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Ideas & Trends

CIGARETTES

Accounting for e-cigs and "vaping" in the workplace

With the rise in popularity of electronic cigarette (e-cigarette or e-cig) devices being used an as alternative to traditional cigarettes, employers are now faced with what should be done, if anything, about e-cigarettes when they are brought into the workplace. E-cigs are a form of smokeless, vapor-filled cigarette. Should e-cigarettes be banned to prevent co-workers from coming into second-hand contact with the vapor? Should vaping be permitted, which might cut down the amount of smoking breaks and encourage employees to quit cigarettes?

Prior to making a decision on limiting or banning this activity at work, employers should carefully consider the pros and cons of these devices. For example, allowing e-cigarettes in the workplace might cut down the amount of smoking breaks that a worker is currently taking. On the other hand, the health effects of these devices are still unknown, and banning e-cigarettes might be a way to avoid future legal problems resulting from employees who get sick after coming into second-hand contact with the vapor.

No matter what an individual workplace decides to do about these devices, experts recommend creating a new written policy, or updating an existing smoking policy, stating what is or is not allowed.

Questions that will aid in policy development

1. What exactly are e-cigarettes, and how are they regulated? Electronic cigarettes are nicotine-containing devices that come in an assortment of flavors from the more traditional such as tobacco to foods like bacon to desserts such as chocolate. Depending on what kind is purchased, e-cigarettes can have as much nicotine as a traditional cigarette or considerably less.

While e-cigarettes do have nicotine, they do not contain tobacco. Despite this, a federal appeals court has ruled that the Food and Drug Administration (FDA) may regulate e-cigarettes as a tobacco product. This means that the FDA could place federal regulations on these devices that might affect how an employer should handle them, though it cannot create a blanket ban on the product.

Consider state law. Many states and municipalities have added e-cigarettes to their public smoking bans or have otherwise addressed when and where these devices may be used. Because there could be a ban on e-cigarettes in place, it is important for an employer to look at the state and municipal laws where it is operating before creating a policy that allows these devices in the workplace.

2. What are the safety and health considerations surrounding e-cigarettes? There has been little scientific consensus on the safety and health considerations surrounding electronic cigarettes. Some people claim that they can act as a smoking cessation tool. However, there is no solid evidence that this is true. Because it has not been proven, the FDA has not approved e-cigarettes as a device used to quit smoking and manufacturers usually refrain from claiming the devices as such.

Similarly, there has been no conclusive evidence regarding second-hand vapor. For the most part, it is agreed that there are probably less harmful effects caused by vaping than by smoking because there are less harmful chemicals in an e-cigarette than in a traditional cigarette. However, there have been reports of harmful side effects caused by e-cigarette exposure. These include, but are not limited to:

- Itchy nose and eyes;
- Nausea;
- Congestive heart failure; and
- Hypotension.

If an employee got sick from second-hand vapor exposure in the workplace, it is conceivable that he or she might be able to recover workers' compensation. However, in order to do so, the employee would be required to prove that the device actually caused the illness.

Employers will also want to consider the odor of e-cigs. While the e-cigarettes do not burn tobacco, thus do not create the same strong scent as a traditional cigarette, most do cause an aroma based on the flavor of the device. Some employees might enjoy the smell of e-cigarettes even if they do not actually use one, others may have smell sensitivities or allergies. E-cigarettes should be examined in the same manner as perfumes and other scent-creating products in the workplace.

3. Are there any legal concerns or liabilities an employer needs to consider? There are legal considerations an employer should take surrounding electronic cigarettes. Consider first any municipal or state laws that apply to your workplace. After that, bans on e-cigarettes are almost always allowed. An employer will most likely not be liable for taking a stance against e-cigarettes in the workplace. However, many states have laws that ban discrimination against smokers or people participating in legal off-duty conduct. Because of this, while a ban on e-cigarettes in the workplace is likely acceptable, a ban on e-cigarettes outside of work or negative job consequences based on e-cigarette use outside of the workplace is likely to be ill-advised at best and illegal at worst.

4. How should an employer create and manage an e-cigarette policy? The first thing an employer should do when creating an electronic cigarette policy is decide whether e-cigarettes will be completely banned, allowed in smoking areas, allowed in certain approved areas outside of the regular smoking areas or allowed everywhere inside the workplace.

The following factors may be helpful in deciding the parameters of an e-cig policy:

- *Size and make-up of the workforce.* The culture of each employer's workforce is different. Accordingly, employers should consider whether its workforce will be amenable to a policy that allows vaping. For instance, a smaller workplace that employs mostly younger adults might be more inclined to adopt a policy that allows vaping because vaping is more common among younger adults. In contrast, employers whose workforce includes a substantial number of minors may wish to prohibit vaping at work.
- *Layout of the work area.* The layout of the work area is a key factor to consider when assessing the feasibility of accommodating individuals who object to the use of e-cigarettes. For instance, outdoor worksites are less prohibitive to vaping than an enclosed office because any offensive odors are more likely to disperse in an open area.
- *Type of work being performed.* Employers should confirm that it is safe to operate an e-cigarette in the workplace. For example, a gas refinery may wish to prohibit e-cigarettes in the workplace because it may not be safe to have a battery-powered heating device in such an environment.

Once it has been determined where e-cigarettes will or will not be allowed, it is important to write the new procedure or

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add it to a current smoking policy and make sure employees are aware of the policy in the same manner that they are informed of any new workplace guideline.

It is also imperative that the employer be ready to back their new policy. If e-cigarettes are allowed, some employees might want to ban them. Alternatively, if they are banned, some employees might want them to be allowed. Regard-less of what decision the employer makes, it should have sound reasoning and should communicate that reasoning to employees. ■

Source: Information taken with permission from the report, "E-Cigarettes in the Workplace: A Policy Toolkit to Manage This New Risk Source" (www.xperthr.com/pages/e-cigarette-policy-toolkit), written by Ashley Shaw and presented by XpertHR.

SECURITY

Expert discusses HR's role in workplace cyber security

When it comes to cyber security, it is fast becoming people, not computers, that are the weakest link. A recent survey revealed that more than a quarter of individuals transfer work files to and from home — even though it is against many HR policies — and half of those said they have had a virus at some point on their machines. Bill Carey, vice president of marketing for the password manager, RoboForm, says it is fast becoming another role of the HR department to help manage an organization's security with policies and induction programs that focus on keeping the business secure.

When asked in an interview with Wolters Kluwer Law & Business why cyber security is an HR issue, Carey said, "It's important to manage cyber security from a policy perspective. Companies that want to get a handle on trends like BYOD need to develop and deploy training programs, create written formal policies and collect employee signatures to ensure compliance. HR typically handles policy development and implementation, so HR is a natural to help manage cyber issues."

To that end, as technology has become an increasingly core part of operations, companywide policies are needed to address emerging vulnerabilities. "Individual departments may come up with their own versions of security policies, but HR can centralize the company's approach and apply it consistently, which typically improves risk management and more efficiently addresses security threats," Carey explained. "HR is well positioned to work with IT to identify threats, create policies and develop training materials to address them – and lead policy deployment companywide."

Carey is not suggesting that HR is in cyber security alone. He suggests that an organization's cyber security is only strengthened if HR and IT address it together. "Cyber security policies are typically more effective when HR and IT work together," he says. "IT and HR can team up to offer automated solutions to help employees comply with company policies – a password management system, for example. Each department can deliver value in its area of expertise – IT on the technology side, and HR on the policy development, implementation, training and compliance side."

Policy development. When it comes to policy development, Carey has some very specific, "simple" steps to get HR started. "Since user passwords are often the first line of defense against hackers, HR should work with the IT team to require users to create strong passwords using a combination of upper and lowercase letters, numbers and symbols and change them at least every 30 days," recommends Carey. "It's also a good idea to make it a policy that workers should log out of sites when leaving their desktops unattended – even if only for a moment. Specific policies will depend on the type of company, how it operates, the use of mobile devices, etc., but there are basic safeguards like the above that should be in practice at virtually every company."

Whatever the policy an organization comes up with for cyber security, Carey recommends presenting it to employees as part of the onboarding program. "Onboarding is usually when HR introduces employees to general corporate policies, so it's a good time to provide new hires with information on cyber security policies and practices as well," he explains. "Technology is evolving rapidly, so it may also be a good idea to hold refreshers periodically, especially if there are new elements of the cyber security policy to roll out, such as BYOD."

In the end, as with all workplace policies, a cyber security policy is only as effective as the number of employees who buy into it. Carey says, "For cyber security policies to be effective, it's important that all department leaders emphasize how crucial it is to gain employee buy-in. Anything HR can do to encourage executives to champion cyber security and model good behavior for employees (leading by example) will drive positive employee behavior changes — and keep company data and devices safer."

Top 10 tips for workplace cyber security

In closing the interview, Carey provides *Human Resource Management: Ideas & Trends* readers with the following Top 10 Cyber Security Awareness Tips:

1. Regularly update software to eliminate security weaknesses. Windows, Macs, and all browsers regularly provide free software updates; take advantage of this to close security loopholes!
2. When you're done with using a website, log off and close your browser. This will prevent others from gaining access to your account.
3. Create passwords with combinations of upper and lowercase letters, numbers and special characters.
4. Don't use personal information in your password, such as your name, your partner's name, your child's name, your occupation, telephone number, birth date, etc.
5. Small businesses have to hold their employees accountable for their security. Employees must adopt safe security habits to keep their information and the company's information protected. Consider putting a formal cyber-security policy into effect.
6. Make sure that you use a PIN or #password on your mobile phone.
7. Use the 'Keystroke' method for making passwords. Choose a password and create a keyboard mapping system. One key to the left and one up would make the password "tinmen" change to "47gh2g"
8. Disable pictures on your email and read it in plain text. The sender will not be able to identify if you've opened the email.
9. Don't keep a record or list of your passwords in unencrypted files on your computer or phone.
10. Have a disposable e-mail address. Only give your actual e-mail address out to who people who need it. This will avoid mass spam and keep your inbox clean. ■

BENEFITS

Employers expecting health care costs to rise 4 percent in 2015

U.S. employers expect a 4 percent increase in 2015 health care costs for active employees after plan design changes, according to Towers Watson. If no adjustments are made, employers project a 5.2 percent growth rate, putting absolute cost per person for health care benefits at an all-time high. Despite this cost trend, most (83 percent) employers consider health benefits an important element of their employee value proposition, and plan to continue subsidizing and managing them for both full-time and part-time active employees, according to the *2014 Towers Watson Health Care Changes Ahead Survey*. They are, however, continuing to rethink company subsidies for spouses and dependents.

Of particular concern on the cost front is the Patient Protection and Affordable Care Act's ("ACA") excise tax. In 2018, according to the ACA, the federal government will impose a non-deductible excise tax on the value of employer-sponsored health programs that exceed an aggregate value of $10,200 for individual coverage and $27,500 for family coverage. The tax equals 40 percent of the value that exceeds these thresholds. Nearly three-quarters (73 percent) of employers said they are somewhat or very concerned they will trigger the tax based on their current plans and cost trajectory. More than four in 10 (43 percent) said avoiding the tax is the top priority for their health care strategies in 2015. As a result of the excise tax and other provisions of the health care reform law, CEOs and CFOs are more actively engaged in strategy discussions.

"In the current economic climate, affordability and sustainability remain dominant influences on employers' overall health care strategies," said Randall Abbott, senior consultant at Towers Watson. "Expense management and worker productivity are equally critical to business results. While employers are committed to providing health care benefits for their active employees for the foreseeable future, persistent concerns about cost escalation, the excise tax and workforce health have led to comprehensive strategies focused on both year-over-year results and long-term viability for health care benefits and workforce health improvement. The emphasis is on achieving or maintaining a high-performance health plan. And CFOs are now focused on a new gold standard: managing health cost increases to the Consumer Price Index. This requires acute attention to improving program performance."

Combatting the high cost of health care. In response to short- and long-term cost concerns, a growing percentage (81 percent) of employers plan moderate to significant changes to their health care plans over the next three years, up from 72 percent a year ago. One tactic employers will use to curb spending in 2015 is specialty pharmacy management. Companies project that pharmacy-only cost trend will be 5.3 percent after plan changes (6 percent before changes). Employers will also embrace telemedicine for virtual physician office visits to improve access and efficiency of care delivery. Another key tactic is new payment approaches that hold providers accountable for the cost of an episode of care and outcomes.

Longer term, for 2016 and 2017, nearly half (48 percent) of employers are considering tying incentives to reaching a specified health outcome such as biometric targets, compared with just 10 percent that intend to adopt it in 2015; 37 percent are considering offering plans with a higher level of benefit based on the use of high-performance or narrow networks of medical providers, compared with just 7 percent in 2015. One-third (34 percent) of employers are considering telemedicine, compared with 15 percent in 2015, further accelerating technology as a way to improve engagement and medical care access, and manage costs.

Another cost-mitigation tactic being considered for 2016 and 2017 are changes in how employers subsidize health care for spouses and dependents. A third (33 percent) of employers are considering significantly reducing company subsidies for spouses and dependents; 10 percent have already implemented such reductions, and 9 percent intend to do so in 2015. In addition, 26 percent said they are considering spouse exclusions or surcharges if coverage is available elsewhere; 30 percent have that tactic in place now, and another 7 percent expect to add it in 2015.

Employers are also examining caps on health care coverage subsidies for active employees, using defined contribution approaches, with 30 percent of employers considering them for 2016 and 2017, 13 percent having them in place today and another 3 percent planning them for 2015.

Private health exchange interest is growing. With regard to private health insurance exchanges for active workers, 28 percent of employers said they have extensively evaluated the viability of private exchanges. Nearly one in four (24 percent) said private exchanges could provide a viable alternative for their active full-time employees in 2016. The top three factors that would cause employers to consider a private exchange for full-time active employees are evidence they can deliver greater value than their current self-managed model (64 percent), adoption of private exchanges by other large companies in their industry (34 percent) and an inability to stay below the excise tax ceiling as 2018 approaches (26 percent).

Despite the challenge of managing the high cost of health benefits, nearly all employers (99.5 percent) said they have no plan to exit health benefits for active employees and direct them and their families to public exchanges, with or without a financial subsidy. Three out of four employers (77 percent) said they are not at all confident public exchanges will provide a viable alternative for their active full-time employees in 2015 or 2016.

"The most effective employers are continually evaluating new strategies for improving health plan performance," Abbott noted. "Examples include a steady migration to account-based health plans (ABHPs), action-based incentives, adoption of value-based payment methods with health plan partners and plan designs that drive efficiencies. Other options are technology-based solutions such as telemedicine, fitness devices or trackers, and social media to encourage employees to take a more active role in both their personal health status and how they use health care goods and services."

Other notable findings. Additional survey findings include:

- Two-thirds of CEOs and CFOs are more directly involved in developing their company's health benefit strategies.
- The importance of data and metrics to evaluate health care benefit program performance is growing, with 60 percent of respondents planning to emphasize data as a gauge of performance.
- Three out of four employers (76 percent) are exploring the use of personalized digital technologies, including mobile health applications and fitness wearables, as well as social media to encourage greater activity among their employees.
- Full-replacement ABHPs (making ABHPs the only plan option) could be in place at 50 percent of companies by 2017: 17 percent offer only an ABHP today; 4 percent intend to do so for 2015, and another 28 percent are considering it for 2016 or 2017. ■

HEALTH CARE

Open enrollment is good time to ensure compliance with ACA

Open enrollment presents the perfect opportunity for employers to update their processes and to take action to ensure they're compliant with an assortment of legal requirements, including those of the Patient Protection and Affordable Care Act (P.L. 111-148; ACA). So said speakers during Mercer's recent webinar entitled "Preparing for 2015 Open Enrollment."

Open enrollment is a good time, they pointed out, to update materials to prepare for 2015 changes, including eligibility terms in those materials that might reflect an employer's pay or play strategy with regard to the ACA's employer mandate, and for reviewing processes for offering coverage to employees identified as full-time.

Employers can also use the open enrollment process to capture 2015 data needed for minimum essential coverage and employer shared responsibility reporting. Employers can then determine if their current systems can supply the required data and establish new systems to collect data not currently captured. They can also obtain necessary documentation such as waivers of coverage, since there is always the possibility that the government may seek confirmation of an employer's figures.

Use open enrollment to keep track of other deadlines. Open enrollment could also be a good time, said the speakers, to carry out tasks that must be done on a regular basis, even if those tasks do not have to be done during open en-

rollment, since distribution at open enrollment could satisfy multiple timing requirements for required disclosures. For example, employers can use that time to allow employees to make elections in their cafeteria plan, because, even though an open enrollment period is not technically required for cafeteria plans, participants must be given a reasonable time period each year for making elections, and open enrollment is as good a time as any to carry out that task.

Requirements for COBRA notices must be updated to reflect information about the ACA Marketplace, and about how electing COBRA may affect Marketplace enrollment, and folding this task into yearly open enrollment can save time and administrative costs, since employers can avoid having to make an extra distribution of just the COBRA notices later on, according to speaker Mike Sinkeldam.

Also, open enrollment materials can serve as summary plan descriptions (SPDs), which helps employers circumvent the task of keeping track of whether or not it is time to provide them, which is especially helpful, since the distribution rules are a bit complicated; SPDs generally only have to be provided every 10 years, unless there are material modifications to the plan, in which case they have to be provided every five years, and summaries of material modifications have to be provided 210 days after the end of the plan year in which a change is adopted. Summaries of material reductions have to be provided within 60 days after adoption.

Update delivery methods. Open enrollment provides a chance to think about updating delivery methods of open enrollment information for employees, the speakers continued. Electronic delivery can save time and costs, but certain rules apply, they cautioned, depending upon whether or not employees routinely access their employers' computer and e-mail systems. The speakers also advised employers to be realistic about what they could accomplish with regard to use of electronic methods of communication, and to think of both short- and long-term strategies.

Finally, open enrollment can be an opportunity for employers to help their employees understand the ACA, and to communicate how they are helping employees avoid the individual mandate penalty. Think about what your current compliance levels are so far, the speakers advised audience members, decide what needs to be clarified for employees, and remember that the grandfathered status of each plan will determine each employer's obligations. ■

Source: *Written by Carol E. Potaczek, J.D.*

HR QUIZ

Does an emergency services notice requirement violate the ACA?

Q **Issue:** *Your group health plan imposes 25-percent coinsurance for emergency services, whether they are provided in network or out of network. If a covered individual notifies the plan within two days after the services are provided, the plan reduces the coinsurance to 15 percent. Does the requirement to notify the plan to receive a reduced coinsurance rate violate the Patient Protection and Affordable Care Act (ACA) requirement to cover emergency services without prior authorization?*

A **Answer:** No, this requirement is not a violation of Public Health Service Act Sec. 2719A, which was added by the ACA. That provision imposes special cost-sharing and other requirements for plans that provide benefits for emergency services. The rules are designed to provide special patient protections for individuals covered by network plans who obtain emergency services from an out-of-network provider.

The Departments of Labor, Health and Human Services, and the Treasury have issued interim final regulations implementing the requirements for emergency services. Under the regulations, if a group health plan or health insurance issuer offering group coverage provides any benefits for services in the emergency department of a hospital, the plan or issuer must provide coverage for emergency services as follows:

- without the need for any prior authorization, even if the emergency services are provided out of network;
- without regard to whether the health care provider furnishing the emergency services is a network provider;
- without imposing any administrative requirement or limitation on coverage for out-of-network services that is more restrictive than the requirements or limitations that apply to in-network services; and
- without regard to any term or condition of coverage other than the exclusion or coordination of benefits, a permitted affiliation or waiting period for coverage, or permitted cost sharing.

Source: *IRS Reg. §54.9815–2719AT, ERISA Reg. §2590.715–2719A, HHS Reg. §147.138.*

SALARY PLANNING

Salary budgets at U.S. companies improve slightly to 3.0 percent in 2014

Pay increase budgets at U.S. employers have improved slightly up to 3.0 percent in 2014 from 2.9 percent in 2013 according to the 41st annual *WorldatWork 2014-2015 Salary Budget Survey*. Forecasts show that the average raise in base pay for 2015 in the United States is projected to be 3.1 percent. This continues a trend of mildly increasing budgets since the 2009 recession when the average salary budget increase reached an all-time low of 2.2 percent (mean). Last year, respondents projected that the 2014 average total salary budget increase across all organizations, employee categories, regions and industries in the United States would reach 3.1 percent (median: 3.0 percent), but actual numbers fell just short.

"Salary increase budgets will likely remain close to the 3.0 percent mark until market forces require employers to raise wages more aggressively," said Alison Avalos, research manager for WorldatWork. "Recovering from the recession is no longer driving employers salary budget planning. Current salary budget increase amounts are less about a recovery from widespread pay freezes from a few years back and more about the current marketplace not demanding much growth in the size of pay increases for employees."

Most common salary increase budget amounts. Organizations continue to converge on budget amounts between 2 percent and 4 percent, with 85 percent to 90 percent of all organizations landing there, depending on employee category. The percentage of organizations not awarding increases has dropped to 2 percent to 5 percent, fairly close to historical levels.

Major metropolitan area data. Responding organizations reported variance in salary budget increase averages between major U.S. metropolitan areas, although all medians are at 3.0 percent. While there are no extreme outliers, there are a few areas that did not follow the national average trend line this year. The following eight cities reported a decline from 2013 to 2014 by one to three-tenths of a percentage point in average total salary budget increases: Detroit; Miami; Minneapolis; Pittsburgh; Portland, OR.; San Diego, St. Louis and Tampa, Fla. Houston, Los Angeles and San Francisco trend above the national average, at 3.1 percent budget for pay increases for 2014, which represents no change from 2013.

Pay for performance. Even though the size of all salary increase budgets, including merit budgets, remains on the conservative side, there is still good evidence of differentiation of awards.

"Organizations know that in order to retain top talent, they need to reward and motivate these important employees," Avalos said. "They are doing so by differentiating salary increases and increasing the use of bonus programs."

Looking at employee performance in 2013, organizations averaged a 2.7 percent merit increase for mid-level performers (median: 2.7 percent) and a 4.0 percent payout for top performers (median: 4.0 percent). Low performers averaged a 0.6 percent increase in 2013, although the median payout was zero. Pay increases for 2014 performance are expected to remain at 2.7 percent for middle performers (median: 2.8 percent), and climb to 4.1 percent (median: 4.0 percent) for high performers.

Increased use of bonus programs. The 2014 data show that 74 percent of respondents are now utilizing market-based pay increases. Similarly, sign-on/hiring bonuses, spot bonuses, retention bonuses and project completion bonuses are all up in usage over past years, suggesting that organizations are beginning to pay more attention to retention of employees as the economy continues to improve. ■

BENEFITS

SIFL rates issued for the second half of 2014

The Department of Transportation has released the applicable terminal charge and standard industry fare level (SIFL) mileage rates for July 1, 2014, through December 31, 2014. These rates will be used by the IRS to determine the value of noncommercial flights on employer-provided aircraft. The terminal charge is $46.25. The SIFL rates are $.2530 per mile for the first 500 miles; $.1929 per mile for 501 miles through 1,500 miles; and $.1855 per mile for miles over 1,500. ■

Source: *U.S. Department of Transportation, Attachment B, August 11, 2014.*

MEDICAL MARIJUANA

State medical marijuana laws and their impact on the workplace

Medical marijuana is currently legal in 23 states plus the District of Columbia, but more states are in the process of legalizing it. Generally, in these states, individuals with the proper documentation from their physician are protected, by state law, from arrest or prosecution for use of the drug. The new laws have caused a mountain of controversy in the workplace regarding liability and protocols, and many employers are struggling with where to draw the line.

Rob Wilson, president of Employco USA, Inc., a human resource outsourcing company, participated in an interview with Wolters Kluwer Law & Business. In the interview, he suggested that employers consider developing a policy, or at least modifying an existing one, to account for the impact of medicinal marijuana on the workplace. "Though what the policy reads will largely be dependent upon the laws of the particular state within which the business operates, in those states where discrimination is illegal, for example, employers can write a policy that reserves their right to discipline or terminate an employee following a failed marijuana test to the fullest extent permitted by law."

Hiring and firing. The medical marijuana laws raise a lot of questions about the hiring process. What employers are legally permitted to ask applicants, and whether or not drug tests now count as discrimination under the Americans with Disabilities Act, are both subject to debate. "It's a complicated topic and there's plenty of gray area," Wilson said. "Some states have passed laws that specifically prohibit employers from discriminating against employees based on marijuana use. At this point, however, employers do not need to be concerned with federal laws (*e.g.,* ADA) because marijuana is still illegal at the federal level."

Whether or not employers are violating any laws if they refuse to hire a person who uses marijuana medicinally really depends on the state and how far the employer wants to push the issue in court, Wilson explains. "For example, employers in Arizona and Delaware are prohibited from discrimination based on medical marijuana status, which appears to include new hire candidates." This is an example of the situation Wilson was referring to when he recommended policy development to include hiring and firing prerogatives.

As for terminating an employee who uses medicinal marijuana, "Employers can discipline and terminate employees for drug use in the workplace or if the employee is under the influence of marijuana (impaired) during work hours," Wilson said. "Most of the established laws do in fact protect employees from termination for simply having, or stating that they have a medical marijuana card in their possession. However, they still could be at risk of disciplinary action for violating any section of their employer's drug policy—including any on-the-job restrictions of drug use."

Job modification. When asked in the interview with Wolters Kluwer Law & Business about modifying an employee's job requirements once the employer is on notice that an employee is a medicinal marijuana user, Wilson definitively stated, "We don't recommend modifying the employee's job without a failed drug test or proof that it has affected their ability to do their job." So, for example, a medicinal marijuana user who's job could be potentially dangerous to him- or herself or others in the workplace, should continue in that role unless he or she consents to or requests a job change. Wilson explained, "For example, just because you know an employee has epilepsy, doesn't mean he or she can't be a police officer or barber. However, if you see that it's not being controlled and people are unsafe, you can act."

As for the coworkers of a marijuana user complaining about having to work with a known medicinal drug user, Wilson explains, "If this is an issue in the workplace, we recommend training supervisors to recognize the signs of employee drug use. Ensure employees that their safety is important and if an employee is believed to be under the influence, the employer will act accordingly."

In the future

When it comes to managing medical marijuana and the workplace, Wilson offers HR the following best practice tips:

1. Stay on top of state laws and court rulings. This is a hot topic that will leave in its wake a number of high profile court decisions within the next year.
2. Review company policies and programs to ensure legal compliance.
3. Train supervisors and employees on company policies.

"A critical outstanding issue is how much, if any, does marijuana affect an employee's work if consumed outside of work (how long can it affect you after use)? Disciplining or terminating an employee purely based on a failed marijuana test may put the employer in hot water in some states," Wilson concluded. "If you suspect an employee is under the influence of marijuana, consider ordering a drug test (urine, blood, etc.) that can reveal recent use." ■

HR NOTEBOOK

CPI for all items rises 0.1% in July

The Consumer Price Index for All Urban Consumers (CPI-U) increased 0.1 percent in July on a seasonally adjusted basis, the U.S. Bureau of Labor Statistics (BLS) reported August 19. Over the last 12 months, the all items index increased 2.0 percent before seasonal adjustment.

The all items index posted its smallest seasonally adjusted increase since February; the indexes for shelter and food rose, but were partially offset by declines in the energy index and the index for airline fares. The index for all items less food and energy increased 0.1 percent in July, the same increase as in June. Along with the shelter index, the indexes for medical care, new vehicles, personal care, and apparel all increased in July. Along with the index for airline fares, the indexes for recreation, for used cars and trucks, for household furnishings and operations, and for tobacco all declined in July.

Real average hourly earnings unchanged in July

Real average hourly earnings for all employees was unchanged from June to July, seasonally adjusted, the BLS reported August 19. This result stems from an unchanged average hourly earnings, combined with a 0.1 percent increase in the Consumer Price Index for All Urban Consumers (CPI-U). Real average weekly earnings was unchanged over the month due to both the real average hourly earnings and the average workweek being unchanged.

Unemployment sees little change in July

Total nonfarm payroll employment increased by 209,000 in July, and the unemployment rate was little changed at 6.2 percent, the BLS reported August 1. In July, employment grew in professional and business services (+47,000), manufacturing (+28,000), retail trade (+27,000), and construction (+22,000). Social assistance added 18,000 jobs over the month (the social assistance industry includes child day care and services for the elderly and persons with disabilities), while mining added 8,000. Employment in other major industries, including wholesale trade, transportation and warehousing, information, financial activities, and government, showed little change in July.

LGBT advocacy in workplace reaps policy changes

Corporate policies on equal treatment of lesbian, gay, bisexual and transgender (LGBT) change when an LGBT advocacy group exists within a business and works with management, according to findings reported by UConn researchers. Moreover, diversity has become a best practice that spreads to other companies as employers monitor what other companies are doing.

The study, "Benchmarking Diversity: Social Movement Outcomes in the Workplace," led by Mary Bernstein, professor of sociology in UConn's School of Liberal Arts and Sciences, is part of a broader study examining changes in corporate policy and the impact of social movements in organizations and institutions. The researchers are reviewing data from Fortune 1000 corporations, law firms listed in The American Lawyer 200, and large nonprofit organizations.

Corporate equality. One measure used in the study is Corporate Equality Index (CEI) developed by the Human Rights Campaign, a civil rights organization that advocates for LGBT rights. The Index ranks businesses in a variety of areas including domestic partner benefits, health insurance coverage, employee recruitment, and philanthropic support.

"What we find is that the most important determinant of a company's CEI score is whether it has an LGBT resource group that operates officially within an organization," Bernstein says. "We also find that benchmarking is important, that companies look at what other companies are doing. It's very much about recruiting and retaining diverse employees, improving workplace efficiency, and expanding markets."

Best practice implemented ahead of government. Bernstein is looking at why businesses often move before government in changing social policies regarding LGBT people — she said there is evidence it is part of a best practices approach to conducting business across an industry. "Diversity has become a best practice," according to Bernstein. "Once major companies become more friendly to LGBT people, others follow suit. They have decided they have an investment in best practice."

Multistate reach. Another aspect of corporate change under examination is state nondiscrimination policies and how they affect companies, particularly those conducting business with organizations located in other states that may have different social policies. "Oftentimes, LGBT employee resource groups will meet with each other through national organizations like Out and Equal, and they can apply pressure," Bernstein says. "They can say that if your customers who are other companies have these policies, then you ought to have these policies as well. We find quantitative support for those activities." ■