ADP TOTALSOURCE®

The Bottom Line

A Publication Dedicated to Employers' Current HR Issues & Solutions Brought to You by ADP TotalSource Volume 14

Shared Responsibility: What It Means for Your Business

ALSO IN THIS ISSUE

The Bottom Line

Volume 14

SHARED RESPONSIBILITY:
What It Means for Your Business

The provisions of the Affordable Care Act (ACA) apply to nearly all companies in the United States. The ways they apply, however, can be different for each organization, making it difficult to know what you need to do to be in compliance, and when you need to do it.

One of these provisions is called Shared Responsibility. It incorporates both employer and individual mandates — the requirements for employers to offer medical coverage to employees and for individuals to purchase medical coverage.

To understand Shared Responsibility, it helps to understand how employees become eligible to participate in health benefit exchanges and receive subsidies for coverage (as well as the penalties for employers and when they're triggered).

THE INDIVIDUAL MANDATE

Beginning in 2014, individuals will be required to maintain "minimum essential coverage" through one of these sources:

- Employer-sponsored plans
- Certain government-sponsored plans, such as health benefits coverage that is recognized by the Department of Health and Human Services, which includes Medicare, Medicaid, Children's Health Insurance Program (CHIP), the veterans' health program and TRICARE (coverage for service members, retirees and dependents)
- Plans in the individual market through health benefit exchanges

An individual may be eligible to receive a subsidy to offset the cost of medical coverage through an exchange if his or her employer doesn't offer coverage or if the cost of employer-offered coverage is more than a certain percentage of the individual's household income (HHI). People who fail to get acceptable medical coverage may have to pay federal and state penalties.

Individuals who either have a religious exemption, are not lawfully present in the United States or are incarcerated are exempt from the minimum-essential-coverage requirement.

Who Can Buy Coverage Through an Exchange?

A health benefit exchange is a virtual marketplace of health care plans, with multiple plan options offered by different insurance carriers.

Although all individuals and families will be able to purchase coverage through the individual market via an exchange, not everyone will be eligible for subsidies to help them purchase coverage. Initially, only small employers will be eligible to offer group coverage through the exchange.

Requirements for subsidy eligibility

Individuals who don't have access to employer-sponsored coverage that meets the government's ***minimum value requirements*** or ***affordability requirements***

AND

whose HHI is 100 percent to 400 percent of the federal poverty-level amount

THE EMPLOYER MANDATE

The employer mandate requires that "applicable large employers" provide minimum essential coverage to their full-time employees (and their dependents) or potentially pay a nondeductible **assessable payment**. An applicable large employer is one that employed an average of at least 50 full-time and full-time-equivalent employees during the previous calendar year.

While any individual can purchase coverage through an exchange, the employer-assessable payment is triggered when:

1. **A full-time employee of an applicable large employer receives a tax subsidy to pay for coverage he or she purchases through a health benefit exchange because coverage is not offered by the employer; or**

2. **The coverage that is offered to the employee does not provide minimum value or is deemed unaffordable.**

Understanding ACA Terms

Full-time and full-time equivalent (FTE) employees: A full-time employee is one who is credited with at least 30 hours a week or 130 hours in a calendar month. A company's number of **FTEs** is calculated by adding the number of full-time employees to the number of "full-time-equivalent" employees. The number of full-time-equivalent employees is calculated by totaling the hours worked by all part-time employees (up to 120 hours each) during the month and dividing that by 120. Adjustments may be made in certain cases for seasonal workers.

Minimum value requirement:
An employer-sponsored plan must pay at least 60 percent of the total covered health care expenses.

Employer-Assessable Payments

While the employer-assessable payment is often discussed as one amount, there are actually two payments. An employer may have to pay one or the other, but not both. The payments are assessed monthly.

1. **If an employer subject to Shared Responsibility *does not* offer coverage to substantially all (at least 95 percent) of its full-time employees (and their dependents),** and at least one *full-time employee* obtains subsidized coverage through an exchange, the employer must pay an annual amount of $2,000 for each of the company's full-time employees (minus the employer's first 30 employees). That's $166.67 per month per employee.

2. **If an employer subject to Shared Responsibility *does* provide coverage to substantially all of its full-time employees (and their dependents),** but the coverage provided either (1) doesn't meet the minimum value requirement or the affordability test, or (2) one or more full-time employees are excluded from receiving coverage and obtains subsidized coverage through an exchange, the employer must pay an annual amount of $3,000, or $250 per month, per *full-time employee* who receives subsidized coverage. There's a cap on this payment: It can't be more than $2,000 times the number of full-time employees minus 30 employees.

Affordability Requirement and Safe Harbors

Employer-sponsored coverage is considered unaffordable if the employee's required contribution for employee-only coverage exceeds 9.5 percent of his or her HHI. Under proposed regulations issued by the Department of Treasury and the Internal Revenue Service on January 2, 2013, there are three safe-harbor alternatives for determining if coverage is affordable. The safe harbors described below do not affect an employee's eligibility to receive a subsidy through an exchange (which will continue to be based upon his or her HHI). As a result, an employer might not be subject to a penalty because the offer of coverage being considered is affordable under a safe harbor.

If an employer subject to Shared Responsibility offers substantially all of its full-time employees (and their dependents) the opportunity to enroll in coverage that meets the minimum value requirement, coverage affordability may be determined under one of the following safe harbors:

1. **Form W-2. Coverage will be considered affordable if an employee's calendar-year contribution for the lowest-cost employee-only option offered by the employer that meets the minimum value requirement is no more than 9.5 percent of the employee's Form W-2 wages for the calendar year. (This is determined after the end of the year.) To qualify, the employee's contribution — either dollar amount or percentage of pay — must be consistent during the calendar year or, for fiscal-year plans, within the portion of each plan year during the calendar year.**

2. **Rate of pay. Coverage will be considered affordable if an employee's monthly contribution for the lowest-cost employee-only option offered by the employer that meets the minimum value requirement is no more than 9.5 percent of either:**
    - *The employee's monthly salary, when the employee is a salaried employee; or*
    - *The employee's hourly rate of pay as of the first day of the plan year multiplied by 130 hours, when the employee is paid hourly. A company can't use this safe harbor if it has reduced employee wages during the year.*

3. **Federal poverty line. Coverage will be considered affordable if an employee's monthly contribution for the lowest-cost employee-only coverage offered by the employer that meets the minimum value requirement is no more than 9.5 percent of 1/12 of that year's federal poverty-line amount for a single individual in the state in which he or she is employed.**

These safe harbors are optional. An employer may choose to use one or more of them for all of its employees or any reasonable category of employees, provided it does so on a uniform, consistent basis for those employees.

Proposed Regulations

The January 2, 2013 proposed regulations are very broad and contain several new rules and clarifications. Some of them are based on earlier IRS guidelines about certain key issues, including:

- **Determining a company's status as an applicable large employer for single employers and those that are part of a controlled group**
- **Determining full-time-employee status using hours of service or an optional safe harbor for employees with varying hours or work schedules**
- **Determining which dependents of full-time employees must be offered coverage**
- **Determining if an employer is subject to an assessable payment, and how to determine the assessable payment for single employers and those that are part of a controlled group**
- **Evaluating affordability and minimum value of coverage, as well as the administration and the amount of the Shared Responsibility assessable payment**

Penalties and Reporting Delayed Until 2015

The U.S. Department of Treasury announced Tuesday, July 2, 2013, that it will delay until 2015 the penalties and reporting requirements of the Employer Shared Responsibility provisions. The Administration considered comments from interested parties concerned with the complexity of the proposed regulations amid looming implementation deadlines in deciding to act. Accordingly, both the employer and insurer reporting requirements and any penalties under the employer mandate have been delayed until 2015.

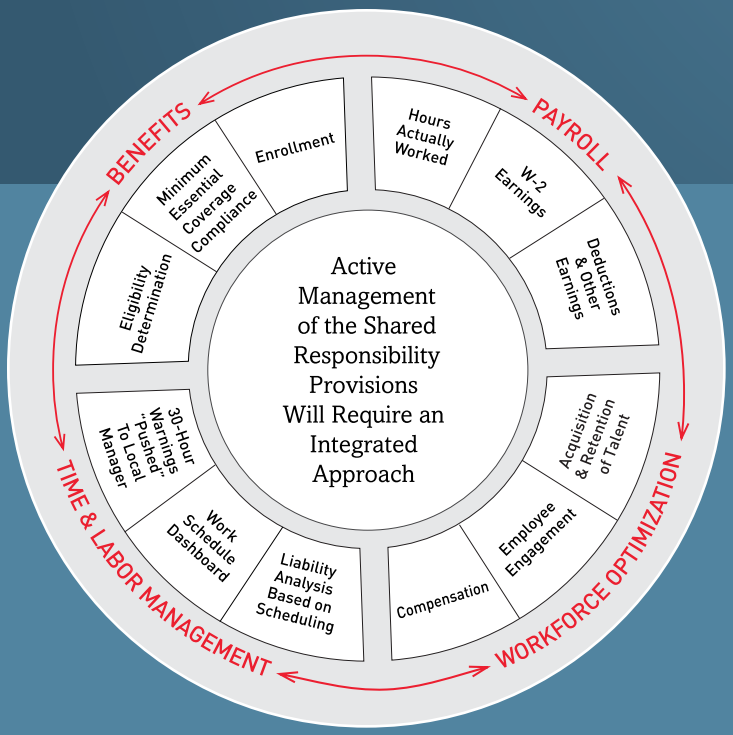
During the transition period in 2014, the Administration encourages employers to voluntarily extend coverage to employees in accordance with the Employer Shared Responsibility mandate in preparation for 2015. The delay is limited to the Employer Shared Responsibility requirement only. Premium tax credits for individuals through an insurance marketplace will continue to be available, although it is unclear until further guidance is issued how eligibility will be verified without the informational reporting under Sections 6055 and 6056. The individual mandate continues to be effective in 2014, although recent guidance was issued that provides transitional relief to individuals who are eligible for non-calendar year coverage through their employer or spouse's employer. The transitional relief indicates that these individuals are permitted to wait to obtain coverage until the first day of the plan year that begins in 2014 without becoming subject to a penalty.

Employers should continue to evaluate their options under the ACA concerning their overall healthcare and workforce strategies for the coming year. Although penalties associated with the employer mandate have been delayed, we encourage you to leverage the expertise of ADP TotalSource in preparing for 2015.

Where Do You Stand?

Your business may be exempt from Shared Responsibility. It applies only if you employ 50 or more combined full-time employees and FTEs. ADP TotalSource® can help you evaluate your position by providing:

- **Tools, including a Web-based Shared Responsibility calculator, to gauge your status as a large employer based on the number of full-timers and FTEs you have**
- **Guidance about how your medical plan meets, doesn't meet or exceeds the minimum–value requirements**
- **Analysis to determine if all full-time employees are offered coverage and if it's affordable**
- **Recommendations on benefits thresholds relative to wages to mitigate the risk of penalties for not meeting affordability safe-harbor provisions**
- **Assistance in determining benefits eligibility for a variable workforce**



Active Management of the Shared Responsibility Provision

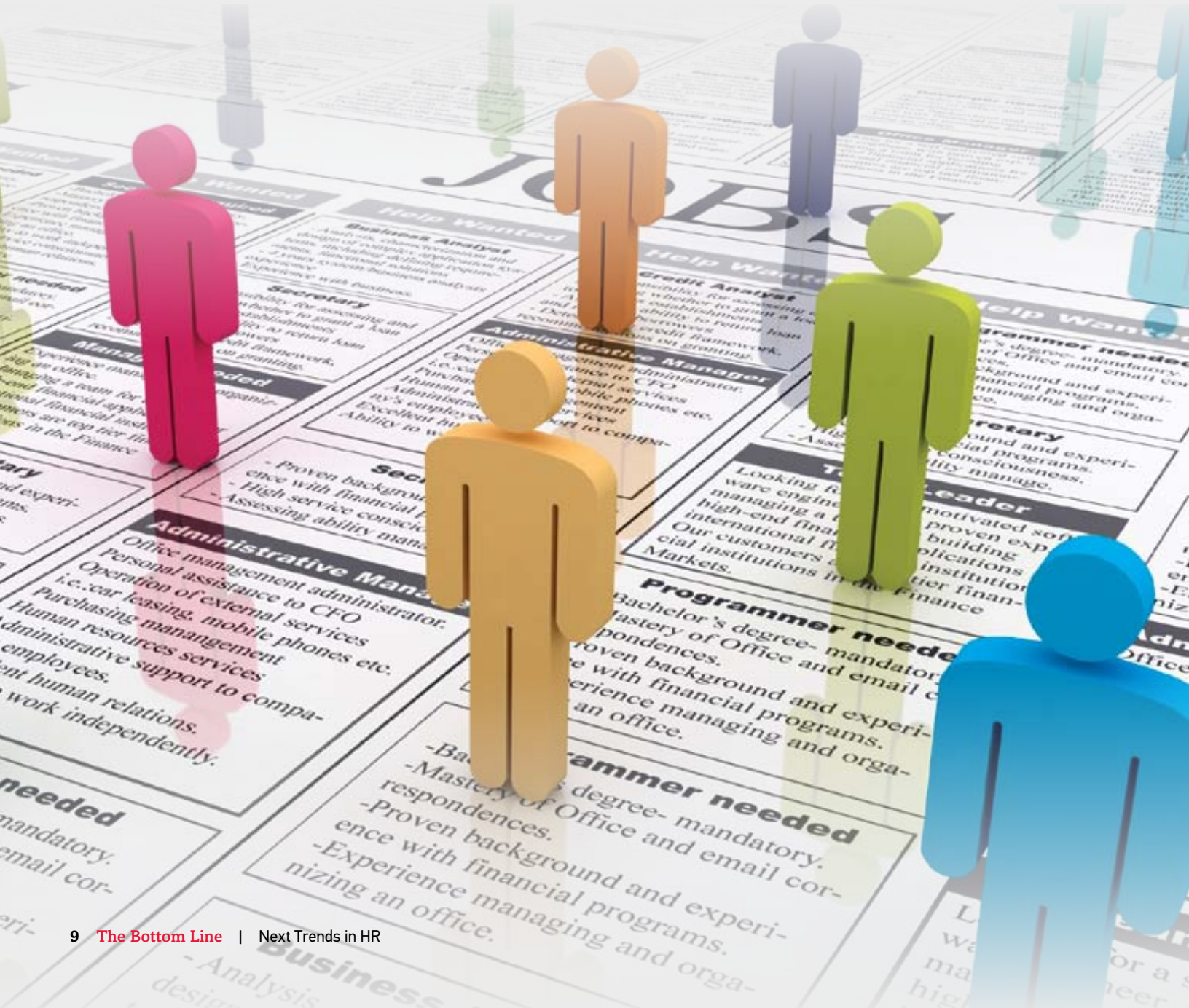
Your ADP TotalSource Human Resource Business Partner (HRBP) can work with you to review your options and evaluate your readiness to comply with the ACA provisions that will affect you.

We invite you to meet with ADP to assess your compliance readiness via the ACA Compliance Checkup – a web-based tool that provides you with a customized snapshot and report of potential issues related to certain elements of the Employer Shared Responsibility based on your existing processes. Call today to register for a complimentary ACA Compliance Checkup Report at (800) 447-3237. ■

LOOKING DOWN THE ROAD AT THE ***NEXT TRENDS*** IN HR

Part 1 of a series of 2

If we were able to accurately predict the future, most of us would take this talent to Las Vegas or a nearby lottery vendor. Since most of us aren't blessed with a functional crystal ball, we have to rely on experts to help us forecast what's coming down the road. Fortunately, the picture of what's next in human-resources trends is pretty clear. And it's no surprise. Hiring and keeping the best and brightest is at the center of the latest trends.



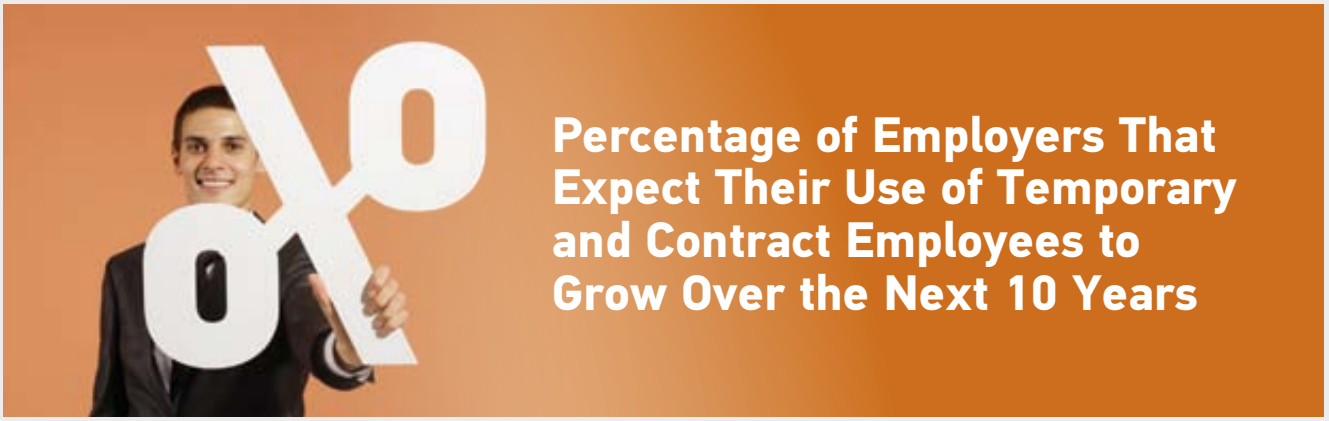
*Talent, **Talent & Talent***

During the recent economic downturn, many business leaders were asking themselves how they were going to be able to keep and reward key employees while maintaining fiscal health at the same time. The answers didn't come easily, and many are breathing a sigh of relief now that those days seem to be behind us.

But the question of attracting and keeping the right talent is still there. In fact, in 2012, when the Society for Human Resource Management (SHRM) asked employers what their biggest challenges would be over the next 10 years, 59 percent said their number-one priority was "retaining and rewarding the best employees." By comparison, when asked this question in 2010, 51 percent said this was their top concern. Clearly, having the best talent is becoming increasingly important to businesses.

Workforces Are Expected to Grow

The same SHRM study asked employers about their expectations for the size of their workforce. More than two-thirds (69 percent) responded that they believe their employee population will expand. It appears that this growth will be with permanent employees rather than a contingent workforce. For example, in 2012, only 29 percent said they expected the proportion of temporary and contract workers would increase, compared with 65 percent who said this in 2010. Smaller employers in particular expect to use fewer temporary and contract employees.



Percentage of Employers That Expect Their Use of Temporary and Contract Employees to Grow Over the Next 10 Years

1 to 99 employees	25%
100 to 499 employees	21%
500 to 2,999 employees	29%

Source: "Challenges Facing HR Over the Next 10 Years," © Society for Human Resource Management, 2012.

Non-U.S.-Born Workforce Increasing

As employers strive to add staff members, the pool of non-U.S.-born workers is growing larger. According to the U.S. Labor Department, from 2009 to 2012 the number of immigrants working in the United States rose 6.5 percent, to 23 million. This is compared with a 1 percent gain to the 119.5 million of those born here. Gains by non-U.S.-born workers were concentrated in low- and high-paying jobs. Unless there are dramatic and sweeping changes in immigration laws, this trend is expected to continue for the foreseeable future.

Retention Hurting in a Post-Recession World

Employers may intend to increase the number of people at work, but this plan could be derailed by retention challenges. Employee loyalty was rocked during the down economy and is now at a seven-year low, according to the MetLife 10th Annual Study of Employee Benefits Trends.[1] This study revealed that one in three employees hoped to be working for a different company the following year. Employers are seeing this play out in their turnover rates. A study conducted by WorldatWork and Towers Watson found that nearly 60 percent of responding companies say they are having trouble retaining critical-skill employees.[2]

The Challenges of Hiring Well

Keeping top talent is not the only challenge facing employers. With so many looking for jobs, it might be tempting to think that replacing a lost employee would be relatively simple. This turns out not to be the case. According to a 2012 survey by XpertHR, 95 percent of employers say the biggest recruitment barrier is the poor quality of applicants. Complicating matters is the deluge of applications companies receive for job postings. To add insult to injury, the survey also reported that more than half (54 percent) of the businesses surveyed said they experienced problems with candidates withdrawing their acceptance of job offers. This may be an indication that job markets are heating up for qualified candidates and that it will take more to land the candidates employers want.

Tying the Trends Together

In the absence of a crystal ball, business leaders who are interested in human-resources trends can turn to the myriad of reports, surveys and studies available on this topic. But you don't need to be able to see into the future to know that attracting, hiring and holding on to a top-notch workforce is a significant driver of organizational success. As companies begin to plan for 2014 and beyond, putting people front and center is a trend that is not going away — in fact, it's gaining traction like never before.

Watch for Volume 15 of The Bottom Line *for a continuation of this discussion on human-resources trends. Part 2 will focus on how reward and benefit trends are influencing employee engagement.*

How ADP TotalSource® Can Help

Employees can be the difference in a company's ongoing success. Yet, many organizations don't have the resources to locate the best talent, develop appropriate job descriptions and adequately screen potential staff members. Not doing these things can lead to ill-advised hiring decisions that can negatively affect your company's productivity, increase turnover and even result in unnecessary and costly lawsuits. With ADP you gain access to a global leader in employee recruitment. ADP TotalSource certified recruiters will partner with your company every step of the way to help you identify, screen and select the best candidates for your organization. ■

[1]The MetLife 10th Annual Study of Employee Benefit Trends: Seeing Opportunity in Shifting Tides (2012, MetLife Inc.).
[2]The Next High-Stakes Quest: Balancing Employer and Employee Priorities, 2012–2013 Global Talent Management Rewards Study, co-sponsored by WorldatWork and Towers Watson.

Top HR Mistakes That Will Get You **Sued**

Among the challenges facing companies today is the increasingly complex and ever-changing regulatory and compliance environment. In fact, keeping up with the vast array of employee- and workforce-related regulations can be a full-time job in itself, straining your internal HR department resources. But failing to adhere to these regulations can lead to costly and time-consuming lawsuits and administrative penalties that can jeopardize your company's long-term success.

Of course, there is no way to guarantee that your business will never be sued by a current or former employee, but you can safeguard against it. Avoiding the following HR and compliance mistakes will go a long way toward reducing your legal exposure while helping to create a risk-free workplace.

MISCLASSIFYING WORKERS AS EXEMPT EMPLOYEES

The rules governing how employers must pay employees are contained in a federal law called the Fair Labor Standards Act (FLSA). (Some states have additional laws that must also be followed.) Workers who are covered by the FLSA are entitled to be paid minimum wage and overtime. However, employees in some positions can be "exempt" from those requirements: They do not receive overtime pay no matter how many hours they work in a workweek.

Some employers have wrongly classified, or misclassified, employees as exempt solely because they are paid a salary or have obtained a college degree, to name a couple of examples. Whether intentional or not, this is a costly mistake. It results in lawsuits. Employers must be prepared to defend their decisions to classify positions as exempt, because if a position has been misclassified, they will be ordered to pay fines, overtime, liquidated damages and attorneys' fees.

Unfortunately, determining exemption can be difficult because it is based on the specific employment situation — not on job titles alone but on the duties performed and compensation received. A list of available exemptions can be found on the Wage and Hour Division's page of the U.S. Department of Labor's (DOL) website, www.dol.gov.

MISCLASSIFYING WORKERS AS INDEPENDENT CONTRACTORS

The FLSA governs pay only for employees, not independent contractors or consultants. And yet the DOL has estimated that up to 30 percent of employers misclassify employees as independent contractors. The Government Accountability Office has estimated that worker misclassification costs the federal treasury $4.7 billion annually in income-tax revenue.

As federal and state governments scramble for revenue, employers who misclassify workers as independent contractors have become an easy target. Although an employer may save money by classifying an employee as an independent contractor, doing so can be ultimately devastating, leading to audits, penalties, lawsuits and substantial unforeseen costs.

To determine whether workers are properly classified, the DOL uses an "economic reality" test that examines the following: 1) the degree of control exercised by the alleged employer; 2) the extent of the relative investments of the alleged employer and employees; 3) the degree to which the alleged employee's opportunity for profit and loss is determined by the employer; 4) the skill and initiative necessary for performing the work; 5) the permanency of the relationship; and 6) the extent to which the work performed is an integral part of the employer's business. Neither the presence nor absence of any individual factor is determinative.

IMPROPERLY USING CONVICTION RECORDS

The Equal Employment Opportunity Commission recently issued revised guidelines on the use of conviction records. It is common practice among some employers to prohibit hiring anyone who has a conviction. However, the guidelines state that an employer must make an individualized assessment of the applicant, the crime, and the position at issue. This allows the applicant to explain the circumstances of the conviction and why it should not exclude him or her from employment.

TERMINATING AN EMPLOYEE WITHOUT A GOOD REASON

The employment at-will doctrine says that an employer can terminate an employee for a good reason, a bad reason or no reason at all. The truth is, the at-will defense is usually a weak one.

As an initial matter, discrimination and harassment are exceptions to the at-will doctrine. Moreover, a plaintiff does not need smoking-gun evidence that an employer acted unlawfully. Courts recognize that workplace discrimination comes in many subtle, different forms. As a result, courts allow plaintiffs to use circumstantial evidence to prove their case, including the timing of a termination, stray remarks, and evidence of how other employees have been treated in similar circumstances. A jury is permitted to rule in favor of a plaintiff based entirely on inferences they draw from such circumstantial evidence.

For these reasons, employers should be prepared to provide an employee with a good reason for termination.

FAILING TO PROVIDE ADDITIONAL TIME OFF TO A DISABLED EMPLOYEE

Many employers have policies that address leaves of absence pursuant to the Family Medical Leave Act (FMLA), personal leaves of absence, and/or a sick leave. Some policies provide for automatic termination if an employee does not return to work when the leave period expires. Any policy that imposes a capped time limit on the amount of unpaid leave available to employees may violate the Americans with Disabilities Act (ADA), which applies to employers who have 15 or more employees. The ADA requires employers to provide reasonable accommodations to disabled employees, and additional unpaid leave is commonly provided for disabled workers who have exhausted all other leave. There is no clearly defined rule that tells employers how much additional unpaid time off is required under the ADA. Leave policies should be flexible, and employers should evaluate each request for leave on an individual basis.

REFUSING TO PAY FOR UNAUTHORIZED OVERTIME

Some employers have a policy stating that employees will not be paid for working unauthorized overtime. That is illegal. Employees must be paid for all the hours they work. To avoid confusion, employers should have a policy that clearly identifies the workweek, states that overtime must be approved in advance, and states that an employee will be subject to discipline for not receiving prior approval. The punishment for unauthorized overtime cannot be refusal to pay the worker for it.

FAILING TO ADDRESS HARASSMENT IN THE WORKPLACE

Courts recognize that employers cannot control everything their employees do, but they will not tolerate employers who sweep incidents of harassment under the rug. Instead, courts have said that employers generally will not be liable for harassment if they (i) maintain appropriate complaint procedures and (ii) promptly and effectively respond to a complaint of harassment. What does that mean you should do? First, have an antiharassment policy that contains a clear reporting procedure, including several options for employees to report complaints of alleged harassment and/or discrimination. Second, promptly investigate complaints of harassment and take appropriate action to correct the situation.

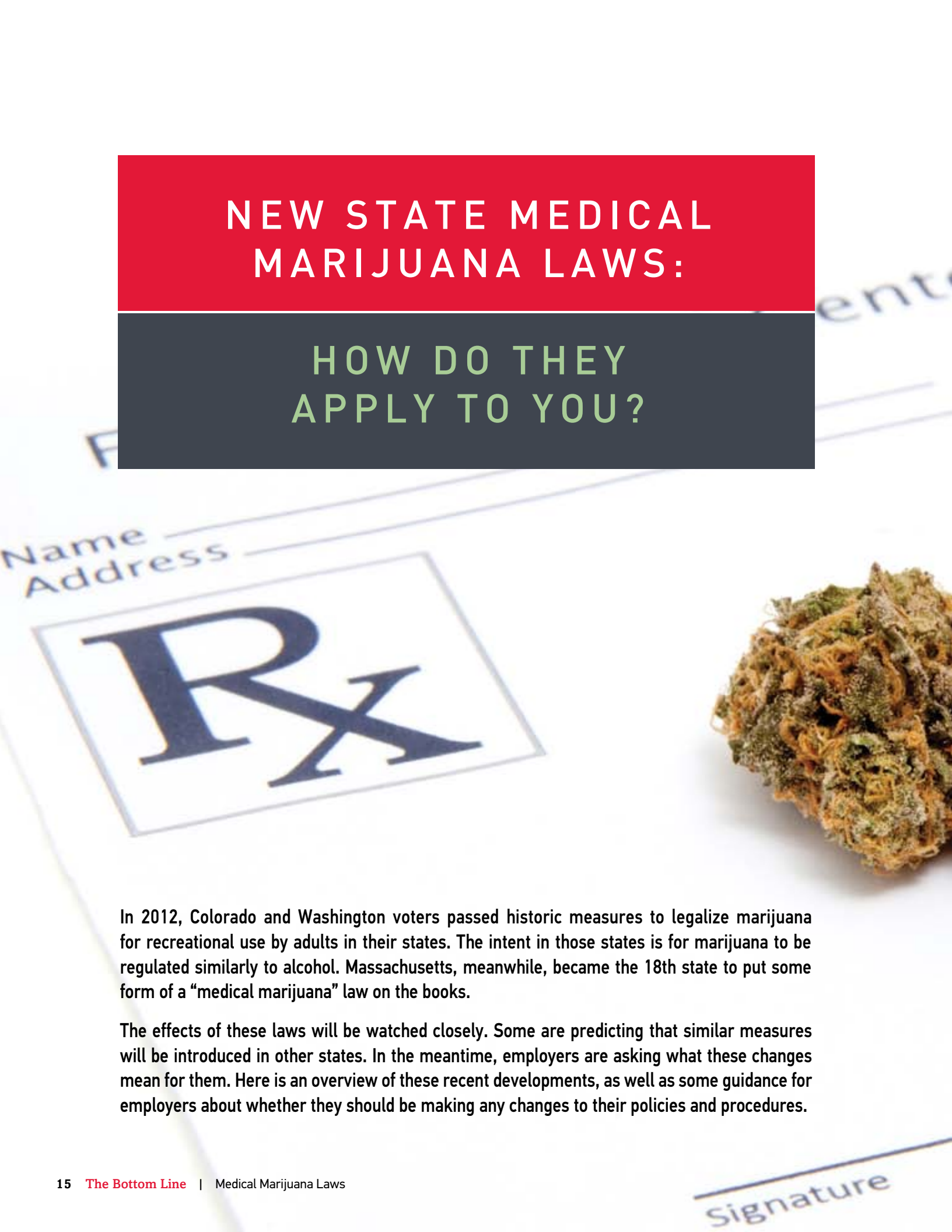
REQUESTING SOCIAL-MEDIA PASSWORDS

It is illegal in Maryland, Illinois, Michigan and California to request that an applicant or employee provide access to a social-networking account. More states are looking to add laws protecting employee passwords for social-media sites. As a result, employers should be careful not to request such information in applications or other employment processes.

While these are risky areas, ADP TotalSource® has the tools and resources to lead you in the right direction. Through ADP TotalSource's regulatory and compliance services, you gain access to an experienced team of HR, risk management and compliance experts, as well as employment practices liability insurance to further protect your company. Its Human Resources Business Professionals can help you make fully informed decisions on a wide range of issues.

NEW STATE MEDICAL MARIJUANA LAWS:

HOW DO THEY APPLY TO YOU?



In 2012, Colorado and Washington voters passed historic measures to legalize marijuana for recreational use by adults in their states. The intent in those states is for marijuana to be regulated similarly to alcohol. Massachusetts, meanwhile, became the 18th state to put some form of a "medical marijuana" law on the books.

The effects of these laws will be watched closely. Some are predicting that similar measures will be introduced in other states. In the meantime, employers are asking what these changes mean for them. Here is an overview of these recent developments, as well as some guidance for employers about whether they should be making any changes to their policies and procedures.


Age
Date

COLORADO

Colorado's Amendment 64, which permits the "personal use and regulation of marijuana" for adults 21 and over, was passed with a 53 to 47 percent margin, making Colorado the first state to end marijuana prohibition in the country. "Amendment 64: The Regulate Marijuana Like Alcohol Act of 2012" amends the state constitution to allow persons over 21 to possess up to one ounce of marijuana and grow up to six marijuana plants for personal use. It also authorizes the licensing of retail facilities for sales of marijuana to adults. Public consumption and unlicensed sales in Colorado will remain illegal.

The licensing provisions of the amendment will not go into effect until 2014. This is intended to provide the state time to develop regulations for the sale and taxation of marijuana. The personal use and cultivation provisions, however, have already become effective.

Amendment 64 provides explicitly, "Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees."

MASSACHUSETTS

Massachusetts now permits doctors to recommend marijuana as part of a treatment plan. While the laws of some other states require employers to accommodate the use of medical marijuana, the Massachusetts law explicitly provides that it does not require "any accommodation in any place of employment." Thus, it does not require employers to allow their employees to possess or use medical marijuana in the workplace, even if the drug is being used to treat a disability.

Similar measures were recently rejected by Oregon and Arkansas voters.

WASHINGTON STATE

Washington voters passed Initiative 502, which regulates and taxes sales of small amounts of marijuana for adults, by a 55.5 to 45.5 percent margin. Under the law, individuals 21 years and older may lawfully purchase and possess up to one ounce of marijuana, 16 ounces of marijuana products and 72 ounces of liquid-infused marijuana products at licensed retail outlets that have been approved by Washington's state liquor control board. It will remain unlawful to open or consume marijuana in the view of the general public.

STILL ILLEGAL UNDER FEDERAL LAW

While possession of marijuana in Colorado and Washington in accordance with those states' laws is not a criminal or civil offense, marijuana possession remains unlawful under the federal Controlled Substance Act. Specifically, marijuana remains a Schedule I controlled substance under that law, which means it remains illegal under federal law to possess, ingest or sell it. As a result, employers are permitted to prohibit their employees from using marijuana at work or from working with marijuana in their system.

"My advice to employers in Washington and Colorado is do nothing," says Mark de Bernardo, a partner at Jackson Lewis LLP and the executive director of the Institute for a Drug-Free Workplace. "Keep your policy, keep your drug-testing of job applicants and employees for THC, continue to take adverse employment actions against those who test positive for marijuana, and follow federal law."

OTHER FEDERAL LAWS TO KEEP IN MIND

Under the Drug-Free Workplace Act of 1988, employers must maintain a drug-free workplace as a condition to becoming a federal contractor or receiving funding from the federal government. An employer that wishes to accommodate an employee's use of medical marijuana should therefore consider the risk of liability under federal law and the potential loss of eligibility for federal contracting or funding.

The U.S. Department of Transportation (DOT) also has drug and alcohol requirements for covered employers. The prohibition of marijuana use by safety-sensitive employees in transportation-related jobs is unchanged. Employers of DOT-covered employees must test for marijuana in accordance with the DOT's Drug and Alcohol Testing Regulations. The DOT's guidelines on this subject (dated October 22, 2009) states clearly:

> **[M]arijuana remains a drug listed in Schedule I of the Controlled Substances Act. It remains unacceptable for any safety-sensitive employee subject to drug testing under the Department of Transportation's drug-testing regulations to use marijuana.**

Even physician recommendations for marijuana use under state medical-marijuana laws do not excuse the use of the drug under DOT rules. As for medical marijuana, the DOT guidelines also state that "Medical Review Officers will not verify a drug test as negative based upon information that a physician recommended that the employee use medical marijuana."

NEXT STEPS

In light of these developments, employers may still consider creating policies to address substance abuse that affects employees' conduct or work. They may also review their existing policies about drug testing, safety, and substance abuse, some of which may prohibit employees from using or being under the influence of lawful substances, such as alcohol and prescription drugs—as long as the policies are written in a manner consistent with applicable federal and state laws prohibiting disability discrimination or regulating drug testing. Additionally, unionized employers should remember their possible collective-bargaining obligations associated with these subjects.

ADP TotalSource® has the tools and resources to lead you in the right direction, including a multistate compliant drug-testing program. Its Human Resources Business Professionals can help you make fully informed decisions about a broad range of employment issues, including drug testing.

WEAPONS AT WORK:

KNOWING THE LAW AND CHANGING COMPANY POLICIES

In August 2012, a man shot and killed a former coworker outside the Empire State Building. A shoot-out followed between the gunman and the police that injured several others. And in November, an Apple Valley Farms employee shot and killed two coworkers in California. These events are tragic and troubling, but they are just two instances of work-related homicide. According to the Federal Bureau of Labor Statistics, there are approximately 500 each year in the United States.

There will never be a foolproof way to prevent an unstable person from committing a violent act, but employers can lessen the likelihood of it happening in the workplace with a written weapons policy. The general rule is that employers can ban weapons in the buildings and areas where employees work. Indeed, the Occupational Safety and Health Act's General Duty Clause states that employers must provide a safe and healthful workplace for employees.

There have been some significant legal developments in this area over the past few years. Many states have passed laws that permit employees to take weapons to work and keep them in their vehicles. These laws are not uniform. As a result, employers must decide whether they can adopt a single policy or have different variations of it. Several state laws are discussed below.

GEORGIA

Any employer that owns the property on which employees park their vehicles may bar firearms from the property and may search employees and guests. Moreover, employers have the right to prohibit employees who have completed a disciplinary action or have one pending from bringing a concealed weapon onto company property.

Employers who are not property owners may not bar weapons from their parking lot, but they do have some rights to search employees' vehicles for firearms under the law: Employers may search company-owned vehicles; they may search an employee's private vehicle when a reasonable person would believe that doing so might prevent an immediate threat to human health, life or safety; and they may search an employee's vehicle when a private security officer has probable cause to believe that the employee unlawfully possesses company property and the employee consents to the search.

FLORIDA

Employers are generally not allowed to prohibit a customer, employee or invitee from keeping a legally owned firearm inside a locked, privately owned motor vehicle parked in a parking lot, even on an employer's private property. There are two exceptions to this rule:

- Employees who wish to keep a firearm inside their privately owned vehicle must possess a valid concealed-weapons permit. (This requirement is not extended to customers and invitees.)
- All employees, customers and invitees are prohibited from keeping a firearm inside a vehicle parked on any school property; at any correctional institution; on property owned or leased by a public or private employer that conducts national defense, aerospace or homeland-security operations; and on any property that manufactures, uses, stores or transports combustible or explosive materials, as regulated under state or federal law.

Additionally, the law imposes multiple restrictions on both public and private employers:

- Employers are prohibited from conditioning employment on whether an employee or a prospective one has a gun license.
- Employers are not permitted to terminate an employee or otherwise discriminate against one simply because the individual keeps a firearm inside his or her locked, privately owned vehicle.
- Employers may not prohibit or attempt to prevent any employee, customer or invitee from entering the parking lot or place of business because his or her vehicle contains a legal firearm.

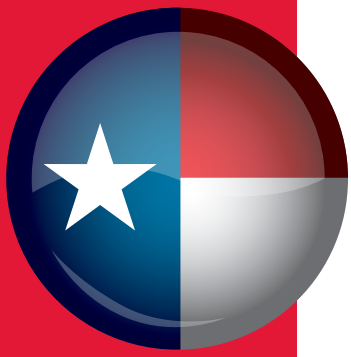
INDIANA

An employer may not maintain a policy prohibiting possession of a firearm in an employee's vehicle at the workplace. An employee who legally possesses a firearm is permitted to keep it in his or her locked vehicle at work, as long as it is stored in the trunk, the glove compartment, or otherwise out of plain sight. Certain employers, including schools, day-care centers and domestic-violence shelters, are provided limited exceptions under the statute. The law only permits keeping the weapon in the employee's vehicle and does not affect an employer's policies prohibiting possession of firearms inside the workplace.

Employers are also prohibited from requiring an applicant or employee to disclose whether he or she owns, possesses, uses or transports a firearm (unless it is used to fulfill the duties of employment). And they may not condition employment — or any rights, benefits, privileges or opportunities associated with it — upon any agreement that the applicant or employee forgo his or her rights under the workplace gun law or any other rights related to lawful possession of a firearm.

MISSISSIPPI

An employer may bar weapons from the workplace. However, employers may not ban employees from leaving their legally possessed guns in their vehicles in the employer's parking lot, unless access to it is limited by use of a gate, security station or other means.



TEXAS

An employer may not prohibit an employee who holds a license to carry a concealed handgun from transporting or storing a firearm in a locked, privately owned vehicle in any parking area it provides for employees.

But people licensed to carry a concealed handgun are prohibited from taking their weapon onto any property where it's illegal to possess a firearm. Under certain federal laws and regulations, including the Maritime Transportation Security Act and the Chemical Facility Anti-Terrorism Standards, employers must implement facility security plans that may include bans on firearms. Those plans must be submitted to federal officials for approval.

The Texas Attorney General has said that an employer can't prohibit employees with concealed-handgun licenses from storing firearms in personal vehicles in their employers' parking lots under the "prohibited by law" exception.

WISCONSIN

An employer may prohibit an employee from carrying a concealed weapon at any time during work hours. However, an employer may not prohibit an employee from carrying a concealed weapon in his or her own motor vehicle, regardless of whether the car is used during work hours or whether it's driven or parked on property used by the employer.

TAKING ACTION

Companies should implement a weapons policy that complies with the laws of the states where they operate. In the process, they should review and update employee handbooks and other policies to make sure they aren't improperly banning employees' storage of lawfully owned firearms in vehicles on the employer's property. It's worth considering instilling a policy that gives employers the right to search private property on their premises, including vehicles parked in their lot. Finally, workplace-violence training for employees could benefit everyone and put minds at ease.

How ADP TotalSource® Can Help

Regulatory compliance may be viewed as a business-draining exercise, but it is not to be taken lightly. With the regulatory and compliance services of ADP TotalSource, you gain access to multiple layers of protection from a seasoned team of experts. They'll work on your behalf to help keep your company current with changing requirements, as well as recommend actions that may help to reduce your company's liability exposure. ADP TotalSource can also provide clients with a state-compliant weapons policy and assist with conducting workplace-violence training.

Retirement Through the Ages

It's 9 a.m. on Monday morning and ...

... Steve (67) is helping his grandson learn how to ride a two-wheeler.
... Diane (62) leads a group of yoga students from the downward-facing dog pose into a low lunge.
... Renata (58) turns on her iPad to show a new client her design ideas for renovating the client's family room.
... Alberto (65) enters a classroom of military veterans and prepares to lead a job-search workshop.

What do these people have in common?

Steve, Diane, Renata and Alberto all retired on the same day last year. But clearly, each has different ideas about what retirement means.

How do you intend to spend your retirement years? And when do you expect retirement to begin? How you, and your employees, answer these questions could depend largely on your age today.

Older Employees Sticking Around

The recent "great recession" forced many older workers to rethink their retirement date. In a September 2012 panel discussion at the Employee Benefit News 25th Annual Benefits Forum and Expo, Edwin A. Redfern, Jr., a senior program manager for AARP Education & Outreach, said that 78 percent of workers age 50 and older are in the workplace because of health insurance and financial needs. Similarly, a report produced by the Society of Human Resources Management says that as many as half of baby boomers (people 54 to 65 years of age) have postponed retirement by four years because of the recession.

While the recession gets some of the blame for employees choosing to work beyond 65, there has been a trend toward delaying retirement since the 1990s, due to the following factors:

- People are concerned about outliving their money.
- There's been a shift from traditional pension plans with established retirement ages (usually 65) to defined contribution plans with no set retirement age.
- The population is more educated, and those with higher levels of education tend to work longer.
- The age to receive unreduced Social Security retirement benefits has increased from 65 to 67.
- The lack of retiree medical benefits keeps many on the job longer.
- Some don't want to retire. They find work satisfying and feel they still have a lot to contribute.

The Retirement Age U-Turn

The Bureau of Labor Statistics predicts that by 2018, 25 percent of the labor force will be age 55 and older. This is completely different from what was happening last century. In 1880, 78 percent of men over age 64 were still working, but by 1990, only 30 percent of men older than 64 were in the workforce.

Working Because They're Wanted

Delayed retirement isn't such a bad thing for business. Employers want their older, more experienced workers to stay. A survey conducted on behalf of BMO Retirement Services found that 45 percent of employers feel that postponing retirement is good for their companies, and only 4 percent of respondents think it will have negative consequences.

Comparing the Younger Generations

As their older counterparts are deciding about retirement, younger employees are thinking about the future also, but in a much different way. Prudential Retirement, a business unit of Prudential Financial, Inc., released a study in December 2012 showing that millennials (born in 1980 to 2000) know they must contribute to their retirement savings, even when times are tough. According to Prudential's "Younger Workers and Retirement" study, millennials are watching their parents and grandparents struggle because they didn't save enough; 83 percent say that this motivates them to want to save more. The study also reported that millennial workers put saving for retirement ahead of spending for a vacation or buying a house.

Although they understand why they should save, millennials are not at all confident about their financial knowledge, and they find the retirement plans offered by employers to be complicated and overwhelming. They want tools that are more interactive and will help them understand their plans better.

Meanwhile, the middle generations—Generations X and Y—are putting their money where their luggage is: Retirement is just barely beating out vacations as the reason Generation Xers[1] save. In February 2013, LIMRA®, an industry-funded research firm, published "Sowing the Seeds for Retirement: Gen X and Gen Y Markets," a report finding that less than half (46 percent) of Gen X employees say retirement is their top reason for saving, compared to 38 percent who are saving for vacations and travel.

For those who are saving, the LIMRA study found that Gen X employees are conservative investors. Between the lower saving level and being risk-averse when it comes to investments, many wonder if Gen Xers will have the nest egg they'll need when it's their turn to leave the workforce.

The Future of Retirement Benefits

So what does this mean for employers? The MetLife 10th Annual Study of Employee Benefits Trends found that 75 percent of employers surveyed recognize that potential holes in Social Security and Medicare safety nets will cause workers to look to their job for help. And 54 percent agree that this creates a responsibility to maintain, if not expand, retirement benefits.[2]

But financial constraints won't permit employers to spend a lot more on retirement benefits, so companies are being creative in the way they offer them, taking the generational needs of their staff into consideration:

- **Phased retirement** allows employees to take a more flexible approach to retirement by transitioning from the traditional 40-hour workweek into retirement over a period of time. This enables employees to access some of their retirement benefits to offset shortfalls created by reduced work hours.
- **Auto-enrollment** takes the effort out of saving for the future by eliminating the need to actively enroll in a company-sponsored retirement-savings plan, such as a 401(k). Employees automatically become savings-plan participants unless they take action to prevent it. "It is vitally important that people begin saving for retirement, especially younger workers, and automatic enrollment gets that done," says David Wray, president of the Profit Sharing 401(k) Council of America in Chicago. In addition, many plans include an automatic escalation feature to increase participant contribution rates over time.
- **Target-date funds** are another way that retirement-savings plans are making it easier for employees to participate. By choosing an investment fund aligned with their estimated retirement age, employees can feel more confident that they are appropriately invested. However, selecting a target-date fund doesn't mean that a participant won't experience the same ups and downs as other investments. It's just an easier, more convenient way for people to invest their savings.

Retirement no longer looks the same as it did when our grandparents left the workforce. And retirement benefits are changing as a result – not only to meet the needs of today's businesses but also to keep pace with a multigenerational workforce. The ADP TotalSource® Retirement Savings Plan is built to provide benefits that will help companies recruit and retain key talent. It also offers the features of a Fortune 500 plan, including expert financial-planning services, robust online tools, and major asset-buying power with funds and fund managers typically found in some of the largest plans. ■

[1]Generation X is defined as those born in the early 1960s to the early 1980s.
[2]The MetLife 10th Annual Study of Employee Benefits Trends: Seeing Opportunity in Shifting Tides (2012, MetLife Inc.).

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 a brief summary of recent developments from January to March 2013:

Jurisdiction	Regulatory Development(s)	ADP TotalSource Action(s)
CALIFORNIA 	The California Fair Employment and Housing Commission has implemented new and amended regulations addressing employers' obligations and employees' rights and responsibilities regarding pregnancy under the California Fair Employment and Housing Act. The regulations now require employers to notify employees of their rights to take pregnancy-disability leave. What's significant is that the regulations now prohibit discrimination based on "perceived pregnancy," which is defined as "being regarded or treated by an employer or other covered entity as being pregnant or having a related medical condition."	Alerted clients to the updates; updated applicable forms and policies to comply with the new regulations; provided guidance to help clients meet their compliance obligations under the new regulations.
CALIFORNIA 	The California Fair Employment and Housing Commission has issued new regulations that significantly expand protections for disabled workers and outline new requirements regarding reasonable accommodations, the interactive process and proof of discrimination. In particular, employers are now required to allow "assistive animals" into the workplace as a reasonable accommodation, subject to minimum standards set by the employer. The regulation also expanded and clarified the definitions of physical and mental disability, and clarified the definition of reasonable accommodation.	Alerted clients to the update; provided clarification and guidance on complying with the law.
FEDERAL 	The Department of Labor issued an executive order requiring federal contractors (including subcontractors) who are working under a contract that succeeds one for the same or similar services at the same location to offer the predecessor contractor's employees a right of first refusal of employment. In other words, and with limited exceptions, the successor contractor must initially offer employment to the predecessor contractor's employees, regardless of whether they meet the successor's employment standards and qualifications. Additional requirements apply if the predecessor's workforce is unionized.	Alerted clients to the executive order; provided HR guidance and best practices to help clients stay in compliance with the law.
FEDERAL 	A new interpretation of the federal Family and Medical Leave Act (FMLA) confirms that the age of a son or daughter at the onset of a disability is not relevant in determining an employee-parent's entitlement to leave to care for a child with a disability, even if that child is an adult. The interpretation also clarifies the availability of FMLA leave for parents to care for an adult child who becomes disabled during military service. The practical impact of this new interpretation of the law is that many more will be entitled to take leave to care for adult children.	Alerted clients to the new interpretation; provided HR guidance and best practices to help clients stay in compliance with the law.
FEDERAL 	The DOL has published final regulations clarifying several amendments to the FMLA. These updated regulations expand military-leave provisions and implements other modifications of the law.	Alerted clients to the update; updated applicable forms and policies to comply with the new regulations; provided guidance to help clients meet their compliance obligations under the new regulations.
MICHIGAN 	Michigan's new Privacy Protection Act prohibits employers and prospective employers from requiring employees and applicants to grant access to, allow observation of or disclose information used to access private Internet and e-mail accounts, including social-media networks such as Facebook. The new law also prohibits employers from discharging, disciplining, failing to hire or otherwise penalizing those who refuse to disclose information that allows access to such accounts.	Alerted clients to the new law; provided guidance and HR best practices to help clients stay in compliance with the law.

What ADP TotalSource® Clients Are Saying

HVAC Services Firm Maximizes Growth Through Superior Service – and Help from ADP TotalSource

From its origins as a two-person operation, Parrish Services has, in just over a decade, grown into a multistate business with a laserlike focus on providing superior customer service. Throughout its years of rapid growth, Parrish has been able to keep its core promise to customers ("Always there for you!"). That said, the increased compliance load and the need to attract and retain good employees compelled owner Alan Givens to rethink how Parrish handles HR administrative and compliance issues.

"We were processing our payroll with ADP®, using the services of a law firm to help stay on top of HR issues, and handling our benefits administration in-house," he recalls. "There were multiple pieces that had to be managed, and there is only so much time in a day. I found myself spending a lot of time on administrative matters. We began researching how to handle all of these responsibilities in a more efficient way."

ADP TotalSource®, ADP's Professional Employer Organization (PEO), was the comprehensive, single-source solution Givens needed. "We did our due diligence and were sold on ADP TotalSource well before they made their presentation to us," says Givens. "We looked at the time and the money the PEO would save us. We could identify savings in all the major areas, from payroll to workers' compensation coverage. One fee covers it for you. By our own internal estimates, we originally were looking at saving between 5 and 12 percent net with TotalSource. Now we're six months in, and I am confident that we are trending more toward the upper end of savings – up to 12 percent."

Regulatory compliance is a major item on any business owner's checklist. Yet Givens feels ADP TotalSource is good at converting compliance requirements into peace-of-mind benefits. He cites an example regarding one of his employees, a customer-service representative who lives and works in California: "That state is one of the most – if not the most – complicated places for employee management. The rules are complex and costly if you make an error, but with TotalSource doing our payroll, tax, and helping us with compliance, we no longer have to worry about California."

For Givens, serving the employees of Parrish Services with Fortune 500®–caliber benefits and consistently excellent customer service is paramount. Instead of calling Parrish Services for assistance during normal business hours, employees now visit the ADP TotalSource Web portal or phone the call center for answers concerning pay and benefits.

Parrish Services

Industry: Service

Type of Business: Provides complete heating, ventilation and air-conditioning (HVAC) services to residential customers throughout Virginia, Maryland and West Virginia.

Location: Headquarters in Manassas, Virginia

Number of Employees: About 100, mostly in Virginia with some home-based employees in other states.

ADP TotalSource Client: Since January 2012

Why ADP TotalSource? "ADP TotalSource helps us stay ahead of our customers."
— Alan Givens, owner, Parrish Services

They can also change their personal information online. "This online system puts them closer to the information they need and expands the time frame for when they can gain access," Givens says.

"Our positive experience as a longtime ADP payroll client was more than enough to give us a really good sense of the type of strong service culture that ADP and its businesses, like TotalSource, bring to the marketplace," Givens concludes. "My company and ADP TotalSource actually have something of a common vision. We also share a common need. Every day, we work hard to make our strong service reputation even stronger."

IN THE BUSINESS OF YOUR SUCCESS®

ADP TotalSource® Solution

With ADP's dedicated team of experts as your partner, you can:

- 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

Take the first step to more streamlined, cost-effective and productive HR management.

Call ADP TotalSource at (800) 447-3237 or visit us at www.adptotalsource.com

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