

THE VOICE

13
WINTER
2011

HR|experts

1.888.HREXPRT for an answer today!

Happy New Year!

The start of a new year is a popular time to refresh priorities, establish new goals, and anticipate blessings and opportunities we hope the new year will offer. The HR|Experts program is no exception. In fact, we have a lot of projects scheduled this year that include on-line resource/information pages on a variety of hot topics as well as continuing the monthly E-Alerts, quarterly newsletter, and presentations at local NCMGM chapters. (Note: If you need a speaker/sponsor, contact your Medical Mutual Account Manager or send me an e-mail.)

The very first improvement we are pleased to announce is the re-design of Healthcare HRAnswersNow, the searchable HR database available on the Medical Mutual website (www.medicalmutualgroup.com). The new features and benefits of HRAnswersNow include:

- New tools such as FMLA-ADA Leave Advisor, White Collar Exemption Advisor, Job Descriptions creator, and Performance Review guide
- Daily news articles and email alerts
- Ability to filter news for specific periods like last 7 or 30 days, on or before certain dates, etc.
- Ability to search entire site and all content
- Ability to save user preferences – save searches, create personal folders, set up e-mail alerts, etc.
- Easier search capabilities – by subject, key word, or table of contents
- New user-friendly design

The new features will be available to you in early February. A webinar to describe the changes in detail and to answer your questions will be presented on March 2 at 11am. An E-Alert highlighting the changes and reminding you of the webinar will be sent in February.

Save the Date:
HRAnswersNow Webinar
Wednesday, March 2 at 11am-12pm

As always, thank you for giving me the opportunity to serve you. If you are not receiving this newsletter via e-mail, you're missing valuable information. Send me an e-mail now so we're connected!

Sincerely,

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Red Flag Clarification Act – Signed Into Law

The Red Flag Rules portion of the Fair and Accurate Credit Transaction Act of 2003 (FACTA) has basically been in limbo since FACTA was enacted in 2003. In fact, only a small portion of the Red Flag Rules has gone into effect (on November 1, 2008) that relates to financial credit reports used as part of a background check. The implemented portion of the FACTA Red Flag Rules requires a business to check the identity of an applicant who has an address discrepancy indicated in the background report.

The main point of the Red Flag Rules required “creditors” to develop an anti-identity theft program that would challenge their customers to prove they are who they claim to be. Unfortunately, the wording of the Red Flag Rules was so broad that they included almost any transaction that was not paid immediately at the time of service. As you know, the program was perceived as creating an undue bureaucratic and

financial burden on physician offices.

In response to the many complaints and lawsuits filed in opposition to the bill, the Federal Trade Commission delayed implementation of the law seven times, pushing the current enforcement out to December 31, 2010. Finally, the Red Flag Program Clarification Act of 2010 was signed into law by the President on December 18, 2010.

The law changes the definition of a “creditor” and generally removes physicians from having to comply with the law. The new meaning defines a creditor to mean one that regularly and in the ordinary course of business:

- obtains or uses consumer reports, directly or indirectly, in connection with a credit transaction;
- furnishes information to certain consumer reporting agencies in connection with a credit transaction; or

- advances funds to or on behalf of a person, based on the person’s obligation to repay the funds or on repayment from specific property pledged by or on the person’s behalf.

One unresolved clarification to watch for (as reported by the American Medical Association) as the law is implemented and guidance is developed by the FTC: If a medical professional conducts a credit report on a patient who wishes to negotiate a payment plan for services rendered, the medical practice may still fall under the Red Flags Rule. We’ll await guidance from the FTC.

As of the publication date of this article, the Federal Trade Commission is revising its website to reflect the changes in the law - <http://tiny.cc/upfwg>. A great source of information continues to be the American Medical Association - <http://tiny.cc/lvcyp>.

FAQs – *Specific state laws are noted where applicable*

Q: Do I get paid while on jury duty?

A: The Fair Labor Standards Act (FLSA) does not require payment for time not worked, including jury duty. This type of benefit is generally a matter of agreement between an employer and an employee.

Q: What notices must be given before an employee is terminated or laid off?

A: The Fair Labor Standards Act (FLSA) has no requirements for notice to an employee prior to termination or lay-off. In certain cases, employers must give the workers advanced notice of mass layoffs or plant closure. The Warn Act provides specific information on advance notice, employer responsibility and workers rights during mass layoffs or plant closure (applies to employers with 100 or more employees).

Georgia law does require that the employee be furnished a separation notice that contains detailed reasons for the employee’s separation (Form DOL 800). If the employee is not available on the last day of their employment, the employer must mail the employee a copy of Form DOL-800 within three (3) days of the last day of work.

Q: Must an Employer Notify Employees of a Wage Reduction?

A: Reductions in pay are not regulated by the Fair Labor Standards Act (FLSA) provided minimum wage regulations are followed.

Georgia does not have any laws addressing when or how an employer may reduce an employees wages or whether an employer must provide employees notice prior to instituting a wage reduction. However, a wage reduction can only be applied to hours worked after the change and cannot be applied to hours already worked.

North Carolina law requires an employer to give an employee 24-hours notice of any reduction in the employee’s wage rate.

Virginia law requires an employer to advise an employee of any change to his or her wage rate before the hours are worked.

GINA: A Closer Look

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Additionally, Title II prohibits employers from requesting, requiring, or purchasing genetic information (with limited exceptions) and prohibits employers from disclosing genetic information (with limited exceptions).

GINA applies to employers that employ 15 or more employees for each working day in each of the 20 or more calendar weeks in the current or preceding calendar year. Employee includes applicant or former employee. Title II regulations became effective January 10, 2011.

What is genetic information?

- Individual's genetic tests
- Family member's genetic tests (including adopted family member)
- Manifestation of disease or disorder of family member (family member's medical history)
- Receipt of genetic services (including genetic education)

Genetic information does not include individual's health history, current diagnosis, age or gender.

What is a genetic test?

- Test to determine whether an individual has the genetic variants associated with a predisposition to breast cancer (the BRCA1 or BRCA2 gene)
- Test for a genetic variant for Huntington's Disease
- Carrier screenings of adults using genetic analysis to determine the risk of conditions such as cystic fibrosis, sickle cell anemia, spinal muscular atrophy, or fragile X syndrome in future offspring

Under GINA, it is unlawful to request, require or purchase genetic information of an individual or family

member. "Request" includes conduct likely to result in obtaining genetic information:

- Conducting Internet search
- Active listening to conversations of others
- Making requests for information about an individual's current health status

What should an employer do to comply with GINA when lawfully requesting health-related information from an employee?

Although the proposed rule said that the acquisition of genetic information as the result of an inquiry about an individual's current health status would be considered inadvertent if the request was lawful, the final rule says that when an employer makes a request for health-related information (e.g., to support an employee's request for reasonable accommodation under the ADA, post-offer medical exam, or a request for sick leave), it should warn the employee and/or health care provider from whom it requested the information not to provide genetic information. The warning may be in writing or oral (if the employer typically does not make such requests in writing).

Employers are encouraged to use the EEOC's "Safe Harbor Language" as an addendum to all legal requests for medical information. The "Safe Harbor Language" can be found on the EEOC's website (see bullet point #17): <http://tinyurl.com/237xw7g> By providing this type of warning, any resulting acquisition of genetic information will be considered inadvertent, and therefore not in violation of GINA.

Title II Employer Action Items

- Add genetic information to your non-discrimination statement
- Train managers/supervisors – especially regarding lawful/unlawful "requests" for "family medical information"
- Post new EEOC poster - <http://www1.eeoc.gov/employers/poster.cfm>

- Store genetic information confidentially in separate files
- Watch for:
 - o Post-offer medical questionnaires – doctors' forms
 - o FMLA certification – "clarifications"
 - o ADA certifications
 - o Workers' compensation records (GINA does not limit or expand workers' comp laws)
- Use "Safe Harbor Language"

For additional information about the EEOC, go to www.eeoc.gov.

FMLA and Workers' Compensation

When an employee's workers' compensation injury meets the definition of a serious health condition under the Family and Medical Leave Act (FMLA) and the employee is eligible for FMLA, employers should run the FMLA concurrently with the workers' compensation. Although FMLA has a provision allowing for retroactive designation if there is no harm to the employee, it is preferable to designate FMLA and follow proper employer notice requirements (see <http://tinyurl.com/2g5z2fl>) when the employee is eligible. It avoids having to address FMLA notice or retroactive designation after the employee has been out for a long period of time and may have retained an attorney.

Although your FMLA policy may require employees to exhaust paid leave time before going on unpaid leave, you cannot require this where workers' compensation and FMLA run concurrently. The FMLA regulations state that the employer may agree to an employee's request to supplement workers' compensation pay if the state's laws permit it. If you have questions regarding this issue, give HR|Experts a call.



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HIRE Act Not Extended

Despite several bills proposed to extend the HIRE Act, the tax credits for employers under this Act end with the hire of qualified employees on December 31, 2010. The credits were created as an incentive to small business to stimulate hiring.

Employers may still claim the employer's portion of the social security tax credit for qualified employees hired by December 31, 2010, and the \$1,000 credit for those qualified employees who are retained for 52 weeks. Qualified employees are those who have worked less than 40 hours in the 60 days prior to employment and are hired for a new position or to replace an employee who separated voluntarily or was terminated for cause.

Retention credits are handled as a credit on the employer's tax return and will continue into 2011 for qualified employees hired in the previous year. For more information on filing for the credits, contact your Accountant or visit <http://bit.ly/hire-act>.

Upcoming Training

Advanced FMLA: The New Regulations and Other Leaves of Absence

- April 7 in Greensboro
- July 19 in Raleigh

Managing Problem Performance

- March 9 in Raleigh
- June 22 in Greensboro

Critical Considerations When Performing Background Checks

- February 16 in Greensboro
- March 15 in Raleigh

View more training dates/programs and register/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.

Quarterly Quote

“A house divided against itself cannot stand.” –Abraham Lincoln