

Special points of interest:

- Essential Training: recognizing discrimination/harassment
- Spending your FSA dollars
- Featured Client—Underwood Insurances Agency
- Volunteers
- Alternative Dispute Resolution

2004

The Human-side

J. ASHCRAFT AND ASSOCIATES, INC.

Essential Training: facing discrimination and/or harassment charges

Primary defense

As has been widely reported, the EEOC's report for fiscal 2002, a period from October 1, 2001 through September 30, 2002 listed 84,442 charges filed with the agency. While there were more charges of race, sex, age, disability, and national origin by numbers, the largest increase, up over 13%, was in charges of religious discrimination.

The EEOC enforces Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), the Equal Pay Act of 1963, the Rehabilitation Act of 1973, Title I of the Americans with Disability Act, and sections of the Civil Rights Act of 1991.

As charges continue to be received, it now takes the EEOC only an average of 171 days to process those charges. Regardless of the numbers and the size of your organization, our courts have held that exposing your employees to training for recognizing discrimination and harassment in their varied forms is absolutely essential to defend



yourself against a charge.

In other words, the primary defense a company can present is evidence that their employees and supervisors have received training. The best evidence is an attendance sheet showing who and when that employee received their training. It is also an excellent idea to have a refresher course on an annual basis. That will tell the EEOC and courts that you are serious.

The discrimination/harassment laws come as close as any in requiring training in recognition of illegal activity and behavior. Train,

IRS Issues Regulations Permitting New FSA Coverage

On September 3, 2003, the Treasury Department and the IRS announced OTC, over-the-counter, drugs can be paid for with pretax dollars through health care flexible spending accounts (FSA). The Treasury and the IRS issued guidance clarifying that reimbursements for nonprescription drugs by an employer health plan are excluded from income.

Thus, reimbursements by health flexible spending arrangements and other employer health plans for the cost of over-the-counter drugs available without prescription are not subject to tax if properly substantiated by the employee.

Good news for those FSA participants who can handle their needs with less expensive OTC drugs.

Inside this issue:

Essential Training	1
FSA Expanded	1
Bona fide Volunteers	2
In the News	2
Underwood Agency	3
Dispute Resolution	3
ID Discrimination	4

Bona Fide Volunteers

The Fair Labor Standards Act (FLSA) covers all individuals employed by a covered employer, though certain employees are exempt from some or all of the law's requirements. These exemptions include 'bona fide volunteers'.

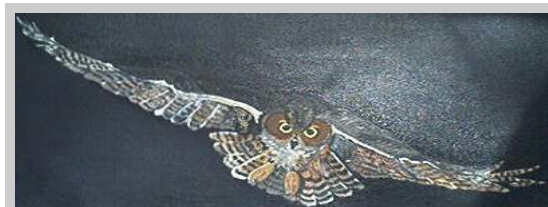
When determining whether a person is a 'volunteer' rather than an 'employee,' the DOL generally considers who receives the benefits of the individual's work, how long it takes to render the services, and whether the services are typical volunteer activities. Volunteers on a part-time basis for public service, religious or humanitarian objectives generally are not considered the employee of religious, charitable, and similar non-profit corporations receiving their services and, therefore need not be paid minimum wage.

The exemption for volunteers does not apply to private employers when an employee spends time working for a public or charitable purpose at the employer's request or direction. All the time the employee spends working as a volunteer is considered hours worked whether the time spent is on the employer's premises or that of the charitable organization or public agency.

In the News

ITEM: The EEOC announced on Nov. 7 that it had filed a law suit against a company with an alleged 'English-only' rule. The EEOC said the company consistently reminded employees not to speak Spanish with each other, even during break times. Under EEOC guidelines, an English-only rule violates Title VII when the rule applies at all times of the workday, including breaks.

ITEM: Employers must accommodate employees during Ramadan. Ramadan, the ninth month in the Islamic lunar calendar, occurs prior to one of two major religious festivals that Muslims celebrate. During Ramadan, Muslims abstain from food, drink and other sensual pleasures from dawn to sunset. It is one of the five pillars (obligations) of Islam. According to the EEOC, an employee's observance of Ramadan is protected under Title VII of the Civil Rights Act of 1964. The law requires employers to "reasonably accommodate" the religious practices of an employee or prospective employee unless doing so creates an "undue hardship" for the employer. The U.S. has an estimated 7 million Muslims.



Owl in Flight: 30 X 15 Oil J. Ashcraft Private Collection

The hours spent volunteering at the employer's request, being part of total hours worked, then could subject the employer to overtime compensation obligations.

If all employees are required to participate in an annual street cleaning day on Saturday, the time spent is considered hours worked.

If the employer posts a notice that volunteers are needed and does not require participation, the time employees spend volunteering for the charity is not considered hours worked.

Also note, employees cannot 'volunteer' to perform their regular duties "off the clock" and without compensation.

ITEM: The Department of Labor in fiscal year ending September 2003 reported that it received 1300 discrimination complaints. According to the DOL, 20 percent of the complaints involved returning military personnel who said their employer denied them reinstatement. One-third of all the complaints involved reserve and guard personnel who said they were passed over for promotion as a result of their service. A reminder, USERRA requires that upon returning from service, members of the armed services and its reserve components must be reinstated to their private civil jobs without loss of seniority or benefits and without any break in service for pension purposes.

ITEM: A "Quirk" in the 2004 calendar has some companies paying 27 biweekly pay periods rather than the usual 26. The [Hartford Courant](#) reports that the calendar quirk will only affect companies that pay on a biweekly basis, depending on their pay cycles and the day of the week their payday falls. The issues doesn't affect companies that pay employees twice a month, 24 pay periods.

Obedience of the law is demanded, not asked as a favor.

-Theodore Roosevelt-

Featured Client: Underwood Insurance Agency, Inc. Lafayette, Indiana

The Underwood Agency is a storied agency in Lafayette, Indiana. In continuous business and under the same family ownership since 1865, this agency is a full-line insurance provider to central Indiana and beyond.

President Craig Graham is proud of the heritage of the agency. It is housed in its historic original office building on Ferry Street just two blocks from the county courthouse. Walking into the agency is like stepping back in time with the preservation of furniture and mirrored certificates of insurance underwriters long gone from the insurance scene. Yet, every desk is equipped with the most modern electronic convenience so that immediate information and service can be given its many clients.

The founder of the agency, Thomas Underwood, was also the local fire department, protecting the property of his clients and the community with a horse drawn wagon equipped with a water pump. Underwood could be seen racing to local fires with his pony 'General Grant' pulling the 'Schuyler Colfax', the pump wagon.

We're proud to count this fine agency among our friends and clients

The people of Underwood represent dedicated service to clients in life, health, personal and commercial lines. Take a couple of minutes to visit their outstanding web page at www.underwoodagency.com.



The 'Schuyler Colfax'

Underwood Insurance Agency

Alternative Dispute Resolution

How do you handle problems between employees or between employee and company? Don't say 'grievance procedure'. That is a union term that has no place in a nonunion environment. What is needed is a step-by-step procedure whereby your employee can have his/her problem heard by authority. We call it the Alternative Dispute Resolution (ADR).

Train your manager/supervisors to listen to employee problems. Include in your orientation a section on how the employee, who has a problem with another employee or with the supervisor, may deal with the problem and process it so it will be heard and handled.

Most problems can be solved by just listening and talking things out. If the problem is a supervisor, have a method whereby the employee can go to the next highest authority to be heard and with a guarantee there will be no retaliation.

We can design a multiple-stepped process for you to handle internal problems. We suggest a process that first is heard by the direct supervisor. We also believe the problem is best put in writing to clarify the situation.

Once the problem has been presented, the supervisor/manager is obligated to discuss the problem with the employee, investigate the situation and talk to any and all witnesses, if appropriate, and give the employee an answer in 2 days.

If the employee (complainant) is not satisfied, have him or her again put the complaint in writing and process it to the next highest authority. This individual should investigate the situation independently from the supervisor and talk to affected or witnesses employees. The Manager should render a decision in three-days and put that in writing as well as discuss with the employee.

Finally, the employee can take the problem to the highest authority in the operation to have the situation heard. Again in writing; again investigation; again an answer in writing within a given number of workdays.

We suggest our clients consider binding arbitration as the final step in the procedure. This is a step that can keep the complaint out of the court system. Ask us more about the procedure.

*You cannot
shake hands with
a clenched fist.*

-Golda Meir-

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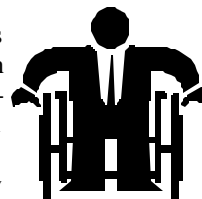
... solving HR problems... creating HR solutions ...

Identifying Discrimination

We have a tendency to believe that discrimination is something that happens to others, that it happens all the time, and that it can't be prevented. Well, it does happen everywhere, even to you. What's more, it can cost you your business.

Federal laws like Title VII of the Civil Rights Act of 1964, the ADA, ADEA, Equal Pay Act, FMLA, USERRA, and Pregnancy Discrimination Act protect almost everyone against discrimination due to race, color, religion, national origin, sex, disability, age (over age 40). Let's not forget the NLRA and the activities it protects between two or more employees.

In addition, many states have their own protected classes in addition to those protected by federal legislation. Among protected classes at state level are, sexual preference, marital status, age (any age), obesity, arrest records,



Know your protected classes in your state.

smokers, polygraph, whistleblowers, and drug testing. Discrimination in any form must not be permitted in the workplace. Do you know who is protected in your state?

It is imperative for every employer to know the state and federal law for which they must be compliant. Many laws do not apply to all employers. Some laws have thresholds of five, twenty, fifty or more employees before you are covered by their terms. However, if your company is on the borderline between covered and not covered, consult your attorney or Human Resources advisor. Some laws have requirements other than number of employees and you could fall into coverage based on other situations.

If you need a listing of federal or compliance thresholds give us a call and we will send you basic information and discuss particulars with you. Don't let non-compliance affect your business.