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SHOW “UNCLE SAM” THE MONEY

On Jan. 2, 2018, the Department of Labor (DOL) increased the monetary penalties for employment law violations to account for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

The maximum penalty changes include:

- Minimum wage and overtime rules increased from \$1,925 to \$1,964
- Child labor laws increased from \$12,278 to \$12,529
- Anti-retaliation and discrimination laws under visa programs increased from \$20,111 to \$20,521
- Workplace injuries or deaths of child workers increased from \$55,808 to \$56,947
- Willful replacement of American workers under the H-1B visa program increased from \$51,588 to \$52,641

These adjustments are effective as of Jan. 2, 2018. The increased penalty levels now apply to any penalties assessed after this date.

IT IS STILL ALL ABOUT PERFORMANCE

Performance management, performance appraisals, performance evaluations, competencies – it all gets rather confusing when we are trying to evaluate and enhance our employee’s performance in doing their job, and to align what and how they perform to certain organizational goals and strategies. First a few definitions:

Performance management is the process of identifying, measuring, managing, and developing the performance of the human resources in an organization. This system is a strategic and an integrated approach which aims at building successful organizations by developing high performance teams and individuals, and improving the performance of people. Performance management emphasizes on looking forward instead of looking backward, with the focus on ongoing dialogue. Thus, performance management may be regarded as a continuous process.

Performance evaluation or appraisal, on the other hand, is the ongoing process of evaluating employee performance. It consists of setting the job standards and evaluation of the past performance. It is understood that the evaluation is carried out based on the job standards that have earlier been set.

What has the potential to be the most meaningful employee engagement opportunity of the year is often seen as an awkward and archaic ritual. At the heart of it all is culture and value. William Bradford with Performance Management Consultants stated that, “... organizational diagnostics consistently validate the relationship between the quality of leadership at all levels and organizational performance. Bluntly put, quality people do not have to work for jerks and people give exceptional performance to their managers because they want to. It’s about trust, relationship, shared purpose, respect and a range of related variables that constitute ‘engagement’.”

From the simple to the complex. We start with performance evaluations/appraisals. As stated above, they are designed around evaluating an employee’s performance based on set job criteria identified in the past. Why may they not be successful? Managers don’t like them because instead of seeing them as an “investment” in the staff, they see it as a “task.” And unfortunately, that mindset put forth by management is seen all too clearly by employees during the process. The other challenge we have is the lack of on-going dialogue around employee performance. Managers are busy, so tend not to be “present” enough to really know what is going on with their employee. Have you accurately assessed your employee’s performance throughout the entire past twelve months, or even the last three months? And as a result, can you be fair, equitable and consistent in the evaluation of all your employees without inadvertently favoring one and demoralizing another?

When you design a performance evaluation system, keep it simple. Research formats that are “objective” rather than “subjective.” The key is to evaluate the job and the goals we have asked our employees to perform. But don’t stop here. Adopt a “culture of Dialogue” and hold management accountable to the process. Without continuous on-going dialogue, the system fails. It becomes a useless tool that

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is unimportant to management, and not valued by employees. Establishing a “Culture of Dialogue” can be a challenge to get started, but various studies have shown that the change to an organizations culture around trust and value, pay large dividends in overall performance, morale and effectiveness.

The next level or levels would be performance management systems. As indicated above, these systems are designed to assess and improve, or develop the performance of employees in the present and the future. Often, they are connected to the organization’s mission, vision, culture and strategic goals. Evaluation is not the focus, instead the focus becomes how performance affects goal achievement, company profitability, service to customers, attitude and behavior. These systems are often tied to the organization’s recruiting efforts, its retention efforts through employee development and succession planning, and may also be tied to the organization compensation system.

Practicing good performance management requires proficiency in certain competencies. Competencies are observable, measurable patterns of skills, knowledge, abilities, behaviors, and other characteristics that some individuals need to perform work roles or occupational functions successfully or that lead to competitive advantage or an aspirational level of organizational effectiveness. Core competencies are helpful in reinforcing values and encouraging common culture and behavior.

Whatever model an organization adopts it will usually break down into a range of categories with behavioral or technical definitions that involve a consistent scoring mechanism.

But be careful, there is no “best practice” around the development of competencies and how they tie to your performance management system. Good systems are adaptable, flexible and customized to your organization’s cultures and needs.

Another caution - Competence correlates with performance, but is not performance. And some experts see the two as only casually related. William Bradford goes on to say that, “Performance evaluation systems tend to focus on standards, task completion and quantifiable outcomes. Competencies are seen as “contributors”—knowledge, skill, attitude or behaviors which facilitate or enable performance. Performance is usually measured by quantitative outcomes while behavioral competencies are usually qualitative. Competent people can under-perform for a wide range of reasons and it is not unusual to see highly motivated people perform well beyond their competency.”

The moral of the story, first determine what your organization wants to measure and why. Then take care to design it to fit your organization’s needs, not based on other organization’s needs. And lastly, ensure management is accountable to doing the things that make your program a success. How will you know if the program is successful...employees will be happier, more productive in their positions, and anxious to learn and do more.

INTERACTIVE PROCESS - ADA

HR Answers has been receiving a number of calls lately regarding dealing with employee disabilities. While many of them are about how to reasonably accommodate an employee who now has a limitation of some kind, some of them are about how to implement the required Interactive Process detailed in the law.

The American Bar Association has some excellent advice in an article entitled (as you might think) Implementing the Interactive Process under the ADA. It can be found at <http://apps.americanbar.org/litigation/committees/employment/articles/fall2013-1013-implementing-interactive-process-under-ada.html>. But if you are short of time (the article is lengthy) here are some of the highlights:

- 1. The employee must make a request for an accommodation.** But that doesn’t mean they have to use those exact words. They simply need to say enough that the employer should be put on notice that there is a problem and that the employee may need some assistance. Remember that the “employer” is any supervisor or manager that the employee thinks represents the organization. So the employee doesn’t have to make this a formal request to a particular person, they simply need to mention this within earshot of a supervisor or manager. The employer has a duty to provide an accommodation without an expressed request.
- 2. The employer has a duty to engage in the interactive Process.** Once the need for an accommodation has been requested or is apparently needed, the employer needs to begin the conversation about what the employee might need to be able to perform the duties of their position. The actions necessary for the employer are:
 - a. analyze job functions to establish the essential and nonessential job tasks;
 - b. identify the barriers to job performance by consulting with the employee to learn the employee’s precise limitations; and,
 - c. explore the types of accommodations that would be most effective.

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.

This process should go back and forth until some identification about what would work best is determined. It is possible that no reasonable accommodation can be identified, but that should only be evident once there has been substantial conversation about possible ways to address the concerns and restrictions.

- 3. The Employer Is Not Required to Provide the Specific Accommodation Requested.** The law states that the accommodation must be reasonable, but that does not mean that the employer has to do what the employee wants, only that the accommodation must meet the needs of the employee and be a reasonable way for the employee to carry out their job responsibilities. Assume for a moment that assistance with getting to and from work is needed. The employer doesn't need to hire a limousine to provide that transportation because that is what the employee suggests. They may be able to arrange a ride assistance program that can serve the employee needs. In determining what is "reasonable" the employer can consider the cost, the impact on other employees, whether additional employees would need to be hired to cover the work the employee can no longer do, and whether the accommodation would cause a direct threat to the employee or others.

The larger the organization, the more it is expected to try and reach an accommodation. Liability can accrue to the employer for failure to go through this process with an open mind and an emphasis on finding a way to accommodate the employee.

In summary, think about the interactive process in terms of what you would want an employer to do and the consideration you would hope they offer to you. Not all situations or conditions can be accommodated, but the more sensitive and respectful the employer can be, the more likely it is something that can be worked out that meets most of the identified needs.

EEO-1 REPORTING NOW OPEN

The Notification letters have gone out and it is now time for all employers with 100 or more employees to begin completing the required EEO-1 survey forms. If you are a federal contractor (with more than \$50,000 in contracts) then you only need 50 or more employees to be subject to this requirement. The reporting must be complete by March 31, 2018. If you have not received a notification letter, then you should immediately contact the EEO-1 Joint Reporting Committee at 877-392-4647. Sample materials, forms, and more information can be found at <https://www.eeoc.gov/employers/eeo1survey>.

WASN'T IT JUST A FEW YEARS AGO...?

It is easy to remember that just a few years ago we were all advised about the benefits of the open office. It was touted as equalizing status of employees, creating better relationships, and reducing the need for all those offices. But now articles asking if the era of open offices are over are seen in multiple magazines and Internet sites. Employees are complaining about the lack of privacy. Managers and supervisors are having difficulty giving performance evaluations and any corrective action conversations. And, if there are multiple small gathering spaces which are not well used, then the Facilities Managers hear complaints about the cost of wasted space.

The facts are stunning. According to a recent survey done by Staples in which 1004 employees were asked about their workspaces, the results showed that workers in an open space environment spend 11% less time working than those in a more closed environment. The conclusion of the survey said, "the open office may have gone too far and ultimately gets in the way of itself. While employees are more likely to think of their office culture and environment as being transparent, distractions like regularly overhearing co-workers personal conversations have become unavoidable.

Here are some other results from the survey:

- 32% of employees spent all of their time working in the office
- 43% of employees have some option to work remotely upon occasion
- 14.6 million employees have co-working arrangements which are defined as come into the office and pick a space to work today.

MONTHLY QUESTION

Last month, we asked the following question:

According to the Bureau of Labor Statistics, in which decade of the past 60 years did the largest percentage of the work force in this country belong to labor unions? Round off to the nearest five years.

Since only 6 decades are possible as an answer, there aren't any choices provided. You just have to determine which decade you think it is.

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And, the envelope please...if you guessed the decade of the '40s when slightly more than 35% of the workforce was unionized, then you guessed correctly...or did you research and ask Google what the answer was?

The month's question is: How many federal laws do employers have to comply with?

Look for the answer next month!!

CLIENT ACCOLADES

Kudos to **GBD Architects** who were chosen as the architects for the first new building in the South Waterfront's Zidell Yards. According to press reports, the new development will rise from Block B which is located between the existing barge building and the Ross Island bridge. It is intended to be a mixed-use space housing both residential and commercial enterprises. We applaud the choice of the well-known architectural firm. We are Very Proud of you!!!

WOW!!! Thirty years and going stronger than ever before. Our client, **Ride Connection** is celebrating its 30th year of service to the Portland metro area. It all started during a bus ride (how apropos) when several riders on the way to a conference began to brainstorm how could funding be developed to address the need for accessible transportation in the Portland region.

Out of the conversation grew **Ride Connection**. Their history is filled with innovation, creativity, and hard work. But they are a fixture in the accessible transportation world and everyone who needs assistance for getting around, **Ride Connection** is just what the community needed. We are thrilled to see you be so successful and fulfill the needs that so many individuals have! Great Work and Congrats on the milestone!!

Did you see the article on **New Seasons** and their initiative to provide paid parental leave for employees? If not, you should check it out. As of January 1, 2018, they are providing paid leave to all employees working 24 hours a week or more. The paid leave can be used for birth, adoption, long-term guardianship of foster placement. **New Seasons** describes itself as "family-friendly" and the new benefit certainly hits that mark. This new offering makes New Seasons a leader in the benefits arena. Only 14% of US employees have access to such a program. Well Done, **New Seasons** – way to go!!

THOUGHTS TO THINK ABOUT

I look to the future because that's where I'm going to spend the rest of my life. *~ George Burns*

Some people dream of success... while others wake up and work hard at it. *~Author Unknown*

Gravitation is not responsible for people falling in love. *~Albert Einstein*

You cannot plough a field by turning it over in your mind. *~Author Unknown*

Luck never gives; it only lends. *~Swedish Proverb*

Never iron a four-leaf clover, because you don't want to press your luck. *~Author Unknown*

March, when days are getting long,
Let thy growing hours be strong
To set right some wintry wrong. *~Caroline May, 1887*

HR BY THE NUMBERS

Do your employees eagerly wait for the next scheduled meeting or do they run and hide whenever the word “meeting” comes up in conversation? Designing your meetings so that they are meaningful can make a big difference in participation and positive impressions of the staff meeting you hold. Consider the following numbers:

- 54% of employees want compelling content when they attend a meeting
- 18% want their employer to promote healthy lifestyle (food) at a meeting
- 52% want there to be positive results from having a meeting
- 12% want to see sustainable practices regarding meetings
- And if the meeting is off-site, 55% want there to be some true consideration of issues around meeting site selection, like distance, time, and amenities offered.

So, if you want to have employees committed to making the most of meetings, then give some thought to their opinions and concerns.

ONE MORE TIME AROUND...

Do you remember December of 2016 when all of us in HR were waiting for the new FLSA announcement about the threshold pay for exempt status? And then do you remember how much we were frustrated by the fact that two weeks before the effective date of that new regulation, the rug was pulled out from under us when we learned that the new rules weren't going to be enacted?

Well, no promises, but it appears that the second time around will be next Fall. One of the reasons for the lengthy delay is that the DOL would like to roll the new regs out without a court challenge. The more attention they give to the wording and requirement, the less chance there is that they will be contested.

The smart money is on the exempt salary threshold being somewhere around \$32,000 to \$35,000 per year. This certainly seems like a more do-able number, but it is no assistance to all the employers who did the hard work previously, took a big deep breath and raised employees to what was thought to be the new number at \$47,476 just a little over a year ago.

New issues that will occupy DOL are the significant increase in “gig workers,” the return of the old Intern definition, and the resolution and further definition of co-employment arrangements. There is plenty on their plate, but our guess is that they won't lose track of the possible changes in FLSA pay levels.

ONE MORE FORM....

Another subject that we have received a substantial number of calls about recently, has to do with payroll deductions. Other than those items that are part of taxes or legally mandated, no deduction can be taken from an employee's paycheck without their authorization. And after the fact, it is hard to get that signature when an employee is leaving you or is upset about something. Please remember there are a number of rules about what can be deducted from a paycheck or final paycheck. Visit the following [BOLI link](#) for a complete list.

If you are interested in having a form as describe, please let us know and we can send you one.

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, go to [HR Answers Events](http://HRAnswersEvents.com), or email your registration form to Petrina Bigford at info@hranswers.com.**

FEBRUARY

National Month of Black History, Canned food, Creative Romance, Bake for Family Fun, Hot Breakfast, Children's Dental Health, Embroidery, and Heart Month.

MARCH

National Month of Irish-American Heritage, Celery, Sclerosis Awareness, Craft, Nutrition, Umbrella, Women's History, Music in Our Schools, and Professional Social Work.

- Mar. 1 HRA Workshop – HRA Office – Tigard
Get The Right Things Done Every Day
8:30am – 12:30pm
- Mar. 2 National Banana Cream Pie Day
- Mar. 6 - HRA Workshop Series – HRA Office – Tigard
- May. 1 Supervisory Success For Beginners- Spring 2018
8:30am – 12:30pm
- Mar. 8 National Proofreading Day
- Mar. 11 Daylight Saving Time
- Mar. 17 St. Patrick's Day
- Mar. 20 Spring Begins
- Mar. 23 National Chip and Dip Day
- Mar. 29 National Mom and Pop Business Owners Day

Coming up:

- Apr. 18 HRA Workshop – HRA Office – Tigard
Compliance Triangle
8:30am – 12:30pm
- Apr. 25 HRA Workshop – HRA Office – Tigard
Compliance Update
8:30am – 12:30pm

Planning Ahead:

- May. 1 HRA Workshop – HRA Office – Tigard
Get The Right Things Done Every Day
8:30am – 12:30pm
- May. 8 HRA Workshop – HRA Office – Bend, OR
Job Descriptions: A Functional Part of Pay Equity
8:30am – 12:30pm
- May. 8 HRA Workshop – HRA Office – Bend, OR
Compensation & Classification with
Oregon's Equal Pay Act
1:00pm – 4:00pm
- May. 9 HRA Workshop – HRA Office – Tigard
Demystifying FMLA / OFLA
8:30am – 12:30pm
- May. 9 HRA Workshop – HRA Office – Eugene, OR
Job Descriptions: A Functional Part of Pay Equity
8:30am – 12:30pm
- May. 9 HRA Workshop – HRA Office – Eugene, OR
Compensation & Classification with
Oregon's Equal Pay Act
1:00pm – 4:00pm
- May. 23 HRA Workshop – HRA Office – Tigard
Corrective Action and Documentation
8:30am – 12:30pm

View more details and register for our workshops and luncheons on our website at hranswers.com.

ON MY SOAPBOX

An article in the on-line *Business Journal* described the difficulties that Toys ‘R’ Us has been experiencing. They filed bankruptcy in September and had originally projected that they would need to close about 180 stores. Now the New Jersey retailer will have to close almost half of the 1,600 stores around the world. They had a “disappointing” holiday season which they say has necessitated the additional store closings.

But here is the kicker...the company executives received “generous bonuses” (according to the news story) despite the fact that the company filed for bankruptcy and that employees are being terminated without any severance support; even their accrued vacation time is not being paid out at separation.

The amount of those bonuses, you ask...well, they totaled \$16,000,000 and the dollars went to 17 people. The math is not hard to figure out, but here are the figures that were reported: \$8.2 million went to the top five people, the CEO received a \$2.8 million retention bonus and he asked the court to approve an additional \$12 million due him in incentives. And these amounts were on top of the millions already paid out prior to the bankruptcy filing just six months ago.

For people who want to live fairly; for people who believe in equitable treatment; for people who believe that the rich shouldn’t just get richer by taking resources from others; for people who recognize that the leadership of this organization wasn’t effective, this story creates heartburn and ire. There is often speculation about why employees feel that they are treated as though expendable by their employers. This case is a perfect example of how employees arrive at that conclusion.

Management is in charge of making decisions that affect the organization and its employees. Employees don’t make those decisions, people at the top do. So, it is unforgivable when there is no consideration of the impact a decision will have on employees who often are paid at or just above minimum wage.

Contrast that with the employers who do everything possible to assist employees when there is a crisis in the organization. Executives that go without a paycheck or senior staff members who take a 15-20% cut in pay to help weather the economic storm are putting the employees of the organization first. Sometimes these initiatives can turn a bad situation around and sometimes they don’t work as hoped. But the employees know that the people making the decisions tried everything to keep them economically safe. That creates loyalty and a fantastic reputation for truly caring about the workers.

I believe that employees work harder for people who demonstrate that level of respect and regard for them. But if there is a windfall of prosperity that accompanies a bankruptcy that is only given to the top executives or managers, then it is hard to see anything other than disrespect and disregard for the people who didn’t make the business decisions that may have gotten the organization in trouble, but who did the daily work asked of them.

We all want a sense of fairness in our workplaces, but actions like this can only create employee feelings of distress and anger. And, it cannot help but allow us to question whether all of management’s decisions were made with this level of indifference to the very people who provided their services to the company.

- Judy Clark, President



ANSWERS, Inc.
“Whatever the Question”

PLEASE FEEL FREE TO VISIT OUR WEBSITE:

WWW.HRANSWERS.COM