

HumanResourcesMemo

www.ima-net.org



A newsletter of the Illinois Manufacturers' Association

August 10, 2011

BRIEFLY

OSHA co-sponsoring first national conference on Eliminating Health and Safety Disparities at Work

OSHA is co-sponsoring the first national conference on Eliminating Health and Safety Disparities at Work Sept. 14-15 in Chicago (<http://www.aocedata.org/conferences/healthdisparities/index.html>). Other cosponsors include the National Institute for Occupational Safety and Health (NIOSH), Environmental Protection Agency (EPA) and National Institute on Environmental Health Sciences (NIEHS), as well as several clinical and research organizations. The conference will feature five White Papers: Work Organization; Workplace Injustice; Approaches to Education and Training; Health of the Low-Income Workforce; and Effects of Social, Economic, and Labor Policies. The goal is to bring together representatives from multiple disciplines and perspectives to understand the social, cultural and economic factors that create and perpetuate occupational health and safety disparities and to identify and share promising practices for eliminating disparities through innovative intervention programs. The conference also includes a Federal Panel on Environmental Justice Listening Session that will be held Sept. 15. Visit the conference Web site to register online: <http://www.aocedata.org/conferences/healthdisparities/registration.aspx>.

IMAs Manufacturing Miles Wellness Competition

Standings for the top five contenders . . .

COMPANY	MILES
Great Kitchens, Inc.	47,538
Eaton Electrical	42,724
Peacock Engineering Company, LLC	36,979
Corn Products—Bedford Park	22,983
HD Electric Company	18,962

Human Resources Memo is published semi-monthly for IMA members by the Illinois Manufacturers' Association, 1211 W. 22nd St., Ste. 620, Oak Brook, IL 60523, 630-368-5300. Editor: Stefany Henson (shenson@ima-net.org).

Reproduction of all or any part is prohibited except by permission of authorized IMA personnel.

“To tweet or not to tweet?”: A workplace question with serious consequences

Employers may breathe a slight sigh of relief. The National Labor Relations Board (“Board”) will not take action against every workplace discharge involving the inappropriate use of social media. The Board recently opined that an employee’s termination for posting inappropriate tweets to a work-related Twitter account did not violate provisions of the Act prohibiting employer interference or coercion of an employee’s union or collective activity.

In *Lee Enterprises, Inc. d/b/a Arizona Daily Star*, Case No. 28-CA-23267 (April 21, 2011), a public safety reporter at the *Arizona Daily Star* in Tucson, Arizona, set up a Twitter account with encouragement from newspaper management. The employee opened the account, decided his own screen name and password, and controlled the content of his tweets. In the biography section of his Twitter account, the employee stated he was a reporter for the *Daily Star* and included a link to the paper’s Website. The employee tweeted from his work computer, a company-provided cell phone, and his home computer. His tweets were not linked to the *Daily Star*’s Twitter feed and did not automatically post to the paper’s feed.

In late January 2010, the employee

tweeted, “The *Arizona Daily Star*’s copy editors are the most witty and creative people in the world. Or at least they think they are.” The Human Resources Director, the Managing Editor, the City Editor, and the Executive Editor met with the employee and discussed their concerns that he tweeted his critiques versus speaking directly to people at the paper. They also talked about the appropriateness of posting those types of tweets. The Managing Editor then told the employee that he was prohibited from airing his grievances or commenting about the *Daily Star* in any public forum.

Between August and September 2010, the employee posted multiple tweets about homicides committed in Tucson. Some of the tweets were merely factual, while others contained commentary. For example he tweeted, “You stay homicidal, Tucson. See Star Net for the bloody deets” and “What?!?!? No overnight homicide? WTF You’re slacking Tucson.”

In late September, the employee responded to a tweet by a local television news station with “Stupid TV people.” The television news station took offense to the employee’s tweet and contacted the *Daily Star*. The Managing Editor, the City Editor,

See **TWEET**, page 2

Available now, order your copy today . . .

IMA’s 2011-2012 Annual Compensation Report

How do your benefits and compensation plans compare?

This is what you need to plan for the future.

Compiled by the Illinois Manufacturers’ Association with assistance from McGladrey and Verisight, the new Compensation Report contains valuable data specifically relevant to Illinois manufacturers.

Order online at: <http://www.ima-net.org/2011-12-benefits-compensati/>

For information, call Janie Stanley, 800-875-4462, ext. 1-3020, or email: jstanley@ima-net.org.

IMA’S 2010-2011 BENEFITS REPORT IS ALSO STILL AVAILABLE

IMA’S HUMAN RESOURCES MEMO IS UNDERWRITTEN BY:



McGladrey

TWEET, continued from page 1

and the employee's team lead met with the employee to discuss both the news station and the homicide tweets. Concerned about the feelings of the families of the homicide victims, the Managing Editor asked the employee how he would feel if it were his family who was a victim of a homicide and told him that there were more appropriate ways to communicate information. The Managing Editor told the employee he could not tweet about work-related matters until he met with the Human Resources Director and the Executive Editor. The *Daily Star* considered the employee's Twitter account to be a work account because the employee's biography said he worked at the *Daily Star* and linked to the newspaper's Web page. The *Daily Star* ultimately discharged the employee based on the inappropriate tweets. The employee then sought recourse at the Board.

The Board determined that the employee's discharge did not violate Section 8(a)(1) of the Act. The employee was terminated for tweeting inappropriate and offensive comments that did not involve protected concerted activity. None of the employee's tweets related to the terms and conditions of his employment nor sought to involve other employees in mutual, employment-related issues. *The Daily Star* previously warned the employee about his inappropriate behavior, yet he continued to send out insensitive tweets.

The Board also found that the newspaper did not implement an unlawful rule that prohibited certain Section 7 activities. Section 7 prohibits overly broad work rules that limit or interfere with an employee's protected activity. While the Managing Editor made statements that could arguably be construed to inhibit Section 7 rights (i.e.,

forbidding the employee to tweet his employment grievances and concerns), the comments were directed to the employee alone. There was no social media policy in place confirming the reach of the Managing Editor's ill-advised comments. The Editor's statements did not constitute orally promulgated, over-broad rules. As a result, the Board found no overly broad restriction of employee social media privileges.

Social media in the workplace is an evolving area of employment law and Human Resources practice. Consult with experienced labor counsel when this issue arises in your workplace. IMA staff can help you as well. That is one of the many benefits of IMA membership.

Author Jim Spizzo is a partner with Vedder Price, Chicago, and also outside counsel to the IMA. Jim's practice emphasis is management-side employment and labor law. He may be reached at jspizzo@vedderprice.com or 312-609-7705. Co-author Emily Collins is an associate with Vedder Price, practicing in the firm's Employment Law Group. Emily may be reached at ecollins@vedderprice.com or 312-609-7572.

Free Webinar on social media strategies for business disaster recovery

A major disaster has devastated your community, and landlines are down. Will you be able to use Facebook or Twitter to keep your employees, customers and vendors aware of your status? How will you distinguish good information on post-disaster social media channels from the scams?

Business and civic leaders in Joplin, Mo., had a crash course in leveraging

social media following the May 22 tornado that tore through the city, killing 160 people and damaging or destroying about 8,000 homes and businesses. Kirstie Smith, communications director of the Joplin Area Chamber of Commerce, and Mark Kinsley, creator of the Rebuild Joplin Facebook page, will join the U.S. Small Business Administration and Agility Recovery Solutions during a **free webinar Tuesday, August 16, 2011, 1:00-2:00 pm CDT**, to talk about how they used social media tools to exchange critical information with local businesses. Social media consultant John Orlando will share practical tips for business owners to use to map out a business continuity plan that includes social media.

SBA has partnered with Agility to offer business continuity strategies for entrepreneurs via their "PrepareMyBusiness" Website. Visit www.preparemybusiness.org to access previous webinars and additional preparedness tips.

The SBA provides disaster recovery assistance in the form of low-interest loans to homeowners, renters, private nonprofits and businesses of all sizes. To learn more, visit www.sba.gov/disaster.

"Social Media and Disaster Recovery" will be presented by John Orlando, John Orlando Consulting; Mark Kinsley, Director of Marketing, Rebuild Joplin; and Kirstie Smith, Communications Director, Joplin Area Chamber of Commerce. A question and answer session will follow.

Space is limited. Register at <https://www1.gotomeeting.com/register/4-29536768>.

HHS and states move to establish Affordable Insurance Exchanges

Proposed rules offer states flexibility, choices, competition and clout for consumers and small businesses

On July 11, the U.S. Department of Health and Human Services (HHS) proposed a framework to assist states in building Affordable Insurance Exchanges, state-based competitive marketplaces where individuals and small businesses will be able to purchase affordable private health insurance and have the same insurance choices as members of Congress. Starting in 2014, Exchanges will make it easy for individuals and small businesses to compare health plans, get answers to questions, find out if they are eligible for tax credits for private insurance or health pro-

See **INSURANCE EXCHANGES**, page 3

Mark your calendar for these upcoming IMA special events . . .

September 22, 2011

IMA Women in Manufacturing Meeting

Ford Motor Co., Chicago. 10:00 am-2:00 pm. Plant tour of Ford Motor Company, panel discussion with successful women from diverse manufacturing backgrounds and networking opportunities included. Contact: Kimberly McNamara, kmcnamara@ima-net.org.

October 13-15, 2011

IMA Young Leaders Council Annual Fall Conference

Contact: Jim Nelson, jnelson@ima-net.org.

October 19, 2011

IMA Breakfast Briefing — Wage & Hour Issues: The Single Greatest Threat to Employers,

Ditka's, 2 MidAmerica Plaza, Oakbrook Terrace

For more information, visit <http://www.ima-net.org/oct-19-breakfast-meeting>, or email: kmcnamara@ima-net.org.

November 10, 2011

IMA SALES TAX SEMINAR, Northern Illinois University — Naperville, 8:30 am-12:30 pm

IMA's Annual Sales Tax Seminar presented by IMA-member Wolf & Company. This annual review includes an overview of the Illinois Tax structure and how manufacturers' are affected, Manufacturers' Purchase Credit (MPC), Exclusions, Exemptions and Deductions. For more information, visit <http://www.ima-net.org/storage/Reg%20form.pdf>.

grams like the Children's Health Insurance Program (CHIP), and enroll in a health plan that meets their needs.

"Exchanges offer Americans competition, choice and clout," said HHS Secretary Kathleen Sebelius. "Insurance companies will compete for business on a transparent, level playing field, driving down costs; and Exchanges will give individuals and small businesses the same purchasing power as big businesses and a choice of plans to fit their needs."

This announcement is designed to help support and guide states in their efforts to implement Exchanges. HHS proposed new rules offering states guidance and options on how to structure their Exchanges in two key areas:

- Setting standards for establishing Exchanges, setting up a Small Business Health Options Program (SHOP), performing the basic functions of an Exchange, and certifying health plans for participation in the Exchange, and;
- Ensuring premium stability for plans and enrollees in the Exchange, especially in the early years as new people come in to Exchanges to shop for health insurance.

These proposed rules set minimum standards for Exchanges, give states the flexibility they need to design Exchanges that best fit their unique insurance markets, and are consistent with steps states have already taken to move forward with Exchanges.

Forty-nine states, the District of Columbia and four territories accepted grants to help plan and operate Exchanges. In addition, over half of all states are taking additional action beyond receiving a planning grant such as passing legislation or taking administrative action to begin building exchanges. States will continue to implement exchanges on different schedules through 2014.

"States are leading the way in implementing health reform, and this announcement builds on that momentum by giving states flexibility to design the Exchange that works for them," said Center for Consumer Information and Insurance Oversight Director Steve Larsen. "This regulation allows us to meet states where they are."

In drafting these proposals, the administration examined models of Exchanges, held numerous meetings with stakeholders and consulted closely with state leaders, consumer advocates, employers and insurers.

To reduce duplication of effort and the administrative burden on the states, HHS also announced that the federal government will partner with states to make

Exchange development and operations more efficient. States can choose to develop an Exchange in partnership with the federal government or develop these systems themselves. This provides states more flexibility to focus their resources on designing the right Exchanges for their local insurance markets.

For more information on Exchanges, including fact sheets, visit <http://www.healthcare.gov/exchanges>.

US DOL extends and aligns applicability dates for retirement plan fee disclosure rules

Effective date of service provider fee disclosure now April 1, 2012

The U.S. Department of Labor's Employee Benefits Security Administration has issued a final regulation under the Employee Retirement Income Security Act to extend and align the applicability dates for its retirement plan fee disclosure rules.

The department published an interim final regulation under ERISA Section 408(b)(2) on July 16, 2010, requiring covered service providers of retirement plans to disclose comprehensive information about their fees and potential conflicts of interest to ERISA-covered plan fiduciaries. This regulation was to become effective with respect to plan contracts or arrangements for services in existence on or after July 16, 2011. This final rule moves the effective date to April 1, 2012.

In addition, the department published a final participant-level regulation on Oct. 20, 2010, requiring that employers disclose information about plan and investment costs to workers who direct their own investments in ERISA-covered 401(k) and other individual account retirement plans. This regulation, which applies to plan years beginning on or after Nov. 1, 2011, contained a 60-day transition rule that permitted initial compliance no later than 60 days after the beginning of the first plan year on or after Nov. 1. The final rule retains a modified version of the 60-day transition rule that works in conjunction with the new effective date of the 408(b)(2) regulation. This linkage will ensure that the 408(b)(2) regulation becomes effective first and that all plans will be able to take advantage of the transition period following the effective date of the 408(b)(2) regulation.

"Employers and workers will benefit from the increased transparency provided

See **DISCLOSURE RULES**, page 4

DATES OF NOTE

For information on IMA special events, visit <http://www.ima-net.org/special-events>.

For information on IMA-MIT training events, visit <http://www.ima-net.org/training-events>.

August 18, 2011

Effective Presentation Skills

DePaul University O'Hare Campus, 8770 W.

Bryn Mawr Ave., Chicago

Learn the key skills, techniques and methods that will help you create memorable presentations delivered with power and passion. No matter what the subject, deliver the message with poise and power. Visit <http://www.ima-net.org/aug-18-effective-presentation/> for more information and to register.

August 23, 2011

Customer Service Excellence

DePaul University O'Hare Campus,

8770 W. Bryn Mawr Ave., Chicago

Organizations worldwide clearly understand that repeat business and long term client relationships are the direct outcomes of how their customer service professionals (and all employees) work with their customers. Recent studies show less than 30 percent of all companies are considered "excellent" in Customer Service skills. This illuminates a substantial challenge as well as a huge opportunity. Those organizations that understand this opportunity will realize a distinct competitive advantage. For more information or to register, visit <http://www.ima-net.org/aug23-customer-service-excelle/>.

September 8, 2011

City of Chicago Business Works Seminars

A free event for entrepreneurs! Thinking about starting or growing your business? Several workshops to choose from. To learn more, visit www.cityofchicago.org/bacp or contact GERALYN CATINO at 312-744-5504 or email Geraldyn.Catino@cityofchicago.org.

September 14, 2011

25th Annual Entrepreneurial Woman's Conference, Women's Business & Buyers Mart — Chicago's McCormick Place

The 25th Annual Entrepreneurial Woman's Conference, Women's Business & Buyers Mart — the oldest conference and business opportunity fair for women in business in the country, and the premier event for women business owners in the Midwest For more details, visit www.wbdc.org.

October 7, 2011

2011 Chicago City Treasurer's

Small Business Expo — UIC Forum

The Chicago City Treasurer Stephanie Neely has announced the City Treasurer's Small Business Expo. Enjoy a FREE day of networking with over 3,000 small business owners and a full day of FREE expert workshops. For more information contact Lilia Chacon at lilia.chacon@cityofchicago.org or call 312-744-2432.

by these fee disclosure rules," said EBSA Assistant Secretary Phyllis C. Borzi. "Extending and aligning the applicability dates of these related rules gives plan fiduciaries an appropriate amount of time to get all required fee and investment information from their covered service providers so they can then disclose, by the date required, complete and accurate information about retirement plan and investment costs to their workers."

Plan sponsors and service providers with questions about applicability dates or the final rule can contact Jeffrey Turner in EBSA at 202-693-8500. Additional information about these regulations is available on EBSA's Website at <http://www.dol.gov/ebsa>.

Board holds that Supreme Court decision forecloses backpay remedy for undocumented immigrant workers

The National Labor Relations Board has ruled that a 2002 U.S. Supreme Court decision compels the conclusion that the Board lacks remedial authority to award backpay to undocumented immigrant workers whose rights have been violated under the National Labor Relations Act, even in cases where their illegal status was known to the employer at the time of hiring.

The Board cited broad language in the Supreme Court decision, *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137(2002), which made clear that "awarding backpay to undocumented workers lies beyond the scope of [the Board's] remedial authority, regardless of whether the employee or employer violated" the Immigration Reform and Control Act of 1986 (IRCA).

In a concurring opinion, Chairman Liebman and Member Pearce agreed that Hoffman is controlling authority and thus precludes backpay here. But they reviewed the policy implications of that result, writing that, "in addition to the obvious failure to make employee-victims whole[,] the

Act's enforcement is undermined, employees are chilled in the exercise of their Section 7 rights, the workforce is fragmented, and a vital check on workplace abuses is removed." Law-abiding employers who must compete with immigration-law violators also may be harmed, they wrote.

"We would be willing to consider in a future case any remedy within our statutory powers that would prevent an employer that discriminates against undocumented workers because of their protected activity from being unjustly enriched by its unlawful conduct," they wrote.

Member Hayes agreed that Hoffman mandated the result in this case. He did not join his colleagues' critique of that decision, expressing his view that "it is the Board's role to enforce this controlling precedent in adjudicatory proceedings without critical comment. It is the role of Congress to determine whether to alter the law in response to the Court's decision."

The seven employees in question worked for Mezonos Maven Bakery in Brooklyn for up to eight years, and were not asked for documentation when they were hired. They were fired on February 12, 2003, after complaining as a group about treatment they were receiving from a supervisor. Unfair labor practice charges were filed, the parties settled, and the Board issued an unpublished Decision and Order pursuant to a formal settlement stipulation. The Board ordered Mezonos, among other things, to offer reinstatement and to make the employees whole for lost wages and benefits, and that order was enforced by the United States Court of Appeals for the Second Circuit.

However, Mezonos later argued that it could not offer reinstatement or backpay under the Hoffman decision because the workers were undocumented. On November 1, 2006, Administrative Law Judge Steven Davis decided against the employer, finding that in this case (unlike Hoffman), it was not the workers but the employer who violated IRCA by failing to verify their work authorization status. That decision was appealed to the Board, resulting in the current decision.

For more information about the NLRB, visit their Website at www.nlrb.gov.

Six rules of wise recruiting

- 1. Look back to go forward** — take a look at your past procedures and practices as they relate to recruiting. Know what worked and what didn't. Develop a strategy based on tried and true techniques as well as using those that are new but helpful (like social networking).
- 2. Hire for attitude / train for skills** — A resume will give you information on a person's experiences and background. Companies have the ability to train for certain skills and do all the time. Hire people whose attitude fits your company culture; If need be, you can train them to acquire the skills your company needs. New hires should have the ability to learn but the willingness to do so is crucial.
- 3. Past performance does predict future behavior** — when interviewing and doing background checks — knowing how someone performed or behaved in the past is a strong indicator of what they are likely to do in the future. Unclear answers from former employers should not be accepted. Develop a recruiting strategy based on finding out who people are, not just what they can do.
- 4. Become the employer of choice** — this is the #1 recruiting strategy. If an employer is the employer of choice, everyone wants to work for them and no one wants to leave. You can control your recruiting budget because word of mouth is your best advertising.
- 5. Put them in the book** — it's important to keep a reference guide. A reference guide is a recruiter's best tool. It has information about everyone in your organization including people who work for you, and people who don't but you wish they did. An employee's, likes, dislikes. What a current employee wants in their next job. Who's moving up, out — who is leaving and have they found a new home? Who took a job where, why. A good reference guide is a record of what's happening inside your company and your competitors. It is a little black book to give the recruiter an edge on their competitors.
- 6. "Hire Hard, Manage Easy"** This is a quote from Alan Davis and this quote says it all. If you spend your time and energy on recruiting, interviewing and hiring the best- then managing them is a breeze.

Author Johnny Laurent is General Manager of Sage Employer Solutions. Reprinted from The Employer Solutions Blog, <http://blog.sageabra.com>.

PAY-AS-YOU-GO WORKERS' COMPENSATION INSURANCE

For a no-obligation quote, please visit www.insurelinx.com/ima/

For more information, contact Mark Frech at 800-875-4462, ext. 1-3022
or email mfrech@ima-net.org