



advantage



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ACTION NECESSARY!!

The deadline has arrived! As of December 1st, positions need to be appropriately classified according to the new rules for FLSA. If your organization has not analyzed the new rules to see how they might affect your assessment of Exempt and Nonexempt, then you only have a few days left to make any changes and inform affected employees of the processes that will apply to them. PLEASE CALL US IF YOU NEED HELP – WE ARE HERE TO ASSIST YOU!! 503-885-9815.

NOVEMBER: A PERFECT TIME TO BE THANKFUL

Gratitude...it's a simple word used to convey a magnitude of thoughts and feelings. Seriously, how often do we open our eyes in the morning and say, "I am going to work today, and I am SO grateful!" It's difficult between brewing coffee, getting the paper, preparing lunches, watering plants, walking the dog, listening to the news, figuring out the weather, deciding what to wear so you don't get sent back home, being distracted by the Internet, and dealing with traffic.

Recently, there was an opportunity to attend a course on forgiveness. Fred Luskin was the presenter, and he has published a book, "Forgive for Good." He made the point that we are upset when our Starbucks order is not correct; we expect things to go right even in the mundane venues of life. Now, bring the big issues like traffic, in-laws, and college football scores into the mix and you can see where this is going. The presenter's remarks gave pause for thought.

Who doesn't know someone right now who is fighting for their life against some potentially terminal disease? How many people get up and go to bed hungry? How many children will never make it to adulthood due to their lack of clean running water? How many library books and downloads are there available for millions of individuals who will never even be able to read? What would it be like to never get a vacation...you know, the kind with umbrella drinks? These are very real issues for the majority of people on this planet, and Fred's point was that we need to focus on the good. From that point, it's really a whole lot easier to forgive others their seeming major indiscretions and miserable behavior.

Employee engagement has been quoted by one source at 8%, and under-engagement at 42%. Now, I'm not sure where they get those numbers, but let's just say we do our own private survey, and it's easy to find plenty of unhappy employees out there...at least according to their Facebook status. The point is that just quite possibly Dr. Fred was right: we need to stop focusing on all the negative, bad, icky things that happen to us and around us and start looking for the affirming elements in life. It takes us way out of that victim role that we can all too easily seek solace in, and empowers us as individuals.

Oprah has often stated that we need an "attitude of gratitude." Or how about that business woman and bastion of beauty, CEO Mary Kay, who's quoted as saying, "There are two things that people want more than sex and money—recognition and praise." Oh, so true. But sometimes people have a hard time doling those out...recognition and praise. Expressing gratefulness is easier when an individual has a full bucket to dip out of—one that has been filled with positive acknowledgements.

How we behave in life is a choice. This month gives us an excellent, if brief, period between Halloween and the holiday season to think about our blessings and the things that are actually going right in our lives. Sydney Harris wrote, "People want to be appreciated, not impressed. They want to be regarded as human beings, not as mere sounding boards for other people's egos. They want to be treated as an end in themselves, not as a means toward the gratification of another's vanity." Maybe just for one month we could extend some effort toward acknowledging our co-workers for the things they get right. Things are never perfect, but maybe we would be happier and more productive...dare we say, engaged...if we could just embrace the positives in life. Here's hoping that you have much to be grateful for this Thanksgiving...and to sharing the goodness with those you spend most of your waking hours with...

Choose to Be Grateful

Sometimes we may feel that our acts go unheeded
That we're lost in the shuffle and not really needed.
What gives us assurance that our efforts are noted?
Is it bonuses, flex time, or being promoted?

It is simpler than that and it won't cost a dime,
Just a few thoughtful words and a moment of time.
What is so strange and more magical yet
Is the more that you give, the more that you get.

As we strive to be grateful, we most surely will learn
That each "Thank You" that's uttered reaps a precious return.
So choose to be grateful. Find chances to say.
"I thank you for doing a fine job today."

~ Mary M. Kristofferson

BEST PRACTICES FOR INVESTIGATION OF WORKPLACE MISCONDUCT

Every employer, regardless of size, will eventually face the need to investigate a workplace misconduct issue. Whether necessary to resolve a dispute between co-workers or to address unethical or unlawful behavior (e.g. alleged harassment of recently married same-sex couples), a properly conducted workplace investigation is a critical part of doing business. Of course, most employers expect their HR professionals to properly handle even the most delicate investigations and, more importantly, protect the organization from potential liability resulting from either the misconduct or the investigation itself. As illustrated in a decision from the United States Court of Appeals for the Sixth Circuit upholding a jury verdict of over \$1 million, juries are not reluctant to award plaintiffs substantial punitive and compensatory damages when employers fail to conduct proper investigations in response to complaints of workplace discrimination. For these reasons, it is imperative that every organization have a process in place to properly investigate workplace issues.

The most effective workplace investigation policies should require prompt investigation of all suspected misconduct. Employers should investigate a claim of wrongdoing even if a formal complaint is not filed. For example, the obligation to investigate may arise from an informal complaint, anonymous tip, information obtained from non-employees, information obtained during exit interviews, or any other means that brings the matter to the employer's attention. "It wasn't in writing," or "She asked me to keep it confidential," are not acceptable excuses for failing to conduct an investigation.

There are exceptions, of course (for example, when the accused employee admits to the allegations right away or when the complaint is very minor), but even in these situations it is advisable to conduct a limited inquiry to determine the full scope of the misconduct. At a minimum, conducting an investigation will stop the misconduct if it is occurring, send a message to employees that all workplace misconduct will be taken seriously, create a documented record, and put the organization in a much stronger position to defend against subsequent claims.

Next, select the right person to conduct the investigation. Selecting an individual who is experienced and is neither biased nor perceived as biased is essential to maintaining the integrity of the investigation. The investigator should be empowered to decide whom to interview, decide which issues to pursue, engage outside resources if necessary, maintain confidentiality where possible, and be expected to make recommendations to management regarding an appropriate response to the complaint.

Developing a strategic investigation plan helps ensure the investigation is comprehensive and thorough, and substantially increases the probability of identifying material facts necessary to determine appropriate action by the employer. Although workplace investigations often take unanticipated turns, a well-documented plan will provide the road map necessary to accomplish the goals of the investigation. Similarly, properly documenting each interview, including obtaining a confirming signature from the complaining employee, is essential to completing a quality investigation. Documents never have bad memories.

Although it is obviously important for an investigation to be done promptly, it is also critical for the investigator to pursue the investigation wherever the facts may lead. Interviewing additional witnesses, reviewing relevant documents, and re-interviewing witnesses to obtain their response to the statements of others should never be avoided for the sake of expediency.

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Quality investigations do not reduce the risk of an employer liability unless they have been properly completed. This requires communicating preliminary findings to the target employee to give that employee the opportunity to provide rebuttal information that may undermine the initial determination or require further investigation. Other essential steps include communicating with the complaining employee once conclusions are reached, administering appropriate corrective action (if any), preparing a final investigation report, destroying all preliminary drafts (unless a “litigation hold” is required), maintaining the report in a location separate from the complaining employee’s personnel files, ensuring no retaliation is taken against the complaining employee or any witnesses/other interviewees, and disseminating information received during the investigation on a “need to know basis” only. It is also advisable, depending on the seriousness of the potential misconduct and potential employer liabilities, to have a “fresh set of eyes” independently review the investigator’s preliminary findings. Conducting investigations is something HR Answers does, so please let us know if you need assistance.

MORE NEW FORMS

Advance copies of 2016 Form 5500 and 2016 Instructions for Form 5500, for benefit plan reporting due for calendar-year plans on July 31, 2017, were issued on Nov. 1 by the U.S. Department of Labor (DOL), the Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corp. (PBGC).

For smaller filers, advance short form (SF) copies of 2016 Form 5500–SF and 2016 Instructions for Form 5500–SF also were released, along with supplemental materials including required Form 5500 schedules and attachments, and compliance questions and answers.

For organizations that do their own 5500s, having some time to review the forms prior to having to file them will be helpful. This would be a great time to chat with your advisors about the change and what information will be needed.

HR SURVEY SNIPPETS

Closing out the Year on a High...

If your organization is thinking about a holiday bonus for employees, you are not alone. In a recent survey, you are part of the three-quarters of employers that are planning a little extra cash for the holidays. The average looks like it will be about \$1,100 according to the employer survey. The survey, done by Accounting Principals, gathered data from more than 500 employers. The results show the following numbers:

<u>Bonus Amount</u>	<u>Percentage of Employer Responses</u>
\$1 - \$99	13%
\$100 - \$499	37%
\$500 - \$999	21%
\$1000 or more	29 %

SPEAKING OF PAY...

One of the measures that tends to shock employees is the ratio of CEO pay to the employee pay level. According to Mercer, the number might be less than expected even though it still is likely to be seen as very high by many. The consulting firm surveyed 112 organizations over 12 different industries. The results suggest that in 60% of the organizations, the ratio was less than 200:1. The survey also found that the ratio is quite different depending on the industry. The largest ratio difference can be found in the retail/wholesale and consumer goods industries and the lowest ratios are in banking/financial services and technology sectors. This is likely because of the pay in some sectors is much lower for the entry level staff therefore increasing the difference between lower versus higher staff. It will be interesting to follow this measure as we move to publicly held organizations having to disclose this ratio starting in 2018.

EEOC PROVIDES INFO TO HELP EMPLOYERS TRANSITION TO THE PAY DATA COLLECTION

As hopefully you are already know, the EEO-1 completion process for employers with 100 or more employees is going to change. One break being given to employers is that no such form will be necessary during 2017. But effective 2018, a whole new form will be required and it will include the provision of compensation data on all employees (that is unless the election results will affect this).

The U.S. Equal Employment Opportunity Commission (EEOC) has posted online a recording of its Oct. 26, 2016 webinar for employers about the new Employer Information Report or EEO-1 at <https://www.eeoc.gov/employers/eeo1survey/2017survey-webinar.cfm>. This webinar provides an overview of the EEO-1, describes the process of reporting and submitting summary pay and hours worked data,

and gives examples of how to enter the data on the new form. A recording of the webinar, the presentation slides, and other resources related to the new EEO-1, including the [new form](#), a [Fact Sheet for Small Business](#), and a [questions and answers](#) document are available on EEOC's [2017 EEO-1 Survey page](#).

Starting March 2018, the EEO-1 will collect summary pay and hours worked data, in addition to demographic information, from certain employers. The new information will improve investigations of possible pay discrimination, which remains a contributing factor to persistent wage gaps.

If you have questions about this process, the above resources and the webinar may be just what you need to feel like you are prepared. Even if you don't review this material now, it may be worthwhile saving it for when you first need to complete the new documents.

DECIDING NOT TO TERMINATE

What could make an employer decide not to end the employment of a poor performer who has a record of performance and behavior issues? The answer to that is something different than we might think. The reason – the low unemployment rate. Employers are reluctant to fire someone when they are having trouble finding qualified applicants. It sounds a lot like “Better the devil we know than the devil that is unknown.”

So what is the consequence for the organization and its productivity? Is this decision a better way to go than ending someone's employment and seeking a better performer as a replacement? And what does this communicate to the poor performer? Do they think that they are immune from termination? And what about the other good performing employees – what do they think when an employee who does not work or meet expectations is retained? No easy answers, but questions worth thinking about and developing a strategy for dealing with these situations. If we are lucky, we will continue to have a low unemployment rate which is good for the economy, but may not be good for managers with a non-performing employee.

RETALIATION CLAIMS SOAR TO THE TOP

In 1998, retaliation claims were 24% of all claims filed with the EEOC (Equal Employment Opportunity Commission) in their efforts to address possible violations of Title VII, ADA, and ADEA. As of last year, those claims had risen to 44.5% of all claims making them the most frequent of all claims. And interestingly, many of the underlying cases of discrimination were successfully defended by the employer, but they lost on the basis of retaliation. And since there is no cap on the awards associated with retaliation, these can be the most expensive cases to lose.

It makes sense that these are difficult claims to defend. How many of us are as friendly, are as cordial, are as warm with the employee who is suing us? Retaliation claims don't have to be a firing or a demotion to be successfully won. They can be won on the basis of an employee being left out of meetings they used to attend; they can be won on the basis of turning down a request for vacation days; they can be won on the basis of none of the senior management speaking to that employee anymore. Face it – it is hard to be warm, friendly, or interested in the employee's professional development when the last interaction with him or her was a lawsuit.

So this is a situation where it is best to have a strong understanding of the affirmative defense that an employer can have to ensure that a retaliation claim either doesn't occur or doesn't have the necessary weight to win.

Fortunately, the EEOC has given employers strong advice and guidance about what constitutes an affirmative defense. They suggest that employers:

- Establish and maintain an anti-retaliation policy that spells out what retaliation is and give specific examples of what not to do;
- Train supervisors and managers about the laws and the anti-retaliation policy;
- Establish an open door policy and practice that encourages employees to bring forward any concerns they have regarding possible retaliation to any member of management they feel most comfortable talking with;
- Ensure that the whole organization knows that retaliation is unacceptable and that it would likely result in corrective action, up to and including termination;
- Review any adverse actions that are proximal to any claims or grievances brought forward to ensure that the adverse action is fully justified based on situations having nothing to do with the previous issue.

Taking all these steps will not prevent employers from being in a tough spot where an employee has brought forward a concern and then acts out in some unacceptable manner, and the organization wishes to separate the employee. Documentation will be critical. Taking actions that are consistent with other occasions when others have been terminated will strengthen the employer's case. One suggestion

that can be very helpful is to have a couple of other management members review the situation and the decision to terminate to see if they would arrive at the same conclusion. These managers cannot be individuals who know about the previous claim or grievance. This helps the organization ensure that the right decisions are being made and that they are not reacting to the issue the employee raised.

If we can ever be of assistance to walk through your thinking or decision-making, please just give us a call to chat about the circumstances.

CLIENT ACCOLADES

We will go to the ends of the earth for our clients and to ensure that appropriate congratulations are offered via our Client Accolades. So we are sure you won't be surprised by the fact that we found this little article in the Scotland issue of the BBC News. Bob Moore, the patriarch of **Bob's Red Mill** was just recognized as the Best Porridge Maker in the world at the 23rd Champions Competition in Carbridge, Scotland. The trophy, called the Golden Spurtle (a dowel-shaped tool originally from Scotland, used for whisking porridge), is given to the maker who produces the best porridge using only three ingredients – oatmeal, salt and water. Bob said, winning the trophy made him "so happy! I couldn't believe it when my name was announced." Congrats, Bob, given your commitment to whole grain foods, we aren't a bit surprised!!

Ride Connection has tallied up the numbers for last year. They gave 559,444 rides to individuals needing transportation assistance to get around town and to medical appointments. They trained 269 individuals so that they could independently get where they needed to go. They utilized 44,824 volunteer hours. They drove 2.3 million miles (that equates to 821 roundtrips between the west and east coasts of the US). They recently had a big scare when there was a fire in the apartments above their office; but fortunately no damage and no injuries. Our hats are off and have been tossed high in the air for the amazing organization!! Their work gives new meaning to the phrase – way to go, Ride Connection!!

Portland Habilitation Center got some great press for their work on October 5, 2016 in an article in the *Hillsboro Tribune*. The story featured two of PHC's employees who work at the Hillsboro Civic Center, and it states that if there wasn't PHC, then maybe these two gentlemen wouldn't be able to work. Making employment possible for individuals with disabilities (disabilities range from cerebral palsy to Down's Syndrome to PTSD) is a terrific mission and it is clear that PHC is being successful in this endeavor. The organizations that contract with PHC are very pleased with the work of their employees and scarcely a day goes by without someone sending a note of appreciation. Congrats PHC, our community is better because of your efforts!!

One hundred years ago it is unlikely that the new little company would know that they were going to become the Northwest's largest provider of bedding plants. But that is exactly what **Iwasaki Bros.** has become. During this 100 years of operation, the family was forced to relocate to an internment camp (even when two of the sons were drafted into the Army). They had to endure the Great Depression and the much more recent Great Recession. They say that only the family's close-knit relationships allowed their company to survive. Their stories are ones of perseverance, dedication, and triumph. We are honored to have them as clients, and we wish them another 100 years (at least).

I DID NOT KNOW YOU DID THAT

Managerial and Executive Coaching

Do you have underperforming or misperforming managers or executives in your organization? Sometimes our key players get in the way of their own success. HRA has been asked many times to come in and work one-on-one with key employees and provide some guidance on how they can take a hard look at themselves and see if there are some bad habits forming that stand in their way of growing as leaders. It maybe that the individual has been recently promoted to a higher level of management and now has many more people to be responsible to and for. Sometimes this is not an easy transition. In some situations, a manager may not know how to supervise other managers or how to delegate work that they previously did personally. It maybe that the individual is great managing people, but less skilled at planning or developing longer range strategies. It maybe that the person is conflict avoidant and needs help dealing with warning employees. Coaching can be an effective way of dealing with these issues.

Organization leaders are always on the lookout for ways to boost their organization's performance. Some of your easiest and low-cost gains can be in the manager's or executive's office. We work with you to learn more about what is going on behind the scenes. Take a look at the questions below. When you review these, ask yourself, "Have I observed or said these things before?" Are your key contributors or senior people facing challenges or creating challenges for others? If the answer is yes, it is worth exploring and investing time and dollars to make sure you are not leaving your key players "lost on the battlefield."

- Does one of your leaders have "blind spots" about his or her own behavior – things that are obvious turnoffs to other employees, customers, or business partners, but unknown to that person?

- Are you getting signals that a high performer is doing things (e.g. harassment) that could put your organization at risk of litigation?
- Do some of your high achievers have challenges dealing effectively with internal or external people?
- Have managers or supervisors in your organization taken training courses on leadership, but still don't seem to get it?
- Has the performance of a valued associate recently taken a negative turn?
- Have you ever thought the following about a colleague: "If s/he could just handle that differently, s/he could be so much more effective working with others"?
- When you listen hard and ask people what's really bugging them, do they talk about a key person in your organization?
- Has your organization ever conducted large group training, when the real agenda was to help or "fit" a single individual?
- Do you have a key contributor with some unfortunate, even embarrassing, behaviors that concern you but are awkward to address?

If any of these sound like your situation, we can help. Our executive coaching has a double focus: help the person win through their improved performance so the organization wins as well.

THOUGHTS TO THINK ABOUT

"What do we live for, if it is not to make life less difficult for each other?"

- *George Eliot*

"Vivir con miedo es como vivir a medias." "A life lived with fear is a life half lived."

- *Spanish saying*

"Everybody thinks of changing humanity and nobody thinks of changing himself."

- *Leo Tolstoy*

"Experience tells you what to do; confidence allows you to do it."

- *Stan Smith*

"A leader is a dealer of hope."

- *Napoleon*

"I never notice what has been done. I only see what remains to be done."

- *Madam Curie*

"I am only one; but still I am one. I cannot do everything, but still I can do something; I will not refuse to do the something I can do."

- *Helen Keller*

"I've never sought success in order to get fame and money; it's the talent and the passion that count in success."

- *Ingrid Bergman*

"This became a credo of mine...attempt the impossible in order to improve your work."

- *Bette Davis*

"I don't know anything about luck. I've never banked on it, and I'm afraid of people who do. Luck to me is something else; hard work and realizing what is opportunity and what isn't."

- *Lucille Ball*

Q & A

Q: We are in budgeting mode. We are looking to send several staff members to an upcoming conference. We would like to send as many people as possible and save money by asking employees to room together. Can we ask employees to share hotel rooms while at a conference?

A: The answer is “yes” and.... Of course many organizations do this to save money, and advocates claim that fewer employees would have a chance to receive training or attend conferences if organizations had to pay for separate rooms. We ask you to consider the following.

While requiring employees to split a room is not illegal, such a policy can invite challenges. There could be a risk a sexual harassment claim or you could be vulnerable to a lawsuit under the Americans with Disabilities Act (ADA). Shared rooms may not offer enough privacy for people to address certain medical situations. For example, an employee may not be able to use a CPAP machine for their sleep apnea without the knowledge of his or her co-worker.

If one roommate uses a perfume and the other’s asthma flares up. Since the employer is requiring the shared room, these situations are considered employment-related, which could present ADA issues during and after the trip.

There are other concerns to consider. Does such a policy show respect to your employees? If not, how might that affect your reputation or workers’ engagement levels?

Failing to honor your employees’ personal time and space could drive good employees out the door and stop great candidates from applying. Moreover, after working all day at a conference or attending a rigorous training session, many employees need downtime. Their hotel room can be a sanctuary, and it is likely the only place they can relax and have some privacy. The bottom line is that forcing cohabitation adds a layer of stress and possible concerns for employees that may not need to be there.

FOR YOUR CALENDAR

Open up your Daytimers, Outlook, Palm Pilots, and all those Smart Phones. The following is a look at upcoming events, special days and other diverse and fun activities you will want to be aware of and get scheduled. **To register for our workshops, please call any of our offices, or send an e-mail to Anna Loughlin at aloughlin@hranswers.com, or fax it to (503) 352-5582.**

NOVEMBER

National Adoption Awareness, National Alzheimer's, National Epilepsy, National Novel Writing, Peanut Butter Lovers Month, and Aviation History Month.

Nov. 24-25 Happy Thanksgiving. Office Closed.

Nov. 30 HR Lunch Bunch – Chemeketa Small Biz Center, Salem, OR
Topic: Onboarding
12pm-1pm

DECEMBER

Identity Theft Prevention and Awareness, National Tie Month, Universal Human Rights Month and Safe Toys and Gifts Month

Planning Ahead

Dec. 7 HR Lunch Bunch – HRA Office – Tigard
Topic: Toxic Employees
12pm-1pm

Dec. 23-26 Happy Holidays – Office Closed

Dec. 28 HR Lunch Bunch Salem – NONE due to the holidays

ON MY SOAPBOX

I have mentioned a couple of times that I stay away from political comments in Soapbox. Not because I don't have any thoughts, but rather because I have strong opinions that others might easily disagree with. I am breaking that rule for this Soapbox. I don't my remarks come from a political party position, rather I hope that you find them a reflection of my emotions and that they offer a sad observation followed by a hopeful one.

First to the sad...this election cycle was disturbing. It generated rude, gross, prejudiced, callous, and beyond the pale actions and vocabulary. I won't repeat any of it here; that was done often enough (or maybe too much) by the media as they sought to cover the candidates. It contained far too many incidents that were cringe-worthy. It created a picture of American at anything other than our best. It was internationally embarrassing! And it was so very childish; even our youngest children do not often behaved that way. But it is behind us now, and we can't change or remedy even one minute of what occurred.

So what is the hopeful one...the very fact that I am but one small voice talking about how must the process was distasteful gives me hope. Hope that we will not fall to this behavior again; hope that there will be reminders of how yucky this felt so we will avoid it in the future; hope that the positions obtained will encourage candidates (now Senators, Congressmen and women, and executive office holders) to rise to the level of seriousness and accountability that are embedded in the position requirements.

I am hopeful that never again will we need to turn down or off the TVs because there are children watching; that never again will we have to explain that politicians are not often role models for all of us; and, that never again will we be embarrassed by our leaders.

At this time of year I want to be thankful for all we have and for all we are. I want to be proud of what we accomplished, not what we have survived. I want us to disagree about policy, not temperament. While there is always be disputes about the best way to handle our foreign relationships, it shouldn't create such hostility that people live in fear for their lives and for our country. There were plenty of things to discuss and quarrel about, but now is the time to set those aside and focus on our commonality and shared hopes for our future. This is America; and for us to continue to be an example for others, we need to return to what we do best...leading the way for democracy and personal respect for all. Respect doesn't require us to agree, but it does ask that we not be disagreeable.

I wish you well as we enter the holidays and I encourage you to look toward the horizon, not back on the challenges of the past. Let us all focus on the positives and seize every opportunity to live our lives so that they are a reminder of the benefits of being positive and thankful. Let me wish you all a Happy Thanksgiving, and let me add that I hope you have many reasons to be thankful.

- Judy Clark, President



ANSWERS, Inc.
"Whatever the Question"

PLEASE FEEL FREE TO VISIT OUR WEBSITE:

WWW.HRANSWERS.COM