

HR Help Line Bits & Pieces

By Lesley Sifers, Tax Favored Benefits, Inc.

This column is a potpourri of topics I've discussed with Association members on the HR Help Line in the past several months. While it's in "Q&A" format, that's just for my writing convenience – these are not the exact questions posed.

Q1: Our Accounting Clerk is paid a semi-monthly salary. He says he works an average of 44 hours a week and expects to be paid overtime. Salaried employees aren't paid overtime, right?

A1: Maybe! There are two tests to determine if a salaried person is exempt from overtime rules. One, is he paid at least \$23,660 per year? Two, are his job duties mainly non-manual, office work AND does he "exercise discretion and independent judgment?" In court, "independent judgment" is somewhat difficult to substantiate. You must look at the scope of the job to see if it qualifies for the Administrative exemption under Wage & Hour laws. Even if your clerical employee has an accounting degree, if the job does not allow "discretion and independent judgment," you should be paying overtime.

Q2: We are implementing Direct Deposit for payroll checks. It's going to save us a lot of time and money. Can we make it mandatory?

A2: Many states have laws prohibiting unauthorized payroll deductions – which would include mandatory direct deposit. So, the first step is to have each employee authorize this form of payment and provide deposit information. (If your payroll service won't give you a form, get a new payroll service!) However, you may find some employees are still resistant to your new method. There are some things you can do. First, promote the benefit because it's timely and convenient. Second, if you have employees who are "un-banked," talk to your banker about establishing courtesy accounts so those employees can obtain their pay by cash or bank draft. (If your banker won't help you, get a new banker!)

Q3: We hired a tech that didn't work out for us so we let him go after about two months. Our handbook clearly explains our 90-day Introductory Period but he filed for unemployment anyway. Can he do that?

A3: My "smarty pants" answer is, "People can do anything they feel like doing!" Seriously, yes, he can and, presuming you have no other reason to contest the claim, he can get it! Your Introductory Period is not some special, legally protected period of employment. It's just a good business practice. When you have this "look/see" time, it's supposed to help management focus on performance and behavior. Making a retention decision early on prevents the nightmare of living with an incompetent or troublesome employee for years. The good news is that the unemployment office looks back for four to five calendar quarters and apportions benefits over ALL past employers. Since you used your Introductory Period properly, and made a timely decision, the pittance this guy draws from your account probably won't hurt your experience rating.

Q4: We just learned that one of our employees is dating a person who works for our closest competitor. We are concerned about confidentiality. What can we do?

A4: Many states have laws prohibiting employers from discriminating against workers who participate in “lawful activities” outside of work. Last time I checked, dating was legal. Your Employee Handbook should include a policy statement on confidentiality and you can call this to the employee’s attention. Even without a written policy, you can have a discussion with your employee and emphasize that any breach of confidentiality is a serious matter and cause for disciplinary action. Keep a record of the conversation. If there is a problem in the future, you have documentation. And just a thought...what would you do if your employee gave you confidential information about your competitor?

Q5: Two years ago, one of our employees resigned to join the military. He completed his enlistment (honorable discharge) and we’ve rehired him. Now he is asking us to reinstate his vacation benefits. He was entitled to fifteen days when he left but, as a rehire, would only receive five days the first year.

A5: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), persons who leave their jobs to perform military service have the right to be reemployed in their civilian job with the same pay, status and benefits they would have attained had they not been absent for military service. Presuming he made a timely request for rehire, you should assume that he has the protection of USERRA. This means restoring his vacation benefit and possibly other benefits. Many employers have questions about how to comply with USERRA these days. My advice is to be as generous as you reasonably can because the Department of Labor actively assists ex-military personnel who have complaints under USERRA.

Q6: I just read that we are supposed to re-verify I-9 documents that have expiration dates. Wouldn’t that mean we have to track expired driver’s licenses? What a hassle!

A6: You only have to track documents that substantiate the employee’s eligibility to work in the United States – not documents proving identity. So no, you don’t have to follow-up on driver’s licenses. The most common authorization document, a Social Security card, has no expiration date. However, visas and work permits do expire so set up a tracking system if you have any employees working under those documents. And don’t forget, maintain I-9 forms separately from personnel files.

If you have questions about HR situations or would like more information about the topics touched on in this article, please call the HR Helpline at 800-683-3440. Thank you for reading!