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Louisiana EMPLOYMENT Law Letter

A monthly newsletter designed exclusively for Louisiana employers

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LEGISLATION

What all the king's men (and women) decided — 2004 legislative session in review

by Jennifer A. Faroldi

The 2004 legislative session, which ended on June 21, brought mostly positive results for employers. What's even better for you are the bills that didn't pass, such as an attempted hike in Louisiana's minimum wage and the abolition of employers' immunity from civil suits for on-the-job injuries. Our final report on the 2004 legislative session summarizes the bills that passed and how they'll affect your workplace. Unless otherwise reported, these laws will go into effect on August 15, 2004.

'Share our wealth' . . . on the first and 16th of each month

SB 37 is on its way to Governor Kathleen Blanco for her stamp of approval. The new law requires all employers to inform their employees when hired how much they'll be paid, by what method, and how often. Employers that fail to designate paydays must now pay their employees on or as closely as possible to the first and 16th days of each month. This law doesn't apply to employees who are exempt from overtime pay under the Fair Labor Standards Act. Additionally, employees who work in manufacturing, boring for oil, mining, and public service corporations are covered by different rules concerning when they must be paid.

Employers that violate the new law will be fined $25 to $250 for each day's violation. A second violation may subject a person to imprisonment for 10 days. Finally, this law requires you to post a notice from the Louisiana Department of Labor that states:

> Your employer has a duty to inform you at the time of your hire what your wage rate will be, how often you will be paid and how you will be paid, and of any subsequent changes thereto. If your employer should, for reasons within his control, fail to pay you according to that agreement, you must first lodge a complaint with him. If no action is taken to resolve your complaint, you may report the violation to the office of labor within the Louisiana Department of Labor.

You should consult with the Louisiana Department of Labor to obtain a copy of this poster, which must be posted with the other posters required by state and federal laws.

This new law shouldn't greatly disrupt the operation of your business since most of you discuss the payment of wages with an employee when hired anyway. Also, most of you have set paydays. If you haven't designated paydays for your nonexempt employees, however, starting on August 15, you must now pay them on the first and 16th of each month or establish and communicate the paydays you wish to follow.

Job protection for our protectors

SB 692 passed in the Legislature with flying colors and is effective immediately. The law requires job, pay, and

In this issue

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benefits protection for certain first-response and security personnel called to duty. SB 692 amends current law providing for the proclamation of a state of emergency and enacts new law, Louisiana Revised Statute § 23:1017.1 - 1017.6, relating to the employment and benefits of employees called to active duty during a state of emergency.

The law requires public and private employers of individuals with first-response obligations to homeland security emergencies, including, but not limited to, medical personnel, emergency medical technicians, Civil Air Patrol, those called to active duty service in the uniformed services of the United States, members of the Louisiana National Guard, law enforcement personnel, and fire protection personnel, to maintain their employment, pay rate, pensions, and benefits during periods of declared homeland emergencies.

The new law requires you to treat employees who leave their jobs to perform first-responder duties as being on temporary leave of absence subject to the terms and conditions of your policies regarding leaves of absence. This leave of absence is unpaid, but you and the employee may agree to apply any accrued paid leave during the absence. The employee's leave of absence can't be considered a break of employment for purposes of seniority or benefits programs you offer. The continuation of retirement or health benefits requiring employee contribution or copayments is subject to the terms and conditions of those benefit plans.

Employees called to duty in homeland emergencies must be reinstated to the same position they had when called to duty or a comparable position with no less compensation, seniority, status, or benefits. In fact, the law provides that when reinstating an employee, she must receive the status she would have achieved if she had continued employment without interruption. You don't need to reinstate the employee if your company's circumstances have changed and made reemployment impossible or if reemployment would impose an undue hardship on the company. Generally, employees must report to work within 72 hours of their release from homeland emergency duties, and a failure to do so will be considered a voluntary resignation.

You're correct if you think this law sounds similar to the Uniformed Services Employment and Reemployment Rights Act, the federal law governing employment rights and benefits for employees who take military leave. So when your employees return from service either abroad or from a local state of emergency, you have obligations to them. Check with your employment lawyer when dealing with these issues.

Employment of minors

The passage of **HB 691** brings clarification to the question of when you may employ minors. The new law doesn't affect minors employed in the dairy industry. As of August 15, minors who are 16 years of age and haven't graduated from high school may not work between the hours of 11:00 p.m. and 5:00 a.m. before any school day. Minors who are 17 years of age and haven't graduated from high school may not work between the hours of 12:00 a.m. and 5:00 a.m. before any school day.

Minors under 16 years of age who haven't graduated from high school may not work between the hours of 7:00 p.m. and 7:00 a.m. before the start of any school day or between the hours of 9:00 p.m. and 7:00 a.m. on any day. For the purpose of this law, any minor who has obtained a GED and received a high-school equivalency diploma is considered to have graduated from high school. This law finally makes crystal clear when you can and can't employ minors, so take note if you have minors in your workforce.

Clarification of drug-testing laws

HB 1701 will become law as soon as it is signed by Governor Blanco, or by August 15 at the latest. Louisiana's drug-testing law currently provides that employee drug tests must be performed in a lab certified for forensic urine drug testing by the National Institute on Drug Abuse (NIDA) or the College of American Pathologists. The new law clarifies that the Substance Abuse and Mental Health Services Administration (SAMHSA) replaces NIDA as the proper authority to certify laboratories for

Web Alert Heads-up play saves the day

Our website, HRhero.com, gives you the latest national news in employment law. Go to www.HRhero.com/news to read:

- **"Prompt response defeats employee's claims"** — An employer avoids an expensive trial and the risk of a large damages award by responding quickly to an employee's racial harassment claims.
- **"Promotion issue keeps sailing"** — A federal appellate court upholds a promotion decision by the U.S. Navy.
- **"Failure to notify creates FMLA claim"** — An employer may have created a claim where none would have otherwise existed by failing to notify an employee of his FMLA rights.
- **"Rooty-toot-toot, your case is moot"** — In a rare decision, a federal appellate court refuses to enforce an arbitration award.
- **"'Safety and health risk' applicant ruled not disabled"** — Although an employee's disease-related symptoms keep him from safely performing certain tasks, he wasn't judged legally disabled. ❖

drug testing in Louisiana. Additionally, the law states that an employer may use on-site screening for employees or applicants only if no "negative employment consequences" will be taken solely as a result of the on-site screening. "Negative employment consequences" are actions taken by an employer that negatively affect an employee's or prospective employee's status, such as termination or refusal to hire. So before you refuse to hire, fire, or take other negative employment consequences against an applicant or employee because of a positive drug-test result from an on-site screening, you must send the applicant or employee to a lab certified by SAMHSA for testing.❖

Wishing you knew more about wages? We can help!

by Stephanie C. Moore

You've asked us to tell you about wage and hour law — how to keep track of hours worked, when wages are due to your employees, and what to do if you ***forget*** *to pay them altogether! Since all employers have employees and all employees get paid, this month's Q&A should be of interest to everyone.*

Q: Is there any risk in making exempt employees use timecards?

A: First, let's define the term "exempt" employees. Exempt from what? Exempt from *overtime*. If exempt employees work any amount of hours during a week (no matter how few or how many, as long as they work at least part of the week), they get the same salary. They aren't entitled to receive overtime for working more than 40 hours per week like nonexempt employees. So whether exempt employees work 30 hours per week or 65 hours per week, their paycheck looks the same every week. Typically, because it doesn't matter how many hours an exempt employee works in a week, most employers don't keep track of their working hours.

Suppose your company is working on a project for a client that wants you to keep track of the hours each employee puts in on the job or you're a government contractor who's required to do so. Is it *illegal* to track the number of hours your exempt employees work by asking them to use timecards?

No, of course not. But what if you want to do it just to keep track of how many hours the employees are working? Illegal? No, *but* as the reader who sent in this question obviously wants to know, does it carry any risk? Only if it appears that the pay for those exempt employees is based on the hours logged or you use the record to dock them for hours not worked. Docking the pay of exempt employees (except in very limited circumstances, some of which are discussed in the next few questions) may cause them to lose their exempt status. Likewise, paying exempt employees based on hours worked will cause them to lose their exempt status.

What does that mean to you? Well, remember all those 65-hour weeks the employees put in? If they lose their exempt status, you owe them overtime for hours worked in excess of 40 for every week up to the prior three years. That can be an expensive proposition.

Also, if you begin tracking the hours of your exempt employees by making them punch a time clock, they may start thinking about all of the "extra" hours they put in each week for the same amount of money they get for working a "regular" week. That's not a morale booster, to say the least.

The bottom line is that if you have a specific reason to ask your exempt employees to clock in and out (like a particular project or a client request), it shouldn't be a problem. If you do it as a matter of course and it appears that the employees' pay correlates to or is based on the number of hours worked, however, the exempt employees may begin to look more like nonexempt employees to the U.S. Department of Labor (DOL), which may tell you to start paying them overtime.

Q: We pay employees on a weekly basis every Friday. If an employee reports hours worked for a week and the employer *forgets* to pay the employee, are we legally allowed to delay payment of wages until the following payday?

A: We don't know of too many *employees* who would forget that it's payday! If *you* forget, it's a safe bet your employees promptly will remind you it's time to send out those paychecks. If you still miss a paycheck, drop everything and pay it — fast! The Fair Labor Standards Act (FLSA), the law that contains minimum wage and overtime requirements, says employers "shall" pay a minimum wage. It doesn't say when, but when this issue has come up in court, judges interpreting the law say that means employers must pay employees their minimum wage *on the regular payday for each workweek*. If a pay period covers more than a single week, payment must be made on the regular payday for the workweek in which the pay period ends. So the reasoning goes that if you miss a payday, you haven't met your obligation to "pay" under the FLSA.

The penalty for a willful violation of the FLSA is *double* damages. That means that if you find yourself in the situation described in the question and you purposely delay the payment of wages, your employee can sue you. If he wins, you pay him *twice* the original amount you owed him plus his attorneys' fees. That can be especially costly if you routinely miss paydays for a large workforce that decides to get together and sue you in a "collective action" (group lawsuit). It's better to invest in a good payroll system to keep on top of those paychecks!

Also, for those of you who don't have a set "payday" for employees, it's important to note that the Louisiana Legislature just passed a bill that requires you to pay employees on the first and 16th of each month if you haven't specified particular paydays. For a complete discussion of this proposed bill and other new Louisiana legislation, take a look at our legislative update on page 1.

Q: If an employer doesn't have a paid-time-off policy for bereavement leave and an exempt employee misses three days from work because of a death in the immediate family, can the employer legally dock that employee's wages for the three days missed? Can the employer demand that the employee use vacation time to "cover" those days to allow her to receive payment?

A: While there are very few exceptions to the general rule that exempt employees can't have their wages "docked" without losing their exempt status, this is one of the few times when it's OK to do it. The DOL regulations interpreting the FLSA state that deductions may be made for absences of *one day or more* when an employee is absent for personal reasons *other than sickness or accident*.

Therefore, if an exempt employee is absent for a day or longer to handle personal affairs (like attending a funeral), her exempt status won't be affected if deductions are made (in full-day increments only) from her salary for the days she missed. It's up to you. You can give this employee a choice: Either she can go three days without pay or you can require her to use vacation time in order to be paid for the days, if doing so is consistent with your policies and practices.

Q: A company manager docked four hours of pay from one of his exempt employees' pay. The employee had reported to work for the day and, after lunch, left because of illness. Since he had depleted all of his sick time, the manager docked his pay. Am I correct in stating that this is against FLSA wage and hour laws and the employee could lose his exempt status?

A: This one is probably a no-no. You're allowed to deduct for absences of *a day or more* due to sickness or disability only *if* (1) you have a bona fide plan, policy, or practice of making deductions from an employee's salary (2) after sickness or disability leave has been exhausted. If you don't have a bona fide sick-leave plan, these deductions can't be made.

In the scenario presented in the question, it appears the employer has a sick-leave policy and the employee has exhausted his sick-leave time. But the employee has missed only a *half-day*, not one or more full days. Therefore, you're correct that this employee could lose his exempt status if his pay is deducted for the four hours of missed work.

There's another potential issue here that you must consider, however. The question doesn't say whether the "illness" that caused the employee to leave work qualified as a "serious health condition" under the Family and Medical Leave Act (FMLA). As you know, if the employee qualifies for FMLA leave, he may take that leave "intermittently" depending on the circumstances.

For example, if the employee suffers from asthma that periodically flares up and requires him to leave work, he may take up to 12 weeks of leave a few hours or days at a time. In this situation, can you dock his pay for the time he misses during the intermittent leave? Yes, the FMLA specifically provides that an employee's exempt status under the FLSA won't be lost if you make deductions from salary for unpaid FMLA leave.

Keep in mind, however, that you must be covered by the FMLA (50 or more employees within a 75-mile radius of the facility where the employee in question works) and the employee must be eligible for FMLA leave (must have been employed for at least 12 months and worked at least 1,250 hours) for this rule to apply. Deductions for FMLA leave fall under the rules described above. ❖

WAGES

Time is money — at least when it comes to seniority status

by Amanda L. Jones and Jennifer L. Anderson

Your employees don't compare how much they make with their co-workers, right? That's probably not a safe assumption, even if you have a policy discouraging them from disclosing their pay. And you probably know that such a policy can't be enforced if the purpose of disclosing or discussing pay amounts to protected activity under the law.

When employees discover differences in pay for similar jobs, they sometimes jump to conclusions about the employer's motivation. While the reasons for differences in pay may be obvious in some situations (e.g., seniority, responsibilities, job title, education, or experience), they're sometimes subtle or not known by employees and, thus, may lead to speculation. A recent Louisiana case addressing an alleged violation of the Equal Pay Act (EPA), which prohibits wage discrimination based on gender, shows what can happen when imaginations run wild and how you might avoid unnecessary litigation as a result.

One man's wealth is another woman's . . . lawsuit?

A woman began working as an adjunct professor at a Louisiana university when her husband accepted an assistant professorship there. A few years later, the university hired her as an instructor and then as an assistant professor, which placed her on a tenured track and made her eligible

for pay increases based on merit. Next, the university promoted her to the position of a tenured associate professor. Two years later, however, the university denied her request for a full professorship based on its belief that her request was premature. The university finally promoted her to a full professorship, although not until six years after her first request.

The professor sued the university for allegedly violating her rights under the EPA. She claimed the university paid her less than her male counterparts because of her gender. The university allegedly paid her $12,000 less than the average full professor salary at the university. She claimed she received the lowest salary of all the full professors in the College of Science — both male and female. She also claimed that her salary was lower than that of all but one associate professor.

The professor said she had 37 years of teaching experience, more than any other teacher in her department, and claimed that her job was identical to the jobs of other professors in her department. She specifically compared herself to a male professor who was hired into a tenure-track position four years before she was and who served as both assistant head of the department and interim department head.

In response, the university argued that the differences in salary resulted from various factors, including different starting dates for tenure-track positions, market values for professors' specialties, and merit pay raises based on the professors' annual performance reviews (APRs). The university explained that the professor's low salary was the result of her APR ranking, not her gender. Nevertheless, the jury concluded that the university violated the EPA and that the wage disparity was based on gender and awarded the professor $49,156. The university then appealed.

Take a moment to review wages within your company.

University makes the grade on appeal

On appeal, the court recognized that the university paid the female professor less than a male professor in her department. But the court asked whether the employees did substantially equal work for different pay and whether the reason for the wage disparity was gender.

The court first reviewed whether the actual jobs performed by the employees required equal skills. The court explained that in a professional setting, such as a university, the proper test is whether the complaining employee is receiving lower wages than the average paid to all employees of the opposite sex who are (1) performing substantially equal work and (2) similarly situated with respect to any other factors, such as seniority, that affect the wage scale.

The court concluded that the male professor in this case wasn't "similarly situated" to the female professor with respect to seniority because he started his tenure-track position *four years before* she did. The male professor also held other positions in addition to his full professorship, including assistant head of the department and interim department head. Those extra jobs affected his pay and job duties.

The court reversed the jury's award and concluded that the female professor hadn't shown that her job was substantially equal to the male professor's job, a requirement under the EPA. The court also determined that the male professor wasn't similarly situated in seniority because he started his tenured career four years before she did. So the university got a passing grade, and the female professor's EPA claim was dismissed. *Ramelow v. The Board of Trustees of the University of Louisiana System*, 03-1131 (La. App. 3 Cir. 03/31/04); 2004 La. App. LEXIS 682.

Good advice is worth more than gold

The moral of this story is that not all wage differences between men and women are unlawful. For example, wage differences that result from seniority systems (paying an employee more because he or she has been with your company longer), merit systems (paying an employee more because of his or her performance), or other systems that base earnings on quantity or quality of work are allowed. In a nutshell, it's OK for you to pay men and women differently — as long as that pay difference is based on *reasonable factors other than sex*.

Take a moment to review wages within your company. If you find pay differences between men and women who seem to be in similar positions, verify that there are reasonable factors for the pay differences, such as those discussed above. This type of audit may save you time and money in the long run. And when you set or modify an employee's pay, take the time to explain the factors on which it's based. Communication may prevent a lawsuit based on an employee's speculation or misunderstanding. ❖

TITLE VII

Federal appeals court allows sex discrimination claim by transsexual

In a decision that's sure to send shock waves through human resources departments across the country, the U.S. Court of Appeals for the Sixth Circuit has allowed a transsexual firefighter to pursue sex discrimination claims against his employer under Title VII of the Civil Rights Act of 1964. This is the first time a federal appeals court has recognized such a claim. Let's take a look at this fascinating court decision and what it may mean for you.

Facts

Jimmie Smith had been a lieutenant in the Salem, Ohio, Fire Department for seven years when he was diagnosed with gender identity disorder (GID), or transsexualism. That basically means he's biologically a man but his sexual identity is that of a woman. Part of the treatment for people with GID is that they start dressing and acting like the sex they believe they are. That often leads ultimately to a sex-change operation.

Smith's lawsuit alleged the following facts. When, after seven years with the department, he began dressing and acting more feminine at work, the other firefighters questioned him and commented on his waning masculinity. As a result, he decided to talk to his supervisor, Thomas Eastek, about his condition. He told Eastek that, eventually, he would probably undergo a sex-change operation. Smith's sole purpose in talking to Eastek was to explain the changes in his appearance and demeanor so that Eastek could address the matter with the other firefighters.

Eastek told the city's fire chief about Smith's condition and behavior after promising not to. The fire chief responded by, together with the city's attorney, devising a plan to get rid of Smith. Apparently afraid to fire him outright, they decided instead to require him to undergo three psychological evaluations with physicians of their choosing. They apparently hoped that Smith would either quit (rather than submit to the evaluations) or refuse to comply (in which case they could fire him for insubordination).

Smith found out about the plan, got a lawyer, and filed a complaint with the Equal Employment Opportunity Commission. A few days later, the city suspended him for allegedly violating a city regulation. That suspension was eventually overturned by a court because the regulation Smith supposedly violated wasn't in effect at the time. Smith apparently still worked for the fire department throughout the duration of his lawsuit and appeal.

Because GID is a recognized medical condition, you might wonder why Smith didn't sue for disability discrimination under the Americans with Disabilities Act (ADA). The answer is that the ADA specifically says that it doesn't apply to transsexualism. We assume that Smith didn't pursue a harassment claim because the comments of his fellow firefighters didn't rise to the level of a hostile work environment.

Legal claims

To understand the court's decision, you need a little bit of background. As you know, Title VII prohibits discrimination in employment on the basis of sex. What that means exactly has long been the subject of controversy and dispute. The U.S. Supreme Court hasn't issued all that many decisions on the subject of sex discrimination, but when it does, it tends to be a doozy.

Such was the case in 1989, when the Court issued its decision in *Price Waterhouse v. Hopkins*. In that case, one of the accounting firm's senior managers was turned down for partnership because, in part, she was considered "macho." She was told that if she wanted to improve her chances for partnership, she should go to charm school; walk, talk, and dress more femininely; and wear makeup and jewelry.

The Court said that denying a promotion to a woman because she's not "feminine enough" is sex discrimination. Since that decision, the courts have generally recognized federal law claims for "sex stereotyping" — or discrimination against a woman because she fails to "act like" a woman.

Smith argued that that's essentially what happened to him. The city discriminated against him because he failed to "act like" a man. In 1983, the Court recognized (in a case that didn't involve sex stereotyping) that Title VII prohibits sex discrimination against men. It follows, then, that if employers can't discriminate against women who aren't feminine enough, they can't discriminate against men who aren't masculine enough, either.

The trial judge basically thought that Smith was trying to disguise what was essentially a claim for transsexual discrimination as a claim for sex stereotyping. But the appellate court disagreed, saying that it could see no difference between Smith's situation and that of the "macho" female manager in the *Price Waterhouse* case.

But the Sixth Circuit went even further, concluding that Title VII prohibits discrimination not only on the basis of a person's *actions* (a man acting like a woman) but also on the mere fact that the person is a transsexual (even if the person doesn't "act" like a member of the opposite sex). A man who professes to be a transsexual, the court explained, is inherently stating that he wants to be a woman, and that's the same thing as acting like a woman under the theory of "sex stereotyping." *Smith v. City of Salem, Ohio* (6th Cir. 2004).

Bottom line

Perhaps the biggest question this case raises is what impact it will have on the ability of homosexual employees to sue in federal court for sex discrimination. It has long been acknowledged that Title VII doesn't prohibit harassment or discrimination on the basis of an employee's sexual orientation. Not all homosexuals exhibit behavior or mannerisms that resemble those of the opposite sex. In other words, not all gay men are effeminate, and not all lesbians are masculine.

It seems clear, then, that employees who are discriminated against or harassed solely because of their homosexuality wouldn't be able to assert a claim under Title VII. But if a homosexual doesn't conform to society's rules regarding appropriate masculine or feminine behavior, it

appears that he or she would be able to sue for sex discrimination under the theory espoused in this case.

The good news is that the chances that you will have a transsexual employee are pretty slim. The bad news is that if you do have a transsexual employee, it's no longer clear what your legal obligations are. Our best advice is to follow the golden rule of employment discrimination: Evaluate employees on the basis of their job performance, not on irrelevant personal factors such as their sexual identity or orientation. ❖

HIRING

Not worth the paper it's printed on: what to do about fake degrees

In the last month or so, reports have been surfacing of professionals in positions of responsibility purchasing degrees from diploma mills to get an edge in the workplace. Some use the fake degrees to qualify for higher pay. Others use them to make it appear that they're more qualified than other job applicants and land the job. Apart from the financial considerations of paying employees a higher salary than they're entitled to, what are the dangers of hiring employees with fake degrees or other falsified credentials? And what resources are available to you in trying to detect which credentials are for real and which aren't worth the paper they're printed on?

Require graduation from an accredited institution of learning.

Diploma mills in the news

One of the highest-profile instances of an employee faking his credentials came to light two years ago when Notre Dame discovered that its head football coach had lied about having a master's degree. More recently, several scandals have broken across the nation about teachers using fake degrees to either qualify for a pay raise or comply with the higher-education requirements imposed by the No Child Left Behind Act.

Of even greater concern, however, are the General Accounting Office's recent revelations that many federal employees hold bogus degrees — including at least three management-level employees at the National Nuclear Security Administration (the office that oversees nuclear weapons safety). Some of the federal employees were even reimbursed by the government for the cost of their fake degrees.

Why worry about fake degrees?

Just because an employee's degree came from a diploma mill doesn't mean she's necessarily unqualified for the job. For example, a teacher who uses a fake master's degree to get a pay raise is a teacher nonetheless. In addition, nondegreed employees are often capable of performing many different types of jobs as well as — or better than — their degreed counterparts.

Your main legal concern about hiring employees with fake degrees should be preventing safety violations and negligence lawsuits. An employee's lack of qualifications and experience could result in accidents injuring employees and, in some workplaces, the public. That means dealing with workers' compensation claims, Occupational Safety and Health Administration penalties, and private lawsuits for negligence or negligent hiring. This is a particular concern for employees who will hold a position of responsibility regarding matters of safety.

In addition, you want to make sure you hire the person who's most qualified for the job and will perform best in that position. You don't want to pay employees whose raises or promotions are linked to the level of education attained more than they're entitled to. And finally, you want to hire people who are honest and have a good work ethic. Individuals who would lie about their educational achievements may be more inclined to lie about other things as well.

Is it real?

How hard can it be to detect a fake degree? It may be more difficult than you realize. Companies that issue fake degrees often use names that are similar to those of accredited schools. Diploma mill customers get not only a fake diploma but a bogus transcript with grades for courses they never took as well as letters of recommendation. The "schools" offering those degrees have websites showing pictures of impressive campuses and describing their degree programs in detail. Some even have a telephone number that prospective employers can call to verify that applicants have been awarded the degrees listed on their resumes.

What can you do to make sure employees didn't buy their degrees from a diploma mill? Since diplomas obtained from an accredited school are usually legitimate, the safest approach for many employers is to require graduation from an accredited institution of learning. You can check on a school's accredited status by checking the following online resources:

- The U.S. Department of Education's U.S. Network for Education Information offers an extensive list and links to the websites of organizations that accredit schools and licensing programs for everything from architecture to acupuncture — www.ed.gov/about/offices/list/ous/international/usnei/edlite-index.html.
- The University of Texas at Austin has a handy online listing of and links to accredited universities and

community colleges, organized alphabetically and by state, at www.utexas.edu/world/univ/.

- The state of Oregon's Student Assistance Commission has extensive information about accreditation on its website, including a list of known diploma mills, at www.osac.state.or.us/oda/unaccredited.html.

Some final thoughts

You have to anticipate that in spite of your best efforts, you won't be able to detect every fake degree listed by job applicants, and you may very well end up hiring an employee based on false credentials. It's wise to include a separate section on your application form for applicants to list coursework completed at unaccredited schools. That way, they can't later claim they didn't intend to deceive anyone by passing off degrees at an unaccredited school. And, as always, include a statement that misrepresentations in the application will result in immediate dismissal when discovered. That will give you a strong basis for firing or otherwise disciplining employees whose false credentials are discovered. ❖

HR Trends

Federal agencies drag their feet on discrimination and harassment claims. According to a recent report from the U.S. Equal Employment Opportunity Commission (EEOC), federal agencies such as the Environmental Protection Agency and the Departments of Agriculture and Health and Human Services routinely take far longer than the law allows to investigate discrimination and harassment complaints filed by their employees. Those agencies (and others) routinely run afoul of a 180-day deadline for investigating complaints filed by federal employees, taking an average of 267 days to do so. And although agencies received eight percent fewer complaints in 2003 than in 2002, only 5,307 investigations were completed within the 180 days allowed. The EEOC acknowledges that the widespread delay in processing federal employee complaints is a problem that frustrates employees and wastes taxpayer dollars. The true irony lies in the fact that the EEOC itself took 400 days more to investigate its own workers' complaints than is allowed under the law.

Health insurance rates are expected to slow down in 2004. After several years of double-digit increases to the cost of health insurance, it looks like employers (and employees) may finally be catching a bit of a break. Several insurers are promising rate increases in 2004 of less than 10 percent. That's a substantial improvement compared to the 14 to 18 percent increases that employers have experienced over the last few years — but still more than twice the general rate of inflation. The slowdown in rate increases is attributed in part to slower growth in the health and prescription drug claims filed by consumers. Fewer claims mean more profits for insurers, which allows them to keep their premium increases down. Insurers are also facing stiffer competition, which also keeps rate increases down. So far, we aren't aware of any predictions on whether this trend will continue in 2005 and beyond.

House passes small business-friendly OSHA legislation. Four bills have passed the House of Representatives that aim to lessen the burden of complying with the Occupational Safety and Health Act for small businesses. Some Democrats have joined in the primarily Republican effort to, among other things, give small businesses more time to respond to Occupational Safety and Health Administration (OSHA) citations and make it easier for those that successfully defend against such citations to recover their legal fees from the federal government. The proposed changes are intended to give a boost to small employers that, without adequate resources to dispute OSHA citations, often pay even false citations without a fight. It's unclear what the future holds for the bills in the Senate, but they're predictably opposed by organized labor. ❖

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