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Table of Contents

MORE CHANGES WITH OSHA..... 2

HR BY THE NUMBERS..... 2

CLIENT QUESTION OF THE MONTH..... 3

EEO-1 UPDATE..... 3

RECORDINGS IN THE WORKPLACE 3

DEVELOPING A MARKET-BASED PAY SYSTEM..... 4

HR QUESTION OF THE MONTH 5

CROSS YOUR FINGERS 6

CLIENT ACCOLADES..... 6

THOUGHTS TO THINK ABOUT 7

FOR YOUR CALENDAR..... 8

ON MY SOAPBOX..... 9



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MORE CHANGES WITH OSHA

HR Answers Inc., is the receiver of great information from a myriad of law firms and other professionals. A particularly interesting article came from Seyfarth Shaw, a law firm based in Chicago. There is an attorney there, Mark Lies II, that frequently writes about Workers' Compensation. He has started 2019 with a comprehensive update about what is currently going on and using 2018 to forecast 2019. He makes a point of saying that OSHA is struggling with the inconsistent application of almost everything because no Assistant Secretary of Labor for OSHA has been nominated by the Trump administration. That position has been unfilled since the transition of administrations.

He cites a number of hurdles for employers, and often comments that employers are by and large, unaware of many of their obligations and rights. He is not the only attorney/author at the firm; there are several. We encourage you to sign up for their postings so that you are aware of the changes in law and suggested actions to minimize your Workers' Compensation risks. You can reach the page so that you can subscribe [here](#).

The new year has also brought changes to the fines that OSHA can impose. On January 15, 2019 Fed-OSHA announced that it plans to increase the maximum penalty an employer can be issued for serious and other than serious citations to \$13,260, and the highest amount that can be issued for repeat and willful violations to \$132,598. In addition to the efforts to keep employees safe, these increased fines are a good reason to avoid workplace injuries.

Also, in his last posting was material on employee rights and a checklist for employers to use so they can see how compliant they are with their employer obligations. If you are interested in either of these items, please just give us a call or email us at info@hranswers.com.

HR BY THE NUMBERS

This article is a bit different than in previous issues of Advantage. Instead of sharing numbers that hopefully are of interest, this month we are sharing information about using numbers to make a case for an initiative or change in process or policy.

HR professionals often comment (jokingly) that they are "people people," not "numbers people." And HR folks have been known to stumble when it comes to using and understanding numbers. But successful HR professionals know that being able to effectively use numbers is key to being seen as a business partner. HR must know how to use numbers to support suggestions for change and to convey the results of a program or new activity.

A handy way to think about using numbers to your advantage is following the steps below. These can be steps to successful communication and accomplishment.

1. Start with an explanation of the problem or the recommended change. The bigger the issue or the more urgent the concern, the more that your audience will be ready to listen.
2. Make sure you integrate time and opportunity for interaction. Don't make the audience wait until the end of your presentation to ask questions. Having them interact with you as you proceed creates credibility and engagement. It is also a great indication of interest and concern.
3. Make sure your numbers are accurate. One wrong number can develop hesitancy and questions. Have someone review your numbers before you make your formal presentation.
4. Think about how to get your audience (even if it is just a few management people) to assist you. Be prepared to answer the question "What do you want from me/us?"
5. Don't provide too much data. Overload can be a problem. Figure out the two to four most important numbers that support your premise. Offer those.

6. Don't make it too complicated. It is likely that the people you are talking to understand numbers, but if you make it too complicated, then they are likely to want to simplify the information. Have graphics that show or explain the numbers and why they are relevant.
7. If you are going to talk about options, be sure to include the pros and cons of each. Make sure you use numbers to identify what you think is the best option and what a positive impact it will have on the organization or its financial results.
8. Finish with the question, "How would you like me to proceed?" This will allow them to say "Come back with more information" or "What is the next step to implement this idea?" If they don't ask those questions, be sure you are ready to provide that information so that your idea doesn't just languish without a plan.

Fortunately, learning the value of numbers and how to use them to persuade others can be learned. If you follow the steps above, or modify them where needed, you are likely to be seen as someone who can translate people strategy into constructive actions.

CLIENT QUESTION OF THE MONTH

We thought it made sense to augment our HR Question of the Month with a question that we have heard multiple times from clients during the past 30 days. So, we are adding a new feature that we hope you find helpful.

Do you occasionally sit back and ask yourself, am I alone? We all need a sounding board or assistance from time-to-time. This past month, one question has been asked of us repeatedly and we thought it would be interesting to share it with you either as an affirmation or information. (An affirmation is when you know the answer and get to say out loud, "Hey, I knew that!" Information is when you have a new nugget of knowledge to tuck away in your brain).

Here's the question...Based on Oregon state law, how frequently must employers pay employees?

- A) Every 30 days
- B) Every 35 days
- C) Every 40 days
- D) Whenever the employer has scheduled paydays

Look for the answer next month, but if you can't wait, then give us a call.

EEO-1 UPDATE

Due to the partial lapse in appropriations during the government shutdown, the opening of the EEO-1 has been postponed until early March 2019. The deadline to submit EEO-1 data will be extended until May 31, 2019. The EEO-1 is an annual survey that requires all private employers with 100 or more employees and federal government contractors or first-tier subcontractors with 50 or more employees **and** a federal contract, subcontract or purchase order amounting to \$50,000 or more to file the EEO-1 report. The filing of the EEO-1 report is required by federal law.

Details and instructions for the 2018 EEO-1 filers, including the exact date of the survey opening, will be forthcoming from Washington, D.C. shortly. Filers should refer to the EEO-1 [website](#) in the coming weeks for updates on the new schedule.

If you aren't certain whether your organization is required to file, please just give us a call.

RECORDINGS IN THE WORKPLACE

Online material and newspaper articles frequently provide information about workplace recording. Employees interested in proving that they have been wronged increasingly are recording workplace conversations and supervisors' comments. Different states have different laws that govern this practice. In some states, there is a two-party requirement. In other words, both parties to the conversation need to know that it is being recorded. In other states, there is a one-party rule that say it is sufficient if one of the parties knows that recording is being done.

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.

The news is full of situations where recordings of workplace conversations have occurred. Whether it is former White House staffer, Omarosa Manigault-Newman, who recorded many of the conversations in the White House and has turned them into a book describing what occurred, the recordings of Michael Cohen, President Trump's attorney who recorded conversations with the President and other clients, or some of the recordings that the NLRB has ruled on during the last several months, workplace recording has proliferated. Some of this is due to technology which has made surreptitious recording much easier. Whether it is on the smart phones that are abundant, tiny microphones that live in pens, or hidden cords attached to telephones or other digital equipment hiding the recording process, this is not difficult.

Employers must think about policies regarding employee recording and how they wish to handle them. Some recent cases have resulted in rulings that favor employer prohibition on workplace recording. A recent pronouncement by the NLRB in the *Boeing Co.* case stated that employers have the ability to enforce policies prohibiting recordings without running afoul of the NLRA.

The ruling said that a prohibition policy is permitted, if management could provide evidence that it is needed to restrict recordings the workers were involved in classified or proprietary tasks that the company depended on to maintain its competitive edge, or sensitive information. Another reason for prohibiting recording or taking pictures is if it would disclose employees' personal identifiable information. A third reason is if the prohibition would help in preventing a terrorist attack. (That might be a reason for the prohibition for Boeing, but it probably doesn't apply to most employers).

There is another side to this policy. What if it is the employer who wishes to record conversations with the employees for some reason? There may be situation where an employer has a legitimate reason to embark on recording, however, the rationale for that action has to be carefully assessed against the possible detriment that may occur. If the justifications outweigh the potential adverse impact on employee rights, the recording might be deemed lawful. This is a question for employer counsel and this action should not be taken lightly.

A general rule is that consent for recording is usually only required where there is an expectation of privacy. So, if an employer wishes to record audio or video at the annual company update where everyone is gathered, that may not represent a difficulty. But if recording is being done in the conference room where corrective action is taking place and no one is aware of that process, then that would likely be a much more difficult challenge to explain.

For organizations wanting to know more about this, a chart showing the 50 states and their requirements can be found [here](#) and there are a host of articles about recording in the workplace online.

DEVELOPING A MARKET-BASED PAY SYSTEM

HRA has spent the last 12 months providing information about Oregon's new Pay Equity law and requirements. We are not going to stop because we have learned that many employers have not yet completed this task, and some have not yet started. Since Pay Equity is about internal alignment and equity, we wanted to provide some detail on the actual setting of employee pay. With unemployment so low, organizations are finding it difficult to recruit and retain employees. It is even more difficult if the employer is not paying market rates. So, this article is intended to offer material on gathering data about what the market rates are for the organization's positions. (HRA can assist with this process if you prefer not to go it alone. Forty percent (40%) of our work is compensation related).

One of the most basic functions of business management is to establish a compensation scheme that is competitive, equitable, and that promotes employee engagement and high performance. Competitive compensation practices are essential to employee recruitment and retention efforts.

This does not have to be an overwhelming and dreaded process; and even though it can be a bit challenging to get relevant data and can be time-consuming, the results are well worth the effort. Assembling market-based pay data and structuring market-based pay ranges encompasses the following steps:

- Gathering the background information needed.
- Determining the sources of external market data and getting the data ready.
- Conducting the market data analysis.
- Developing the pay structures.
- Calculating the costs of the pay structures.
- Implementing and evaluating the new pay structures.

This month's article will address the first three items on the list. Next month, we will write about the last three items. A few basics are important to start. The first question to ask and answer is "What do we want compensation to do for us?" The answer to this question will be a key aspect of the compensation program's mission/purpose. Responses such as giving the organization the ability to hire qualified talent, or retaining key employees, or position us as a great place to work, or as being seen as a high-performing organization, etc. shine light on what information and structures will be needed to achieve the stated goal. This process is usually the first step and defines the compensation philosophy that will be essential to the organization.

Step 1. Gathering the background information needed

Before an organization begins the process of collecting labor market data, it must first define its relevant labor market. This may include similar organizations in the same labor market, all employers in the local market, similar organizations in the regional or national market, and/or all employers in the regional or national market. The goal of labor market data collection is to find data from employers with whom the organization competes for employees. For clerical employees, this may be all employers in the local labor market. For high level management positions or certain specialized and professional positions, this may be all employers in the national market. In some cases, only organizations that do what you do will be appropriate because that is where employees of certain skills and abilities will be found. For other positions, there are people working in every type of organization doing that work (IT, HR, Finance, Purchasing, etc.). Simply said, **the market is often considered to be where an organization hires from and where it loses employees to.**

Step 2. Determining the sources of external market data and getting the data ready.

There are two ways of getting market data. The first is through use of published salary surveys. The second is through direct market contact. For private employers, the direct market contact is often very difficult. Most competitors will not release their compensation information to other organizations. For public sector organizations, direct market contact is possible, but takes a bit of time to make all the calls, ensure that the positions are actually a match, and get all the pay data necessary.

Using published surveys is the usual route organizations take when trying to learn what the competitive pay landscape is. Compensation analysts suggest that at a minimum, three separate salary surveys should be used; and care should be taken to ensure that participants come from different organizations otherwise you have the same data in each survey. The best surveys provide the weighted average of employee pay, the minimum, midpoint, and maximum of the pay range. If the position is eligible for any bonus or incentive, then the surveys used should include that information. One of the most critical features of usable data comes from surveys that include a mini-description of the work performance and the qualifications of the positions. If only the title exists, then that survey should NOT be used. An Accounting Clerk in one organization may be responsible for payroll processing while another Accounting Clerk in a different organization may have no such responsibility. To get relevant data, solid matches should be made. If typical tasks and qualifications are not provided, you have no way to judge whether the positions are a good match or not.

Step 3. Conducting the market data analysis.

Once surveys have been selected, then the process of collecting and analyzing the data begins. Elements typically included in the activity are:

- Determining the date the data was effective so that a decision can be made if the data needs to be aged forward to the expected date of implementation.
- Does the survey provide data for different organizational revenue break-outs? Choosing the right one will be important.
- Is there any need to do geographical adjustments? If the data is national, is that going to be correct for your location? Knowing what the cost of labor is for the location of your positions will be essential so that a geographic differential can be applied if needed.
- It is critical to remember that you are pricing positions, not pricing employees. Once the price of the position has been determined, a decision can be made about the appropriate employee pay.

Look for material on the remaining three steps of creating a market-based compensation system next month. But if you can't wait, then feel free to give us a call.

HR QUESTION OF THE MONTH

Here are the two questions from January – the answers are shown in **bold**.

1. How often does someone in the US develop Alzheimer's?

Possible Answers: every 15 seconds **every 65 seconds** every 4.5 minutes every 11 minutes

2. What is the composition of individuals with Alzheimer's?

Possible Answers:

- **Women are more likely to develop the disease than men by a ratio of 2:1**

- **Hispanics are about 1 and one-half times as likely to be affected than older whites**
- **African-Americans are about twice as likely to be affected than older whites**
- **People 65+ are 28.5 times as likely to develop the disease as those under 65**

Here is the February offering:

How many federal laws are overseen and enforced by the Department of Labor?

Possible answers: 68 laws 72 laws 180 laws 203 laws

Bonus question: How many employers are they responsible for governing?

Possible answers: 7.3 million 8.6 million 9.2 million 10 million

Look for the correct answers next month.

CROSS YOUR FINGERS

The U.S. Department of Labor is moving closer to releasing its proposed changes to the white-collar exemptions, aka the infamous so-called “Overtime Rule.”

USDOL reportedly is submitting a proposed rule for review by the federal Office of Management and Budget (OMB). Neither OMB nor USDOL has elaborated upon what this proposal actually says.

Although there has been no announcement of how long OMB’s evaluation will take, the agency commonly completes its assessment within 90 days. If OMB approves the submission for publication, then history suggests that USDOL probably will release the proposal for a public-comment period of 60 days. This is on target with the agency’s regulatory agenda, which anticipated that the proposed overtime rule would be released in March 2019.

Another action taken by the DOL agencies is to now adjust penalties annually. The newest increase, effective immediately, permits USDOL to impose a monetary penalty of up to \$2,014 for a violation.

The agency normally imposes these assessments “per-person” based upon the number of employees an employer paid unlawfully. Please note, an employer’s transgression can be considered a “repeated” one for penalty purposes even if it is not factually or legally the same as an earlier one. Additionally, USDOL can assert a penalty for a “[willful](#)” violation if the employer knew that it was in violation or acted with *reckless disregard* for whether it was in violation.

CLIENT ACCOLADES

Client Accolades this month go to two healthcare providers who are recognized for their excellence in the provision of healthcare for senior citizens on Medicare. Both health systems, **Kaiser** and **Providence**, have achieved five-star status for their Medicare Advantage Plans. This is the highest rating given and both health systems have achieved this status previously. Congratulations to you both for your contributions to the programs that assist senior citizens in maintaining healthy lifestyles!!

The *Portland Business Journal* has created a Leader Board which features organizations that have great leadership and that are positive contributors to our area’s business success. One of the featured organizations is **Union Wine**, a client of ours. We are proud to be associated with this fine organization, and we wish them the very best as they expand and grow!

Ride Connection just celebrated its 30th anniversary; the plan is for this to be a yearlong celebration. The concept started with one conversation between employees of TriMet, ODOT, and folks from similar organizations on a minibus on the way to a conference. The discussion turned to the need for accessible transportation. The result was the legislature’s approval of a Special Transportation Fund, and Ride Connection was born. We commend all the hard work and the collaboration that generated this service; and the special people who have kept it going!

The Portland architectural firm **GBD Architects** has been chosen as the architects of record for the first new building in the South Waterfront’s Zidell Yards. It will be comprised of two towers and a connecting facility. **GBD** is known for its history of urban architecture and its local knowledge of the area having worked on the South Waterfront Master Plan. The Zidell family real estate group says that **GBD** will be able to create a sense of neighborhood through its design features. Congrats, **GBD**, we are thrilled to learn of this new project!

THOUGHTS TO THINK ABOUT

Gravitation is not responsible for people falling in love.

~Albert Einstein

Love is the greatest refreshment in life.

~Pablo Picasso

What the world really needs is more love and less paper work.

~Pearl Bailey

Patience is the companion of wisdom.

~St. Augustine

The years teach much which the days never knew.

~Ralph Waldo Emerson

All of life is the exercise of risk.

~William Sloane Coffin

Goodness is the only investment that never fails.

~Henry David Thoreau

Your most unhappy customers are your greatest source of learning.

~Bill Gates

Attitude is a little thing that makes a big difference.

~Winston Churchill

FOR YOUR CALENDAR

Open up your Daytimers, Outlook, and all those Smartphones. The following is a look at upcoming events and workshops, special days, and other diverse and fun activities you will want to be aware of and schedule. **To register for our workshops, go to [HR Answers Events](#), or email your registration form to info@hranswers.com.**

FEBRUARY

National month of the following: American Heart, Black History, Canned Food, Hot Breakfast, Library Lover's, Weddings

Coming Up:

- Apr. 3 HRA Lunch Bunch Webinar- Online
Giving References
12:00pm - 1:00pm
- Apr. 11 HRA Workshop – HRA Office – Portland/Tigard
[Oregon Pay Equity Overview](#)
2:00pm - 4:00pm
- Apr. 24 HRA Webinar - Online
[Oregon Pay Equity Overview Webinar](#)
9:00am - 10:30am

MARCH

National month of the following: Brain Injury Awareness, Multiple Sclerosis Awareness, Music in Our Schools, Nutrition, Social Work, Women's History

Planning Ahead:

- May. 28 HRA Webinar - Online
[Oregon Pay Equity Overview Webinar](#)
2:00pm - 3:30pm
- May. 11 HRA Workshop – HRA Office – Portland/Tigard
[Oregon Pay Equity Overview](#)
2:00pm - 4:00pm

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

- Mar. 6 HRA Lunch Bunch Webinar - Online
[Positive Workplaces](#)
12:00pm - 1:00pm
- Mar. 7 - HRA Workshop Series –
- May 2 HRA Office – Portland/Tigard
[Supervisor 8 Part Series](#)
8:30am - 12:30pm
- Mar. 10 Return to Daylight Savings
- Mar. 12 HRA Workshop – HRA Office – Portland/Tigard
[Oregon Pay Equity Overview](#)
2:00pm - 4:00pm
- Mar. 14 Pi Day
- Mar. 15 HRA Workshop – HRA Office – Portland/Tigard
[Job Search Support Workshop](#)
11:00am - 1:00pm
- Mar. 17 St. Patrick's Day
- Mar. 19 Visit our HRA booth at the NW Youth Career Expo
[HRA Booth Recruiting Assistance](#)
8:00am - 5:00pm
- Mar. 19 HRA Workshop – HRA Office – Portland/Tigard
[Recruiting Systems](#)
8:30am - 12:30pm
- Mar. 20 HRA Webinar - Online
[Oregon Pay Equity Overview Webinar](#)
9:00am - 10:30am
- Mar. 28 Something on a Stick Day

ON MY SOAPBOX

One recent (pre-government shutdown) article reported that 78 percent of U.S. workers live paycheck to paycheck in order to make ends meet, and a further 71 percent of workers said they were in debt.

The takeaway for HR leaders is pretty simple from my perspective: If you are not at least talking about employee financial wellness in your organization, then you are probably not doing a complete or full job of considering the needs and circumstances of your workforce. Chances are, almost three out of four of your employees are closer to financial troubles than any of us would like to admit.

With data from studies like this one from CareerBuilder and the visceral nature of seeing federal workers talking on TV about having to visit food pantries or make decisions about whether to pay for groceries or medicine, this topic is now in the mainstream and one with which HR leaders in all industries must come to terms with. No employee can truly succeed at work if they are constantly facing financial pressure and stress. This kind of stress never “turns off” and affects everything about their lives—both inside and outside of work.

It isn't enough to have an Employee Assistance Plan (EAP) and assume that employees will utilize their financial assistance. To make sure that the organization has productive employees, HR professionals must ensure that employees have access to information and support for financial difficulties. It makes no sense to provide drug and alcohol support which affects approximately 9% of the current workforce, and not provide financial support tools and training.

When presented with the data, employers easily understand that if employees make poor decisions with their money, then they are going to have financial issues. Those financial issues will come to work with the employee, will cause stress, and will sometimes have other unwanted repercussions including affecting work performance of those employees.

The stories surfacing during the recent governmental shut-down were heart-wrenching. And these stories may exist in each organization. Employers are often surprised to discover that a divorce has resulted in an employee sleeping in his car or that an employee has had to give up an apartment due to rent increases. These are not highly unusual events, they are everyday events for some segments of our workforce. Recognizing that employees need help with managing money or determining how to get themselves out of debt can lead to a program of financial planning and debt reduction. And, what a payoff that can have. Less stress, a greater sense of personal confidence, and the enhancement of problem-solving skills that can lead to more productive and happier employees. It can also generate a great sense of gratitude to the employers who made this positive change in their lives.

- Judy Clark, President



ANSWERS, Inc.
“Whatever the Question”

PLEASE FEEL FREE TO VISIT OUR WEBSITE:

WWW.HRANSWERS.COM