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U.S. CHAMBER OF COMMERCE REPORTS ON STATE LAW IMPACT ON JOB GROWTH

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The U.S. Chamber of Commerce has released the results of a study it commissioned the labor law firm of Seyfarth Shaw LLP to conduct. In short, it concluded that job creation and new business formation can be jumpstarted with less burdensome workplace laws and regulations.

The report includes a state-by-state review of laws governing employment issues. States were actually rated and placed into groups based on their favorable or unfavorable business climate. States like Massachusetts, California, New York and Illinois were rated in the lowest group. The study concludes that those states have the potential to substantially increase job growth by adopting less burdensome policies. Massachusetts, for example, has some of the toughest wage and hour laws in the nation, and the volume of workplace litigation in California has boomed since 2004 passage of the state's *Labor Code Private Attorney General Act*, which has generated a wave of so-called "bounty hunter" and "sue your boss" lawsuits.

The new study arrives as the national economy is starting to rebound from the recession, but also as many U.S. companies are confronting heightened employment regulation as well as a surge in workplace litigation, two trends that are crimping hiring decisions and business expansion.

The Report features an "Employment Regulation Index" or (ERI) measuring the extent of labor and employment regulation in each state, based upon 34 characteristics related to employment (including treatment of covenants not to compete, existence of state minimum wages in excess of federal, and the existence of right-to-work laws). States were placed into one of three tiers – "Good," "Fair," and "Poor" – based on their level of labor and employment regulation.

In the final analysis, the Report concludes that if each state were to get a "perfect" Index score of 1, the effect would be the creation of 746,000 net new jobs nationwide, and that business formation would increase by 12 percent, bringing to life 50,000 new companies.

Where did your state fall in the analysis? Find out for yourself.

For a copy of the 116-page report, go to:

www.uschamber.com/sites/default/files/reports/WFI_StateBook201103.pdf

HOW TO HIRE AN HONEST STAFF

By Denis Collins, Ph.D.

It's not just hard finding good help these days -- it's hard finding honest help, too.

According to the U.S. Chamber of Commerce, approximately 75 percent of all employees steal from work in some way. What's worse is that about 30 percent of all corporate bankruptcies are a direct result of employee theft. The National Retail Security Survey in 2009 said you can also subtract a whopping \$15.9 billion each year just from retailers who suffer from employee theft. With the problem so widespread, many companies simply factor those losses into their yearly projections, and then hope it's not worse by year's end. But there is another alternative -- simply hire better.

Tips for managers who screen new job candidates include:

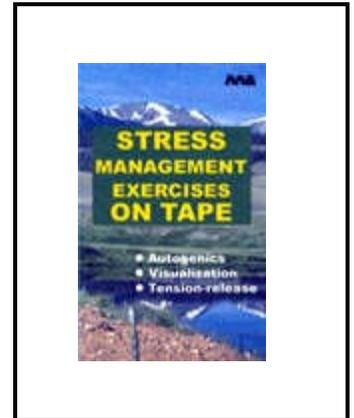
- **Obey Legal Ground Rules** -- While there are many questions the law forbids you to ask job candidates to eliminate discrimination, there are still many questions you can ask. [And, test for validity of selection steps in your employment process to avoid disparate impact.]
- **Use Ethics-Based Interview Questions** -- Too many interviewers gloss over questions that test an individual's character. Ask the candidate how he or she responded at a previous job to someone stealing, engaging in sexual harassment, or cutting corners at the cost of high ethical standards. Ask them if a superior ever requested that they do something unethical and, if so, how did they react. Even those who are dishonest with their answers can reveal how they feel about ethics in general.
- **Review Behavioral Information** -- Behavioral information can be gathered about job candidates through resumes, reference checks, background checks and some basic integrity tests that quiz candidates through "what would you do" style situations. Three standard integrity tests come from the Reid Report, the Stanton Survey and the Personnel Selection Inventory (PSI), which are easily found with a Google search if you don't already have access to them.
- **Test Personality Traits** -- The traits that govern whether an employee is more or less inclined to be dishonest include conscientiousness, organizational citizenship behavior, and social dominance. For the first two, you want to see high scores -- not so much on the last one. Again, personality tests are widely available to test these traits.
- **Other Tests** -- Some of the most revealing tests are the obvious ones -- alcohol tests, drug tests and even polygraph tests, when permitted by law. Many candidates may object to these as employment requirements, but in a world in which seven percent of our entire economy goes up in smoke from employee theft and fraud, companies should not feel shy about drawing a line in the sand. While those who refuse to take those tests may not have anything to hide, it's clear that those who agree to those tests have nothing to hide.

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Stress Management Exercises on Tape

A powerful collection of exercises designed to manage your stress through relaxation. Autogenics, visualization, and tension-release exercises are narrated by Dr. Wayne Ford. These exercises are easy to perform, and can be done individually or in a group. All you need to do is get comfortable, listen, and start relaxing your way to a more stress-free existence.

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



POTPOURRI

- **OFCCP Requests 3.4% Budget Increase in FY2012**

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has requested an increase of \$3.6 million for its FY2012 budget. If authorized, the \$109,010 million would be a 27.8% increase over its 2007 funding level. It is proposing a FTE level of 775 employees.

- **EEOC FY2010 Discrimination Charges Increase**

Retaliation charges outpace all other categories of discrimination complaints filed with the Equal Employment Opportunity Commission (EEOC) during Fiscal Year 2010. In bad economic times, with layoffs at all time high levels, one would expect complaints to increase, but retaliation charges usually increase only when employers are behaving badly.

<http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>

- **Individual Can Be Liable for Retaliation Under State Law**

The Arkansas Supreme Court has ruled that an individual supervisor can be held liable for retaliation that state law prohibits. Individuals may not be personally liable under federal law. Conclusion: Don't be cavalier in handling discrimination complaints in Arkansas.

<http://law.justia.com/cases/arkansas/supreme-court/2010/50818.html>



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OFCCP ISSUES “ACTIVE CASE ENFORCEMENT” DIRECTIVE

Patricia A. Shiu, Director of the Office of Federal Contract Compliance Programs (OFCCP) has signed and issued Directive Number 295. The signing happened on December 16, 2010. It became effective on January 1, 2011. It was not released publically until February 2011. The new requirements call for every Compliance Evaluation (audit) to require a complete desk assessment of Affirmative Action Plan documents. It also requires an on-site visit if any “indicators” of discrimination are discovered during the desk audit review. Class is redefined as “two or more people.” Indicators will include “statistical evidence, anecdotal evidence, patterns of individual discrimination, patterns of systemic discrimination, patterns of major technical violations such as recordkeeping deficiencies or failure to maintain an AAP, and indicators of non-compliance with non-EEO labor and employment laws enforced by other federal agencies.”

OFCCP will be contacting state and federal enforcement agencies to determine what the contractor’s history of discrimination complaints might be. They will also be checking with wage and hour agencies for the same reason. OSHA complaints will weigh into their consideration as well. Every 25th audit will be selected for an on-site visit to the contractor’s work location.

http://www.dol.gov/ofccp/regs/compliance/faqs/ACE_faqs.pdf

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