

A Publication Dedicated to Employers' Current HR Issues & Solutions

The **BOTTOM** LINE

Volume 6

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KEEPING YOUR ONLINE BUSINESS INFORMATION SECURE

PROTECTING YOUR COMPANY, EMPLOYEES, CLIENTS AND CUSTOMERS AND YOURSELF

Would you willingly hop on a roller coaster that had malfunctioned earlier in the day? Or order a meal from a restaurant with a questionable sanitation grade? Most individuals, including your potential clients and customers, work only with organizations they can trust. Protecting your employees', customers' and other business partners' sensitive information is critical to your reputation and business success—and it's required by law.

Why Should You Invest in Information Security?

The federal government and several states have passed laws making it your legal obligation as an employer to safeguard all private information and data. Although there are numerous laws regulating *how* businesses must protect sensitive information, the Federal Trade Commission (FTC) recommends one standard: **Companies must maintain *reasonable* measures to protect sensitive information.** Of course, what's reasonable for your organization may not be reasonable for another. Your security practices should be based upon your company's size and resources, the nature of your business, the types of sensitive information you access and your likely risks.

Laws that could govern your business' data-security practices include:

- **The Fair Credit Reporting Act:** regulates and promotes the privacy of consumer reports, including their personal and credit information. This act may be applicable if you have conducted credit or background checks on employees.
- **Graham-Leach-Bliley Act:** includes provisions to protect consumers' personal financial information held by "financial institutions"—a term that covers many more businesses than just banks. This law governs the collection and disclosure of customers' personal financial information by financial institutions and any companies that receive this data. It also protects consumers from individuals and companies that acquire their personal financial information under false pretenses (also known as pretexting).
- **Federal Trade Commission Act:** prevents unfair competition and/or deceptive acts affecting business commerce.
- **Health Insurance Portability and Accountability Act (HIPAA):** provides federal protections for personal health information held by covered entities and gives patients rights with respect to this information. However, it permits the disclosure of personal health information needed for patient care.
- **Laws in 46 states and territories, including the District of Columbia, Puerto Rico and the Virgin Islands** require companies to notify individuals if their identifiable information has been compromised. A breach of security includes unauthorized use or disclosure of electronic data. Businesses should notify law enforcement and affected businesses to guarantee that their private business information and their employees' personal information stay protected.

State Example

Massachusetts state law requires companies operating within the state to develop a written plan detailing their measures to assess security risks; develop security policies; implement, monitor and audit security measures; and document any breach and resulting action taken. It specifically details expected measures for computer data security, and names other explicit actions like assigning employee(s) to maintain information security, training workers and overseeing third-party service providers. Massachusetts businesses were required to ensure that their policies and procedures were compliant with this regulation (201 CMR 17.00) by March 1, 2010.

The FTC's Recommendations for Data Security

While the FTC's general rule is intentionally broad to give employers flexibility in how they create and implement data-security measures, the agency recommends that employers follow five general steps:

1. Take stock

Know the information you have and who has access to it. For private information, restrict access to key personnel on a need-to-know basis only. And out of sight shouldn't mean out of mind; also consider the information you share with your vendors and business partners. Your data security is at least partially dependent on the reliability of your transaction and your partners' data-security practices (see 3).

2. Scale Down

Keep only the information the company needs. The more sensitive information your business collects, the higher your risk of a significant breach of company records.

3. Lock It

Protect your information with physical *and* electronic security. How? The FTC suggests installing a network server that allows only authorized access to data and changing the original account settings, such as the usernames and passwords that come with a new machine or software. Then change your passwords (and require employees to do the same as a matter of company policy) every 30 to 60 days, and mandate "strong" passwords made up of letters, numbers and special characters. As an added line of defense, encryption software can help limit hackers' ability to decipher the information they find, even if they are able to break into your system.

Do you have employees who work remotely?

If so, you'll need to consider the special security measures they require. Secure their computer and mobile access (for example, using a virtual private network, or VPN) to ensure information is viewed only by those logged on through the secured network. Remind traveling employees that they should use only secure wireless signals to access the Internet and to protect their laptop or tablet screens when working in crowded areas, like airports, airplanes and lobbies. Computer theft from cars is a known source of data loss for companies, so be sure your employees know to never leave their computers in their cars, even in the trunk.

4. Pitch It

When your company no longer needs private data and documents, promptly and properly remove or dispose of the information. To stay on top of your data-disposal schedule, implement a record- and document-retention policy to limit the length of time private business information is maintained. And make sure the disposal is secure; the proper disposal of information should be as fully destructive as shredding or burning printed documents to comply with legal requirements.

5. Plan Ahead

Create a plan to deal with security breaches, and then conduct regular audits to help ensure continuous data protection. This is critical for all organizations, but because of the FTC Red Flags Rule, it is especially important for financial institutions and creditors. Under the rule, financial institutions include banks, savings-and-loans institutions, credit unions and other entities that hold consumer transaction accounts. Creditors can include finance companies, automobile dealers, mortgage brokers, utility companies and telecommunications companies, to name a few. The Red Flags Rule requires these organizations to develop and implement a written program that identifies and detects the relevant warning signs ("red flags") of identity theft. The program must also describe the appropriate responses that would avoid suspicious activity. Refer to www.ftc.gov for more information. (The Red Flags Rule is a good rule to monitor, thanks to recent legislation signed into law by President Obama in December 2010 that is modifying its provisions.)

Remember that an information-security plan is effective only if your employees know about it and practice it daily.

Training employees on your data-security policies and procedures is an important step in maintaining reasonable data-protection measures.

Should Your Company Outsource Data-Security Management?

Only you can determine the most effective way for your company to protect personal information. While you can take the necessary steps to secure data using internal resources, outsourcing your information-security management is another option that allows some organizations to focus on their core competencies.

If you choose a company to manage the security of your business information, be sure to research its qualifications and performance records. Qualified outsourcing companies should be able to provide references to support their security standards. You may also consider using the help of a third party, such as Gartner and its Magic Quadrants methodology or Forrester Research and its Forrester Wave, to evaluate and select an outsourcing partner.

How ADP TotalSource® Can Help

With more company information accessible electronically, vulnerability of online data continues to rise. As the fall 2010 WhiteHat Website Security Statistics Report describes, small and medium-sized organizations respectively averaged 11 and 12 serious vulnerabilities on their websites (possibilities for hackers to exploit data). As risks increase, federal and state legislators are likely to focus on protecting consumers from fraud and identity theft. Businesses can expect laws, regulations and enforcement in this area to continue to evolve, and a Professional Employer Organization (PEO) like ADP TotalSource can help monitor the changing legislative landscape. ■



BEWARE OF THE RISKS OF BACKGROUND CHECKS

YOU WOULD THINK THAT BACKGROUND CHECKS ARE A HUMDRUM, LOW-RISK PART OF THE HIRING PROCESS. BUT YOU WOULD BE WRONG. RECENTLY, THERE HAS BEEN SIGNIFICANT LEGAL ACTIVITY IN THIS AREA OF THE LAW.

On January 19, 2011, the U.S. Supreme Court resolved years of litigation by approving NASA's background-check process for certain positions. The U.S. Equal Employment Opportunity Commission (EEOC) has sued the U.S. Census Bureau alleging that its system of criminal-background checks unlawfully discriminates against up to 100,000 blacks and Latinos because they are more likely to have arrest records than whites.

The EEOC is suing private employers, too—including a company in Maryland, alleging that it used criminal-background checks to “unlawfully deprive a class of black, Hispanic and male job applicants of equal employment opportunities.” And on December 15, 2010, the Third Circuit Court of Appeals resolved years of litigation by ruling that a job applicant who alleged that a private employer refused to hire him because it discovered via a background check that he had filed for bankruptcy seven years earlier has no discrimination claim under the federal bankruptcy code.

➤ WHAT'S GOING ON HERE?

The EEOC is leading the charge, but the plaintiffs' bar is not far behind. Because background checking is usually a “systemic practice,” if it is found to be unlawful, the damage exposure could be huge even for small- to mid-sized employers.

The EEOC also believes that criminal-background checks may violate federal law because some protected groups are disproportionately represented among those with criminal records. Interestingly, one study suggests that is not the case. A 2006 study in the University of Chicago's *Journal of Law and Economics* concluded that “employers who check criminal backgrounds are more likely to hire African-American workers, especially men. This effect is stronger among those employers who report an aversion to hiring those with criminal records than among those who do not.”

With respect to background checks that include bankruptcy, the courts have struggled with whether a private employer may refuse to hire an applicant because of a prior bankruptcy. The decision from the Third Circuit Court of Appeals is important because it is the first appellate court to rule on the issue. That decision is favorable for employers. But the issue is far from settled.





> WHAT SHOULD EMPLOYERS DO?

Background checks serve legitimate purposes. Many employers conduct routine checks as part of their employee-selection process to avoid making bad hiring decisions that could harm business operations or pose safety risks to employees or customers. Some businesses—day-care centers, nursing homes, hospitals, educational institutions, transportation agencies, law enforcement, security firms—need to be especially concerned about the safety of their customers.

Nonetheless, this has become a tricky area of the law. Until further case law is developed, employers conducting *any* type of routine background checks may be vulnerable to challenges. Here are several tips to assist employers:

1. **KNOW** the statutes, regulations and case law in your state. There are differences among the states, and between federal law and the states, that must be taken into account in considering workplace screening policies. For example, Massachusetts, Illinois and Oregon recently enacted new background-check laws.
2. **THIS AREA OF THE LAW IS ACTIVELY CHANGING**, and employers need to be vigilant in monitoring the latest developments and implementing best-practices compliance policies. The cases recently filed by the EEOC will likely be useful to employers who are formulating their policies and practices.
3. **MAKE SURE** that all criminal-background checks are job-related and that the disqualification is required by business necessity. Doing so may provide a defense to charges that an employer's background-check process is discriminatory. In addition, to the extent the EEOC's position is upheld in the courts, employer policies that take into account the nature and severity of the offense, the length of time since conviction, and the relationship of the offense to the job sought are more likely to be upheld. If necessary, modify pertinent policies and applicant questionnaires to reflect these considerations.
4. **AUDIT APPLICANT/HIRE FILES** to determine whether your criminal-background-check policy disparately impacts any group. If it does, explore the reasons for this, and if it is not justified by business necessity, amend the policy and its implementation.
5. **IF THIS IS AN AREA OF PARTICULAR CONCERN** to your business, monitor your local and federal legislative developments, and examine whether your company should lobby on this issue. This area of the law is actively changing, and employers need to be vigilant in monitoring the latest developments and implementing best-practices compliance policies.

ADP TotalSource® provides clients an array of recruiting and selection services, including comprehensive background checks. Clients of ADP TotalSource can rely on the expertise of their designated ADP TotalSource Human Resources Professional to help guide them through the background-check process. Additionally, ADP TotalSource administers background checks in accordance with the Fair Credit Reporting Act, the federal law that regulates an employer's use of background checks. ADP TotalSource also regularly provides clients with state and federal employment-law updates, including those on the new background-check laws, to help keep clients in compliance. ■

Are You Protected?

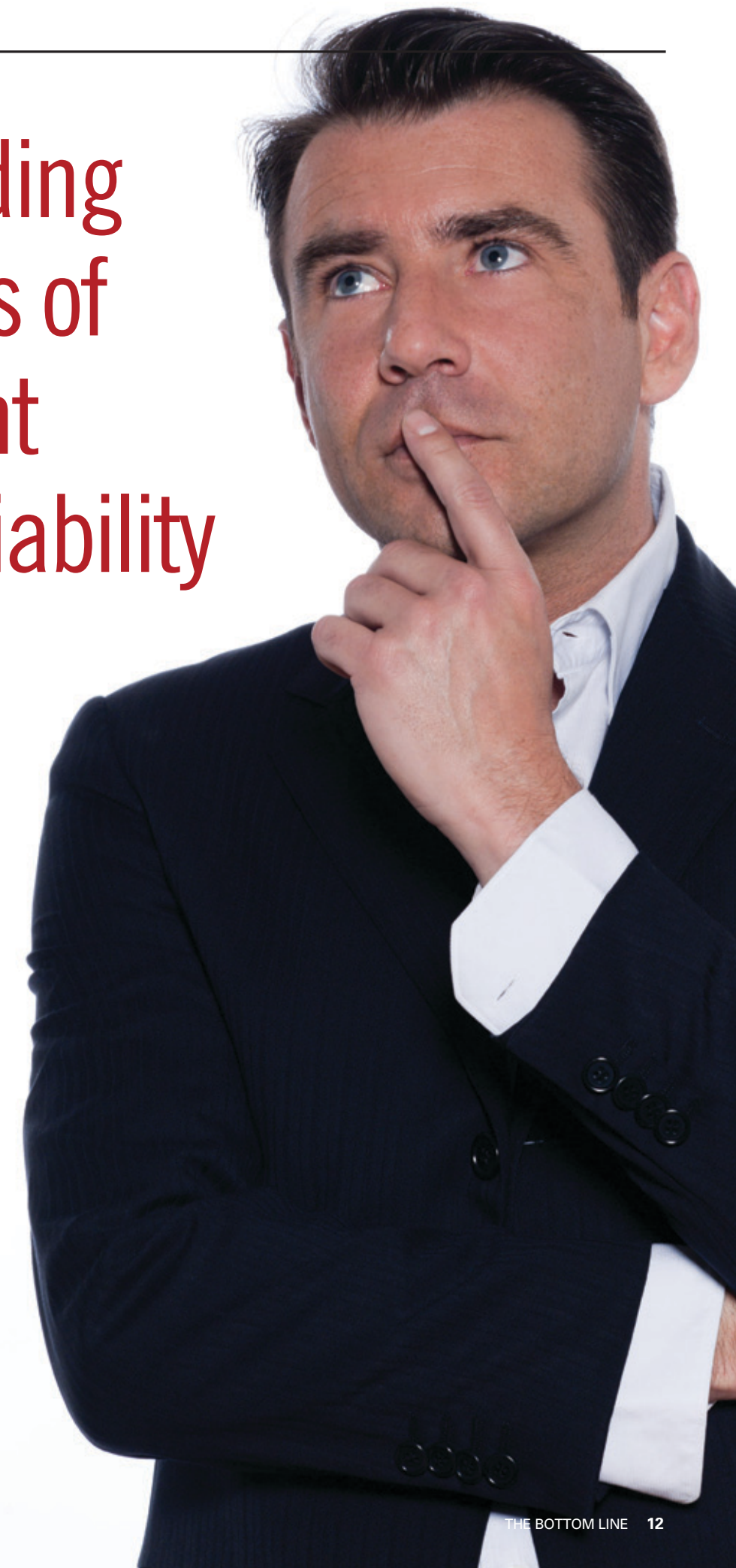


"I've been doing this for 20 years, and I've never been sued. I do everything by the book. We're a big happy family here." That is what many small-business owners will say, and they'll mean it. But the reality is, it doesn't matter—at least, not as much as you might think. As a business owner, you don't have to do anything wrong to get sued; someone just has to say you did. Between frequent media coverage of big settlements and the ease with which employees can take legal action, employers are more vulnerable than ever.

Workplace-discrimination claims filed with the U.S. Equal Employment Opportunity Commission reached unprecedented levels in 2010, with retaliation allegations edging out the number of race-discrimination claims for the first time ever. Employees filed 99,922 discrimination claims against private employers and state and local governments in the fiscal year ending Sept. 30, 2010, according to the EEOC. That's a 7 percent increase, compared to the 93,277 claims filed in 2009.

Understanding the Benefits of Employment Practices Liability Insurance

To help businesses protect themselves, employment practices liability (EPL) insurance provides employers with coverage to defend against lawsuits by current or former employees' (including the cost of defense) and other related claims. Although it's been available for more than two decades, EPL insurance has not been as widely appreciated as other forms of insurance. Bottom line: EPL insurance is an effective risk-management tool for businesses.



EPL Insurance Is On the Rise

A 1997 survey by national labor- and employment-law firm Jackson Lewis LLP and the Society of Human Resource Management (SHRM) indicated that only 22% of the companies studied had EPL insurance. Two years later, Jackson Lewis and SHRM found that the percentage increased to 30%. By 2005, approximately half the companies with 250 employees or more had some type of EPL insurance, and 19% of companies with 25 to 49 employees had such coverage.

The most recent available data, published in 2008 by the Institute of Management and Administration, showed the following percentage of respondents carrying EPL coverage:

- banks, 51%; consumer staples, 41%;
- nonbank financials, 38%;
- consumer discretionary, 36%;
- information technology, 36%;
- and health care, 19%.

Although larger employers may be more likely to have EPL insurance, small employers may obtain greater protection from it. Defending a single discrimination claim can cost more than \$100,000 in attorneys' fees alone. In contrast to a larger business, a significant adverse verdict could bankrupt a small business or be a serious setback. The 2010 edition of "Jury Award Trends and Statistics" states that in 2009, the average settlement for discrimination litigation was \$140,338, and the average jury verdict granted \$991,486.

Insurance carriers are able to spread this risk among thousands of insured businesses. Although no small-business owner expects his employees to bring a claim, statistically it is more likely to happen than a fire, which almost all companies insure against. Further, according to SHRM, an employer is more likely to have an employment claim than a general liability claim, which, again, is coverage almost all companies obtain.

EPL Coverage

Most if not all EPL insurance policies cover wrongful termination, sexual harassment and discrimination claims that allege differential treatment based on a plaintiff's membership in a protected class. Discrimination claims can arise under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, state human-rights laws, the Older Workers Benefit Protection Act, the Uniformed Services Employment and Reemployment Rights Act, the Americans with Disabilities Act and the Family Medical Leave Act. Common law tort claims, such as negligent hiring, defamation and invasion of privacy, are usually covered as well.

EPL insurance in general is somewhat counterintuitive, as employment discrimination is at times viewed as an intentional act, and insurance cannot be purchased for intentional acts. This form of insurance simply reflects the fact that any employer is at risk for claims by employees in our legal system, and that these risks can be quantified and underwritten in such a way as to protect small companies from catastrophic claims.

EPL insurance does not cover all employment claims. It typically excludes claims under Social Security, unemployment insurance laws, workers' compensation laws, disability insurance laws, the Occupational Safety and Health Act, the National Labor Relations Act, the Fair Labor Standards Act and claims (other than retaliation) under the Employee Retirement Income Security Act (ERISA).

EPL Benefit

There are many benefits to EPL insurance:

Protection:

You have worked hard to build your business. A large jury verdict could be a serious setback, if it doesn't put you out of business altogether. EPL protects against such an outcome. Some small-business owners still think, "If the deductible is \$25,000, then the insurance is never really going to help me." Not true. Employment claims can easily exceed \$100,000 in attorneys' fees and, as seen above, settlements and jury verdicts can be even higher.

Expert Representation:

Most EPL policies require the insured to be defended by a preapproved law firm selected from a limited panel, sometimes known as panel counsel. Panel-counsel firms are chosen based on their established expertise and experience in defending employment-law claims. As a result, you are assured of quality representation.

Reduced Attorney Rates:

Insurance companies usually have negotiated lower hourly rates with panel counsel. You benefit from those rates.

Qualified Claims Examiners:

Insurance companies tend to have claims examiners who also have established expertise and experience in defending employment-law claims. Thus, you will have two sets of eyes (the attorney and the claims examiner) helping protect your business.

ADP TotalSource® and EPL Insurance

ADP® stands behind its advice and recommendations to clients. In addition to the human-resources guidance and expertise provided by a dedicated ADP TotalSource HR Business Partner, EPL insurance coverage is one of the strategic benefits of a partnership with ADP TotalSource. The Legal Defense Benefit, which is also offered by ADP TotalSource, pays the attorneys' fees' deductible/retention under the EPL policy for a covered claim when certain conditions are met. Moreover, fees for covered claims in excess of the Legal Defense Benefit are paid by the insurance company. ■

Human Resources

Ask the Experts: HR Business Partners

Employee-relations issues can present some of the thorniest challenges for employers. ADP TotalSource® spoke with several of our Human Resource Business Partners—the HR professionals who work the front lines with employers every day—to gain answers and insight to some of the questions that employers are asking.



My employee wants to see his personnel file. Do I have to show it to him?

As with many questions regarding employment law, the answer depends on the law of the state where your employees work. There is no federal law requiring that employees be provided access to their personnel files. However, in many states, current and former employees have the right to review their file even without a court-issued subpoena. California, Illinois and Pennsylvania, for example, do have laws giving employees access to their file.

Generally, in states that allow employees access to their file, the employer must produce the file within a reasonable time frame, not on the spot. In addition, the individual should be accompanied by someone from human resources or management while viewing his/her personnel file to prevent removal or destruction of documents.

Many states require not only access to the personnel file but also that the employer provide copies of it to employees upon request. (Most states allow companies to charge a nominal fee for the cost to copy the file.) An employer's failure to comply with these laws may result in fines, penalties and payment of an employee's attorney's fees.

I often receive questions from clients about what documents should be retained in the employee's personnel file. Part of my job is to provide guidance on how and why employers should pay close attention to the way they set up and maintain each employee file. A detailed Personnel File and Maintenance document is available to assist clients with both federal and state recommendations and laws regarding maintaining employee personnel files.



One of my employees has complained that her manager is not treating her fairly. I don't think it is true; she is always causing problems. Can I fire her?

While this employee may be reporting falsehoods, you should not assume that she is. Therefore, I would not recommend a termination without more information.

Employers should take every complaint very seriously (regardless of an employee's prior history) and always seek additional information. Otherwise, if the company proceeds with termination, it could be construed as retaliatory, which could ultimately result in a formal complaint from the employee. In this instance, my recommendation would be to allow me, as an unbiased party, to conduct an investigation and speak to the employee to get her side of the story and obtain specific examples as to why she feels she is being treated unfairly. Then I would need to speak to the manager to address the employee's allegations.

If necessary, I would also speak with other employees to either confirm or deny the allegations. Then I would recommend what type of action should be taken, based on the findings of the investigations. Sample actions might include supervisory training, formal counseling for the complaining employee, clarifying/updating the company's policies if any were found to be vague or unclear, etc.



One of my employees told me he thinks that we are processing our invoices incorrectly and overcharging our clients. Can I fire him?

I would not recommend terminating an employee who is voicing a concern or opinion about the organization in which he works. Such a rash decision could result in the employee feeling that his termination was retaliatory. Plus, the employee may be protected as a whistle-blower if an organization is involved in what could be considered unlawful or fraudulent activities.

I would use this as an opportunity to educate the employee on the company's business model, pricing methodology, etc. Depending on the circumstances, you may also want to express to the employee that you appreciate feedback. If the employee is disruptive to the workplace, I would address that separately.



I had to let several employees go as part of a reduction in force. Some of them had performance issues, and I would prefer not to rehire them. What are some best practices for recalling employees from a reduction in force?

Absent a collective-bargaining agreement, which may provide employees with recall rights, employers generally have discretion in terms of whether to recall former employees to work and, if so, the selection criteria to be used. Some employers elect to inform all previously separated employees that a position is available. This approach places employees on the same footing as other potential candidates (internal and external) and is perhaps the most risk-averse approach providing the selection procedures are equally applied and the most qualified candidate is hired.

To the extent the employer elects to bring back former employees, there are some clear benefits. The most obvious, particularly for highly skilled or technical positions, is that the learning curve for a former employee may be significantly less steep than for a newly hired one.

Bear in mind that some employer policies could be interpreted to require that the employee's previous length of service be credited such that the employee would not be considered a "new hire" for benefits purposes, paid-time-off policies, etc. In addition, certain state and federal laws may require an employer to recognize the former employee's previous length of service when determining an employee's rights (e.g., with regard to the federal Family and Medical Leave Act). Consistency is key, and the action taken may set a precedent for future situations.



Can I ask applicants about arrests?

I don't recommend that employers inquire about arrests. Making employment decisions based on an arrest record may have a disparate impact on some protected groups. Additionally, an arrest does not necessarily mean an applicant committed the crime. However, if you discover that an applicant has been arrested, the applicant should be given the opportunity to explain the circumstances of the arrest before any employment decisions are made.

According to the EEOC, even if the employer believes that the applicant engaged in the conduct for which he or she was arrested and/or convicted, that information should preclude the applicant from employment only to the extent that it is evident that he or she cannot be trusted to perform the duties of the position based on:

- the nature of the job,
- the nature and seriousness of the offense, and
- the length of time since it occurred.

It is important to note that certain states prohibit or further limit the use of arrest or conviction records. The employment application that ADP TotalSource provides clients is compliant with state and federal law. We also provide our clients with a guidance on the state nuances regarding the use of an applicant's arrest/conviction record. Additionally, the Fair Credit Reporting Act (FCRA) imposes a number of requirements on employers who wish to investigate the criminal records of applicants. As an ADP TotalSource HRBP, I frequently counsel clients on these and other related matters.



I have an employee who was arrested yesterday for check fraud. He did not show up for work today and is still in jail. What should I do?

The EEOC's position is that since the use of arrest records as an absolute bar to employment has a disparate impact on some protected groups, such records alone cannot be used to routinely exclude persons from employment. However, conduct that indicates unsuitability for a particular position is a basis for exclusion. Where it appears that the employee engaged in the conduct for which he was arrested and that the conduct was job-related and relatively recent, exclusion or termination may be acceptable under federal guidelines.

In addition, many states have statutes prohibiting discrimination on the basis of criminal arrests and/or convictions unless job-related. Therefore an employer may not be able to terminate an employee based solely on the fact that the employee has been arrested.

As a practical matter, assuming the arrest does not relate to the employee's suitability for employment, the employer may wish to determine how much time off is needed in order to determine if it's something that can be accommodated. If it cannot be accommodated and there are no state or federal prohibitions to consider, then termination can be considered.



An employee told me that her boyfriend threatened to kill her. What should I do? Can I fire her?

Domestic violence and stalking can seriously threaten workplace safety. Employers may hesitate to get involved in an individual's personal life and may even fear invasion-of-privacy claims. Because of this potential harm to employees, employers must be prepared to prevent and respond to domestic violence and stalking of its employees.

A particular concern when domestic and workplace violence intersects is the possibility that the victim, not the offender, will end up being punished. Frequently when an employee is being stalked, harassed or threatened at work, an employer will decide that the quickest and easiest solution is to terminate

Q&A

the employee, rather than look for ways to protect the employee and coworkers. This practice is counterproductive to an effective workplace-violence prevention strategy (as it will discourage future reports from other employees) and raises obvious ethical questions—and possibly issues of legal liability as well.

In this situation, you would want to first make sure the employee is safe. You may ask her if she is currently at risk and if the boyfriend has threatened to come to her place of employment. Then you can take a variety of steps to heighten security, such as distributing the suspected abuser's photograph to security personnel, receptionists, and co-workers (with the employee's permission) so that he can be identified and denied entrance to the victim's workspace. Possible domestic-violence victims can be given parking spaces closer to the entrance or be provided with a security escort to cars or public transportation. Other options include changing working hours, removing the employee's name from staff office or telephone directories, and screening phone calls. Employers may also suggest that employees who seek a protective order ask to have potential abusers banned from the employee's work address, as well as from his or her home; in some states, an employer can obtain such an order on its own.

You should also consider referring the victim to an Employee Assistance Program (EAP), (made available to all ADP TotalSource clients and employees) for emotional, legal or financial counseling, or to a battered-women's shelter. Finally, approving a voluntary leave of absence for the victimized employee may be the most ethical and effective way of preventing harm to co-workers while providing the victim with time to concentrate on addressing the issue. Some states also require employers to give time off for court appearances related to domestic violence. ■



LEVERAGE THE POWER OF VOLUNTARY BENEFITS

In today's turbulent economic environment, where flexibility can determine a company's success, businesses are continually contracting and expanding, changing benefits programs and redefining job responsibilities. Often, employees are caught in the middle—asked to do more with less. Now, more than ever before, it's important to build retention and improve satisfaction among your employees, and offering voluntary benefits as part of your benefits package is one way to help.

Voluntary Benefits Defined

Voluntary benefits are additional benefit options that employers make available to employees should they choose to sign up for them, with the employee normally paying 100% of the cost. These benefits are often offered at competitive group rates and paid through the convenience of payroll deduction. They can cover a wide range of offerings, from disability and accident insurance to legal and homeowner protection and even employee purchase programs and pet insurance.

The Benefits of Voluntary Benefits

Most employers recognize that a comprehensive benefits program can be a smart way to hold on to valuable employees and attract new talent. But providing a broad array of core benefits can be costly. That's why voluntary benefits can be so effective: They offer employers a way to meet varied individual needs while maintaining overall benefit costs.

Benefits for Employees

One of the most valuable features of voluntary benefits is their flexibility. Giving employees the opportunity to select the plans that help them (and then allowing them to adjust their choices as their needs change) is a powerful tool that could potentially increase their productivity. Through their flexibility, voluntary benefits offerings allow employees to fill gaps that may exist in their core benefits plan. This choice is the key to meeting your employees' unique, individual needs.

According to a recent published survey, voluntary benefits are most commonly offered:

- As a part of an employer of choice initiative
- As a tool to attract and retain quality employees
- As a tool to assist employees in finding their optimum work/life balance
- In response to employee requests
- To offset health-care-cost increases
- To offset a reduction in benefits

Other Advantages for Employees Include:

Time savings. Buying through the workplace saves employees time.

Convenience. Payroll deduction helps employees accurately plan their costs and is convenient.

Valuable products. Employees' research time is reduced, since you pre-screen and select the best products and carriers to offer them.

Objective information. Benefits information is provided by you, a trusted source, versus marketing materials from carriers.

Cost savings. Voluntary plans frequently offer competitive group rates to employees.

Benefits for Employers

Voluntary benefits round out your core offering for a more comprehensive benefits program, without significantly increasing your spending. Because the employee pays the cost, your expenses and involvement are limited to:

- Promoting the program
- Providing access to the employees during normal business hours
- Extending the courtesy of payroll deductions

In exchange for this limited cost and involvement, your company's reputation among employees—and potential employees—will grow stronger, which will better enable you to attract and retain key talent. As economic conditions improve, recruiting is likely to become more competitive, so your efforts at recruiting and retaining talent will be important to your organization's success.

How to Get the Most Out of Your Voluntary Benefits Offerings

Offer the Right Benefits

Selecting the right voluntary benefits can make a difference. Research shows that the main reasons employees enroll in voluntary benefits are cost savings (54%), greater protection for their families (50%) and peace of mind (44%). Your employees' needs may be unique; assess their values and preferences before selecting your offerings.

Make Sure Your Employees Understand All Their Options

If employees aren't aware of all the benefits accessible to them, or if they don't understand how they work, they won't take advantage of them—and you won't reap the rewards of increased employee satisfaction and retention. To make sure your employees know what's available:

Communicate early and often. Open enrollment can be a hectic time for employees, so communicating about voluntary benefits throughout the year will make them aware of the options, how they work and which ones are right for them.

Promote the positive. If you expect employee contributions for other benefits (medical, dental, vision) to increase significantly, educating your employees about the flexibility and value of voluntary benefits can help offset negative messaging and balance the overall value of your benefits offering.

Educate. It's important to make sure employees understand not only how the voluntary plans work but also the value of participating. How much do they save by enrolling in one of the voluntary benefits versus seeking coverage on their own? How do these voluntary plans link with existing coverage? For example, you can highlight how a voluntary short-term-disability plan links with your sick-leave policy.

Make it easy. Develop an enrollment strategy (e.g., web-based, telephonic, on-site) that reaches all employees, and provide access to resources where employees can get answers to their questions.

ADP TotalSource's TotalChoice Program

Offering voluntary benefits gives you a measurable competitive advantage in the fight for talent. Companies that partner with ADP TotalSource®, an industry-leading Professional Employer Organization (PEO), gain this competitive advantage at no cost. ADP TotalSource works with Marsh Voluntary Benefits, the largest insurance broker in the world, to provide its TotalChoice suite of voluntary-benefits options to its clients, and ADP TotalSource doesn't charge fees or receive referral fees for making the TotalChoice program available. The expansive suite of supplemental benefits includes:

Short term disability insurance supplements a portion of employees' base earnings if injury or illness prevents them from working for an extended period.

Level term life insurance provides beneficiaries with prompt financial assistance after an insured's death. Rates stay constant over the term of the policy.

Accident Insurance pays a lump sum directly to employees if they are seriously injured in an accident.

Critical illness insurance pays a lump sum directly to employees to cover out-of-pocket medical expenses following diagnosis of a covered illness.

Group universal life insurance allows employees to purchase universal life insurance (which builds cash value) at competitive rates.

Accidental death & dismemberment insurance provides financial protection in case of death or injury from an accident.

Auto/homeowners/renters insurance gives employees access to auto and/or home insurance at competitive rates.

Employee purchase program allows employees to purchase brand-name computers and electronics through payroll deductions.

Group legal services plan offers a variety of legal services at no or low cost within a network of top-quality legal professionals.

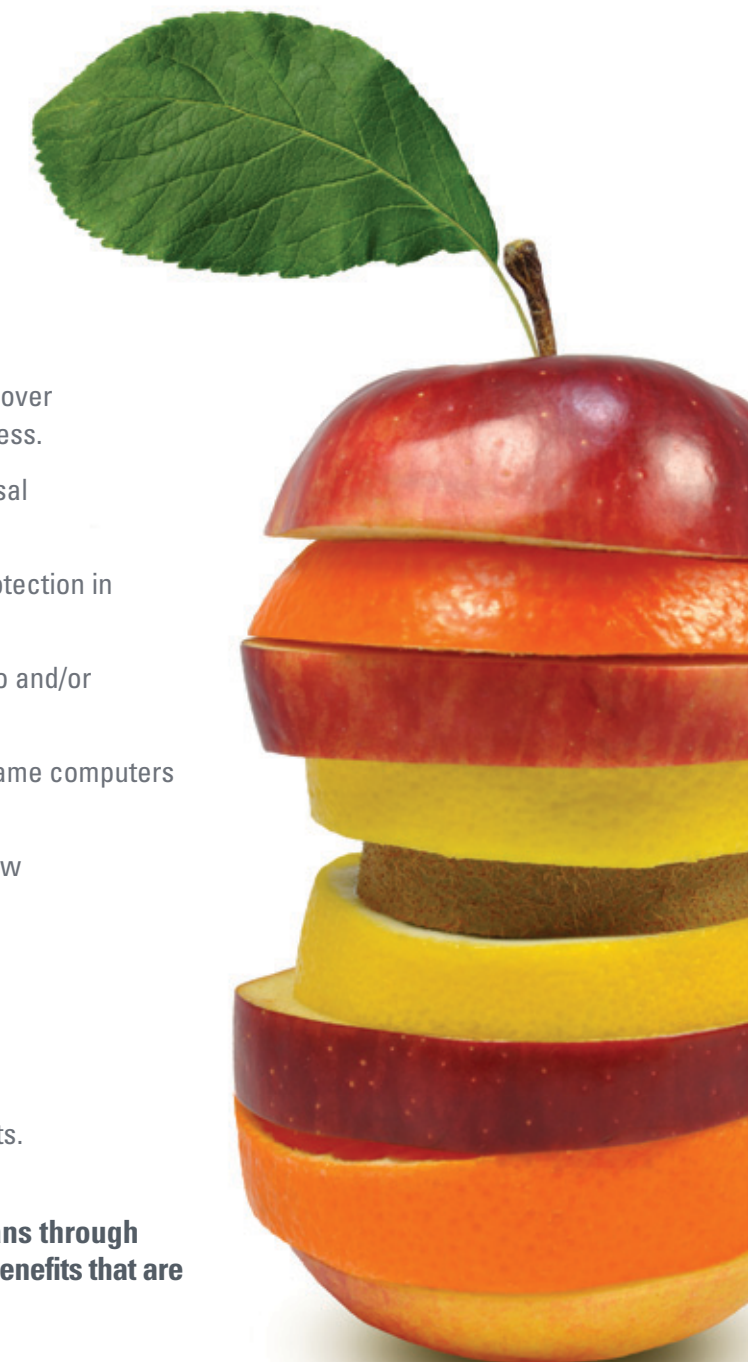
Identity theft coverage provides identity-theft protection and restoration services.

Life-prints allows employees to create and securely store important personal information.

Pet insurance covers certain medical treatments and services for pets.

Employees who choose to participate in voluntary-benefits plans through the TotalChoice program appreciate the flexibility to choose the benefits that are important to them. In addition, they also enjoy:

- Convenience of optional payroll deductions
- Portability of the benefit if they retire or change jobs
- A dedicated toll-free number with access to personalized enrollment agents
- A 24/7 web site that offers information about their benefits. ■





Small-Business Statistics: Substance Abuse and Elder Care

Small businesses are often ill-prepared for the growing effect that two important but unrelated issues will have on their workforce: substance abuse and elder care.

Substance Abuse

The statistics are sobering. The U.S. Department of Labor (DOL) has reported that, of the 17.4 million current illicit-drug users age 18 and over, 13.1 million (75.3%) were employed. Similarly, among 55.3 million adult binge drinkers, 44 million (79.4%) were employed, and among 16.4 million people reporting heavy alcohol use, 13.1 million (79.6%) were employed.

Unfortunately, small businesses bear the greatest burden of substance abusers, according to the DOL. Smaller businesses are less likely to have programs in place to combat substance abuse, yet they are more likely to be the employer of choice for illicit-drug users. Individuals who cannot adhere to a drug-free-workplace policy seek employment at businesses that do not have one.

For example, the DOL has reported that about half of all U.S. workers work for small- and medium-size businesses (those with fewer than 500 employees). And among the employed illicit-drug users and heavy drinkers, nine out of ten work for small and medium-size businesses. However, smaller businesses are generally less likely to test for substance use.

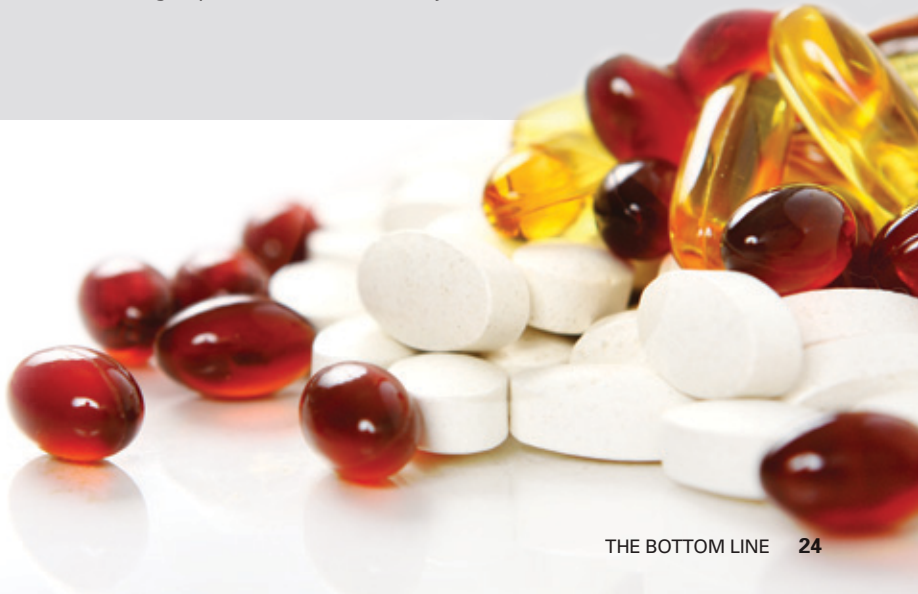
The financial consequences can be significant. According to the National Drug-Free Workplace Alliance, substance abusers are 33% less productive and cost their employers \$7,000 annually; up to 40% of industrial fatalities can be linked to alcohol abuse and alcoholism; drug-using employees are 3.6 times

more likely to be involved in workplace accidents and five times more likely to file a workers'-compensation claim; 38% to 50% of all workers'-compensation claims are related to substance abuse; and substance abusers are three times more likely to use medical benefits than other employees.

The good news is that there are steps businesses can take to minimize the risks of substance abuse. For starters, they can build a drug-free-workplace policy and implement drug testing as part of it. Drug testing works best when it's based on a clear, written policy that is shared with all employees and includes employee education about the dangers of alcohol and drug abuse, supervisor training on the signs and symptoms of substance abuse, and an Employee Assistance Program (EAP) to provide help for workers who may have an alcohol or drug problem.

There are many benefits to a drug-free-workplace policy. Such a policy can have positive indirect financial benefits on a business (more productive employees and fewer workplace accidents), as well as a more direct financial impact. Many states offer employers a discount on workers'-compensation insurance premiums if they take certain steps to maintain a drug-free workplace, like testing job applicants.

Lastly, a drug-free-workplace policy helps reduce a company's legal liability. If an intoxicated employee harms someone on the job, the business could be legally liable for those injuries.





Elder Care

The burden of elder care significantly affects employers. According to The MetLife Caregiving Cost Study: Productivity Losses to U.S. Business, the total estimated cost to employers for full-time employees with intense caregiving responsibilities is \$17.1 billion; the average cost per employee is \$2,441; and the total estimated cost to employers for all full-time employed caregivers is \$33.6 billion.

Statistics also show that nearly 60% of people caring for an adult over the age of 50 are working, and the majority of them work full-time. Moreover, in a nod to changing societal trends, nearly 40% of caregivers are men.

These statistics highlight the impact elder care has on employers. Employees may be less productive at work when they are worried about caring for an elderly family member or when they spend time caring for one. Worse, if an employee is forced to choose between caring for a loved one and devoting himself to work, the company will lose. And that is expensive. The MetLife study estimates the replacement cost of employees who leave the workplace to be in the millions. Additional costs for absenteeism and workplace disruptions take that number even higher.

Still, less than 10% of small businesses currently offer elder-care resources—beyond what is required by law—for employees who have to care for infirm parents, according to a human-resource industry trade

group, even though the number of people age 65 and older in the U.S. is expected to double to 70.3 million by 2030.

Given these demographics, business owners need to be prepared to assist employees who are current and future caregivers with balancing family and work demands. They can do so in several ways:

Be a Source of Information:

This one is easy but valuable. Providing information on resources can save employees time and employers money. Websites, including <http://www.eldercare.gov> and <http://www.n4a.org>, can help find local services such as transportation, meals, home care, caregiver support and legal and financial assistance.

Be Flexible:

Small businesses have often spent years helping employees succeed, and they need to protect that investment—good employees are hard to find. Companies should look for ways to permit the employee to job-share, telecommute or pursue an alternative career track.

Be Knowledgeable of the Law:

Companies should be informed about employees' legal rights. The federal Family and Medical Leave Act may require leave in some circumstances, depending on the size of your business. In addition, states may have similar laws that require leave for caregivers.

ADP TotalSource® can assist employers who are addressing substance-abuse or elder-care issues. ADP TotalSource's risk and safety program offers clients a state-of-the-art comprehensive Drug/Alcohol-Free Workplace Program that includes a multistate compliant drug-and-alcohol testing policy, complete test administration, Employee Assistance Program (EAP) referral services and compliance guidance. Further, as part of its comprehensive human-resources offering, all ADP TotalSource clients are assigned a Human Resources Professional who can help them understand how to effectively manage the real-life challenges that employers and employees face in the midst of substance abuse, as well as the burdens that elder care places on their workforces. ADP TotalSource provides not only compliance guidance on state and federal mandated leave laws but also comprehensive leave-administration services and access to valuable employee-assistance-program services that may help employees work through these challenges while remaining engaged and productive workers. ■

Don't Wait Until It's Too Late: Business Continuity Planning

How would your company maintain operations and recover in the event of a natural disaster, technology failure, sudden health threat or other event that could interrupt business activities? If you aren't sure, you should strongly consider adding business-continuity planning to your 2011 activities.

Being prepared for unexpected and unforeseen events is the cornerstone of business continuity planning. Developing a business-continuity plan can help your organization guard against business disruption should a disaster or disabling event occur. While business continuity planning may not be top of mind for leaders at your company, it should be.

The ability of an organization to recover from a disruptive event is directly related to the degree of business-continuity planning that took place before it. Government legislation, such as the Sarbanes-Oxley Act and Health Insurance Portability Accountability Act, contains specific language and mandates governing the need for business-continuity planning. If that's not enough of a reason to begin your business continuity planning, consider this: According to www.ready.gov, **at least one in four businesses affected by a disaster never reopens**. How can you ensure that your company is one of the three that would survive a disaster? By developing and implementing a well-thought-out business-continuity plan. It can mean the difference between success and failure for your organization.

Know the Risks: Potential Business Interruptions

- Civil disturbance
- Communications interruption
- Electrical failure
- Employee error
- Epidemic
- Equipment malfunction
- Facility structural failure
- Fire
- Financial systems unavailable
- Natural disaster
- Postal/UPS/FedEx strike
- Union issues/strikes
- Sabotage
- State of emergency
- Staff shortage or unavailability
- Technology upgrade, obsolescence or incompatibility
- Terrorism
- Theft
- Untrained or improperly trained staff
- Utility outage

Getting Started: A Business Continuity Checklist

In the midst of a potentially catastrophic situation, an effective business-continuity plan will alert employees about how to secure their safety and continue business activities. Here are some actions to consider when devising such a plan for your company:

☐ Learn about your risks

Find out which disasters are most common in the areas where you operate. You may be aware of some of your community's risks, but others may surprise you. Visit www.fema.gov/hazard for more information about the types of disasters and dangers that may affect your organization's operations.

☐ Identify your essential people and functions

Carefully assess how your company operates to determine which employees, procedures and equipment are absolutely necessary for your business to continue basic functions during an emergency.

☐ Document employee contact information

In times of crisis, it can be difficult to track down an up-to-date list of employee contact information. Maintain a current list of all employees' emergency contact information as well as alternate phone numbers, e-mail addresses, and home addresses so you can contact them quickly. Keep copies of this list in different places—your office, your house, your car—and encourage managers to do the same.

☐ Determine how to stay in touch with your employees

Consider setting up a telephone calling tree, e-mail alert system, central phone number employees can call for information or to leave messages, or some other mechanism for communicating with your employees.

☐ Document external contact information

Keep a current list of your vendors, critical contractors and clients. Be sure to include attorneys, bankers and IT consultants—anyone who is likely to have a critical role in your operations. Also include phone numbers for utility companies, police, the fire department and hospitals.

☐ Identify your contingency location

Select a location where you can conduct business while your primary offices are unavailable, like a hotel or one of your contractor's offices. Telecommuting may be an option for your employees if they can access their work-related e-mail and files remotely.

☐ Make a list of instructions

Create a list of step-by-step instructions detailing who should do what tasks and when and how they should be done. List each responsibility and write down the name of the person assigned to it, along with a backup person.

☐ Communicate the plan

Make sure everyone in your company knows about and fully understands your business-continuity plan. Hold mandatory training classes for all employees—even those who aren't critically involved.

☐ Test and practice the plan

Now that you've created the plan, will it work? Test it to determine if it provides all the best options and resources. You'll probably discover that some things should be revised. Testing and practicing the plan is critical to successful execution.

☐ Review and revise

Maintain and revise the plan anytime something changes within your organization. Make sure critical steps on your list are covered by current employees, because an out-of-date plan is useless in an emergency.

Remember, a business-continuity plan is effective only if it's maintained, updated and rehearsed. While it may seem like a tedious task, building a strong business continuity plan and ensuring that your employees understand how to implement it can determine the success of your company should a crisis occur.

For more information and helpful tools for starting a business continuity plan, visit <http://www.ready.gov/business>. ■

STATE EMPLOYMENT LAW UPDATES

ADP TotalSource® offers clients relief from legal and regulatory burdens, including the legislation shown here. Timely communication, clear action plans and helpful resources allow ADP TotalSource clients to focus on their business objectives.

The following updates reflect sample developments from August to December 2010.

District of Columbia



Regulatory Development

The D.C. Department of Employment Services has issued a mandatory workplace poster under the D.C. Accrued Sick and Safe Leave Act. Under the act, the poster must be posted in all languages spoken by 3 percent or 500 of an employer's D.C.-based employees, whichever is fewer.

ADP TotalSource Action

Alerted clients to the new requirement and provided copies of the mandatory workplace poster.

Illinois



The Illinois Wage Payment and Collection Act, which took effect January 1, 2011, expands wage-theft protection for employees to make it easier for them to take legal action against employers who neglect to pay or underpay them.

Under the Illinois Employee Privacy Act effective January 1, 2011, most employers will be prohibited from: (a) inquiring about an employee's or applicant's credit history, (b) ordering a credit report on an employee or applicant from a consumer-credit-reporting bureau, and (c) taking adverse employment action because of an individual's credit history or report. Employers in certain industries are exempt, as are situations in which an employer can establish creditworthiness as a bona fide job qualification.

Recommended that clients undergo a periodic assessment of their wage and hour practices; alerted employers to penalties and damages for noncompliance.

Alerted clients to the changes; provided general guidance and best practices, including job descriptions, to ensure compliance with the law.

Massachusetts



A new law that took effect November 2010 bans employers from asking questions about criminal history on written employment applications. The law also creates a new method and database for employers to access criminal records. Employers who obtain such information must provide it to an applicant prior to questioning the applicant about his or her criminal history or taking any adverse action.

Recent legislation designed to promote economic development includes a provision that employers must notify employees within 10 days of placing information in their personnel files that could negatively affect employment standing or lead to disciplinary action.

Alerted clients to the changes; revised standard model employment application; developed a model policy for handling criminal-offender record information.

Alerted clients to the change; provided ongoing training and best practices for documenting employee performance and discipline.

New Jersey



Companies with N.J.-based employees must annually distribute (either in writing or electronically) the notice required under the Conscientious Employee Protection Act (CEPA) in both English and Spanish.

Reminded clients of the requirement and provided copies of the required notice and explanatory letters for distribution to employees.

New York



Effective January 1, 2011, a new Hospitality Industry Wage Order clarifies and makes substantial changes to the rules governing payment of wages to employees in the hospitality industry.

Alerted clients to the changes and updates in the Wage Order, penalties and damages for noncompliance.

What ADP TotalSource® Clients Are Saying

Amping Up HR Strategy and Technology with ADP TotalSource

As small companies grow larger, roll out new products and expand into new markets, their HR departments frequently struggle to keep pace. More employees means higher benefits costs, more complex compliance challenges and more HR paperwork. For Fishman Transducers, a Massachusetts-based manufacturer of acoustic amplifiers and related musical equipment, those burdens weighed heavily on its one-person HR department. As Fishman CFO Phil Doucette says, "We got to the point where we just didn't have the resources to do a proper job of HR management, and our benefits costs were getting way too high." He turned to ADP TotalSource.

Fishman's biggest challenge at the outset was a lack of internal HR resources. "We realized that we needed stronger capabilities in dealing with HR and benefits," says Doucette. "We saw that we weren't doing a good job—our HR administration was cumbersome, and we needed to streamline it without spending a fortune."

With ADP TotalSource, Fishman has gained a significant asset: the expertise and guidance of its assigned HR Business Partner, Jennifer Whitcomb, and her team. "ADP TotalSource has a cadre of specialists that I can call on for anything—compliance, workers' compensation, safety, benefits, you name it. In particular, they've been excellent in helping us with any unusual situations," says Doucette.

Fishman Transducers, Inc.

Industry: Light Manufacturing

Type of Business: Manufactures and distributes acoustic amplifiers and related equipment, both on retail level and as Original Equipment Manufacturer (OEM)

Location: Andover, Massachusetts

Number of Employees: 63

ADP TotalSource Client: Since 2009

Why ADP TotalSource? "We had one person doing HR in-house, and frankly, we were overwhelmed. ADP TotalSource has allowed us to save money and get a much broader range of HR services."

One factor that drove Doucette to consider ADP TotalSource in the first place was the ever-increasing cost and complexity of administering employee benefits, especially health insurance. Previously, the company worked with an insurance broker and dealt with significant cost increases every year. "Going with ADP TotalSource has saved us money, beefed up the selection of benefits we're able to offer our employees and taken the job of managing those benefits off our plate," Doucette says.

Before partnering with ADP TotalSource, Fishman's HR recordkeeping was, in Doucette's words, "a bit helter-skelter." Other than payroll, which ADP already handled, employee records were mostly of the manual, manila-folder variety. As an ADP TotalSource client, Fishman now has access to My TotalSource, a robust, secure, Web-based HRMS that has transformed its record-keeping capability. "My TotalSource contains all the employee information—payroll, benefits, when their last raise was, everything—and we can get at the information quickly. And for the first time, I have confidence in the accuracy and timeliness of our employee records," Doucette says.

"ADP TotalSource helps us make better business decisions." Doucette believes that Fishman is better off for the ADP TotalSource partnership: "Our health-care costs have gone down, and we've been able to put the savings right back into R&D for our company. The employees view it as a positive change—ADP TotalSource helps them gain more control over their work environment. And our decision-making has gotten smarter, more efficient in a way that just wasn't happening before." ■





ADP TOTALSOURCE[®] SOLUTION

With ADP's dedicated team of experts
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- ➔ Increase employee productivity, which leads to increased profitability
- ➔ Focus on core competencies
- ➔ Reduce administrative burdens
- ➔ Help mitigate risk/liability and protect assets
- ➔ Become an employer of choice

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cost-effective and productive HR management.**

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