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EMPLOYMENT LAW LETTER

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Vogel Law Firm

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LABOR LAW

Reins are loosened: What NLRB's new guidance means for your handbook

by KrisAnn Norby-Jahner

In our February 2018 issue, we informed you that the National Labor Relations Board (NLRB) was "loosening the reins on employer handbook rules" (see the lead article in that issue). This month, we can finally tell you exactly how much the reins have been loosened because the NLRB's General Counsel has outlined the standards the Board will follow when assessing employers' personnel policies. Overall, you will have much greater leeway in drafting and enforcing workplace rules—and, in particular, any rules related to civility, insubordination, disruptive behavior, photography/recordings in the workplace, confidential information, defamation, disloyalty, or media contact on behalf of the company.

Background

In its decision in *The Boeing Company* on December 14, 2017, the NLRB reassessed its standard for determining when a workplace policy or rule violates Section 7 of the National Labor Relations Act (NLRA). The NLRB established a new standard that focuses on the balance between (1) the policy's negative impact on employees' ability to exercise their Section 7 rights and (2) the policy's connection to the employer's right to maintain discipline and productivity in the workplace. The NLRB not only added a balancing test but also significantly altered its jurisprudence on the reasonable interpretation of handbook rules, severely criticizing the effects of the previous standard set forth in 2004 under *Lutheran Heritage Village-Livonia*.

Under the previous standard, almost any workplace policy could be interpreted as applicable to Section 7 activity. Under the new standard, ambiguities in workplace policies are no longer interpreted against the drafter of the policy, and generalized provisions will not be interpreted as banning all activity that could conceivably be included under the policy's prohibitions.

On June 6, the NLRB's General Counsel published a memorandum outlining general guidance and the standards the Board will follow when evaluating the lawfulness of employee handbook policies. The standards are organized in three categories:

(1) Rules that are generally lawful to maintain;

(2) Rules that demand individualized scrutiny; and

(3) Rules that are unlawful.

(See GC 18-04, "Guidance on Handbook Rules Post-*Boeing*" (June 6, 2018), available at https://www.nlrb.gov/reports-guidance/general-counsel-memos.)

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Category 1: rules that are generally lawful

Category 1 rules are presumed to be lawful because when they're reasonably interpreted, they do not prohibit or interfere with employees' exercise of any rights guaranteed by the NLRA or because the potential adverse impact on protected rights is outweighed by the business justifications associated with the policy. Examples of policies or rules that are generally presumed to be lawful under the new balancing standard include rules that address:

- **Civility,** including policies and prohibitions related to inappropriate conduct; rude, condescending, or otherwise socially unacceptable behavior; negative or disparaging comments about another employee or a visitor; rude, discourteous, or unprofessional behavior; disparaging or offensive language; or statements, photographs, video, or audio that could reasonably be viewed as disparaging to other employees;
- **No-photography/no-recording rules,** including policies and prohibitions related to using camera-enabled devices; recording conversations, meetings, and images without approval; or recording coworkers' conversations without approval;
- **Insubordination, noncooperation, or on-the-job conduct that adversely affects operations,** including policies and prohibitions related to insubordination, unlawful or improper conduct, uncooperative behavior, a refusal to comply with orders or perform work, or other on-the-job conduct that adversely affects the employer's operations;
- **Disruptive behavior,** including policies and prohibitions related to boisterous behavior and other disruptive conduct, creating disturbances on company premises or creating discord with clients or fellow employees, or disorderly conduct on company premises or during working hours for any reason. (The no-disruption rule *may not* be used to discipline employees for a strike or walkout.);
- **Confidential, proprietary, and customer information or documents,** including policies and prohibitions related to nondisclosure of customer information; nondisclosure of confidential financial data or other nonpublic proprietary company information; nondisclosure of confidential information to partners, vendors, customers, or other employees; and nondisclosure of business secrets or other confidential information;
- **Defamation or misrepresentation,** including policies and prohibitions related to misrepresenting company products, services, or employees or sending defamatory e-mails;
- **Use of employer logos or intellectual property,** including policies and prohibitions related to use of company logos or intellectual property for non-business-related purposes;
- **Authorization to speak on behalf of the company,** including policies and prohibitions related to employees not being authorized to comment to the media and only designated spokespersons being able to respond to media requests for information; and
- **Disloyalty, nepotism, or self-enrichment,** including policies and prohibitions related to conduct that is disloyal, competitive, or damaging to the company; illegal acts in restraint of trade; employment with another employer; and activities or investments that compete with the company, interfere with an employee's judgment regarding the company's best interests, or exploit the employee's position with the company for personal gain.

Category 2: Rules that require individualized scrutiny

Category 2 rules are not obviously lawful or unlawful, and must be evaluated on a case-by-case basis to determine whether they would interfere with employees' NLRA rights and, if so, whether any adverse impact on employees' rights is outweighed by legitimate justifications. Examples of policies or rules that must be evaluated on a case-by-case basis include:

- Broad **conflict-of-interest** rules that do not specifically target fraud or self-enrichment;
- **Confidentiality** rules that are not limited to restricting the use of customer or proprietary information;
- Rules that restrict **disparagement or criticism** of the employer rather than disparagement of other employees;
- Rules that restrict the **use of the employer's name** rather than the use of its logo or trademark;
- **Media contact** rules that generally restrict employees from speaking to the media or third parties about the employer rather than speaking to the media/third parties on the employer's behalf;
- Rules that ban **off-duty conduct** that might harm the employer rather than banning insubordinate or disruptive conduct at work; and
- Rules that ban **false or inaccurate statements** rather than defamatory statements.

Category 3: rules that are unlawful

Category 3 rules are generally unlawful, and you should ensure that you don't implement any policies or practices that fall into this third category. Examples of policies or rules that are unlawful include rules that address:

- **Confidentiality of wages, benefits, or working conditions,** including policies and prohibitions related to the disclosure of salary; employment contracts and terms of employment; wages, commissions, or performance bonuses; or information about an employee's identity or disclosures to the media or any third party about any employee's employment and working conditions; and
- **Membership in an outside organization or voting on matters that concern the employer,** including policies and prohibitions related to general restrictions on an employee's membership in any outside organization (because this may reasonably be interpreted to include union activity) or general restrictions on employee voting (because this may reasonably be interpreted to include voting on union matters).

Bottom line

The General Counsel's memo finally gives employers the necessary guidance to properly apply the revised standard for lawful workplace policies set forth in *Boeing* in December. The three categories enumerated in the memo include examples to help you ensure the proper balance between a policy's negative impact on employees' Section 7 rights and your right to maintain discipline and productivity in the workplace.

As always, you should continue to work with your employment lawyers to ensure your policies comply with the law, and keep performing annual policy audits and reviews. Categories 2 and 3 contain some "red flag" areas that you should scrutinize and use as guidance for revising your policies if necessary. On the other hand, you can look to Category 1 for some much-welcomed breathing room.

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LITIGATION

Supreme Court upholds class action waivers in arbitration agreements

On May 21, 2018, the U.S. Supreme Court ruled 5-4, in what will likely be an important decision for employers and employees, that employees who sign agreements with their employers can be required to arbitrate employment claims (nothing new) and, in arbitration, can be required to give up proceeding on a class or collective basis.

Background

Employees at Epic Systems sued the company, claiming its pay practices violated the Fair Labor Standards Act (FLSA), the federal law governing payment of minimum wages and overtime compensation. They had signed agreements that required them to arbitrate all employment disputes, including wage and hour claims. Arbitration is an alternative to filing a lawsuit in court.

The arbitration agreement also required that the employees pursue their claims, including wage and hour claims, on an individual basis and not as part of a class or collective action. When such agreements are allowed, employees are effectively prohibited from banding together to assert claims in a class action, a collective action, or even a multiemployee arbitration. Class and collective proceedings are useful tools for employees who make "low-dollar" claims, such as violations of wage and hour laws. When employees band together, collective liability increases, the employer's risk increases, and, frankly, the case becomes more attractive to plaintiffs' lawyers.

Therefore, the employees challenged the arbitration and class/collective action waiver provision, arguing in part that agreements requiring the resolution of employment disputes through one-on-one arbitration should not be lawful. The employees won at the trial court and the court of appeals levels.

Supreme Court's ruling

The U.S. Supreme Court disagreed with the lower courts and ruled for Epic Systems. The Court again spoke approvingly of the importance of arbitration as an alternative to court litigation for resolving disputes. Although the case involved the employees filing a collective action under the FLSA, the parties and the Supreme Court addressed the enforceability of the class/collective action waiver under a separate federal law, the National Labor Relations Act (NLRA).

The NLRA protects employees, whether unionized or not, who engage in protected concerted activity in the workplace. These rights are often referred to as Section 7 rights. The employees argued that this protection forbids an employer from having employees waive the right to engage in class or collective actions.

The Supreme Court observed that Section 7 of the NLRA was primarily intended to protect unionized employees. The Court ultimately concluded that employees could waive their Section 7 rights to proceed as part of a class or collective action. *Epic Systems Corp. v. Lewis,* 584 U.S. ___ (2018).

Next steps for employers with arbitration agreements

The Supreme Court's decision was highly anticipated because of the potential impact for employers that have added class and collective action waivers to their arbitration agreements, especially in response to the recent surge in wage and hour claims under the FLSA.

Based on the Court's ruling, it's now clear that employers and employees may enter into arbitration agreements containing class and collective action waivers that require arbitration of employment disputes to proceed on an individual basis. If you use arbitration agreements, you should review your agreements to determine whether they already include class and collective action waivers. If they don't, consider incorporating such waivers.

You should also assess whether your arbitration agreements cover the full spectrum of employment disputes that may arise. If not, an employee filing a claim that isn't specifically addressed in his arbitration agreement may be able to bypass mandatory arbitration.

Also keep in mind that arbitration agreements can be challenged and found unenforceable for a variety of other reasons. To take full advantage of your arbitration agreements, including any class and collective action waivers, you must ensure the agreements satisfy a variety of requirements. For example, an arbitration agreement may be considered "unconscionable" if it requires the employee to pay a substantial portion of the arbitration fees.

Moreover, some state laws allow arbitration agreements to be signed during the course of an employee's employment (rather than at the commencement of employment), while other states require the employee to receive some benefit or compensation in addition to continued employment. Different states have different rules governing what makes a contract valid. You must ensure that your arbitration agreements are valid and enforceable under applicable state law in order to take full advantage of any class and collective action waivers they contain.

Bottom line

The Supreme Court's *Epic Systems* decision will certainly result in employers' increased use of arbitration agreements containing class and collective action waivers. The decision will also reduce the number of employment class and collective actions in federal and state court.

The *Epic Systems* decision was based on language in federal laws, and Congress can amend those laws if it chooses and permit employment claims to be brought as class or collective actions. But for now, one thing is for sure—class and collective action waivers are lawful. The Supreme Court's *Epic Systems* decision may certainly result in employers' increased use of arbitration agreements containing class and collective action waivers, and the decision will likely reduce the number of employment class and collective actions in federal and state court. Mandatory arbitration agreements that contain collective and class action waiver provisions certainly have some advantages for many employers. To examine whether such agreements would be valuable for your organization, contact your employment lawyer. ✤

CLASS ACTION

8th Circuit finds fast-food shops bound by bonus contracts offered to at-will managers

Panera Bread employs general managers in its restaurants throughout the country. These general managers are at-will employees. However, the company implemented a bonus plan for its general managers and had them sign a contract outlining the plan. Was the bonus contract enforceable even though the managers are at-will employees? Under what circumstances, if any, could the company change the terms of the contract? A group of managers filed a lawsuit against Panera in which the U.S. 8th Circuit Court of Appeals (whose rulings are binding in North Dakota) was required to offer a resolution.

Panera creates a sticky situation

Panera Bread wanted to recruit and retain general managers for its various restaurants. It created a program in which qualified managers could receive a large one-time bonus based on performance.

A few years after creating the program, the company asked the managers—who were at-will employees—to execute an employment agreement that outlined a compensation plan. The plan explained that the one-time bonus would be paid five years after the managers signed the agreement, and the amount would depend significantly on the profitability of the individual manager's restaurant during the last two years of the five-year period. The plan also required that they still be employed as managers at the time the bonus was payable.

In 2010, Panera decided to set a $100,000 cap on the amount of the bonus in an effort to control costs. Managers were informed of the cap in 2011 and told it would become effective in January 2012. The first complaint about the cap didn't occur until 2014. It was raised by a manager shortly before he received his bonus.

Managers turn up the heat

Three managers filed a lawsuit against Panera in federal district court in Missouri on behalf of themselves and other similarly situated managers. The district court then certified a class of about 67 managers in the case.

The managers asserted that Panera breached their contracts by imposing the cap. In response, the company argued that they had orally terminated and replaced the agreement. It claimed that through their words and actions, they had assented to a new agreement containing the cap. It further asserted that they waived any claims regarding the cap by continuing to work without complaint and were now precluded from raising any claims.

Finally, Panera argued that an economic downturn allowed it to impose the cap because the purpose of the contract had become commercially frustrated.

Panera gets burned

The managers filed a request for summary judgment (a ruling in their favor without trial) claiming that based on the undisputed facts and Missouri contract law, Panera's attempt to implement the cap was invalid and therefore wasn't enforceable. The district court agreed.

Panera then appealed to the 8th Circuit. The 8th Circuit applied Missouri state contract law and first considered whether the bonus contract was a bilateral or unilateral contract. A bilateral contract contains mutual promises imposing a legal duty on each promisor, and a unilateral contact requires only one party to make a promise.

Here, Panera offered the bonus contracts to its qualified managers, promising to pay the bonuses as outlined in the contract. Because the managers were at-will employees, their employment could be terminated by either party at any time. The court reasoned that an at-will employee's promise to work for an employer until he decides to quit is no promise at all. Therefore, it concluded that the company's "promise to pay a bonus in return for an at-will employee's continued employment was an offer for a unilateral contract."

The next issue was whether Panera could modify the terms of its unilateral offer by placing a cap on the bonus. The Missouri Court of Appeals has previously held that an offer to make a unilateral contract may not be revoked or modified after the person to whom the offer is made has rendered a substantial portion of the requested performance.

Based on that authority, Panera asserted that the mangers had to "substantially perform" under the offer to prevent it from modifying the offer. However, the 8th Circuit isn't bound by federal court decisions in this case. Rather, it's bound only by decisions of a state's highest court on questions of state law, and the Missouri Supreme Court hasn't addressed how much performance is necessary to make a unilateral-contract offer unmodifiable.

As a result, the 8th Circuit was left to predict how the Missouri Supreme Court is likely to resolve the issue. It determined that if presented with this issue, the supreme court is likely to conclude that the person to whom the offer is made must only *begin* performance to render the offer irrevocable and to prevent the one making the offer from modifying its terms. For this reason, substantial performance isn't required.

In this case, the managers had already begun performance under their offered contracts when Panera instituted the cap. Therefore, the 8th Circuit concluded that the company couldn't legally modify the terms of the offer, thereby making its imposition of the cap ineffective.

AGENCY ACTION

USCIS and DOJ announce partnership. Two federal agencies have announced an agreement that expands their collaboration in an effort to better detect and eliminate fraud, abuse, and discrimination by employers bringing foreign visa workers to the United States. In May, U.S. Citizenship and Immigration Services (USCIS) and the Department of Justice (DOJ) announced the memorandum of understanding, explaining that it is aimed at increasing their ability to share information and help identify, investigate, and prosecute employers that may be violating the law. The new agreement expands on a 2010 agreement that enabled the agencies to share information about E-Verify misuse and employment discrimination.

EEOC releases report on federal workforce. The Equal Employment Opportunity Commission (EEOC) in May released its federal workforce report for 2015, showing small increases in both workplace diversity and equal employment opportunity (EEO) complaint filings and small declines in complaint processing time. The annual report informs and advises the president and Congress on the state of EEO throughout the federal government.

More visas for foreign workers announced. The U.S. Department of Homeland Security (DHS) in May announced that an additional 15,000 H-2B temporary nonagricultural worker visas will be available for fiscal year 2018. DHS Secretary Kirstjen M. Nielsen has determined there are not sufficient qualified U.S. workers available to perform temporary nonagriculture labor to satisfy the needs of American businesses for the fiscal year. The new allocation is in addition to the 66,000 visas already issued this year. Nielsen made the decision after consulting with Secretary of Labor Alexander Acosta, members of Congress, and business owners. "The limitations on H-2B visas were originally meant to protect American workers, but when we enter a situation where the program unintentionally harms American businesses, it needs to be reformed," Nielsen said.

DOL announces grants to help injured and ill stay in workforce. The U.S. Department of Labor (DOL) announced in May the availability of $20 million in grants to help Americans who are injured or ill remain in or return to the workforce. The grants are intended to identify new, replicable strategies to help individuals with work-related disabilities stay on the job. The grants represent the first phase of funding for Retaining Employment and Talent After Injury/Illness Network (RETAIN) demonstration projects, which will be administered by the DOL's Office of Disability Employment Policy, in partnership with the department's Employment and Training Administration and the Social Security Administration. ✤

The contract expressly recognized that the managers would remain at-will employees during the five-year bonus period. The 8th Circuit noted that the fact that the managers were at-will employees didn't mean that the bonus promise was illusory. However, Panera could have fired them, which would have prevented them from receiving the bonus, but it didn't. It also could have adjusted the variable in the bonus formula—over which it did have control—but it didn't. Because the managers had already started performing the unilateral-contract offer, it couldn't "move the goalposts on them by imposing a bonus cap" that wasn't contemplated in the offer.

The 8th Circuit explained that if an employer wants to reserve the power to modify or terminate a unilateral contract offer, the language in the offer should be clear. For example, if it offers an employee a bonus it says is "voluntary" and the employee agrees that the bonus may be "withheld, increased, decreased, or discontinued, individually or collectively, with or without notice," then no employee could reasonably rely on actually receiving a bonus. But no such language was present in this case.

The appeals court also rejected Panera's argument that by continuing to work, the managers accepted the cap. Silence doesn't automatically mean acceptance. Something more than the employees' continuance of work is necessary to show that they accepted a unilateral modification to employment terms.

Finally, the 8th Circuit rejected Panera's other defenses, including its commercial-frustration defense. This defense is only available if, among other things, an unforeseeable event occurs. If the event is foreseeable, then it should be included in the contract. When the event isn't provided for, then the risk falls on the one making the offer.

Here, Panera imposed the cap because a change in general business conditions made the bonus payout too expensive. But such a decline in general business conditions is foreseeable because business is risky and the market is undependable. Because Panera could have accounted for lower-than-anticipated profits when it devised the bonus plan but didn't, it bears the risk.

Bottom line

This case is a great example of how critical it is to draft clear and comprehensive contracts—particularly when forming a unilateral contract with an at-will employee. It's also illustrative of how you should take the time to anticipate possible occurrences that could affect your ability to perform your obligations under the contract and to address such possibilities directly within the contract. This will help to control employee expectations and minimize your risk if such an occurrence does arise.

Future modifications to the contract also have to be consistent with its language and with general contract laws, realizing that they can vary somewhat state by state. Rather than make a unilateral change to a contract that may not be enforceable, you need to consider whether the employee accepted the initial offer and whether his performance under the contract has begun. Also keep in mind that an at-will employee's continued work may not constitute acceptance of a change.

Following this process and considering these issues along the way will minimize your risk and maintain reasonable expectations with your employees. ✤

EMPLOYEE BENEFITS

Planning and education are key to successful HSA

Over the past decade, the percentage of employers offering a health savings account (HSA) to their employees has grown dramatically. HSAs are a form of "consumer-driven health plan," a category of employee benefit that strives to place more responsibility on employees to be better consumers of health care. In short, employees pay 100 percent of the deductible under a high-deductible health plan (HDHP). In return, they are given the opportunity to contribute to an HSA, which offers substantial tax benefits.

While most employers provide HSAs as a cheaper alternative to a traditional group health plan, a few offer it as the sole coverage option. Either way, when an employer first adopts an HSA, there's a very good chance it will experience a lot of pushback and confusion from employees. For anyone who hasn't had an HSA before, it's a pretty big adjustment. In addition, the complicated rules regarding who can and can't contribute to an HSA provide lots of ways for both the employer and its employees to make mistakes that could jeopardize the tax benefits HSAs are designed to provide. Let's take a look at those rules and how they can cause unforeseen problems for you and your employees.

Enrollment in HDHP

The first prerequisite for an individual to contribute to an HSA is that he must have health coverage under an HDHP. For individual coverage, that means the deductible has to be at least $1,350. For anything other than individual coverage, the deductible has to be at least $2,700.

There are also other technical requirements for an HDHP to be considered HSA-eligible. For example, the plan must require participants to pay *all* of their medical expenses until the deductible is met. So if the underlying health plan offers copays for office visits or prescriptions, employees won't be eligible to contribute to an HSA—no matter how high the deductible is.

Another important concept is that while an employee needs an HDHP to contribute to an HSA, the opposite is not true. It's possible, for example, for an employee to enroll in your HDHP but contribute nothing to the HSA. It's also possible, depending on how your plan is set up, for your company to contribute to an employee's HSA when the employee is enrolled in an HDHP other than your own.

No other 'first dollar' coverage

For the whole premise of an HSA to work, employees must be fully responsible for their health expenses up to the amount of the deductible. That means they can't have any other "coverage" that would pick up those costs.

In this context, other coverage is defined very broadly. Employees may not contribute to an HSA if they have any of the following:

- Other non-HDHP coverage (including coverage under a spouse's or parent's group health plan);
- Medicare, Medicaid, or Tricare coverage;
- A general-purpose health flexible spending arrangement (but they can have a limited-purpose flexible spending arrangement—which covers only dental or vision expenses—if you offer one); or
- Access to an on-site health clinic or telemedicine services that aren't HSA-compatible (i.e., if services are provided at a cost that is lower than the fair market value). Make sure to discuss their impact on HSA eligibility with your benefits attorney before implementing such services.

Finally, remember that because enrollment in the HDHP and HSA eligibility are separate issues, employees might still enroll in the HDHP even if they're ineligible to contribute to the HSA.

Final thoughts

Employees deciding whether to choose coverage under an HSA need to be educated on—and make their decision after careful consideration of—all the pros and cons. Some key considerations will be how high the deductible is (it can get pretty high), the age and health of individuals to be covered, and whether the employee can afford to put aside extra money each month.

And one final word of caution: It's a bit of a double-edged sword, but HSAs are designed to encourage people to be informed consumers of health care rather than simply agreeing to every test or treatment a doctor recommends without regard to cost. Unfortunately, that aspect can also cause people to delay seeking treatment out of concern over the cost, doing more harm than good in the long run. You can help by educating your employees about the free preventive services provided under your plan and making employer contributions to their HSAs. ✤

WORKPLACE TRENDS

Study finds link between workers' clothing and chances for promotion. Research from staffing firm Office Team finds that 86% of professionals and 80% of managers believe that clothing choices affect someone's chances of being promoted. The research shows that HR managers say that jeans, tennis shoes, and leggings are more acceptable to wear to work now than five years ago. In the same time frame, employers have become less tolerant of tank tops, tops that expose one or both shoulders, and shorts. The study found that 44% of senior managers have talked to an employee about inappropriate attire, and 32% have sent staff home based on what they were wearing.

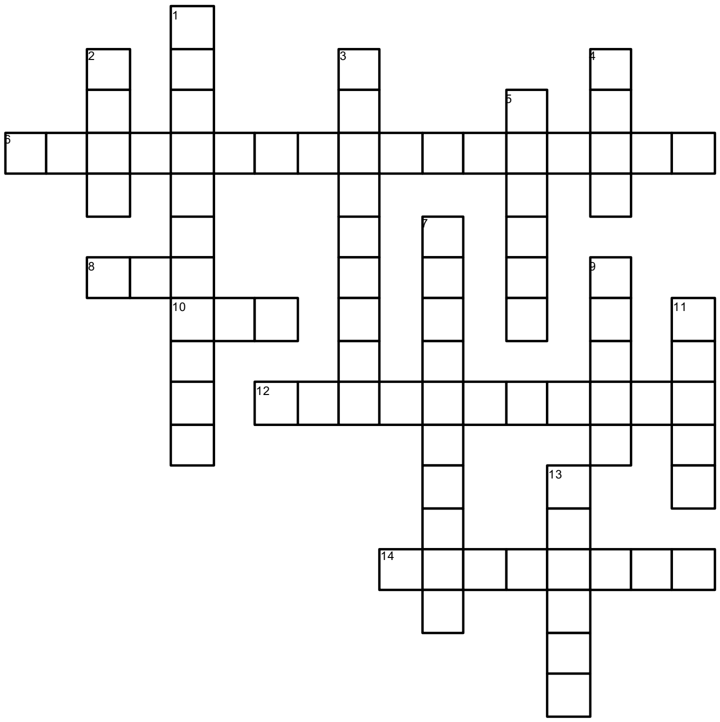
Survey finds workers unwilling to pay more for better health benefits. A survey from Willis Towers Watson shows that most U.S. workers aren't willing to pay more for more generous healthcare benefits. However, a majority of U.S. workers say they are willing to sacrifice more of their paycheck for better employer-provided retirement benefits. The 2017 Global Benefits Attitudes Survey, announced in May, also found that while a majority say their benefit packages meet their needs, many want more benefit choice and flexibility. According to the survey of nearly 5,000 U.S. employees, 66% of respondents said they would be willing to pay more each month for more generous retirement benefits, while 61% would give up more pay to have a guaranteed retirement benefit. Only 38% said they are willing to pay more each month for a more generous healthcare plan.

Research shows high cost of low performers. A new study shows that employees who can't keep up with work demands take a heavier toll on business than some may think. Global staffing firm Robert Half asked CFOs to estimate how much time is spent coaching underperforming employees, and their answer showed an average of 26% of working hours. That's over 10 hours of a 40-hour workweek. Finance executives also acknowledged that hiring mistakes negatively affect team morale.

Study finds more than half of workers 60 and over are postponing retirement. A survey from CareerBuilder shows that 53% of workers at least 60 years old say they are postponing retirement, with 57% of men putting retirement on hold compared to 48% of women. CareerBuilder also pointed out that the statistics were based on small base sizes, and therefore caution should be used in interpreting the results. When asked if they are currently contributing to retirement accounts, 23% said they don't participate in a 401(k), IRA, or other retirement plan, a rate even higher in younger adults ages 18 to 34 (40%). ✤

JUST FOR FUN

Mindteaser of the month



ACROSS

6 Workplace rules or policies cannot restrict an employee's right to discuss his wages, benefits, or _______ __________ (two words).

8 An ___ is a "consumer-driven health plan" often provided as an employment benefit (abbreviation).

10 Workplace rules or policies that must be evaluated on a case-by-case basis fall into Category ___, according to the NLRB General Counsel.

12 ______ _____ recently found itself in a sticky situation involving bonus contracts it signed with its managers (two words).

14 If a workplace rule or policy restricts disparagement or criticism of the employer, it is ________.

DOWN

1 ___________ is an alternative dispute resolution process to filing a lawsuit in court.

2 The ___ is the federal agency that enforces the National Labor Relations Act.

3 A recent study finds a link between workers' clothing and their chances for _________.

4 The ____ recently released a federal workforce report showing an increase in workplace diversity and EEO complaint filings.

5 Policies prohibiting disruptive behavior at work are generally lawful unless they are applied to an employee ______ or walkout.

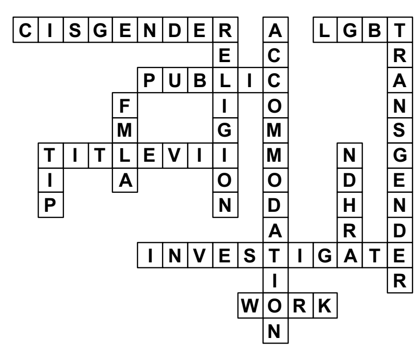
7 A study by CareerBuilder found that more than half of workers who are older than 60 are postponing _______.

9 The NLRB General Counsel's recent memorandum on handbook rules sets out _____ categories of rules.

11 It's generally lawful to have a policy that prohibits employees who aren't authorized spokespeople for the company from having contact with the _____ .

13 If a workplace rule or policy restricts disparagement or criticism of another employee, it is ______.

Solution for June's puzzle



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