



Iowa Department of Administrative Services
Human Resources Program Delivery Services ■ Labor Relations Bureau

LABOR RELATIONS INFORMATION AND NEWS
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“A leader is best when people barely know he exists, when his work is done, his aim fulfilled, they will say: we did it ourselves.”

- Lao Tzu, Chinese Taoist Philosopher

Employment Law Updates

EEO/ADA/Title VII:

- For a discussion on three discrimination lawsuits filed on behalf of Muslim women who claimed they were discriminated against by their employers for wearing a *hijab*, or headscarf, to work, go to:
<http://www.littler.com/presspublications/index.cfm?event=pubItem&pubItemID=17249&childViewID=249&type=all§ion=Press%20%20Publications&subject=ASAPs&title=Accommodating%20a%20Muslim%20Woman's%20Right%20to%20Wear%20a%20Headscarf%20at%20Work:%20Recent%20Court%20Decisions>
- According to the EEOC, religious discrimination complaints have jumped more than 60% in the past 10 years. For a discussion on the types of accommodations employers must make, and four key factors that let employers off the hook, go to: <http://www.msnbc.msn.com/id/20973408/>
- On August 10, 2007, the U.S. Court of Appeals for the District of Columbia Circuit ruled that basing a promotion decision on specific factors encompassed but not expressly stated in a job description did not raise an inference of race discrimination. *Jackson v. Gonzales*, No. 06-5053. For a copy of the decision, go to: [http://op.bna.com/eg.nsf/id/hirn-762ndg/\\$File/jacksonk.pdf](http://op.bna.com/eg.nsf/id/hirn-762ndg/$File/jacksonk.pdf)
- On September 17, 2007, the EEOC filed a lawsuit against 7-Eleven of Hawaii and parent company 7-Eleven Japan Co. for discriminating against an employee in violation of the Americans with Disabilities Act (ADA) by disclosing his medical information to another employer while giving a job reference. For the full news story, go to: <http://www.bizjournals.com/pacific/stories/2007/09/17/daily5.html>
- On October 1, 2007, the EEOC announced that United HealthCare of Florida, Inc. will pay \$1.8 million to settle a same-sex harassment and retaliation lawsuit. Sexual harassment charge filings by men (reported to the EEOC and state/local agencies nationwide) have trended upward from 9% of all sexual harassment charges in Fiscal Year 1992 to 15% in FY 2006. For details on this case, go to: <http://www.eeoc.gov/press/10-1-07.html>
- For a discussion on employment decisions regarding employees with caregiving responsibilities that have been identified by the EEOC as actions that may violate Title VII or the ADA, go to:
<http://nhbr.com/apps/pbcs.dll/article?AID=/20070928/INDUSTRY03/70926031/-1/INDUSTRY>

FLSA:

- Action is expected soon on the Paycheck Fairness Act (H.R. 1338), legislation that would limit employers' defenses when accused of paying women less than men for the same work. The legislation would allow plaintiffs to seek punitive and compensatory damages, instead of just backpay, and would make it easier to file class action lawsuits in such cases. For updates on the status of H.R. 1338, go to:
<http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.01338:>
- In a donning/doffing case, the U.S. Court of Appeals for the Third Circuit recently ruled that cumbersome activity and exertion is not a requirement for "work" under the Fair Labor Standards Act. *De Asencio v. Tyson Foods Inc.*, No. 06-3502 (September 6, 2007). For a copy of the decision, go to:
[http://op.bna.com/dlrcases.nsf/id/mtrt-76ssqc/\\$File/Tyson.pdf](http://op.bna.com/dlrcases.nsf/id/mtrt-76ssqc/$File/Tyson.pdf)

FMLA:

- On September 25, 2007, the U.S. House of Representatives passed a bill, referred to as the Support for Injured Servicemembers Act, which includes an amendment to expand the Family and Medical Leave Act (FMLA) to allow 26 weeks of job-protected leave to caregivers of injured military service members. For details, go to:
<http://thomas.loc.gov/cgi-bin/query/z?c110:S.1975:>
- On September 21, 2007, the First Circuit Court of Appeals ruled that work holidays falling on days when an employee is out on intermittent FMLA leave of one week or more can count toward the employee's statutory 12-week FMLA leave entitlement. *Mellen v. Trustees of Boston University*, No. 07-1151. For a copy of the decision, go to: <http://www.ca1.uscourts.gov/cgi-bin/getopn.pl?OPINION=07-1151.01A>

NLRA: On September 19, 2007, the House Education and Labor Committee passed the Re-Empowerment of Skilled and Professional Employees and Construction and Tradesworkers (RESPECT) Act. If enacted, the bill would effectively overturn the decision of the National Labor Relations Board in the Kentucky River trilogy, and would amend the NLRA to narrow the definition of supervisor for the purposes of collective bargaining. For updates on the status of H.R. 1644, go to: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h1644>:

Miscellaneous:

- Legislation to criminalize workplace discrimination against gays, lesbians and bisexuals, but not cross-dressers or people whom have had sex-change surgery, has stalled in the U.S. House after an outcry from the transgender community and its allies against excluding anyone from the bill. A committee vote on the bill (H.R. 2015) has been put off until later this month. The **Employment Non-Discrimination Act** (ENDA) was first introduced in Congress in 1994. For the full news story, go to: <http://www.wtopnews.com/?nid=104&sid=1260148>

For the bill text, go to: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:H.R.2015>:

- On September 18, 2007, the U.S. Senate passed the **Mental Health Parity Act** (S. 558), which would require health plan sponsors to offer coverage for mental illness that is similar to benefits offered for other medical conditions. The House version of the bill (H.R. 1424) passed the Education and Labor Committee on July 18, 2007, and the Ways and Means Health Subcommittee on September 19, 2007. Speaker of the House Nancy Pelosi, D-Calif., has indicated that the House will consider the legislation this fall. For a copy of S. 558, go to: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:s.00558>:

For a copy of H.R. 1424, go to: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.01424>:

- The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) now offers a new web-based tool, **Compliance Assistance Quick Start**, to employers and employees for free compliance assistance resources. For details, go to: http://www.osha.gov/dcsp/compliance_assistance/quickstarts/index.html
- On August 28, 2007, the U.S. Commission on Civil Rights issued a report warning that the use of **affirmative action** in admissions processes might harm minority law students. For a copy of the report, go to: <http://www.usccr.gov/pubs/AALSreport.pdf>
- On October 1, 2007, the U.S. Department of Labor announced that the **Permanent Foreign Labor Certification Program's** backlog has been eliminated, with nearly 99% of cases completed, and the remainder awaiting responses from employers. The Permanent Labor Certification Program processes employer requests for foreign workers when U.S. workers are not available, willing, and able to fill job openings. For details, go to: <http://www.dol.gov/opa/media/press/eta/eta20071483.htm>
- Massachusetts recently became the 39th state to pass a **security breach notice law**. While the statutes vary from state to state, they all pertain to the exposure of employee personnel information to unauthorized individuals, and the employer's requirement to notify employees of such security breaches. Iowa is one of only 11 states that have yet to enact such a law. For further discussion on these laws, go to: <http://www.litler.com/presspublications/index.cfm?event=pubItem&pubItemID=17209&childViewID=235&type=all§ion=Press%20%20Publications&subject=Insights&title=Employers%20Face%20New%20Compliance%20Challenges%20As%20Massachusetts%20Becomes%20the%2039th%20State%20to%20Enact%20a%20Security%20Breach%20Notice%20Law>

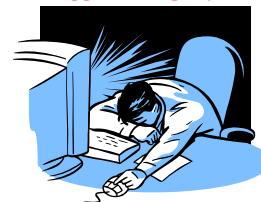
National Drug-Free Work Week: October 14–20, 2007

The Department of Labor and its Drug-Free Workplace Alliance have collaborated for the purpose of this annual campaign in an effort to educate employers, employees, and the public about the importance of being drug-free as an essential component of a safe and healthful workplace. To learn more about ways to promote drug-free workplace messages, go to: www.dol.gov/workingpartners

National Disability Employment Awareness Month

Throughout October, the U.S. Department of Labor's Office of Disability Employment Policy (ODEP) will profile on its Web site individuals who have personally benefited from agency-sponsored programs aimed at eliminating the chronic underemployment of people with disabilities, as well as employers and organizations that have successfully implemented strategies to hire, support, empower and otherwise value employees with disabilities. For more information, go to: www.dol.gov/odep/

WAKE UP!



According to a recent survey by Careerbuilder.com, the most common workplace taboos that workers admitted to taking part in include:

- Falling asleep at work (45%)
- Kissing a co-worker (39%)
- Consuming alcoholic beverages while on the job (21%)
- Stealing from the office (22%)
- Spreading a rumor about a coworker (22%)
- Snooping after hours (18%)
- Lying about an academic background (4%)
- Taking credit for someone else's work (2%)

PROFESSIONAL IMPACT!

When we're extremely busy or when we've been with an organization a long period of time, it is easy to lose site of the professional image we portray to superiors, co-workers, and customers. It is important to remember the degree of professionalism demonstrated in the way we dress, communicate, and behave affects us each and every day, both directly and indirectly.

A low degree of professionalism can result in missed growth opportunities and misperceptions of your skills and capabilities. A high degree of professionalism can help you grow in the organization and increase your credibility and success.

Professional Impact: Building Essential Skills for Today's Organization (GI 084) will be held on **October 31, 2007**, from 8:30 – 4:30, in the Hoover State Office Building. It is a newly redesigned course instructed by Brian Mayer (DAS-Human Resources) that will help you discover how to enhance your personal and professional presence in the workplace.

To enroll, please speak with your agency's training liaison, or call (515) 725-2051 for more information.

For a full listing of upcoming workshops available through Performance & Development Solutions (DAS-HRE), please visit: <http://www.das.hre.iowa.gov/LearnAtPDS/>

Sample GRIP Case:

The following case, recently heard at GRIP, is an example of a grievance filed over an issue that is not grievable:

The grievant had requested pre-determination from Delta Dental for dental work for her spouse. Delta Dental denied the request on November 1, 2005. On January 4, 2006, the grievant and her husband decided to proceed with the dental work. In June 2006, the grievant again made inquiries to Delta Dental and DAS-HRE Benefits. Benefits responded on June 28, 2006, advising that the grievant had received both verbal and written denial from Delta Dental on November 1, 2005, and that Delta Dental continued to deny the claim. The grievance was filed on July 13, 2006, long after Delta Dental's denial and the completion of the dental work.

Management made the points during its presentation that 1) the grievance was untimely; and 2) Delta Dental's denial of a claim is not a grievable issue under the terms of the collective bargaining agreement. With respect to timeliness, the grievant was aware as early as November 1, 2005, that Delta Dental would deny the grievant's claim for dental work. Therefore, the grievance was not filed within 14 days of the grievant's knowledge of the issue. In addition, the State does not determine which dental claims will be paid. Delta Dental is responsible for that determination. Management's position was presented clearly and concisely, with focus on the significant dates and appropriate method of appeal for dental claim determinations.

The GRIP Panel denied the grievance.

According to a study by Development Dimensions International (DDI), a global human resource consulting firm, and Monster®, which surveyed nearly 6,000 staffing directors, hiring managers, and job seekers, **two-thirds of job seekers reported that the interviewer influences their decision to accept a position.**

Job seekers identified a number of interviewer behaviors that adversely affected their willingness to work at the company in question:

- Acting as if he/she has no time to talk (70%)
- Withholding information about position (57%)
- Turning interview into cross-examination (51%)
- Showing up late (48%)
- Appearing unprepared for interview (47%)
- Asking questions unrelated to job skills (43%)

For details on the survey, go to:

http://www.ddiworld.com/about/pr_releases.asp?id=113



To access this newsletter online, go to:

das.iowa.gov/newsletters/index.html

and click on the link for Labor Relations Information and News.

For questions, or to provide suggestions for items/topics to be included in upcoming issues of this newsletter, please contact:

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