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HR Compliance Library

Ideas & Trends

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EMPLOYEE FEEDBACK

Transfer employees as best source of feedback

Employees who transfer within a company are often the best source of internal feedback—and given the right outlet can provide honest and concrete data of what prompted their move. Beth N. Carvin, CEO of Nobscot Corporation says transfer employees may love the company but not the boss and their experience provides important information for managers.

Carvin, participating in an interview with Wolters Kluwer Law & Business, says companies are missing out on this untapped goldmine of data that can provide some of the best clues to managers. "Most companies conduct exit interviews to identify the problems (and successes) happening within departments. Some companies also conduct new hire surveys to gain feedback on the hiring process, the training, and time to productivity. But only recently have organizations started to conduct exit interviews and new hire surveys with transferring employees. This is especially important for companies like financial services institutions, where most positions are filled via employees transferring from one position to another. Aside from entry level positions some banks fill 80 percent to 90 percent of their positions from within. If you are only getting feedback from external exits and hires, then you are only gathering data from 10 percent to 20 percent of people coming and going."

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CRIMINAL RECORDS

Navigating the EEOC's criminal history guidance

The EEOC's release late last year of a pair of informal discussion letters identifying what the agency sees as every employer's legal obligations when using criminal history information to make employment decisions — particularly at the hiring stage — reminds us of the difficulty faced by employers that want to stay out of the agency's crosshairs, but yet also want to avoid potential liability for failing to discover an applicant's predisposition to harmful conduct, such as violence, fraud or theft. The letters also underscore some of the confusion surrounding the "individualized assessment" urged by the EEOC's updated guidance. If the agency comes knocking , employers should keep in mind that in any particular case the EEOC must have a sound basis for imposing those purported employer obligations.

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Can't always blame management. Employees transfer within the company for many reasons. "It's easy to blame the manager," Carvin explains, "but the truth is that it's more likely that employees are transferring for a growth opportunity, for a new challenge, to learn new skills, or to increase their salary. A bad manager is only one reason, but it isn't the most common."

When an employee seeks opportunity, it's nice if they think to do so within the company, Carvin continues. "We're seeing a growth in the number of transfers versus exits, due mostly to a lack of opportunity elsewhere. Employees who have felt stifled for one reason or another but haven't had the opportunity to leave have begun to look inward. Companies have also begun doing a better job with communicating about internal opportunities and creating a safe culture to transfer and grow within the organization. Management training programs commonly encourage employees to work in different parts of the company to gain a full range of experience. Mentoring programs typically pair mentees with mentors in other parts of the organization. It's a great way to develop talent from within."

Garnering feedback

When asked about the best time to garner feedback from a transfer employee, Carvin explains that it depends on the employer's objective. She says that if the goal is to find out about the department the employee is leaving (similar to an exit interview), then an employee would want to have that conversation relatively quickly before the employee forgets pertinent information or their memories change. In this instance, capture the employee's feedback somewhere around their last day working in the previous position. If, however, the goal is to garner feedback regarding the "new hire" position, then timing should be based on what the employer is looking to measure. "If you want to get feedback on the job posting and transfer process, then survey them within 30 days. If you want to get feedback on their training an acclimation, then survey at 60 or 90 days."

Preferred method of feedback solicitation. "Most employees feel a little bit guilty for leaving their old department," Carvin explains. "This makes it difficult for them to speak candidly and provide constructive critique. A face-to-face meeting will likely yield some uncomfortable moments with the employee saying everything was just fine. They may also be nervous about getting in trouble with their new boss and so will be cautious about how they respond verbally. A survey that the transfer employee can complete from the privacy of their own desk will yield much greater candor and more useful information. With a survey, they can also respond to quantitative questions (on a scale of 1-5) which can be aggregated with other surveys to make it easy to identify issues in different departments, divisions or other demographic groupings."

In a face-to-face meeting, the transfer survey should be done by someone in Human Resources, preferably someone with a warm personality with whom the employee feels comfortable to be open and honest, Carvin continues. "The staffing recruiter who helped coordinate the employee's transfer is often a good choice as a bond may have been formed during that process."

According to Carvin, the following questions are likely to yield valuable information:

- What did you like best about your previous position?
- What did you like least about your previous position?
- What improvements would you recommend?
- What tips would you share with someone taking over your previous position?
- What expectations do you have of the new position?
- Are your expectations of the new position being met?
- Has the training for your new position been sufficient?
- Are you feeling at home in your new role?

"You can ask about the quality of the managers but it's unlikely they will provide a candid critique in a face-to-face meeting," Carvin says.

Similar questions can be asked in a written survey, but Carvin says employers also have the opportunity with

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JOB APPLICATIONS

Best practices for management of automated applications

Since the economy bottomed out in 2008, the "resume black hole" has gained folklore status. And while employers would prefer to believe it's a myth, a recent survey of over 2,500 job seekers conducted by Seven Step ROP confirms that this phenomenon is real — and employers' automated job applications are to blame.

According to the survey, more than 25 percent of all candidates never received employer acknowledgment of their most recent online application with Seniors and Millennials the most likely of all age groups to be ignored by employers. Nearly 45 percent of Seniors and 40 percent of Millennials report never receiving an employer response. The survey also shows nearly half of all candidates (41.8 percent) seek out a direct HR contact, even after applying for a job online. Eighty percent of candidates with household incomes between $100k and $150k report that they would rather apply directly through a hiring manager than through an online form, showing the strongest preference among candidates at all income levels.

"Online applications have overtaken paper applications in virtually every industry," said Paul Harty, president of Seven Step RPO in an interview with Wolters Kluwer Law & Business. "One of the last areas to go paperless was retail, but even retail stores now have kiosks to fill out applications for part-time or full-time positions. Some of this demand to go paperless is driven by efficiency, getting the applications quickly to screeners, but compliance and record keeping is the true primary factor."

Harty expects paper applications will eventually go away. "Except in the instance of your local hardware store or a similar type of business where there is walk-in traffic," he explained. In those instances, a help-wanted sign still works, but Harty says that's because there is no concern for compliance and reporting in those settings.

It is the bigger businesses that have the most to gain from offering online applications. "Speed, compliance, reporting, and follow-up are the advantages most likely to be gained from the automated process," explained Harty. "With the paper application, the resume is recorded and saved. It can be tracked and moved to recruiters with jobs that fit. With a paper application it's up to the owner of the filing system to follow up. That creates an unpleasant candidate experience, massive inefficiency, and no reliable reporting."

Harty says hiring managers, recruiters, and HR all share equally in the benefits of online applications, which he defines as:

- Candidates receive calls faster and can be communicated with more clearly;
- Hiring managers fill the openings faster because candidates are getting called quicker;
- Recruiters are more efficient with their time because they can screen and dispose of unwanted apps faster; and
- HR has reporting that it can rely on to make better decisions for the business.

Harty did say that it can be expensive to install a fully integrated Applicant Tracking System (ATS), but said that for smaller companies, SaaS models can be priced based on volume resulting in multiple options that are inexpensive and robust enough to fulfill the need.

HR's role in managing automated job applications. "It's important to spend a large portion of time setting up the automated system correctly and completely understanding the reporting capabilities," Harty said when asked what HR's biggest responsibility is in the management of an automated system. "If the automated system is set up correctly, the reports should be generated automatically on a schedule and there should be virtually zero communication issues. It's all about making sure its correctly set up and then taking the time to manage the internal change management process well."

The trouble starts when HR forgets that a real person is attached to each and every automated application. In addition, Harty points to the following errors HR needs to avoid:

1. Not re-engaging candidates after they apply;
2. Not sending email notifications that candidates' application has been received;
3. Not including branding in correspondence with candidates; and
4. Not including ways for candidates to communicate with the organization during hiring process.

After ensuring proper setup and avoiding the all too common management errors, Harty lists the following best practices for better management of online applicants and their applications:

- Provide candidates with timely and prompt status feedback;
- Include more details on what is expected after a candidate applies;
- Integrate social connectivity (provide access to the company's career based social media channels);
- Integrate social connectivity (provide access to the company's career based social media channels);
- Provide ways for candidates to engage with the company after applying (through email notifications, job alerts, company newsletters, career events, etc.); and
- Create opportunities for candidates to provide feedback. ■

CRIMINAL RECORD

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The letters, one dated November 20 and the other October 24, set out the agency's position that excluding individuals from employment due to criminal records can raise issues under Title VII, especially when the exclusion disproportionately harms people of a particular race or national origin. Should that be the case, the employer is required, according to the EEOC, to show that its policy is necessary in light of:

- the nature and gravity of the offense or offenses for which the applicant was convicted;
- the time that has passed since the conviction and/or completion of the sentence; and
- the nature of the job held or sought.

The test is drawn from EEOC Enforcement Guidance No: N-915.002, the comprehensive, updated agency guidance on the use of criminal history in employment decisionmaking that was issued on April 25, 2012. The test, however, is nothing new — it's based on the 1977 decision by 8th Circuit in *Green v Missouri Pacific Railroad*.

Individualized assessment confusion. Both of the recently released letters state that if an employer excludes an applicant from hire due to the applicant's criminal record, "the EEOC's position is that you should have an opportunity to provide more facts before the employer makes a final decision."

Yet there appears to be considerable confusion surrounding this purported position of the agency. According to the updated guidance, an individualized assessment "generally means that an employer informs the individual that he may be excluded because of past criminal conduct; provides an opportunity to the individual to demonstrate that the exclusion does not properly apply to him; and considers whether the individual's additional information shows that the policy as applied is not job related and consistent with business necessity."

Last July, the attorneys general of nine states sent a letter to the EEOC challenging the new guidance, particularly in light of the agency's lawsuits questioning the "use of bright-line criminal background checks in the hiring process" at Dollar General and BMW Manufacturing. "We believe that these lawsuits and your application of the law, as articulated through your enforcement guidance, are misguided and a quintessential example of gross federal overreach. Our states urge you to reconsider your position and these lawsuits."

The AGs specifically challenged the updated guidance, which they said asserts that the use of generally applicable criminal background checks as a bright-line screening tool in the hiring process will rarely be "job related" and "consistent with business necessity" and thus, will often violate Title VII — a proposition, according to the AGs, that "defies common sense."

The "EEOC two-step." EEOC Chair Jacqueline Berrien responded to the AGs' primary objection to the guidance — its discussion of individualized assessments. The objection, she said, "appears to be premised on a misunderstanding: that the Guidance urges employers 'to use individualized assessments rather than bright-line screens.'" However, the guidance "does not urge or require individualized assessments of all applicants and employees," she wrote. According to Berrien, the guidance "encourages a two-step process, with individualized assessment as the second step."

1. In the first step, the guidance calls for employers to use a "targeted" screen of records, which considers "at least the nature of the crime, the time elapsed, and the nature of the job — the three factors identified in *Green v. Missouri Pacific Railroad*, 549 F.2d 1158 (8th Cir. 1977))."
2. In the next step, the guidance "encourages employers to provide opportunities for individualized assessment for those people who are screened out," Berrien stressed. "Using individualized assessment in this manner provides a way for employers to ensure that they are not mistakenly screening out qualified applicants or employees based on incorrect, incomplete, or irrelevant information, and for individuals to correct errors in their records." The support in the guidance for an individualized assessment only for those identified

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FEEDBACK

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written surveys to ask employees to rate various items related to the environment, co-workers, supervisors, the work itself, the company, the compensation, and the transfer process itself.

"I can't think of any questions that need to be avoided," says Carvin. "In fact, it's a good idea to ask about sexual harassment, violence, and discrimination in the previous position in case that is why they wanted to transfer. Just be sure to keep an eye on the results and conduct appropriate investigations as needed or required by law." ■

CRIMINAL RECORD

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via the targeted screen "also means that individualized assessments should not result in "significant costs" for businesses," she explained.

Berrien also underscored that as explained in the guidance, employers may decide never to conduct an individualized assessment if they are able to demonstrate that their targeted screen is always job related and consistent with business necessity. Thus, the individualized assessment "is a safeguard that can help an employer to avoid liability when it cannot demonstrate that using only its targeted screen would always be job related and consistent with business necessity," she wrote.

Targeted screen may be enough. Although the two recently released informal discussion letters may at first blush appear at odds with the Chair's discussion about individualized assessments and the updated guidance, the discussion letters state that the applicant "should have an opportunity to provide more facts before the employer makes a final decision." Although not expressed as a requirement, it is understandable that employers reading the two letters (which are not considered formal agency opinions) might mistakenly believe that any applicant screened out due to his or her criminal history must be given a chance to provide additional information.

However, as the guidance states, "depending on the facts and circumstances, an employer may be able to justify a targeted criminal records screen solely under the Green factors. Such a screen would need to be narrowly tailored to identify criminal conduct with a demonstrably tight nexus to the position in question. Title VII thus does not necessarily require individualized assessment in all circumstances."

When might an employer forgo the individualized assessment? EEOC Commissioner Victoria A. Lipnic, in a public comment addressed to a U.S. Commission on Civil Rights briefing on the EEOC's criminal history guidance, wrote that although a wise and prudent business practice in many instances, "Title VII does not require an employer to provide such an individualized assessment in any instance." This fact is "explicitly recognized" in the updated guidance, and is a point about which Lipnic said she feels very strongly.

"This means that there can, and will, be times when particular criminal history will be so manifestly relevant to the position in question that an employer can lawfully screen out an applicant without further inquiry," Lipnic said. Emphasizing the point, she said that "a day care center need not ask an applicant to 'explain' a conviction of violence against a child, nor does a drug store have to bend over backward to justify why it excludes convicted drug dealers from working in its pharmaceutical lab."

Presumably, the two examples provided by Lipnic are instances in which the targeted screen is "narrowly tailored to identify criminal conduct with a demonstrably tight nexus to the position in question."

Disparate impact question. Of course, the issues of whether an employer policy on criminal background checks is job related and based on business necessity, as well as whether excluded individuals should be given an individualized assessment, only come into play when the policy has resulted in a discriminatory disparate impact based upon a protected category — usually race or national origin (African-American, Hispanic).

In its updated guidance, the EEOC lays out statistics showing that nationally, African-Americans and Hispanics are arrested and incarcerated at disproportionately high rates compared to their percentage of the overall population and when compared to Whites. The agency's updated guidance either implies, or comes very close to doing so, from those statistics a rebuttable presumption operating at least during the investigatory stage, that the use of criminal history information in employment screening necessarily results in a disparate impact on African-Americans and/or Hispanics: "National data, such as that cited above, supports a finding that criminal record exclusions have a disparate impact based on race and national origin. The national data provides a basis for the Commission to further investigate such Title VII disparate impact charges. During an EEOC investigation, the employer also has an opportunity to show, with relevant evidence, that its employment policy or practice does not cause a disparate impact on the protected group(s)."

Best practices. Based on the issues discussed above, employers should consider implementing a few best practices with regard to the use of criminal background checks in making hiring decisions:

- If possible, screen job applicants for other required qualifications before inquiring about criminal history information;
- Once a candidate is determined to be otherwise qualified, inquire only as to criminal history information that is relevant to the particular job applied for and document the reasons why that information (the offenses and period during which they occurred) is relevant;
- Permit applicants who are otherwise qualified but have been screened out due to criminal history

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BEST PRACTICES

Google tops *Fortune Magazine's* 100 Best Companies list

Once again, Google finds itself atop the *Fortune Magazine* list of the 100 Best Companies To Work For. The 2014 100 Best Companies to Work For show strong signs of growth, with the number of employees at the 100 Best increasing by a reported average of 6.2% over the past 12 months and 15.6% over the past 24 months — nearly five times the rate of U.S. companies overall in the same two-year period, according to the Bureau of Labor Statistics. Moreover, the 100 Best Companies with available revenue data reported that revenue among both private and publicly traded companies has risen an average of 7.8% over the past 12 months and 22.2% over the past 24 months.

While buzz around workplace culture has been growing, the companies appearing on the 100 Best list frequently identify their workplace culture as the driver of results superior to competitors, particularly around turnover and financial returns. To achieve their competitive advantage, leaders at these companies focus on activities such as defining values statements, hiring for culture fit, and integrating culture with strategy.

When it comes to employee development, the 100 Best are inclined to spend more time and money investing in employees. On average, the 100 Best provide 73 hours of on-the-job training for full-time employees, compared to 38 hours among non-winning list applicants. From creating individualized development plans for each employee to placing a greater emphasis on succession planning, the 100 Best are committed to developing and advancing their people, understanding that retention is a competitive advantage whose value will only increase as the competition for talent heats up.

To pick the 100 Best Companies to Work For, *Fortune* partnered with the Great Place to Work Institute to survey more than 252,000 employees representing 257 U.S. businesses. The survey asks questions related to their attitudes about management's credibility, job satisfaction, and camaraderie, pay and benefit programs and a series of open-ended questions about hiring practices, methods of internal communication, training, recognition programs, and diversity efforts. Any company that is at least five years old and has more than 1,000 U.S. employees is eligible.

For more on how *Fortune* chooses the 100 Best, what makes Google the best again in 2014, and the complete list of winners, go to: http://money.cnn.com/magazines/fortune/best-companies/?iid=BC14_lp_header.

The deadline to apply for next year's list is June 30, 2014. For an online nomination form, go to the Great Place to Work Institute's website. ■

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information a reasonable opportunity to provide additional relevant information, and if they are still rejected for hire, document the reasons why (though this step may be eliminated when the targeted screen used by the employer is "narrowly tailored to identify criminal conduct with a demonstrably tight nexus to the position in question," it may be more prudent to include it anyway);

- During any EEOC investigation (or litigation) of purported disparate impact discrimination based on a criminal background policy, employers should consider providing the agency with the following:
- Regional or local data showing that African-American and/or Hispanic men are not arrested or convicted at disproportionately higher rates in the employer's particular geographic area;
- The employer's own applicant data demonstrating that its policy or practice did not cause a disparate impact;
- When sued by the EEOC for disparate impact discrimination based on criminal background checks, make sure that the EEOC has identified the particular policy that purportedly resulted in the alleged unlawful discrimination, and if it has not done so, move for dismissal or summary judgment; and
- When litigating an agency claim of disparate impact discrimination based on the use of criminal background information, employers should aggressively challenge the agency's expert analysis of relevant applicant data to make sure it is comprehensive, reliable, and not skewed, as well as its reliance on any national, as opposed to local, data. ■

Source: *Originally published in the January 7, 2014, edition of Employment Law Daily, a Wolters Kluwer Law & Business publication, "Navigating EEOC criminal history guidance and holding the agency to its initial burden," was written by Pamela Wolf, J.D.*

EMPLOYEE RELATIONS

Research analyzes Gen Y's big demands, high expectations

Big demands and high expectations summarize the results of this year's Deloitte Touche Tohmatsu Limited's (DTTL) third annual Millennial Survey. Across the globe, 70 percent of tomorrow's future leaders might 'reject' what business as traditionally organized has to offer, preferring to work independently through digital means in the future.

Findings include: while most Millennials (74 percent) believe business is having a positive impact on society by generating jobs (48 percent) and increasing prosperity (71 percent), they think business can do much more to address society's challenges in the areas of most concern: resource scarcity (68 percent), climate change (65 percent) and income equality (64 percent). Additionally, 50 percent of Millennials surveyed want to work for a business with ethical practices.

- Millennials say government has the greatest potential to address society's biggest issues but are overwhelmingly failing to do so.
- Millennials want to work for organizations that support innovation. In fact, 78 percent of Millennials are influenced by how innovative a company is when deciding if they want to work. They believe the biggest barriers to innovation are management attitude (63 percent), operational structures and procedures (61 percent), and employee skills, attitudes, and (lack of) diversity (39 percent).
- Over one in four Millennials are 'asking for a chance' to show their leadership skills. Additionally, 75 percent believe their organizations could do more to develop future leaders.
- Millennials believe success should be measured in terms of more than just its financial performance, with a focus on improving society among the most important things it should seek to achieve. ■

HR Quiz

Can tax preparation services be provided to employees as a tax-free benefit?

Q Issue: *Your company is a provider of tax and other business information. Every year, it provides free tax preparation services to its employees. Can this benefit be provided tax-free?*

A Answer: The tax preparation services might be considered a tax-free "no-additional-cost service" benefit under Internal Revenue Code Sec. 132, but a number of rules must be met. A "no-additional-cost service" is a service that is provided tax-free to employees at no additional cost to the employer. It is typically offered to employees either free or at reduced charges by an employer and includes the services that the employer, in its line of business, sells to the general public. If specified rules are met, the value of a no-additional-cost service provided to participating employees is excludable from their income and wages for purposes of income and employment taxes.

Criteria. To be considered a no-additional-cost service, the services must meet the following criteria:

- the employer does not incur any substantial additional cost in providing the service to the employee;
- the service provided by the employer is within its "line of business";
- the employee works in the line of business in which the service is being provided; and
- the service is offered free or at a reduced charge by an employer to an employee, or specified members of the employee's family, for personal use.

Who may receive the service? Free or reduced charges for an employer's services are classified as tax-free, no-additional-cost services only if the services are provided to the company's employees. For purposes of no-additional-cost services, the term "employees" includes: current employees; spouses of employees; dependent children; former employees who have left the service of the employer due to retirement or disability; and widows and widowers of deceased former employees.

Source: *Internal Revenue Code Sec. 132(b).*

MINIMUM WAGE

President to raise minimum wage on federal contracts to $10.10 per hour, pushes for same boost in private sector

In his State of the Union Address on January 28, President Obama announced his plans to issue an executive order that would raise the minimum wage for individuals working on federal contracts to $10.10 per hour. The president also wants to work with Congress to pass a previously introduced bill that would raise the federal minimum wage to the same rate. The current federal minimum wage rate is $7.25 per hour.

Harkin-Miller bill. The *Fair Minimum Wage Act of 2013* (S. 460, H.R. 1010) was introduced in the Senate last year by Senator Tom Harkin (D-Iowa), chairman of the Senate Health, Education, Labor, and Pensions (HELP) Committee, and in the House by Congressman George Miller (D-Cal). The legislation would increase the minimum wage to $10.10 per hour in three steps and provide for automatic annual increases linked to changes in the cost of living. It also would gradually raise the minimum wage for tipped workers, currently $2.13 per hour, for the first time in more than 20 years — to 70 percent of the regular minimum wage. It is unlikely that the GOP-controlled House will approve it.

In a fact sheet posted on January 28, the White House expressed the president's support for the Harkin-Miller bill and said that he will continue to work with Congress to pass its proposed $10.10 minimum wage that will thereafter be indexed to inflation.

Federal contracts wage hike. The beneficiaries of the president's upcoming executive order will be those who work on new federal contracts for services and construction and currently are paid less than $10.10 per hour — including janitors, construction workers, and military base workers who wash dishes, serve food, and do laundry.

The White House states that the wage increase will be manageable for contractors because it will apply to new contracts after the effective date of the order, giving contractors time to prepare and price their bids accordingly.

Private-sector wage boost. As to the federal minimum wage, the fact sheet points to businesses like Costco that have supported past increases to the minimum wage "because it helps build a strong workforce and profitability over the long run."

According to the White House, by indexing the minimum wage to inflation, as would be the case under the Harkin-Miller bill, lower-income workers would be better able to keep up in the future. Introduced in 1938, the minimum wage has been increased 22 times, but it has also eroded substantially over several prolonged periods due to inflation. ■

COMPENSABLE TIME

Donning and doffing time not compensable under CBA

The time spent by production workers donning and doffing their protective gear was not compensable, a unanimous Supreme Court ruled on January 27, affirming the Seventh Circuit and clarifying the scope and definition of "clothes" within the "changing clothes" exception found in Section 203(o) of the FLSA, which provides that donning and doffing activities may be exempt from compensable time under the express terms of, or custom or practice under, a bona fide collective bargaining agreement (*Sandifer v U.S. Steel Corp*, January 27, 2014, Scalia, A).

Applying the ordinary common meaning of the term "clothes" as defined in dictionaries from the era in which the statutory provision was enacted, the Supreme Court reasoned there was no basis for interpreting the term in any other manner, such that the term would omit protective clothing.

Finding the de minimis doctrine employed by some circuits in such cases ill-suited to a statute that is itself "all about trifles," the Court said the better approach is to determine whether the time in question could be characterized "on the whole" as time spent changing clothes — *i.e.*, whether the vast majority of the employees' time is spent donning and doffing "clothes" (as defined here) — in which case the entire period qualifies, and the time spent donning and doffing other items "need not be subtracted." ■

Source: *Originally published in the January 27, 2014, edition of Employment Law Daily (www.employmentlawdaily.com), a Wolters Kluwer Law & Business publication, "Production workers' donning and doffing time not compensable, unanimous High Court holds," was written by Lisa Milam-Perez, J.D.*

UNION MEMBERSHIP

Union membership rate unchanged in 2013, BLS says

The percent of wage and salary workers who were members of unions in 2013 was the same as it was in 2012 — 11.3 percent, the U.S. Bureau of Labor Statistics (BLS) reported on January 24. The number of wage and salary workers belonging to unions, at 14.5 million, was little different from 2012. The latest numbers represent a continuing, substantial decline from the 20.1-percent union membership rate (with 17.7 million union workers) that the BLS reported in 1983, the first year for which comparable union data are available.

Industry and occupation of union members. According to the BLS report, in 2013, 7.2 million employees in the public sector belonged to a union, compared with 7.3 million workers in the private sector. The union membership rate for public-sector workers (35.3 percent) was substantially higher than the rate for private-sector workers (6.7 percent). Within the public sector, the union membership rate was highest for local government (40.8 percent), which includes employees in heavily unionized occupations, such as teachers, police officers, and firefighters. In the private sector, industries with high unionization rates included utilities (25.6 percent), transportation and warehousing (19.6 percent), telecommunications (14.4 percent), and construction (14.1 percent). Low unionization rates occurred in agriculture and related industries (1.0 percent), finance (1.0 percent), and in food services and drinking places (1.3 percent).

Among occupational groups, the highest unionization rates in 2013 were in education, training, and library occupations, and protective service occupations (35.3 percent each). Farming, fishing, and forestry occupations (2.1 percent) and sales and related occupations (2.9 percent) had the lowest unionization rates.

Selected characteristics of union members. The union membership rate was higher for men (11.9 percent) than for women (10.5 percent) in 2013. The gap between their rates has narrowed considerably since 1983, when rates for men and women were 24.7 percent and 14.6 percent, respectively. Among major race and ethnicity groups, black workers had a higher union membership rate in 2013 (13.6 percent) than workers who were white (11.0 percent), Asian (9.4 percent), or Hispanic (9.4 percent). By age, the union membership rate was highest among workers ages 45 to 64 — 14.0 percent for those ages 45 to 54 and 14.3 percent for those ages 55 to 64. Full-time workers were about twice as likely as part-time workers to be union members, 12.5 percent compared with 6.0 percent.

Union representation. In 2013, 16.0 million wage and salary workers were represented by a union. This group includes both union members (14.5 million) and workers who report no union affiliation but whose jobs are covered by a union contract (1.5 million). Private-sector employees comprised more than half (810,000) of the 1.5 million workers who were covered by a union contract but were not members of a union.

Earnings. In 2013, among full-time wage and salary workers, union members had median usual weekly earnings of $950, while those who were not union members had median weekly earnings of $750. In addition to coverage by a collective bargaining agreement, this earnings difference reflects a variety of influences, including variations in the distributions of union members and nonunion employees by occupation, industry, firm size, or geographic region.

Union membership by state. In 2013, 30 states and the District of Columbia had union membership rates below that of the U.S. average, 11.3 percent, while 20 states had higher rates. All states in the Middle Atlantic and Pacific divisions reported union membership rates above the national average, and all states in the East South Central and West South Central divisions had rates below it. Union membership rates declined over the year in 26 states, rose in 22 states and the District of Columbia, and remained unchanged in 2 states.

Nine states had union membership rates below 5.0 percent in 2013, with North Carolina having the lowest rate (3.0 percent). The next lowest rates were recorded in Arkansas (3.5 percent), Mississippi and South Carolina (3.7 percent each), and Utah (3.9 percent). Three states had union membership rates over 20.0 percent in 2013: New York (24.4 percent), Alaska (23.1 percent), and Hawaii (22.1 percent).

State union membership levels depend on both the employment level and union membership rate. The largest numbers of union members lived in California (2.4 million) and New York (2.0 million). Over half of the 14.5 million union members in the U.S. lived in just seven states (California, 2.4 million; New York, 2.0 million; Illinois, 0.9 million; Pennsylvania, 0.7 million; and Michigan, New Jersey, and Ohio, 0.6 million each), though these states accounted for only about one-third of wage and salary employment nationally.

Texas had about one-fourth as many union members as New York, despite having 2.7 million more wage and salary employees. Conversely, North Carolina and Hawaii had comparable numbers of union members (117,000 and 121,000, respectively), though North Carolina's wage and salary employment level (3.9 million) was more than seven times that of Hawaii (549,000).

The data on union membership were collected as part of the Current Population Survey (CPS), a monthly sample survey of about 60,000 households that obtains information on employment and unemployment among the nation's civilian noninstitutional population age 16 and over. ■

HR Notebook

December unemployment falls below 7%

The unemployment rate declined from 7.0 percent to 6.7 percent in December, while total nonfarm payroll employment edged up (+74,000), the U.S. Bureau of Labor Statistics (BLS) reported December 10. The number of unemployed persons declined by 490,000 to 10.4 million in December. Over the year, the number of unemployed persons and the unemployment rate were down by 1.9 million and 1.2 percentage points, respectively.

Employment rose in retail trade (+55,000), wholesale trade (+15,000), professional and business services (+19,000), manufacturing (+9,000), and mining (+5,000). Healthcare employment changed little in December (-6,000). Employment fell in December in Information (-12,000) and Construction (-16,000). Employment in other major industries, including transportation and warehousing, financial activities, leisure and hospitality, and government, changed little in December.

Consumer prices rise .3% in December

The Consumer Price Index for All Urban Consumers (CPI-U) increased 0.3 percent in December on a seasonally adjusted basis, the BLS reported. Over the last 12 months, the all items index increased 1.5 percent before seasonal adjustment.

Advances in energy and shelter indexes were major factors in the increase in the seasonally adjusted all items index. The gasoline index rose 3.1 percent, and the fuel oil and electricity indexes also increased, resulting in a 2.1 percent increase in the energy index. The shelter index rose 0.2 percent in December. The indexes for apparel (+0.9%), tobacco (+0.6%), and personal care (+0.3%) increased as well. These increases more than offset declines in the indexes for airline fares (-4.7%), for recreation , for household furnishings and operations, and for used cars and trucks (-0.2%), resulting in the index for all items less food and energy rising 0.1 percent.

Real average hourly earnings falls 0.3 percent in December

Real average hourly earnings for all employees fell 0.3 percent from November to December, seasonally adjusted, the U.S. Bureau of Labor Statistics reported. This decrease stems from a 0.1 percent increase in average hourly earnings being more than offset by a 0.3 percent increase in the Consumer Price Index for All Urban Consumers (CPI-U). Real average weekly earnings fell 0.5 percent over the month due to the decrease in real average hourly earnings combined with a 0.3 percent decrease in the average workweek.

Real average hourly earnings rose 0.2 percent, seasonally adjusted, from December 2012 to December 2013. The increase in real average hourly earnings, combined with a 0.3 percent decrease in the average workweek, resulted in no net change in real average weekly earnings over this period.

IMMIGRATION

DHS expands list of countries eligible for H-2A, H-2B visas

The Department of Homeland Security, in consultation with the Department of State, has added Austria, Italy, Panama, and Thailand to the list of countries whose nationals are eligible to participate in the H-2A and H-2B Visa programs for the coming year. The list of 63 eligible countries was published in the *Federal Register* on Friday, January 17. The list is effective for one year beginning on January 18, 2014.

The H-2A and H-2B Visa programs permit U.S. employers to bring foreign nationals to the United States to fill temporary agricultural and nonagricultural jobs, respectively. Generally, U.S. Citizenship and Immigration Services only approves H-2A and H-2B petitions for nationals of countries that the Secretary of Homeland Security has designated as eligible to participate in the programs. USCIS may approve H-2A and H-2B petitions for nationals of countries that are not included in the list if it is determined to be in the interest of the United States to do so. ■