



Iowa Department of Administrative Services  
Human Resources Program Delivery Services ■ Labor Relations Bureau  
**LABOR RELATIONS INFORMATION AND NEWS**  
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"The whole idea of motivation is a trap. Forget motivation. Just do it. Exercise, lose weight, test your blood sugar, or whatever. Do it without motivation. And then, guess what? After you start doing the thing, that's when the motivation comes and makes it easy for you to keep on doing it."

-John Maxwell, author, speaker & leadership expert

### Employment Law Updates

#### EEO/ADA/Title VII:

- For a discussion on 10 situations involving **employee caregivers** that the U.S. Equal Employment Opportunity Commission (EEOC) now says may give rise to a finding of unlawful discrimination, go to:  
<http://www.hmw.com/workcite/20071018.htm>
- On October 11, 2007, the EEOC announced the formation of an **Asian American and Pacific Islander Work Group** that will examine this community's concerns about federal sector employment, special emphasis programs, and the complaints process. For further information, go to:  
<http://www.eeoc.gov/press/10-11-07.html>
- On October 10, 2007, the U.S. Court of Appeals for the Eighth Circuit affirmed a district court's finding that **falsely reporting a workplace injury** does not constitute exercise of workers' compensation rights and thus the employee failed to prove causation in a retaliation claim following his termination. *Zuhdija Napreljac v. John Q. Hammons*, No. 06-4038. For a copy of the decision, go to:  
<http://www.ca8.uscourts.gov/opndir/07/10/064038P.pdf>
- For a discussion on whether or not **punctuality** is always an essential function, go to:  
[http://www.envoynews.com/elarbee/e\\_article000913899.cfm?x=bbk3nj0.b5gm6J11.w](http://www.envoynews.com/elarbee/e_article000913899.cfm?x=bbk3nj0.b5gm6J11.w)  
For a copy of the decision issued by the U.S. Court of Appeals for the Eleventh Circuit (*Holly v. Clairson Industries*, No. 05-00192-CV-OC-10GRJ) and referred to in the article, go to:  
<http://www.ca11.uscourts.gov/opinions/ops/200613365.pdf>
- The EEOC has seen a 39% increase in the number of **pregnancy discrimination** charges filed since 1992, with a record 4,901 charges filed in 2006. For an overview of the Pregnancy Discrimination Act and tips on avoiding pregnancy discrimination claims, go to:  
<http://www.hmw.com/workcite/20071011.htm>
- For a discussion on several cases involving **sensitivity to perfumes and fragrances** generally not being considered a disability under the Americans with Disabilities Act (ADA), go to:  
<http://www.laborlawyers.com/showarticle.aspx?Ref=list&Type=1119&Cat=3386&Show=9969>
- On September 6, 2007, the Tenth Circuit Court of Appeals found that the University of Colorado Boulder's failure to prevent **sexual assaults** may have been the result of deliberate indifference. *Lisa Simpson; Anne Gilmore v. University of Colorado Boulder*, Nos. 06-1184 and 07-1182. This case places the burden on universities and colleges to monitor student activities on and off campus, and implement new policies and procedures to affirmatively address known misconduct. For a copy of the decision, go to:  
<http://www.ceridian.com/www/content/10/12487/14865/14911/simpsoncase.pdf>

#### FMLA:

- On September 28, 2007, the Sixth Circuit Court of Appeals affirmed a lower court decision in favor of an employer who denied an employee's request for leave based on **insufficient and unreliable health certifications**. *Novak v. MetroHealth Medical Center*, No. 06-3036. For a copy of the decision, go to:  
<http://www.ceridian.com/www/content/10/12487/14915/14934/novakcase.pdf>

- For a discussion on recent First and Sixth Circuit Court opinions concerning the **calculation and denial of FMLA leave**, and possible action by the Department of Labor (DOL) to address concerns raised over health certifications and releases, go to:  
<http://www.hmw.com/workcite/20071005.htm>

### **Miscellaneous:**

- On October 9, 2007, California Governor Arnold Schwarzenegger signed into law a statute requiring California employers with 25 or more employees to allow **an employee who is a spouse of a member of the Armed Forces**, National Guard, or Reserves to take up to 10 days of unpaid leave during a qualified leave period when the employee's spouse is home on leave. For a copy of the statute, go to:  
[http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_0351-0400/ab\\_392\\_bill\\_20070920\\_enrolled.pdf](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0351-0400/ab_392_bill_20070920_enrolled.pdf)
- The New York Supreme Court Appellate Division ruled in a 3-2 decision that punitive damages can be awarded for a grossly negligent **breach of confidential medical information**, even if the breach was not intentional or malicious. In this case, the jury awarded the plaintiff \$365,000 (\$65,000 in compensatory emotional distress damages and \$300,000 in punitive damages). For a discussion on how the decision might affect New York employers, go to:  
<http://www.jacksonlewis.com/legalupdates/article.cfm?aid=1226>  
For a copy of the decision, go to:  
[http://op.bna.com/pl.nsf/id/dapn-77plny/\\$File/anon.pdf](http://op.bna.com/pl.nsf/id/dapn-77plny/$File/anon.pdf)
- For a discussion on **preventing workplace violence**, and a list of indicators of potential for workplace violence identified by the FBI, go to:  
<http://www.hmw.com/workcite/20070927.htm>
- The **Workforce Investment Act** of 1998 (WIA), which became effective July 1, 2000, establishes a national workforce preparation and employment system (America's Workforce Network) to meet the needs of businesses, job seekers, and those who want to further their careers. To view each state's WIA Report for Program Year 2006 (July 1, 2006 – June 30, 2007), go to:  
<http://www.doleta.gov/performance/Results/AnnualReports/annual-report-06.cfm>

**USERRA:** For an article outlining the law governing service members' **employment-related rights** under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and employers' obligations to military service personnel, go to:

<http://www.laborlawyers.com/showarticle.aspx?Ref=list&Type=1119&Cat=3386&Show=10049>

*When investigating employee misconduct, what should I include in my interview notes/documentation?*



- Where the investigative interview took place
- Who conducted the interview
- Who else was present during the interview
- Date, start time, and end time of the interview
- Date the interview notes were transcribed, if applicable
- Events/allegations leading up to the interview
- Who said what during the interview; include direct quotes, if possible
- Non-verbal indicators (crying, tone of voice, etc.)
- If not typed, be sure your notes are legible. They may eventually be offered as evidence to a GRIP Panel or an arbitrator.
- Record facts, not conclusions. If you've been asked to write a recommendation based on your investigation, put it in a separate document.

### **Revised 7-1 Required Posters**

The revised 7-1 posters are now available from Iowa Workforce Development. These posters contain the new Federal and Iowa minimum wage changes; Your Rights Under the Family & Medical Leave Act; Equal Employment Opportunity is The Law; Employee Polygraph Protection Act; OSHA Safety and Health Protection; Unemployment Insurance; and the Uniformed Services Employment and Reemployment Rights Act.

The posters also contain the updated information from the Iowa Civil Rights Act that prohibits discrimination in employment because of a person's Age (18 and older), Race, Creed, National Origin, Color, Gender Identity, Sex, Sexual Orientation, Disability, and Religion.

The posters are provided at no cost, are standard poster sized, and can be delivered, mailed or picked up at the Iowa Workforce Center, 430 East Grand Ave, Des Moines.

To order, or for more information, please contact:  
**Craig Immerfall**  
[craig.immerfall@iwd.iowa.gov](mailto:craig.immerfall@iwd.iowa.gov)  
515-242-5985



### *Problems with Productivity? Sit near a window.*

Recent studies have shown that exposure to natural light caused shoppers to buy more, students to perform better in school, and employees to be more productive.

For an article on the subject, go to:

[http://www.mercurynews.com/ci\\_7124845?nclick\\_check=1](http://www.mercurynews.com/ci_7124845?nclick_check=1)

#### **Sample GRIP Case:**

The following case, recently heard at GRIP, is an example of a grievance that was presented well by Management:

*The grievant submitted an electronic leave slip to request vacation for May 7, 2007. The leave slip was submitted 60 days prior to May 7. Management denied the grievant's vacation request because three of the six nursing staff were already scheduled to attend training on the same date. However, a scheduling calendar located in the nursing station reflected that the grievant would be on vacation on May 7. The Union argued that the grievant's vacation request should have been approved, in accordance with Article IX, Section 11(D) of the CBA which states, in part, "Once vacation periods have been scheduled, the Employer shall make no changes in employee vacation schedules except to meet emergencies."*

Through its presentation, Management was able to show that three of the six nursing staff already being scheduled for training created a staffing shortage for May 7, 2007, and approving the grievant's vacation request was not possible. Further, Management noted that the grievant was never approved for vacation on May 7, and, therefore, the language referred to in Article IX, Section 11(D) is not applicable in this situation. Management's presentation made it clear to the GRIP Panel that the note about the grievant's vacation on the scheduling calendar located in the nursing station was not an official document reflecting approved leave, that there was no conclusive evidence to show who made the note on the calendar, and that the scheduling calendar does not take the place of the electronic leave slip, which was denied.

The GRIP Panel denied the grievance.

#### **How do "bad bosses" affect the bottom line?**

**Research by Wayne Hochwarter, a professor of management at Florida State University**, and research associate Samantha Engelhardt, finds that employees with bad ("abusive") bosses retaliate with lower productivity.



- ↓ **30%** of those who reported abuse **slowed down or purposely made errors**, compared with 6% of those not reporting abuse.
- ↓ **27%** of those who reported abuse purposely **hid from the boss**, compared with 4% of those not reporting abuse.
- ↓ **33%** of those who reported abuse confessed to **not putting in maximum effort**, compared with 9% of those not reporting abuse.
- ↓ **29%** of those who reported abuse **took sick time off even when not ill**, compared with 4% of those not reporting abuse.
- ↓ **25%** of those who reported abuse **took more or longer breaks**, compared with 7% of those not reporting abuse.

To access this newsletter online, go to:

[das.iowa.gov/newsletters/index.html](http://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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