



Cut and Paste Post November, 2011

Montana Minimum Wage will Increase January 1, 2012.

On January 1, 2011 the Montana Minimum Wage increases from \$7.35 to \$7.65 per hour. This is consistent with Montana law, which basically provides for annual cost of living increases in the minimum wage. A poster is available at the link provided below. While it is **not** a required poster, it doesn't hurt to post it!

Click here to [Download the Montana Wage and Hour Poster!](#)

To obtain information on required postings, [CLICK HERE](#).

SHRM Expresses Serious Concerns with Affirmative Action Enforcement Letter

Last week, SHRM and the College and University Professional Association for Human Resources (CUPA-HR) sent a letter to the Office of Management and Budget (OMB) expressing serious concerns about proposed changes in federal affirmative action enforcement.

In May, the Office of Federal Contract Compliance Programs (OFCCP) proposed changes to the compliance review scheduling letter. The changes would mean the collection of more employer-specific data. Specifically, information on employer leave policies, including sick, personal, pregnancy, FMLA and religious leave. Plus, the agency would seek information on personnel activity within five or seven racial and ethnic categories, up from the current two, and by both job group and job title, instead of just one. Finally, compensation information would be reported by individual employee, not in an aggregated format, and would be required for an expanded group, including contract, per-diem and day laborers.

The SHRM/CUPA-HR letter argued that the proposal violates the Paperwork Reduction Act (enforced by OMB) by grossly underestimating the burden this will create for federal contractors. The scheduling letter is just one part of the agency's multi-faceted compliance evaluation process. SHRM questions whether such an extensive information collection requirement is needed during the very first stage of that process.

SHRM and CUPA-HR urged the OMB to ensure that legitimate information is collected in the least burdensome way possible.

The joint letter is available [HERE](#).

Court Report:

Here are some links to cases which may peak your interest:

Montana Supreme Court –

This is a new case under Montana's Wrongful Discharge from Employment Act. Ray Williams brought this action in the District Court for the Eleventh Judicial District, Flathead County, alleging that he was wrongfully discharged from Plum Creek Timber Company (Plum Creek). Williams had been subject to a transfer during a reduction in force, and was later terminated 'for cause' from the position to which he was transferred. At the District Court level, Plum Creek moved for summary judgment contending that it had good cause to terminate Williams. The District Court granted Plum Creek's motion and Williams appealed. The Supreme Court found that that Plum Creek violated the express provisions of that policy by failing to apply it consistently and equally to all of its employees, that Plum Creek wrongfully demoted and transferred Williams, and that this demotion and transfer was directly linked to Williams' discharge. The Court reversed the District Court and remanded it for further proceedings.

Read the case: [Williams v. Plum Creek Timber](#)

9th Circuit:

Social Workers do not meet FLSA "Learned Professional" Exemption

This was heard on appeal from a summary judgment out of Washington State. The social worker positions at issue required only a degree in one of several academic disciplines or sufficient coursework in any of those disciplines. As a result, the Ninth Circuit concluded that Washington State had not met its burden of showing that its social worker positions "plainly and unmistakably" met the "Learned Professional" regulatory requirement.

Read the Case: [Solis V. Washington](#)

Jury Award of \$1,326,000 In Non-Economic Damages Excessive In Disability Discrimination Case

Randy Cosby brought an action against AutoZone under California's Fair Employment and Housing Act, raising five claims. The jury found AutoZone liable for two of those claims--failure to provide reasonable accommodation and failure to engage in the interactive process--that resulted in Cosby being forced to take unpaid medical leave, and contributed to Cosby's later termination. Based on that liability, the jury awarded Cosby damages including \$1,326,000 for past mental suffering. On appeal, Ninth Circuit held that amount to be excessive in light of the fact that Cosby was only slightly upset at being forced to take medical leave, he eventually found satisfactory employment, and he did not continue to endure mental suffering.

Read the case: [Cosby v. Autozone, Inc.](#)

The Ninth Circuit Court of Appeals' jurisdiction includes California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska and Hawaii.

11th Circuit: Arbitration Clause Did Not Extend To Claims Arising From Drugging and Rape Of Ship Crewmember

The legal issues in this case involve the scope of an arbitration clause in the ship line's crew agreement, and whether the allegations of the complaint fall within its scope. While the case was not in our circuit, it is a good read for any employer whose employment policies or contracts include an Arbitration Provision which compels arbitration for employment disputes. It is also a "How NOT To" manual on addressing employee complaints of sexual assault on the job!

Read the case: [Jane Doe v. Princess Cruiselines](#)

U.S. Supreme Court Will NOT Review Scope Of Title VII's Exemption For Religious Corporation, Association, Or Society

The United States Supreme Court has declined to grant certiorari in a case in which a divided panel of the Ninth Circuit held that a non-profit faith-based Christian humanitarian organization fell within the scope of the Title VII exemption for a "religious corporation, association, ... or society," and thus its termination of employees who denied the deity of Jesus Christ and disavowed the doctrine of the Trinity did not violate Title VII.

While the two Ninth Circuit judges in the majority agreed the organization fell within the exemption, they disagreed as to the proper criteria for making this determination. The employees' petition for certiorari asked the Court to determine when and under what circumstances the religious corporation exemption applies.

The 9th Circuit decision may be read at: [Spencer v. World Vision](#)

Employers Share List Of Most Unusual Excuses For Calling In Sick From Ceridian Abstracts

Employers expect to see more empty seats around the office as the holidays approach, a new CareerBuilder survey finds. One-third (33 percent) of employers reported that workers call in sick more often during the winter holidays.

While the cold and flu season is a heavy contributor to workplace absences this time of year, some workers may be using sick days to take care of some holiday shopping or visit with family. Twenty-nine percent of workers have admitted to already playing hooky from the office this year, citing errands and plans with family and friends among the top reasons for calling in sick when they were well. The nationwide study was conducted by Harris Interactive from August 16 to September 8, 2011 and included more than 2,600 employers and 4,300 workers.

Top time of year for absenteeism

While employers reported heightened absenteeism around the holidays, the prime time of year when companies say employees call in sick is in the first quarter:

- January through March - 34 percent
- April through June - 13 percent
- July through September - 30 percent
- October through December - 23 percent

Texting in sick

When it comes to notifying employers that they are taking a sick day, some workers reported they are bypassing a phone call to the boss and relying on digital communications.

- Phone call - 84 percent
- Email - 24 percent
- Text message - 11 percent

Most unusual excuses

When asked to share the most unusual excuses employees gave for missing work, employers offered the following real-life examples:

- Employee's 12-year-old daughter stole his car and he had no other way to work. Employee didn't want to report it to the police.
- Employee said bats got in her hair.
- Employee said a refrigerator fell on him.
- Employee was in line at a coffee shop when a truck carrying flour backed up and dumped the flour into her convertible.
- Employee said a deer bit him during hunting season.
- Employee ate too much at a party.
- Employee fell out of bed and broke his nose.
- Employee got a cold from a puppy.
- Employee's child stuck a mint up his nose and had to go to the ER to remove it.
- Employee hurt his back chasing a beaver.
- Employee got his toe caught in a vent cover.
- Employee had a headache after going to too many garage sales.
- Employee's brother-in-law was kidnapped by a drug cartel while in Mexico.
- Employee drank anti-freeze by mistake and had to go to the hospital.
- Employee was at a bowling alley and a bucket filled with water crashed through the ceiling and hit her on the head.

Checking up on employees

Calling in sick without a legitimate excuse can have serious consequences. Fifteen percent of employers said they have fired a worker for this reason. Twenty-eight percent have checked up on an employee, citing the following examples:

- 69 percent required a doctor's note
- 52 percent called the employee
- 19 percent had another employee call the employee
- 16 percent drove by the employee's home.