HR COMPLIANCE LIBRARY
Ideas & Trends

MARCH 4, 2015
ISSUE NO. 768

INSIDE

HEALTH MANAGEMENT

Engaging remote workers in wellbeing with technology

Healthcare is one of the biggest cost burdens for U.S. employers. Experts at Keas, a provider of fully-integrated health management experiences, say engaging remote employees is an often overlooked key to reducing that expense. And how are remote workers to be engaged? According to Missy Jaeger, vice president at Keas, the key is technology. This is because technology makes it possible for an *entire* population to be engaged.

Participating in an interview with Wolters Kluwer Law & Business, Jaeger said, "At Keas, we believe it is important to focus on a robust health management solution because it addresses the core problems employers are facing in employee health today—their health and benefits programs aren't being used or adding value to employees. The reality is this is not a health challenge. Rather, it is a marketing and IT challenge. It is especially important to engage remote workers who are not able to access on-site health programs and who are not attending office-based health programs. Creating an online and mobile, highly-engaging experience that employees—both onsite and remote—can participate in drives utilization of employee health programs and adds great value to both employees and their employers."

Add technology to traditional wellness programs

"Traditional wellness programs were not designed to engage remote or flextime workers," explained Jaeger. "The problem with health management as a whole is that it was designed for a workforce that doesn't exist today. Remote employees want to engage with their benefits and health programs as much as on-site employees, but often traditional wellness programs are not set up to engage remote workers."

In many cases, Jaeger continued, remote workers may not even know about their health and wellbeing benefits. "For instance, an employer may offer a telemedicine or health coaching benefit, but a remote employee may be unaware this benefit is available to them. We used to do everything by phone, or paper and mailers. Technology innovation today makes it possible to be much more engaged with remote employees using wearable devices and mobile health applications. We can also now create much more personalized and relevant health experiences based on preferences, demographics and other data we didn't have access to in the past."

Stumbling blocks. Jaeger explained that there are three stumbling blocks to getting remote workers involved in their health programs. They are:

1. benefits rollout;
2. communications; and
3. employee engagement in their own health.

Wolters Kluwer

Traditional wellness programs are disconnected from both the employees' daily experience and their benefits programs, said Jaeger. "Once benefits are integrated into a centralized hub for employee access, the employer must create an ongoing multi-channel direct marketing program," she said. This is especially important to drive engagement by a remote workforce. The problem is that HR leaders who are responsible in driving engagement in health programs aren't trained marketers. They shouldn't have to be."

Solutions are available, however, to assist in this endeavor. Experts, like those at Keas, can assist HR in focusing on the marketing piece of the puzzle, constantly optimizing how all employees are reached and kept engaged in their own health. Once the direct marketing challenge is overcome—*i.e.,* employee traffic to an online health portal starts to flow—HR will need to give employees a reason to come back.

Driving engagement. According to Jaeger, the best way to drive engagement in health management programs for both on-site and offsite employees is through a highly-engaging online portal. "Offering a social network that highlights your employee health engagement and allows individuals to post pictures, talk about their health activities, join teams, and compete for rewards, is one way to engage remote employees and make them feel more a part of their company culture," she said. "This creates a powerful support system within the population, and especially among remote workers. In addition, the features are provided via mobile so the individual can engage at a time that is convenient and not necessarily only when they are at a desk. Additionally, leveraging direct marketing best practices for remote workers—keeping the employee and their dependents engaged via email and postal mail communications—creates high levels of engagement in health across an entire employee population."

Jaeger also recommended competition. "Competition works very well," she said. "Give employees a goal, let them form teams and watch how peer pressure, in a positive way, can drive engagement. This is just one of innumerable ways to drive engagement across remote workforce populations."

One program will do. When asked whether an organization should offer one wellbeing program for onsite workers and another for off, Jaeger responded with an emphatic "No! This is a recipe for disaster in reaching your remote workforce population."

"One of the many benefits of an integrated health management program is that it helps create a more engaged and connected company culture. While there may be some programs only available to on-site employees, the goal any HR leader should have is to create a health management program that offers value to all employees, no matter where they are based," Jaeger explained. "HR should put all their eggs in one basket here and focus on building the best, most integrated health and benefits experience for employees."

The key, once again, is technology. "With technology, you can still offer specific programs or competitions for remote employees within the context of an integrated health management platform," Jaeger said. "If you try to build two different programs it's very likely your remote worker program will pale in value in comparison to your on-site programs. The less value the program offers employees, the less likely they are to engage." ■

LOVE CONTRACTS

A look at the potential value of developing workplace love contracts

Whether or not Valentine's Day is a "Hallmark holiday" created by big business to make money is an interesting debate better left for another time and source. What does deserve discussion here, however, is the importance of a SHRM survey, which shows that 43 percent of HR professionals report romances in their workplaces. The holiday or "holiday" for 2015 has passed, but potentially detrimental issues remain. Romance is in the workplace—and it's not just there during February. Claims of discrimination, unfair treatment and sexual harassment are among the issues employers may face

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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.

if they don't have a "love contract," or a policy for managing romantic relationships at work, says XpertHR.

"Office romances are often inevitable and they can cause complications for employers, who need to ensure proper workplace conduct and make sure all employees are treated fairly," says Beth Zoller, Legal Editor, XpertHR. "Employers should evaluate the risks related to romantic relationships in the workplace, adopt proper policies to protect the employer's interests, and set parameters for dating and close personal relationships at work."

A love contract is a document signed by employees involved in a romantic relationship setting parameters for their relationship in the workplace. By signing the love contract, the employees agree that the romantic relationship is voluntary and consensual, they will refrain from retaliation, and they will not sue the employer for sexual harassment. A love contract may also outline the employer's expectations of what is considered appropriate and inappropriate workplace conduct. Love contracts generally address a grievance process and eliminate the possibility of a sexual harassment suit when the relationship ends.

XpertHR recommends the following for employers who want to maintain a fair and professional workplace:

- Consider the risks of employee relationships—Conduct that was welcome during the course of the relationship may be considered unwelcome when the relationship ends, resulting in a sexual harassment claim.
- Understand the dangers of supervisor-subordinate relationships—Other employees may claim unfair treatment if the supervisor inappropriately favored the employee he or she was romantically involved with, or a rejected lover may claim that the supervisor retaliated against him or her with a poor performance review and undesirable work assignments after the relationship ended.
- Implement policies that will protect the employer's interests—In addition to implementing strict policies against discrimination, harassment and retaliation, an employer should consider implementing other policies such as a workplace dating policy or love contract that will protect the employer's interests. A love contract outlines the employer's expectations of what is considered appropriate and inappropriate conduct for the workplace.
- Provide training to all employees and supervisors—Training should address what is considered appropriate and inappropriate behavior for the workplace as well as guidelines regarding behavior that is considered discriminatory, harassing and/or retaliatory.
- Create a complaint procedure and respond to complaints—Such a system will provide employees with more than one individual to bring a complaint to and ensure that the employee feels comfortable notifying the employer of his or her concerns regarding unfair treatment or improper conduct.
- Manage workplace relationships—The employer may want to consider transferring either the supervisor or subordinate so as to avoid a direct reporting relationship and a potential conflict of interest. ■

HR QUIZ

Employer disposal of background check information

Q Issue: *One of your New Year's resolutions is to clean up your office. Can you throw away old background information your company has obtained, including application forms and consumer reports?*

A Answer: Yes, but timing matters. According to the Equal Employment Opportunity Commission (EEOC), any personnel or employment records you make or keep (including all application forms, regardless of whether the applicant was hired, and other records related to hiring) must be preserved for one year after the records were made or after a personnel action was taken, whichever comes later. The EEOC extends this requirement to two years for educational institutions and for state and local governments. The Department of Labor also extends this requirement to two years for federal contractors that have at least 150 employees and a government contract of at least $150,000. If the applicant or employee files a charge of discrimination, you must maintain the records until the case is concluded.

The Federal Trade Commission requires that once you've satisfied all applicable recordkeeping requirements, you may dispose of any background reports you received. However, the law requires that you dispose of the reports — and any information gathered from them — securely. This can include burning, pulverizing, or shredding paper documents and disposing of electronic information so that it can't be read or reconstructed.

Source: *EEOC Publication: Background Checks What Employers Need to Know, http://www.eeoc.gov/eeoc/publications/background_checks_employers.cfm; Disposing of Consumer Report Information? Rule Tells How, http://www.ftc.gov/tips-advice/business-center/disposing-consumer-report-information-rule-tells-how.*

SALARIES

Majority of HR executives are in favor of salary transparency

With more attention being paid to issues of pay—*i.e.,* CEO salaries, minimum wages, and the ever-widening income gap—one workplace policy is likely to become an increasingly hot topic in the latter half of this decade: salary transparency. While salary transparency is still far from widespread, the idea of instituting an open-book policy on what every employee earns is starting to gain traction. In fact, one new survey shows that more than half of human resources executives would welcome policies shedding light on salaries. In the survey conducted by Challenger, Gray & Christmas, Inc., 55 percent said that companies should practice some form of salary transparency. Meanwhile, 39 percent of those surveyed were opposed to opening the books on salaries. The survey was conducted at the end of 2014 among approximately 100 human resources professionals. Blind responses were submitted from a pool representing a variety of industries, regions and company sizes.

"There are countless pitfalls related to practicing salary transparency, chief among them the fact that even minor discrepancies between co-workers' salaries can lead to resentment and conflicts over who earns what," said John A. Challenger, chief executive officer of Challenger, Gray & Christmas. "Of course, there could be a number of reasons two individuals in the same positon earn different salaries. The person with the higher salary may possess a unique or in-demand skill or it may have taken a higher salary offer to lure the worker from his or her previous employer. It simply may be that the higher earner was a better negotiator. Even if companies share the reason for a particular worker's higher salary, it may not quell the dissatisfaction among those earning less. The resulting acrimony could sap a department's morale and productivity and lead to increased turnover."

Some companies have found a way around this potential source of conflict by not sharing individuals' salaries, but instead sharing information about the range of salaries at each position, along with information about what employees can do to move toward the higher end of that scale. North Shore-LIH Health System in New York, which was featured in a recent *HR Magazine* article on the issue of salary transparency, maintains varying levels of transparency depending on category of worker. For example, its union workers' salaries are fully public under collective bargaining. Meanwhile, nonunion workers only know the salary range for each position.

In the Challenger survey, 42 percent of respondents preferred a policy that provides information on salary ranges for departments and/or job categories. About 13 percent said employees should know exactly how much everyone at the company earns. That is the policy practiced by New York-based business analytics firm SumAll, also cited by *HR Magazine*.

"Many believe that sunshine is the best disinfectant and that providing full exposure to everyone's salary will not only provide employees with information that will help them determine their value to the company, but will also force employers to really think about salaries and possibly fix inequities that have become part of the system," said Challenger.

Ultimately, the decision of whether to institute a policy of salary transparency, the level of transparency, and the success of that policy, is likely to be determined by the culture of the company, according to Challenger. "Organizations need to take a long and honest look at the culture they have created. If you have a company where there is a long history of distrust, animosity, perceptions of favoritism, etc., simply opening up the books on salaries is not going undo all of that. In fact, it will probably just make matters worse. However, if you have a highly collaborative workforce, engaged workers, open-door policies, and a bottom-up management style, then salary transparency is simply a natural extension of the culture already in place," Challenger noted. "It's not that companies can't change their culture to be more conducive with salary transparency. However, that type of deep-rooted change takes time and it certainly cannot start with divulging everyone's salary."

Clearly, with more than half of the surveyed human resources executive in favor of salary transparency, it is an idea that is gaining popularity. More companies are likely to explore, experiment with and implement such policies over the next five years. This will, in turn, help establish models to follow as well as best practices. ■

ACCOMMODATIONS

Animals in the workplace as a reasonable accommodation

Matthew is a pretty good employee, with the exception of a few emotional outbursts in his tenure. You have disciplined him for yelling at work a couple of times but he performs his job duties well. Recently, another employee told you that Matthew has been bringing his dog to work and hiding it under his desk. Although the other employee does not mind, she mentioned that the dog is usually unleashed and once urinated in the office (which Matthew promptly

cleaned up). When you approach Matthew about not bringing his dog to the office, he responds "I have a service animal card, so I can bring him to the office." Should or must Matthew be allowed to bring his dog to the office?

This situation is becoming more and more common as animals, usually dogs, are used as therapy companions for an increasing variety of medical conditions such as post-traumatic stress disorder, depression, adjustment disorder, and anxiety. Employers should interpret requests by employees to bring animals to work as reasonable accommodation requests under the Americans with Disabilities Act (ADA) and engage in the interactive process to determine whether the accommodation may be granted or denied.

Service animals under the ADA. Title I of the ADA, which protects disabled individuals with respect to employment, does *not* require employers to allow all service animals or therapy animals in the workplace. Instead, Title I requires the employer and employee to engage in the interactive process to determine whether the presence of the animal, as a reasonable accommodation, will allow the individual to perform the essential functions of his or her position. Fundamentally, if the presence of the animal is not an accommodation that would allow the individual to perform an essential function of his or her job, then the accommodation request need not be granted.

Title III of the ADA, which protects disabled individuals with respect to public accommodations, requires places of public accommodation to modify policies, procedures, and practices to allow service animals. The regulations define a service animal as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability." Notably, "other species of animals, whether wild or domestic, trained or untrained, are not service animals." The "work or tasks [performed by the service animal] must be directly related to the individual's disability." Finally, the regulations specifically exclude from service animal work or tasks any "crime deterrent effects of the animal's presence and the provision of emotional support, well-being, comfort, or companionship." Accordingly, the regulations implementing Title III of the ADA significantly limit the class of protected service animals based on their species (dog) and function (work and tasks directly related to the individuals' disability).

Significantly, Title III and its implementing regulations on service animals do not apply to employment situations. Employers may not rely on the dog-only definition of service animals under the Title III regulations. Yet, employees often point to the animal's status as a service animal and federal or state law requiring service animals to be allowed in places of public accommodation.

Handling requests to bring animals to work

The request to bring a therapy animal to work, based on a medical condition, is a request for reasonable accommodation and must be treated like another such request. Unless the need for the animal is obvious (for example, a seeing-eye dog), employers should request medical documentation from the employee's health care provider regarding the need for the animal in the workplace. Employers may draft questions to the health care provider to determine the employee's specific accommodation needs. For example, does the employee need to bring the animal for the full day, every day? Does the employee need to be with the animal at all times, or may the employee leave the animal at or outside an area of the workplace while performing some tasks?

Employers should also explore other accommodation options that would allow the employee to perform his or her essential job functions and enjoy equal employment opportunities without bringing the service animal to work. For example, if the animal assists the employee with managing stress, determine what environmental stressors may be modified to allow the employee to work without the service animal. This could involve shift changes, work station changes, or removing marginal job functions that compound the employee's stress. Alternatively, the employer may allow the employee an extended meal or rest break time during the day to spend time with the animal at home rather than bringing the animal to work.

Finally, employers and employees should be prepared to reevaluate the animal's presence at work after a reasonable period of time. Both parties should be willing to explore modifications that will allow the accommodation to continue. Also, if the employee's medical documentation provides a period of time for the accommodation, employers should require the employee to provide additional certification at the end of that period if he/she desires to continue bringing the service animal to work.

Determining whether service animals are an undue hardship

The circumstances in some places of employment and job positions make animal-at-work requests unreasonable (such as food preparation staff or some medical personnel). Other employers must review all of the circumstances of the situation. For example, are there co-workers in the office area who are allergic to animals and, if so, can arrangements be made to accommodate both parties? Alternatively, the animal itself may implicate undue hardship issues—is the animal a large dog or aggressive breed that will make co-workers or vendors/customers/ clients uncomfortable? Or, is the animal a non-traditional ther-

apy animal (a snake, ferret or loud bird) that would be disruptive to the workplace?

One manner in which to evaluate undue hardship is to seek information on whether and how the animal is trained. The employee may be able to provide documentation regarding the animal's ability to remain quiet and calm in the face of workplace noise and other distractions.

Setting boundaries

If an employer grants the accommodation request, identify upfront the boundaries to which the employee must adhere. For example:

- Clearly outline, based on the medical documentation, when the animal is allowed at work.
- Identify where the animal is allowed in the work area.
- Set out requirements for the animal's presence such as a bed or pad on which it will lay (or other enclosure in which the animal will be), that the animal must be leashed or otherwise restrained, and where the animal is to relieve itself.
- Identify requirements for control of the animal such as when the employee must be in direct supervision of the animal and limitations on noise that the animal may make in the workplace.
- State that the animal's presence is an accommodation for a medical condition and the employee should not be (except for a first introduction) taking the animal around for co-worker interaction.
- Notify the employee that his or her performance requirements will not change, and that, if the animal's presence (separate from the disability) causes significant inefficiency in the employee's performance, then the accommodation will be reevaluated.

The employee should be aware of the boundaries of the accommodation and action should be taken when the boundaries are exceeded. Although employers may not retaliate against employees for their accommodation requests, employers should have rules regarding the animal's presence in the workplace that are uniformly enforced.

Additionally, the employer should avoid allowing the animal to become the office pet. The animal's presence is an accommodation for a medical condition and should be treated that way. Although employers must keep the details of an employee's medical condition confidential, they should consider notifying co-workers that the animal is in the workplace for service purposes and that should not be approached without the consent of the employee.

Additional resources

The federal Department of Labor, Office of Disability Employment Policy, provides assistance to employers with accommodating workplace modification requests from disabled employees. This service, called the Job Accommodation Network (JAN), provides information and free counseling on specific employer questions by telephone, live chat, and email. JAN is available at www.askjan.org, (800) 526-7234, and http://askjan.org/JANonDemand.htm (email submission). For information specific to accommodating animals in the workplace, see: www.askjan.org/media/downloads/serviceanimalsintheworkplace.pdf.

Source: *"Notes On: Making Room for Fido at Work: Animals in the Workplace as Reasonable Accommodations," written by James H. Kizziar Jr. and Amber K. Dodds, was originally published as a Strategic Perspective in the February 5, 2015 Employment Law Daily, a Wolters Kluwer Law & Business publication.* ■

RECRUITING

Campus recruiting taking on heightened significance

College campus recruiting is playing a greater role in many organizations, yet many of these same organizations could do more to drive innovation and impact in their campus programs. Those are the findings of a new research report from Bersin by Deloitte, "Developing an Effective Campus Recruiting Program."

The findings show that campus hires can provide organizations with a consistent pool of workers in today's talent-constrained global business world. More than 70 percent of large organizations hire interns to fill full-time positions. Campus recruitment can deliver additional strategic benefits by helping organizations manage talent gaps and elevate their profiles as potential employers on campuses. It also can bring fresh and diverse perspectives to the organization on topics ranging from technology to contemporary workplace policies. However, simply setting up a table at college recruiting events is no longer enough to sustain an effective campus program.

"Given the scarcity of available candidates for many positions today, more organizations are making well-rounded campus recruiting programs a significant component of their talent acquisition functions," said Robin Erickson, vice president, talent acquisition research, Bersin by Deloitte, Deloitte Consulting LLP. "There are compelling business reasons for increased commitment to these programs. For example, according to the National Association of Colleges and Employers, campus programs boast high retention rates

with almost 70 percent of campus hires remaining with an organization after five years. This is good news, given that employee turnover can be costly. But to reap the benefits of campus recruiting, organizations recognize they need to take a more strategic approach and demand measurable results."

For example, one global organization found that a new campus recruiting program was not converting enough MBA interns into full-time hires, resulting in lost return on investment. A root-cause analysis showed that while interns reported having positive experiences, they wanted a more structured internship experience. The organization subsequently implemented several changes. These included individual work plans that provided interns with opportunities to develop professional skills in their functional areas, a structured group project, and networking events to give interns exposure to different areas of the business. With these few enhancements, the organization realized a 45 to 50 percent increase in the offer-to- acceptance ratio during the next year and set the foundation for future innovation across the organization's talent acquisition function.

"This illustration demonstrates that a well-run recruiting program requires year-round commitment, planning, and support from the business," said Erickson.

To help organizations assess the current state of their campus recruiting programs and identify opportunities to develop a strategic approach, the research provides six critical steps:

1. **Create a compelling business case.** Present convincing business reasons for increased investment and commitment to campus programs, such as how they can tap rich talent pools, reduce turnover, and help build leadership pipelines. Presenting a clear vision for your recruiting efforts is critical to creating an effective program.
2. **Identify stakeholders and decision-makers.** A large number of individuals need to champion, support and ultimately manage program development and implementation. Executive buy-in and support are likely to contribute to the overall success of a campus program.
3. **Develop strategy and tactics.** A campus recruiting program may satisfy a variety of needs, from traditional internships and cooperative programs (traditionally at least three work terms alternated with school terms) to entry-level positions and even experienced hiring. Organizations should align their campus recruiting initiatives with their overall talent acquisition strategy and develop a work plan.
4. **Determine a budget.** Some campus recruiting programs fail to launch due to lack of financial support from leadership. Set a realistic budget and look for ways to optimize efforts by using niche job posting sites, hosting virtual job fairs, and partnering with local universities.
5. **Align resources.** As the need to hire more skilled entry-level staff and interns in competitive fields grows, organizations should look to individuals from the business, former interns, and college alumni networks to help align campus strategies and program execution.
6. **Ensure sustainability.** Delivering a sustainable program requires anticipating emerging business needs and continued identification of the successes and shortcomings of a current campus recruiting program. Assessing the ROI and value of the program will likely be the truest measure of a program's success. ■

Resources available for complying with new LGBT regs

In response to federal contractor requests, the OFCCP has created a non-exhaustive directory of organizations and other entities that offer resources and guidance to employers around issues related to creating an inclusive workplace for lesbian, gay, bisexual, and transgender (LGBT) employees. These resources are intended to assist federal contractors in complying with a final rule published last December on regulations to implement an executive order (EO) banning discrimination against LGBT workers by federal contractors. The directory is on the OFCCP website at http://www.dol.gov/ofccp/LGBT/LGBT_resources.html.

The final rule derived from EO 13672 is scheduled to take effect on April 8, 2015, and will apply to federal contractors who hold contracts entered into or modified on or after that date. Contractors are not required to conduct any data analysis with respect to the sexual orientation or gender identity of their applicants or employees and it does not require contractors to collect any information about applicants' or employees' sexual orientation or gender identity. However, it does not prohibit contractors from asking applicants and employees to voluntarily provide this information, although doing so may be prohibited by state or local law. In any event, the rule prohibits contractors from using any information gathered to discriminate against an applicant or employee based on sexual orientation or gender identity.

The new directory posted on the OFCCP website includes information from both the public and private sectors and will be updated periodically. While guidance developed by federal agencies for public sector use may not have direct applicability to private sector employers, some employers may still find it informative, the agency notes. ■

HR NOTEBOOK

Unemployment changes little in January

Total nonfarm payroll employment rose by 257,000 in January, and the unemployment rate was little changed at 5.7 percent, the U.S. Bureau of Labor Statistics reported February 6. The number of unemployed persons, at 9.0 million, was little changed. January job gains were seen, however, in retail trade (+46,000), construction (+39,000), health care (+38,000), financial activities (+26,000), and manufacturing (+22,000). Job gains were also seen in professional and technical services (+33,000) and food services and drinking places (+35,000).

New guide offers employer best practices related to people with disabilities

On February 3, the White House announced a new guide for employers that compiles key federal and federally funded resources related to the employment of people with disabilities. It also provides a collection of best practices for employers. The resource guide, Recruiting, Hiring, Retaining, and Promoting People with Disabilities, gives employers plain-language technical assistance tools in a question-and-answer format.

The guide is the product of the Curb Cuts to the Middle Class Initiative, a federal interagency effort to increase equal employment opportunities and financial independence for people with disabilities. The initiative is aimed at coordinating and leveraging existing resources across the federal government. EEOC Commissioner Chai R. Feldblum has played a leadership role in the initiative. The guide includes three best practices sections for recruiting candidates with disabilities; respecting, retaining, and promoting employees with disabilities; and providing reasonable accommodations.

H-2B petitions capped out

USCIS has received a sufficient number of petitions to reach the congressionally mandated cap on the total number of foreign nationals who may seek a visa or otherwise obtain H-2B status for the first half of fiscal year (FY) 2015, the agency has announced. No cap numbers from the first half of FY 2015 will be available in the second half of FY 2015, which begins April 1, USCIS indicated. USCIS will continue to accept H-2B petitions that are exempt from the congressionally mandated cap.

FMLA definition of spouse now includes employees in same-sex marriages

Employees in legal same-sex marriages will have the same rights to take leave to care for a spouse with a serious health condition under the FMLA—regardless of where they live—as those afforded to employees in opposite-sex marriages, under an amendment to the DOL's FMLA regulations announced on February 23. Specifically, the Wage and Hour Division will issue a final rule to adopt a "place of celebration" provision. The rule change was slated for publication in the *Federal Register* on February 25 and will take effect 30 days thereafter.

Previously, the regulatory definition of "spouse" did not include same-sex spouses if an employee resided in a state that did not recognize the employee's same-sex marriage. Under the new rule, eligibility for federal FMLA protections is based on the law of the place where the marriage was entered into. This "place of celebration" provision allows all legally married couples, whether opposite-sex or same-sex, to have consistent federal family leave rights regardless of whether the state in which they currently reside recognizes such marriages.

In supplementary information to the final rule, the DOL also notes that such a rule "reduces the administrative burden on employers that operate in more than one State, or that have employees who move between States with different marriage recognition rules; such employers will not have to consider the employee's state of residence and the laws of that State in determining the employee's eligibility for FMLA leave." Moreover, the rule is consistent with interpretations adopted by other federal agencies, allowing for greater uniformity.

Currently, reasonable documentation may take the form of either a simple statement from the employee that such a relationship exists, or documentation such as a birth certificate or court document. The DOL said that, in its view, that provision "adequately addresses the nature of the documentation that employers may require," and that "in all cases, a simple statement of family relationship is sufficient under the regulation to satisfy the employer's request." However, the employer may require that statement to be in writing.

The DOL also said that if an employee has already submitted proof of marriage for some other purpose, such as obtaining health benefits for the spouse, "such proof is sufficient to confirm the family relationship for purposes of FMLA leave." ■