

THE SPOTLIGHT

A monthly HR, Benefits & Health newsletter designed exclusively for Nevada Benefits Clients

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HR Segment: Sexual Harassment By Tanja Anderson

Yes. Another employment issue in the shadows – sexual harassment. It can come to light at anytime. Is the fun and friendly work atmosphere gone forever? A simple, “You look *really* nice today!” May sound innocent enough until the tone and body language come into question. Where does sexual harassment begin and employer liability end?

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII, a federal

law applies to employers with 15 or more employees. Nevada employers with those under 15 employees, still need to comply. Sex discrimination can still become an issue for you under state regulations.

According to the U.S. Equal Employment Opportunity Commission (EEOC), Sexual Harassment Charges Statistics for FY2006, there were 12,025 reported cases of alleged sexual harassment, 15.4% filed by men. A little over half of the cases were resolved by awards of benefits, merit resolutions and monetary benefits totaling \$48.8M. The total how-

ever, does not include monetary benefits obtained through litigation and **those** awards could cripple or close a small business down for good.

As outlined with the EEOC, sexual harassment can occur in a variety of circumstances, including but not limited to the following; The victim as well as the harasser may be a woman or a man; The victim does not have to be of the opposite sex; The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee; The victim does not have to be the person harassed but could be anyone affected by the offensive conduct; Unlawful

sexual harassment may occur without economic injury to or discharge of the victim; and the harasser's conduct must be unwelcome.

If an employee complains to a supervisor or line manager, they have the affirmative responsibility to report complaints up the chain of command. The company may be liable for failure to prevent, investigate or remedy the alleged harassment, even if the manager does not pass the complaint to the organization's proper authorities.

To be able to raise a defense or avoid punitive damages in sexual harassment lawsuits, an organization would

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Hiring the right way

Not too long ago, in the Nevada Benefits seminars “Firing the Right Way.” and “HIPAA,” employers asked, “What *are* the rules and regulations for hiring? It makes perfect sense that your company would want to screen and hire the best candidate. Hopefully one that you wouldn't have to terminate.

Having to fire, what you

thought was the right person for the job does happen. Nevada is an At-will state, meaning employers can terminate an employee with or without cause or with or without notice. However, it still is in the best interest of a company to document through coaching and counseling or discipline that the employee was warned and had ample time to correct

their performance or behavior. It is the documentation that may help you in a wrongful termination lawsuit. Follow your employee handbook, if you have one– and review it so that your handbook doesn't inadvertently create an employment contract.

In Hiring the right way, you

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By Tanja Anderson



Nevada to tighten their belts: House and Senate approve federal minimum wage increase By Tanja Anderson

The federal minimum wage has stayed stagnant until now. The House of Representatives approved an increase in January. And now, February 2nd, the Senate approved a \$2.10 increase by an overwhelming 94-3 vote!

Fair Minimum Wage Act of 2007 - Amends the Fair Labor Standards Act of 1938 to increase the federal minimum wage to: (1) \$5.85 an hour, beginning on the 60th day after enactment of this Act; (2) \$6.55 an hour, beginning 12 months after that 60th day; and (3) \$7.25 an hour, beginning 24 months after that 60th day.

It is Nevada's intention to stay \$1 ahead of the federal minimum wage.

This means that small and medium sized business will need to tighten their belts.

Keep up on changes at www.labor-commissioner.com. The Nevada Labor Commissioner home page features links to proposed temporary and permanent changes, and workshops on the Nevada minimum wage.

Keep your required posters updated as well. You can find the "Rules to be Observed by Nevada Employers," a required state posting on the Labor Commissioner webpage and find the federal minimum wage posting at www.dol.gov/esa/regs/compliance/posters/flsa.htm

(Hiring the right way, Continued from page 1) must follow the law and implement HR best practices to find the right employee and protect you from future liability.

First, make sure you have a legally compliant employment application and have an updated job description (J/D). I've visited companies, where neither existed. Even if candidates provides a resume, they should still be required to fill out an employment application. The application can reveal job and salary growth.

Under Title VII and Nevada law, you may not discriminate in virtually every employment circumstance on the basis of race, color, religion, gender, pregnancy, or national origin. This means that your application should not include any questions that would disclose protected information, as well as information on medical status or if the candidate has ever applied to workmen's comp. In addition, your application should include

several statements such as at-will employment and authorization for background check, physical or drug testing among others.

Job descriptions are not required by law, but if you do have them use an ADA (American with Disabilities Act) format, listing the essential duties of the job. J/D's Are the tools that summarizes the most important features of the job, and describes the general nature of the work, specific tasks, responsibilities, outcomes, and employee characteristics required to perform the job. Having a J/D aids you in placing an appropriate ad, guides you in asking the right questions, and comparing whether or not the candidate has the qualifications and experience required of the job.

Interview questions should be relevant to the job and its essential duties. Questions should be consistent between candidates. Use open ended questions and behavioral question, like "Tell me about a time when you improved a process and what was the

Health Wise:

Keep your employees feeling good and encourage a little exercise.

Technology is a blessing and a bane. Employees may find themselves in front of their computers for up to 8 hours a day leaving work with tension. Of course ergonomics is key; monitor at eye level, arms bent comfortably at 90 degrees, and a seat that provide proper support helps.

Beyond that, neck and shoulders still get tense. A little daily exercise can help prevent aches and pains; moderate stretching and strength training can help tone muscles and increase flexibility. People are less likely to tense up in stressful situations—or after a long day at the office.

Encourage a healthy lifestyle with good eating and exercising, by providing inspiring notes or fitness magazines in the break room.

outcome?" A good candidate has done research and knows what the job description and requirements are. Was the candidates answers relevant to the job you are hiring. Did they unveil skills that would be useful in carrying out the job function? Using an interview rating form will aid in keeping notes and rating candidates.

What a candidate has presented in an employment application and resume and how a candidate answers pre-screen questions over the phone and during the interview are your keys. Using a search committee, and getting committee input on final candidates can also help eliminate candidates that looked good at first glance.

If a candidate doesn't feel right, you should go with your gut instinct, if you hire anyway, make sure you've done your homework through reference

Benefits: COBRA

All employers with 20 or more employees who provide health and medical benefits must comply with the federal health insurance law - called COBRA (Consolidated Omnibus Budget Reconciliation Act of 1985).

COBRA must be offered by employers after "qualifying events" such that cause an employee to lose their health benefits. Termination of employment or layoff are examples of an events. For family members, events also include an employee's death; divorce or legal separation; a dependent child who has turned 18 or whatever age the plan deems as dependent status) among others. The type of qualifying event determines the length or period of COBRA coverage. It is the responsibility of workers to notify the employer within 60 days should a qualifying event occur.

COBRA seems simple enough, but there are rules an employer must follow and, if they break the rules, there is a price to pay!

While COBRA violations are rarely prosecuted by the government, the bigger risk for the employer is lawsuits by former employees or covered dependents over mistakes in the administration of COBRA.

Those who elect COBRA coverage pay 102 percent of the full premium, which includes a 2% administrative fee. Coverage can be quite expensive. It may reason, that those who wish coverage or seek legal remedies for a denial of COBRA or for administration mistakes, might be those with larger medical expenses and motivated by the monetary benefits of a lawsuit.

As the HR point person or plan administrator, it is important to know what

the COBRA rules are. COBRA requires that several notices, generally mailed by first-class mail are sent.

Notification includes a general notice that outlines COBRA coverage rights, sent within 90 days to new employees; A qualifying/election notice within 14 days after the plan administrator has been notified of a qualifying event; A notice if coverage is unavailable if the qualifying event or dependent is ineligible; and a notice of termination when the coverage is about to expire or because of non-payment of premiums.

COBRA administration is a free service provided to Nevada Benefits clients with medical group plans. For more information call Trish at 702.295-1995.

The Law: Title VII Sexual Harassment

The EEOC gives oversight to Title VII of the Civil Rights Act of 1964 which covers sexual harassment as a form of sex discrimination. Employers with 15 or more employees, including state and local governments are obligated to comply with the provision.

Two types of sexual harassment are recognized by the law:

1] *quid pro quo harassment* is unwelcome sexual conduct (advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature) when submission to the conduct is made either explicitly or implicitly a term or condition of a person's employment, or submission to or rejection of the conduct is used as a basis for employment decisions affecting the person. Although theoretically distinct, the line between the two is not always clear and the two forms of harassment can often occur together. The EEOC believes that when a constructive discharge is due to a hostile environment, the claim also becomes a quid pro quo claim.

2] *hostile environment harassment* is unwelcome sexual conduct that has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile, or offensive working environment.

Clues that harassment may be occurring in the work place include; emotional distress, deteriorating job performance, avoidance of harasser, work from friends/family, trusted co-worker, negative non-verbal communication.

For more information: www.eeoc.gov.

What are your biggest fears?

Business owners, HR professionals and Controllers, what are your biggest employee relations fears?

- New federal and state wage and hour law?
- Sexual harassment?
- Safety?
- Americans with Disabilities Act?
- Family Medical Leave Act?
- Human Resources and Employee relations in general?

Let us know! If you have would like us to address something in particular, would like to share your experience, or would like to contribute to The Spotlight Newsletter, Email Tanja at tanja@nevadabenefits.com

For free HR department assessments, call Tanja Anderson at 702-258-1995.



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Coming up next time in the HR Segment...

OSHA and HR

For Human Resource assistance call Nevada Benefits at 258-1995.

No-Charge HR services available to Nevada Benefits group insurance clients. Call for a free quote today.

Nevada Benefits is a brokerage of independent agents licensed with every major insurance company in Nevada. We offer free services, such as comprehensive Financial Plans, Human Resource assistance, and a wealth of resources to help you prosper.

(Sexual Harassment, Continued from page 1)
 to have to show a strong anti-harassment policy, training and reporting mechanism so that prompt action can take place. Additionally, periodic sexual harassment training to all employees would help strengthen a defense.

The circumstances in which sexual harassment can occur seem rather straight forward. Does a hug, a pat on the lower back, or seemingly innocent comment like "You look **really** nice today!" constitute sexual harassment? - If the alleged victim thinks so—you need to ACT!

Nevada Benefits, will hold two ses-

sions of the free Lunch & Learn Seminar on Sexual Harassment in March. (See info below)

Tanja Anderson, Director of Human Resources of Nevada Benefits will present a one-hour Sexual Harassment training for business owners, Human Resources Managers, and those that manage employees.

The training will provide realistic scenarios of sexual harassment, techniques and guidance on how to recognize sexual harassment, and explain the responsibility to respond promptly and appropriately. This training is free. Space is limited, so RSVP by March 5, 2007 at 702-258-1995.

In this newsletter

- **Sexual Harassment**
- **Hiring Tips**
- **Federal Minimum wage increase**
- **COBRA**
- **The Law: Title VII and Sexual Harassment**

If you'd like to see a particular subject included in our next newsletter, or would like to contribute please email tanja@nevadabenefits.com

Sexual Harassment FREE Lunch and Learn Seminar at Nevada Benefits

Session I: Wed. , March 7, 2007 at 12:00-1:00 pm.

Session II: Wed., March 14, 2007 at 12:00-1:00pm.

RSVP by 3/5/07 to save your place! 702-258-1995