

DOL Proposes New FMLA Rules

The Department of Labor has published a proposal to revise regulations covering several areas of the Family and Medical Leave Act, including notice requirements, medical certification, and the definition for "continuing treatment" of a serious health condition.



The department published the proposal in the February 11 edition of the *Federal Register*. The department is seeking public comment on the proposal. Comments must be received on or before

April 11, 2008.

The department is also seeking public comment on issues to be addressed in final regulations regarding military family leave. President Bush recently signed legislation that amends the FMLA to provide leave to eligible employees of covered employers to care for injured service members and because of any qualifying "exigency" arising out of the fact that a covered family member is on active duty. The provisions requiring 12 weeks of leave for a "qualifying exigency" will not be effective until the Department of Labor issues final FMLA regulations defining the term "qualifying exigency."

Notice Requirements for (Please see FMLA on p.4)

Employees and Employers

One area the proposal addresses is what constitutes timely notice of employee's need to take leave in cases when the employee becomes aware of that need less than 30 days in advance.

"Absent emergency situations, where an employee becomes aware of a need for FMLA leave less than 30 days in advance, the department expects that it will be practicable for the employee to provide notice of the need for leave either the same day (if the employee becomes aware of the need for leave during work hours) or the next business day (if the employee becomes aware of the need for leave after

'Old Fuddy Duddy' Gets Day in Court

In a case that highlights the age tension that exists at many of today's high-tech companies that are dominated by younger workers, a California appeals court has ruled that a 54-year-old who was called an "old fuddy duddy" by co-workers can take his age bias suit to a jury. The case is *Reid v. Google, Inc., Calif. Court of Appeals (Dist. 6) No. H029602 (2007)*.

Google, Inc. hired Brian Reid, who was 52 years old and a former Stanford associate professor, as the director of operations and engineering. Reid's first

performance review included this comment: "Adapting to the Google culture is the primary task for the first year here.? Right or wrong, Google is simply different: Younger contributors, inexperienced first line managers, and the super fast pace are just a few examples of the environment."

During Reid's employment with Google, a supervisor allegedly told him that his opinions and ideas were "too old to matter" and that he was "sluggish" and didn't "display a sense of ur-

gency." Co-workers also referred to him as an "old man" and "old fuddy duddy."

A year after Reid was hired, his director's responsibilities were transferred to employees who were about 20 years his junior. Reid was reassigned to develop a new graduate degree program for engineers--but wasn't given a job title, budget, or staff. Google then denied Reid an annual bonus and told him he wasn't a "cultural fit" and there was no place for him in the engineering

(Please see Fuddy Duddy on p.6)

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Teen Drivers Need a Full Tank of Z-Z-Z-Z-Zs

Teens have the highest crash rates in the country. They also are likely to have the least sleep. GEICO (www.geico.com) agrees with a growing number of sources including the National Sleep Foundation (www.sleepfoundation.org) that the problem could be reduced by a good night's sleep.

Two critical factors collide when teens are in their early driving years: 1) they need nearly 9.5 hours of sleep every night to accommodate an upswing in growth and hormone development, and 2) they get far less sleep than they need - an average of 7.4 hours a night,

considerably less for many.

Compounding the problem further, researchers say that teens' biological clocks are set so that they to fall asleep later at night and wake up later in the morning, a schedule which is impossible to follow due to early morning school starts for most teens.

It all points to a nation of very sleepy teenagers.

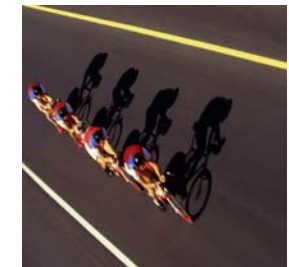
National Sleep Awareness Week March 3-9

During National Sleep Awareness Week, March 3-9, GEICO is alerting parents with teen drivers to observe their teen's sleep habits and adjust them so teens get more sleep. Teens must have more sleep to stay alert, make sound judgments, and when driving to maintain clear thinking and quick reflexes.

Your teen may be sleep deprived if he or she can't wake up in the morning, is irritable late in the day, falls asleep spontaneously during the day

(Please see Teen Drivers on p.6)

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Free Tax Filing? - It's True!

If you have access to a computer and the Internet you may be eligible to prepare and file your 2007 federal tax return electronically—for free. Free File is an easy way to file your taxes and get your refund in half the time.

The IRS and the Free File Alliance, a private-sector consortium of tax software companies, continue their partnership to help taxpayers earning \$54,000 or less electronically prepare and file their federal tax returns for free. Free File made its debut during the 2003 filing



season as a way to provide free services to moderate and low-income taxpayers. For the 2007 filing season 97 million taxpayers will be eligible for these free tax services.

Taxpayers access Free File through the IRS Web site at IRS.gov. Each company sets its own criteria for

free usage. The criteria are usually based on income, state residency and age.

Filing electronically is fast, accurate and secure. Last year almost 60% of all taxpayers filed their tax returns electronically including 3.8 million who used Free File through the IRS website. The benefits of using Free File, like those of *e-file*, include:

- Reduced tax return preparation time

(Please see Free Tax Filing on p.3)

INTERESTING RESULTS

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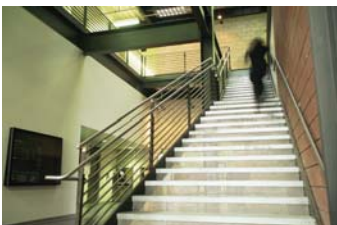
19% BETWEEN 75 AND 90 PERCENT

9% BETWEEN 50 AND 75 PERCENT

9% WE DON'T OFFER ONE

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Weight Management Tips for the Workplace



According to Tangerine Wellness, it may not be an

employer's responsibility to help employees trim their weight but with the number of diseases and medical problems related to obesity numbering about 53 and 2/3 of the U.S. population being overweight, it couldn't hurt to help your employ-

ees better manage their weight. The cost of employee health benefits and absenteeism may be reduced if your employees focus on better nutrition and increase their activity levels.

(Please see Weight on p.3)



Weight...

"Most single-sourced nutrition and diet plans often found at companies don't do enough to continually reinforce a healthier lifestyle," said Aaron Day, chairman of Tangerine Wellness. "Weight loss is not just about eating less and exercising more, it's about changing behavior."



Implementing a formal weight loss and physical activity program is the best solution to assist your employees in becoming healthier and to slow your healthcare benefit cost increases, according to Tangerine Wellness.

Weight Management Tips

The company provides some simple tips that you can share with your employees:

- **Do a "walk about."** Park your car far from the main entrance of the building where you work. If you take the bus or subway, get off one or two stops early and walk the rest of the way to work. Take the stairs instead of the elevator. Go for a walk at lunchtime or find a place to have lunch that includes a brisk, long walk from your office to get there.
- **Beware of diet sabotage.** Grabbing a few candies or cookies on your way past someone's desk and eating them adds up to many extra calories that you don't need.
- **Soda blast.** Researchers from Harvard found that cutting soda consumption by a can each day can add up to losing more than 1 pound per month!
- **Stand to speak.** Just by standing up when you're talking on the telephone can help you burn more than 50 extra calories a

day. If you can add pacing back and forth while you talk, you will burn even more calories.

- **Don't Go for Bloat.** Just because you can buy a meal instead of a sandwich and receive a great discount on French fries and/or your soda, doesn't mean that you should do it. It just adds unnecessary calories to your lunch. Overeating at lunch can also make you bloated, lethargic, and gassy--not the best situation when you've got an important meeting to attend or a big project to complete.

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Free Tax Filing...



- Acknowledgement that the return is received that end in .com, .net, .org or other designations instead of .gov.

For more information on Free File, check out the IRS Web site at IRS.gov.

Remember that for the genuine IRS Web site be sure to use .gov. Do not be confused by internet sites

- Faster refunds
- Accuracy of return

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NOTICE!

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With our clients and their employees in mind, Peliton has revamped our paychecks to include only the last four digits of the employee's social security number on the pay stub to address the ever increasing threat of identity theft. This change will take full effect starting with checks issued the week beginning February 25th.



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FMLA...

work hours)," the department states in the proposal.

The proposal also covers the procedures employees use to request leave.

The department is proposing that "absent unusual circumstances, employees may be required to follow established call-in procedures (except one that imposes a more stringent timing requirement than the regulations provide), and failure to properly notify employers of absences may cause a delay or denial of FMLA protections. Unusual circumstances would include situations such as when an employee is hospitalized and his/her spouse calls the supervisor to report the absence, unaware that the attendance policy requires that the human resources department be called instead of the supervisor."

In addition, the proposal covers the notice requirements for employers. For example, the proposal would require that employers provide a notice explaining the FMLA's provisions and complaint-filing procedures in employee handbooks or by distributing a copy *at least once a year*. Employers must also provide employees with a notice regarding designation of FMLA leave--referred to as the "designation notice"--within *five business days* of having obtained sufficient information to determine whether the requested leave is being taken for a qualifying reason.

Medical Certification

The proposal would allow employers to contact healthcare providers directly for the purposes of authenticating or clarifying a medical certification. The proposal would eliminate "the requirement that the employer's healthcare

provider, as opposed to the employer itself, make the contact to an employee's health-care provider."

"The department believes that this change would significantly address the unnecessary administrative burdens the current requirement creates and, in light of the protections provided by the HIPAA Privacy Rule, will not significantly impact employee privacy. The Department notes again, however, that such contact by the employer may only take place after the employee has been afforded the opportunity to cure any deficiencies with the certification."

The department's proposal also states that healthcare providers may provide information on the diagnosis of the patient's health condition on medical certification forms. "However, the department does not intend to suggest, by including such language, that a diagnosis is a necessary component of a complete FMLA certification," the proposal states.

Serious Health Condition

The department's proposal would change the meaning of "continuing treatment" under the definition of a serious health condition. The proposal would specify that the two visits to a healthcare provider must occur within 30 days of the beginning of the period of incapacity unless extenuating circumstances exist, instead of the completely open-ended time frame under the current regulations.

"Accordingly, if an ill employee visits his/her health care provider, is told not to report to work for more than 3 days due to the health condition but is not prescribed any medication, whether the condition is considered a serious

health condition for FMLA purposes will depend on whether the health care provider determines that additional treat-



ment is needed within 30 days of the beginning of the initial period of incapacity (for example, whether the provider determines that an additional follow-up appointment should be scheduled in two weeks or two months)," the proposal states. "The beginning of the period of incapacity will usually correspond with the date of the employee's first absence, however, as under the current regulations, the more than three calendar day period of incapacity may commence on a day on which the employee is not scheduled to work."

Among the other areas addressed in the proposal are:

- Nonconsecutive periods of service
- Joint-employer coverage

For more information visit www.dol.gov.

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Yo Quiero 'Thank You' - Employee Recognition Is Key

New research in the area of motivation, recognition and rewards suggests employees don't need costly bonuses or rewards to keep them happy. A pat on the back goes a long way-but only if it is expertly done.

'Creating a culture'

Paul Sanchez, a worldwide partner at Mercer, says that creating a culture of recognition -often referred to as motivation, engagement and commitment- is the first step.

"Recognition is one of the most underutilized tools," seconds Leslie Yerkes, president of Catalyst Consulting Group and author of several books on the subject. "It's so easy to do. It doesn't necessarily cost any money, either."

The best way to motivate employees is an age-old question, and there's no perfect solution, these experts say. However, Kingman, Ariz.-based Desert de Oro Foods, the state's largest Taco Bell franchise, seems to have gotten the method down better than most.

Sweet success

De Oro, which has between 1,200 and 1,400 employees in 55 restaurants, has made it part of their mission to create a "glass is half full" mentality among employees and management, says Jo Adams, director of human resources. It focuses on creating a culture and philosophy of recognition as an intrinsic part of the business, rather than simply an add-on.

District managers, called area coaches, carry cards called "Champs cards" with them for on-the-spot recognition.

"If we catch somebody doing something good, we write it down, sign it, and present it," Adams says. The catch, she says, is that managers present the cards to employees while they're on shift, usually in front of their co-workers. The immediate gratification, coupled with the temporary fame, makes earning a Champs card a big deal.

Managers take the time to ensure recognition is done on an individual level. They "walk the talk," Adams says.

Each member of management, Adams included, is also encouraged to purchase

an individual pin "mascot" from Baudville, de Oro's motivational rewards supplier. If managers catch someone going above and beyond, the employee gets to keep the pin.

"Employees have contests to see how many pins they can get," Adams laughs, "if they don't have one, they'll come up and say, 'I don't have a pin from you, what does it take to impress you?'"

Brad Darooge, president and CEO of Baudville, supports de Oro's pledge. "It's not an 'on-off' program ... it's really an organizational commitment," he says.

Recognize, then reward

It's easy for SMBs to assume that since they can't afford lavish gift cards, bonuses or vacations, they can't effectively motivate employees. Not true.

"Recognition is the first step," says Sanchez. "Many organizations would do well if they could only recognize contributions," he says.

Small things, like handwritten notes or quick phone call to say "thanks for doing such a great job" can go a long way with employees, Yerkes adds, but employers must remember that motivation is different for each employee. "You can't come up with a one-size-fits-all recognition program."

It's intrinsic motivation - motivation that stems from company culture, rather than extrinsic motivation, in the form of tangible recognition and rewards programs, that is most effective, Yerkes says.

Be TRUE

When designing a motivation, recognition and rewards program, it's important to think of four steps, noted by author Ken Blanchard in his book, *Gung Ho*.

Be **TRUE**: Timely, Responsive, Unconditional and Enthusiastic.

Also keep this in mind when hiring employees, says Yerkes, adding SMBs would be well to follow airline giant Southwest's mantra - "hire for attitude and train for skill."

"Hire motivated people and create conditions where you fan the fires of their motivation," she advises. Also, be careful to

note what undermines their motivation.

A top complaint from SMB employees comes at performance review time. "It's the one time each year when employees can find out what they're doing well and what they can do better," Yerkes says, yet employers often drop the ball by issuing late or non-specific feedback.

Remember that it's a lot less expensive to selectively motivate extrinsically than it is to start fresh with new employees, she concludes. "People say, 'We can't afford to do that,' and I reply 'how much money does it take to find and replace an employee? And you're not willing to have a pizza party?'"

But make sure that extrinsic programs aren't an ad hoc activity, Sanchez cautions. At best, such programs can be a minor pick-me-up. At worst, they're a total waste of money, or can even further disengage employees.

SMBs do it better

As with many things, when SMBs put proper time and effort into affecting organizational change, they find that it's easy to compete with the big boys. But when programs are implemented haphazardly, the negative effects are also magnified more than with their larger counterparts.

"Start small and see what works," says Adams. "Design a program that is sincere and from the heart and has buy-in from the top. Dessert de Oro's slogan is 'Every guest gets our best,' and we apply that to our employees, too."

SMBs are "more intimate" than big corporations, says Sanchez, which gives them unique advantages. For example, employees can be recognized by someone at a higher level than in large companies. "But if CEOs or managers don't engage employees, they lose a golden opportunity ... Employees react acutely and [the disaffection] becomes more intense."

"Remember that the clichés [about motivation and recognition] are so trite, yet so true," Adams says. "What's common sense isn't always common practice."

smbhr.benefitsnews.com

Fuddy Duddy...

department. Reid was told that he could apply for jobs elsewhere in Google; but company e-mails indicated that Google had no intention of hiring Reid in another department and, indeed, Reid couldn't find a position.

Google fired Reid at age 54, and he sued for age discrimination. Now a California appeals court has ruled that there was enough evidence to suggest that Google's alleged reason



for terminating Reid--purportedly because it had eliminated the graduate degree program--was really a pretext for age discrimination.

The court pointed to statistical evidence indicating a 29 percent bonus decrease for every 10-year increase in a Google employee's age. Plus, there were the ageist remarks made to Reid and the comments that he wasn't a cultural fit. Reid's abrupt position change in the company further suggested discrimination, coupled with his not having been given a title, budget, or staff and the elimination of his program a few short months later. Furthermore, Reid's previous duties were reassigned to much younger employees.

Google's shifting reasons for Reid's termination also suggested pretext. Reid claimed that upon his firing, he was told he was being discharged because he wasn't a cultural fit, but

later in court, Google contended that Reid was terminated because the graduate degree program was being eliminated. Also, there was evidence that the decision makers included much younger employees, including Google founder Larry Page, age 29.

Tip: To avoid problems such as Google faces, make it clear to your entire workforce that comments referring to or suggesting age are not permitted, whether in conversation or written documents or communications. Also, take the time to review bonus, promotion, and other key decisions to ascertain whether there might be a pattern of age bias.

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Teen Drivers...

and sleeps at great length on weekends.

While that sounds like a universal description of most teens most of the time, it could be the gap in their sleep hours that is at the heart of a lot of tragic adolescent behavior.

The driving danger is clear. Drowsy driving is a principle cause of traffic crashes each year, and young drivers are particularly vulnerable since they are operating most of the time on much less sleep than they need. See www.drowsydriving.org for more

Rework Teens' Schedules Around Sleep Needs

It's important for both parents and teens to recognize the signs of fatigue and rework daily schedules to allow for healthier sleep cycles.

It won't be easy. Teens have a lot to keep them up on school nights:

studies, anxiety over grades, after school sports and social activities that delay study time, relationship issues, over stimulation from media sources such as popular computer sites, computer gaming, and an overload of cell phone use and text messaging.

What Parents Can Do

What can parents do to help their teens get more rest:

- Build time-management skills. Encourage teens to see how long tasks will take and plan realistically to complete school assignments. Get them to start early and not procrastinate.



Then they won't have to burn the midnight oil and they can enjoy a good night's rest.

- Establish a reasonable bedtime and stick to it.
- Create a bedtime routine that winds down the pace. The Mayo Clinic suggests a warm bath or shower, a book, relaxing activities, and for 30 minutes before lights out, no loud music, video games, phone calls or Internet use.
- Eliminate caffeine drinks in the evening.
- Complete exercise and sports programs early in the evening, well before bedtime.
- Determine if any medications may be affecting sleep.

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