

Agency Risk Management



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NEW:

- Online Sign-up for Webinars
- ALERT & OSHA Topics
- New Versions of FMLA Poster and Notices

UPCOMING WEBINARS VIA TELEPHONE AND/OR COMPUTER

Reply to this email or use our new online Webinar sign-up form at:

<http://www.agencyrms.com/webinars-calendar-registration-form/> to sign up for one or more of these topics. Each webinar typically lasts approximately 30 - 45 minutes. Attendees can participate via land line phone, smart cell phone, and/or phone/computer.

The “Annual” Safety Committee Training will immediately follow all OSHA and monthly safety committee trainings. Individuals who need the “Annual” training - or would like a “refresher” - can remain logged into the OSHA or monthly safety committee webinar and the Annual Training will follow.

“Annual” Safety Committee Training:

- Thursday, March 7 at 4:00 PM
- Tuesday, March 12 at 8:00 AM
- Monday, March 25 at 12:00 PM
- Friday, April 5 at 11:00 PM
- Monday, April 22 at 9:00 AM
- Thursday, April 25 at 3:00 PM

OSHA 300 Log Training:

(Note: The “Annual” training immediately follows these for those who need it.)

- Thursday, March 7 at 2:00 PM
- Tuesday, March 12 at 4:00 PM
- Monday, March 25 at 8:00 AM
- Friday, April 5 at 8:00 AM
- Monday, April 22 at 3:00 PM
- Thursday, April 25 at 12:00 PM

Monthly Safety Committee Meeting:

(Note: The “Annual” training immediately follows these for those who need it.) (Reminder: We prepare and email the “minutes” for clients conducting their monthly safety committee meeting via the webinar.)

Topic: Housekeeping

- Thursday, March 7th at 8:00 AM
- Tuesday, March 12th at 1:00 PM
- Monday, March 25th at 3:00 PM

Topic: Workplace Safety Self-Inspection

- Friday, April 5 at 10:00 AM
- Monday, April 22 at 8:00 AM
- Thursday, April 25 at 2:00 PM

Please contact us for more information and/or to register for specific seminars. Contact us if Webinars on additional topics would be of benefit to you.

ALERT & OSHA Topics

ALERT & OSHA TOPICS AVAILABLE

We now have a comprehensive list of our ALERT and OSHA topics available on our website www.agencyrms.com for your information and convenience.

You can access these lists and fill out a brief form indicating which topics you would like more information about.

For a list of ALERT topics, follow this link: <http://www.agencyrms.com/alert-topic-request-form/>.

For a list of OSHA topics, follow this link: <http://www.agencyrms.com/osha-policy-training-materials-request-form/>.

Once you reach the web page, you can scroll down and view all the topics available. Complete the form at the top of the web page to request more information.

New Postings

NEW VERSIONS OF REQUIRED POSTERS AVAILABLE

The US Department of Labor has released new versions of required Federal posters for employers:

- Employee Polygraph Protection Act – WHD 1462 – January 2012
- OSHA Job Safety and Health Poster – 3165 – 02 2012R

Please click on the following link on our website to download copies of these posters along with printing and posting information:

<http://www.agencyrms.com/pennsylvania-federal-posters-forms/>

FMLA – For Those with 50 or More Employees

FAMILY AND MEDICAL LEAVE ACT – UPDATED POSTER AND NOTICES

Several changes were made to the FMLA regulations including military caregiver leave for a veteran, qualifying exigency leave for parental care, and the special leave calculation method for flight crew employees. **These changes become effective on March 8, 2013.** As the Department noted in the preamble to the Notice of Proposed Rulemaking, however, some of the provisions of the FY 2010 NDAA and the Airline Flight Crew Technical Corrections Act, such as the expansion of qualifying exigency leave to families of members of the Regular Armed Forces and the special eligibility hours of service requirement for flight crew employees, were effective as of the enactment date of those statutes. 77 FR 8962 (Feb. 15, 2012).

An updated **FMLA Poster** is required by the US Department of Labor to be posted by all covered employers. Please click on the following link on our website to download a copy of this poster along with printing and posting information:

<http://www.agencyrms.com/pennsylvania-federal-posters-forms/>

The US Department of Labor have also updated the following FMLA notices as of February 2013. **These notices are NOT required but highly recommended:**

- Certification of Qualifying Exigency for Military Leave – WH-384
- Certification for Serious Injury or Illness of a Current Service Member – WH-385
- Notice of Eligibility and Rights & Responsibilities – WH-381

Unemployment Compensation

Please click on the following link on our website to download copies of these notices along with printing and posting information:

<http://www.agencyrms.com/pennsylvania-federal-posters-forms/>

PENNSYLVANIA: UNEMPLOYMENT COMPENSATION RULING

The Pennsylvania Supreme Court has ruled that the “voluntary layoff” provision of the Pennsylvania Unemployment Compensation Law permits employees to receive unemployment compensation benefits when they accept an early retirement incentive offered as part of a reduction in force. Earlier case law held that employees who received early retirement incentives in a reduction in force were not eligible to receive unemployment compensation. The Supreme Court found that those cases were unsupported by the unemployment compensation law’s plain language.

As a result of this decision, Pennsylvania employers who offer early retirement incentives as part of a workforce reduction likely will see an increase in claims for unemployment compensation by participants in such incentives. Employers should consider those increased costs when deciding whether to offer an early retirement option and the types of incentives to be included in such a plan.

EEOC Update

EEOC TAKES POSITION ON DISABILITY LEAVE

In *EEOC v. United Parcel Service Inc.*, a case pending in the United States District Court for the Northern District of Illinois, the Equal Employment Opportunity Commission (“EEOC”) has taken the position that an employer’s policy to automatically terminate employees who are unable to return to work after 12 months of disability leave violates the Americans with Disabilities Act (“ADA”). The EEOC’s litigation position conflicts with substantial prior case law, including recent appellate decisions from the Eighth and Tenth Circuits holding that the ADA’s reasonable accommodation provision does not require employers to provide indefinite leave to their employees. The district court has not ruled on the merits of the EEOC’s position, but the court recently allowed the agency to proceed with its claim on a class-wide basis. The EEOC’s litigation position could affect many employers whose ADA policies prohibit indefinite leave.

HIPAA

HIPAA: WHAT EMPLOYERS CAN AND CANNOT ASK

Employers need to be aware of how their inquiries to employees’ doctors—which might involve the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), workers’ compensation, and short-term and long-term disability (STD and LTD)—interact with the privacy guarantees of the Health Insurance Portability and Accountability Act (HIPAA) and the Genetic Information Nondiscrimination Act (GINA).

Any question that an employer poses to a health care provider about employee medical information is subject to the HIPAA privacy rule, which controls when a covered entity—health care providers and health care plans—may disclose health information. A covered entity can’t give the employer any protected health information without having a signed HIPAA release from the employee.

Under the ADA, an employer may ask employees about a disability only if the questions are job-related and consistent with business necessity. This means that the employer may seek information about when it has a reasonable belief that the employee will be unable to perform the essential functions of his or her job because of the medical condition or the employee will pose a direct threat

Sick Leave Policies

because of the medical condition.

Bottom line: Employers should ask the employee to sign a HIPAA release before calling the health care provider.

SICK LEAVE POLICIES IN THE WORKPLACE

According to the U.S. Bureau of Labor Statistics' 2011 American Time Use Survey, 59 percent of U.S. workers had some form of paid leave. Along with paid holidays, sick leave and vacation are the most common types of paid leave. However, many part-time and nonexempt hourly workers have no paid sick leave, which can increase the likelihood that employees will report to work sick.

Employers should consider the following when designing a sick leave policy:

- How will the company track abuse? Will a physician's note be required and if so, after how many days?
- Are there accommodation issues?
- What about workers' compensation and disability insurance issues?
- Does the Family Medical Leave Act or other leave laws apply?
- What if the employee runs out of paid sick leave time? Can they use another form of leave?
- Wage and hour issues might also need to be considered, as allowing employees to work remotely can trigger Fair Labor Standards Act (FLSA) problems when it comes to measuring and tracking time worked by nonexempt employees.

While an employer can ask about an employee's health only when the inquiry is "job-related and consistent with business necessity," the Equal Employment Opportunity Commission, in connection with the 2009 H1N1 flu pandemic, ruled that employers can ask those exhibiting flulike symptoms about their health and request that they go home, without giving rise to claims under the ADA.

In addition to requiring or encouraging flu vaccines and stepping up sanitation procedures, employers should do a risk assessment and consider options like increasing space between workers in cubicles, cutting back on travel and having more meetings remotely via the telephone or Internet, experts suggested.

Providing risk management services to help our clients not only reduce their insurance costs but reduce costs associated with employment practices claims, work-related injuries, unemployment compensation claims, and OSHA and other regulatory citations.

Please Note: Information contained, linked to and/or attached is designed and intended to provide accurate and authoritative information in regard to the subject matter covered. If accounting, legal, medical, or insurance advice is required, the services of a competent accountant, attorney, medical provider, or insurance professional should be obtained. This message may contain confidential information that may be protected by state and/or federal regulations.

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