

EMPLOYMENT LAW BRIEFING

SPRING 2007

Administrative Leave: How do you temporarily remove an employee from the workplace while investigating potentially serious conduct or performance issues? A suspension without pay poses the problem of penalizing the employee while determining if any penalty is appropriate. A paid “administrative” leave maintains the status quo until the issues under investigation have been sorted out. Such an approach also demonstrates an employer’s commitment to a fair investigation. The conditions for the leave should be explained in writing and typically include a requirement that the employee to be available by telephone during working hours. Please call our office for a sample leave notice or for other assistance with workplace investigations.

New Protected Class: Oregon’s Governor has signed a bill prohibiting discrimination in employment based upon sexual orientation. The new protected class category is defined as “an individual’s actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual’s gender identity, appearance, expression or behavior differs from that traditionally associated with the individual’s sex at birth.” Oregon Employers should prepare to address issues related to the sexual orientation of applicants and employees.

Check Your Handbook: Ideally, your published policies will demonstrate a commitment to regulatory compliance. Changes in employment laws often lead to changes in handbook language. The new prohibition against discrimination on the basis of sexual orientation is a case in point. Equal Employment Opportunity policy statements, in handbooks for Oregon employees, should now include “sexual orientation” in any listing of protected class categories.

Tightrope Walking: Dealing with medical issues in the workplace requires management to perform a balancing act. When providing reasonable accommodation to a disabled employee, modified duty to an injured worker or intermittent statutory leave to an employee with a serious health condition, management faces privacy issues and the potential for conflicts. Medical information is confidential. It should be maintained outside of personnel files and shared with supervisors or managers only on a strict, need-to-know basis. Generally, the situation is best explained as “authorized by management.” Supervisors and managers should be trained to watch for indications that their statements or actions have been seen as retaliatory and for teasing or harassment by coworkers reacting to perceptions of “special” treatment.

Best Practices Tip: Avoid taking photocopies of documents provided by new employees to establish identity and eligibility to work. Employers are permitted to make copies, but are not required to do so. If copies are taken, recordkeeping obligations are created. Employers may face liability for failing to properly maintain copies that were not required in the first place. To add insult to injury, copies may also be used against an Employer as evidence to establish that fraudulent documents were accepted. Take reasonable, good faith steps to ensure that documents presented are genuine, maintain I-9 forms in a separate file, perform periodic compliance audits, but avoid copying documents creating unnecessary exposure to liability.

Please contact our office if you have questions about the material in this newsletter, or other employment law compliance concerns.

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