

Dear Valued Clients and Business Partners,

We hope that this newsletter finds you well as the end of Summer draws near and we enter cooler weather. As always, this issue of our newsletter brings you current and relevant workplace-related topics taken from recent headlines, as well as guidance issued by government agencies to help you and your organization comply with the most up-to-date labor laws and regulations.

Additionally, as the start of the academic year approaches, some of your staff may be dealing with back-to-school issues such as child care and transportation issues, school visits and a general increased focus on work/life balance. You may experience this in the form of flexible schedule and/or leave requests. This is a good time to review your policies and ensure that policy and practice represent best case solutions for both staff and the organization. As always, be sure to apply company policy in a clear and consistent manner in order to ensure a fair and productive workplace.

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## Benefit Trends in U.S. Organizations

Not surprisingly, most HR professionals at U.S. organizations report that benefit offerings at their organizations were affected by the 2007-2009 global recession. In an effort to control expenses and maximize financial performance, most employers have been looking for creative ways to cut costs without reducing the size of their staff. Many companies turned to re-evaluating their benefits policies as a first step. Some cost-saving trends have been to revise policies regarding payment of unused vacation time at the end of the year or at employment termination (where allowed by state law), and re-evaluating company matching rates for 401(k) deferrals.

During a recession, benefits naturally become a target for re-evaluation because benefits are used to attract and retain top talent. In a recession, companies generally get a bargain when hiring new staff members and retaining their current ones because unemployment rates are high and voluntary turnover is low. In difficult economic times, the labor market generally does not demand the competition that it does in a flourishing economy.

According to reports, while most benefits remained relatively stable since last year, when compared with five years ago, there has been a clear downward trend in overall benefits offerings. According to the *Society for*

*Human Resource Management (SHRM) 2010 Employee Benefits Research Report*, an annual publication that reviews trends in employee benefits, 72% of HR professionals reported that the employee benefits offerings at their organization had been affected in some way by the economic downturn. But while the 2009 annual study revealed a decrease in the percentage of organizations offering benefits from 2008 to 2009, employee benefits remained relatively stable from 2009 to 2010. This could mean that organizations made their deepest cuts early on in the recession, which began in December 2007, and then held steady as the recession progressed and economic conditions began to improve. Of course, we have not yet seen the effects, if any, that the health care reform bill will have on benefits offerings.

Over the past year, organizations:

- spent an average of 19% of an employee's annual salary on mandatory benefits (such as Unemployment Insurance, Worker's Compensation, Social Security, etc.);
- spent an average of 18% on voluntary benefits (such as medical plans, dental plans, prescription coverage, flexible spending accounts, vision plans, survivor benefits, etc.); and
- spent an average of 11% on pay for time not worked benefits (regular rate of pay for a nonworking period of time, such as vacations, holidays, personal, bereavement and sick leave).

Large organizations spent more on voluntary benefits than small organizations.

#### **Year-Over-Year Trends in Selected Benefits**

- *Health Care and Welfare Benefits:* Overall, larger organizations were significantly more likely to offer most health care and welfare benefits (i.e. life insurance, disability insurance, etc.).
- *Preventive Health and Wellness Benefits:* Again, larger organizations were more likely than smaller organizations to offer many preventive health and wellness benefits (health fairs, weight loss programs, smokers' quitting programs, etc.), and many of these types of benefits showed a slight increase in the percentage of organizations offering them over the past few years.
- *Flexible Working Benefits:* Larger organizations were significantly more likely than smaller organizations to offer many of these benefits (which include casual dress, flextime, telecommuting, etc.), as were governmental organizations compared with other sectors.
- *Family-Friendly Benefits:* Far fewer organizations offer family-friendly benefits (day care, elder care, dependent flexible spending account, etc.) compared with those that offer health care, wellness, retirement and paid leave benefits. Large organizations were more likely to offer many family-friendly benefits, with the exception of allowing employees to bring a child to work in an emergency. Only a small percentage of employers offered the other types of family-friendly benefits the survey asked about.

The *SHRM 2010 Employee Job Satisfaction Research Report* shows that employees rank benefits among their top contributors to job satisfaction. Because of this, even in difficult economic times, employers that continue to provide a strong benefits package will see that investment pay off in higher rates of employee job satisfaction and retention.

The key to capitalizing on the benefits that your organization offers its staff is to communicate the value of the organization's benefits package so that staff fully understand all of their options and the true value of their benefits package. Unfortunately, most American workers take certain benefits, such as health care, for granted and generally are not familiar with the cost to the employer of providing such benefits. Total compensation statements, benefits workshops, employee meetings and social networking tools are examples of communication methods that organizations can use to help ensure their benefits program is valued, understood and used by staff.

## DOL Defines “Son or Daughter” Under the Family and Medical Leave Act (FMLA)

On Tuesday, June 22, the Wage and Hour Division of the U.S. Department of Labor issued an interpretation letter (No. 2010-3) clarifying the definition of "son or daughter" under section 101(12) of the Family and Medical Leave Act (FMLA), as it relates to "a child of a person standing in loco parentis."

The background of this interpretation is that employers and employees have been trying to determine whether leave may be taken by employees lacking a biological or legal relationship to a child, but still act as caregivers.

The new guidance, a copy of which is available by clicking [HERE](#), explains that a person may be eligible for unpaid FMLA leave for the birth or placement of a child, or to care for a son or daughter with a serious health condition, even if that person has no biological or legal relationship with the child.

In determining whether an employee is eligible for FMLA leave, the interpretation states that:

- An employer may require the employee to provide reasonable documentation or statement of a family relationship.
- A simple statement asserting that the requisite family relationship exists is all that is needed in situations such as in loco parentis where there is no legal or biological relationship.
- It is the Administrator’s interpretation that the regulations do not require an employee who intends to assume the responsibilities of a parent to establish that he or she provides both day-to-day care and financial support in order to be found to stand in loco parentis to a child.

The letter specifically mentions its application to unmarried partners and same-sex partners. The fact that the child has a biological parent at home or has both a mother and a father does not prevent a finding that an employee with a non-biological relationship is eligible for FMLA leave. The letter clearly states that "neither the statute nor the regulations restrict the number of parents a child may have under the FMLA."

It is important to note that the interpretation is intended to cover both public and private employers, but does not change the existing size limitations (50 or more employees) for the application of the FMLA's requirements.

## Is Your Staff Protected Against Workplace Bullying?

Two recent news items call attention to the severity of the effects of workplace bullying.

On July 30, Kevin Morrissey, managing editor of the Virginia Quarterly Review, a publication of the University of Virginia, committed suicide near the campus of the university. Reports from co-workers were that this tragic event was fueled by workplace bullying, although Morrissey had a history of depression. At least two co-workers claimed that they tried to warn university officials that Morrissey might harm himself, but no immediate action was taken. Additionally, phone records show that Morrissey placed eighteen calls to university officials during the two weeks before his death. An investigation into the bullying allegations followed the suicide, but the damage has already been done, with colleagues of Morrissey’s claiming that they feel unprotected in the workplace due to the delayed or lack of response by the university.

A more lighthearted example is the recent outburst of Steven Slater, the JetBlue flight attendant who, fed up with what he considered a hostile work environment created by a passenger on his plane, shouted obscenities over the plane’s public address system before inflating the emergency slide and escaping from the plane. This event quickly became big news and created an outpouring of public support for Slater.

Regardless of how you feel about these situations, these incidents bring to the forefront several important points for consideration. First of all, an employer should provide its entire staff with a working environment

free from bullying in order to avoid situations that cause poor morale, bad press and potentially put others in danger. In this case, it was not a supervisor or even an employee of JetBlue who created the working environment, but the airline's customers, which brings up the point that employers must protect their staff against bullying or other unwelcome behavior from both staff and non-staff (vendors, clients, customers, etc.).

Secondly, the recession has caused many businesses to either lay off staff or at least put a hold on hiring and make do with limited resources. This often places more of a burden on remaining staff members which in turn causes a higher stress level in workers. This may compound the effects of a situation in which a staff member feels unsafe or uncomfortable at work and may cause a more severe reaction to incidents of bullying. The outpouring of public support for Steven Slater shows us that many people identify with the feeling of "I can't take this anymore" in their jobs and encourage some sort of revolt. This confirms the American worker's general feeling of job-related stress and also shows the prevalence of feeling belittled at work. In fact, according to a Workplace Bullying Institute national scientific survey, 37% of adult Americans have reported being bullied at work.

### **What is workplace bullying?**

According to the Workplace Bullying Institute, workplace bullying is defined as:

Repeated, health-harming mistreatment of one or more persons by one or more perpetrators that takes one or more of the following forms:

- Verbal abuse
- Offensive conduct/behaviors (including nonverbal) which are threatening, humiliating, or intimidating
- Work interference -- sabotage -- which prevents work from getting done

Most companies maintain policies about workplace harassment, because of the clear legal risks associated with illegal harassment. Currently there are no laws expressly prohibiting workplace bullying, however, there has been some legislation proposed recently and more and more employers are beginning to recognize workplace bullying as a serious issue that should be addressed through company policy. The major difference between workplace bullying and harassment is that harassment must be either sexual in nature or based on one or more protected characteristics, such as race, religion, gender, age, etc. Bullying refers to mistreatment that is not based on one of these characteristics.

If your current policy does not address workplace bullying but you would like to include an anti-bullying policy in your handbook, please feel free to contact Imageon Consulting for support in creating such a policy.

## **DHS Issues Final Rule on Electronic Signature and Storage of Form I-9**

The U.S. Department of Homeland Security (DHS) on July 22, 2010, published a final rule in the *Federal Register* regarding the electronic signature and storage of the Form I-9. The final rule permits employers to complete, sign, scan and store the Form I-9 electronically as long as certain performance standards are met.

Some points that the final rule clarifies are that employers:

- Must complete a Form I-9 within three business days, not calendar days from the date of hire.
- May use paper, electronic systems, or a combination of paper and electronic systems.
- May change electronic storage systems as long as the systems meet the performance requirements of the regulations.
- Need not retain audit trails for each time a Form I-9 is viewed electronically, but only when the Form

I-9 is created, completed, updated, modified, altered, or corrected.

- May provide or transmit a confirmation of a Form I-9 transaction but are not required to do so unless the employee requests a copy.

Additionally, DHS clarified that employers may, but are not required to, copy or make an electronic image of documents used to verify an employee's identity and eligibility to work in the United States. It cautioned, though, that employers should apply consistent policies and procedures for all employees to avoid discrimination.

DHS noted that the Form I-9 and verification documentation may be stored in a separate Form I-9 file or as part of an employee's other employment records. In addition, only the pages of the Form I-9 containing employer- and employee-entered data need be retained. Other pages of the current form are instructions for completing the Form I-9 and need not be retained.

If requested, a receipt when completing an electronic record should be provided within a reasonable period of time, but it need not be provided at the time of the transaction.

Please be advised that the option of electronic preparation and storage does not alter the requirement that the employer physically examine any documentation provided by the employee in the presence of the employee prior to completing the Form I-9.

The final rule takes effect Aug. 23, 2010.

## The Impact of Social Networking on Employers

Social media sites are becoming some of the most heavily trafficked sites on the internet, including in the workplace, according to a recent poll. The survey, conducted by Right Management, gathered data from over 1,000 respondents concerning employee use of social networking sites during work hours.

While about half of the organizations reported blocking sites like Facebook, LinkedIn, and Twitter, others have decided to use the social networking sites as a business tool. Organizations are using the sites to reach out to clients, potential customers, employees, and job seekers.

The survey also found some interesting statistics comparing the following criteria:

- *Company Size:* 51% of workers at an organization with 10,000 or more employees responded that use of social networking sites seldom interferes with productivity, compared to 41% at smaller organizations.
- *Department:* 62% of IT professionals said it seldom interferes with productivity, compared to 30% of sales professionals who reported that it often interferes.
- *Age:* 47% of workers aged 35-44 said that it seldom interferes with productivity compared to 35% of those 18-24.

Organizations can no longer afford to ignore the growing presence of social media sites and their use. A recent poll by Manpower suggested that as many as 75% of employers do not have a formal policy concerning the use of social networking sites. This is a very high number considering the many ways that the use of social networking sites by employees can affect an organization.

The following are just some examples of ways that the use of social networking media by its staff can impact an organization:

- *Productivity:* Perhaps the most obvious concern is the impact to productivity if and when social networking sites are used for personal use during working time. Of course, this can be avoided by blocking these sites, but as mentioned above, more and more companies are using these sites for

legitimate business purposes such as advertising and recruiting.

- *Public Relations*: Even if the organization blocks access to these sites from company-provided networks and systems, companies still cannot limit use by staff during non-working time or from outside networks (almost every current cellular phone model has applications that support the use of these sites). These sites (including blogs) provide a forum for disgruntled staff members to disparage the company, its products, staff, customers, etc., especially when unchecked by company policy.
- *Misrepresentation*: Many social networking sites include information such as one's current employer. This can lead to misrepresentation when blogs, product reviews, status posts, and other information are taken as representations of an employer's views rather than the user's own personal views.
- *Confidentiality*: Especially when an organization allows use of such sites for business purposes, the uploading, posting, or otherwise sharing of proprietary or confidential company information becomes a concern that organizations should look out for.
- *Neglect*: When an organization chooses to use social media to represent the company, it is a good idea to have a formal plan for maintenance of the information. Failure to maintain up-to-date information can lead to misinforming the target audience, a perception of irrelevance or apathy, or other negative consequences.

Whether an organization chooses to utilize social networking media to its advantage, allow personal use, or block access from company systems all together, having a formal policy outlining how the company expects its staff to use these sites is becoming increasingly important in protecting an organization's interests.

## Corporate Social Responsibility (CSR) and Japanese Leaders of Industry

Corporate Social Responsibility (CSR) has been an aspect of corporate policy since the 1970's. However, with the growing international market and economic globalization, CSR projects have become a high-profile feature of corporate planning and strategy in the last decade. Until recently, CSR project planning and strategy has been closely associated with large American and European firms, but it has become popular for corporations of all sizes across the globe to take formal responsibility to reduce their impact on the environment and increase the sustainability of their processes, goods, and the consumer. Japanese industry is considered a CSR forerunner in many ways; environmental protection and occupational health and safety programs have a new standard against the American-European CSR model.

Canon Corporation is an innovative manufacturer of high end consumer digital cameras, high end optics, and other precision imaging equipment. Headquartered in Tokyo, Canon has developed a CSR plan to significantly reduce the organization's impact on the local environment. Canon's sustainability report from 2009 details carbon footprint reduction efforts ranging from reducing the burden logistics and manufacturing puts on the environment, to developing increasingly sustainable production techniques and products. Canon's sustainability report and their "*kyōsei*" (coexistence) philosophy target the domestic manufacturing process, but ultimately affect the global environment and the international consumer. Canon is committed to "contribut[ing] to a future that promotes both enrichment and the environment through technological innovation" and it is the combination of corporate philosophy and practical application of CSR that allows Canon to report a high rate of success.

Many CSR projects are globally oriented and have the expressed intent of increasing the well-being of the manufacturers' stakeholders. In August of 2010, the leading Japanese electronics manufacturer Sony brought over 26 FIFA World Cup soccer matches to small communities in Ghana and Cameroon via large-screen viewing equipment, Blu-ray players, and audio equipment specifically set up for the games. This



program was partnered with the United Nations Development Programme (UNDP) and the Japan International Cooperation Agency. The humanitarian effort behind this World Cup soccer project was to gather local communities and raise AIDS awareness. 24,000 people attended in over 18 events in 15 regions and almost 4500 participants were tested for the AIDS virus. Sony was also able to test recently developed sustainable energy technologies that it developed for large-scale events. This is a prime example of businesses being able to work internationally to combat poverty and disease while researching new highly-sustainable products.

High-profile CSR projects do not always have to be international. The Sharp manufacturing facility in Kameyama, Japan boasts to be a “Super Green Facility”, minimizing all carbon dioxide output while maximizing sustainability to an impressive level. The facility is equipped with a wide range of cost and energy reducing next-generation products that are all designed by Sharp. The roofs of many of the factory buildings are covered with high output solar panels, the facilities use fuel cells that reduced the facilities’ carbon dioxide emissions by 3,000 tons a year and Sharp has installed one of the largest on-site waste water recycling plants to process water used during the LCD TV manufacturing process into purified water. Sharp has also developed a see-through photovoltaic film that covers the facilities’ windows. The lightly tinted film blocks a portion of the sun’s rays and reduces electricity costs, but makes a “solar window” that collects solar energy for the facilities’ use while letting light into the office. Sharp has built a manufacturing facility centered on the image of high-profile and high-impact environmentally responsible product and practices, all while researching and possibly increasing profits through CSR.

As CSR gains popularity with large and small Japanese companies both domestic and abroad, the results of programs will not only push the Western model for CSR to adapt to new trends, but also increase the importance of social welfare, reduce the strain industry puts on the local and global environment, and differentiate Japanese brands by building a reputation as a progressive corporate community with integrity.

### Additional Information

This information is being provided to you as a courtesy. For specific information about how the information in this newsletter affects your business, please do not hesitate to contact us at:

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