

Experts give their solutions to difficult workplace problems

HR professionals like you face new questions every day on how to deal with workplace conflict and employment law. In this section, our experts answer those real-life questions.

Can requiring a high school diploma violate the ADA?

Q: We've always made it a prerequisite that staff have a high school diploma. But now we've heard that doing so may violate the Americans with Disabilities Act (ADA). Is that true?

A: Yes, requiring a diploma may screen out applicants with learning disabilities, according to a new informal discussion letter from the Equal Employment Opportunity Commission.

If you want to make a diploma a job requirement, you have to show that the essential functions of the job can't be done without one.

Even then, if an applicant lacks a diploma due to a learning disability and applies, you must then determine if the candidate could do the job with a reasonable accommodation. If not, only then can you legally deny him or her a job.

Can we dock staff for inclement weather days?

Q: We're just waiting for the first snowstorm that'll prevent staff from getting to work. How should we pay workers who can't come to work due to the weather?

A: It depends if staffers are exempt or non-exempt, says Michael Kelsheimer (mkelsheimer@lrmlaw.com) on the Texas Employer Handbook (TheEmployerHandbook.com).

It's easy if your employees are non-exempt – they don't clock

in, they don't get paid. And salaried staff who are non-exempt may have their pay docked for days you close.

Things get a bit more complicated for exempt staff.

Exempt employees who put in any work at all during a week must be paid for that week. Barring a storm that closes your doors for a full week, you likely have to pay them.

Another option: If you're open but employees can't make it in, require exempt staffers to use a vacation day. You must of course let staffers know in advance that this is your policy.

But if the exempt staff have no vacation days left, then you're out of luck – you have to pay them for the day they miss.

Can we be sued for retaliation by a former staff member?

Q: Can a former staffer sue us for giving a bad recommendation?

A: Yes, says Eric Meyer (emeyer@dilworthlaw.com) on The Employer Handbook (TheEmployerHandbook.com).

Post-employment retaliation often involves harm to a staffer's employment chances. Example: Say a worker files a discrimination complaint with your firm then quits. If you give that employee a bad recommendation later, he or she could sue you for retaliation.

If you have an HR-related question, email it to Dan Wisniewski at: dwisniewski@pbp.com

EFFECTIVE COMMUNICATION

■ 3 tips to align your culture with the best in the biz

What separates firms with great cultures from those with so-so ones?

Unlike a top-notch benefits plan or vacation policy, a company's culture is an intangible, abstract idea, which can make it hard to change – or even know how to start.

It may take time, but it's worth it

Here are three tips on how to improve your culture, courtesy of a survey of top-ranked firms by the Great Place to Work Institute and the Harvard Business Review:

- **Recognize that culture is crucial.** Of the companies surveyed, the workplace area that most benefited daily operations was culture – even more so than retention or recruitment. That means that culture is a retention tool in itself. Realizing that culture is important and making the commitment to maintaining one is the first step.

- **Invest in employees.** Simply put, top-ranked companies do all they can to prevent cutting back or eliminating work-life programs.

In fact, nearly 30% of firms surveyed said they're investing more in flextime, employee perks and health benefits now.

The other 70% of the top-ranked employers? They're maintaining the level of their benefits.

- **Tailor your benefits to the people you've got.** You may think flextime or a solid benefits plan is what can make or break a company's attempt to create a successful and meaningful culture. That's not quite the case.

While those are important to some degree, the companies with the best cultures are those that offer benefits that provide stability, like career development opportunities.

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