



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

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

<<FIRSTNAME>> <<LASTNAME>> <<SUFFIX>>
<<TITLE>>
<<COMPANY>>
<<ADDRESS>>
<<CITY>>, <<STATE>> <<ZIP>>
□□□□□□□□□□

THE VOICE

10
SPRING
2010

HR|experts
1.888.HREXPRT for an answer today!

“Red Flags Rule” Toolkit

Through partnership with the California Employer’s Association, you have the opportunity to purchase a “Red Flags Rule” toolkit, a complete identity theft solution. This toolkit will help you create, implement, and manage your required Written Identity Theft Compliance Plan. The toolkit includes:

1. Fill-able, written Identity Theft Policy and Procedure Form template (Adobe/MS Word)
2. 7 step instructions for understanding, explaining, completing, and implementing your Identity Theft Plan
3. An employee training presentation (run as a PowerPoint or give as a handout)
4. Single page employee handout that reminds employees how to protect the business from identity theft
5. Employee training and policy acknowledgement forms for accountability, compliance, and training purposes

The price for the “Red Flag Rules” Toolkit package is \$245. To order, call 919.878.9222 and ask for Tia. You can find an FAQ about the “Red Flags Rule” on the FTC’s Website: <http://www.ftc.gov/bcp/edu/microsites/redflagsrule/faqs.shtm>.



Upcoming Training

Staying Union Free
June 15 Raleigh

Steps to Delegating Effectively
June 17 Greensboro; November 18 Raleigh

Time Management: Analyze, Strategize and Attack
June 17 Greensboro; June 29 Raleigh

Managing Employee Issues: From Coaching to Termination
June 25 Raleigh

New! Register and pay on-line at www.capital.org – Click on the Training tab. If you don’t already have an account, it’s easy to create a visitor account. E-mail jill.schultz@callhrexper.com with questions.

Special rates offered to Medical Mutual policyholders. For additional programs visit www.capital.org.

Coming in 2010...

With the summer months fast approaching, HR|Experts is busy developing resources covering several hot topics. You’ve already heard that we offer a complimentary Handbook Guide which contains 50+ sample policies (see note on page 3). Here’s a snapshot of additional fact sheets and resources that will soon be available...

Q - What is the difference between an Independent Contractor and an employee?

A - According to the IRS, generally, an individual is an independent contractor if the employer has the right to control or direct only the result of the work and not the means and methods of accomplishing the result. An individual is an employee if the employer can control what will be done and how it will be done. These are very general guidelines and “grey areas” need to be examined closely. If an employer misclassifies an employee as an independent contractor, the employer may be liable for employment taxes and back pay issues for that worker.
<http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>

Q - What factors do we look at to determine if an employee is exempt or non-exempt?

A - Under the FLSA, for a position to be exempt from overtime and minimum wage requirements, the position must meet earnings and primary duties requirements. There are four exemption categories: Executive, Administrative, Professional, and Outside Salesperson. It is imperative that an employer examine the actual job duties of the position and not just the title and/or job description. <http://www.dol.gov/elaws/esa/flsa/overtime/jobs.htm>

Q - We don’t have a written alcohol/substance abuse testing policy. Can I terminate an employee if they test positive for alcohol or an illegal substance during work hours?

A - It is strongly recommend that before any drug-testing program is implemented, an employer have a written policy that is shared with all employees and clearly outlines why drug testing is being implemented, prohibited behaviors and the consequences for violating the policy. However, it is possible to require an employee to submit to a drug or alcohol test if reasonable suspicion (observable signs) exists. <http://www.dol.gov/asp/programs/drugs/workingpartners/faq.asp#q9>

If you need immediate guidance on the topics listed above, please contact me. Otherwise, watch your Inbox for more detailed resources!

Jill Schultz, MPA, SPHR
Human Resources Advisor

In This Issue:

- Continuing Extension Act of 2010 Extends COBRA Subsidy2
- Bonus Payments May Affect Overtime2
- Nursing Mother Amendment to FLSA.....3
- Free Handbook Guide for Small Employers3
- Virginia Healthcare Salary Survey3
- IRS Releases Final HIRE Act Affidavit3
- “Red Flags Rule” Toolkit4
- Quarterly Quote4
- Upcoming Training4

Contact HR|Experts:

Direct: 919-431-6096
Main: 888-473-9778
Fax: 919-431-6094
jill.schultz@callhrexper.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.

Quarterly Quote

“Management is, above all, a practice where art, science, and craft meet.” — Henry Mintzberg, McGill University

Continuing Extension Act of 2010 Extends COBRA Subsidy through May 31, 2010

Congress passed the Continuing Extension Act of 2010 (the “Extension Act”) on April 15, 2010, and it was quickly signed into law by President Obama. The Extension Act extends the COBRA subsidy eligibility period to include individuals who are involuntarily terminated on or before May 31, 2010.

In early March, Congress extended the COBRA subsidy eligibility period to March 31, 2010. They did not re-extend the deadline prior to the March 31st expiration. The Extension Act extends eligibility retroactively, so

individuals involuntarily terminated after March 31st but before the Extension Act was passed are now eligible to receive the subsidy. The Extension Act requires employers to notify these former employees regarding eligibility.

The Extension Act continues to allow individuals to receive the subsidy who first lost their health coverage due to a reduction in hours and then were involuntarily terminated. Therefore, an involuntary termination of employment that occurs on or after March 2, 2010 but by May 31, 2010 and follows a qualifying event

of a reduction of hours occurring any time from September 1, 2008 through May 31, 2010 is also a qualifying event for purposes of the ARRA (American Recovery and Reinvestment Act of 2009). The Act did not change the maximum period for receiving the subsidy, which remains at 15 months.

For further information on the Continuing Extension Act of 2010, go to <http://www.dol.gov/ebsa/COBRA.html>. The Department of Labor website has updated model notices, fact sheets, FAQs and a link to the Continuing Extension Act of 2010.

Bonus Payments May Affect Overtime

The Fair Labor Standards Act (FLSA) requires that non-exempt employees be paid one and one-half times their “regular rate” for all hours worked in excess of 40 per week. The regular rate includes payments made to employees that are in addition to their salary or hourly wage, unless such payments are specifically excluded by the law.

The law specifies that the regular rate does not include payments for which no work is performed, such as holiday, vacation, sick pay, jury duty pay and other similar payments. However, certain bonuses and payments may have to be included in computing overtime rates. The determining factor relates to the character of the bonus or payment. Bonuses or payments that are designed to encourage increased effort on the part of employees constitute earnings that must be included in overtime pay

calculations.

If a bonus is clearly a payment for services rendered, or when the employee must be on the payroll in order to receive a future bonus payment, the bonus is employment related and must be included in the “regular rate” for proper overtime pay calculation. Some examples of bonuses or payments that must be included in the non-exempt employee’s regular rate include: attendance; production; length of service; and bonuses promised or contracted. Specific examples include an annual bonus that is provided to employees if the company attains its profit goals for the year. However, if the bonus is calculated using a percent of an employee’s total earnings, overtime payments have already been included/accounted for. Another example of a bonus that must be included in the regular rate

for purposes of overtime calculations is a bonus provided in lieu of a pay increase because the employee is at the top of the pay scale.

On the other hand, a payment that is discretionary, and not given in exchange for services rendered, would fall under the “other similar payment” exclusion and would not be included in any overtime pay calculation. Some examples of bonuses or payments that may be excluded from overtime pay calculations include: gift bonuses; bonuses wholly within the employer’s discretion; and profit sharing bonuses paid pursuant to a profit sharing plan. Employers are advised to use caution; the definition of discretionary is narrow and certain conditions must apply.

For more information on the FLSA overtime regulations and bonuses, visit: http://www.dol.gov/dol/allcfr/Title_29/Part_778/Subpart_C.htm

Nursing Mother Amendment to FLSA

As the dust settles after passage of the newly enacted *Patient Protection and Affordable Care Act of 2010 (PPACA)*, new provisions in the law are coming to light. The *Nursing Mother Amendment* is one of these. This amendment to the Fair Labor Standards Act (FLSA), effective immediately, requires employers covered by the FLSA to provide for *unpaid* breaks to nursing mothers so they can express breast milk. Covered employers with less than 50 employees are exempted from this provision if they can prove that these breaks would impose an “undue hardship” on the employer meaning that it would cause the employer significant difficulty or expense.

Covered employers have two obligations under this amendment:

1. Employers must allow a “reasonable break time” for the employee to express milk for the child during the first year of the child’s life. Although the law gives no guidance as to how many breaks must be given during the day, breaks must be given upon request for such purposes. Authorities regarding this matter report that mothers who have children up to six months of age need to express milk every three hours.
2. Employers must provide a room other than a bathroom. The nursing mother must be shielded from view and be assured of privacy, with no interruptions by other employees or the public.

The FLSA requires employees be paid for breaks or rest periods 20 minutes or less. The *Nursing Mother Amendment* is an exception to this requirement in that the breaks are unpaid. Not paying for these breaks, however, could create problems if frequent paid breaks are provided to employees for other reasons (*smoking breaks*). Since this amendment is to the FLSA, employees who believe their rights have been violated can file their complaints with the USDOL.

IRS Releases Final HIRE Act Affidavit

The Internal Revenue Service (IRS) recently released its final HIRE Act affidavit (Form W-11). Employers can use this form to confirm that newly hired employees are qualified under the HIRE Act. This legislation provides incentives in the form of tax credits to employers that hire the unemployed. One of the major provisions regarding these incentives is granting an employer an exemption for their 6.2% Social Security (FICA) payroll contribution for employees hired after February 3, 2010 and before January 1, 2011. This affidavit can be downloaded at <http://www.irs.gov/pub/irs-pdf/fw11.pdf>. The IRS does not require employers to send in the affidavits, but requests that employers retain the forms with their payroll and income tax records.

Free Handbook Guide for Small Employers

Send an e-mail to jill.schultz@callhrexpert.com and request your copy. The Handbook Guide contains sample policies on over 50 topics!

Virginia Healthcare Salary Survey - 2010 VaSHHRA Salary Survey

The Virginia Society of Healthcare Human Resources Administration (VaSHHRA) collected compensation data on over 130 jobs throughout Virginia in the following job families: Nursing, Pharmacy, Support Services, Clinical Management, Clerical & Administrative, Business/Non-Clinical Management, Allied Health, and Maintenance/Security. Results available in May.

Survey Costs

Member/Participant: \$225
Member/Non-Participant: \$600
Non-Member/Non-Participant: \$700

For information on how to order the survey, contact Terri Stevens, 2010 VaSHHRA Treasurer & Salary Survey Chair at (540) 983-3631 or via email at TEStevens@carilionclinic.org

For information about membership with VaSHHRA, please visit their website at www.vashhra.org