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North Dakota
EMPLOYMENT LAW LETTER

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What's Inside

What's Online

Podcast
Keurig brews engagement via volunteerism, source trips
ow.ly/TsJu30fDcS8

Strategic HR
"Power of positive": new HR method from sports coaches
ow.ly/kJHP30fBnsg

FLSA
3 tips for employers to ward off FLSA off-the-clock claims
bit.ly/2gHeebc

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HOSTILE WORK ENVIRONMENT

Seeing eye to eye: 8th Circuit affirms dismissal of sex, age claims

by Vanessa Lystad

An essential element of any discrimination claim is a showing by the employee that she suffered an "adverse employment action" based on a class or characteristic protected under state or federal law. And although an employee who resigns from her job may still be able to bring a discrimination claim against her former employer, she bears the substantial burden of showing that her working conditions were so intolerable that she had no choice but to quit—in other words, that she was "constructively discharged." A necessary precursor to such a claim requires that the employee give her employer an opportunity to correct the discrimination before she resigns.

A hostile work environment claim requires an employee to show that she was subjected to unwelcome harassment based on a protected class during her employment. Hostile work environment claims are distinct from disparate treatment claims, but they're similar to discrimination claims involving constructive discharge in that the employee must show she provided some notice to her employer that the harassment was unwelcome.

Recently, the U.S. 8th Circuit Court of Appeals (whose rulings apply to all employers in North Dakota) affirmed a district court's dismissal of a longtime employee's sex and age discrimination and hostile work environment claims. In doing so, the 8th Circuit reiterated the requirement that an employee must have notified her employer of the alleged discrimination before she resigned to show constructive discharge, and she must have voiced disapproval of the alleged harassment to establish a hostile work environment claim.

Employee's long history with employer

Bobbette Blake had a 40-year history with her former employer, MJ Optical, and its owners, the Hagge family. In the early 1970s, Blake began working as a bench technician for a company called Shamrock, fitting eyeglass lenses into frames. Shamrock was owned by Michael Hagge, who would occasionally bring his then-adolescent son, Marty, into the office to assist around the shop. At some point, the Hagges went from owning Shamrock to owning MJ Optical, and Blake followed them there.

Marty eventually became vice president of MJ Optical. Although he wasn't Blake's direct supervisor, he essentially supervised the entire shop and interacted with her every day. Blake referred to her relationship with him as purely an "employee-employer" relationship, but it did sometimes extend outside work. For example, Blake was invited to—and attended—Marty's daughter's wedding; Marty enrolled in college classes with Blake's grandson

AGENCY ACTION

Premium processing of some H-1B applicants resumes. The U.S. Citizenship and Immigration Services (USCIS) announced in September 2017 that it had resumed premium processing for all H-1B visa petitions subject to the fiscal year (FY) 2018 cap. That cap has been set at 65,000 visas. Premium processing also has resumed for the annual 20,000 additional petitions that are set aside to hire workers with a U.S. master's degree or higher educational degrees. When a petitioner requests the agency's premium processing service, USCIS guarantees a 15-day processing time. If that deadline isn't met, the agency will refund the petitioner's premium processing service fee and continue with expedited processing of the application. The service is available only for pending petitions, not new submissions, since USCIS received enough petitions in April to meet the 2018 cap.

USCIS no longer accepting petitions for one-time increase to H-2B program. The one-time increase in the number of H-2B visas being accepted has ended, USCIS announced in September. In May, Congress delegated its authority to the secretary of homeland security to increase the number of temporary nonagricultural work visas available to U.S. employers through FY 2017. It was determined that there weren't enough qualified and willing U.S. workers available to perform temporary nonagricultural labor to satisfy the needs of some American businesses during FY 2017. Consequently, additional H-2B visas were made available to businesses that could establish that they would likely suffer irreparable harm if they couldn't hire all the H-2B workers requested in their FY 2017 petitions. An additional 15,000 visas were made available under a final rule published in July. Following guidance included in that rule, USCIS has stopped accepting petitions and is rejecting any FY 2017 H-2B cap-subject petitions received after September 15, USCIS said.

DOL awards nearly $1.5 million for women in nontraditional occupations. The U.S. Department of Labor (DOL) announced on September 21 that it had awarded $1,492,095 to support the recruitment, training, and retention of women in skilled occupations. The Women in Apprenticeship and Nontraditional Occupations grant program funds community-based organizations that provide employers and labor unions with one or more of the following types of technical assistance: preapprenticeship or nontraditional skills training programs; ongoing orientations for employers, unions, and workers on creating a successful environment for women to succeed in these careers; and support groups and facilitating networks for women to improve their retention. ✤

and helped him with the course work; and Marty lent Blake's church a hog cooker.

More than a 'love pat'

Blake admitted that she had a "good" relationship with Marty for most of her employment, but things allegedly started to change when her husband died in 1999. Marty and other MJ Optical employees attended the funeral, where Marty "grabbed her fanny," according to Blake. She asked him, "What was that all about?" and he responded, "I thought you needed it."

Blake contended that Marty's conduct didn't end with the incident at her husband's funeral. Rather, he occasionally touched her buttocks at various times during the workday. She said he "would either smack it really hard or grab [the] whole cheek of [her] butt." To her, "it was no love pat." He also began to tell her that she "needed to find a man," which she took to mean that "if [she] had sex with a man, . . . it would make [her] happy." Marty saw his behavior simply as an attempt to make Blake happy and lighten her mood a bit.

Blake recalled one exchange that occurred while she was standing by Marty's desk. He commented on her breasts, saying, "You'd better watch those things because they're going to poke my eyes out" and asking "whether her nipples were the size of nick[el]s or quarters." She said she turned red from embarrassment and "went home and bought padded underclothes."

Blake claimed that she flashed a "dirty look" at Marty at least once, but she never lodged a complaint with him or anyone else at MJ Optical. According to her, it "wouldn't have done any good." Moreover, she admitted that she would platonically touch him "between his shoulders" and joke around with him occasionally. Sometimes, they would even exchange "I love yous." When she was asked during the lawsuit whether she thought Marty treated her differently because of her gender, she responded "no."

Age-related comments?

Blake was born in 1949 and was in her 50s and 60s when the alleged conduct occurred. Although she was the oldest employee in the finishing department, she wasn't the oldest employee in the office. She claimed that Marty made age-related comments to her as well. For instance, he would say in the presence of other MJ Optical employees that he "only kept her around to 'watch her die.'" She believed his comments were occasionally prompted by her asking him why he kept her around and were "sometimes" meant as a joke.

Marty also told Blake that her "hands [weren't] any good anymore" when they talked about fitting lenses. The only time she felt he treated her differently because of her age was when he said she was "too old" to carry stacks of trays. She said that limitation was "unwarranted," but it "didn't matter" to her. She didn't inform Marty or anyone else that she didn't find his comments funny, and she didn't complain about his behavior.

Enough is enough

On May 9, 2013, Blake noticed a problem with a large number of frames and reported the issue to Mary Hagge, the president of MJ Optical and Marty's mother. Mary tasked Marty with fixing the problem. He believed the issue was occurring at the mounting area, where Blake tended to work, so he asked her to temporarily refrain from doing the mounting work. She performed other tasks during this time and didn't consider the short-term reassignment a negative employment action.

Blake returned to the mounting area after approximately two or three days when she saw it was unoccupied. Marty became angry and told her to move. "Shaking and crying" after the encounter, Blake approached Mary about Marty's outburst, but she didn't raise any other complaints about him or allege that he mistreated her because of her sex or age. Mary said she would talk to Marty about his outburst and instructed Blake to "go home and plant flowers." Blake took the afternoon off, with pay, and did just that.

Rather than returning to work the next day, Blake resigned from MJ Optical by leaving a voice mail for Mary in which she indicated that she was afraid of Marty's temper but expressed gratitude to Mary for being a good boss. Eventually, she sued MJ Optical in federal court for sex and age discrimination in violation of Title VII of the Civil Rights Act of 1964 and the Nebraska Fair Employment Practices Act (which is similar to the North Dakota Human Rights Act).

District court and court of appeals see eye to eye

In examining the facts of this case, the district court noted that Marty's behavior was "without a doubt disgusting," but Blake nonetheless couldn't establish a claim of sex or age discrimination. The court therefore granted judgment in the employer's favor and dismissed the case. Blake appealed to the 8th Circuit, which affirmed the district court's decision.

With respect to Blake's claim of sex discrimination, the court noted that the key issue was whether she suffered any adverse employment action. Blake didn't claim that she was fired, asked to resign, or subjected to any demotion, pay cut, or transfer to an undesirable position. Instead, she claimed she suffered an adverse employment action because she was constructively discharged from her job.

The court explained that to establish constructive discharge, an employee must show "the employer deliberately caused intolerable working conditions with the intention of forcing her to quit." However, Blake failed to carry her "substantial" burden for establishing constructive discharge because she quit "without giving [her] employer a reasonable chance to work out a problem." The only time she complained about Marty was the day before she quit, and her complaint involved behavior unrelated to her sex. In her single report to Mary, she didn't seek any resolution to her problems with Marty, and therefore, she didn't giver her employer a "reasonable chance" to fix any issues.

Blake attempted to salvage her sex discrimination claim by asserting that it would have been "futile" to complain about Marty. The court rejected her proposed "futility exception" because an employee's obligation to be reasonable includes an obligation "not to assume the worst, and to not jump to conclusions too fast." Because she couldn't establish that she was constructively discharged under the facts of her case, she couldn't establish that she suffered an adverse employment action. Her age discrimination claim failed on the same grounds.

Blake also claimed she was subjected to a hostile work environment at MJ Optical. The court again focused on only one element of her claim, this time whether Marty's conduct constituted "unwelcome harassment." Although the court noted her hostile work environment claim was distinct from her discrimination claims, it highlighted the same facts in finding that neither claim could succeed.

In particular, the court held that because Blake never complained that the alleged harassment was unwelcome, she couldn't establish a hostile work environment claim. Other than one "dirty look," she failed to give any indication to Marty or anyone else at MJ Optical that she felt discriminated against. Her later administrative charge was simply "too little, too late."

Employer takeaways

This case highlights the difficulty an employee will have in establishing constructive discharge if she fails to put her employer on notice of potential discrimination. It also illustrates that to support a hostile work environment claim, an employee must have opposed—likely verbally—any potentially harassing unwelcome behavior. The lack of those two elements was fatal to Blake's claims.

The employer prevailed in this case, but that isn't to say the type of conduct its manager allegedly engaged in should be condoned. If you know about potentially discriminatory or harassing conduct—whether your knowledge comes from an employee or a third party or from directly observing the misbehavior—you must promptly take affirmative steps to address it. Otherwise, what might start out as a "love pat" between employees could transform into a discrimination or harassment lawsuit, exposing your organization to liability.

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FAMILY AND MEDICAL LEAVE

Don't fall prey to these misguided FMLA practices

The Family and Medical Leave Act (FMLA) has long had a reputation as one of the most maddening laws for HR professionals to administer. Yet even now, nearly 25 years after it was enacted, relatively few employers give it the conscious thought and planning that's necessary to develop a strong process and avoid missteps that could lead to a lawsuit. Which may explain why FMLA lawsuits continue to be common despite the ample attention devoted to FMLA compliance in HR publications, seminars, and other educational materials.

While the violations alleged in those lawsuits are too numerous to list, five stand out above the rest as having been the most highly litigated or receiving the most attention from the federal regulatory agencies.

Calling leave 'FMLA leave' when it's not

We get it, sometimes when an employee is taking leave for a medical reason, it's easier just to call it FMLA leave as shorthand. But unless the leave actually qualifies for FMLA protection, don't call it that. Why? Because you may be obligating yourself to comply with the law when you aren't required to. This can happen, for example, to employers that aren't covered by the FMLA because they have fewer than 50 employees or in situations in which the employee doesn't qualify for FMLA leave. If you call it FMLA leave and then fail to follow through on any of the law's requirements, there's a good chance a court will hold you liable for it.

Not documenting performance issues

Performance management may not seem like an FMLA problem, but it's a story we've seen unfold time and again. You have an employee who's notoriously difficult. Let's say she blames others for her mistakes or has a really bad temper or attendance problems. Frequently, this type of employee is uncharacteristically knowledgeable about the ins and outs of various employment laws. Pair her with a supervisor who's reluctant to address the problem behavior—either because he is too nice or is intimidated at the thought of being sued—and the situation will fester until you are ready to do something about it.

And that is when the employee goes out on FMLA leave. And now you are really in a tight spot. Because if you discipline the employee now, it will look like you are retaliating against her for requesting FMLA leave rather than disciplining her for the genuine performance problems you have been letting slide.

The moral? Don't let problem behaviors go unaddressed, especially out of the misguided belief that you are protecting your company from a lawsuit by doing so. Usually, the longer you accept such behavior, the more problems you create for yourself in the long run.

Failing to consider leave as ADA accommodation

One of the most difficult issues HR professionals face is what to do when an employee has exhausted his FMLA leave and still can't return to work. The first thing to ask in this situation is whether the employee is on leave for his own medical problem or for some other reason. If he is on leave for his own condition, you need to consider offering him additional time off as a reasonable accommodation of a disability under the Americans with Disabilities Act (ADA).

This is a tricky situation involving questions such as whether the employee is disabled (and how to determine that), whether additional leave will allow him to return to work and perform the essential functions of his job, and whether the additional leave is reasonable or would create an undue hardship for the employer. This can be further complicated by varying interpretations of the ADA and whether the Act encompasses leave requirements in different jurisdictions. In this type of situation, it's nearly always best to consult your employment attorney on how to proceed.

FMLA lawsuits continue to be common despite the ample attention devoted to FMLA compliance.

Failure to designate FMLA in timely manner

Another common problem is when an employee has already missed several weeks or months before anyone thinks about offering her FMLA leave. More often than not, the employee doesn't request FMLA, and the supervisor doesn't think to suggest it. Also common is a simple misunderstanding on the part of the employer as to when it's necessary to start the FMLA process. (Some don't start thinking about it until it's a sufficiently "serious" leave of a few weeks or more.)

The problem with this approach is that you can't count those absences as FMLA leave unless you have told the employee that's what you're doing by issuing her a designation notice. And designating absences as FMLA leave retroactively is tricky at best. Consider asking the employee to agree in writing to a retroactive designation of leave. In general, your rule of thumb should be to do this only to the extent necessary to protect the employee, not harm her.

Lack of supervisor training/ employee education

At a minimum, three of the above four problems can be reduced with adequate supervisor training on how to recognize and talk about possible FMLA leave situations. It follows that educating your supervisors is one of the best steps you can take to prevent FMLA lawsuits.

Final word

Take some time to candidly assess your FMLA practices and how you can prevent the above problems. By shoring up your processes now, you can greatly reduce your risk of an FMLA lawsuit in your future. ✤

PAID LEAVE

As paid leave laws become more common, challenges increase

Much has been made in recent years about the fact that leave laws in the United States suffer dramatically in comparison to every other industrialized nation. Many companies, large and small, have responded by adopting paid leave policies on their own. But beyond that, there is an increasing effort at the state and even city and county levels to require employers doing business within their borders to offer varying types of paid leave to their employees.

While most of the laws that have taken effect so far are in solidly "blue" states, employers all over the country need to be paying attention if they fall into any of the following categories:

- *They have employees in any of the cities, counties, or states that have enacted a paid leave requirement;*
- *They are federal contractors (which are subject to their own paid leave requirements under an Obama-era Executive Order); or*
- *Their competitors offer paid family and medical leave policies that could make it harder for them to recruit and retain top talent.*

State and local laws

State, county, and city laws and ordinances that require employers to provide paid leave run the gamut from relatively simplistic (Arizona requires employers to provide a minimal amount of sick leave for the employee's own illness) to very robust (Washington guarantees employees up to 90 percent of their wage or salary, with a maximum weekly benefit of $1,000).

Currently, Arizona, California, Connecticut, New Jersey, New York, Rhode Island, Washington, and the District of Columbia have enacted paid parental and/or sick/medical leave laws. Some of the cities and counties with their own requirements include Minneapolis and St. Paul, Minnesota, and Montgomery County, Maryland.

While there is a wide variance in what the different laws require, most of them apply to employers that have employees within the state's, city's, or county's borders. So, for example, a

WORKPLACE TRENDS

Survey finds pay more important than health benefits for most workers. A survey by the American Payroll Association shows that 63% of employees in the United States say that receiving higher wages is more important to them than having better health benefits. "A wage increase is easy for workers to understand," Mike Trabold, director of compliance risk for Paychex, said of the findings. "The value is clear and immediately apparent. In 2017, considering today's unpredictable regulatory environment, the same can't be said for better benefits." More than 34,000 employees responded to the 2017 "Getting Paid In America" survey.

U.S. job tenure down slightly. New research shows that the typical American worker stayed at a job just over five years last year, down slightly from the record high since 1983 set in 2014. Research from the Employee Benefit Research Institute found that the median tenure (midpoint, half above, and half below) for all wage and salary workers ages 25 or older with their current employers was 5.1 years in 2016, compared with the high since 1983 of 5.5 years in 2014 and the low of 4.7 years in 1998-2002.

Report finds employer-provided benefit costs vary sharply by industry. The cost of employer-provided healthcare and retirement benefits, measured as a percentage of pay, varies greatly by industry, with retirement benefit costs experiencing the greatest variation, according to research by Willis Towers Watson. The analysis shows that healthcare costs are substantial across all sectors, ranging from 10.4% of pay in the retail sector to 12.7% of pay in the oil, gas, and electric (OG&E) sector. The disparities among industries are more pronounced for retirement benefits, which include defined benefit, defined contribution, and postretirement medical programs. Total retirement benefits averaged 12% of pay in the OG&E sector compared with roughly 5.5% of pay in the healthcare, high-tech, general services, and retail industries.

Glassdoor names 25 top cities for jobs. Jobs site Glassdoor has announced a new report identifying what it calls the 25 best cities for jobs in 2017. The 25 cities are Pittsburgh, Pennsylvania; Indianapolis, Indiana; Kansas City, Missouri; Raleigh-Durham, North Carolina; St. Louis, Missouri; Memphis, Tennessee; Columbus, Ohio; Cincinnati, Ohio; Cleveland, Ohio; Louisville, Kentucky; Birmingham, Alabama; Detroit, Michigan; Minneapolis-St. Paul, Minnesota; Hartford, Connecticut; Oklahoma City, Oklahoma; Washington, D.C.; Seattle, Washington; Atlanta, Georgia; Baltimore, Maryland; Nashville, Tennessee; Milwaukee, Wisconsin; San Jose, California; Chicago, Illinois; Charlotte, North Carolina; and Dallas-Fort Worth, Texas. ✤

UNION ACTIVITY

UAW launches BuildBuyUSA campaign. The United Autoworkers (UAW) union has launched a new BuildBuyUSA campaign to promote "the value and importance of a strong manufacturing base," according to a September 14, 2017, announcement from the union. "This is a real Made-in-America campaign that will benefit everyday working families—not empty rhetoric coming from Washington, D.C.," UAW International President Dennis Williams said. "A strong manufacturing base was the foundation of a prosperous America, but we've seen too many of those jobs vanish from our shores. We need to bring those jobs back." The UAW will be partnering with other labor, progressive, community, and religious groups on the campaign.

Union leaders decry Trump's DACA decision. Union leaders spoke out against the Trump administration's decision in September to sunset the Deferred Action for Childhood Arrivals (DACA) program. DACA protected from deportation an estimated 800,000 young undocumented immigrants brought to the United States as children. AFL-CIO President Richard Trumka called the move to terminate DACA "cruel and wrong." He said ending DACA "will increase the pool of vulnerable workers in our country and embolden employers to retaliate against working men and women who dare to organize on the job or speak out against abusive working conditions." Rocio Saenz, international executive vice president of the Service Employees International Union (SEIU), said ending the program will "crush the hopes and dreams of nearly 800,000 young people who are lawfully living [in] and contributing to our society, working to provide for their families, and planning for their future."

Steelworkers urge complete steel import investigation. Members of the United Steelworkers (USW) traveled to Washington, D.C., in September to urge lawmakers to press the Trump administration to move forward with an investigation on the impact of steel imports on U.S. national security. In April, the administration initiated an investigation, but a statement from the union on September 18 said no public release of the document had occurred. "Since April, when the president called for the initiation of an investigation on the impact of imports of steel on our national security interests, imports have surged almost 21 percent," the union statement said. "The delay in acting is further undermining our national security and critical infrastructure interests."

Union announces graduate worker vote at Boston College. The UAW announced on September 13 that graduate workers at Boston College voted 270-224 to join the union, capping a three-year effort. The Boston College Graduate Employees Union-UAW will represent close to 800 workers, according to the UAW. ✤

company in Kansas with employees in San Francisco would have to satisfy its paid leave requirements for those employees. Some of the laws provide an outright exception or lessen the requirements for very small employers.

Prospects for federal paid leave

While legislation hasn't yet been proposed to implement paid leave at a federal level, the Trump campaign and administration have expressed the desire to do so. In addition, the nonpartisan *Kaiser Health News* recently published an article titled "Paid Parental Leave May Be the Idea that Transcends Politics," pointing out that both Democrats and Republicans in Congress have previously proposed legislation that would have created or encouraged paid leave.

While it remains to be seen whether any issue can really "transcend politics," we agree with the position reported in the article that paid leave is "a win-win for businesses and workers, and the economy as well" because of its positive effect on worker retention and loyalty.

Clearly, it's too soon to know where all this will go, but the winds of change seem to be blowing in favor of paid leave laws, at least for the near future.

How are you supposed to keep up?

Too few employers manage their legally mandated leave requirements proactively, at least until after they get into trouble with the U.S. Department of Labor (DOL) or are hit with a lawsuit. Needless to say, that isn't the best approach.

For small companies with a presence in only a few states, a few changes to your leave policies and procedures will likely suffice. For larger companies, especially those with employees in multiple states, the patchwork of varying leave laws that could apply to you (plus the federal paid leave law if that ever happens) are only going to become more difficult to manage. An increasing number of leave management companies now offer outsourced management of every type of mandated leave imaginable. Some even offer a buy-up option of handling the Americans with Disabilities Act (ADA) accommodation process for you.

If you're looking for an external leave management solution, you may want to explore the options offered by your disability insurer first. This is often a good place to start because the carrier is already managing your employees' short-term disability claims, and it's a natural fit for them to handle Family and Medical Leave Act (FMLA) and various types of paid leave as well.

Some of the downsides include that many disability carriers offer leave management only to employers with a minimum number of employees, and others have systems that are too rigid to accommodate and administer your specific leave policies. The companies that offer leave administration independently of a carrier are typically willing to work with smaller employers and can offer more flexibility.

The long and short of it is that there is no one-size-fits-all solution. It will take some time and energy to find the right one for you. ✤

WORKPLACE ISSUES

Job descriptions: worth doing or a tedious waste of time?

Job descriptions—usually seen as just another task on the to-do list for HR professionals—are generally an underused resource. But you can rely on them for a variety of reasons, including recruiting, performance reviews, reasonable accommodations, and employee classification. The often overlooked process of writing job descriptions, if done correctly, can prove to be a significant asset for employers. By contrast, outdated job descriptions can open you up to significant liability. When was the last time you reviewed your company's job descriptions? Are your job descriptions an asset or a liability for your company? It's time to put more thought into your job descriptions.

Recruiting the right candidates

A job description sets the expectations for a position and should be viewed as a key element in the hiring process. Using outdated job descriptions in the hiring process increases the possibility that you'll receive applications from the wrong (or underqualified) pool of applicants. On the other hand, updated and accurate job descriptions allow applicants to determine whether they are interested in the job and whether their skill set is a match with the position. Determining what the job will entail and the skill set necessary to perform the job can help you minimize poor hires and result in hiring the right candidate the first time around.

Conducting performance evaluations

Supervisors should review job descriptions when they conduct performance evaluations. An accurate job description will help your supervisors assess the various rating factors on the evaluation form. On the other hand, evaluating an employee against an outdated job description could result in a lower rating than warranted and harm morale. The job description should be used to provide a structure from which to review an employee's performance as it relates to the various tasks and responsibilities of the job.

Supervisors should also go over job descriptions with employees during reviews. Doing so will allow the supervisor to remind the employee of the requirements and expectations of her job. It will also provide the employee an opportunity to remind her supervisor of duties or aspects of her job that may not have been considered as part of the evaluation process.

Creating ADA accommodations

Job descriptions are also helpful from a liability perspective in determining compliance with the Americans with Disabilities Act (ADA). Outdated job descriptions can be a detriment if you rely on them to deny an applicant a job based on his inability to perform a stated "essential function" of the position that isn't essential. HR professionals should review the job description's essential functions and determine whether they are in fact essential.

Updated job descriptions are also necessary for determining if a reasonable accommodation can be made for an employee or applicant with a disability. Liability will likely ensue if you decline to (1) hire an applicant who is unable to perform a task that isn't truly an essential function or (2) make a reasonable accommodation for a disabled applicant or employee.

Determining FLSA classifications

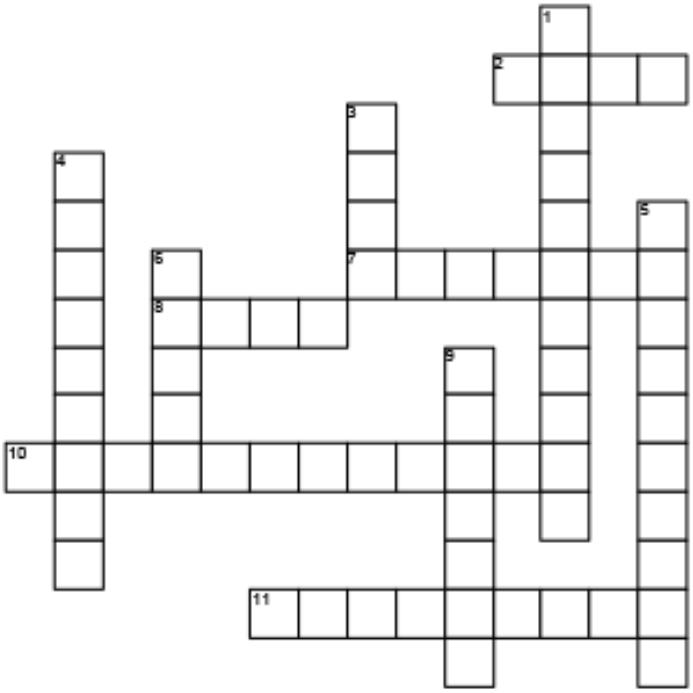
Employers also use job descriptions to categorize positions as "exempt" or "nonexempt" from overtime under the Fair Labor Standards Act (FLSA). Job duties must be accurately described to properly determine whether the employee is eligible for overtime or meets any of the FLSA exemptions. Failure to properly classify a position could result in liability for back overtime pay, liquidated damages, and possibly penalties and attorneys' fees.

The time is now

Were these reasons enough to get you started on an audit of your job descriptions? They should be. To get started, identify someone who will manage the process internally and work with outside experts. Determine job requirements by engaging with and observing employees throughout the process. Base descriptions on current job requirements; don't tailor the description to what an incumbent is doing. ✤

JUST FOR FUN

Mindteaser of the month



ACROSS

2 The typical American worker stays at a job for approximately ___ years.

7 Employees asserting a discrimination claim must establish that they suffered an _____ employment action.

8 Some state and local governments have begun to require that employers provide paid ____ leave to their employees.

10 A _____ discharge may occur if an employer deliberately caused intolerable working conditions with the intention of forcing an employee to quit.

11 Employers can use job descriptions to set forth the _____ functions of a position.

DOWN

1 The majority of employees in the United States prefer _____ _____ over better healthcare benefits (two words).

3 Job descriptions can indicate whether a position is exempt or nonexempt from overtime under the ____ (acronym).

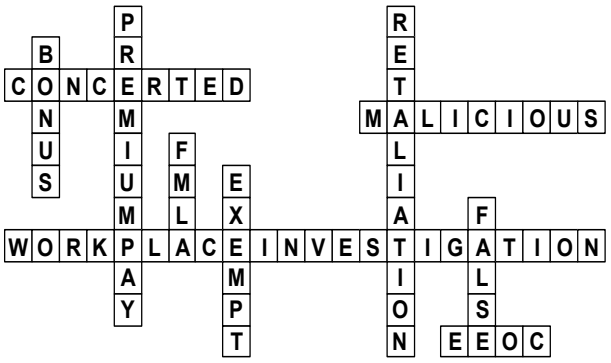
4 Online jobs site _____ recently announced the 25 best cities for jobs in 2017.

5 When an employee has exhausted his FMLA leave, his employer may need to consider offering additional time off as a _____ accommodation.

6 _____ is no longer accepting petitions for a one-time increase to the H-2B program.

9 _____ is one of the states that have enacted a paid sick leave law.

Solution for October's puzzle



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