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Special Report for HR Professionals

December 4, 2009
Number 515

The Management Advantage, Inc., PO Box 3708, Walnut Creek, CA 94598
www.hrwebstore.com newsletter@management-advantage.com 925-671-0404

CALIFORNIA DLSE OPINION ALLOWS REDUCTION IN EXEMPT PAY DUE TO ECONOMY

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Since 2002, the California Department of Labor Standards Enforcement (DLSE) has held the position that reducing the hours worked by an exempt employee would result in the position losing its exemption. Since August of this year, that position has changed just a bit.

The question was, can an employer reduce the number of days worked by an exempt employee and also reduce the salary paid that employee because of economic impact on the business? The answer is yes...with certain conditions.

In 2002, the DLSE published an opinion letter that said reducing an exempt worker's weekly salary would result in loss of the positions exempt status. So, exempt workers may not be "docked" pay due to disciplinary problems, for example.

With the world's economic recession in full bloom, employers are looking for ways to reduce expenses and a big expense is payroll. In California, the DLSE rule would seem to have required layoffs rather than a reduction in work hours for exempt people.

Well, DLSE accepted the argument and said, when the economy impacts an employer so much that it is faced with laying off exempt workers, it may consider using the reduction of hours (and pay) as an alternative to the layoffs.

Is it better to cut people's pay and work hours rather than lay off a portion of the workforce? Many HR professionals would argue that it is. Now, in California, that option is finally available.

March 12, 2002 DLSE Opinion Letter
<http://www.dir.ca.gov/dlse/opinions/2002-03-12.pdf>

August 19, 2009 DLSE Opinion Letter
<http://www.dir.ca.gov/dlse/opinions/2009-08-19.doc>

FAKE JOB REFERENCE SERVICES

A new scam is appearing on Internet job sites. Job listings are appearing as a means for gathering personal information from job candidates that results in identity theft. Don't submit Social Security Number, credit card number or other data that should not be required in a job application process.

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Every HR professional who has been in the field for more than a few years has a deep understanding of the pre-employment background check process. The need for it has only increased in recent years because of the very common tendency of job candidates to “inflate” or “fabricate” the content of their resumes. Everything, it seems, is subject to embellishment from the number and types of college degrees to work experience and awards.

Background checking takes time and money. An entire sub-industry has grown up to serve the need employers have to be assured that their job offers only go to honest and exceptionally qualified people.

Now, there is a new wrinkle in the picture.

It seems, there is money to be made in providing job applicants with fake job references. If your real work history doesn't look too good on your resume, just invent a history that you like more. Then, hire one of the new Internet-based organizations to take calls from prospective employers and give out whatever confirmations you wish. Dishonest? Yes. Immoral? You bet. Illegal? Maybe not.

It is common, as a matter of policy, for employers to terminate people that they hire and later discover to have lied on their application or resume. Yet, we are not aware of any state law that prohibits providing false references.

So, the employer is faced with another challenge. And, it seems that some of these new reference mills will also provide doctor notes for employees who wish to take some “sick time” away from the job. With skiing season just around the corner, that could be germane.

Here are just three of the services we found that can make life difficult for HR professionals.

- <http://fakesummary.com>
- <http://careerexcuse.com>
- <http://fakesummarymembers.com>

One site, www.alibihq.com appears to have gone out of business.

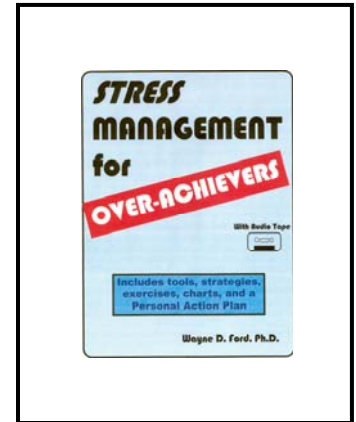
One by-product of this new practice is that some employers are receiving calls asking for employment confirmation for people who have never worked in their organization.

What to do? HR professionals are left with little option but to dig a little deeper in their background checking. Use only phone numbers, Internet sites and other publicly-known methods for contacting former employers and educational institutions. And, be sure to include an acknowledgement on your web site and in your application form that any falsified information will be cause for immediate dismissal if hired based on that information.

Stress Management for Over-Achievers

Over-achieving too often leads to over-stressing for many who have had successes in life beyond the standard or expected level. Taking positive action to reduce stress fits with the achievement goals of many who achieve beyond expectations. This book takes the reader on a journey of understanding, coping and overcoming excess stress.

<http://www.management-advantage.com/products/achievestress-book.htm>



POTPOURI

- **E-Verify Extended for Three Years**

A three-year extension of E-Verify was included in a \$42.8 billion appropriations bill for the Department of Homeland Security (DHS), signed by President Obama on October 28, 2009. The program is now scheduled to end on September 30, 2012. (HR 2892)

- **Interim Final Rule for Increased HIPAA Penalties**

The maximum fine for each violation of HIPAA under this new rule will be \$50,000. The maximum fine for "all such violations of an identical provision within a calendar year" will rise to \$1.5 million.

<http://edocket.access.gpo.gov/2009/E9-26203.htm>

- **OFCCP Issues Corporate Scheduling Announcement Letter (CSAL)**

The Office of Federal Contract Compliance Programs (OFCCP) has revised and promised to send the scheduled Fall 2009 CSAL letters to contractors with 2 to 25 establishments on the audit schedule for the next six months. Signed by the new Director, Patricia A. Shiu, the agency's web site has a copy of the revised letter. You will find it at:

http://www.dol.gov/ofccp/regs/compliance/CSAL_Letter.pdf

There had been great confusion in the contractor community about whether the Director would cancel use of this announcement. Apparently, the issue has been put to rest.

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DOD OFFERS WHISTLEBLOWER PROTECTION TO EMPLOYEES OF ITS CONTRACTORS

On November 19, 2009, The U.S. Department of Defense (DOD) published final regulations giving whistleblower protections to employees of federal contractors. As of that date, DOD contractor employees are protected if they disclose to Government officials information regarding waste or mismanagement, danger to public health or safety, or violation of law related to a DOD contract.

For a copy of the Federal Register notice of the final rule go to:

http://www.management-advantage.com/media/DOD_Whistle_Blower_FAR_Final_Changes.pdf

The effective date of this new rule is November 19, 2009.

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The Management Advantage, Inc.

PO Box 3708
Walnut Creek, CA 94598
925-671-0404

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Editor: William H. Truesdell, SPHR
billt@management-advantage.com

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