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04 04/2002 01:45:18 PM

Record Type: Record

To: John F. Morrall III/OMB/EOP@EOP

cc: pcleary@nam.org
Subject: Federal Rules Not Working

I am taking advantage of this opportunity to comment on Federal Rules that need changing, mentioned in the most recent edition of NAM's Workplace Watch. Here goes:

Age Discrimination -- I've heard that the Federal Government placed an age maximum of applicants for the Federal Sky Marshall program .... age 40. How was this rationalized, and why should the logic used be limited to the Federal government? Could private industry 1)be informed of the rationale behind this and 2)use that same rationale themselves, if it is legitimate?

Secondly, the baby boomers are now a protected class. They still dominate the workforce. Reductions in Force and layoffs will look like they are skewed to "older" workers as a result of this "pig in the python." There is a HUGE technical gap between people in their 50's and 60's and the computer whizzes of the younger generation. Businesses need those whizzes, but are stuck with the older workers who resist learning much at all. Learn about spreadsheets? data entry, word processing? There is a LOT of passive resistence. For example, we've got a 55 year old who uses both hands on his mouse because of computer-phobia. Accounting and memos ARE HANDWRITTEN... the work is accurate, maybe even "on time" but NOT efficient for possible revision, sharing, e-mailing to others, etc. I know, I know ... training!!! Yet, why is it supposed to be the COMPANY that initiates training to bring these individuals up to speed? How about fear of losing one's position? But no, they are "protected" making it a LOT more difficult to get them off the dime.

COBRA -- a company can pride itself on its cadillac medical plan .... until it faces a reduction in force or a layoff (meaning, an employee involuntarily loses job). Suddenly, the plan is too rich for the employee to pay via COBRA. True, the company can GIVE some COBRA coverage in the severance package. However, company financial problems can be what led to the layoff to begin with. Can an employer introduce a

"bare bones" plan as an alternative to its cadillac? Not!! One company I know aniticpated a reduction in force by more than a year and asked their medical insurance carrier to offer a two-tier plan. The layoff could occur just before open enrollment, allowing the departed(ing) employees to drop to the more affordable, probably more catastrophic plan. But no, the company was too small to be able to offer both!!!

Medical Spending Account -- Employee contributes to a Medical Spending Account and has a balance. Let's say anticipated oral surgery did not occur when planned. Employee is leaving the company and with the "use it or lose it" concept, s/he winds up, say, buying a surplus of disposal contacts, or prescription sunglasses when these are really not needed. Why can't this balance be used to pay Cobra medical premiums? Right now this money cannot be used for that.

Additionally, -- why can't an individual's Long Term Care policy premium be paid through an FSA??(This may have changed in the last 3 years ... that was when it came up in my experience.) This country should be encouraging people to take out Long Term Care insurance because when the baby boomers hit the nursing home/home health system Medicaid won't be able to afford itself. There will be wards of people lying around awaiting attention. Nursing homes will not be able to improve facilities because the reimbursement rate from Medicaid will be unrealistic.

Deductibility of IRA contributions -- in many instances this unable to be done if there is an "x" in the box on the W-2 designating Retirement Plan PARTICIPATION. Participation really means nothing in a defined benefit situation unless one is VESTED. Since vesting takes time and may not happen if the employee leaves, the person experiences several years of not being able to deduct with no pension plan at all. Makes no sense.

FLSA -- employees being paid on a biweekly or semi-monthly basis "think" in those blocks of time. They don't understand that "make-up time" for, say, taking off early for a doctor's appointment must be done in the same workweek. Often they make it up in the next week, if the next week is in the same pay period. Getting these people to think weekly is very, very difficult. I think make up time should be permitted in the same payroll period to ease this confusion.

Severance and Unemployment -- (I realize this is more related to the STATE but I do know that when the states do something irrational, the federal legislation can override.) If a company, in a reduction in force or layoff situation, creates a nice, generous severance plan ... the recipient can

simutaneously run down to the unemployment office, file for, **AND** RECEIVE unemployment compensation. This double dipping is often "permitted" because the severance pay was unique to the individual, based on length of service. **A** way to "get around" this is for a company to make its severance via "keeping the person on the payroll" and the Severance Agreement stating that filing for unemployment would result in the discontinuation of the severance stream. Having to do this is cumbersome. Even if the severance is a lump sum, the number of weeks' pay it is worth (or the payroll time stream) should prevent this double-dipping for that time frame. **A** generous company with its severance plan gets hit with an increase in unemployment insurance payroll rates when, really, the ex-employee could have found a new job in the length of time for which the severance was calculated.

I will close for now, but I may come up with more ludicrous employment situations that **I** have seen and dealt with. If **I** do, **I** hope it is before May 28. Thanks for letting me vent and, hopefully, for listening.

Jennifer Young with
HR experience in oil (large and small), banking (large), manufacturing (small) in four states -- Texas, Idaho, California, Missouri

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