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Editor: Deborah Jeffries, SHRM-CP, PHR, CPC: **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 resources professionals and labor relations professionals. If you have questions about the content, an opinion about the information, or questions about your subscription, please call us at 503-885-9815 or email us at info@hranswers.com



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LEGISLATIVE UPDATE – ELECTION RESULTS AND BENEFITS

While a number of important issues remain unresolved, employers can keep an eye on these benefits-related legislative items. This information is taken from a November 2020 executive summary provided by Marsh & McLennan Agency (MMA) with attorney James Slotnick of Sun Life.

- 1. COBRA Subsidies.** Given the pandemic, debates continue about whether the federal government should provide COBRA subsidies to employees who have been laid off. While a number of earlier proposals had included COBRA subsidies, it is now unlikely they will be included in the next COVID-19 relief package.
- 2. Prescription Drug Importation Rule.** The prescription drug importation rule which was designed to help lower drug costs in the U.S. will probably not change. Even so, Canadian suppliers are not eager to participate. The Canadians have a limited supply of prescription drugs and Canadian pharmacies and suppliers are working together to stop exportation.
- 3. Price Transparency Rules.** The new hospital pricing transparency rule, which requires hospitals to disclose their negotiated rates for certain “shoppable” services, will remain in place. While compliance is likely to be delayed past January 1, 2021 due to litigation, it should become elective at some point in 2021. Likewise, the plan rule which requires insurers to make available a variety of cost-sharing, negotiated rates, and other pricing-related data will likely stay in effect, but does not begin until 2023.
- 4. Paid Family & Medical Leave.** Colorado is the ninth state (plus the District of Columbia) to approve a Paid Family & Medical Leave program. As more states require this benefit, the likelihood of a federal action increases. The reason behind this is due, in part, to the many state-by-state regulations. The number of paid weeks, income replacement, and even the definition of family varies. The largest employers are beginning to lobby for a national program. There are a number of issues to be worked out, but both Democrats and Republicans support expanding access to Paid Family & Medical Leave.

EMPLOYEE HANDBOOKS

The new year often starts with a review of an Employee Handbook and making updates not only for things that have changed legally but also legislatively in your areas as well as any changes from an organizational policy standpoint, too. It is important to remember that while you may be focusing on compliance and legal language, do not forget to incorporate your brand.

There are lots of ways to format or design an Employee Handbook but the next time you are updating yours you might think of some non-traditional design elements such as:

- Pictures of employees with quotes about what they like most about working for the organization.
- A visual timeline of your organization's history with important milestones noted.
- An infographic showing the organization's mission, vision, and values.
- Tips for employees who want to get promoted.
- Leader testimonials about how they advanced through the organization.

Now, if you want to get at the technical pieces of a handbook, we have a [webinar on February 9th](#) that can give you ideas and suggestions in that regard too. There have been changes that you will want to make sure get incorporated.

COVID-19 LAWSUITS UPDATE

Lawsuits filed regarding COVID-19 number over 1,500 and are spread over several different tort claims. Setting aside the lawsuits related to small business grants/loans filed under the CARES Act, two other types of claims emanating from virus-based lawsuits have been resolved at above-average rates. They are wrongful discharge cases (35% closed) and WARN Act cases (30%). All other types of cases have dismissal rates below the average dismissal rate for federal court cases: unsafe workplace (23%), wage and hour (22%), non-compete and trade secrets (17%), remote work and leave conflicts (16%), breach of contract (14%), employment discrimination (10%), negligence and wrongful death (10%), retaliation and whistleblower (8%), and ERISA and benefits (0%).

With the level of confusion regarding different states setting up different rules and the changing nature of guidance based on new knowledge, it is very challenging to keep up with the best course of action. Employers need to read and look for information on a regular basis to remain current on regulations and the need for action.

Side Note: for Oregon – Beware OR-OSHA has been out and about and is auditing your COVID Safety. Since the new requirement (Dec. 2020) for an infection control and risk assessment being conducted, OR-OSHA has visited 300 employers across the state with 197 organizations having been fined. OR-OSHA is looking to see if employers have followed through in creating these assessments, formalized the documentation, and educated its employees. At the present time these are items that must be in place through May and must be shared with every new employee as part of onboarding.

PEOPLE WITH DISABILITIES AND THE PANDEMIC

With COVID in the mix some workers with disabilities face elevated health risks. With the mass layoffs and other consequences of the crisis, job opportunities are dwindling. There have been decades of hard-fought advances for job opportunities and worker safety which may have come to a crashing halt over this last year. Of course, the final numbers are not in, but the outlook is a bit grim. A high number of disabled workers work in the restaurant and hospitality industries and they were particularly hit hard this last year. Of course, as you might imagine with the layoffs and the furloughs many of our social service agencies and not-for-profits had to make cutbacks and that meant some individuals with severe disabilities were working without support and guidance of job coaches and mentors.

A silver lining in this picture is with the widespread shelter in place orders that have been activated have provided an increase in work opportunities for individuals with mobility impairment to work from home.

When we return to work, we need to make sure we do not ignore the needs of workers with disabilities. Here are some suggestions on what organizations can do to stay on the right side of the equation.

- Recognize the legal and moral responsibility to easily accommodate the needs of workers with their disabilities.

- Recognize that remote work requests and other accommodations previously associated with such workers may benefit all employees.
- Make sure social distancing and other special steps aimed at curbing the spread of the virus do not disproportionately harm workers with disabilities.
- Prove to those workers that HR is a trusted partner by helping to resolve any problems they may be having.
- Recall workers in a way that does not disproportionately affect individuals with disabilities.

HR BY THE NUMBERS

According to the US Bureau of Labor Statistics people with disabilities work:

- 34.1% in management or professional fields
- 22.3% in sales, offices
- 20.7% service sector
- 14.5% production, transportation, material moving and
- 8.4% in natural resources, construction, maintenance

In addition to the information listed above there are a number of accommodation requests. Again, according to the U.S. Bureau of Labor Statistics less than 14% of workers with disabilities seek special equipment or other workplace modifications, and when they do, the cost is usually negligible. Here is a list of the most common changes sought and the percentage of workers seeking each one:

- 33% new or modified equipment
- 21% physical changes to the work environment
- 11.6% changes in communication or information sharing
- 8.7% policy changes

EEOC 2020 Annual Performance Report. Despite the challenges of 2020, the EEOC adapted quickly and made significant progress in maintaining the messaging of equal employment opportunity in the workplace.

- The EEOC secured a record amount of recovery, more than \$535 million, for victims of discrimination in the workplace. This includes \$333.2 million in monetary relief for employees and applicants in the private sector and state and local government workplaces through mediation, conciliation, and other administrative enforcement, and \$106 million in monetary relief through litigation. The litigation recovery was the biggest since 2004.
- The EEOC reduced the private sector charge workload by 3.7 percent to 41,951, the lowest pending inventory in 14 years.
- The EEOC conducted more than 6,700 successful mediations resulting in \$156.6 million in benefits to charging parties without the need for costly litigation.

To learn more, you can read the full EEOC's [Fiscal Year 2020 Agency Financial Report](#) that was posted on November 19, 2020.

THE COST OF CONFLICT

Negative and destructive conflict is costly. Often managers do not deal with them or do not have the skills, or the time and the conflict is often ignored. Some research and some experts suggest that managers and supervisors spend at least 20% of their time dealing with conflicts in their workplaces. That is over 9 weeks a year and that could be an optimistic set of numbers. Some may say “that's why managers get paid the big bucks” is to take care of situations that arise.

When conflict is present there are productivity, relationship, and employee costs all of which do not help the organization succeed. If you were to think about four people being involved in a conflict; the manager, two employees and perhaps an HR person - now let's talk about their salaries and how much money that adds up to by the hour. Work relationships have always been plagued with interpersonal destructive conflict. That can be in the form of delaying work, transferring work, lack of information sharing, sabotaging, talking behind ones back and more. All of this time is wasted time and/or do-over time and it certainly adds up. The rebuilding of relationships between individuals, between departments, even with customers and suppliers uses a tremendous amount of time, energy, and other resources that could be targeted in a more productive way. Our conflicts can often lead to someone with the need to rebuild credibility with others. Again, more precious time. If the conflict is intense enough or goes on long enough it is quite possible an employee would see this as an opportunity to miss work all-together. The cost of absenteeism and low morale is high. The often ignored and painful “big picture” of a poorly handled or avoided conflict at work adds up.

The good news is that there are options for being proactive and able to assist others in developing skills to address conflict in a healthy manner. It is always okay to disagree with someone's point of view or a suggestion to a workplace challenge. It is not okay to be disagreeable. If you are looking for some tried and true methods like reframing, needs vs. wants assessments, and interest-based solutions of working through conflicts, we suggest checking out our [upcoming webinar](#) that we have scheduled for February 24th.

QUESTIONS TO BRING TO A PROFESSIONAL COUNSELOR

There is no doubt that the last year has been challenging for many of us - some more so than others. The stress, the isolation and other challenges have led many to stay quiet and yet many have asked for help and support.

If you are not familiar with Employee Assistance Programs (EAPs), they are additional benefits employers can purchase for employees which offers resources when they are struggling with personal challenges like legal issues, divorce, sensitive family matters, and of course personal challenges.

When you have a chance to sit down with someone and actually talk through your concerns with a professional counselor, we think there are some key questions for you to think about to maximize the benefits of your first visit by answering these questions before you go:

1. What is causing stress and tension in your life?
2. How does the tension affect you, your family, and your job?
3. Are these stress or tension issues short-term or long-term?
4. Who in life represents your support group?

5. What are you willing to change or give up to achieve less stress or tension in your life?
6. When you have successfully reduced stress and tension on your own, how have you done so?
7. What has not worked?
8. If counseling is successful, how do you envision life afterward?

If you need a referral to an EAP firm, we can supply you with suggestions.

HRA CALENDAR

Open 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 click on the event below.

FEBRUARY: National Month of Black History, Cherry, Hot Breakfast, Fasting, Great American Pies, Library Lover’s, Snack Food, and Weddings.

- | | |
|---------------|--|
| Feb 2 | Groundhog Day |
| Feb 7 | National Send a Card to a Friend Day |
| Feb 9 | HRA Webinar – Handbooks: Your Guide to Consistency
1:30pm to 3:30pm
Register Here |
| Feb 11 | Job Search Webinar - FREE
11:00am to 1:00pm
Register Here |
| Feb 12 | Chinese New Year – Year of the Ox |
| Feb 14 | Valentine’s Day |
| Feb 14-20 | Random Acts of Kindness Week (17 th RAK Day) |
| Feb 15 | President’s Day |
| Feb 16 | HRA Webinar -Fair Labor Standards Act (FLSA): Tips and Tricks to Compliance Success
9:00am to 11:00am
Register Here |
| Feb 18 | HRA Webinar - Managing Generational Differences
8:30am to 12:00pm
Register Here |

Feb 24 **HRA Webinar - Soft Skills: Conflict Resolution**
 8:30am to 12:00pm
[Register Here](#)

COMING UP:

Mar 2 **HRA Webinar - Prevention of Discrimination, Harassment, and Retaliation**
 1:30pm to 3:30pm
[Register Here](#)

Mar 10 to Apr 14 **HRA/SHRM Series – HR Basics: What You Don’t Know Can Hurt You**
 March 10, 17, 31, April 7, 14
 8:30am to 11:30am
[Register Here](#)

March 10 **HRA Webinar – Mindfulness**
 3:00pm to 5:00pm
[Register Here](#)

Mar 11 **HRA Webinar - Employee Leaves: Protected, Discretionary, Paid or Unpaid**
 9:00am to 11:00am
[Register Here](#)

Job Search Webinar – FREE
11:00am to 1:00pm
[Register Here](#)

Mar 18 **HRA Webinar – Ideas for Creating a Happy Workplace**
 8:30am to 12:00pm
[Register Here](#)

Mar 31 **HRA Webinar - Soft Skills: Creativity and Curiosity**
 8:30am to 12:00pm
[Register Here](#)

LOOKING AHEAD:

Apr 6 **HRA Webinar – Emotional Safety in the Workplace**
 9:00am to 11:00am
[Register Here](#)

Apr 7 **HR Lunch Bunch: Consultant’s Corner - FREE**
 12:00pm to 1:00pm
[Register Here](#)

- Apr 8** **HRA Job Search Webinar - FREE**
11:00am to 1:00pm
[Register Here](#)
- Apr 13** **HRA Webinar: Foundations of Leadership**
8:30am to 12:00
[Register Here](#)
- Apr 14** **HRA Webinar: Creating a Culture of Belonging**
8:30am to 12:00pm
[Register Here](#)
- Apr 28** **HRA Webinar – Soft Skills: Critical Thinking**
8:30am to 12:00pm
[Register Here](#)
- Apr 29** **HRA Webinar – Personal Improvement: Building Trust**
8:30am to 11:00am
[Register Here](#)

FLSA: THREE NEW OPINION LETTERS

Last month (January 2021) the Wage and Hour Division of the U.S Department of Labor announced three new opinion letters that address compliance issues related to the Fair Labor Standards Act (FLSA). An opinion letter is an official, written opinion by the Department’s Wage and Hour Division (WHD) on how a particular law applies in specific circumstances presented by the person or entity that requested the letter.

The opinion letters issued covered:

- FLSA2021-3: Addressing whether certain entities satisfy the “establishment” requirement under Section 13(a)(3) of the FLSA, and whether an accrual method of accounting may be used to satisfy the “Receipts Test” under Section 13(a)(3)(B).
- FLSA2021-4: Addressing whether a restaurant may institute a tip pool under the FLSA that includes both servers, for whom the employer takes a tip credit, as well as hosts and hostesses, for whom a tip credit is not taken.
- FLSA2021-5: Addressing the proper calculation of overtime pay under the FLSA for tipped employees receiving tips and amounts charged as automatic gratuities or service charges.

While these three opinion letters may not be directly impactful to your organization/industry please keep in mind that FLSA applies to all employers. If you have ever had questions, or you are challenged with key pieces of this legislation we encourage you to attend our [upcoming webinar](#) on February 16th.

The public can search for existing opinion letters by keyword, year, topic, and a variety of other filters on the [Department's website](#).

Q & A: PRIMARY DUTIES

Q: The duties test that used to decide overtime eligibility talks about determining the employee's primary duty. How do we determine that?

A: You are looking for the person's principal, main, major, or most important duty that they perform - the reason you hired them in the first place. Determination of an employee's primary duty must be based on all the facts with major emphasis on the employee's job as a whole.

Factors to consider when determining the primary duty of an employee include, but are not limited to:

- the relative importance of the major or most important duty as compared with other types of duties;
- the amount of time spent performing the major or most important duty;
- the employee's relative freedom from direct supervision; and
- the relationship between the employee's salary and the wages paid to other employees for performance of similar work.

A good rule of thumb is to look at whether they spend more than 50% of their time on exempt duties. Time alone, however, is not the sole test, and nothing requires that exempt employees spend more than 50% of their time performing a specific duty.

THOUGHTS TO THINK ABOUT

"Feeling gratitude and not expressing it is like wrapping a present and not giving it." - William Arthur Ward

"It is not enough to be busy; so are the ants. The question is: What are we busy about?" - Henry David Thoreau

"I have learned silence from the talkative, toleration from the intolerant, and kindness from the unkind; yet strange, I am ungrateful for these teachers. - Kahlil Gibran

"What are you doing that's hindering you from where you want to go?" - Chris Longstreet

"To succeed in life you need 3 things: A wishbone, a backbone, and a funny bone."
- Reba McEntire

"Liberty will not descend to a people, a people must raise themselves to liberty; it is a blessing that must be earned before it can be enjoyed." - Benjamin Franklin

"I can live for two weeks on a good compliment." —Mark Twain

THE HAPPY MANIFESTO

The Happy Manifesto is a book by Henry Stewart. His ambition is to lead a movement to create happy, empowered, and productive workplaces. One of his goals is to help people find joy in at least 80% of your work.

1. Trust Your People.
2. Make Your People Feel Good.
3. Give Freedom within Clear Guidelines.
4. Be Open and Transparent.
5. Recruit for Attitude, Train for Skill.
6. Celebrate Mistakes.
7. Community: Create Mutual Benefit.
8. Love Work, Get a Life.
9. Select Managers Who are Good at Managing.
10. Play to Your Strengths.

Learning more about this has inspired the HRA training team to offer a program on Ideas for Creating a Happy Workplace being held on March 18th, click [here](#) for more details.

We are not suggesting that you can just flip a switch and your workplace will be happy. What we are suggesting is that the way we lead, the conversations we have, how we handle disappointments, and our own perspectives all play a role in creating a happy culture.

Being happier at work is tied to better health and well-being, more creative and effective problem solving, more productivity and innovation, and faster career advancement.

People who are happier at work are more authentic, more committed and driven to work, and more willing to contribute beyond their job descriptions.

We have all experienced adversity and setbacks of some sort. Happier employees tend to see the bigger picture, making them less stressed; better at coping with and recovering from work strain; and also better at reconciling conflict.

Happier people are often thought of as more likable, more trustworthy, more deserving of respect and attention, more helpful and supportive of one another.

Happier workplaces report less turnover, lower health care costs, fewer mistakes and accidents, more efficiency and they also earn higher rating on customer loyalty, commitment, and business growth thanks to word-of-mouth endorsements.

ON MY SOAPBOX

I have a regular activity each January. I ask the same question of any CEO or Executive Director I encounter during the month. That question is “Do you have any resolutions that you actually plan on implementing this year?” The answer tells me about their business pain or priority. Not all answers are the same. They vary from, “I have already broken all my resolutions” and there are always some that say, “I just don’t do resolutions anymore.” But regularly I get some variation of “I wish I could get my employees to think like I do, or to think like being an owner here...” They may express this using different words, but it all boils down to “Why don’t they think about the organization like I do?” They follow that sentence with something that sounds like this, “It may be my organization, but it is their employment which I know means a lot to them.”

If we just take only a minute to think about this response, the answer to why employees don’t think like owners is obvious. They don’t have all the responsibility, risk, and headaches that go along with being the owner. And the second answer to that question is, the organization hasn’t taught them to think like an owner.

During [Ted Talks](#) from CEOs they often give reference to the fact that they started with the organization in an entry level job and worked their way up. They talk about what they learned, and it is apparent that they were thinking more like an owner all the way up. They credit thinking with their promotion path to the top. But not all employees think that way. Advising employees that the process of thinking like an owner will assist them in advancement is a good way to make it important. Providing training and education that will help them understand business operations and knowledge will give them the tools to see a bigger picture and understand the connection between business activities. Once they have a general idea and business basics, then the real work can begin.

Here are four ideas to consider:

- Talk with and show them the difference great customer service makes. Tell stories about great customer service and let them know that this is a difference any employee can make. Tell them how much it pains you when you hear about instances where good customer service was not evident. Ask them to think about how the interaction would be perceived if it was the owner of the business handling it.
- You may not want to use a Suggestion Box. They are often filled with ideas like “more money, please,” and “Can we have more vacation time?” But setting up brain-storming sessions as an add-on to staff meetings can generate a positive conversation about business improvements. It isn’t hard to do, it is just hard to get it started. Seeding some ideas with key employees is a good way to begin this new tradition. Fifteen minutes of each staff meeting can be committed to “What could we do differently or how could we improve something we are doing?” Remember to thank and praise each idea brought forth. You can focus the discussion on one particular aspect of your operations, or you can just leave it open for any idea. You should give employees a heads-up before starting this, so they aren’t caught off-guard by the new opportunity or expectation of the new process.
- Give employees with potential a stretch project and then help them to accomplish it. During the process, you can talk with them about the difference the project makes and how they are learning to think like you do. This allows you to see how much your employees want to achieve and how much they want to learn. This can be the beginning of your succession planning. It also conveys an owner mentality.
- And lastly, help employees learn to deal with ambiguity. Owners deal with this every day. Trade-offs, go no-go decisions, and fluctuating market and business conditions create risks. Owners must become inured

- to the fear of risk. Very rarely does an organization become successful if the owner isn't willing to take risks. I am not suggesting wild and crazy ideas, but since the future cannot be known in advance, there is risk in each new operational endeavor. Let employees know that you understand that some of their ideas won't work and others won't turn out to be beneficial. Virtually every owner has made a decision that didn't work out. Letting employees know that you have their back when that occurs, frees up their thinking and creativity.

Every effort, a great staff, and positive reinforcement will not generate an entire organization with business thinking skills. Some employees are just not interested. But think about the benefits of even 10% of your employees thinking about how the organization could be improved, how the organization's positive reputation can be cemented, and how new streams of revenue can be generated.

Talk about a positive outcome...this can be the recipe for tremendous growth and success!!!



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Judy Clark, Founder

