

Special points of interest:

- New OT Rules still in effect.
- USERRA
- In the News
- HR Advisor
- Holiday Wishes

2004

The Human-side

J. ASHCRAFT AND ASSOCIATES, INC.

## New OT Rules Still the Law

### Re-election virtually assures new rules will remain

Despite action taken by both the U.S. House of Representatives and the Senate, overtime rules effective August 23, 2004 are still in effect. As promised, both Houses of Congress enacted their own blocking legislation.

Both versions attack the appropriations for the Department of Labor by denying any funding for enforcement until fiscal 2005. While the Senate version reinstates the old rules, the House does not. One other item of interest, the Senate version permits the new wage base test of \$23,660 annually as a minimum for overtime exemption. As a result, the Senate version is coming under 'point of order' scrutiny. Critics say the Senate version is trying to legislate in an appropriation bill, a legislative no no.

The fact is that companies should put the new rules in force if they have not done so. Job Descriptions should be reviewed, job content should be determined by individual, not classification.

With the re-election of the President, and congress in 'lame-duck' session, there is virtually no way block-

ing legislation will be enacted this year prior to the seating of the new Congress.

From the beginning, the objections concerning the new rules were political, a campaign issue for unions to flex their perceived muscles. Now, with the election behind us and a new Congress being seated in January, some modifying action may be argued. However, Congress is unlikely to change any of the new rules.

The new rules changed the wage basis test for the first time since the FLSA came into being in 1935. There is no argument that the wage basis test needed to be modified to reflect cost of living increases over the years. The problem is the new rules could potentially take current employees now earning overtime pay off the overtime eligible list. What is really happening is the new rules are making millions of employees overtime eligible for the first time.

To date, according to *HRNews*, there is no evidence of significant loss of overtime eligibility. Congressman George Miller's (D-Calif.) prediction of 'the biggest pay cut in American History' has not proved accurate. In fact, more employers are reclassifying their employees making them eligible for overtime pay.

We may not have heard the last of this issue but going back now is improbable.

## WFTRA: Working Families Tax Relief Act of 2004

The most significant issue facing employers and the benefits administrator today is the newly enacted WFTRA. In effect, the WFTRA exempted from taxation the value of health benefits that employees receive. However, the Act did not exempt the value of the amount the employer spends on premiums. Consequently, the amounts that

employers spend on premiums for dependents will be taxable income to the employee unless those dependents fall under WFTRA's new definitions of dependents.

In the rewrite of the code, you will also see hardship withdrawal from a 401(k) affected by the new definitions. The IRS promises to fix, but when?

Inside this issue:	
OT Rules in effect	1
WFTRA	1
USERRA	2
In the News	2
Union Movement	3
HR Advisor	3
Holiday Wishes	4

## USERRA: Veteran's Rights

The *Uniformed Services Employment and Reemployment Rights Act of 1994* protects the employment rights and benefits of military service members on their return to civilian life.

While there is a sweeping change being proposed to the 1994 law, you will be well served to liberally interpret current protective language in favor of the homecoming veteran.

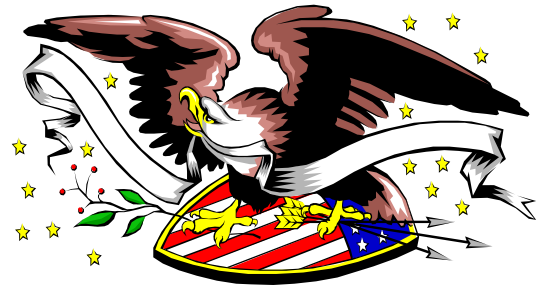
The time served may not be paid, however, nothing can affect the employee's right to vacation, sick leave, and other normal benefits. Normally, the returning employee must be restored to the position the employee would have attained had the employee continued employment without interruption. That means appropriate seniority, status and pay. Unless you can prove business conditions have substantially changed and reinstating the employee to the old position is impossible you are expected to give the returning employee their old job back with all the pay raises he or she may have reasonably expected during their absence.

Another condition you should be aware of: you may not discharge reemployed veterans,

in absence of just cause, for up to one year.

This is one of those laws that should be applauded by industry. It can prove to be an administrative headache for some. However, the sacrifices made by armed services personnel, especially those in our reserve units, those who have been called up to serve their country, those leaving their homes, families, and jobs should be given every opportunity to return to their previous life without unnecessary hassle.

USERRA, like other employment law is there to protect the employee AND employer. Compliance is easy once the law is understood and our obligation to comply is accepted.



“An optimist is a person who sees green everywhere, while a pessimist sees only the red stoplight . . . The truly wise person is colorblind.”

-Albert Schweitzer-

## In the News

**ITEM:** *Secret Ballot Protection Act of 2004*, H.R. 4343 was introduced on May 12 by Rep. Norwood (R-GA). This bill would amend the NLRA by making it an unfair labor practice for an employer to recognize or bargain with a union that has not been selected by a majority vote in a secret ballot election supervised by the NLRB.

**ITEM:** The Working Families Tax Relief Act of 2004 raises havoc among benefit administrators and company accountants.

**ITEM:** New law allows electronic completion and storage of INS Form I-9. The act is welcomed by most HR professionals. However, now you might want to add a firewall to protect the privacy of health information that is sometimes stored with I-9s. As we know, the I-9 is never stored in the employee's Personnel file. Neither are medical records. Be cautious of electronic storage of sensitive information.

**ITEM:** November 26 was the effective date for new COBRA rules. Generally, the new rules require new notices be given to employees.

**ITEM:** March 28, 2005 is the effective date for the new 'Safe Harbor' test for automatic rollover of 401(k)s. The new rule permits the automatic rollover of the funds in a terminated employee's tax-qualified plan to an individual retirement account.

## Unionism on decline: Legislative CAUTION

A recent study released by Canada's Labor and Household Surveys Analysis Division showed Union membership that had grown over the past 25 years, the percentage of the workforce represented by organized labor, is declining. This is a trend shown around the world. However, in the U.S. Congress there is a movement afoot to make organizing a breeze. You should be aware of the efforts.

At the urging of the AFL-CIO several congressmen have taken on the sponsorship of a bill that would permit the recognition of a union without a secret election.

The NLRA sets forth the method by which a group of employees may gain recognition for their union. In most cases, this is a process of signing cards and the union using these cards to petition the NLRB for an election. If a majority of one votes, secretly, to recognize a union, the company must bargain, in good faith, in all matters pertaining to wages, benefits, and working conditions.

In their wisdom, sponsoring congressmen believe the fact that having signed cards

should be enough evidence to justify recognizing a union. On the surface, it makes sense.

However, cards are often signed under duress. Some eligible signers are pressured, threatened, abused verbally and physically until the card is signed. Some potential voters will sign anything to get the organizers off their back knowing full well that the vote is a secret ballot and the organizers are not present in the voting booth. The secret ballot is the only mechanism by which your employees can freely express their desire to be represented by a union. You should do everything to protect that right.

Unionism is on the decline. It is little wonder the unions are pressuring their friends in congress to improve their lot. When membership declines, dues are shut off, high international salaries are difficult to sustain, services are reduced and the rank and file become angry. The international needs a way to increase membership and they are looking to your congressman to be their organizer.

Let your congressman know that the secret ballot is the only way to recognize unions.

## HR Advisor

A recent study reported that 79% of employees who leave their jobs cite "lack of recognition" as a key factor. Is turnover a concern of yours? If so, here is just one solution.

As the study suggested, recognition is important to all employees. It has often been said that an occasional 'pat-on-the-back' is more appreciated than money. Recognizing an employee's contribution is one important factor. You do not need to give plaques or certificates. You just need to say thanks and it helps if it is in the presence of a fellow employee.

Another way of extending recognition is recognizing territory. How often do you hear 'my desk', 'my computer', 'my office', 'or 'my machine'? This is the way many employees express ownership. Taking that ownership away is a significant cause of discontent among workers at all levels.

If you are a union operation you already know the number one issue cited in the grievance procedure is job assignment. That is just another way of saying you're messing with my territory. Perceived territory should be recognized when-

ever possible. How? That's easy.

In an office, let your rules permit personalization of the office or cubicle space. Let your employees have pictures and personal items on display in their work space. Let your employee know their work assignment is their job, a job that the company relies upon. Let them sign documents, not officially, perhaps, but sign when a job is submitted as complete. Let the employee know their signature is their personal guarantee the job is complete.

In other environments such as a plant, assign employees to areas, departments, machines, and duties consistent with their job titles. Guarantee, as far as possible, their job assignment today, tomorrow, next week so long as the job is up and running (no breakdown of equipment) and is running up to company expectation. Let your employees claim ownership to an operation and don't assign anyone else to that operation so long as the employee is doing the job as you expect.

The same is true to sales territory. But, you already know that. Let others in the organization also have territory.

"If you find yourself in a hole, stop digging."

-Will Rogers-

# J. Ashcraft and Associates, Inc.

P.O. Box 11143  
Sarasota, Florida 34278

Phone: 941-400-0483  
Fax: 941-351-1266  
Email: jim@hr-only.com  
www.hr-only.com



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

## HOLIDAY GREETINGS

Prepared or not, the holiday season is upon us all. A time for celebration, parties, relaxed atmosphere at work and play, food, perhaps even a drink. Take our advice, review your plans now and make sure you and the company are protected.

Every year some employer somewhere believes the time is right to relax and give something special to the employees who have given so much all year. Let's have a party!

That's OK, so long as you know and understand your liabilities.

Don't allow alcohol on company premises. If you are sponsoring a party, take it off-site, make it voluntary, refrain from buying any alcohol.

If alcohol is available, make sure your employees purchase their own drinks. At an officially sponsored party the company could find itself liable for the actions of employees after they leave the party. Designated drivers are encouraged.

It is far better to have a get together on site, without alcohol. A celebration of the season and an opportunity to express the company's best wishes for the holiday season. It may be a time to hand out bonuses or that free turkey. Our advice? Say thanks, wish them well and give them the bonus, gift or handshake. Then send

them on their way home to spend their time with family and friends.

***The Human-side***  
is a publication of  
**J. Ashcraft and Associates.  
Inc.**  
for its clients and friends.

Information contained herein is the opinion of the publisher and does not represent advise or counsel to the reader. Should there be any questions, please call

**941-400-0483**  
before you act on any matter contained in this newsletter.  
J. Ashcraft, Editor