

**From “THE VOICE” at the other end of the telephone:**

Dear Practice Administrators/Managers,

It is hard to believe that the 1st Quarter of 2008 has already come and gone. There have been a flurry of calls and emails to HR|Experts with questions ranging from unemployment benefits, compensation to progressive discipline procedures.

I have been fortunate in our first several months of operations to meet or talk with over 400 medical group managers/administrators by telephone, email or in person at meetings sponsored by Medical Mutual Insurance Company.

Many changes related to Human Resources which may impact your practice’s operations are pending or have been passed into law since our first newsletter last fall.

In this issue of “The Voice” you will read about:

- Changes to the Family Medical Leave Act
  - Caregiver Leave for Military Personnel
  - Active Duty Leave
- Ways To Salvage An Employee Performing Below Average
  - Five Ways to Help Turn Around an Employee’s Performance
- When You Must Pay An Employee For Travel Time
  - Commuting
  - Working at other locations
  - One Day Assignments
  - Overnight Travel
- Frequently Asked Questions

We have been successful in supporting our Medical Mutual Insurance Company Members with a variety of Human Resource related services. We look forward to our continued work with each of your practices. I am sure that together we will continue to make a difference.

Sincerely,

*Ted Pattison*

Human Resources Advisor



Ted Pattison

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## New FMLA for Families of Military Personnel

On January 28, 2008, President Bush signed into law, legislation amending the Family and Medical Leave Act of 1993 (FMLA) to allow a “spouse, son, daughter, parent or next of kin” to take up to 26 weeks of leave to care for a “member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness sustained while on active duty.” **This amendment to the FMLA , referred to as “Caregiver Leave”, was effective January 28, 2008.**

In addition to the “Caregiver Leave”, new legislation also permits an employee to take FMLA for “any qualifying exigency” arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation. This “Active Duty Leave” provision is not effective until the Secretary of Labor (DOL) issues final regulations. In the interim, **employers are encouraged to provide this type of leave to qualifying employees.**

The DOL also stated that the FMLA poster will be revised as a part of the regulatory updates and will be available once the new regulations are issued. Until these regulations are finalized employers may use the POSTER INSERT which describes the new military leave entitlements. To download this poster insert go to: <http://dol.gov/esa/regs/compliance/posters/fmla.htm>



## Saving An Employee Performing Below Average

What do you do with the employee who is a good performer except for those times when he/she returns late from lunch, doesn't demonstrate initiative, is rude to co-workers? This isn't a terrible employee who should be discharged immediately but you and your management team know that the employee is capable of so much more. You hope things will get better but unless these behaviors are addressed, nothing is likely to change.

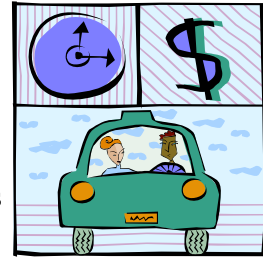
Here are a few ways to improve your under achieving employee's performance:

1. **Clearly explain what “good” performance looks like.** Don't just say “Your work needs to improve.” Give specific behaviors and the results you are looking for. Talk about times when you have observed the employee returning from lunch late or an example of a time he/she could have shown more initiative. Don't assume an employee knows what you consider good performance
2. **Communicate your expectations.** In the absence of direction your employees may think they are working on the things that are important to you and your business. You don't have to wait until it is time to conduct a formal performance review to give constructive feedback.
3. **Avoid the “halo” effect.** Employees observe how you deal with the office “prima donna”. Regardless of how talented or specialized your employee may be, if they treat other employees rudely they are slowly damaging your practice's morale. Make it clear to your employees that you are not only interested in HOW MUCH work gets done but you are interested in HOW WORK GETS DONE.

4. **Confront the behavior not the person.** Don't make the constructive feedback about the person, address the action or behavior. Point out that it is what they did or didn't do that you want them to correct or improve upon. Be timely, don't put off speaking to your employee in hopes that the behavior will go away on its own.
5. **Catch them doing their job right.** We are often much better at telling our employees when their work is wrong! We must do a better job "catching" them doing work correctly. Celebrate small victories. Positive reinforcement is more likely to cause an employee to repeat a good behavior than negative comments will cause an employee to stop specific behaviors. A "job well done" from a supervisor helps build employee confidence.

## Travel Time: When Must You Pay?

That questions has perplexed many Practice Managers & Administrators. It is easier (notice I didn't say easy) to understand by using an example:



**Commuting:** Your employee Janice is a non-exempt employee who occasionally travels for your practice. Ordinary home-to-work and work-to-home travel time is not classified as time worked. But suppose you have asked Janice to stop by another clinic on the way into work to pick up test results. In that situation the time from when she arrives at the other clinic until she reaches her normal place of work should be counted as time worked. The Fair Labor Standards Act (FLSA) is very clear the if an employee's travel benefits the employer, it is paid time.

**Working at other offices:** If you have Janice go to several offices after reporting to the main office all travel time from your main office until her last stop is paid time. The time commuting home after her last stop is unpaid time.

**1 Day Assignments:** Typically travel time on work-related day trips is counted as time worked. For example, let's say that Janice drives three (3) hours to a seminar which you have asked her to attend for her job. The seminar begins at 9:00 a.m. and runs until 5:00 p.m. After the seminar Janice drives three (3) hours home. She normally commutes 30 minutes each way to and from work. What counts as "compensable" time?

You have to pay Janice for the travel time driving to the seminar, the time attending the seminar and the travel time driving home from the seminar. You don't have to pay Janice for her normal commute time (in this case 30 minutes each way) and you don't have to pay Janice for her 1 hour lunch break. Bottom line is Janice would be paid from 6:00 a.m. until 8:00 p.m. minus 1 hour for her normal commuting time and 1 hour for lunch, totaling 12 hours of paid time (this includes 5 hours travel time & 7 hours for attending the meeting).

**Overnight travel:** Travel time that cuts across an employee's normal work day counts as time worked. If an employee is traveling for your business on a non-work day but the travel time also cuts across the normal work day, this travel time is compensable. You don't have to pay the employee for travel time on a non-work day that falls outside normal work hours. Nor do you have to pay for time the employee is completely relieved of work, for example in the hotel at night. Look at the example below.

Janice normally works from 8:30 until 5:00, Monday through Friday. You send her to a meeting in California which begins on Monday morning and runs through Wednesday at noon. Janice takes an 8:30 flight Sunday morning. Following her 3 days of meetings, she arrives home from California on Wednesday evening at 7:00 p.m. Janice would be paid for her travel time on Sunday between the hours of 8:30 a.m. and 5:00 p.m. You wouldn't have to pay her for the hours in the hotel on Sunday night as long as she does no work. She must be paid for the hours attending the meeting Monday, Tuesday & Wednesday. Janice would also be paid for her travel time up to 5:00 p.m. on Wednesday. .... 3 .....

## Frequently Asked Questions .....

- **Can employees choose not to use FMLA leave even though they meet the qualifications?**

**A:** It is up to you as the employer to designate leave as FMLA whenever you become aware of an FMLA qualifying event. It is not up to the employee to pick & choose when they want to use FMLA time, even if they have sick time or other PTO available to them. You can designate that time away from work which qualifies as FMLA time runs concurrently with other forms of paid leave time. Be sure that your FMLA policy requires employees to use FMLA time concurrently with their paid leave time as applicable. It is also important to promptly notify the employee that the paid leave time will run concurrent with FMLA leave.

- **Can I release information regarding an ex-employee's work history to a new employer?**

**A:** It is lawful in North Carolina for an employer to supply job reference information concerning a former employee to another company 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 a job reference.

- **If a Department Manager covers a shift for a nurse resulting in the Manager working over 40 hours , must the Manager be paid overtime even though she is a salaried employee?**

**A:** No. According to the Fair Labor Standards Act, an employee working in a exempt position (such as this department manager) is exempt from overtime pay for hours worked over 40 in a work week. As the employer, you may choose to pay the Department Manager for the hours to cover for the nurse without jeopardizing the Managers exempt status. It is important to remember that if you decide to "compensate" this Manager for work which pushed her into "overtime" hours, you have set a precedent for future situations of a similar nature with other exempt employees. To ensure that the Manager does not lose her exempt status, she must spend more than 50% of her time doing "management work".

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