



Human Resource and Management Services

October 2007

HUMAN RESOURCE EXCHANGE

Human resource issues and topics impacting employers

◆ **FROM HR COMPLIANCE LAW BULLETIN** ◆
“The pros and cons of ‘googling’ job candidates”

You have a hard-to-fill position and a great candidate. She aced the interview and her references are stellar. Still, you can't get the go-ahead to hire her. The problem? An internet search turned up lewd pictures on her personal website and now the hiring team questions her judgment.

... On one hand, employers gain more insight into candidates' personalities, goals, etc. ... On the other hand, information found ... can lead employers to make judgments based on information that is immaterial or, even worse, incorrect.

(Editor's note – internet searches should be just one of many tools to use and it should not make or break a candidate unless the information found is job related. A negative employment decision based on an internet search could be very problematic.)

◆ **FROM TEXAS EMPLOYMENT LAW LETTER** ◆
“Razzoo's settles religious discrimination suit”

EEOC has announced that Razzoo's Cajun Café will pay \$38,750 to settle a religious discrimination suit stemming from the restaurant chain's firing of a server who sought an accommodation for her religious beliefs.

According to the suit, Sabrina Balentine, a Jehovah's Witness, asked to be excused from participating in guest birthday celebrations at the chain's Mesquite location because those kinds of activities are prohibited by her religion. She offered to cover other servers' tables while they substituted for her in the birthday celebrations, but her supervisor dismissed her.

In addition to the monetary award, the settlement provides for the adoption of an anti-discrimination policy directed at religious accommodation, training, and the posting of a notice informing employees of their Title VII rights.

◆ **FROM WORKFORCE MANAGEMENT** ◆
“Nike Settles Racial-Bias Class Action”

Nike Inc. has agreed to pay \$7.6 million to settle a class-action lawsuit charging the company with racial discrimination at its Niketown store in downtown Chicago.

Plaintiffs in the case were about 400 current and former African-American employees at the store. The suit, originally filed in December 2003, was granted class-action status in March 2006 by a federal court judge in Chicago. The court

gave its preliminary approval to the settlement Monday, July 30.

The plaintiffs charged Beaverton, Oregon-based Nike with segregating its black employees into its lowest-level and worst-paid jobs; denying them equal opportunities for promotions to more attractive positions; applying workplace rules and (handing) out discipline in a racially biased manner; and routinely denying minorities employee benefits by predominantly hiring them into part-time rather than full-time positions.

In addition to the settlement, Nike also agreed to several other measures, including a court-appointed diversity consultant to monitor and periodically report to the court and the appointment of a compliance officer at Nike's headquarters.

Nike said in a joint statement issued with the plaintiffs' counsel, Chicago-based Brennan & Monte Ltd. and Randall Schmidt of the Edwin F. Mandel Legal Aid Clinic of the University of Chicago, that it continues to deny all allegations of wrongdoing and liability in the litigation. A spokesman had no further comment.

◆ **FROM CCH WORKWEEK** ◆

“Conviction for display of giant inflatable rat in labor dispute is affirmed”

A municipal ordinance that prohibited the use of inflated signs, including the display of a large balloon in the shape of a rat during a labor dispute, is not preempted by the NLRA, nor did it violate a union's free speech rights, a New Jersey appeals court ruled, taking note that a rat "is a well-known symbol of protesting unfair labor practices." The court affirmed the conviction of a union official who authorized the use of the 10-foot-tall inflatable rat. (*State of New Jersey v Deangelo*, NJSuprCt).

◆ **FROM EMPLOYEE TERMINATIONS LAW BULLETIN** ◆

“Weigh the pros and cons before rehiring a former employee”

... This is, of course, if the worker wasn't a poor performer. ... For starters, ... ask yourself, have your practices changed so much that it wouldn't be cost-effective to re-hire a former worker; that is, would you have to retrain him/her from scratch, or could he/she step into the role with little or no

training? ...Also, refresh your memory as to why the employee left in the first place. If he/she left because his/her role was being redefined or because of a complete career change altogether, the employee's staying power could be short-lived the second time around.

◆ **FROM COMPENSATION & BENEFITS** ◆

"5 steps to take when an employee dies"

1. Ask the family for a death certificate
2. Begin COBRA notification process
3. Determine who should receive the employee's final wages
4. Record and report
5. Don't withhold employment taxes

◆ **FROM THE HR SPECIALIST** ◆

"Texas prisoners aren't entitled to minimum wage"

Compelling a prisoner to work without pay is not illegal... The prisoner worked in the prison laundry and claimed he should be paid at least the federal minimum wage.

While the federal FLSA doesn't specifically exempt prisoners from its coverage, the 5th Circuit court ruled that prison workers are not "employees." Rather, they are wards of the state who have their living expenses paid for by the state. (Loving v. Johnson, No. 05-10679, 5th Cir.)

◆ **A REAL LIFE SITUATION** ◆

Situation: An employee sent out an email to his co-workers announcing that he had just applied with another company. He further informed his co-workers that this other company was also looking to fill several positions and that if anyone was interested, he provided the contact information on how they too could apply.

One of the recipients of the email reported it to his supervisor. As the supervisor contemplated what, if anything should be done, he remembered something that he heard during one of the supervisory training classes conducted by HR&M. Could that situation be applied here?

Observation: A lot of scenarios are discussed during a typical HR&M supervisory training class. One in particular that seems to come up quite frequently these days is what to do when an employee expresses, through certain behavior, that he/she is looking for another job.

Of the many options that are available, one of them is to take the employee's actions as a resignation, gather up the employee's personal belongings, and escort the employee out of the building. And since you are taking his/her actions as a resignation, it would be suggested to pay the employee for the two week's notice that you normally would have expected from any other employee resigning.

In the above example, however, the employee could also be viewed as recruiting for the other company. So not only

could this employee's behavior be considered as his resignation, but his recruiting efforts could also be cause for termination.

FEATURED SERVICE

Responding to Discrimination Charges

Unfortunately, today's environment has created a quick "I've been wronged" attitude and employees almost automatically scream discrimination because they were fired, disciplined, not hired, not promoted, or whatever else comes to mind.

This activity appears to be on the rise just within the last couple of months.

When a discrimination charge is made, HR&M will walk you through the process and help you strategize for mediation or submit a formal response within the typical 30-day time frame.

Discrimination charges need to be answered in a very professional yet exact manner in order to address all of the specific allegations. For this reason, and with the extremely successful extensive experience of HR&M in responding to discrimination charges, organizations realize that they have the resources available to respond to discrimination charges themselves without the need for initial legal involvement.

Contact HR&M for further information.

◆ **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