VOLUME 2 ISSUE 8

The Source

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Inside This Issue

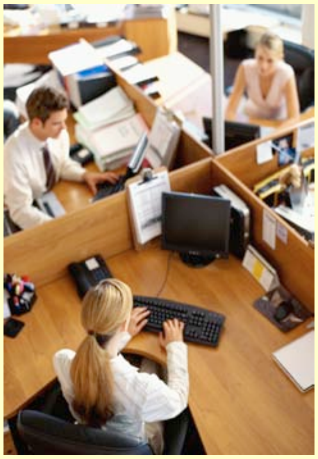
Managing your Leaves of Absence

What do you do if you discover a previously unknown performance issue while an employee is on a protected leave of absence? If the "performance issue" is that the replacement employee is a better worker, you still must return the on-leave employee to his or her same job.

However, if the issue is something you can objectively identify, for instance, the person filling in finds out that the employee on leave has not been performing portions of the job, then the rule is to treat this situation the same as if these issues were found while the employee was out to lunch or on vacation. Generally, you would document what has been found, discuss the issue with the employee when he or she returns to work, and then put the employee on a performance improvement plan.

However, if the performance issue involves stealing, fraud, or some other gross violation, which is grounds for immediate termination, then once the employee returns and has an opportunity to offer an explanation of the circumstances, you may then take the same disciplinary action you normally would. Depending on the infraction and details, termination of employment before the protected leave exhausts could be permissible. Please contact the Human Resource Department for assistance managing your leaves of absence.

Did you know…



Basic overtime rules require employers to provide time-and-one-half the employee's regular rate of pay for:

- All hours worked beyond eight in a single workday; and
- The first eight hours worked on the seventh consecutive day worked in a single workweek.
- Hours worked over 40 in a work week

Employers must pay double the employee's regular rate of pay for:

- All hours worked beyond 12 in a single workday; and
- The hours worked beyond eight on the seventh consecutive day worked in a single workweek.

If an employee works a six-day workweek, but has not worked more than 40 hours in that workweek, no overtime is owed unless the employee works more than eight hours on the sixth day.

COMPENSATION & EMPLOYEE RETENTION
Be Bold and Reward Real Performers

It's challenging to design an incentive program that actually rewards top performers, and only top performers. In this economy, many employers are saying to themselves their employees should feel lucky to have jobs, and although many of their employees are earning less than market, they are not concerned because there are so few jobs for their staff to leave them for. Employers nationwide have reduced staff to all time lows to trim expenses and current staff members have taken on greater and greater workloads for the same, if not less pay. Your current staff has weathered the economic storm of the past three years and how you decide to reward this staff will have its effects.

Compensation experts believe it is more expensive, in the long run, to leave top performers under-rewarded. In business terms, employers will pay when they reward the top performers or pay when they lose them. Performers will tell you it's not so much about the money, it's more symbolic than that. It's about top performers knowing they are noticed, recognized and appreciated by the company, way beyond the attention, money and recognition that low performers receive.

- **Rewards Are Costly**

It is understandable that paying base salaries plus incentives strains your budget. It does for every company. A good example would be Google. At the beginning of 2011, Google made an announcement that they were giving every employee a 10 percent raise and a $1,000 cash bonus. The financial analysts on Wall Street went crazy. Why? because even for a multi-billion dollar company like Google, that is a big expenditure.

- **Response to Google's Decision**

After the announcement, everyone expected all of Google's employees to be really excited. Comments and stories about the move had people saying, "Wow, I wish my company would do that." But, there were other observers who said it was "unfair." Why? because people performing poorly were getting the same increase as those performing well.

Even something as generous as the choice made by Google was attacked on some level. Top performers especially did not like the idea. Top Performers think in these terms: "That guy is going to receive as much as me? My contributions have not been rewarded in a way that matches what I added to the organization."

- **Crafting Rewards Requires Hard Work**

It's difficult to pay for performance. It's really hard. It's much easier to give across-the-board increases. It's easier to give increases that are only differentiated by 1-2 percent, much easier. Compensation experts believe that over time, those decisions have a devastating effect. You get what you measure and reward. If you measure and reward mediocre performance, that is what you will get. If you measure and reward longevity, that is what you will get. So, you have got to make sure that whatever you are designing in terms of who gets paid more, links back to what it is you want more of. Compensation experts make a strong case that it should be performance.

- **Take On the Challenge**

Experts believe healthy competition is better than low-performance harmony. Low-performance harmony is, once again, easy. But, that does not mean that it's better for your organization.

Compensation & Employee Retention, continued

Employers should not be afraid of their staff coming to them and saying, “What do you mean I got that kind of increase? I heard that someone got this other kind of increase.” That opens up a constructive dialogue with that employee about where they are falling short, what they can do to improve their performance and what success looks like. Employers shouldn’t be afraid of those challenges and those conversations, yet many organizations are. Remember, encouraging competition, creating a challenge and formalizing that you are an organization that pays for performance breeds a high-performing culture and it drives out an entitlement mentality when it comes to employees and their pay.

- **Make Tough Decisions to Stay on Budget**

Most organizations have significant budget restraints and these restraints affect their bottom line, so, when you have fewer dollars, make them more impactful.

- **Make the Incentive Worthwhile**

A SHRM (Society of Human Resource Management) article on incentive pay said, “to get the attention of your better-performing staff members, you must offer a variable pay rate of seven to eight percent, in addition to their base pay.” Most every company varies merit increases according to performance, but if the difference between low performance and high performance is a rate of four percent or less, the amount is not significant enough. When employers begin getting into seven and eight percentage points, that begins capturing people’s attention. That starts driving people’s behavior.

It's tempting to avoid taking this type of approach because managers are forced to decide who deserves those increases. But, if you want to truly reward performance and stay on budget, you must embrace those decisions, not avoid them. Be brave and reward only what you want.

Final Wages – When are they due?

The time requirement for a final paycheck depends on whether the employee resigns without notice, resigns with at least 72 hours notice, or is terminated or laid off.

If you terminate an employee or lay him/her off with no specific return date, all wages and accrued vacation time are due and payable immediately. It is not acceptable to ask or require an employee to wait until the next regular payday for his/her final wages. In fact, the California Labor Code requires that employees receive all earned and unpaid wages at the time of discharge from employment or the employer may be assessed waiting time penalties. The California Supreme Court has ruled that neither the length of employment or reason for termination changes this requirement.

It is illegal to withhold a final paycheck to induce the former employee to:

- Return tools, uniforms, pagers, laptop computers, keys, or any other items belonging to the employer;
- Pay back money that may be owed to the employer; or
- Turn in expense reimbursement forms.

If an employee resigns, and provides you with 72 hours or more notice, wages are due on the employees last day. If an employee resigns with no notice their final wages are due in 72 hours. Contact the payroll department if you have questions as to when final wages are due.

COMPENSATION

Learning from Walmart's legal battle over pay

Though a nationwide sexual discrimination lawsuit was just settled in Walmart's favor by the Supreme Court, it looks like they have similar, smaller, suits on the way, possibly a lot of them.

Three of Walmart's female employees filed a case on behalf of themselves and 1.5 million of their female coworkers nationwide (intended to include all female employees at Sam's Club and Walmart stores from 1998 to 2001), claiming sexual discrimination in Walmart's pay and promotion practices. The Supreme Court did not decide in the female employees' favor, but the battle does not appear to be over.

The Supreme Court decided that Walmart did not have one single, nationwide policy that resulted in all of the discrimination claims made, and that is why the plaintiffs lost. Next up are cases in local courts that will be filed by individual's or small groups of female Walmart employees.

This legal mayhem is a nightmare for any company, even one with deep pockets like Walmart. One line from the above-mentioned story is especially interesting. It read, "Kwapnoski and others pressing their suit claimed they were victimized by Walmart's practice of letting local managers make subjective decisions about pay and promotions.

More than 100 employees had filed sworn statements saying they were paid less and given fewer opportunities for promotion than male colleagues." Walmart's pay practices are being scrutinized for inequity based on gender and subjective decisions by managers.

Walmart's legal battles bring up some important questions for employers. Employers are not only responsible for the creation of compensation policies, they are responsible for ensuring their management teams implement the policies properly and indiscriminately, and to ensure employees have a thorough understanding of those policies. Here is a checklist of questions to ensure you minimize the risk of legal problems at your company:

- Do you have your compensation philosophy well defined?
- Have you done market research on what to pay your employees in each position, depending on their level of experience, location, skill level and other factors?
- Do you maintain a salary structure that rewards employees on legally defensible criteria, such as experience, skills and performance?
- Can you explain why each employee at your company earns what he or she does?
- Do your managers understand the company's pay practices?

It is difficult to defend pay decisions made by many different managers unless the company can prove that it provides good structure and guidance with regard to pay decisions.

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