HR COMPLIANCE LIBRARY
Ideas & Trends

OCTOBER 1, 2014
ISSUE NO. 763

INSIDE

DISABILITIES

Blanket policy for alcoholics not so good!

An EEOC informal discussion letter underscores the danger of blanket policies that may impact individuals with disabilities, even when they screen out employees due to employer concerns about safety risks. In this case, the employer is a public utility that operates nuclear power plants. At first blush, a blanket policy requiring abstinence from drinking alcohol by alcoholic employees may seem appropriate and defensible. Not so, according to EEOC Acting Associate Legal Counsel Christopher J. Kuczynski.

Brief ADA tour. A brief tour of ADA requirements will set the framework for the proper analysis. The statute bars the application of qualification standards that screen out, or tend to screen out, individuals based on disability *unless* they are job related for the particular position and consistent with business necessity — meaning that the qualification standards are *actually necessary* for effective job performance.

The ADA also bars employers from using safety-based qualification standards to screen out individuals with disabilities *unless* they can show that the individuals pose a direct threat — meaning a significant risk of substantial harm that cannot be reduced or eliminated with a reasonable accommodation. Perhaps most importantly, the direct-threat determination *must be based on risks actually posed by a particular individual* — it cannot be based on generalizations about the individual's disability.

Blanket policy for alcoholics. In this case, the policy analyzed by the EEOC attorney was implemented by a public utility that operates nuclear power plants regulated by the U.S. Nuclear Regulatory Commission (NRC). Kuczynski notes that under NRC regulations employers are required to implement procedures for screening employees who will be granted unescorted access to secured or critical areas of nuclear power plants to ensure they are "trustworthy and reliable" and do not constitute "an unreasonable risk to public health and safety or the common defense and security, including the potential to create radiological sabotage."

The employer and the union entered into a "two strikes and you are out" agreement under which the employer conducts "random, for cause, and follow-up" alcohol and drug testing of all employees and is permitted to discharge any employee after a second confirmed positive alcohol test on the job. On its own, the employer added another requirement for employees who have either been referred or have referred themselves to its Employee Assistance Program (EAP) for counseling. An EAP counselor, based on amount and frequency of alcohol con-

Wolters Kluwer
Law & Business

sumption, may deem an employee to be either an alcoholic or to have ongoing problems with alcohol. In such cases, the EAP may issue the employee a letter using the employer's prescribed language recommending that the employee permanently abstain from consuming alcohol *both on and off the job* as a condition of being granted or maintaining unescorted security access — to keep their job, in other words.

As Kuczynski notes, the ADA Amendments Act broadened the definition of disability, so that it's now easier for individuals with a broad range of impairments, including alcoholism, to establish coverage.

Under the employer's policy, employees given permanent alcohol abstinence letters can be fired for off-duty drinking even if: (1) they either never tested positive for alcohol or tested positive once; (1) there was no evidence of their poor job performance; and (3) they have never been suspected of being impaired at work.

Is the policy defensible under the ADA? The employer's policy requiring that employees who are alcoholics (or perceived by this employer's EAP counselor to be alcoholics) permanently abstain from drinking alcohol both on and off the job as a condition of continued employment raises questions under the ADA. The first is whether application of that standard would screen out individuals based on disability. If so, the follow-up inquiry is whether the standard meets either the business necessity or direct threat defense.

Under the ADA, an individual with a disability is a person: (1) with a physical or mental impairment that substantially limits one or more major life activities; (2) with a record of such an impairment; or (3) who is regarded as having such an impairment. As Kuczynski notes, the ADA Amendments Act broadened the definition of disability, so that it's now easier for individuals with a broad range of impairments, including alcoholism, to establish coverage.

Because the inquiry that prompted the EEOC letter did not include information that would otherwise be taken into consideration during this stage of the analysis (*i.e.*, whether there was a clinical diagnosis of alcoholism; how and to what extent drinking alcohol affects the employees' lives), Kuczynski presumed that some of these employees would meet at least one prong of the ADA's definition of a disability. As a result, application of the policy would screen them out based on disability because their failure to agree to, or their violation of, the policy would subject them to discharge.

Job related/business necessity defense fails. Success on the employer's defense that its policy requiring employees who are alcoholics (or perceived to be alcoholics) to permanently abstain from alcohol consumption on and off the job is both job-related and consistent with business necessity turns on whether the standard imposed accurately predicts the ability of such employees to perform essential job functions. According to the EEOC attorney, the business necessity defense would fail in this case.

The first problem is that the total abstinence requirement applies *only* to employees who are alcoholics or are perceived to be alcoholics regardless of whether they have tested positive for alcohol or have been found under its influence at work. Contrast that to the "two strikes and you are out" agreement, under which employees who have tested positive for alcohol once are not barred from drinking off the job and are not fired *unless they test positive for alcohol a second time*. Permitting some employees to continue working after a failed alcohol test, while requiring others who have *never* failed an alcohol test to abstain from alcohol off the job as a condition of employment, undermines any notion that requiring total abstinence is necessary for effective job performance, or that it ensures employees are "trustworthy and reliable."

HR COMPLIANCE LIBRARY
Ideas & Trends

Managing Editor
Heidi J. Henson, J.D.

Contributing Editors
David Stephanides, J.D.
Tulay Turan, J.D.

Newsletter Design
Publishing Production & Design Services

Newsletter Layout
Chris Tankiewicz

HR Compliance library—Ideas & Trends (USPS 680-810)(ISSN 0745-0613), a Wolters Kluwer editorial staff publication, is published monthly by Wolters Kluwer, 4025 W. Peterson Ave., Chicago, Illinois 60646. Periodicals postage paid at Chicago, Illinois, and at additional mailing offices. POSTMASTER: SEND ADDRESS CHANGES TO HR COMPLIANCE LIBRARY—IDEAS & TRENDS, 4025 W. Peterson Ave., CHICAGO, IL 60646. Printed in U.S.A.

The other obstacle facing the employer relates to the ADA's *individualized assessment* requirement. There is no evidence here that employees deemed to be alcoholics have ever had performance or work-related conduct issues. Even if the employer appropriately requires some employees to abstain from alcohol, or subjects them to more frequent alcohol testing, these requirements *must stem from an individualized assessment* based on a particular employee's history — not from a blanket requirement that all employees who are alcoholics (or perceived to be alcoholics) totally abstain from alcohol as a condition of employment.

No direct threat. A second potential defense would also fall short. The employer has apparently speculated that employees who are alcoholics (or perceived to be alcoholics) may one day come to work under the influence of alcohol and present a risk to themselves or others because they have unescorted access to a nuclear power plant. To prevail on its defense of the permanent abstinence requirement based on safety concerns, the employer would need to show that the standard is necessary to avoid a direct threat — a significant risk of substantial harm to the particular employee or others that cannot be eliminated through reasonable accommodation.

To meet the direct-threat showing, we're back to the *individualized assessment* issue. As Kuczynski points out, the determination must be based on an individual's present ability to safely perform the essential job functions, taking into account the most current medical knowledge and/or best available objective evidence. In determining whether a particular individual poses a significant risk of substantial harm employers should consider these factors:

- duration of the risk;
- nature and severity of potential harm;
- likelihood that the potential harm will occur; and
- imminence of the potential harm.

However, because the employer's policy *does not permit an individualized assessment* of the risks that particular employees pose, it falls short of meeting the direct-threat defense.

Conflict with other federal laws defense. One other defense may have permitted the employer to maintain its policy, but only if NRC regulations required imposition of a total abstinence qualification standard. The EEOC letter did not elaborate on this defense in the absence of information that the employer's alcohol abstention requirement was mandated by the NRC. The defense applies when the alleged discriminatory action has been taken in order to comply with another federal law or regulation. It *does not apply*, however, where federal law permits, but does not require, the alleged discriminatory action, or where compliance could have been achieved without violating the ADA.

The lesson? Think twice about implementing *blanket policies* that may impact applicants and employees who have disabilities or may be perceived as having disabilities. Where ADA requirements may be implicated, the better practice is to craft policies that permit *particularized, individualized assessments* of applicants and employees. Moreover, an employer practice or policy that discriminates based on disability cannot be defended based on mere *assumptions or speculations* about how individuals with disabilities are limited on the job. ■

Source: *"Blanket policy for alcoholics not so good!" written by Pamela Wolf, J.D., was originally published in the September 17, 2014 edition of Employment Law Daily, a Wolters Kluwer Law & Business publication.*

FALL PROTECTION TOPS LIST OF OSHA'S TOP 10 SAFETY VIOLATIONS OF 2014

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has announced the preliminary Top 10 most frequently cited workplace safety violations for fiscal year 2014. The top 10 for FY 2014 are:

1. Fall protection (1926.501) – 6,143
2. Hazard Communication (1910.1200) – 5,161
3. Scaffolding (1926.451) – 4,029
4. Respiratory Protection (1910.134) – 3,223
5. Lockout/Tagout (1910.147) – 2,704
6. Powered Industrial Trucks (1910.178) – 2,662
7. Electrical – Wiring Methods (1910.305) – 2,490
8. Ladders (1926.1053) – 2,448
9. Machine Guarding (1910.212) – 2,200
10. Electrical – General Requirements (1910.303) – 2,056

Source: *National Safety Council.*

HR QUIZ

May an employer request a doctor's note when an employee with diabetes requests a reasonable accommodation?

Q Issue: *Joey told you that he's been diagnosed with diabetes and asked for one week of unpaid leave so he can attend a class to learn how to manage his recently diagnosed condition. Can you ask for a doctor's note in support of his request for unpaid leave without violating the Americans with Disabilities Act (ADA)?*

A Answer: Yes. An employer may request reasonable documentation where a disability or the need for reasonable accommodation is not known or obvious. However, the employer is entitled only to documentation sufficient to establish that the employee has diabetes and to explain why an accommodation is needed. A request for the employee's entire medical record, for example, would be inappropriate as it likely would include information about conditions other than the employee's diabetes.

In this instance, a note from Joey's doctor would be sufficient to show that he has a disability and needs the requested reasonable accommodation. If Joey makes a subsequent accommodation request related to his diabetes (for example, he asks for a shift change) and the need for accommodation is not obvious, you (as his employer) may ask for documentation explaining why the new accommodation is needed but may not ask for documentation concerning his diabetes diagnosis.

Source: *EEOC Guidance: "Questions and Answers about Diabetes in the Workplace and the Americans with Disabilities Act," http://www.eeoc.gov/laws/types/diabetes.cfm; reported in Accommodating Disabilities Business Management Guide ¶140,325.*

WAGES

Expert discusses wage garnishment in the workplace

More than 7 percent of U.S. workers studied by ADP® have had their wages garnished. In an effort to identify current wage garnishment trends, ADP looked at the primary reasons for garnishments, or debt recovery through pay seizures, discovering over 40 percent of garnishments are for child support and nearly 20 percent for tax debts. The study results are the result of an analysis of aggregated, anonymous payroll data from 2013 of 13 million employees age 16 and older.

"Our goal in doing the research was to shed light on a little-known area of the economy that has consequences for individuals and businesses," said Julie Farraj, vice president of ADP Wage Garnishment Services, in an interview with Wolters Kluwer Law & Business. "Businesses, in particular, need a better understanding of their compliance requirements when employees are subject to wage garnishment."

Impact of wage garnishment on employers

The impact of wage garnishment in the workplace is twofold. On the one hand, employees who have their wages garnished can find it humiliating and stressful, often resulting in decreased workplace productivity and motivation. And, on the other, employers may be exposed to financial risk when their employees' wages are garnished by becoming liable to creditors for an employee judgment if they do not assist with the garnishment appropriately.

Employers' responsibility. "Employers do have a responsibility when it comes to wage garnishment," explained Farraj. "To avoid becoming liable to creditors for an employee judgment, employers must assist with the garnishment appropriately. They must comply with administering the payroll deduction associated with the garnishments and disbursing the funds to the appropriate payee. The complexity falls in the varying laws in the Writ of Garnishment arena. The laws associated with these orders vary by state and even at a court level; there is no central governing agency that the employers can work with."

"Regardless of the type of garnishment, the maximum withholding limits, calculations, lien priorities, response requirements, and even the definition of disposable earnings can vary by state," continued Farraj. "The employer must ensure that they have established processes that ensure compliance and continue to make the needed updates when laws regarding garnishments change."

Where can HR be of assistance? Farraj explained that one responsibility HR has is hardly time-consuming, but critical nonetheless. One of the first critical steps in the process is to identify

whether the person named on the order is an active employee. "Even if the person named on the order is no longer an employee, is on a leave of absence, or has never been an employee, the employer is still obligated to respond to the sender if an order is received," said Farraj. "Not doing so can cause the employer to become liable to for issues involving noncompliance."

Beyond identification, the HR department is required to allocate resources to handle the administration of these orders. "Other departments impacted include payroll and health care benefits," Farraj explained. "The payroll department is obviously impacted anytime an employees' wages are at issue. If a National Medical Support notice (NMSN) is received as part of an employee's child support obligation, then the employers' health care benefits department will also be impacted by a wage garnishment order. The NMSN may instruct the benefits department to enroll the child in the health care plan (if one is available). Once the child is enrolled, the payroll department must make the appropriate deductions for employee contributions required under the health care plan. Payroll must ensure that the total deductions do not exceed the maximum allowed under the Consumer Credit Protection Act or any applicable state laws."

In addition to the HR department, Legal, Compliance, and IT departments may be impacted and have to comply with the garnishment requirements.

Impact of wage garnishment on employees

According to the ADP study, the manufacturing sector has the highest percentage of companies with garnished employees at 48 percent, followed by the transportation and utilities industry at 42 percent. Companies in the professional and business services, financial activities, and education and health services industries have the lowest rate at 23 percent for each segment. Experts at ADP say this disparity suggests a possible relationship between garnishment and blue- and white-collar job categories.

ADP study statistics identify additional demographics most likely to be affected by wage garnishment:

- The highest garnishment rate is 10.5 percent among employees age 35 to 44, which is typically the age of peak debt load, child rearing and divorce.
- Garnishment rates are highest among those earning $25,000-$39,999 per year with 10 percent of these workers having their wages garnished.
- For nearly all categories of garnishments, the rates are similar for men and women with the exception of child support: 5.8 percent of male workers versus only 0.6 percent of females. This finding may reflect that more women than men have physical custody of children, and men are more likely to be required to pay child support.
- The Midwest has the highest garnishment rate at 8.9 percent of employees, compared to the Northeast, which has the lowest rate at 4.9 percent. This disparity may be related to a higher concentration of manufacturing companies being located in the Midwest.

According to Farraj, employees often find wage garnishment embarrassing and shameful because the courts have intervened and employers are now involved. "Employees may also feel like they don't work for themselves anymore and instead work to pay off the organization they owe money to," she said. "To support those employees, it's important for companies to become proactive. One way to do so is by making a financial wellness expert available to provide counsel. And, in some cases, tax education may help employees successfully lower tax debts."

Looking ahead

"Many of us know someone who either pays or receives child support. As we look at ways to improve and streamline the process, employers will continue to be the largest contributor in ensuring that child support is being withheld," Farraj explains. "Wage withholding has become a common way to ensure outstanding obligations are being paid. By taking the payment directly from the employee's paycheck and sending to the proper recipient, employers are providing a benefit to their employee and to those to whom the debt is owed."

Farraj identifies one wage garnishment trend to keep an eye on as being the movement to electronic, especially as agencies look to automate their process. "For child support orders, there are currently 32 states that have implemented the option to send employers electronic income withholding orders," said Farraj. "As more states adopt this electronic process, it is likely that this may become a mandate for some employers, which will require IT investment."■

WAGES

Compensation programs falling short at U.S. employers

Despite the importance of pay when it comes to attracting and retaining employees, companies are falling short in the delivery of their base pay and annual incentive programs, according to analysis of research from Towers Watson. Further, while the competition for talent is heating up, companies are not differentiating pay for their best performers as much as in recent years, and some continue to provide annual bonuses to employees who don't meet performance goals.

"Pay really matters to employees when they make decisions about whether to join or stay with a company," said Laura Sejen, managing director, Rewards, at Towers Watson. "But simply offering a competitive salary and annual bonus is not enough to win the war for talent. Employees believe that employers are falling short in how pay decisions are made and that there is much room for improvement."

Despite awarding better-than-target bonuses and higher merit increases to their best performers, many companies are still not providing enough differentiation in their incentive programs for them to be effective.

Consider these findings from the Towers Watson Global Workforce Study:

- Only one-half (50 percent) of employees believe they are paid fairly compared with other people in similar positions in their organizations.
- Fewer than six in 10 employees (59 percent) say their company does a good job of explaining their pay programs.
- Less than half (40 percent) report a clear link between pay and performance.
- Only one-half (50 percent) of employees say their managers are effective at fairly reflecting performance in their pay decisions.

Meanwhile, employers give themselves middle-of-the-road ratings on the effectiveness of their base pay programs, although they believe they are more effective at delivering annual incentives. According to the Towers Watson Talent Management and Rewards Survey, about a third of U.S. employers (35 percent) say their employees understand how base pay is determined, and even more (61 percent) say employees understand how their annual bonuses are determined. Roughly four out of 10 (38 percent) say managers execute their base programs well, while 53 percent indicate that managers execute their annual incentive programs well.

In a separate survey, Towers Watson Data Services found that U.S. employers are planning to give pay raises that will average 3 percent in 2015 for their exempt non-management (*e.g.,* professional) employees. That is only slightly larger than the average 2.9 percent increase workers received in each of the past two years. Meanwhile, annual bonuses are expected to fall short of target, the fourth consecutive year employers are unable to fully fund their annual incentive pools. However, while star performers are expected to receive significantly larger pay raises and above-target annual bonuses, employers are differentiating less for performance compared with previous years.

Exempt workers who received the highest performance ratings were granted an average salary increase of 4.5 percent this year, about 73 percent greater than the 2.6 percent increase given to workers receiving an average rating. Three years ago, the best-performing workers received raises that were 80 percent greater than raises given to average workers.

The survey noted that pay differentiation for annual bonuses is narrowing as well. The top 10 percent of employees are expected to receive bonuses that are 25 percent larger than those given to employees who met expectations. In 2010, those same top performers received bonuses that were 30 percent larger than those of workers who met expectations. Interestingly, almost one-third (30 percent) of employers plan to give bonuses to workers who failed to meet performance expectations, an increase from last year, when nearly one-fourth gave bonuses to employees with the lowest ranking.

"Despite awarding better-than-target bonuses and higher merit increases to their best performers, many companies are still not providing enough differentiation in their incentive programs for them to be effective. In fact, it appears that the extent of differentiation has declined in the past few years. This is a missed opportunity not just for recognizing top performance and improving the employment deal for this segment of the workforce, but also for creating incentives for improved productivity across the entire employee population," said Sejen.■

Source: *Towers Watson.*

BULLYING

Workplace bullies don't discriminate; all employees at risk

Twenty-eight percent of workers report they have felt bullied at work — nearly one in five (19 percent) of these workers left their jobs because of it. While the prevalence is higher among certain minorities and workers with lower incomes, a new CareerBuilder study finds that workers in management roles, those with post-secondary education and other workforce segments are not immune to bullying. The nationwide survey, which was conducted online by Harris Poll on behalf of CareerBuilder from May 13 to June 6, 2014, includes a representative sample

of 3,372 full-time, private sector workers across industries and company sizes.

"One of the most surprising takeaways from the study was that bullying impacts workers of all backgrounds regardless of race, education, income and level of authority within an organization," said Rosemary Haefner, vice president of Human Resources at CareerBuilder. "Many of the workers who have experienced this don't confront the bully or elect not to report the incidents, which can prolong a negative work experience that leads some to leave their jobs."

Bullying among minorities. Minorities continue to face challenges in being treated fairly and equally in the workplace, according to the study. Forty-four percent of physically disabled workers have felt bullied at the office. Thirty percent of Lesbian, Gay, Bisexual and Transgender (LGBT) workers shared this sentiment.

Comparing genders, female workers were significantly more likely to experience bullying at work (34 percent) than their male counterparts (22 percent).

Comparing racial segments, minorities were not the only ones to experience strong-arming at the hands of co-workers or the boss. Twenty-seven percent of African American workers and 25 percent of Hispanic workers said they have been bullied at work compared to 24 percent of Caucasian males.

Bullying at work today. Of those who reported being bullied at some point in their careers, nearly one in four (24 percent) said the bullying is taking place right now in their present jobs. Surprisingly, bullied workers in management roles were the most likely to report this. While high school graduates who have not received any further education had a higher tendency to feel pressured by a bully, nearly one in four workers (23 percent) who have been bullied and have bachelor's degrees or higher reported that the bullying is taking place in their present jobs. The percentage of workers earning less than $50,000 annually who said they are being bullied was nine percentage points higher than those earning $50,000 or more.

Of those who reported being bullied at some point in their careers, the percentages that said that they are currently being bullied break down as follows:

Job level

- Management (manager, director, team leader, vice president and above) — 27 percent;
- Professional and technical — 21 percent; and
- Entry level/administrative and clerical — 26 percent.

Highest level of education attained

- High school graduate — 28 percent;
- Associate's degrees — 21 percent; and
- Bacherlor's degree or higher — 23 percent.

Compensation level

- Earning less than $50,000 —– 28 percent; and
- Earning $50,000 or more – 19 percent.

Who are the bullies? Of workers who felt bullied, 45 percent said the main culprit was the boss while 25 percent said the person was higher up in the organization, but not the boss. Forty-six percent pointed to a co-worker. More than half (53 percent) of workers who were bullied said the aggressor was someone older while 25 percent were bullied by someone younger. Most of the situations involved one person, but nearly one in five workers (19 percent) who were bullied said the incidents took place in a group setting where more than one person partook in the bullying. Comparing the public and private sectors, workers in government were nearly twice as likely to report being bullied (47 percent) than those in the corporate world (28 percent).

Bullying methods. "The definition of bullying at work will vary considerably depending on whom you talk to," Haefner added. "It's often a gray area, but when someone feels bullied, it typically involves a pattern of behavior where there is a gross lack of professionalism, consideration and respect – and that can come in various shapes and sizes. Whether it's through intimidation, personal insults or behavior that is more passive-aggressive, bullying can be harmful to the individual and the organization overall."

Respondents reported a number of ways they felt bullied while on the job, including:

- Falsely accused of mistakes he/she didn't make — 43 percent
- Comments were ignored, dismissed or not acknowledged — 41 percent
- A different set of standards or policies was used for the worker — 37 percent
- Gossip was spread about the worker — 34 percent
- Constantly criticized by the boss or co-workers — 32 percent
- Belittling comments were made about the person's work during meetings — 29 percent
- Yelled at by the boss in front of co-workers — 27 percent
- Purposely excluded from projects or meetings — 20 percent
- Credit for his/her work was stolen — 20 percent
- Picked on for personal attributes (race, gender, appearance, etc.) — 20 percent

Confronting the bully. Nearly half (48 percent) of workers who were bullied at work took matters into their own hands and confronted the bully in an attempt to discourage it from

happening again. Of these workers, 45 percent stated they were successful in stopping the bullying while 44 percent said it made no difference and 11 percent said the situation worsened. Nearly one-third (32 percent) reported the bullying to their Human Resources department, but more than half of those who did (58 percent) said no action was taken.

Tips for dealing with a bully

CareerBuilder offers the following tips for dealing with a bully in the workplace:

- Keep records of all incidents of bullying, documenting places, times, what happened and who was present.
- Consider talking to the bully, providing specific examples of how you were treated unfairly. Chances are the bully may not be aware that he/she is making you feel this way.
- Always focus on the resolution. When sharing examples with the bully or a company authority, center the discussions around how to make the working situation better or how things could be handled differently. ■

EQUAL WAGES

Little to no progress being made on paycheck fairness

A fact sheet by the Institute for Women's Policy Research (IWPR) uses updated data released September 17, 2014, by the U.S. Census Bureau to chart the gender earnings ratio since 1960 and analyzes changes in earnings during the last year by gender, race, and ethnicity. The gender wage ratio improved slightly from 76.5 percent in 2012 to 78.3 percent in 2013, which the Census Bureau reported was not statistically significant. Moreover, an IWPR analysis finds that, if current trends are projected forward, women will not receive equal pay until 2058. This date is unchanged from last year, further indicating stalled progress in closing the gender wage gap.

"The gender wage gap has hovered around the same level for more than a decade," said IWPR President and economist Heidi Hartmann, Ph.D. "These statistically insignificant improvements in closing the wage gap do not do enough to improve the economic security of working women and the millions of families that rely on their earnings."

Overall, women's median annual earnings in 2013 were $39,157, compared with $50,033 for men. Real full-time year-round earnings for all women were 2.1 percent higher in 2013 than in 2012; Hispanic women saw the largest increase in real wages, as their earnings increased by 4.8 percent, while Asian women saw the largest decrease in real wages, with their earnings 6.5 percent lower than in the previous year. (Real earnings changed by less than 0.5 percent for white and black women.)

Persistent earnings inequality for working women translates into lower lifetime earnings, less family income, and more poverty in families with a working woman. According to a recent regression analysis of federal data by IWPR, the poverty rate for working women would be cut in half if women were paid the same as comparable men. The IWPR says nearly 60 percent (59.3 percent) of women would earn more if working women were paid the same as men of the same age with similar education and hours of work.

A lack of transparency about pay prevents many women from knowing that they are being paid less than their male counterparts. IWPR's research has found that more than half of working women are either prohibited or strongly discouraged from discussing their pay with their colleagues. The gender wage gap in the federal government—with high levels of pay transparency—is only 11 percent, compared with 22 percent nationwide.

The need for federal legislation. "Improved public policies—such as increasing the minimum wage, ensuring access to paid family leave and paid sick days for all workers, and improving pay transparency at work—would go a long way in accelerating progress for women and the families that rely on their earnings," said IWPR Vice President and Executive Director Barbara Gault, Ph.D.

For years, politicians have been considering a measure that, if enacted, would amend the Equal Pay Act to revise enforcement remedies and existing exceptions to prohibitions against sex discrimination in the payment of wages. According to its sponsors, S. 2199, the Paycheck Fairness Act, would provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex. However, in September, the legislation once again failed to see the light of day. Despite efforts to breathe life back into the bill, it fell short of the 60 votes required to cut off debate and let the Senate take an up-or-down vote on the measure. The 52-40 ballot fell along party lines with Democrats voting for cloture and Republicans voting against the move. One Independent senator voted for cloture and another opposed it. Six Republican and two Democrat senators did not participate in the voting. This is just another in a string of failed attempts over the past several years to get the traction required to put the proposal on track to become law. ■

HR NOTEBOOK

Real average hourly earnings rise 0.4% in August

Real average hourly earnings for all employees increased by 0.4 percent from July to August, seasonally adjusted, the U.S. Bureau of Labor Statistics (BLS) reported September 17. This increase stems from a 0.2 percent increase in the average hourly earnings and a 0.2 percent decrease in the Consumer Price Index for All Urban Consumers (CPI-U). The change in real average hourly earnings is the largest 1-month percentage increase since November 2012. Real average hourly earnings increased 0.4 percent, seasonally adjusted, from August 2013 to August 2014.

CPI for all items drops 0.2% in August

The Consumer Price Index for All Urban Consumers (CPI-U) decreased 0.2 percent in August on a seasonally adjusted basis, the BLS reported September 17. Over the last 12 months, the all items index increased 1.7 percent before seasonal adjustment.

The seasonally adjusted decline in the all items index was the first since April 2013. The indexes for food (+0.2%) and shelter rose, but the increases were more than offset by declines in energy indexes (-2.6%), especially gasoline. The energy index fell 2.6 percent, with the gasoline index declining 4.1 percent and the indexes for natural gas and fuel oil also decreasing.

Unemployment rate changes little in August, holding at 6.1

Total nonfarm payroll employment increased by 142,000 in August, and the unemployment rate was little changed at 6.1 percent, the BLS reported September 5. Job gains occurred in professional and business services (+47,000) and in health care (+34,000). Also up in August, employment in food services and drinking places (+22,000) and construction (+20,000). Retail trade employment was little changed (-8,000). Manufacturing employment was unchanged in August. Similarly, employment in other major industries, including mining and logging, wholesale trade, transportation and warehousing, information, financial activities, and government, showed little change over the month.

Over the year, the unemployment rate and the number of unemployed persons were down by 1.1 percentage points and 1.7 million, respectively. The number of long-term unemployed (those jobless for 27 weeks or more) declined by 192,000 to 3.0 million in August. These individuals accounted for 31.2 percent of the unemployed. Over the past 12 months, the number of long-term unemployed has declined by 1.3 million.

OPEN ENROLLMENT

Workers spend less than 15 minutes on benefits selection

Selecting the right health insurance plan may be one of the most important decisions Americans will make this open enrollment period, yet many workers do very little research on their health benefits. In fact, 41 percent of employees spent 15 minutes or less researching their benefit options during the 2013 open enrollment season; and nearly a quarter (24 percent) spent five minutes or less according to the newly-released *2014 Aflac Open Enrollment Survey*, conducted in June and July 2014 among 2,100 U.S. consumers. In contrast, American workers typically spend more time:

- Researching for new car purchases — 10 hours;
- Planning family vacations — 5 hours;
- Shopping for new computers — 4 hours; and
- Deciding what television to buy — 2 hours.

Considering that employees pay an average of $4,565 a year in premiums for an employer-sponsored health plan which helps protect their financial well-being as well as those of their loved ones, the 15 minutes allocated to benefits selections pales in comparison to time spent researching popular consumer purchases.

Common enrollment mistakes. Those who don't set aside time to research their insurance options may make hasty benefits decisions and end up wasting money. The survey found that the majority (90 percent) of workers are "auto-enrolling" or keeping the same benefits year after year. And, 4 in 10 (42 percent) workers waste up to $750 each year on mistakes with their insurance benefits. The survey also revealed:

- Most workers (73 percent) only sometimes, rarely or never understand everything that is covered by their policy.
- More than 6 out of 10 workers (64 percent) sometimes, rarely or never understand changes in their coverage.
- 64 percent disagree or only somewhat agree that they are more prepared for open enrollment this year compared to last year. ■

Source: *Aflac.*