

THE VOICE

15
SUMMER
2011

HR|experts

1.888.HREXPRT for an answer today!

Mid-year is always a good time to check for legislative updates to see if the current Congress has anything in store for employers as far as key legislative changes. The good news is that we are not expecting any major federal labor and employment legislation that is harmful to business enacted in the 2011-2012 session (112th Congress).

Here is a brief recap of one federal regulation that did take effect in 2011:

- ◆ GINA (Genetic Information Nondiscrimination Act)
 - Signed into law May 21, 2008
 - Title II, which applies to employment practices, became effective on November 21, 2009
 - January 10, 2011 – Regulations implementing Title II took effect (applies to employers with 15 or more employees)
 - Title II of GINA prohibits employers from:
 - Using genetic information in making employment decisions
 - Harassing/retaliating against employees based on genetic information
 - Disclosing genetic information about applicants or employees
 - Title II of GINA requires an employer to keep any genetic information it acquires confidential, which includes maintaining any written genetic information in a file separate from an employee's personnel records.

A review of state legislatures includes a notable focus on Immigration Reform and the required use of E-Verify by private employers when hiring new employees. Below are

summaries of enacted E-Verify legislation in Georgia and North Carolina.

Georgia - HB87 – Illegal Immigration Reform and Enforcement Act of 2011: Requires private employers (with 11 or more employees) to use E-Verify. Required use of E-Verify is phased in over 2 years beginning in 2012 (depending on the number of employees). To read this bill, go to <http://j.mp/hb87g>

North Carolina - H36 - Employers and Local Government Must Use E-Verify: This bill requires all public and private employers to use E-Verify. The original bill required only private sector employers bidding on public contracts to use the system. It was expanded by the Senate to require all employers with a staff of 25 or more to use E-Verify, and now addresses concerns raised by the business community regarding penalties and processes. To read this bill, go to <http://j.mp/h36-nc>

Virginia – HB737 - The Virginia legislature considered an immigration bill which would have required all employers in the state to use E-Verify. The House bill failed in a Senate Committee.

If you have any questions about legislation in your state (enacted or under consideration), give me a call and I'll be happy to research and provide you with an update.

Enjoy your summer!

Jill E. Schultz, MPA, SPHR
Human Resources Advisor

In This Issue:

Employee Access to Personnel Records.....	2
Job Referrals/References	2
Employees Cannot Waive Their Right to Overtime	2
Social Security Cards: "Valid For Work Only..."	3
Responding to an Employee's Arrest	3
Unemployment Benefits - Leaving Employment for Good Cause	4
Upcoming Training	4

Contact HR|Experts:

Direct: 919-431-6096
Main: 888-473-9778
Fax: 919-431-6094
jill.schultz@callhrexperts.com
Phone calls and messages will be responded to 8:30am-5:00pm Monday-Friday.



Medical MutualSM
PROTECTING OUR PROFESSION

HR|Experts is provided as a benefit to members of Medical Mutual.

The Voice is not designed or intended to render legal advice to its members.

Employee Access to Personnel Records

Generally, employees (current or former) have no right to see their personnel records or files. While there are exceptions (i.e. access to OSHA medical records), the exceptions are limited. From a practical standpoint, however, it may promote good employee relations to allow employees to view their own personnel records so long as certain precautions are observed.

It is usually sound employee relations policy to remove irrelevant items from personnel files and allow employees to view their own records if they so request. This will strengthen an effective open door policy and promote good employee relations. As a general rule however, employees should not be allowed to photocopy materials in their file or to remove their files from company property.

Employees Cannot Waive Their Right to Overtime

Have you ever had a nonexempt employee request to work extra hours and volunteer to sign a written agreement to do so at their regular rate of pay or “comp time” instead of at overtime rates? If you ever do have this situation occur, DO NOT agree to it!

It may seem like a great idea because your nonexempt employees would get extra pay for working additional hours and you would get extra work without having to pay overtime rates. However, the Fair Labor Standards Act (FLSA) specifically requires employers to pay nonexempt employees who work more than 40 hours in a single workweek at least one and one-half times their regular rate of pay for each hour worked over 40. Employees cannot waive their rights to overtime compensation and that type of agreement is not valid and enforceable. Therefore, you cannot legally allow your nonexempt employees to work any hours over 40 in a single workweek without paying them overtime.

For more information on overtime pay requirements, go to <http://1.usa.gov/OT-pay>.

Job Referrals/References

It is lawful for an employer to supply information concerning an employee or former employee to another company. However, federal and some state laws place restrictions on the type of information which may be sought by an employer. Federal laws make it unlawful to “blacklist” a former employee by providing false information to a prospective employer or information concerning the employee’s exercise of a statutorily protected right. For example, it is unlawful to disclose information regarding the employee’s EEOC charge, Workers’ Comp claims, and the like.

It is also not advisable to provide unsolicited information about a current or former employee.

Georgia

State law provides qualified immunity to employer representatives who act in good faith when providing information at the request of a prospective employer or current or former employee. Employers are presumed to be acting in good faith when disclosing factual information concerning job performance, ability or violations of law.

North Carolina

The state’s “Blacklist-

ing” law provides that an employer may supply information to another employer about a discharged employee provided that: 1) the information is truthful; 2) it is in writing; 3) the discharged employee has applied for employment; and 4) the prospective employer has made a request for such information. The Employment Reference Immunity law provides a qualified immunity to employers that provide certain employment references on current or former employees. The references must be provided upon request of the prospective employer or upon request

of the current or former employee. The information provided must also be factual to the best of the employer’s knowledge.

Virginia

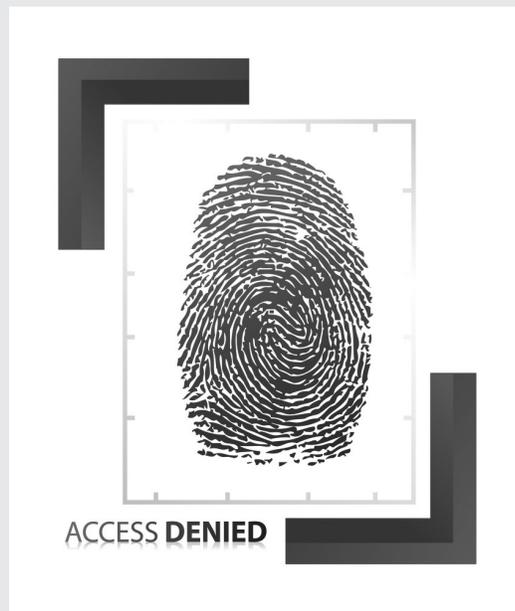
State law prohibits an employer or person from willfully or maliciously preventing or attempting to prevent a separated employee (via discharge or resignation) from obtaining employment with any other person. Employment Reference Immunity provides a qualified immunity to employers who, acting in good faith, provide factual employment references.

Social Security Cards: “Valid For Work Only...”

Upon reviewing documents presented for I-9 employment authorization purposes, employers occasionally spot a social security card that has “Valid For Work Only with INS Authorization”, “Valid For Work Only with DHS Authorization” or “Not Valid for Employment” clearly printed on the card. The “Valid For Work Only...” means that by itself the social security card does not authorize the card holder for employment and that an additional document from the INS (Immigration and Naturalization Service) or DHS (Department of Homeland Security) is required for employment purposes. The “Not Valid...” language means that the card holder may have a valid non-work reason for needing a social security number (e.g. federal benefits or state public assistance benefits) but is not authorized to work in the U.S.

Employers may also be presented with a document by a prospective employee that shows an Individual Taxpayer Identification Number (ITIN). These documents are issued by the Internal Revenue Service (IRS) to aliens for tax purposes (e.g., reporting unearned income such as savings account interest, investment income, royalties, scholarships, etc.). An ITIN card is NOT considered as an approved document for employment authorization and should NOT be accepted as such.

For additional information regarding immigration issues, go to the U.S. Citizenship and Immigration Services web site at <http://www.uscis.gov/portal/site/uscis>. If you have questions about your responsibilities to complete Form I-9 for every employee, contact HR|Experts.



Responding to an Employee’s Arrest

It is important to remember that an arrest is not a conviction or proof of guilt. Moreover, the EEOC limits consideration of arrest records in hiring decisions because of the disproportionate effect on some protected groups. However, the nature of an employee’s arrest may well have bearing on short-term or continued employment. Things to consider are:

- Whether the arrest results in incarceration and absence from work
- The nature of the charge and its impact on the workplace
- Company policies

(substance abuse, workplace conduct, attendance, leaves of absence, etc.)

If the arrest was for assault or other serious charges, you must assess the potential liability of returning the employee to the workplace from the standpoint of providing a safe workplace for all employees, patients, and the impact on the business. A person who is arrested for not paying numerous parking tickets will likely not be a workplace threat; however, an arrest for pointing a gun at someone is another story. Also, if the

employee is incarcerated, the time away from work may exceed the allowed absences under your attendance policy. If the employee is released, you should assess the charge and the relevance to the job.

The employee may provide information that will assist you in making the decision. When an employee is arrested and calls or comes in to see how it will affect his or her job, the employer can ask about the charges and the employee’s position. An admission of some involvement makes it easier for you to make a judgment on the next step.

If the employee denies involvement, you may want to get a copy of the police report to determine what basis there is for the charge. You must again look at the seriousness of the charge and the impact on your business.

It is very important that you are consistent with your approach to equivalent arrest situations, whether you decide to allow employees to return to work, place them on suspension, allow them to take a personal leave of absence, or terminate them under the attendance policy. For more information, go to <http://1.usa.gov/arrest1>.



HR|Experts
 2900 Highwoods Blvd.
 Raleigh, NC 27604-1060

PRSRT STD
 U.S. POSTAGE
 PAID
 RALEIGH, NC
 PERMIT NO. 2510

Unemployment Benefits - Leaving Employment for Good Cause

Generally, employees who leave work are ineligible to receive unemployment benefits unless they left for good cause attributable to the employer. The burden of establishing good cause is placed on the former employee.

Good cause exists by statute where the employee left because of a unilateral and permanent reduction in hours of work of more than 20 percent, a reduction in rate of pay of more than 15 percent, or because of lack of work due to the bankruptcy of the employer. In addition, many state courts have recognized that a constructive discharge based on illegal harassment constitutes leaving employment for good cause.

For more information on unemployment benefits, visit your state’s employment commission or department of labor website. Contact HR|Experts with questions.

Upcoming Training

- **Critical Considerations When Performing Background Checks**
 September 8 Greensboro; October 25 Raleigh
- **EEO Harassment, Discrimination & Retaliation**
 September 8 Greensboro; October 25 Raleigh
- **Communication & Conflict Resolution**
 September 9 Raleigh; September 22 Greensboro

View more training dates/programs and register/pay online at www.capital.org – Click on the Training tab. If you don’t have an account, it’s easy to create a visitor account. E-mail Jill with questions.

Quarterly Quote

“Experience is not what happens to you; it is what you do with what happens to you.”
 ~ Aldous Huxley