HR SPECIALIST

Pennsylvania Employment Law

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Trusted compliance advice for Pennsylvania employers

Contributing Editor: Susan K. Lessack, Esq., Pepper Hamilton LLP, Philadelphia

In the News . . .

City of Brotherly Love rates high for LGBT rights

Philadelphia scored a perfect 100 in the Human Rights Campaign's (HRC) annual rankings of American cities with local laws and policies that protect lesbian, gay, bisexual and transgender (LGBT) people from discrimination.

The gay-rights advocacy organization's Municipal Equality Index ranked 353 cities nationwide on several categories, including nondiscrimination laws, employment practices, municipal services and programs and law enforcement practices.

Pittsburgh came in second among Pennsylvania municipalities, earning 90 points. It was marked down for not offering transgender-inclusive health benefits to city employees and not requiring nondiscrimination policies for city contractors.

Other highly rated Pennsylvania cities: New Hope (89 points), Allentown (85) and Harrisburg (70). The national average was 59.

Learn about the practices HRC considered at **www.hrc.org/campaigns/municipal-equality-index**.

Starbucks customers to see a latte more ink

In response to employee feedback, Starbucks has changed its employee appearance policy to allow employees

Continued on page 5

Pennsylvania Employment Law is published by **HR Specialist**. Susan K. Lessack, a partner in the Philadelphia office of **Pepper Hamilton LLP**, is the contributing editor. She concentrates her practice in employment counseling and employment litigation. Contact her at (610) 640-7806 or lessacks@pepperlaw.com.

Beware firing right after EEOC complaint

Here's a warning on discharge timing: If you happen to make the final termination decision right after the employee files an EEOC charge, timing alone may be enough to send the case to trial.

Then you will have to persuade a jury or a judge that you had solid reasons for terminating the employee when you did and that retaliation wasn't a motivating factor.

Recent case: Judith worked as a city health director for several years. She got involved in a messy personal relationship, developed a drinking problem and wound up seeking treatment after a drunken driving arrest. Then she was arrested after a domestic argument with her boyfriend. The charges were eventually dropped after she sought more treatment.

Meanwhile, the city became concerned that as health director, she wasn't representing the city very well given her personal problems. Over several months, the city negotiated with Judith and her attorney, who alleged that male employees with similar problems were treated more favorably.

Eventually, the city offered Judith a demotion in exchange for agreeing not to sue. Her attorney filed an

Continued on page 2

Calling in sick doesn't count as FMLA notice

Employees are supposed to let their employers know when they may need FMLA leave, although they don't have to specifically mention the law. It's up to employers to tell employees precisely how to ask for FMLA leave.

However, simply calling in to report being "sick" isn't valid FMLA notice. Not every illness is covered and run-of-the-mill illness isn't a "serious health condition."

Recent case: Paul worked for Standard Steel and began experiencing health problems. He saw his doctor several times and always got excuses for the missed work. Then he showed up for work one day with what a supervisor described as "glassy eyes" and "slurred" speech. Paul was directed to the infirmary, where he told the nurse that he was tired after taking a sleeping pill the night before. Paul was sent home.

Paul never returned to work. Instead, he called in sick, provided a return date and then called in again on the anticipated return date. Each time, he merely said he was sick. He was terminated for unexcused absences. About three weeks later, Paul was transported to the hospital after falling in his bathroom.

Continued on page 2

IN THIS ISSUE

Firing, EEOC complaint

(Cont. from page 1)

EEOC complaint while Judith was considering the offer. She rejected the terms—and three days after the EEOC complaint was filed, the city terminated her.

She sued for retaliation, reasoning that the city retaliated against her by firing her after it knew she was going to sue.

The court said a jury or judge should decide whether that was the case or whether the timing was merely coincidental. (*Maloney v. City of Bethlehem,* No. 13-7664, ED PA, 2014)

Final note: Timing is everything when it comes to terminations. In this case, the employer may have waited too long, giving the employee a chance to create confusion by timing the EEOC complaint for maximum impact.

Calling in sick, FMLA

(Cont. from page 1)

He was eventually diagnosed with HIV.

Paul sued, alleging that his employer should have provided him with FMLA paperwork when he first became ill at work and began calling in.

But the court dismissed the lawsuit. It said that nothing Paul had said or done triggered the employer's FMLA notice obligations.

He had merely said he was sick and that he was tired because he hadn't slept despite taking a sleeping pill.

That wasn't enough to inform his employer he might have a serious health condition and therefore might be eligible for FMLA leave. (*Goss v. Standard Steel,* No. 1:13-CV-0607, MD PA, 2014)

More than a matter of style: Grooming rules can differ based on sex

If you have a dress and grooming policy that sets out different rules for men and women, you aren't necessarily setting yourself up for a sex discrimination lawsuit.

You can have different rules based on gender as long as you enforce those rules even-handedly. For example, if you don't discipline women who wear hairstyles prohibited by the female grooming policy but do discipline men who violate the male grooming policy, you may be discriminating on the basis of sex.

> *Grooming rules based on gender are fine as long as you enforce them even-handedly.*

Recent case: Wayne, who is black, worked for many years as a Greyhound Bus driver. After a decade on the job, Wayne began wearing his hair in dreadlocks.

Three years later, a supervisor gave him a copy of the company grooming rules, which did not prohibit dreadlocks altogether. Instead, the rule said that for male employees, hair "should be neatly combed and trimmed, cut and tapered so it does not extend beyond or cover any part of ears and does not stick out over shirt collar."

Female employees had a different hairstyle rule. It required hair to "be neatly combed, trimmed and styled away from face."

Wayne was warned about his dreadlocks several times. He was told he could retain the style, but needed to pull the dreadlocks back and up under his hat. He sometimes did and sometimes didn't.

When Wayne was fired for breaking other rules, he sued, alleging he had been discriminated against based on his sex.

He claimed that the hairstyling rules discriminated against him by not allowing him to wear his hair in a ponytail when women could wear ponytails and didn't have to pull theirs off their shoulders or under a hat.

The court tossed out the claim. It said that employers can provide different grooming rules for men and women. Those rules are only discriminatory if the employer enforces the gender-specific rules against one sex or another. Thus, if Greyhound had allowed women to wear their hair over their faces while disciplining male workers who let their hair down below their collars, then Wayne might have had a case. But he had no evidence that women were allowed to ignore the grooming rules for females. (*McNeil v. Greyhound Lines,* No. 13-1947, ED PA, 2014)

Final notes: Regularly conduct at least an informal discipline audit before revising your handbook. You may see patterns to correct or realize that some rules just aren't being enforced. If that's the case, eliminate the rule or move forward with an eye toward enforcing the rule. Then warn employees about the rule and tell them you are going to start enforcing it.

Try to make grooming rules as gender-neutral as possible.

Your rules should invite employees to call HR with questions, especially if the employee has a religious or culturally based reason for deviating from the grooming standard. For example, some religions prohibit members from cutting their hair or require head coverings. By inviting questions, you show you are open to making reasonable accommodations for religious beliefs and practices.

HR staffing: Those who handle discipline shouldn't have access to FMLA info

If you have a large enough HR office, it makes good sense to keep the FMLA request and approval process separate from the disciplinary process. Doing so ensures that someone with expertise in FMLA administration handles the entire process.

But there is an additional benefit. Should the employee later argue that he or she was disciplined in retaliation for requesting FMLA leave, you can show that the same parties weren't involved in the decision-making. That makes proving retaliation much harder, as this case shows.

Recent case: Darryl worked for a casino with central offices in Nevada. When he requested information on taking FMLA leave, he contracted the HR person designated as the FMLA expert. She forwarded his inquiry to an outside administrator in Nevada.

Meanwhile, Darryl was involved in an incident in the elevator at work. He allegedly grabbed and pushed a co-worker into the elevator and continued to touch the co-worker after being told to stop. The casino fired Darryl a few days later based on its anti-harassment policy.

Darryl sued, alleging that he had been fired for requesting FMLA leave.

The court tossed out his lawsuit. It reasoned that the managers who approved discharge for the elevator incident knew nothing about the FMLA request. Since they didn't, they could not have retaliated. (*McElroy v. Sands Casino,* No. 14-1325, 3rd Cir., 2014)

Final note: Remember, asking for or taking FMLA leave isn't a shield against unrelated discipline.

Aim high! You can strive for a more diverse workplace without breaking the law

Increasing the diversity of your workplace makes sense as a business strategy. After all, America is becoming more diverse and so is your customer base.

But you may worry that trying to hire a wider range of candidates may leave you open to reverse discrimination claims.

However, as long as you consider all candidates on their individual merits and not solely because of what sex, age, race or ethnicity they belong to, your efforts at diversity won't get you in trouble. Just cast your recruiting net wider to capture more qualified applicants in general. Then pick the best.

Recent case: Catherine, who is white, was hired as a substance abuse counselor at a time Soar Corp. was trying to diversify its staff. Soar serves a predominantly black client base.

When Catherine was subsequently fired for not meeting quotas for weekly counseling sessions, she sued, alleging race discrimination.

She claimed that the company had publicly stated after winning a big counseling grant, it would work on diversifying its counseling staff, and that this was somehow proof that Catherine had been fired in order to hire black counselors.

The court tossed out her lawsuit. It said striving for diversity is fine as long as no individual suffers discrimination. Since Catherine couldn't show she was singled out for discharge for missing quotas while nonwhite counselors were not, she had no claim. (*Mussa v. Soar*, No. 13-2847, ED PA, 2014)

Legal Briefs

No commission payment? Unemployment comp instead

An employee who doesn't receive the commissions he believes he is owed can quit and still receive unemployment compensation.

Recent case: When Thomas went to work for a real estate firm, he signed a contract outlining how he would be paid, including commissions. He complained several times to managers, demanding payment of commissions for leases he negotiated. When none came, he quit and applied for unemployment compensation benefits. He appealed when he was turned down.

Thomas testified that he had no choice but to quit because he was getting nowhere trying to get the company to pay the commissions. The court agreed he was eligible because he had tried to get the employer to pay. Quitting was for a compelling reason. (*O'Neil Properties v. Unemployment Compensation Board of Review,* No. 677 C.D. 2014, Commonwealth Court of Pennsylvania, 2014)

Comments on accent aren't automatically discrimination

Some people who speak English well still have thick accents. Asking for clarification or inquiring about the accent isn't national-origin discrimination, as long as it's not disrespectful.

Recent case: Soon, of Korean national origin, works in health care. She has a Korean accent and her co-workers sometimes have difficulty understanding her. She claimed that one supervisor criticized her inability to say "odor" and "order" differently. Sometimes, in Soon's opinion, the boss made light of her pronunciation efforts.

She sued, alleging she was the victim of national-origin harassment.

The court disagreed, reasoning that a heavy accent may interfere with smooth communication and commenting on the accent isn't discriminatory unless it's pervasive, frequent and offensive. (*Park v. VA, et al.,* No. 14-1063, 3rd Cir., 2014)

Beat the chill of an ICE inspection: How to survive an I-9 audit

Quick: Could you put your hands on all the necessary records if U.S. Immigration and Customs Enforcement (ICE) officials announced they were about to audit your I-9 Employment Eligibility Verification files? The answer better be yes!

It's more likely than ever that you will receive an ICE Notice of Intent to Audit (NOI). In fiscal year 2013, ICE inspected the I-9s of 3,127 employers. That's a fivefold enforcement increase in just five years. The total fines generated by federal I-9 audits have grown from just $1 million in 2009 to more than $15 million last year.

The audit process starts when an ICE agent serves an NOI. In addition to I-9 documentation, the NOI typically requests other information, including lists of all current and former employees and payroll records. You usually have only three business days to respond to an NOI.

What happens in an audit

Once the requested documentation has been turned over to ICE, an auditor reviews the records and notes any I-9 deficiencies. If any technical or procedural irregularities are found, ICE allows 10 days to correct them. Most problems identified at this stage are easily corrected clerical errors.

However, employers do not get a chance to correct substantive I-9 violations. Those might include failing to reference a document number or relying on documents not listed as acceptable identity or employment authorization documents. The difference between the two types of violations is that a substantive violation is more likely to lead to the hiring of an unauthorized worker.

Penalties for violations

Employers are generally fined between $110 and $1,100 per substantive or uncorrected technical violation (the amount depends on the number of total violations).

In addition, if, during the course of an audit, an employer is found to have knowingly hired or continued to employ unauthorized workers, it will face additional fines. Also possible are criminal sanctions and debarment from future government contracts.

What employers must do

So, what is the takeaway? Don't wait for an ICE audit to take I-9 compliance seriously. Implement an effective and workable compliance plan. Conduct regular I-9 audits on your own, making any necessary corrections to forms.

Finally, provide training on the proper procedures to use to all staff who complete I-9s.

I-9 compliance Heed these 9 do's and don'ts

1. Do require new hires to complete and sign Section 1 on their first day of work.
2. Don't ask an applicant to complete an I-9 prior to making a job offer.
3. Do review each employee's documents to make sure they're on the I-9's list of acceptable documents.
4. Don't ask new hires for any particular documents or for more documents than the I-9 requires. The employee chooses the documents, not you.
5. Do establish a consistent procedure for completing I-9s.
6. Do retain copies of I-9 documentation.
7. Don't forget to keep a tickler file to follow up on expiring documents that limit an employee's authorization to work.
8. Do keep I-9s and copies of documents for three years after the employee's hire date or one year after his or her termination, whichever comes later.
9. Don't put the I-9 in an employee's personnel file. Set up a separate file.

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Live from New York, it's a seven-figure settlement

NBC has agreed to settle a Fair Labor Standards Act (FLSA) lawsuit filed by interns who worked on "Saturday Night Live." The interns filed a class-action lawsuit against the network last year, alleging that NBC used interns in place paid workers, a practice the FLSA forbids.

A federal judge must still approve the $6.4 million settlement. Comcast Cable, based in Philadelphia, owns NBC.

The plaintiffs successfully demonstrated that NBC did not provide interns the kind of educational experience the FLSA envisions. To qualify as a bona fide unpaid internship, the interns must receive instruction similar to what they would have received in a classroom setting. While supervisors may manage interns, the FLSA does not allow employers to use interns in place of paid employees.

Note: Internships are supposed to be designed for the intern's benefit. Employers are not required to hire an intern following the internship. To protect all parties, employers should have an internship agreement that clearly spells out all of the internship's terms.

Starbucks tattoo policy

(Cont. from page 1)

to show more of their tattoos.

The move comes after Starbucks received an online petition signed by 25,000 employees requesting the change.

Under the new policy, employees may show tattoos as long as they are tasteful and not located on the face or throat.

Specifically, the policy advises employees to treat tattoos like speech: Their ink shouldn't expose co-workers and customers to anything profane, hateful or lewd.

Employees are allowed piercings within limits.

Ear piercings are to be kept small and no more than two per ear. Ear gauges are permitted, but limited to 10 millimeters in diameter. A small nose stud is permitted, but no septum piercings or rings.

Note: Starbucks charted a middle course with its tattoo policy by listening to its employees, but limiting the changes to those it felt its customers would be comfortable with.

Unions on the rise: Prepare for 'ambush' elections

The National Labor Relations Board (NLRB) says a new controversial rule issued Dec. 12 will "streamline" union elections. Critics say the result will be "ambush elections" in which voting happens so quickly that employers stand little chance of persuading employees to reject union representation.

The new final rule, which takes effect April 14, covers elections that certify a union to represent workers.

Under current rules, an automatic one-month delay follows after the NLRB receives a petition for a union election. The new rule eliminates the one-month pause, clearing the way for so-called "ambush" or "quickie" elections, which usually come within days. *(Read the NLRB fact sheet at **http://tinyurl.com/ambush14**.)*

Currently, the standard time period for elections is 42 days. After these rules take effect, most elections will likely be held within 10 to 21 days, experts say. Also, employers will have to provide more contact info to unions, including employee personal phone numbers and email addresses.

Practical impact: Employers interested in keeping their workplaces union-free must prepare in advance to react fast to the threat of union organizing.

Online resource For tips on what employers still can (and can't) do to defend against a union campaign, go to **www.theHRSpecialist.com/unions**.

AT&T settles OT dispute

AT&T Prime Communications, one of the nation's largest cellphone plan providers, will pay $122,254 to 255 workers to settle charges it failed to pay them for overtime work.

The U.S. Department of Labor's Wage and Hour Division (WHD) investigated complaints the company was not properly calculating overtime pay. WHD found the company failed to include commissions that hourly nonexempt employees had earned when calculating overtime pay. The practice deprived workers of overtime pay in 11 states, including Pennsylvania.

The company agreed to amend its pay practices to include commissions in the future.

Note: When calculating overtime, employers must figure the employee's hourly rate using all income the employee earns and dividing it by the number of hours worked. That number becomes the employee's base hourly rate.

Disabled SSA employees settle for $6.6 million

Current and former employees of the Social Security Administration (SSA) will receive $6.6 million to settle charges the agency failed to accommodate disabled workers and denied them promotions. A federal judge in Baltimore has given preliminary approval to the deal.

SSA employees first filed complaints with the EEOC in 2005. They alleged a pattern of discrimination throughout the SSA. EEOC investigators found that some disabled employees were denied promotions as many as 15 times.

The deal will compensate 570 current and former employees affected by the SSA's actions. Additionally, SSA will create a supervisory board responsible for ensuring the settlement is carried out fully. The SSA will also overhaul its reasonable accommodation process and create a centralized office to handle disability issues.

by Christopher Moran, Esq., Pepper Hamilton LLP, Philadelphia

Pay up! Wage-and-hour issues take center stage in 2015

Wage-and-hour issues could take center stage in 2015, with federal, state and local legislative battles looming over increases to the minimum wage, more wage-and-hour litigation and proposed regulations that could dramatically narrow the overtime exemptions under the Fair Labor Standards Act.

Minimum wage battles

President Obama has called on Congress to raise the national minimum wage from $7.25 to $10.10 an hour. He signed an executive order raising the minimum wage to $10.10 an hour for individuals working on new federal service contracts.

Philadelphia Mayor Michael Nutter followed suit, signing an executive order increasing the minimum wage for most individuals working for city contractors or first-tier subcontractors to $12 per hour effective Jan. 1. Several criteria govern whether contractors must comply (for example, for-profit or nonprofit status and the size of contracts). If you are a contractor or subcontractor to the city of Philadelphia, consult your contracting officer or an attorney to determine if you are covered by this executive order.

At the state level, two bills were introduced in 2014 that would have increased the minimum wage. Neither passed. With the Legislature now controlled by Republicans, it's less likely either will pass if introduced again.

However, 20 other states will increase their minimum wage this year and by the end of the year, every neighboring state will have a minimum wage higher than the Pennsylvania minimum wage of $7.25 an hour. That may put pressure on the Pennsylvania Legislature to pass an increase.

Wage-and-hour litigation

In the most recent 12-month period for which data is available, the number of wage-and-hour lawsuits filed in federal court increased almost 5% over the prior period. Last year, over 8,000 such cases were filed. This pattern of year-over-year increases has continued for almost a decade. There is no reason to believe that wage-and-hour litigation will decline in 2015.

Moreover, the U.S. Department of Labor (DOL) has requested a budget increase to allow it to hire 300 additional investigators to investigate and pursue wage-and-hour claims.

The number of federal wage-and-hour lawsuits jumped almost 5% last year.

How can an employer reduce the risk of wage-and-hour litigation?

First, Pennsylvania employers should understand the differences between federal and state wage-and-hour laws. For example, unlike federal law, Pennsylvania does not allow for an hourly exception for computer professionals. Be aware that, where state wage-and-hour law is more generous to employees than federal law, state law will control.

Second, you should review the bases for categorizing any employees as exempt from the minimum wage or overtime requirements of federal or state law. So-called misclassification is the basis for many wage-and-hour claims.

Third, ensure that your employees do not work off the clock. Compensable time includes any time that an employer suffers or permits an employee to work. Such time can include time spent by the employee during meal breaks and after regular business hours doing such things as answering phone calls or responding to emails. Ensure that nonexempt employees do not perform such work. If they do, you must pay them for their time. Keep accurate time records for all nonexempt employees.

Fourth, putting on or taking off personal protective equipment is generally compensable time under the FLSA, unless specified otherwise in a collective bargaining agreement.

Finally, employers should be careful to correctly calculate the "regular rate of pay" on which overtime is based. Include such things as commissions and nondiscretionary bonuses.

FLSA regulations

In March 2014, President Obama directed the Secretary of Labor to "modernize and streamline" the existing overtime regulations. The DOL has suggested that the proposed regulations will be issued in February.

We anticipate that the proposed changes will include an increase in the minimum salary threshold level for exemptions. The present minimum salary level is $455 per week or $23,660 per year. Research funded by the DOL recommended that the salary level be increased to $970 per week or $50,440 per year.

We also expect that the DOL may propose narrowing the scope of the white-collar exemptions (e.g., administrative, executive and professional) by requiring that exempt employees perform exempt duties at least 50% of their work time. Once the rules are proposed, there will be a public comment period, after which the DOL will respond to those public comments, and may revise the proposed regulations.

The Office of Management and Budget must also review and approve of the proposed regulations before they are published in the Federal Register. As a result, any proposed changes to the regulations would likely not take effect before the second half of 2015.

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Let it snow! But make sure you know how to pay employees

Parts of New York were inundated with feet of snow well before Thanksgiving. Buffalo businesses have dug out from under the lake effect by now, but they may still be dealing with lingering pay issues.

THE LAW The Fair Labor Standards Act requires employers to pay exempt personnel their regular salaries if they worked any part of the workweek. Nonexempt employees are generally paid for only the hours they work.

Several states have enacted laws that entitle employees to receive pay if they show up for work and the business is closed due to weather. In most cases, employers can avoid the situation by informing employees of the closing.

For example, New York law requires employers to pay workers who show up for work for at least four hours. California has a similar statute that requires two to four hours of pay depending on a number of variables.

WHAT'S NEW Much of North America, including areas not accustomed to harsh weather, have experienced extended cold spells and higher than normal winter precipitation. Should the pattern hold, employers throughout much of the country will have to make decisions about when to open, when to close, liberal leave and telecommuting policies.

Additionally, the IRS and Department of Labor have been scrutinizing employers' classification of employees as exempt or nonexempt. Those agencies are also looking closely at employers that classify employees as independent contractors in order to avoid payroll taxes, benefit costs and workers' compensation costs.

HOW TO COMPLY Employers should review which employees are exempt and which are not. Generally, executive, administrative and professional workers are exempt. Certain highly skilled computer workers are also exempt. Confer with your attorney to ensure your classifications comply with the FLSA.

Formulate a policy

Employers should determine which operations must continue during inclement weather. From there, decide which workers have to report to work under those circumstances.

Some functions can be performed remotely. Employees asked to work from home must be paid as if they came into work. For nonexempt workers, you must have a way to track employees' time—it's up to the employer to maintain time records. If an exempt employee performs any work during the week, he or she is entitled to a full week's salary.

Most telecommuting policies include a list of jobs that can be done remotely. It's important to coordinate your hazardous weather policy with your telecommuting policy.

You may wish to designate only some positions to operate remotely during emergency conditions. If so, note that in your policy.

Establish notification protocols

Especially if you operate in a state where employees are entitled to some pay if they show up for a regularly scheduled shift, you need a notification protocol. This can be via phone or email. The laws in your state may have specific requirements. Check with your attorney to ensure your practices comply with the law.

Travel liability

Requiring employees to come to work during hazardous weather could potentially subject you to liability. Employers are potentially responsible for auto accidents involving employees who are on the clock.

Include in your policy a limitation on travel during hazardous conditions. Again, include in your plan a protocol for notifying traveling employees when to stay in place.

You may have to send employees home early if weather becomes inclement during the day. In certain cases, providing lodging for employees may be a better option. For example, last year a severe winter storm hit the Atlanta area. Because this was such a rare event, the state and city had no means to clear the roads and the entire area skidded to a halt. Many employers wisely opted to house employees at nearby hotels so they could easily get to work without incurring potential employer liability.

Liberal leave policies

Depending on how long an employee's commute may be and what conditions the employee will face while commuting, employers should remain flexible.

Many employers have liberal leave policies that allow employees to stay home from work if they determine commuting would be unsafe. (As a practical matter, parents often appreciate a liberal leave policy to care for their kids when inclement weather causes schools to close.)

The absence is typically charged against employees' available leave. Some make other arrangements, such as allowing workers to come in a specific number of hours late without docking their leave total.

Generally, liberal leave is triggered when the employer determines that travel is hazardous enough to warrant it. Employees may not claim it unless the employer authorizes liberal leave for specific locations on specific days.

The keys to handling winter weather are to plan in advance and have clear lines of communication in place.

by Susan K. Lessack, Esq., Pepper Hamilton LLP, Philadelphia

Why bother with job descriptions?

Q Are employers required to have job descriptions for every position within the organization?

A In Pennsylvania, job descriptions are not legally required. However, they are helpful for several reasons. They typically (and should) include the essential functions of the job and the requirements for holding the job, which is important information if an individual requests a reasonable accommodation for a disability. They also should state whether a position is exempt or nonexempt, and the responsibilities described should support that classification. That information can aid the company if an employee claims that he or she was misclassified. If an employer uses job descriptions, it should have one for every position.

Can we require emergency contact info?

Q We're cleaning up our personnel files and updating emergency contact information. Some employees don't want to provide their contact information. Is it legal for us to require them to give it to us?

A Generally, an employer is not legally obligated to maintain emergency contact information, nor is an employee legally obligated to provide such information. If an employee does not want to provide the information, you might consider having him or her sign a statement to that effect which describes the consequences of not providing it (e.g., that if the employee requires medical attention, you will not be able to contact someone on his or her behalf).

Is there anything wrong with requiring employees to agree to mandatory arbitration?

Q As a condition of employment, we require our employees to agree to resolve all disputes by binding arbitration, rather than going to court. One of my friends said a lot of the government agencies don't like those kinds of arbitration policies and one agency even decided that they were illegal. I know lots of employers have binding arbitration, so I don't think that could be right, but thought I better check.

A Binding arbitration policies are legal, provided that they meet certain requirements. However, it is also true that certain agencies, like the Equal Employment Opportunity Commission and the National Labor Relations Board, take the position that employees cannot be forced to forgo filing an agency claim in favor of arbitration. Therefore, an arbitration policy should advise employees that it does not preclude employees from filing a charge with the EEOC or an unfair labor practice charge with the NLRB or other agencies that have similar views. The enforceability of arbitration agreements has been the subject of recent litigation so before you implement an arbitration policy, you should consult with counsel.

OK to monitor email without consent?

Q We suspect someone is conducting inappropriate business using their work email. Is it illegal for us to monitor their email without their consent?

A Generally, email accounts provided by an employer are the property of the employer, not the employee. You should review your company's policy regarding email use and access. Usually, such policies contemplate that the employer may view an employee's email and state that the employee has no reasonable expectation of privacy in his or her emails. If your policy contains those concepts, then it is probably permissible to monitor an employee's work emails.

How can we make sure departing employee doesn't divulge sensitive information?

Q As an employer, what can I do to avoid unauthorized disclosure of sensitive company information when an employee departs?

A There are several actions an employer can take to protect sensitive company information. First, include a confidentiality policy in the employee handbook which makes clear that the improper use or disclosure of company information is a violation of the policy and that the employee can be held personally liable for any damages resulting from the violation, even after termination of employment.

An employer also should make sure that, upon termination, employees deliver to the company all correspondence, documents, files or other writings related to the business of the company and that the employee does not retain any copies. Second, the employer may require that the employee sign a Confidentiality and Non-Disclosure Agreement, especially for employees who have access to sensitive company information. Finally, you should send the employee a letter when he or she leaves the company reminding the employee of his or her obligation to maintain the confidentiality of the company's proprietary information.

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To submit your question to Pennsylvania Employment Law, *email it to HRPAeditor@BusinessManagementDaily.com.*