

THE VANTAGE POINTE™

PROACTIVE PERSPECTIVES ON ISSUES AFFECTING THE WORKPLACE

FMLA Expanded to Relatives of Military Personnel

On January 28, 2008, President Bush signed into law a revised version of the National Defense Authorization Act (“Act”), which among other things, expands the scope of the Family and Medical Leave Act of 1993 (“FMLA”) to grant two new leave entitlements to close family members of uniformed military personnel. These amendments require employers to grant “caregiver leave,” for an employee who needs to care for a relative who is recovering from illness or injury acquired while on active duty, and “active duty leave” to an employee who has a close family member who has been called to active duty in the Armed Forces, for the purposes of a “contingency operation.”

Caregiver Leave

Effective immediately, an employee covered by FMLA is entitled to leave for a total of 26 weeks during any 12-month period, if that employee is caring for a service member recovering from injury or illness suffered in the line of active duty in the Armed Forces and the injury or illness prevents the service member from performing his or her required duties. The employee/caregiver may be the spouse, parent, child or “next of kin” of the injured service member. The provision including “next of kin” is a new addition to the FMLA and is defined as the *nearest blood relative* of the ill or injured service member.

As with other types of FMLA leave, the employee can elect, or the employer may require the employee, to substitute any accrued paid vacation, personal, family medical or sick leave for any part of the 26-week period. However, the amendment does not require an employer to provide paid sick or paid medical leave in any situation where the employer would not normally do so. As with other types of FMLA leave, an employee may elect to take the leave on an intermittent or reduced-schedule basis.

Given that the caregiver leave provision of the bill is effective immediately, employers should update their FMLA policies, forms and handbooks to reflect this new entitlement, and distribute the updated documents to employees as necessary.

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Active Duty Leave

The act also amends the FMLA by requiring employers to grant up to twelve weeks of unpaid leave to an employee because of “any qualifying exigency” which arises because a spouse, child, or parent is or has been notified of an impending call or order to active duty in the Armed Forces in support of a “contingency operation.” This provision adopts the current statutory definition of the term “contingency operation”, as an operation in which members of the armed forces are or may become involved in operations or hostilities against an opposing military force, as well as other circumstances as defined by the Secretary of Defense. Therefore, the language of the bill generally excludes instances where a service member is called to duty for training or other missions which are not in preparation or support of actions against an opposing military force.

According to the Department of Labor, the Active Duty Leave provision of the amendment is not effective until the Secretary of Labor issues regulations defining “qualifying exigencies”. The DOL has requested the submission of comments to be considered in developing this definition. In the meantime, the DOL encourages employers to liberally provide leave that might qualify as a qualifying exigency to qualifying employees.

Conclusion

As a result of the amendments to the FMLA, employers should act quickly and conscientiously to offer caregiver leave and active duty leave to all eligible employees. While it is unlikely that the full breadth of these new provisions will be illuminated until subsequent DOL rulemaking and litigation, it is important for employers to update their workplace postings, practices, policies, handbooks and other documentation to reflect the new changes in the law. Employers are encouraged to partner with legal counsel to ensure full compliance not only with the new revision, but with the FMLA in its entirety. Should you have any questions about your company’s compliance with the FMLA, please do not hesitate to contact Dyahanne Ware at 312.440.0602 or dware@vantage-solutions.com.

Not-for-Profit Business Solutions

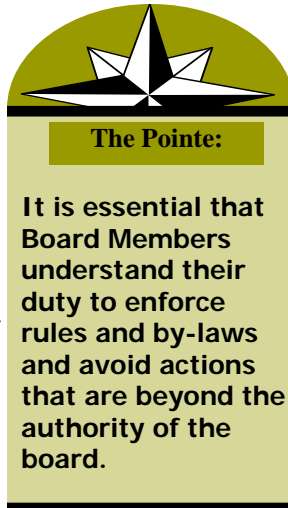
Regardless of the noble mission intentions, non-profit organizations are just as vulnerable to legal liability as for profit corporations. Non-profits, whether a church, hospital, school, or swim club, have become increasingly vulnerable to employee lawsuits. According to a survey by Tillinghast-Towers Perrin, 96% of claims against Directors and Officers in non-profits were brought by employees. In contrast, only 23% of such claims against public companies were brought by employees.

Unfortunately, many such claims result from the unintentional failure of not-for-profit organizations to proactively identify and address issues that may lead to litigation relating to board operations, employees, and volunteers. Although it is not possible to cover all of the pitfalls in this article, the following is a checklist of questions to consider for such organizations to avoid potential legal liabilities.

Board Operation

It is essential that Board Members understand their duty to enforce rules and by-laws, avoid unlawful acts, and avoid actions that are beyond the authority granted to the Board in the by-laws of the organization. Some questions to ask are:

- Is the board an administrative governing board that carries out the daily activities of the organization or a strategic/policy governing board that sets policy but acts through an executive director? This distinction is important to how the constitution, by-laws, policies and procedures should be drafted and followed.
- Do the constitution and by-laws reflect the true nature of the board and mission?
- Are there policies in place prohibiting conflicts of interest or other prohibited acts, and outlining obligations such as annual filing requirements?
- Are the constitution, by-laws, and policies being followed? Is there documented proof?
- Are board members provided with a written board manual (containing, at the least, all policies of the organization) and a formal orientation?
- Is adequate liability insurance provided to cover acts of board members?



Employees

When examining potential legal liabilities with employees, the first consideration is whether the reporting relationship between the board, any executive director, and employees is well defined and followed. Employees should not be subjected to the conflicting orders and direction of board members or others. Further, it is critical to ask:

- Are there written job descriptions for every position, including the executive director?
- Are there written policies provided to employees regarding harassment and discrimination, compensation, employee leave, performance reviews, work rules, etc.?
- Do personnel policies and procedures comply with all legal requirements such as wage and hour laws, immigration, non-discrimination, worker's compensation, family, or other leave?
- Are employees provided with orientation and training on the organization's policies and procedures? Is the training documented?

Volunteers

Volunteers are the lifeblood of the organization yet they pose potential risk management questions that may be addressed with proper planning. Some questions to consider regarding volunteers are:

- Are there organizational policies in place that govern volunteer behavior toward clients, employees and the public?
- Are volunteer expectations clearly articulated and followed to protect their volunteer status?

By being aware of the liabilities, not-for-profits can better take the appropriate steps to minimize liability and maximize productivity, allowing greater focus on achieving the organization's mission. For more information, contact Vanessa Smith McTier at 312.440.0602, or at vsmith@vantage-solutions.com.

10 YEARS!!

Vantage Solutions LLC recently celebrated its 10 year anniversary of servicing the needs of employers. We are extremely proud of our accomplishments over the last decade and extremely grateful to all of our clients for choosing Vantage Solutions LLC to fulfill your workplace needs.



Managing The Multi-Generational Workforce

For the first time in our nation's history, the U.S. workforce is made up of four generations. Each of these generations has different views and expectations about work and to be successful in employee retention, employers must create an environment that can support and derive the best from these varying styles. This article will help employers to better understand the characteristics of each generation and provide tips on how to manage them toward high workplace performance.

Generational Characteristics

Traditionalists/Builders

Often referred to as the "greatest generation", these individuals were born prior to 1945 and they currently make up approximately 75 million employees. They are loyal, generally comfortable with a top-down management style and often motivated by recognition for a job well done.

Baby Boomers

Those born between 1946 and 1964, they make up 80 million of the nation's employees and are optimistic and idealistic, if extremely competitive. Boomers are primarily motivated by symbols of success – titles, salary, and the perks of more money.

Generation X

This generation was born between 1965 and 1980 and was the first generation to have substantial numbers of "latch-key" children; moreover, they saw their loyal parents work enormously hard only to face lay-offs and downsizing. As a result, they are largely distrusting of systems and perceive freedom as the ultimate reward. Gen X-ers make up 46 million of our nation's workers.

Generation Y/Millennials

Currently comprising 75 million employees, they were born between 1981 and 1999 and are great multi-taskers. They may question authority, but generally want to make a difference and be appreciated for the value of their work.

Because of the unique emphasis each places on what constitutes value and respect in the workplace, these different approaches can lead to tension, frustration and mistrust and many workforce conflicts often have generational differences at their core.

To manage these differences, organizationally, each employer must understand how its culture views work and establish clear organizational values. Likewise, individual managers must understand their own views about what constitutes appropriate

work ethic and attributes and how your generational wiring impacts these views. This self-awareness will go a long way toward helping managers and the organization as a whole more effectively manage the multigenerational workforce.

Tips for Management

Establish a variety of rewards. Though compensation may be the ultimate reward for Boomers (and they are willing to work longer hours for it), Gen X will value flexibility in work schedule over money, while Gen Y will work hard but will expect to advance rapidly and learn new skills quickly.

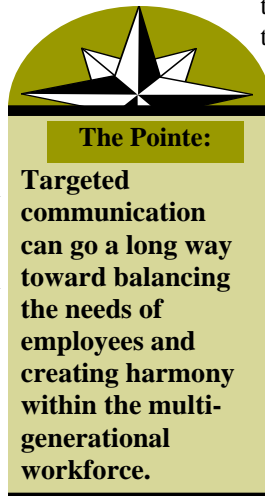
Consider restructuring your bonus and/or compensation system to reward productivity. All generations must be expected to produce and generally will-- just in their own way and their own time. By rewarding productivity, rather than work methods or hours spent on a project, you show respect for the fact that each generation may work differently but can still produce the results your business requires.

Consider flexible hours. Builders are most likely to work 9-5 steadily throughout the day, Boomers 7am-7pm (with more socializing), Gen X 10am-4pm (with little or no socializing), and Gen Y 9am-5pm (yet will have built a website, updated their MySpace.com page and sent 30 text messages to friends). However, if they all accomplish the tasks required of them, does it really matter? If it does, there is nothing necessarily wrong with that, but employers must be clear about workplace expectations.

Communicate effectively and differently. Employers should develop key message points that help show the different generations that management appreciates their value. For Builders, communicate that they are respected; for Boomers, give them full attention and choose face to face conversations that delve into their personal life; for Gen X, show value for and respect their time; and with Gen Y, show respect by investing in their skill set and career development.

Managing the multi-generational workforce requires thought and, in most cases, changes at both the managerial level and the organization level. However, a little effort can go a long way toward balancing the varying needs of your entire employee population and creating harmony in your workplace.

For more solutions for managing the multi-generational workforce, please contact Vanessa Smith McTier at vsmith@vantage-solutions.com.



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EMPLOYMENT COUNSELING & CONSULTING



PROACTIVE
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ISSUES AFFECTING
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The Vantage Pointe™ is a quarterly publication of Vantage Legal Solutions, P.C. and Vantage Solutions LLC®, Chicago-based firms specializing in employment law and human resource strategies. Our 110 years of experience in employment law and HR gives us the superior position from which to provide employers of all sizes with proactive strategies to better manage their workforce. Our workplace solutions help maximize worker productivity, reduce turnover, and minimize employment practices lawsuits.

Our integrated and customized services include policy and procedure development, customized on-site training for managers and employees, ongoing advice and counsel on employment law topics, independent investigations of employee complaints, and conflict and dispute resolution.

For more information, contact us at 312.440.0602 or 877.816.4818.

This newsletter is for informational purposes only and should not be considered legal advice. For more information on any of the articles here, please contact Dyahanne Ware at the number above or at info@vantage-solutions.com.

Managing Multi-Generational Benefits: The Employee Benefits Survey

Research shows that employees value benefits more than any other factor in determining their job satisfaction, including compensation. For this reason, employers must make use of innovative and competitive benefit plans as part of their retention strategy. Yet, like many of the items discussed in the prior article, the benefits expectations of the various generations in the workforce may vary greatly.

For example, those closest to retirement place highest value on generous retirement benefits, such as an employer match on retirement contributions. Younger workers, Gen X in particular, are most likely to place value on additional paid time off or flex time. Boomers with elderly parents might most appreciate long-term care plan options, while Gen X with small children might prefer a 529 Plan or childcare assistance benefits. For Millennials that are single and living in the city, transportation benefits or discounts on coffee, books, or home supplies might be the ticket.

Understanding that demographic variations will influence the relative importance of various benefits to your employees, employers must take the time to fully understand which benefits will deliver the greatest value to their employees for the least cost to employers. This value proposition can best be obtained through conducting an **Employee Benefits Survey**. The goal of an Employee Benefits Survey is to accurately gauge exactly which benefits are of greatest importance to your unique employee population. The results of a well defined survey can prove invaluable and provide accurate and immediate input into what benefits you should offer to your employees and provide a clear roadmap on where your benefit dollars can be best spent.

Vantage Solutions LLC offers an on-line, user-friendly Employee Benefits Survey that can be used to gauge which benefits are most important to your employees. We will customize the survey as needed for your workplace, and send a link to the survey to your employees. Once responses are received, we will analyze the results and offer recommendations for improvement of your current benefits plans. Further, if you desire, the results of the survey can be shared with our benefits consulting affiliate, Waddell & Reed Advisors, who have agreed to conduct a no-cost audit of benefits plans for all Vantage clients and help you achieve any available cost savings. To offer this survey to your employees, at a cost of just \$10.00 per employee, please contact Valerie Silk at vsilk@vantage-solutions.com or 312.440.0602, extension 105.