

HR DIGEST



August 2014

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Letter from the Editor

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This may be one of the coolest, wettest summers on record in the midwestern United States. But don't we always complain when it is too hot? (I do!) You'll find inside this issue some ideas for staying cool when the weather gets seriously warm. While we may joke that we talk too much about the weather around here, it does need to be taken seriously. It can present very real risks

to our employees if they work outside, or in hot environments inside.

You'll also find a new, occasional, feature inside. On page 4 is our premiere "Point/Counterpoint" article. There are so many subjects that you deal with every day. Do you always agree with your colleagues on every one? We suspect that you do not, and we like the idea of giving at least a couple of different points of view on a topic. I'd love to hear from you about any other ideas for the *HR Digest*. Stay cool! (Or do I mean stay warm?)

OUR MISSION

The mission of MRA is to maximize performance of organizations and employees so that business thrives.

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We achieve our mission through knowledge transfer—the delivery of HR expertise through a wide range of membership benefits.

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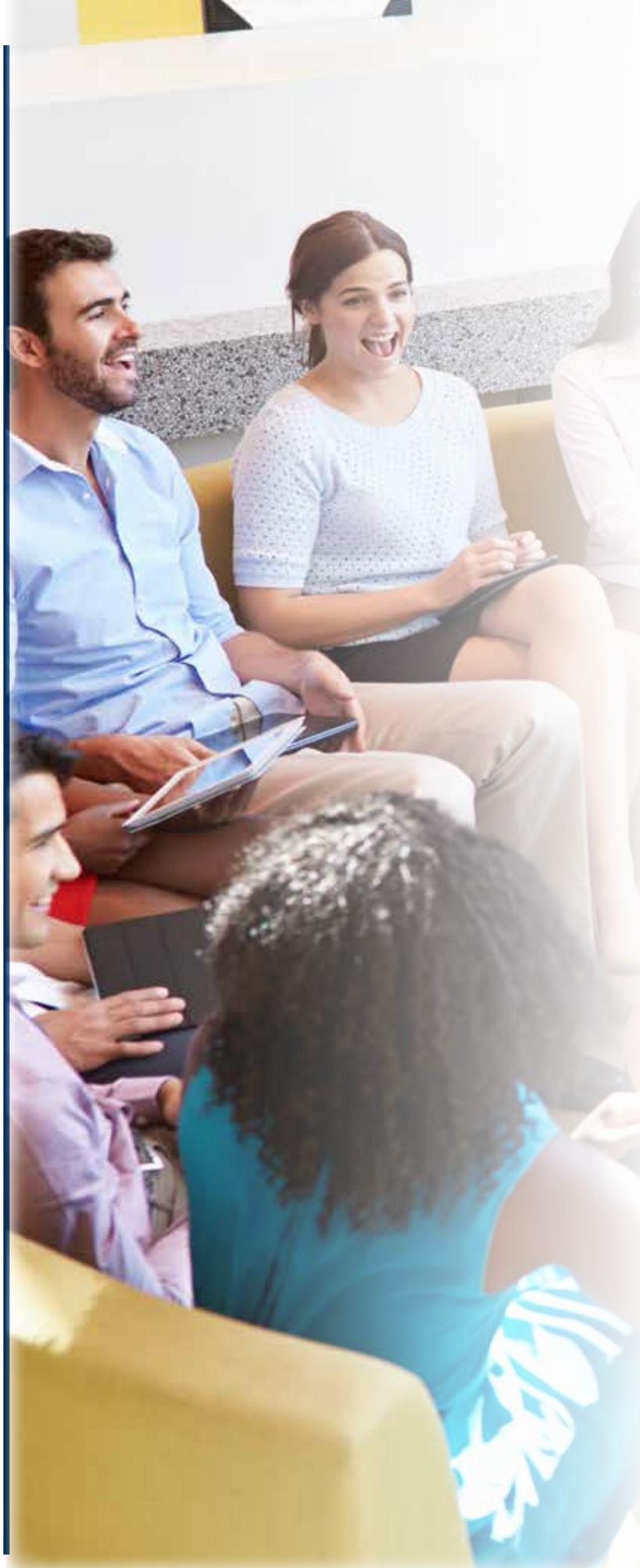
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The Upsides and Downsides of a Strong Organizational Culture

Cover
Story

➔ HAVE YOU EVER HEARD ANYONE IN YOUR WORKPLACE SAY THAT A NEW EMPLOYEE HASN'T BEEN "(YOUR COMPANY NAME HERE)-IZED" OR "(YOUR COMPANY NAME HERE)-ED" YET?

Typically, this is said when someone hasn't been at an organization long enough to have learned the unwritten rules—the processes, protocols, key people, proper channels, important symbols, standard practices, how to win, how to fail... in a word, its culture (otherwise known as "how we do things around here").

Clearly, there are benefits of a strong culture that guides an organization, engages its employees, and delivers bottom-line results. Look at Google, GE, Southwest Airlines, Zappos, and others known for both strong cultures and strong financial performance. So when we say that the new employee hasn't been "(your company name here)-ized" yet – it's usually in a well-intentioned and matter-of-fact spirit. And, we usually prefer things to be "(your company name here)-ized", don't we? It's what works, it's comfortable, and it's been proven to be effective, efficient, and profitable.

Is there a down side of assimilation into a corporate culture, especially when that culture appears to be working well?

If your organization actively seeks diversity of thought, backgrounds, perspectives, and approaches to spur innovation and boost profitability (not to mention enhance employee engagement and productivity), you most likely have diverse top talent knocking at your door. But if an organization's recruitment, interviewing, and evaluation processes send a message that in order to be a part of the company, candidates need to change to be more "like us" (the implication being, because our way is better) this may invalidate the stated goal of increasing diversity.

An organization that says it values inclusive behaviors and views inclusion as vital to employee engagement, but then effectively tells the workforce that you have to be "(your company name here)-ized" to be a real part of the team—or to get ahead—is discrediting its stated goal of inclusion.

Many companies verbalize this approach as encouraging "cultural fit." Unfortunately, this often translates to others as, "Hey, if you don't conform to our culture, you're probably not going to feel welcome here, because to be honest we're not as

open to different ways of doing things as we think we are."

Most people—including senior and C-suite leaders—agree that there are benefits and advantages to diversity and inclusion in our organizations. Agree, that is, until people who act or look differently (for example, have a direct or more blunt communication style than what you're used to, wear their hair in dreadlocks, work less than 60 hours a week—or whatever is the norm if you want to be seen as a hard worker—text during meetings, don't check their email on the weekend, or work from home a couple of days a week) are assessed to be "not a cultural fit" and as such are shut down or shown the door. Despite the message of diversity and inclusion, both employees and potential employees may be evaluated through a very specific—and narrow—corporate cultural lens.

So the question becomes, is it possible to balance a strong corporate culture with a strategic goal of diversity and inclusion? In other words, is there a way to inject intercultural competence into corporate culture?

This can happen when corporate culture truly supports diverse perspectives and approaches—when "cultural fit" means: "Don't suppress who you are, keep doing what you're doing, and also expand your options to give a chance to our way. We will, in turn, expand our options to give your way a chance." In this scenario, there's a mutual adaptation to what's great about each other. In the process of an employee becoming "your company name here-ized," disagreement will be okay. An employee may disagree with some of the unwritten rules and the culture allows for creating new ones. This is how we welcome and encourage the diversity of thought, perspectives, and approaches that will keep ideas fresh, possibilities unlimited, and employees engaged. 🌱

By Rebecca Parrilla
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For Your Information

Federal Activity

Definition of Spouse: Family and Medical Leave Act

On June 20, 2014, the U.S. Department of Labor's Wage and Hour Division released proposed regulations to revise the definition of "spouse" so that eligible employees in legal same-sex marriages will be able to take leave under the Family and Medical Leave Act (FMLA) to care for their spouse or family member, regardless of where they live. The proposed regulations are in response to the United States Supreme Court's decision in *United States v. Windsor*, which found provisions of the Defense of Marriage Act (DOMA) to be unconstitutional.

- The definition would change from one based on "state of residence" to where the marriage was entered into (sometimes referred to as "place of celebration").
- The definition includes same-sex marriages in addition to common-law marriages, and would encompass same-sex marriages entered into abroad that could have been entered into in at least one state.

Federal Contractors: Anti-discrimination

On July 21, 2014, President Obama issued an executive order prohibiting federal contractors from discriminating on the basis of sexual orientation or gender identity. The executive order amends two existing orders signed by President Lyndon Johnson and President Richard Nixon and orders the Department of Labor to draft regulations to implement the requirements of the order. The executive order retains a provision that allows religious groups with federal contracts to hire and fire based on religious affiliation, but does not permit religious groups to take an individual's sexual orientation or gender identity into consideration.

Health Care Reform

On June 30, 2014, the United States Supreme Court issued its opinion in the case of *Burwell v. Hobby Lobby Stores*. The Court held that the provisions of the Affordable Care Act requiring closely held corporations to provide their female employees with no-cost access to contraception violate the Religious Freedom Restoration Act.

Labor Relations

On June 26, 2014, the United States Supreme Court issued its opinion in the case of *National Labor Relations Board v. Noel Canning*. The holding invalidated the recess appointments made by President Obama to the National Labor Relations Board in 2012.

On June 30, 2014, the United States Supreme Court issued its opinion in the case of *Harris v. Quinn*, holding that home health care workers in Illinois who are paid by the Illinois Medicaid program need not financially support a union to be their exclusive representative for collective-bargaining purposes.

Pregnancy Discrimination and Related Issues: Americans with Disabilities Act

On July 14, 2014, the U.S. Equal Employment Opportunity Commission (EEOC) issued new guidance on pregnancy discrimination and related issues. Much of the guidance is an update of longstanding EEOC policy, but the EEOC also explains how the definition of "disability" under the Americans with Disabilities Act (ADA) might apply to workers with impairments related to pregnancy. Specifically, the EEOC has clarified that, while pregnancy itself is not an impairment within the meaning of the ADA and thus is not a disability, changes to the definition of the term "disability" under the ADA Amendments Act of 2008 (ADAAA) make it much easier for individuals with pregnancy-related impairments to demonstrate that they have disabilities and are, therefore, entitled to protection under the ADA. Pregnancy-related impairments are disabilities if they substantially limit one or more major life activities or substantially limited major life activities in the past.



What Now? My Employee's Pay Is Too High!



THERE ARE VARIOUS SITUATIONS THAT CAN LEAD TO EMPLOYEES BEING PAID MORE THAN IS WARRANTED BY THE JOB THEY ARE PERFORMING AND A VARIETY OF REASONS THIS MAY OCCUR. Understanding the “why” is the first step to figuring out the “how” to fix the problem.

Pay that is too high may result when:

1. An employee with long job tenure has received consistent pay increases over time;
2. The pay philosophy at the company has changed;
3. The market or economy has declined; or
4. The employee moved to a job with decreased responsibilities and duties without a pay adjustment.

Why not simply reduce an employee's pay? Many employers hesitate to do this, as it can create personal hardship for the employee and that, in turn, can have a negative impact on morale. On the other hand, leaving an employee's salary at an inflated rate can also cause morale problems. How should an employer deal with this dilemma? One option is to “red circle” the affected employee. When this method is used consistently for all similar situations, this is a positive solution that is permissible under the federal Equal Pay Act.

Here are some of the common methods for red circling:

- Freeze the employee's pay until the salary structure catches up and the employee is no longer over the top of the range;
- Only allow pay to increase by the amount of the pay structure increase and/or the general increase given to all employees;

- Continue to allow the employee to experience pay increases for a fixed period of time while they train and/or transfer to a higher-paying position;
- Pay the employee a lump-sum bonus (annually, or more frequently) instead of a merit or general increase; or
- Reduce the employee's pay until it falls below the maximum of the range and only permit future increases that do not move the employee's pay above the top of the range.

If an employee voluntarily transfers to a lower-paying position, a consistently applied salary administration procedure can easily prevent the pay issue. Consider the following options:

- Pay the employee at no more than the midpoint of the range of the new position, as long as the employee fully meets the qualifications of the position;
- Transfer the employee at his or her current rate if it does not exceed the maximum of the new range;
- Pay the employee similar to other employees in the same position who have similar knowledge, skills, and abilities; or
- Decrease the employee's pay over a period of time, allowing the employee to adjust expenses, for the range to increase, and/or the employee to improve performance to justify higher pay in the range. 

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Point/Counterpoint

EEOC Guidance on Criminal Background Investigations

On April 25, 2012, the Equal Employment Opportunity Commission (EEOC) issued new guidance, stating that the use of criminal background checks could violate Title VII of the Civil Rights Act. The guidelines recommend conducting individualized assessments and identifying a business necessity for denying employment to an applicant with a criminal history.

Question: *Is the EEOC proper in issuing and enforcing guidance on the use of criminal background investigations in hiring decisions?*

The EEOC has gone too far in issuing guidelines and challenging employers in court on the use of criminal background investigations. The agency seems to be trying to create a new protected class: people with a criminal record. But in fact, the EEOC's efforts have met a string of defeats and challenges in several high-profile cases. In addition, attorneys general from ten states have taken the position that the guidance and lawsuits by the EEOC are "misguided" and an example of "gross federal overreach."

For many employers, conducting a criminal history or credit record background check on a potential employee is a rational and legitimate component of a reasonable hiring process. The EEOC itself performs criminal background checks on applicants for every one of its positions.

Some businesses, such as daycare centers, nursing homes, hospitals, nuclear power plants, educational institutions, transportation agencies, law enforcement organizations, and security firms, are held to a higher standard than others with the safety of their customers. For many there is a statutory requirement to use background investigations in

the selection process, but even without a statutory mandate, the rise in negligent hiring claims, along with concerns about workplace violence, security, and increased liability of company officials, has made employers more wary of hiring higher-risk applicants. Reliable criminal background checks can assist employers' efforts to reduce that risk.

Conducting proper background investigations and thoughtfully using the information gleaned from them is good business practice. Employers conduct criminal background checks to protect their customers, employees, and the general public as well as their property and reputation. This should not be discouraged. By bringing lawsuits against employers, the EEOC is doing just that.

No



By Natalie Mirando
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The EEOC's position that the use of criminal background checks in hiring processes may violate Title VII reflects the conventional wisdom that non-whites are disproportionately represented among those with criminal records. Thus, even a neutral policy could disproportionately impact black candidates even without any discriminatory intent. This simply means that an employer considering a candidate with a criminal record needs to be sure that the criteria used to make the hiring decision is relevant to the job, and is justified by business necessity.

Many states are concerned about the employability of ex-offenders, and have enacted or are considering statutes limiting the use of criminal background checks. After all, when members of a community are qualified for jobs but never get the opportunity to be considered for hire, the entire community, including (perhaps especially) its businesses, loses. Hawaii limits employers' background checks to convictions within the past 10 years that bear a direct relationship to the responsibilities of the position. And although the EEOC has been accused of attempting to create a new protected class—criminal status—it's already a protected class under human rights laws in some states, including Wisconsin.

The guidance does not prohibit the use of background investigations, nor does it bar the consideration of a criminal record in a hiring decision. Rather, the EEOC's guidance can help employers who wish to avoid unintended results when using criminal records in selection decisions.

By Debra Dorgan
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Yes



Tips for employers

1. Learn the statutes and regulations in your jurisdiction. Your state may include having a criminal record as a protected class. Consider these elements as you develop and carry out your screening policies.
2. Review your current policies and hiring practices. Are the screening criteria consistent with the “business necessity” requirement? Policies that consider “recency”—length of time since conviction, “rehabilitation”—the nature and severity of the offense along with the individual’s history since then, and “relevance”—the relationship of the offense to the job sought, are more likely to be upheld. Make sure that your policies, documents, and processes reflect these areas.
3. Review your files regularly to ensure that hiring decisions show no disproportionate impact on any group, especially based on race, national origin, and other protected categories. If you find disparate impact, review the reasons for each decision and make sure that they are justified by business necessity. If necessary, amend your policies and practices.
4. Be vigilant in monitoring the latest developments and implementing best practices and compliance policies.

A Good Time to Stay Cool

Summer's heat and humidity can be a serious health threat to those who work in facilities that are not air conditioned or who work outdoors, where employees must also deal with the effects of the sun. Ensure that employees exposed to these conditions know how to prevent related health problems and what to do if they occur. When the body is unable to cool itself through sweating, serious illnesses may result. The most severe heat-induced illnesses are heat exhaustion and heat stroke.

Heat exhaustion is the body's response to an excessive loss of water and salt. Heat exhaustion is characterized by:

- Headache
- Dizziness or lightheadedness
- Weakness
- Irritability or confusion
- Pale, clammy skin
- Vomiting
- Fainting

If not treated promptly, heat exhaustion can progress to heat stroke, and possibly death. An employee showing signs of heat exhaustion should be moved to a cool, shaded area and steps should be taken to cool the worker's body. Loosen and remove any tight or heavy clothing. Have the person drink cool water. Provide a fan or a mist of cool water. Call 911 if the employee does not feel better in a few minutes.

Heat stroke, the most serious type of heat stress, is characterized by:

- Dry, pale skin with no sweating or hot red skin that looks sunburned
- Irritability
- Confusion
- Seizures
- Unconsciousness

Heat stroke is a medical emergency and 911 should be called immediately. While waiting for emergency help to arrive, take the same steps described for treatment of heat exhaustion and place ice packs in the individual's armpit and groin areas.

Preventing Heat Stress

When it is not possible to avoid exposure to extreme heat, sun, and high humidity, OSHA recommends taking the following precautions to guard against heat-related illness:

- Drink plenty of water before you get thirsty.
- Avoid caffeine and alcohol as well as large amounts of sugar.
- Eat smaller meals before work activity.
- Wear light, loose-fitting clothing made of breathable fabrics such as cotton.
- Take frequent short breaks in the shade.
- Find out from your health care provider if your medications and heat don't mix.
- Be aware that equipment such as respirators or work suits can increase heat stress.
- Perform the heaviest work during the coolest part of the day.
- Use a buddy system with people working in pairs.

Those who work outdoors should limit exposure to the sun when it is most intense (between 10 a.m. and 4 p.m.) and block the sun's damaging rays with:

- Tightly woven, opaque clothing.
- A wide brimmed hat to protect the neck, ears, forehead, nose, and scalp.
- Sunscreen with an SPF of at least 15.
- UV-absorbent sunglasses.

Educate your employees who are exposed to summer's heat, humidity, and sun, to ensure that they know what precautions to take to avoid heat-related illnesses, the symptoms of those illnesses, and how to respond appropriately if a co-worker is affected. Lives could depend on it. 

The Importance of Cover Letters



AS A HUMAN RESOURCES PROFESSIONAL, YOU MAY WORK IN THE AREA OF TALENT ACQUISITION. It is not unusual to receive dozens of resumes daily.

Perhaps you request a resume and cover letter in your job postings. How many applicants take the time to follow these simple instructions? How many resumes come to your desk without a cover letter? Some recruiters may bypass cover letters because they feel the resume has all the information necessary to quickly assess an applicant. However, most human resources professionals know that they can glean some valuable information from a cover letter, and that they should not be overlooked.

Here are some important factors that a cover letter can reveal about an applicant:

- By reading and responding to the instruction on your job posting, and providing all information and documents requested, candidates reveal how they are likely to approach their work if hired. You learn whether they follow directions.
- If the cover letter is directed to a specific person versus “To Whom It May Concern,” you know that the applicant took the time to investigate who would be receiving the letter and resume, and to make his or her letter personal and friendly.
- Submitting a generic cover letter shows that the individual has not taken the time to personalize his or her submission. Does the letter mention the job posting to which he or she is responding? Does the applicant explain his or her interest in both the position and the company? After reading the letter, have you gained some information about why you should read on about this applicant?
- A succinct cover letter, limited to two or three paragraphs and no more than one page, reveals a candidate with good written communication skills. Perhaps the writer even thought to bold certain words or phrases so they stand out to the person reading the letter.
- An error-free cover letter shows that the individual took the time to proofread the document, and was even perhaps smart enough to ask a trusted advisor to provide a second set of eyes.



Notice whether your candidates do a professional job with their application process. You may even achieve better results in your hiring decisions! 



By Lyssa Bernstein
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Tattoos and Body Modifications: What's Your Policy?



According to the Pew Research Institute, 40 percent of Americans between the ages of 26 and 40 have at least one tattoo. Nearly one in four people have a piercing in some part of their body other than an ear lobe. This represents more than just a passing fad, even though the same survey also found that 76 percent of respondents felt that visible tattoos at work were always inappropriate.

As a form of personal expression, tattoos are clearly here to stay. They are also a protected form of free speech under the Constitution (*Anderson v. Hermosa Beach* – 9th Circuit 2010). But in the workplace, constitutional rights to free expression are tempered by laws and statutory regulations, applied in ways they might not apply in the public arena, and by employers' business needs. Thus, employers are not barred from placing restrictions on some expression, or from having a dress code addressing tattoos and body modifications ("mods").

Practical suggestions for dealing with tattoos and body mods at work:

- Develop relevant policies and dress codes. Consider new social norms along with your business needs. Some rules may vary according to the area of a business; for example, will you treat the factory floor the same as your office environment, or will you have different expectations where there is face-to-face customer contact?

- As with all policies and updates to them, communicate changes to all employees and obtain signed acknowledgements.
- If you don't limit all tattoos and body mods, make sure employees understand that any personal expression that amounts to a violation of your harassment policy and other discrimination policies will be banned under those policies.
- Avoid making value judgments. If tattoos are banned, ban them all regardless of content.
- Do not create blanket requirements about having tattoos or body modifications. Base requirements only on what may be visible at work.
- Treat everyone, regardless of gender, exactly the same.
- If an employee claims a tattoo or body mod is for religious purposes, remember that an employee must establish that the item in question is a genuine practice of their sincerely held religious belief. Mere religious content of a tattoo or other body adornment does not exempt it from the rules of a dress code.

Social norms are changing with regard to personal expression. MRA Advisors who are familiar with ever-changing laws and regulations are available to offer advice to members. Talk to an expert. Call 866-HRHOTLINE, 24/7. 

By Guy Hoppe
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- 2014 Managerial, Supervisory and Professional Salary Survey
- 2014 Holiday Practices Survey

Recently Published Reports:

- 2014 Non-Exempt Wage Survey
- 2014 National Executive Compensation Survey
- 2014 Wage Survey of Industrial Jobs
- 2014 Production Trades Survey
- 2014 National Business Trends Survey
- 2014 National Wage & Salary Survey

Questionnaires Open in August:

- 2014 National Sales Compensation Survey
- 2014 Insurance Plans Survey: Health & Prescription Drugs

InfoNow!

Heard
it on the
Hotline

Q

We have an employee in our IT department who has recently worked several hours over a weekend or into an evening because we've had server issues. We would like to give him recognition for this extra work. Is it okay to give exempt employees "comp time"?

A

For nonexempt employees, "comp time" is not allowed for private employers. However, since this is an employee in an exempt level position, you could consider giving him additional paid time off as a way of recognizing the extra weekend and late night hours. This time should be referred to as "extra or bonus paid time off" and not "comp time." In addition, it should be communicated clearly to the employee why the extra time off was given in order to avoid creating an unintentional expectation going forward.

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