on their return, as well. For example, if you’ve consistently awarded “merit” increases to nearly all employees, then the raises would be considered seniority-based, and returning service members would be entitled to the raise as well.

What about health benefits?

On his or her return from service, you must reinstate the employee’s health insurance coverage without any waiting period or exclusions for pre-existing conditions, other than waiting periods or exclusions that would have applied even without absence for uniformed service. This rule does not apply to any military service-related illness or injury.

Effects on pension benefits

Absence for service is not considered a break in employment for pension purposes. For vesting and benefit computation

purposes, employers must treat returning service members as if they had been continuously employed.

Employees who would have become eligible to participate in a pension plan while serving should be placed in the plan retroactive to the initial eligibility date. If an employer contribution is contingent on the employee’s contribution, then the employee must make his or her contribution before the employer is obligated to contribute.

Vacation accrual

Employees who spend three years on active duty don’t return to work with three years of vacation time waiting to be used.

However, they are entitled to begin accruing vacation leave again as if they had never been gone. For example, someone returning from three years of service may have passed a time benchmark where she is entitled to build vacation at an increased rate (e.g., from one week a year to two weeks per year). Thus, she should begin accruing leave at the greater level.

Building FMLA eligibility

When determining FMLA eligibility, count the months and hours that military reservists or National Guard members would have worked if they hadn’t been called for duty. Combine those “would have worked” hours with actual hours worked to see if the employees qualify for FMLA leave.

More USERRA info

The U.S. Department of Labor enforces USERRA. Find more information at www.dol.gov/vets.

Because some states have their own, more-generous military leave laws, check with your state labor department before making any decisions on military leave.



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Lebanon firm owes back wages for misclassifying traveling staff

The Pennsylvania Department of Labor (DOL) has ordered Lebanon-based Pennsylvania Counseling Services (PCS) to pay \$196,477 in back wages to 203 mobile employees who were improperly classified as exempt from overtime.

The employees include social workers, family-based counselors, mobile therapists and outpatient services staff in Adams, Berks, Dauphin, Lancaster, Lebanon and York counties. DOL found that PCS did not pay the workers for hours spent writing reports, traveling between assignments or attending office meetings, resulting in overtime violations.

The company also failed to keep accurate records of hours worked for each employee, the department found.

Verizon settles harassment suit filed by Pittsburgh woman

Telecom company Verizon is getting a lesson in communication.

Lissa Hannan, a Verizon employee in the Pittsburgh area, filed a complaint alleging a male contractor sexually harassed her. The company essentially put her on hold and then hung up. Ten days after she filed her complaint, Verizon fired Hannan.

Hannan's EEOC suit was apparently a wake-up call for Verizon. The company agreed to pay her \$37,000 to settle the suit and train its employees and supervisors how to handle sexual harassment complaints in the future.

Note: Employers must have an avenue to report sexual harassment and make good faith efforts to investigate the

Abusive manager fallout

(Cont. from page 1)

forced his resignation, amounting to constructive discharge.

Tip: Don't wait for employees to file charges against their supervisors. Pull abusive managers aside and read them the riot act. It's your job to make sure all employees are treated with respect.

What not to ask your prospective HR director

It is an unwritten rule in polite society that anyone who feels compelled to guess a person's age should always guess down.

Most members of the HR profession know to avoid at all costs any mention of an employee's or applicant's age.

That's why it's hard to sympathize with Joseph Kestenbaum, an investor with Unitek USA, a Blue Bell communications firm, who reportedly asked a 55-year-old applicant seeking an HR director's position, "How old are you, 78?"

According to the EEOC, Frank Bruno had aced his interviews with top management and was all but assured Unitek's top HR job when he sat for his final interview with Kestenbaum. Whether Kestenbaum was trying to be funny, or whether he's merely clueless, he thrust that ill-fated, ageist parry Bruno's way in the guise of an interview question.

Bruno reportedly dodged, saying nothing in response. He was not offered the job, which went instead to a 36-year-old woman with half the experience.

Who would have thought an HR pro might sue in such a case?

complaint. Explaining to a jury why you fired an employee 10 days after she filed a complaint may require communication skills even the phone company lacks.

Bethlehem's St. Luke's Hospital won't hire smokers

St. Luke's Hospital and Health System in Bethlehem will screen new hires for tobacco use and not hire anyone who tests positive for nicotine.

Current employees will not be tested. Applicants who fail the screening may try again in six months.

The hospital launched the initiative to promote a healthier workforce and cut health care costs.

Unlike some states, Pennsylvania lacks a "lifestyle discrimination law" that prevents employers from discriminating based on employees' use of legal products on their own time.

Advice: If you're considering your own policy to refuse to hire smokers, beware. St. Luke's could face disability discrimination charges under the ADA if applicants can prove their nicotine addiction meets the law's definition of a disability.

KKK videos, swastikas cost AK Steel Corp. \$600K in bias suit

AK Steel Corp. will pay \$600,000 to seven black employees and an employee's estate to settle a hostile environment case at its Butler facility.

The employees described an atmosphere of verbal abuse and intimidation.

Ku Klux Klan videos and literature, swastikas, Nazi graffiti and even nooses were on open display in common work areas.

The company also must provide annual training on its equal employment opportunity policies to all its Butler employees.

We're smart, we really, really are

According to independent private research firm Morgan Quitno Press, Pennsylvanians are a smart bunch.

The company ranked Pennsylvania number 10 in its fifth annual Smartest State Awards.

The ranking is based on 21 factors, including dropout rates and high school graduation.

Think about that the next time you shake your head over an applicant's apparent inability to write well or work with numbers. It could be worse.

Check your OSHA records!

OSHA is conducting a "National Emphasis Program" (NEP) targeting employer record-keeping of workplace accidents and injuries. As part of the program, OSHA inspectors will be checking employer records and taking enforcement action "when employers are found to be under-recording injuries and illnesses."

Advice: Employers can see what the feds are looking for by reading the OSHA directive at www.osha.gov/OshDoc/Directive_pdf/CPL_02_09-08.pdf.

Is it legal to regulate your employees' off-duty behavior?

To help control significant health care cost increases, many employers are trying to regulate employees' off-duty behavior when they believe that it creates health risks. Although motivated by legitimate economic concerns, are these employers overstepping the boundaries of individual privacy?

For example, employers often argue that smokers and overweight workers have higher health insurance claims than nonsmokers and employees who are not overweight. In response to those higher costs, more employers are instituting bans on hiring smokers, even if they smoke only during off-duty hours. Or they may charge more for health insurance to smokers and obese workers.

But it's not just smokers and overweight people being targeted. Other groups that may be subjected to such "lifestyle" regulation include people with hypertension or high serum cholesterol levels, social drinkers and sports enthusiasts.

Arguably, all daily activities carry some health risks—from smoking to participating in extreme sports to simply walking down the street. That raises the question: Which category of employees will be the next to pay higher health premiums or have their lifestyle choices affect their employment relationship?

Do employers have free rein to monitor and make decisions based on the off-duty conduct of their employees? Some states have "lifestyle" statutes that prohibit them from doing so. Pennsylvania doesn't have such a law, so Pennsylvania employers have more freedom to take action based on off-duty conduct.

That is particularly true when there is a connection between employees' personal habits and their workplace effectiveness. In addition, employers may be justified in investigating employees' off-premises behavior if they have reason to suspect workplace misconduct or violations of workplace rules.

Disability discrimination?

These employer practices raise privacy concerns, and also could increase the odds that a smoker or obese employee who is treated adversely might have a viable claim for disability or perceived disability discrimination.

Pennsylvania doesn't have a 'lifestyle bias' law, so employers have more freedom to take action based on off-duty conduct.

At the federal level, the ADA prohibits employment discrimination against people with "any physical or mental impairment that substantially limits one or more of an individual's major life activities." Also protected are people who are "regarded as having such an impairment." A smoker who is fired for smoking could claim that he is addicted to nicotine and that his addiction constitutes a disability. A morbidly obese employee could claim that he is disabled because he is substantially impaired in walking. And an employer that fires an employee because of smoking or obesity could be vulnerable to a claim of disability discrimination.

Wellness programs

Instead of refusing to hire or deciding to discharge employees whose lifestyles result in increased health care costs, some employers are adopting the option of establishing "wellness programs." Wellness programs provide a means to cut health care costs without interfering with the employment relationship. Although the Health Insurance Portability and Accountability Act of 1996, or HIPAA, generally prohibits employers from discriminating on the basis of an employee's health condition in determining insurance premiums and contributions, it makes an excep-

tion for wellness programs.

Some employers offer discounts to employees who participate in smoking cessation or nutrition programs. To qualify under the wellness program exception, the employer's program must meet certain specified requirements.

Among those is the requirement to offer an alternative to those employees who, for medical reasons, cannot meet the program goals. For instance, if a smoker's physician certifies that she has been unable to stop smoking because of her addiction, the employer must offer a reasonable alternative, such as a smoking cessation program or nicotine patch.

Unintended consequences

Whether legal or not, employers' efforts to force changes in employees' personal lifestyles can, at a minimum, lead to an unsatisfied or underperforming work force. It can drive away talented employees who object to such scrutiny of their personal lives.

The issues surrounding the impact of off-duty conduct on employment-related decisions will continue to be debated as employers struggle to balance the need to run their businesses effectively and economically with the desire to be viewed as a positive place to work.

Off-duty restrictions and other discrimination claims

In addition to potential disability discrimination claims, employees who are subjected to adverse action because of their off-duty conduct could argue discrimination on some other protected basis—race, gender or age, for example—if the employer does not act consistently.

For example, if an employer declines to hire a male employee who smokes, but hires a female employee who does, it becomes difficult for the employer to maintain that its decision was based on a legitimate business reason rather than on gender.

Workplace notices: Are your labor-law posters out of date?

THE LAW The U.S. Department of Labor (DOL) and each state government require employers to post certain employment-law information that explains employees' rights and responsibilities. You also must make sure your federal and state labor-law posters are up-to-date to comply with current standards.

WHAT'S NEW Determining which posters the DOL requires and when to replace them can be tricky because required postings change frequently. For example, the most recent change requires U.S. employers to post a notice explaining military-leave rights. Compliance can also be costly, particularly for employers with operations in multiple states. The average employer spends up to \$1,000 a year in employee time to track, order and follow through on labor-law posting compliance issues.

The most commonly altered state posting rules include: minimum-wage increases, new smoking restrictions, workers' comp revisions, unemployment insurance updates, child-labor law changes and whistle-blower protection rules. (*See Pennsylvania's posting requirements in box at right.*)

HOW TO COMPLY All employers, regardless of their size or industry, must post some federal labor-law notices. Other posters apply only to those in certain industries, or those

that meet certain employee-count thresholds. When you tack up posters, you must put them in a prominent place where they can be readily seen by all employees and applicants. Many employers choose to post notices in more than one high-traffic location, such as lunchrooms, break rooms, meeting rooms and in their HR offices. In some cases, if your employees don't speak fluent English, you must provide your notices in their languages.

The big five

Here are the five main federal poster requirements:

1. Equal employment opportunity.

This poster explains employees' and applicants' rights to be hired and work free from discrimination on the basis of race, color, religion, sex, national origin, age or disability.

2. Federal minimum wage. You must post this notice if you employ anyone covered under the Fair Labor Standards Act, which currently requires a \$7.25 per hour minimum wage. Many states set their own higher minimums. The poster also covers federal child-labor and overtime rules.

3. Job safety and health protection. The Occupational Safety and Health Administration requires this posting, which outlines your responsibility to provide employees with a safe workplace.

Required Pennsylvania posters

- Equal Employment Opportunity poster
- Equal Pay poster
- Minimum Wage and Overtime Hours poster
- Child Labor Law poster
- Schedule of Hours for Minors (to be completed by employer)
- Right-to-Know poster (public sector)
- Workers' Compensation Insurance poster
- Unemployment Compensation Benefits poster (English)
- Unemployment Compensation Benefits poster (Spanish)
- Unemployment Compensation Benefits poster (state employees)

4. Employee Polygraph Protection Act. This federal notice prohibits most private employers from subjecting applicants or employees to lie-detector tests.

5. FMLA. This notice applies to covered employers—private employers that employ 50 or more workers, as well as public agencies and schools—and explains an eligible employee's right to take up to 12 weeks of unpaid, job-protected leave for qualifying circumstances.

In addition to the mandatory posters, if you employ workers with disabilities and you pay them under special minimum-wage certificates, you must post notices of those wage rights. Plus, agricultural employers and farm-labor contractors that employ migrant or seasonal agricultural workers must post a notice of employees' rights under the Migrant and Seasonal Agricultural Worker Protection Act.

The DOL offers free, downloadable copies of the required posters at its website, as do many state labor agencies (*see box at left*).

Resources for understanding federal poster requirements

- Find compliance advice and downloadable posters at the U.S. Labor Department's poster site, www.dol.gov/osbp/sbrefa/poster/main.htm. The site spells out who must post particular notices, penalties for failing to do so and requirements for providing posters in languages other than English. It also suggests cases in which state posters may be required. One section relates specifically to employers involved in federal government contract work.
- The department's Poster Advisor site at www.dol.gov/elaws/posters.htm is a great site to bookmark. The site lets you complete an online checklist that captures information about your industry, workforce, government contracting status and location. Then it generates a customized list of posters that apply to your organization. In addition, it suggests state requirements that may apply. The site also includes links to regulatory text, publications and other resources.

For more information about poster requirements, contact the U.S. Department of Labor by telephone at (888) 9-SBREFA, or by email at Contact-OSBP@dol.gov.

Next Nuts & Bolts: *Equal Pay Act*
Coming soon: *Age discrimination*



Do you recommend anti-harassment training?

Q Our company is considering anti-harassment training for all employees. Some managers and executive are concerned that this will stir up lawsuits. Do you recommend such training?

A Yes. Educating employees about what constitutes harassment will hopefully prevent employees from engaging in behaviors that they may not have realized are inappropriate.

The training should also advise employees about what to do if they feel harassed.

Although it might also lead employees to challenge inappropriate behavior, it is helpful in defending a harassment claim to show that employees were trained on the employer's intolerance of harassment and on the employer's anti-harassment policy. (If you don't already have such a policy, you should develop one.) Training should be conducted for all new hires and for all employees annually.

Can I fire someone I just don't like?

Q I would like to fire an employee who is unpleasant to work with. We simply don't "click." Do I have to have cause to terminate him?

A Unless the employee has an employment contract or is a union member, you don't need "cause" to terminate him. At-will employees can be terminated for any reason except for a discriminatory reason.

That means you can fire this employee because you don't work well together.

Before you do, however, you should examine whether he might claim discrimination based on some protected characteristic or claim that you are terminating him for some reason other than how you work together. If so, you should balance the risks of a lawsuit against the business reasons for terminating him.

Does workers' comp cover telecommuters?

Q Do workers' compensation laws apply if an employee is injured while working in his own home and using his own equipment?

A Very possibly, if the employee is injured while acting in the course and scope of his employment. In one case, for example, an employee had a home office in her basement, went upstairs to get a drink while talking to her supervisor on the phone, and was injured when she fell down the stairs to go back to her home office.

The Pennsylvania Commonwealth Court held that the employee injured herself in the course and scope of her employment because she was engaged in furthering the employer's business at the time that she was injured.



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How do I make a noncompete enforceable?

Q Can I ask employees who are already with the company to execute noncompete agreements?

A In Pennsylvania, you would need to give something extra to an existing employee to support a noncompete. This "consideration" has to be something to which the employee is not already entitled. Consideration can include a cash payment, a bonus, a promise of severance or a term of employment, among other things.

Is it OK to use SSNs as ID numbers?

Q A few employees have complained that we use their Social Security numbers (SSNs) as their ID numbers. They're concerned about identity theft. Is it legal to use Social Security numbers for ID purposes?

A In Pennsylvania, it is not illegal for employers to use employee SSNs as ID numbers, provided the employer does not publicly share the Social Security numbers.

Employers should not print employee SSNs on materials that are mailed or require employees to enter their SSNs to access an Internet site.

The Federal Trade Commission has published materials to assist victims of identity theft on its website at www.ftc.gov.



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