

TOP
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Abbe's Top 5 HR Lessons of 2009

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Number
5



5. What was true yesterday may not be true today.

Corollary: What is true
today may not be true
tomorrow

2009 brought with it

- The Ledbetter Act
- Implementation of new FMLA regulations
- Implementation of new ADA regulations
- The ARRA
- Changes in I-9s

that have required companies to
repeatedly modify their HR
documents throughout the year

What's an HR Professional to Do?

- Exactly what you are doing: Keep up with the new laws, and attend trainings that will answer your questions
- Regularly review (and, where necessary, revise) the Company's policies and procedures
- Make sure that all employees and managers (yes, even the #1) are continually trained



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4. No matter how much training you provide, people will still do and say the darnedest things.

The #1 example this year: **David Letterman**

- His actions were not illegal in and of themselves
- BUT, his revelation that he had been engaging in sexual relations with his staff is just an example (high-profile though it may be) of the problems that may result when supervisors have personal relationships with lower-level employees
 - Sexual harassment
 - Hostile work environment



**And it may be more
than just direct supervisors**

- The person need not necessarily supervise his/her alleged victim. In an Illinois Supreme Court case (*Sangamon County Sheriff's Dept v. Illinois Human Rights Comm'n*), the court ruled that a supervisor who created a hostile workplace for a woman he harassed made his employer liable for his misconduct despite the fact that he was not a supervisor of the victim.
 - "The issue in this case is whether an employer is strictly liable under [the Illinois Human Rights Act] for the 'hostile environment' sexual harassment of its supervisory employee, where the supervisor has no authority to affect the terms and conditions of the complainant's employment," Justice Anne M. Burke wrote for the majority. "The answer is yes."
 - The justices acknowledged that federal law may not hold the employer liable when the supervisor lacks authority over the victim, but added that the Illinois Human Rights Act doesn't make that exception.

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**3. Technology is not
always a good thing.**

Technology brings with it:

- Distractions during business hours.
- Exposure to legal liability.
- Breaches of confidentiality or proprietary information.
- Potential for misuse.
- Damage to business reputation.

Off the clock work



- In June 2009, Sprint paid a \$120,000 fine after a federal labor investigation revealed that non-exempt employees in a Virginia call center were not paid for "off the clock" work
- This is just the latest in a long line of such issues, including a reported \$350K settlement by Convergys in Tucson in 2006
- Lawsuits in such situations have been more frequent and successful in recent years.
 - Recall *Alvarez v. IBP*, 546 U.S. 21 (2005), in which the U.S. Supreme Court affirmed that a non-exempt employee's day begins when s/he performs "integral and indispensable" activities for their employer's benefit and continues until s/he completes her/his last task of the day.

Social Media: To friend, or not to friend

- Bosses who "friend" subordinates = liability risks.
 - Potential access to personal information (i.e., age, ethnicity, political/religious affiliation, personal or family health issues)
 - Potential discrimination
 - Potential harassment
 - Potential favoritism



This Doesn't Mean You Have to Surrender Your "CrackBerry"

- Implement and continually review a policy addressing use of electronic media and electronic communications
- Your policy should (among other things):
 - Inform employees that they have no reasonable expectation of privacy regarding electronic communications in the workplace or when using workplace equipment (including cell phones, computers, e-mail, and wireless hand-held devices)
 - Advise employees that they must not use electronic communications in any manner that is unlawful or contrary to the company's interest
 - Inform employees that all electronic communications must abide by confidentiality or nondisclosure agreements
 - Caution employees that their electronic communications may be intercepted and their stored communications accessed
 - Have employees acknowledge the policy in writing and consent to monitoring to avoid any wiretapping issues

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2. Doctors aren't the only ones who have to worry about epidemics, pandemics, and just general "ick."

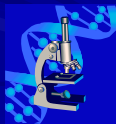
Anti-illness policies

- Focus on balancing your interest in maintaining a safe workplace with the rights of sick (or apparently sick) employees.
 - Consider asking a sick employee to bring in a doctor's note saying he or she is safe to be in the workplace.
 - Consider whether you will notify other employees when there's a confirmed case of swine flu (or other communicable illness).
- Don't jump to conclusions based on symptoms.



GINA

- Genetic Information Non-Discrimination Act of 2008 (42 U.S.C. 2000ff, *et seq.*)
- Title II prohibits employment discrimination on the basis of genetic information
- Goals to
 - Prohibit discrimination
 - Encourage genetic testing and research



Not to mention...

- Wellness programs
- Caregiver discrimination
- FMLA
- ADA

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1. Even in the "green" world around us, forms and files are a Human Resources professional's best friend.

What types of forms and files?

- I-9 audits continue to increase
 - Conduct regular self-audits
 - Invite friendly external auditors
- New FMLA regulations provide specific (and quick) notice time periods
- Furloughs, layoffs, and other personnel actions all need supporting documentation
