# THE VOICE

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## Must-Reads for All

### President Obama Directs Labor Department to Update Exemption Regulations

President Obama recently signed a presidential memorandum instructing the Secretary of Labor to update regulations regarding overtime protections and the exemption regulations. The President's directive (if enacted) would lead to the changing of employers' wage and hour obligations as spelled out in the Fair Labor Standards Act (FLSA) to make overtime compensation available to a wider group of employees who are currently considered "exempt" from the federal law's overtime requirements.

The overtime and minimum wage rules are set in the FLSA, originally passed by Congress in 1938, and apply broadly to workers. However, there are some exemptions to these rules that the US Department of Labor (DOL) has the authority to define through regulation. The most commonly used exemptions are for executive, administrative and professional employees – the so-called "white collar" exemptions.

In general, workers who are paid hourly wages or who earn below a certain salary threshold are generally protected by overtime regulations, while those above the salary threshold who perform executive, professional or administrative duties are not.

The new rules (if enacted) are expected to extend the availability of overtime compensation for hours worked over 40 in a workweek to managers working at fast-food restaurants, loan officers, and other workers who are currently classified as "executive" (managerial). The change, if implemented, could affect millions of workers.

### Military Leaves - 401(k) Protections

The Uniformed Services Employment and Reemployment Rights Act (USERRA) provides job and benefit protections to returning service personnel who have been on military leaves of absence, including their company-sponsored 401(k) plans.

USERRA requires that the time spent on military leave be counted as covered service with the company for eligibility, vesting and accrual purposes. Returning service personnel should be treated as if they had been employed regardless of the type of retirement plan provided by the employer.

Although there is no requirement for an employer to make contributions to a

In This Issue:




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# MUST-READs *(cont.)*

service member's 401(k) while on military leave, the employer is required to make contributions to the plan that would have been made if the service member had been continuously employed upon return from leave. Returning employees from military leave are given an extended period of time to repay employee contributions to the plan (three times the period of military service with a maximum of five years).

For additional information regarding benefit protections for returning service personnel, consult your plan administrator and/or go to http://bit.ly/ML-R.

## Employers Will Continue Sponsoring Health Benefits, but Deliver Those Benefits in New Ways

New research from Aon Hewitt, the global talent, retirement and health business of Aon plc (NYSE: AON), shows that the majority of employers plan to continue sponsoring health benefits for active employees and retirees, but will change the way those benefits are managed and delivered in the coming years.

According to Aon Hewitt's soon-to-be-released Health Care Survey of more than 1,230 employers covering more than 10 million employees, 95 percent of employers say they plan to continue providing health care benefits to active employees in the next three-to-five years. However, a growing number plan to move away from their traditional "managed trend" approach, which includes aggressively managing costs through vendor management and employee cost sharing.

Almost 40 percent of organizations expect to migrate toward a "house money/house rules" approach, which requires employees to take a more active role in their health by offering them a few plan options, plus initiatives designed to improve health and reduce costs. Thirty-three percent said offering group-based health benefits to active employees through a private health exchange will be their preferred approach in the next three-to-five years.




## Wrongful Termination in Georgia

In the state of Georgia, employment is presumed to be "at-will" when no contract exists between the employer and employee. At-will employment arrangements allow either the employer or employee to terminate the work relationship at any given time. The termination may be done for any stated reason, so long as law does not prohibit the reason. Because each party has so much discretion when terminating the relationship, at-will employment in Georgia can make wrongful termination suits very complicated.

**Discrimination as Grounds or Wrongful Termination**

Due to Georgia's status as an at-will employment state, most wrongful termination claims are based on some sort of violation of law. The most common basis for a wrongful termination lawsuit in Georgia is illegal discrimination.

For example, it is illegal for an employer to fire a worker simply because of a physical characteristic. Workers cannot be fired because they are of a certain nationality, race, religion, sex etc. Other examples of illegal termination include terminating the worker to avoid paying benefits or disability pay, or firing a worker for taking pregnancy leave.

**Employment Contracts**

On the other hand, employment contracts *are* allowed in Georgia. Violations of an employment contract can also lead to a wrongful termination or wrongful discharge claim. For example, if the contract clearly indicates a certain date for termination, and the employer terminates the worker before the date without good reason, this could be considered wrongful termination.

Wrongful termination can also be based on an implied contract, such as when an employee reasonably relies on termination policies presented in an employee handbook or procedures the employer implemented while firing other workers within the company. Although no formal contract exists, the fired employee can sometimes recover under a "quantum merit" theory, wherein the worker receives compensation for their services rendered.

**Public Policy Violations**

Finally, in the state of Georgia, it is possible to file a wrongful termination claim if the termination violates public policy. Public policy violations include firing a worker who has reported misconduct, or firing a worker because they missed work to take jury duty.

**Remedies for Wrongful Termination**

The state of Georgia allows a number of remedies for victims of wrongful termination. Some of these include reinstatement to the former job position, entitlement to back pay, and injunctive remedies (such as requiring the employer to enforce new termination policies).


## North Carolina Research Shows Companies that Screen Social Media Accounts Alienate Job Candidates

Research from North Carolina State University shows companies that screen the social media accounts of job applicants alienate potential employees — making it harder for them to attract top job candidates. In some cases, social media screening even increases the likelihood that job candidates may take legal action against the offending company. "The recruiting and selection process is your first indication of how you'll be treated by a prospective employer," says Will Stoughton, a Ph.D. student at NC State and lead author of a paper describing the research. "If elite job prospects feel their privacy has been compromised, it puts the hiring company at a competitive disadvantage."

The researchers did two studies, which returned similar results. In the first study, 175 participants who had applied for a job online were told that their Facebook accounts had been reviewed for "professionalism," and that a decision on whether they'd been hired was forthcoming. Of the 175 participants, two-thirds reported finding the prospective employer less attractive because they felt the Facebook screening was an invasion of privacy that reflected poorly on the company.

For a copy of the complete article, please contact HR|experts at suzanne.allen@callhrexperts.com


## Contribution Rates - Virginia Unemployment Insurance

For 2014, the fund balance factor is 50%. There is also a pool cost charge of 0.22% and a fund building charge of 0.20%. For 2014, rates range from 0.52% to 6.62%, including the pool cost and the fund building charges. The new employer rate is 2.92%. In 2014, foreign contractors and delinquent and nonrated employers pay 6.62% (VEC Communication, Va. ¶1120).

## Virginia Governor Signs Executive Order Prohibiting Discrimination Based on Sexual Orientation or Gender

Virginia Governor Terry McAuliffe has signed Executive Order No. 1 (2014), which specifically prohibits discrimination based on race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, or against otherwise qualified persons with disabilities in state government. Governor McAuliffe signed the executive order immediately following his inauguration on January 11, 2014.

State appointing authorities and other management principals must take affirmative measures, as determined by the Director of the Department of Human Resource Management, to emphasize the recruitment of qualified minorities, women, disabled persons, and older Virginians to serve at all levels of state government. This directive does not permit or require the lowering of bona fide job requirements, performance standards, or qualifications to give preference to any state employee or applicant for state employment.

"My administration is committed to keeping Virginia open and welcoming to all who call our Commonwealth home," the governor said. "Executive Order Number 1 sets the tone for an administration that will not accept discrimination in any form, and one that will work tirelessly to ensure all Virginians have equal opportunity in the workplace, no matter their backgrounds, race, religion, or whom they love."

Executive Order No. 1, which is now in effect, supersedes and rescinds Executive Order No. 6 (2010), Equal Opportunity, issued by Governor Robert F. McDonnell on February 5, 2010.

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# 2014 Employment and Labor Law Update

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