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Table of Contents

PAYEQUITY LAW.....	2
GOOD NEWS FOR EMPLOYERS	2
HR BY THE NUMBERS	3
HR SNIPPETS	3
HOW EMPLOYERS CAN HELP ADDRESS AMERICA'S OPIOID EPIDEMIC.....	4
BOY SCOUT MOTTO APPLIES	5
ACCOLADES	6
CLIENT ACCOLADES	6
HR QUESTION	6
THOUGHTS TO THINK ABOUT.....	3
FOR YOUR CALENDAR.....	7
ON MY SOAPBOX.....	8



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PAY EQUITY LAW

The topic of conversation wherever HR professionals gather is the new Oregon Pay Equity law. The first part of this law was effective October 6th regarding the restriction of asking applicants about their previous compensation. However, one point doesn't appear to be getting the level of coverage that might be needed. This portion of the law also indicates that no third party can be asked to provide that information either. Much like other restrictions, if you can't ask the applicant for specific information, no employer can ask for that information from anyone else. This means background and reference checks completed by third parties cannot try to secure information about past earnings. Along that same line of thinking, if your organization does employment verifications for the purpose of future employment, anyone responsible for sharing that information will need to know these rules. One avenue is to consider setting a policy that previous salary history is not shared.

But this isn't the BIG news about the law. The big news is the requirement for **every employer** to conduct an analysis of their workforce and determine whether there are any internal equity issues regarding base pay, bonus or incentive plans, and benefits between employees in comparable positions within the organization. The law's initial purpose was to address the difference in pay between men and women, and has now been expanded to include all civil right categories such as gender, race, age, etc. This portion of the law is effective January 1, 2019, which gives employers time to conduct necessary analysis and devise a plan for addressing any inequity that is discovered. In brief, the product of the analysis is assessment of each position to determine how much of the five stipulated factors (knowledge, skills, responsibility, effort and working conditions in each position). The law has spelled out the definition of working conditions, but offers no information about the other four required factors. We will have to wait and see if BOLI will define these factors for us when writing the supporting Administrative Rules. (NOTE: HR Answers is working on preliminary definitions of the remaining four factor so that all the work associated with complying with the law doesn't have to be done at the last minute.)

In order to utilize the flexibilities provided in the revised law efficiently, we strongly recommend the use of established pay ranges for all positions. Additionally, written policies about how job offers will be made and ongoing pay administration, as well as documentation showing how the determinations were made within these policies. These things will go a long way to ensure consistency for applicants with different levels of past experience or greater knowledge and ongoing equity. This information will also help the organization in reviewing compliance every three years (a requirement of the new law) and will allow for an affirmative defense to any employee claim of inequitable compensation.

The heart of the new law is that consistency must be reached and maintained for employees who are in comparable positions. It does not require that every employee be paid identically to one another. It does require that employees in comparable positions be offered the same package of pay and benefits (total compensation), and their offer be defensible within the law.

No doubt there will be some refinement of the employer obligations as we move forward to the effective date. HR Answers has been holding workshops regarding this law and the employer mandates. Please check the calendar of training opportunities found later in this newsletter for times and dates of these workshops.

GOOD NEWS FOR EMPLOYERS

It has been reported that the Trump administration will soon direct the Department of Education to commit \$200 million every year to strengthening computer science education for classes ranging from kindergarten through high school. The purpose of this direction is to expand access to computer science and better prepare students for employment and personal success when their schooling is completed. This is the same effort that President Obama made and Congress turned down. It appears that with a Republican Congress this initiative will go forward.

Today, only forty percent of schools teach computer science, so having a graduate who is conversant with computers and can easily move into productivity as an employee is far less likely to occur. The goal is to have 100% of schools offering this education component. This plan is also designed to ensure women and minorities are encouraged to take advantage of the new emphasis so that they are better able to complete for future positions. The future outlook for more applicants with computer savvy should assist employers in meeting their needs.

Portland Office
7650 SW Beveland Street
Suite 130
Tigard, OR 97223
(503) 885-9815

Willamette Valley Office
7287 Park Terrace Dr. NE Ste. 101
Keizer, OR 97303
(503) 463-7269

THOUGHTS TO THINK ABOUT

When witches go riding, and black cats are seen, the moon laughs and whispers, 'tis near Halloween.

~Author unknown

Autumn is the season of change.

~Taoist proverb

I make the most of all that comes and the least of all that goes.

~Sara Teasdale

Fall, leaves, fall; die, flowers, away; Lengthen night and shorten day! Every leaf speaks bliss to me, Fluttering from the autumn tree...

~Emily Brontë

Don't look where you fall, but where you slipped.

~African Proverb

Backward, turn backward, O Time, in your flight, make me a child again, just for to-night!

~Elizabeth Akers Allen

Clothes make a statement. Costumes tell a story.

~Mason Cooley

A day is Eternity's seed, and we are its Gardeners.

~Erika Harris

The difference between ordinary and extraordinary is that little extra.

~Jimmy Johnson

HR BY THE NUMBERS

According to RNR Research the market for HRIS packages will grow from \$14.5 billion in 2017 to \$22.5 billion in 2022. It is expected to increase by 9.2% every year. That growth outstrips many other products in the IT space. This growth is driven by the increase in acceptance of mobile devices, the increasing need to address employee mobility, and the increasing need to provide data to savvy employees. Much of the increase will be for core HR functions, but there is an advancing level of thought being given to the interface between employer and their workforce.

According to Recruiterbox, 22% of new hires will resign after only 45 days on the job? In fact, a recent study shows that only 35% of candidates actually have the experience necessary to qualify for the position that they applied for. That is why the process of screening candidates is so essential to an organization's success.

For those of you who studied, were nervous, and finally learned that your test scores qualified you for HR certification, here is a special number for you. There are 127,439 certified HR Practitioners (that includes executive in the profession as well). And some more numbers you may find interesting; there are 250,000 SHRM members and 1,270,000 LinkedIn profiles of individuals who indicate that they are in the HR profession.

HR SNIPPETS

For employers who have California operations, a compliance change is on the horizon. Both the California State Assembly and the State Senate have voted to pass a law that bans questions about the job applicant's criminal history. That bill now rests on the Governor's desk awaiting signature. If it becomes law, no questions can be asked on the employment application or during the interviews about any criminal history. Such questions can only be asked if a conditional job offer has been made.

An additional bill passed by the California legislature would prohibit employers from asking applicants to talk about their compensation history. (For those who believe that Oregon and Washington always follow California's in legislative actions, this time the table has been turned and California is following Oregon.)

Editor: Judy Clark, CPC, SPHR, IPMA-CP: Advantage is published monthly and is designed to provide information on regulations, HR practices and management ideas and concerns. The intended audience is managers, supervisors, business owners, human resource and employee relations professionals. If you have questions about the content, an opinion about the information, or questions about your subscription, please give us a call at (503) 885-9815 or e-mail info@hranswers.com.

SHRM has announced that it supports the raising of the federal minimum salary threshold for exempt status. The organization says that number should be about \$32,000 annually.

A recent case in Texas reinforces the need for contemporaneous documentation. The employer had only undated materials to present in their defense or materials that were dated after the employee had been fired. The Judge stated that the documents were not to be submitted for evidence due to the fact that they could not be validated as occurring during the employment period or were written after they terminated the employee. Moral of the story is document as corrective action is being taken or at the time of some violation of offence.

Employers escaped one more regulation. The Department of Justice was going to write regulations regarding employers' websites to ensure that they are accessible to people with disabilities. Evidently someone had a different point of view and the effort has been scrubbed. That doesn't make the original thought a bad one. Thinking about the accessibility of your website is still worthwhile.

HOW EMPLOYERS CAN HELP ADDRESS AMERICA'S OPIOID EPIDEMIC

As many as 50,000 Americans may have died last year of opioid-related overdose, and with the use of prescription opioids to relieve pain at staggering levels, that number continues to increase with no end in sight. A recent study showed 2 million Americans had a substance use disorder involving prescription pain relievers, while drug overdose is now the leading cause of death of Americans under the age of 50. Abuse of the drug has had tragic consequences across the nation, ravaging communities and tearing apart families. What role can employers play in combatting this 21st-century drug crisis?

The following article is reprinted with permission from Fisher Phillips Law firm. We at HRA think this issue is a critical for all employers and we encourage you to consider whether there are employees in your organization who may be struggling with Opioids.

Prescription Drug Use Often Leads to Heroin Addiction

To understand how we ended up in the midst of this crisis, it's helpful to have some background information. Opioids may be found in any medicine cabinet. They are a broad group of drugs including the regularly prescribed painkillers oxycodone, hydrocodone, morphine, and fentanyl. They interact with opioid receptors on nerve cells in the brain and nervous system to create a pleasurable experience and relieve pain. Due to the relief they provide, consumers of these drugs often become dependent. Once addicted, individuals may turn to heroin, which, although illegal, is often a cheaper and more accessible opioid. In fact, nearly 23 percent of opioid users will eventually become addicted to heroin, and approximately four in five heroin addicts developed their addiction after taking prescription painkillers.

Effects on The Workplace

Employees may be prescribed opioids to relieve pain following a workplace injury, which could begin a path to dependency. Regardless of how an employee begins the abuse cycle, use of these drugs could have a dramatic impact on the individual's performance. Opioid dependency often leads to drowsiness, shifting moods, anxiety, and depression. An employee with an opioid addiction may struggle to maintain regular attendance or achieve quality goals and could pose a safety hazard to themselves and coworkers. Moreover, addiction usually causes financial issues because the addict is in constant search for a fix, which could lead to workplace theft or embezzlement.

Four Practical Lessons for Employers

The growing opioid epidemic and its impact on the behavior and health of employees creates unique challenges for employers. Although no perfect response is available, now is the time to rethink your drug testing and counseling programs in order to keep your employees and workplace safe. A focus on education, prevention, and counseling may help minimize the impact of opioid use on your workplace. When formulating your plan to address the issue, you should consider the following four steps:

1. Create an Environment Where Employees Are Likely to Disclose Opioid-Related Issues

Given the rise of opioid use, you should consider encouraging employees to tell you if they have a problem or suspect that another employee may have an issue with prescription painkillers. This starts by creating a workplace environment conducive to the free exchange of information. This is an evolving area of human resources and business management; you must balance the concern of being viewed as an employer intrusive of employees' private home life, against potentially dealing with an employee who quits, overdoses, or creates a safety or liability concern due to an addiction you may have ignored.

The key to preventing opioid addiction among your workforce is educating employees on the harmful impacts of abusing painkillers. If you become aware of a potential abuse of opioids in the workplace, attempt to approach the employee in a cordial, non-confrontational manner to offer assistance. Pay special attention to employees returning to work after an injury. But because there are some legal dangers associated with any such communication, you should first consult with your legal counsel to navigate any potential Americans with Disabilities Act (ADA) or Health Insurance Portability and Accountability Act (HIPAA) issues.

2. Reconsider Zero Tolerance Drug Testing Failure Policies

An employee who loses their job because they fail a drug test may fall further into the depression often caused by opioid use. Unemployment may lead to more drastic outcomes for the employee, including intentional or accidental overdose. In order to avoid such a tragedy, you should revisit your zero-tolerance drug testing policy.

Many employers have recently modified their drug testing policy due to the Occupational Safety and Health Administration's (OSHA) new rule. Effective December 1, 2016, OSHA requires employers to perform compulsory drug tests after workplace accidents only when there is a reasonable basis to believe the incident or injury was likely caused by the employee's impairment, and if the drug test will determine whether the employee was impaired at the time of the incident or injury (versus a test that shows mere historical drug use).

When modifying your drug testing policy, and in light of the opioid epidemic, you should think seriously about removing any provision requiring the automatic termination of the employee after the first positive drug test. Instead, you can amend your policy to include mandatory counseling for employees who fail drug tests. This not only gives the employee a second chance to get "clean" and attempt to end their dependency, it also provides the individual with an opportunity to obtain much-needed education and counseling on their condition. The permitted use of prescription drugs while working must also be clearly explained in the policy.

3. Consider Enhanced Monitoring of Workers' Compensation Claims

Many workers' compensation carriers (and even employers) often seek to minimize the potential impact of claims by finding the most inexpensive treatment option possible. Indeed, under the guise of "conservative" treatment, insurance carriers may be more inclined to pay for opioid prescriptions to "treat" an on-the-job injury versus more aggressive treatment options (i.e., steroid injections, surgical intervention, etc.), even when medical providers recommend the latter. This dynamic can lead to more incidents of dependency – and increased tolerance levels in the event of a future surgery – simply in the name of reducing the financial impact of a workers' compensation claim. You should monitor these trends, and even your medical providers, and evaluate the care provided to injured workers.

4. Revisit and Enhance Your Drug Counseling Programs

Finally, now is the time to evaluate and enhance your drug counseling programs. Questions you should address include whether your insurance provider offers drug counseling to employees, whether there is an extra cost for this service, and if your employees are aware of this amenity. Providing employees robust counseling on opioid use and addiction may prevent further drug abuse.

Conclusion

Although opioid use continues to increase at an alarming rate, many employers have not yet addressed this concern in their policies and programs. There is no perfect plan currently available, but working with counsel to take proactive steps and avoid risks to your employees is a good place to start.

We at HR Answers wish to thank Authors Edwin Foulke Jr. and Travis Vance for their expertise and sharing of valuable information....
Reprint permission from Fisher Phillips Law Firm

BOY SCOUT MOTTO APPLIES

The national news has been filled with extraordinary stories about hurricanes, floods, fires, and earthquakes. Our local Oregon news has focused on the earthquake in Mexico in addition to the major fires in our state. No doubt this is because many of us are sitting on the Cascadia Subduction Zone. In fact, there are far more earthquakes than we may be aware of. For instance, as of the writing of this article, there have been 3 earthquakes in the past 24 hours; 9 earthquakes in the past 7 days; 28 earthquakes in the past 30 days; and a whopping 279 earthquakes in the past 365 days.

There is no doubt that it is difficult to get to everything that an employer should do, but this one, if not done, can be a major headache. Planning for an emergency may seem like it needs to be lower on the list of requirements, but if Oregon was to have a big earthquake (and that goes for California as well), employers may find that they wish they had addressed the need before the event.

Same but different: In a recent newscast, it was suggested that Oregon may have another year of multiple snow incidents again. Washington is likely to experience the same. So, what's your plan?

ACCOLADES

Ordinarily this space is for compliments to our clients for honors or initiatives they have made that show the best of organizational productivity, community involvement, or new actions and growth. However, we are going to change it up for this month. This month we also provide information about the heroes assisting in the number of national disasters.

The *Denver Post* said it this way, “With four big hurricanes, a powerful earthquake and wildfires, it seems that nature recently has just gone nuts.” Perhaps the only silver lining to the massive display of Mother Nature, is the organizations who have responded with an outpouring of support and assistance. Whether it was teams from countries around the world that flew into Mexico to aid with the search and rescue or the marina operator who loaded two boats with supplies he purchased and set of for the islands, it is wonderful to see the spirit of caring spring up from so many.

We invite all to consider the wonderful actions of oh so many organizations regarding the hurricanes, fires, floods, and earthquakes that have afflicted so many. We encourage each person to be aware of organizations, both large and small, who have been responding to each crisis and let them know how much their actions are appreciated. A couple of highlights for you about companies headquartered in the Northwest:

- Starbucks has reached out to its 462 employees of its 24 stores in Puerto Rico to ensure they are OK, and to reassure them that the company is committed to taking care of each of them. They have also donated \$250,00 and have made it possible for anyone to donate through the Starbucks app.
- Costco has four stores and 1,200 hundred employees in Puerto Rico. The stores were closed for only five days and re-opened with critical supplies of generators, basic food essentials, and bottled water. They have made arrangement for barges to bring in more of everything the island needs. **Mercy Corps has sent several medical teams to Puerto Rico to aid the injured and the ill. Their services are always so helpful in cases of disaster.**
- And for story not about Northwest organizations, read about a little-known operation called PALS (Patient Airlift Services) of Connecticut and their support for those in need in Puerto Rico. An article from the Daily Beast who conducted an interview with the Executive Director Eileen Minogue described the organization’s operations this way, “You name it, we’ve done it. We literally jumped into the deep end together to provide disaster relief and it just hasn’t stopped. We’ve been working for 30 days in a row right now pretty much round the clock just trying to provide support first in Houston and now in the islands.” PALS has sent volunteer pilots to Caribbean islands like Puerto Rico daily, bringing satellite phones, water filters, generators, tarps, hammers, and medical supplies. (You can read about the pilots who volunteer their time at <http://www.thedailybeast.com/volunteer-pilots-swoop-into-puerto-rico-with-supplies-and-leave-with-survivors?via=newsletter&source=DDMorning>)

Let’s all take a minute to offer our prayers and our thoughts for all those who are suffering from our Summer of Anguish. And let’s include all those who were harmed in the Las Vegas shooting and their families. What a horror for them! Let’s spend a moment of time to think about our gratefulness that organizations and people step-up to assist in so many ways.

Check next month’s Advantage for information about employer preparedness for emergencies.

CLIENT ACCOLADES

Congratulations to our clients who made *The Oregonian Media Group’s* “Oregon Top Workplaces 2017”!! A round of applause goes to.....**Certified Languages International, Fortis Construction, Inc., HawkSoft, Inc., Nursingale, and TerraFirma Foundations Systems! Welldone!!**

HR QUESTION

Employee Assistance Programs provide a wide array of employee services, including handling stress, grief or loss, divorce, financial concerns, strife with children, conflict resolution, etc. They are often not promoted well enough for employees to understand the support that is available to them. This is a benefit that employers fund to ensure that employees have a resource to deal with life’s challenges. What percentage of employers provide this service to their employees?

Possible Answers:

41% 52% 77% 29% 60%

The answer to last month’s question – What percentage of positions filled in 2016 were for new positions never before held by anyone in the organization? Answer:60%.

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 Petrina Bigford at info@hranswers.com, or fax it to (503) 352-5582.**

OCTOBER

Month of AIDS Awareness, Bat Awareness, Breast Cancer Awareness, Eat Better-Eat Together, Halloween Safety, Cookie, Roller Skating, Work and Family

- Oct. 12 Columbus Day
- Oct. 14 National Dessert Day
- Oct. 17 HRA Workshop – HRA Office - Tigard
Compensation & Classification with Oregon's
Equal Pay Act
8:30am – 12:30pm**
- Oct. 18 National Chocolate Cupcake Day
- Oct. 23 iPod Day
- Oct. 26 National Pumpkin Day
- Oct. 31 HRA Workshop – HRA Office – Tigard
Effective Meeting Facilitation**
- Oct. 31 Halloween

Coming up:

- Nov. 2 HRA Workshop – HRA Office – Tigard
First Aid/CPR/AED
8:30am – 3:30pm**
- Nov. 7 HRA Workshop – HRA Office – Tigard
Effective Presentation Skills
8:30am – 12:00pm**
- Nov. 14 HRA Workshop – HRA Office – Tigard
Developing & Utilizing Job Descriptions
8:30am – 12:30pm**
- Dec. 5 HRA Workshop – HRA Office – Tigard
Preventing Discrimination &
Harassment in the Workplace
8:30am – 12:30pm**

Flyers for our workshops can be found on our events page under each workshop. View more details and register on our [website](#)

Information and advice offered through Advantage should not be construed as legal opinion. The material contained herein will not apply to all circumstances or to all organizations. Use it as a resource and reference. Should you feel legal advice is required, please consult with your corporate counsel.

ON MY SOAPBOX

We wrote about the Pay Equity Act as our lead article this month. It is a “gift” from the Oregon Legislature which finished its work at the end of June. A few organizations have contacted us already to start on the work that the new law requires. And we have been having some internal meetings here to begin the process of determining what clients need to do and how we can best assist them. For most organizations it is going to take some work to analyze their pay program and then figure out how to resolve any discrepancies that they find.

When the Act first passed, we fussed a bit and worried a bit more on behalf of our clients. And then someone said what should have been obvious to all of us. It was always true (at least from the Equal Pay Act date in 1963) that the pay for men and women doing the same work was supposed to be equal. The Oregon law simply expands this and says that all employees doing comparable work regardless of any individual characteristic is supposed to be paid equally. So that must suggest that if organizations were abiding by that 1963 law, that there would be only a little work needed to meet the requirements of the new law. However, pay levels of employees are rarely analyzed to see if there is a sound reason for what we pay our work force.

Most organizations pay attention to what the market says they should pay employees, especially during time when there is a scarcity of individuals to hire. But the questions surrounding internal equity are not as evident. What will now be required is for all of us to assess and address the issues that surface. It will be fascinating to see what the results are once we are all completed with the analysis and building our plans to address the concerns we find.

And there is one more aspect to the Pay Equity Act that we are all supposed to have put in place no later than October 6, 2017. That’s when the change in interviews and employment applications was to be made. No longer can we ask about an applicant’s previous salary history. This is because it is believed that if you ask about what someone used to make and use that as a guide to setting pay for them as they come to work for you, that it will continue the difference between male and female pay that we have seen for decades. The question is – is that true? An article in the *Harvard Business Journal* cites a study done by Pay scale which involved 15,413 job seekers. They were asked whether they disclosed their previous pay at any point in the interview process. There were five possible answers:

- (A) No, and the employer didn’t ask
- (B) No, the employer did ask
- (C) Yes, the employers asked about my salary history
- (D) Yes, I volunteered information about my salary history
- (E) I do not recall

The study had some surprising results. A woman who was asked about her salary history and refused to disclose it was actually offered 1.8% less than a woman who was asked and did disclose that information. A man who refused to disclose when asked about salary history received an offer that was 1.2% higher than a man who did share that information. Obviously, this was one study and its findings may not apply to all situations. But it is interesting that the results were not what is usually thought of.

We know that there are adverse reactions when a woman tries to negotiate about pay. Those studies have been done over and over again. We also know that there is not a corollary negative when men negotiate for pay. This double standard is one of the reasons that the Pay Equity Act was passed. It will be a few years before we know whether this change will make any difference in what men and women are paid for similar work. If the end result of this is not what is desired, who knows what will come next in an effort to achieve equal pay.

- Judy Clark, President



ANSWERS, Inc.

“Whatever the Question”

PLEASE FEEL FREE TO VISIT OUR WEBSITE:

