THE VOICE

26
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FEDERAL

Must-Reads for Every Practice

New Publications Issued by EEOC on Religious Dress and Grooming in the Workplace

The US Equal Employment Opportunity Commission (EEOC) recently issued two new technical assistance publications addressing workplace rights and responsibilities with respect to religious dress and grooming under Title VII of the Civil Rights Act of 1964.

The guide, entitled "Religious Garb and Grooming in the Workplace: Rights and Responsibilities," and an accompanying fact sheet, provide a user-friendly discussion of the applicable law, practical advice for employers and employees, and several case examples based on past EEOC litigation.

Employers covered by Title VII must make "dress code" accommodations to permit applicants and employees to follow religiously-mandated dress and grooming practices unless it would pose an undue hardship to the operation of an employer's business. When an exception is made as a religious accommodation, the employer may still refuse to allow exceptions sought by other employees for secular reasons.

Topics covered in the publications include:

- prohibitions on job segregation, such as assigning an employee to a non-customer service position because of his or her religious garb;
- accommodating religious grooming or garb practices while ensuring employer workplace needs;
- avoiding workplace harassment based on religion, which may occur when an employee is required or coerced to forgo religious dress or grooming practices as a condition of employment; and
- ensuring there is no retaliation against employees who request religious accommodation.

Religious discrimination charges relating to a wide range of issues have steadily increased. In fiscal year 2013, the EEOC received 3,721 charges alleging religious discrimination.

Further information about the EEOC is available at its website at www.eeoc.gov.

In This Issue:

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Phone calls and messages will be responded to 8am-5pm Monday-Friday.

Workers Cite Flexible Schedules, Leaving Early on Fridays as Most Prized Summer Benefits — Survey Results

As temperatures heat up, professionals are looking forward to fun in the sun, a new OfficeTeam survey suggests. Flexible schedules (41 percent) and leaving work early on Fridays (28 percent) are the most coveted summer benefits, according to employees polled. The results mirror those from a similar survey of workers conducted in 2009. The study also shows employers may be warming up to these perks: Three out of four (75 percent) human resources (HR) managers interviewed said their company offers flexible schedules during the summer, and more than six in 10 (63 percent) noted that workers are allowed to leave early on Fridays.

The joint surveys of workers and HR managers were developed by OfficeTeam, a leading staffing service specializing in the placement of highly skilled administrative professionals, and conducted by an independent research firm. The survey of workers includes responses from 449 working adults 18 years of age or older and employed in office environments. The manager survey includes interviews with 515 HR managers at companies with 20 or more employees.

If you would like to know the workers responses to "Which of the following summer benefits would you most like to have?" Please feel free to send a request for the entire article to suzanne.allen@callhrexperts.com and see how they responded!

Timing Key when Responding to FMLA Requests

Issue: *One of your employees has requested leave under the Family Medical Leave Act (FMLA). How quickly do employers have to respond to requests for FMLA leave?*

Answer: According to the U.S. Department of Labor (DOL), an employer must determine, by the time the leave would start, whether the employee who made the request is eligible for FMLA leave — that is, whether she has worked for the employer for at least 1,250 hours in the past 12 months.

Once the employer has received notice from the employee requesting the leave, the DOL rules require that the employer advise the employee of his or her eligibility for FMLA leave within five business days, absent extenuating circumstances. Note that, prior to January of 2008; employers had only two days to respond to an employee's FMLA request.

The eligibility notice must state whether the employee is eligible for FMLA leave. If the employee isn't, the notice must state at least one reason why the employee is ineligible. A rights and responsibilities notice must be provided at the same time as an eligibility notice. This notice must detail the specific expectations and obligations imposed upon the employee and any consequences for failure to meet those expectations and obligations. The employer must also notify the employee whether the requested leave will be designated and counted as FMLA leave.

Impact: If an employer fails to follow the notice requirements, the employer may be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses, and for equitable relief, including employment, reinstatement, promotion, or any other relief that is tailored to the harm suffered by the employee.

For more information regarding FMLA or other forms of Leave of Absence (LOA), please contact Suzanne Allen at suzanne.allen@callhrexperts.com or 1-888-HREXPRT.

May an Employer Request a Doctor's Note when an Employee with Diabetes Requests a Reasonable Accommodation?

Issue: *Joey told you that he's been diagnosed with diabetes and asked for one week of unpaid leave so he can attend a class to learn how to manage his recently diagnosed condition. Can you ask for a doctor's note in support of his request for unpaid leave without violating the Americans with Disabilities Act (ADA)?*

Answer: Yes. An employer may request reasonable documentation where a disability or the need for reasonable accommodation is not known or obvious. However, the employer is entitled only to documentation sufficient to establish that the employee has diabetes and to explain why an accommodation is needed. A request for the employee's entire medical record, for example, would be inappropriate as it likely would include information about conditions other than the employee's diabetes.

In this instance, a note from Joey's doctor would be sufficient to show that he has a disability and needs the requested reasonable accommodation. If Joey makes a subsequent accommodation request related to his diabetes (for example, he asks for a shift change) and the need for accommodation is not obvious, you (as his employer) may ask for documentation explaining why the new accommodation is needed but may not ask for documentation concerning his diabetes diagnosis.

Source: EEOC Guidance: "Questions and Answers about Diabetes in the Workplace and the Americans with Disabilities Act," http://www.eeoc.gov/laws/types/diabetes.cfm ; reported in Accommodating Disabilities Business Management Guide ¶140,325.

Unemployment Insurance Law Amended

Georgia has amended its Employment Security Law as follows:

Benefit charging. Absent good cause, where an employer, or an officer or agent of an employer, violates the provision that requires a timely and adequate response to a notice of a claim filing or a written request by the Department for information relating to a claim, the employer's account may be charged for overpayment of benefits paid due to such violation. The account may be charged even if the determination is later reversed. However, upon a finding of three such violations within a calendar year, an employer will not be relieved of such charges unless good cause is shown. Benefits paid to individuals are charged against the trust fund when benefits are paid but not charged to an employer's account (Ga. ¶4396).

Duration of benefits. The maximum benefit amount payable to an individual in a benefit year will be the lesser of (1) 14 times the weekly benefit amount, if the state's average unemployment rate is at or below 6.5%, with an additional weekly benefit amount added for each 0.5% increment in the state's average unemployment rate above 6.5% up to a maximum of 20 times the weekly benefit amount if the state's average unemployment rate equals or exceeds 9%; or (2) 1/4 of the individual's base period wages.

In addition, and subsequent to payment of all benefits otherwise allowed in the above paragraph, whenever the average rate of total unemployment in the state, seasonally adjusted, as determined by the U.S. Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 11%, weekly unemployment compensation is payable to any individual who is unemployed, has exhausted all rights to regular unemployment compensation and is enrolled and making satisfactory progress, as determined by the Commissioner, in a training program approved by the Department, or in a job training program authorized under the Workforce Investment Act of 1998, and not receiving similar stipends or other training allowances for non-training costs. The amount of unemployment compensation payable to such an individual is equal to their weekly benefit amount for their most recent benefit year less deductible earnings, if any. The total amount of unemployment compensation payable will be equal to at least 14 times an individual's weekly benefit amount for the most recent benefit year, if the state's average unemployment rate is at or below 6.5%, with an additional weekly amount added for each 0.5% increment in the state's average unemployment rate above 6.5% up to a maximum of 20 times the weekly benefit amount if the state's average unemployment rate equals or exceeds 9% (Ga. ¶4434).

More Mandated Health Benefits Laws on the Way....

The state of Virginia has seemed to have picked up the pace in enacting mandated health benefits laws. The state has enacted a law requiring any health insurer, corporation providing group accident and sickness subscription contracts, or HMO that applies a formulary to prescription drug benefits provided under its policy, contract, or plan to provide prior written notice to each insured of a formulary modification that results in the movement of the drug to a tier with a higher cost (Ch. 272 (H. 308) and Ch. 297 (S. 201), L. 2014).

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Welcome to your Summer 2014 Voice newsletter. The Voice provides a quarterly update on external regulations at the state and federal level that affect your practice along with with timely advice on ways to respond. It is provided as a benefit to Medical Mutual members. The Voice is written by Suzanne B. Allen, HR Advisor. You can reach Suzanne at suzanne.allen@callhrexperts.com or 1-800-HREXPRT.

NORTH CAROLINA

Employee Choice Transition Delayed in 18 States with a Federally-Facilitated SHOP

Small businesses in 18 states will have to wait until 2016 to participate in the employee choice in the small business health options program (SHOP), as only 14 states with federally-facilitated SHOPs will have employee choice available to small businesses in 2015, which was the original timeline. "Employee choice" allows small business employers to give employees the ability to choose any health plan at the "metal" tier the employer chooses—bronze, silver, gold, or platinum.

Due to the importance of allowing for flexibility in this transition, state insurance commissioners, however, were given a chance to request a waiver in implementation of the employee choice program until 2016 if the commissioner felt "that not implementing employee choice would be in the best interest of a small group market consumers in his or her state," i.e., if it would cause plans to be priced higher in 2015 in response to the threat of adverse selection. By 2016, it is thought that those commissioners can learn from the experiences of those that went forward with employee choice in 2015. *North Carolina is one of those states that granted a waiver from the employee choice requirement for 2015.*