

ADP RESOURCE®

# The Bottom Line

A Publication Dedicated to Employers' Current HR Issues & Solutions Brought to You by ADP Resource Volume 10

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# OSHA HAS BEEN BUSY. ARE YOU PAYING ATTENTION?



OSHA (Occupational Safety and Health Administration) is using every tool at its disposal to ensure that employers are in compliance with workplace safety standards and rules. Employers must keep abreast of this activity, increasing their awareness of worksite safety and health issues and addressing them for worksites.

## OSHA FORM 300A

Employers covered by OSHA's recordkeeping rule must prepare and post OSHA Form 300A, "Summary of Work-Related Injuries and Illnesses," by February 1 and update it through April 30. The form must be posted at each establishment covered, in a conspicuous place among other notices to employees.

Before posting the form, a company executive must complete it and certify that he has examined the OSHA 300 Log and believes the annual summary to be correct to the best of his knowledge.

A company executive can be one of the following:

- An owner of the company (only if it is a sole proprietorship or partnership)
- An officer of the corporation
- The highest-ranking company official working at the establishment
- The immediate supervisor of the highest-ranking company official working at the establishment

OSHA can cite an employer who fails to post Form 300A as required.

## PROPOSED CHANGES: NEW INDUSTRIES KEEPING LOGS, MORE STRINGENT REPORTING

OSHA has proposed changing the industries that would be generally exempt from maintaining regular workplace injury and illness records. Exempt employers would not be required to maintain OSHA 300 logs, complete OSHA 301 incident report forms or complete the OSHA 300A annual summary forms.

The proposed rule also would require employers to report workplace amputations to the agency within 24 hours and all in-patient hospitalizations within eight hours. The current recordkeeping rule (Part 1904) requires employers to report in-patient hospitalizations of three or more employees to OSHA within eight hours. Any workplace fatality would continue to be reportable.



### Partially Exempt Industries

Certain employers in relatively low-hazard industries are excluded from OSHA's basic recordkeeping requirements. The current exemption list is industry-specific and based on the outdated 1987 Standard Industrial Classification (SIC) coding system. The proposed rule would recategorize the exempt industries according to the North American Industrial Classification System (NAICS), which is used by federal agencies for statistical research purposes. It would also remove some industries from the list based on new injury and illness data compiled by the Bureau of Labor Statistics.

The proposed change is significant. Some employers who have been regularly exempt from maintaining OSHA 300 logs would be required to keep them. Recordkeepers would need to be trained to identify work-related injuries and illnesses and properly record them. Conversely, some employers that have been required to keep records would now be exempt from doing so.

Employers should check the following lists to determine where they fit within OSHA's proposed rule:

## TOP 10 MOST FREQUENTLY CITED STANDARDS



OSHA published its annual top 10 most frequently cited standards for fiscal year 2011 (October 1, 2010 through September 30, 2011). It publishes this list so that employers "can take steps to find and fix recognized hazards addressed in these and other standards before OSHA shows up." The list can be a critical tool, pointing out dangers often encountered in the workplace and the standards that OSHA compliance officers target the most. They are:

1. Scaffolding
2. Fall protection
3. Hazard communication
4. Respiratory protection
5. Lockout/Tagout
6. Electrical, wiring methods
7. Powered industrial trucks
8. Ladders
9. Electrical, general requirements
10. Machine guarding



## Industries That Include Establishments to be Newly Required to Keep Records

3118	Bakeries and Tortilla Manufacturing	5617	Services to Buildings and Dwellings
4411	Automobile Dealers	5619	Other Support Services
4413	Automotive Parts, Accessories and Tire Stores	6219	Other Ambulatory Healthcare Services
4441	Building Material and Supplies Dealers	6241	Individual and Family Services
4452	Specialty Food Stores	6242	Community Food and Housing, and Emergency and Other Relief Services
4453	Beer, Wine and Liquor Stores	7111	Performing Arts Companies
4539	Other Miscellaneous Store Retailers	7113	Promoters of Performing Arts, Sports and Similar Events
4543	Direct Selling Establishments	7121	Museums, Historical Sites and Similar Institutions
5313	Activities Related to Real Estate	7139	Other Amusement and Recreation Industries
5322	Consumer Goods Rental	7223	Special Food Services
5324	Commercial and Industrial Machinery and Equipment Rental and Leasing	8129	Other Personal Services
5419	Other Professional, Scientific and Technical Services		
5612	Facilities Support Services		

## Industries That Include Establishments to be Newly Exempt from Keeping Records

4412	Other Motor Vehicle Dealers	5239	Other Financial Investment Activities
4431	Electronics and Appliance Stores	5241	Insurance Carriers
4461	Health and Personal Care Stores	5259	Other Investment Pools and Funds
4471	Gasoline Stations	5413	Architectural, Engineering and Related Services
4511	Sporting Goods, Hobby and Musical Instrument Stores	5416	Management, Scientific and Technical Consulting Services
4532	Office Supplies, Stationery and Gift Stores	5418	Advertising and Related Services
4812	Nonscheduled Air Transportation	5511	Management of Companies and Enterprises
4861	Pipeline Transportation of Crude Oil	5614	Business Support Services
4862	Pipeline Transportation of Natural Gas	5615	Travel Arrangement and Reservation Services
4869	Other Pipeline Transportation	5616	Investigation and Security Services
4879	Other Scenic and Sightseeing Transportation	6116	Other Schools and Instruction
4885	Freight Transportation Arrangement	7213	Rooming and Boarding Houses
5111	Newspaper, Periodical, Book and Directory Publishers	8112	Electronic and Precision Equipment Repair and Maintenance
5122	Sound Recording Industries	8114	Personal and Household Goods Repair and Maintenance
5151	Radio and Television Broadcasting	8122	Death Care Services
5172	Wireless Telecommunications Carriers (except Satellite)	8134	Civic and Social Organizations
5173	Telecommunications Resellers	8139	Business, Professional, Labor, Political and Similar Organizations
5179	Other Telecommunications		
5181	Internet Service Providers and Web Search Portals		
5191	Other Information Services		
5221	Depository Credit Intermediation		

## Reporting In-Patient Hospitalizations and Amputations

Under OSHA's existing recordkeeping rule, employers must report to OSHA, within eight hours, all work-related fatalities and in-patient hospitalizations of three or more employees. OSHA's proposal would broaden this to include work-related amputations, to be reported within 24 hours of occurrence, and any work-related in-patient hospitalization of an employee, to be reported within eight hours.

With this proposal, OSHA is following the actions of many states that have adopted more stringent reporting requirements for amputations and in-patient hospitalizations.

Employers had until September 20, 2011, to file written comments on the proposal and were encouraged to participate in the rule-making process. A final rule is expected soon.

*Focus on  
your business  
objectives!*

## THE ADP RESOURCE® SOLUTION

*It is difficult to keep up with all of the developments by federal agencies. To help you achieve a safe workplace and minimize the potential for on-the-job injuries, ADP Resource has teamed up with SkillSoft, a leading specialist provider of online safety training and risk management solutions. SkillSoft provides access to a comprehensive online library of resources designed to help your company improve workplace health, safety and organizational performance. Features include online safety training, OSHA compliance support, and a toll-free risk management hotline. ■*





# Human Resources

## Ask the Experts: HR Business Partners

As you have just read in “OSHA Has Been Busy. Are You Paying Attention?” proactive workplace-safety initiatives and risk management are essential to your company’s financial health. ADP Resource® spoke with several of our Human Resources Business Partners—the HR professionals who work the front lines with employers every day—to gain answers and insight into some of the questions employers are asking.

**What are the general OSHA standards that apply to many employers?** OSHA has a general duty clause that requires an employer to create a workplace that is free from recognized hazards that cause, or are likely to cause, death or serious physical harm to employees. While OSHA does have specific standards for certain industries, the following are OSHA requirements that broadly apply to many general industry employers.

### HAZARD COMMUNICATION STANDARD

This standard is designed to ensure that employers and employees know about hazardous chemicals and how to protect themselves. Employers with employees who may be exposed to hazardous chemicals in the workplace must prepare and implement a written Hazard Communication Program and training and comply with other requirements.

### EMERGENCY ACTION PLAN STANDARD

OSHA recommends that all employers have an Emergency Action Plan; it’s mandatory when dictated by an OSHA standard. An Emergency Action Plan describes actions employees should take to ensure their safety in a fire or other emergency situation.

### FIRE SAFETY

OSHA recommends that all employers have a Fire Prevention Plan. It’s mandatory when dictated by an OSHA standard.

### EXIT ROUTES

All employers must comply with OSHA’s requirements for exit routes in the workplace.

### WALKING/WORKING SURFACES

Floors, aisles, platforms, ladders, stairways and other walking/working surfaces are present, to some extent, in all general industry workplaces. Slips, trips and falls constitute the majority of general industry accidents. The OSHA standards for walking and working surfaces apply to all permanent places of employment, except where only domestic, mining or agricultural work is performed.

### MEDICAL AND FIRST AID

OSHA requires employers to provide medical and first-aid personnel and supplies commensurate with the hazards of the workplace. The details of a workplace medical and first-aid program are dependent on the circumstances of each workplace and employer.

**I have heard a lot about OSHA’s proposed “IIPP” rule. What is it, and has it gone into effect yet?** OSHA has been saying for two years that it will implement its Injury and Illness Prevention Program (IIPP) rule. The rule could affect over 5 million business establishments across the country and potentially over 120 million employees. Over 40 million employees may need to be retrained. In the proposed rule, OSHA estimated that the annualized compliance costs will be almost \$100 million for employers. Annualized benefits were estimated to be approximately \$850 million.

Even so, businesses still have no idea what the IIPP rule will look like. Most safety and health-management systems have some form of the following elements, implemented to proactively address hazards in the workplace:

- Management leadership
- Employee participation
- Hazard identification and prioritization
- Hazard control
- Education and training
- Evaluation and continuous improvement

OSHA’s draft of the proposed rule will likely integrate some form of these elements. Of course, the real challenge for OSHA is turning these broad concepts into mandatory requirements that can be broadly applied to employers in all industries and of all sizes. OSHA must also attempt to craft a rule that does not disrupt existing employer programs that may be working. However OSHA deals with these issues, it is important for businesses to watch its rule-making closely and actively engage OSHA on what will work and what won’t with respect to a proposed IIPP rule.

OSHA announced in February 2012 that there will be an additional delay in starting the IIPP process and gave no indication of when the process will begin, so businesses should stay tuned and monitor OSHA’s Web site for developments.

**Does OSHA ever provide alerts to businesses to notify them of hazards in their particular industries?** Yes, and in late 2011, OSHA expanded its practice of publicizing “Industry/Hazard Alerts” on its Web site. These alerts are designed to notify employers in certain industries of hazards that are of particular concern to the agency. In part, OSHA is using this technique to ensure industry recognition and knowledge of hazards, which OSHA may attempt to utilize in the context of enforcement proceedings. Employers in the industries targeted must take note of these alerts and ensure that they are fully compliant with OSHA standards.

The following Industry/Hazard Alerts are listed on OSHA’s Web site:

- Incorrectly refurbished circuit breakers
- Student worker killed while filming football practice from a scissor lift
- Dangers of engulfment and suffocation in grain bins
- Clearing piping systems with natural gas
- Hair-smoothing products that could release formaldehyde
- Work precautions for handling hazardous drugs

**Are there any hard numbers that show how busy OSHA has been?** Fewer inspections were conducted in fiscal year 2011 (October 1, 2010 to September 30, 2011) by OSHA compliance officers than in fiscal year 2010. Federal officers conducted 40,648 inspections, down from 40,993 in fiscal year 2010 but still above the 38,667 inspections in fiscal year 2008 (the last full year of the Bush administration). Construction inspections continued to account for more than half—56 percent—of OSHA’s visits in 2011. For 2010, the figure was 60 percent. The average proposed federal penalty for a serious violation in 2011 was \$2,132, up 102 percent from 2010’s average of \$1,053. Under the Bush administration in 2008, the average was \$998. The increase resulted from OSHA’s instituting a new penalty structure on October 1, 2010. The higher fines also meant there were more “significant” cases—investigations producing proposed fines totaling at least \$100,000. In 2011, there were 215 significant cases, up 31 percent from 164 in 2010. ■

# Anatomy of an Employment Lawsuit – How Could a Jury Do That?



Employment lawsuits are skyrocketing at an alarming rate. Plaintiffs' attorneys and government agencies are getting more and more aggressive. Reductions in force and other cost-cutting measures are fueling the fire. Jury Awards are getting larger and larger.

**An Illinois jury recently awarded \$95 million to one hourly employee** who worked at a rent-to-own company. The plaintiff claimed the store manager had made verbal sexually offensive comments to her, inappropriately touched her and eventually sexually assaulted her. The supervisor adamantly denied doing so.

**A Georgia jury recently awarded \$386,000 to a plaintiff** who was terminated as part of a 28-person reduction in force when she was eight months pregnant. It was undisputed that the company's business had decreased significantly and no one was hired to replace her.

**A California jury recently awarded more than \$2 million to an hourly employee** after determining she was sexually harassed by her supervisor and retaliated against when she reported the abuse. That supervisor also denied doing so.

**A New York jury awarded \$3.4 million in compensatory damages and \$250 million in punitive damages** in a gender-discrimination class action – one of the largest gender-discrimination verdicts ever. For 10 years before the verdict, the company had been named one of the top places to work by *Working Mother* magazine. Clearly, the company had invested a great deal of time and effort in to do the right things for its female employees.







## How Could a Jury Do That?

The plaintiff does not have a shred of evidence that I've done anything wrong. It's my word against his, so how can he possibly have a case? Plus, this is an at-will state. I can terminate him for any reason." That is what many small-business owners will say—and mean. The reality is that it does not matter, at least not as much as you might think.

For starters, discrimination and harassment are exceptions to the at-will doctrine created by Congress and many states. Consequently, the at-will defense is rarely an effective defense.

Equally important, a plaintiff does not need "smoking gun" evidence that an employer acted unlawfully. Courts recognize that workplace discrimination comes in many different forms. To be sure, discriminatory behaviors and actions can be blatant. For example, a manager might say, "Fire Don, he's too old." Or, an email might read, "Mary's medical problems are too troublesome, terminate her."

But those cases are rare. Courts understand that discrimination is normally much more subtle and difficult to prove. As a result, courts allow plaintiffs to use circumstantial evidence to prove their case. Depending on the type of case, examples of circumstantial evidence include the timing of a termination (was it close to a recent medical leave?), stray remarks that may seem innocent on their face ("we need a more vibrant and energized workforce"), evidence of how others have been treated in similar circumstances, what company policies say or do not say, whether the plaintiff was qualified for the position, whether the plaintiff was replaced by someone outside of the protected category, and whether the plaintiff had received good performance reviews.

A jury is permitted to rule in favor of a plaintiff based entirely on inferences they draw from such circumstantial evidence. Thus, if a jury concludes that an employer's story does not line up with the facts or does not justify the action taken, they are free to rule in favor of the plaintiff and conclude the real reason for the employer's action was unlawful discrimination or harassment.

Last, but certainly not least, a plaintiff's burden of proof in court is relatively low. A plaintiff need not prove beyond a reasonable doubt that an employer unlawfully discriminated against or harassed her. Rather, a plaintiff need only prove that an employer more likely than not discriminated against her. In hard numbers, this means that a plaintiff who proves her case by a mere 50.1 percent can win. Do you want a lawsuit against your company to be decided by the same odds as a coin toss?

Ultimately, when employers understand a plaintiff's 50.1 percent burden of proof and a jury's ability to rely exclusively on inferences drawn from circumstantial evidence, the verdicts discussed above become less surprising.

## What Can You Do?

Though employers are not likely to change the judicial system, they can focus on what they do control:

- Employers must continue to monitor, train and manage their workforce in an ongoing effort to prevent discrimination and harassment.
- Employers should consistently administer company policies and procedures, especially in disciplinary actions and terminations.
- Employers should review their compensation and evaluation systems to make sure there is not a disparate impact on women or minorities.
- Employers should review other policies and practices, such as leave policies, to determine whether they might adversely impact women, minorities or employees with disabilities.
- As reflected by several of the verdicts discussed above, sexual harassment claims are alive and well. Employers must have applicable policies in place and, equally important, promptly and effectively investigate complaints of harassment when they are received. Simply conducting harassment training and having good written policies is not enough.
- Employers should consider effective use of severance agreements at the time of termination.

*ADP Resource® clients can rely on the expertise of their designated human-resources professional for information and guidance to help them keep up with complex employment laws and regulations. ■*

Age of the American Workforce Since 2007: | 55+ growing by 12%  
25-54 dropped by 6.5%

# HAS THE RECESSION WIDENED THE GENERATION GAP?

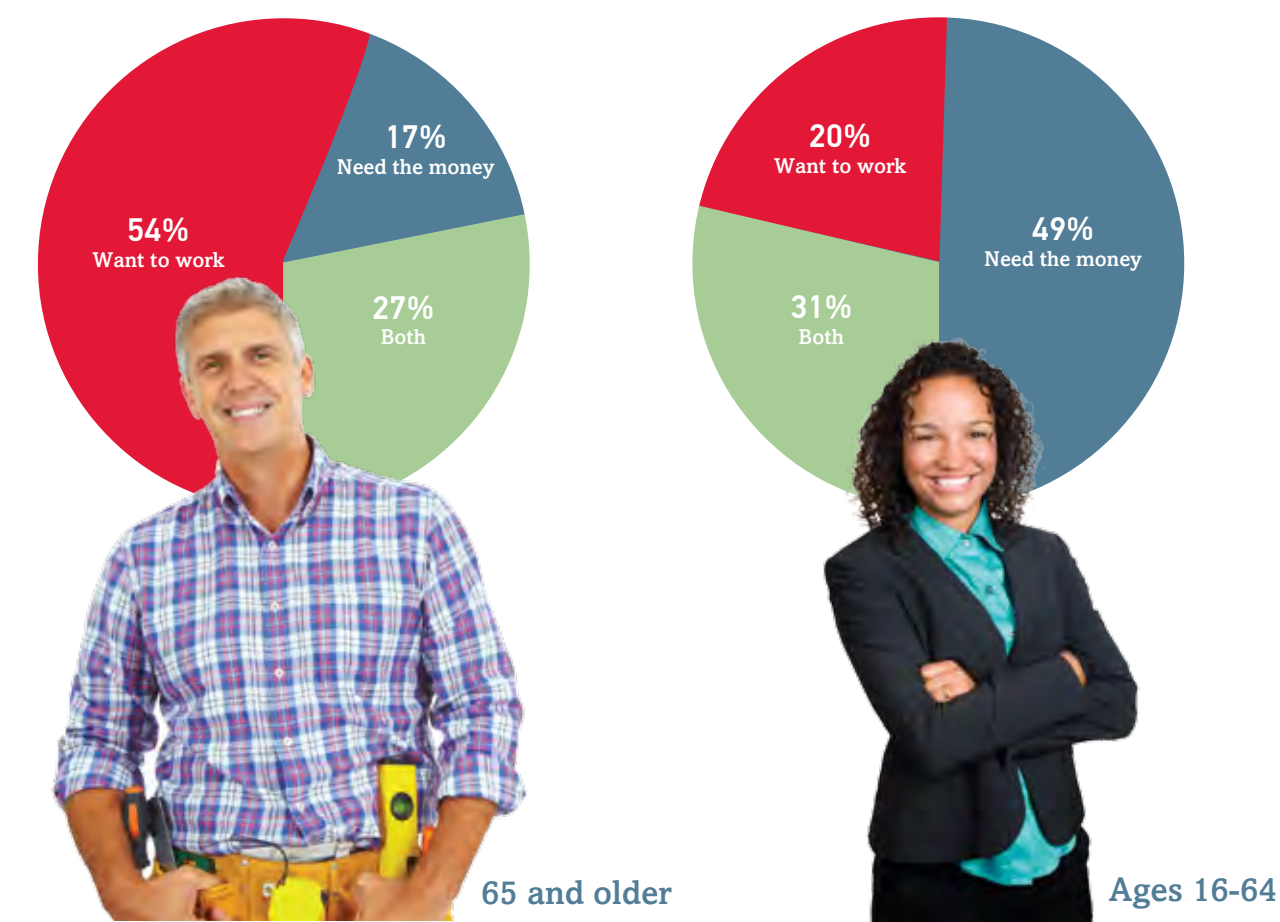
The number of people over the age of 55 in the workforce has grown by 12 percent since 2007, while that of workers aged 25 to 54 has dropped by 6.5 percent. Before the recession, many employers worried about the possible “brain drain,” as a large number of baby boomers were expected to retire over the next few years. Just as companies were coming to grips with this challenge, the recession took hold. Older employees put the brakes on their retirement plans, and companies shelved plans to hire, train, develop and promote younger talent. Instead, companies downsized staff, and many younger, less experienced employees were suddenly unemployed.

**The result?** A workforce that consists of older employees. But this may be a good thing for small businesses, at least in the short-term. Here are some of the advantages mature employees often bring to work:

- A strong work ethic
- Experience-driven problem-solving and troubleshooting skills
- Ability to work autonomously and proactively
- Intellectual maturity and an accumulation of knowledge to do a good job
- Knowledge of how to get along with other people and build relationships that foster cooperation
- An interest in mentoring co-workers
- Ability to think on their feet
- Ability to draw on past experiences to make critical decisions and use solid judgment based on those experiences



# WHY DO YOU WORK?



A 2009 Pew Research study reports that 54 percent of employees working past the age of 65 say the main reason they work is that they want to—versus 20 percent of employees between ages 16–64.

Note: Asked of 1,140 respondents employed full-time or part-time. “Don’t know/Reused” responses not included. Pew Research Center, 2009

## Are Older Workers Less Healthy and More Expensive?

One of the biggest concerns about older workers is their effect on healthcare costs. But an aging workforce does not always mean higher healthcare costs.

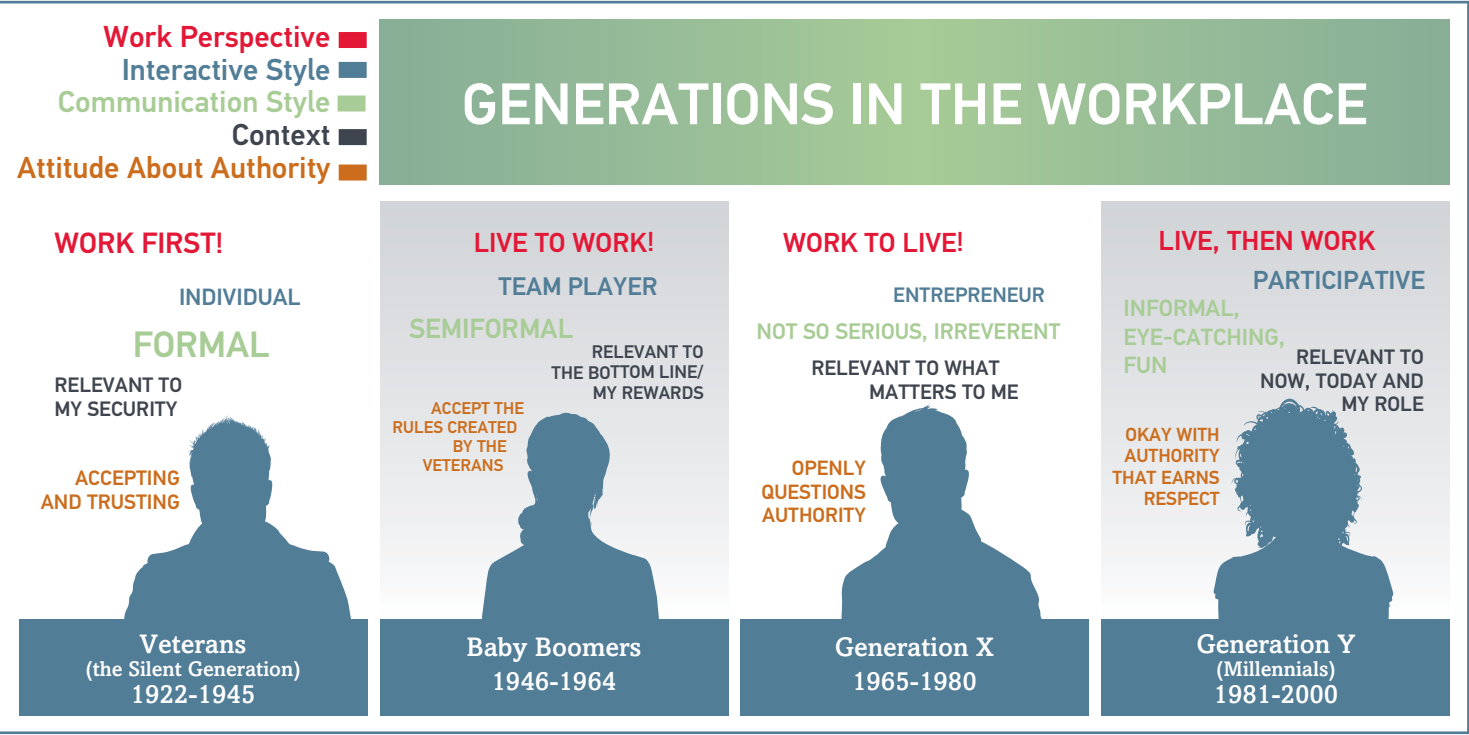
**Prevention and Disease Management.** Employers who offer or provide access to resources for wellness and disease management generally have lower rates of diabetes and heart disease among their older workers than comparable organizations without wellness programs.

**Intervene Before Disability.** Statistically, the incidence of disability increases with age, so many employers are transitioning older employees to jobs that help mitigate this risk or are making adaptations to the workplace for them. And if an older employee does incur a disability, identifying it and intervening earlier helps the worker recover faster and the employer to control disability costs.

**Reduced Absences and Lower Healthcare Costs.** While older workers may take longer to recover from an illness or injury, studies show that they take fewer sick days than their younger counterparts. And because older employees typically do not cover young dependents, older employees’ health benefit costs can also be lower.

## Younger Manager, Older Employees: Making It Work

It’s not uncommon for older employees to change careers, reinvent themselves and start over in fields where they’re the “newbies.” An October 2011 survey by office-equipment maker Pitney Bowes found that about 20 percent of mid-level corporate employees now report to a boss who is younger than they are. For smaller businesses where there are fewer layers in the workforce, this is often the case. Since generational diversity can be as great a differentiator as cultural and ethnic diversity, understanding the differences is essential to bridging the generation gap and managing the modern workforce.



Source: Neil Howe and William Strauss, *Generations: The History of America’s Future, 1584 to 2069*, William Morrow and Company, Inc., 1991

## So What Happens Next? New Approaches to Recruiting and Development

Companies with a large percentage of older workers may be enjoying the fruits of their problem-solving skills and expertise today. But when veterans and boomers retire, will the next generation have those same competencies? How will you hire and develop to make sure you continue to operate at the same high level as you do now?

Hans-Paul Burkner, CEO of Boston Consulting Group, commented at the World Economic Forum in Davos in January 2011 that organizations need to look at their current employment picture and map out where the chasms are going to open up in a few years. He worries that skills will be lost when workers leave and that this knowledge won’t be replaced. In his view, “the developed world will move away from just getting people employed to making sure the right people are employed the right way.”

The good news is that in 2011, spending on employee development increased by an average of 9.5 percent, according to Bersin & Associates, an HR research and consulting firm. “U.S. companies are now reinvesting in training to address a major skills gap, which we identified in the market more than a year ago,” says Josh Bersin, CEO and president of Bersin & Associates. With more emphasis on training and development, small businesses can help prevent a loss in valuable skills as older workers leave the workforce.



## RECIPROCAL MENTORING PAVES THE WAY FOR INCREASED SKILL AND KNOWLEDGE SHARING

Formal and informal mentoring programs that encourage professional interaction and contributions from all employee groups can help close the knowledge gap. Good ideas come from different generations and as a result of different motives. Individuals learn from each other in partnerships where they are both the giver and receiver of wisdom and information.

Traditional mentoring pairs a more senior person with a relative newcomer. “Reciprocal mentoring” is a two-way conversation where both the junior and senior colleague impart valuable knowledge. For example, as senior employees provide business knowledge and expertise to their junior counterparts, younger employees help older employees learn new technologies quickly and with fewer missteps. Reciprocal mentoring can help to:

- Engage workers across all generations
- Supplement formal training and development programs
- Show older employees that their expertise is valued
- Increase the adoption and acceptance of new tools and technologies
- Build relationships between the generations

For small businesses, reciprocal mentoring offers a low-cost and effective means of developing staff members at all stages of their careers. It can be a structured program or it can take place organically as employees perform their day-to-day tasks.

*Source: Beverly L. Kaye, Beverly Bernstein Olevin and Mary Ammerman, “The New Corporate Ladder is Round: A New Mentoring Model to Fit the Changing Shape of Business,” Career Planning and Adult Development Journal, Vol. 17, No. 1, Spring 2011.*

## A Graying Workforce or a Silver Lining?

The graying of the workforce, whether due to an aging population in general or a downturn in the economy, can be both a challenge and an opportunity for the small-business owner. Older employees bring a lot of advantages to your business, but as they retire, an unbalanced workforce could put you in a precarious position. However, small businesses are typically more flexible when it comes to creative workforce planning and development. The key is to take advantage of what you have today and plan for what you need tomorrow.

*ADP Resource® University makes it easy for employers to provide learning activities through the **iLearn@ADP®** online training system. Programs are available for all staff levels from leadership and management to the basics for entry-level employees. Similarly, ADP Screening and Selection Services has the expertise to help small businesses recruit, screen and hire top talent in your industry.*

*With all a small-business leader has to worry about, ADP Resource can assist in lessening the burdens associated with making important hiring, training and development decisions. ■*





# ARE EMPLOYEE BENEFITS A SMALL-BUSINESS OWNER'S SECRET WEAPON?

As a small-business owner, you face these human-resource challenges daily:

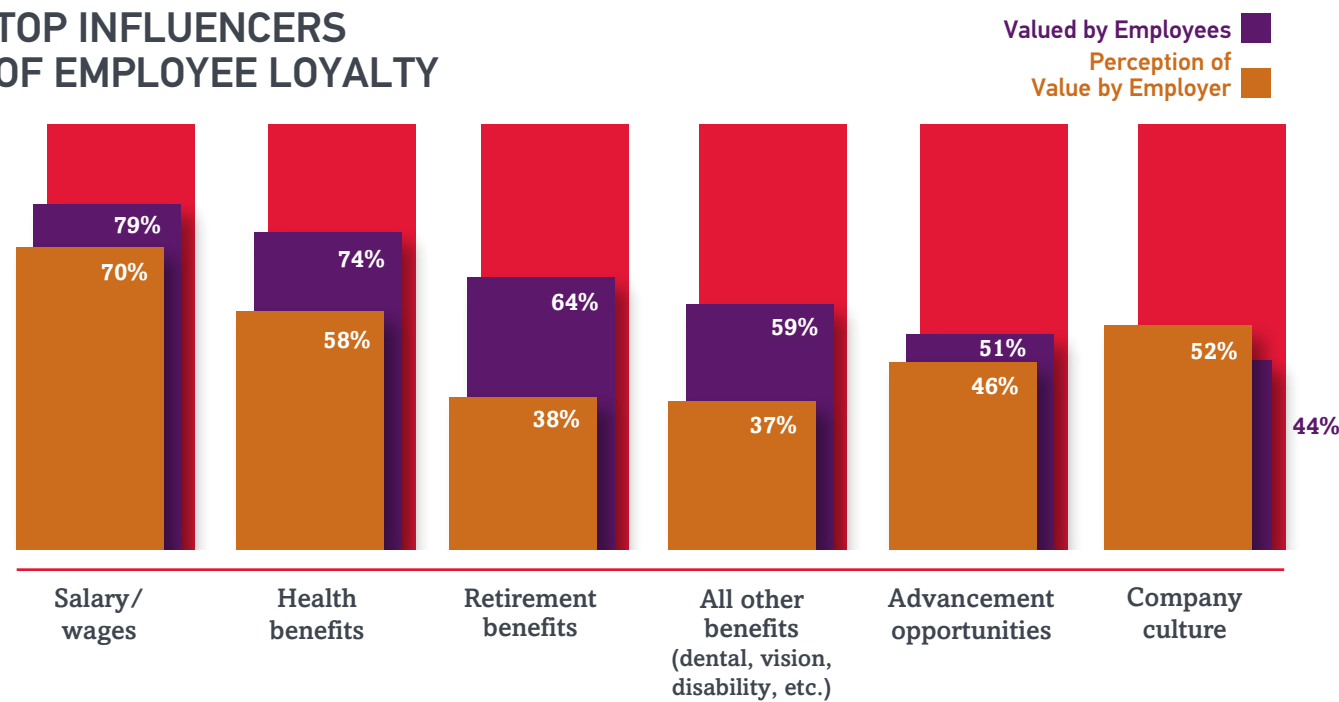
- 1. Paying for expensive employee benefits
- 2. Recruiting and retaining key talent
- 3. Balancing 1 and 2 above with limited resources

Approaching employee benefits strategically can help you turn these challenges into opportunities. How? Recognizing the value of benefits to your employees, and then maximizing their understanding of them, will allow you to get the most bang for your benefits buck.

## Benefits Influence Worker Loyalty

Benefits are a major driver of employee loyalty and retention—valued commodities for smaller businesses where each employee represents a larger percentage of your workforce. In fact, the 9th Annual MetLife Study of Employee Benefit Trends found that only salary and wages ranked higher than benefits as the top influencer of company loyalty. What’s alarming, however, is that in the same survey, employers ranked the top influencers much differently than their workers.

TOP INFLUENCERS  
OF EMPLOYEE LOYALTY



## Employee Loyalty Is No Longer a Sure Thing

In eight of the past 10 months, more workers have quit than have been laid off, according to the Bureau of Labor Statistics. And the MetLife study found that employees working for smaller employers (less than 500 employees) acted similarly. More than one-third (34 percent) surveyed by MetLife said they would like to work for a different employer.

What is a small-business employer to do? The answer may be in the benefits you offer. Approximately two-thirds (60 percent) of surveyed employees say that benefits are important to why they remain with their company. And 71 percent of employees who are highly satisfied with their benefits feel a strong sense of loyalty to their employer.



## THE HIGH COST OF LOYALTY

*You probably know how benefit costs affect your budget. But have you considered the cost of turnover? Experts estimate the cost of replacing an employee who resigns to be 100 percent to 200 percent of the person’s annual salary when you factor in lost productivity, overtime for others taking over their work, and recruitment and training of a replacement, not to mention the difficult-to-quantify costs, such as relationships with customers and suppliers.*

*So when you connect the dots, the appropriate investment in benefits can help increase loyalty, reduce turnover costs and decrease stress to the organization.*

# THE GOOD NEWS: SMALLER BUSINESSES HAVE AN ADVANTAGE

Small businesses are in a good position to use benefits programs to engage their workers and improve productivity and job satisfaction. This is because small-business owners often have more personal relationships with their employees and can more easily tailor benefits to suit them. With a little creativity and planning, small-business owners can enhance their benefits packages without taking a big hit to the bottom line.

### Better Communications

The single most effective action a small business can take to improve its employees' impressions of their benefits is to provide meaningful communications about them. In fact, a fall 2011 Aflac WorkForces Report found that 43 percent of workers agree they would be less likely to leave their jobs if they were well-informed about their benefits.

Most organizations expend a great deal of energy and effort creating communications around enrollment. But a strategy that emphasizes ongoing communications may yield better results. According to the Aflac report, "Expecting employees to comprehend and retain large amounts of benefits information all at once—as often is the case during new employee orientations and the open enrollment period—is unrealistic. Instead, employers should use an incremental approach that allows for regular sharing of benefits information."

### Voluntary Benefits

The MetLife study shows that 61 percent of small-business workers say they value voluntary benefits as a way to obtain benefits that meet their personal needs. They're even willing to pay some or all of the cost. Employees recognize the advantages of obtaining these benefits through work: lower group rates, convenient payroll deduction and easier enrollment.

There are numerous voluntary benefits available to small businesses. These are some of the most popular:

- Disability
- Life insurance
- Accidental death and dismemberment
- Critical-illness insurance
- Auto and homeowners' insurance
- Identity-theft protection

Source: <http://hiring.monster.com/hr/hr-best-practices/workforce-management/employee-retention-strategies/employee-turnover-costs.aspx>



### Retirement Security

Being able to afford to retire is a concern of many workers. Stock market volatility, housing market ills and other financial challenges have increased this concern. Implementing a retirement-savings plan for your small business helps you accomplish two important goals:

- It demonstrates your commitment to employees. It sends a message to current and prospective employees that you're concerned about their standard of living in retirement, which helps attract and retain staff.
- It can provide you with financial advantages. Small-business owners may save on taxes and secure their own retirement along with those of their employees.

Having these benefits can make the difference between an engaged workforce and one that is "retired on the job." The MetLife research found that 64 percent of employees age 55 and older who are behind in saving for retirement are more likely to say they keep working because they need the money. Those who are on track in their retirement planning are more likely to say they are working to stay meaningfully engaged (63 percent).

### Workplace Flexibility

Small businesses that offer workplace flexibility are better able to attract and retain workers who are willing to engage in some give-and-take with their employers to make sure work gets done.

Forty-two percent of working adults say they would give up some percentage of their salary for more flexibility at work, according to an online survey of 1,071 working adults nationwide conducted on behalf of Mom Corps, a professional staffing firm. And there is some evidence that flexibility as a perk is gaining traction because it is a benefit that employers can still provide in a recessionary economy.

"Workplace flexibility is something that we have to do not only when times are good but when times are bad. Workplace flexibility will help our businesses and our families thrive," says Martha Coven of the White House Domestic Policy Council.

## WHAT CAN BENEFITS DO FOR YOU?

Savvy business owners understand the importance of a valued benefits package as a tool to preserve and enhance employee loyalty. During these times of belt-tightening and expense control, small businesses are looking for ways to maximize the benefits they offer. With some creativity and ingenuity, they can take steps to stretch their dollars and keep themselves in position to offer competitive benefits that support their businesses and their workforce.

*Clients of ADP Resource® have access to a premium only plan document and summary through ADP Retirement Services, which is maintained in compliance with IRS Code Section 125 and related regulations. Implementation of the premium only plan document allows employee group insurance premiums to be withheld on a pre-tax basis, in accordance with Section 125 of the IRS Code. ■*



To Fee or Not to Fee?

# NEW 401(k) PLAN DISCLOSURE RULES

Participants in 401(k) retirement-savings plans have seen the numbers on their statements change over time as the added contributions and investments gained or lost value. Soon there will be a new set of numbers on account statements. Participants may not have been aware of them, but these numbers have a direct effect on account balances and retirement savings.

## New Rules About Plan Fees

The U.S. Department of Labor (DOL) has created new legislation that will require 401(k) plan administrators/recordkeepers to disclose the fees they charge to participants by August 30, 2012. There are two major sources of these fees, which will be broken down and expressed as a percentage of assets on participants' statements:

- **Management fee.** The amount the administrator charges for managing the specific investments (usually mutual funds, but can also include annuities and other insurance products).
- **Recordkeeping fee.** The cost of administering the plan, including transferring money, providing education and customer service and keeping the plan compliant.

Participants may also pay a fee for certain transactions, such as loans, hardship withdrawals or actions relating to a divorce.

**Not All Ignorance Is Bliss!**

Most plan participants are not aware that they're absorbing the cost of these provider fees. According to an AARP survey report released in March 2011, 81 percent of plan participants feel that fees are an important consideration in investment decisions. However, 62 percent of the respondents said they don't know what they pay in fees and expenses. And about a third (32 percent) said they don't know how the fees can affect their retirement savings.

**The AARP report also shows that when plan participants were asked whether they pay fees for their 401(k) plan:**

- 71 percent reported that they did not pay any.
- 23 percent said they do pay fees.
- 6 percent weren't sure.

Source: 401(k) Participants' Awareness and Understanding of Fees, March 2011, [http://assets.aarp.org/rgcenter/econ/401k\\_fees.pdf](http://assets.aarp.org/rgcenter/econ/401k_fees.pdf)

## WHAT DOES IT ALL MEAN?

*Retirement-savings plans, such as 401(k) plans, seem to have their own language. Here are a few of the terms that frequently pop up in discussions about them:*

- **Administrator/recordkeeper.** A firm or individual that:
  - Tracks contribution rates, investment selections and balance
  - Tracks the amount of employer matching contributions (if applicable)
  - Provides account statements
  - Maintains information about any outstanding 401(k) loan(s)

Recordkeeping services are commonly provided by accountants, payroll-services providers, brokerage firms and mutual-fund companies.

- **Trustee.** A plan's assets must be held in trust to ensure that they are used solely to benefit the participants and their beneficiaries. The trust must have at least one trustee to handle contributions, plan investments and distributions. By law, all 401(k) savings must be held in a trust account that is separate from the assets of the employer.

- **Investment manager.** The individual or firm that offers the investments available to participants. These typically are brokerage or mutual-fund firms.

Depending on the plan, the roles of the administrator/recordkeeper, trustee and investment manager may be filled by the same or different companies or individuals.





## Fee Transparency on Participant Statements

The fees that plan participants pay aren't new—today, they're typically reflected in a participant's account balances after the charges have been taken out. The new DOL rules make the fees transparent to participants. In other words, the fees will be shown as a new line item on account statements, along with contributions and investment gains and losses.

An additional regulation, due to be implemented in June 2012, will require that plan administrators offer a summary document, or road map, of all fees.

## What This Means in Dollars and Sense

Experts estimate that participants pay anywhere from 0.1 percent to 1.5 percent of their assets in fees each year. According to a November 2011 study conducted by Deloitte Consulting LLC for the Investment Company Institute, annual fees amount to an average of 0.83 percent of assets. So for every \$100,000 in a participant's account, the participant will pay, on average, about \$830 per year in fees. Over the course of 30 years, that adds up to almost \$25,000. Obviously, the more assets a participant has, the more he or she will pay in fees.

The legislation won't change the fees that participants pay – at least not at first. But the new rules are expected to put pressure on 401(k) administrators and fund managers to keep their fees and expenses as competitive as possible. As a result, plan participants may see reductions in fees and expenses in the future.

The bottom line is that in the near future, plan participants will be able to clearly see what they are paying in fees and make informed decisions about how to invest their retirement savings. Fees should not be the only factor that participants need to consider in their investment allocation, but being fully informed will certainly help them make better decisions.

Clients of ADP Resource® that choose to take advantage of the retirement plan solutions offered through ADP Retirement Services gain access to flexible investment platforms that they can trust to meet their employees' needs and their fiduciary requirements which also integrate seamlessly with their ADP payroll. ■

Source: Inside the Structure of Defined Contribution/401(k) Plan Fees: A Study Assessing the Mechanics of the 'All-In' Fee, November 2011, [http://www.ici.org/pdf/rpt\\_11\\_dc\\_401k\\_fee\\_study.pdf](http://www.ici.org/pdf/rpt_11_dc_401k_fee_study.pdf)





# VACATION POLICIES

## HOW TO MAKE THEM WORK

How can you make your vacation policy work best for your company?

**For starters, take inventory.** Many vacation policies have been built in pieces over the years. Companies should study the policies they already have in place and make sure they still meet the needs of their employees. In some cases, the way in which various time-off program segments are combined can make a significant impact on costs and employee productivity.



**Identify** the totality of time-off program costs and establish a formal tracking plan. Once companies have a comprehensive inventory of their vacation policies, they need to identify all the related costs and establish a formal plan for tracking and managing them.

**Keep up** with current trends in offering vacation benefits. A less generous vacation policy may make it difficult to hire new employees or keep current ones, while a more generous vacation policy can be a valuable recruiting tool.

**Know the differences** in state law. In some states, accrued but unused vacation cannot be forfeited; in others, it can. Employers must plan ahead and understand that state law will differ depending on where they operate.

**If vacation is not forfeited, then employers might consider capping the carry-over of accrued vacation time.** When employees reach a certain number of hours, an employer may stop them from accruing more until they take vacation, depleting their balance. This helps control vacation accrual and encourages employees to take their earned time off. However, this approach should be balanced against the employee-relations benefit of having a vacation policy with no cap, which rewards committed workers.

**Lastly, understand your rights.** Subject to state and federal law, employers generally have the right to force vacations when employees accumulate a specific amount of time off or when they want to achieve certain business needs. Also, employers generally have the right to deny vacation time. If four people in a department all want time off in the same week, it could create a business hardship, so employers may have the right to deny time off as appropriate.

**Vacation time is an opportunity for workers to rest and return to work rejuvenated.**

Time off can increase productivity, boost morale and instill an appreciation for the benefits of working for a company. Not surprisingly, vacation time has become a practically universal benefit. Almost all employers offer it, and it's usually paid. In fact, a Bureau of Labor Statistics survey of private industry shows that a large majority of employees are given paid vacations. Here is the breakdown:

- *77 percent of all workers*
- *91 percent of full-time workers*
- *37 percent of part-time workers*
- *87 percent of workers in management, professional and related occupations*
- *59 percent of workers in service occupations*
- *87 percent of unionized workers*
- *76 percent of nonunionized workers*
- *70 percent of workers in small establishments (less than 100 workers)*
- *85 percent of workers in larger establishments (100 or more workers)*



# Q&A

## WHAT FACTORS SHOULD BE CONSIDERED WHEN DESIGNING OR REDESIGNING A VACATION POLICY?

What follows is a categorized list of questions to answer that will assist in the design or redesign of a vacation policy:

### ENTITLEMENT

- How is the amount of vacation each employee receives determined?
- Do part-time staff earn vacation?
- If so, is it earned under the same entitlement as full-time staff?
- Is there a difference in entitlement based on rank (e.g., between managers and nonmanagement staff)?
- Is there a relationship between seniority and amount of vacation received?

### PAY CALCULATION

- If an employee routinely receives a special pay, like shift differential, will that also be paid during vacation?
- On what basis is vacation pay calculated for employees who do not work regularly scheduled hours?

### SCHEDULING

- How are vacations scheduled?
- What if more employees than an employer can afford to have absent want vacation at the same time?
- Are there times during the calendar year that vacation must be taken or cannot be taken?
- Is there a waiting period before a new employee can take vacation?
- Can an employee split vacation and/or take it in daily or hourly increments?

### ACCUMULATION

- Can vacation entitlement be carried over from year to year?
- If yes, is there a maximum amount of either the total accumulation or the amount that can be carried over from one year to the next?
- Can an employee take all of his or her earned vacation at one time, which could be three or four weeks, or is the employee limited to a certain amount of time?

**Options for unused vacation time.** Many employers maintain vacation programs under which an employee is entitled to a specified amount of paid time off each year based on his or her years of experience. If the vacation time is not taken by year-end, employers usually adopt one of three strategies, as permitted by state law: unused vacation is forfeited; the employer pays the employee the equivalent of the unused vacation; or some or all of the unused days are carried over to the next year.

Some employers are creative with their vacation policies. They may use a vacation buy-back program (as permitted by state law), which typically affords an employee the opportunity to cash out his or her unused vacation benefits.

This may incentivize employees to work rather than take unnecessary vacation. Others use vacation-donation programs, which lets workers donate their accrued vacation hours to fellow employees who have experienced a catastrophic illness or injury and who have exhausted all their accrued time, resulting in a prolonged, unpaid leave of absence. The program is a positive employee-relations tool that supports workers who want to help their colleagues.

**Pay at time of separation.** Accrued vacation pay may be given to a terminating employee. Some states require it, and some do not. Be sure to check your state's laws to know your rights.



*Certainly, a lot of thought and preparation goes into creating an effective, rewarding company vacation policy. Making sure employees are fully aware of policy details is just as crucial. More than just a payroll processor, ADP Resource® provides clients with a customized employee handbook that communicates company policy on a wide range of topics – including paid time off – to help ensure company-wide understanding. As part of our HR administrative services ADP Resource also tracks individual employees' paid time off accruals in accordance with your company's policy. ■*



# STATE EMPLOYMENT LAW UPDATES

ADP Resource® offers clients relief from legal and regulatory burdens, including the legislation shown here. Timely communication, clear action plans and helpful resources allow ADP Resource clients to focus on their business objectives. The following updates reflect sample developments from December 2011 to March 2012.

Jurisdiction	Regulatory Development(s)	ADP Resource Action(s)
<div>CALIFORNIA</div> <div></div>	<p>The State of California enacted a series of new employment laws that require significant changes in employer human resource policies and employee handbooks. The new rules provide for (among other items) disability leave for pregnant employees not otherwise eligible for Family and Medical Leave Act benefits; restrictions on an employer's ability to obtain job candidates' credit reports; and increased penalties for misclassifying employees as independent contractors.</p>	<p>Alerted clients to the new requirements; updated standard employee handbook policy and provided a model form as necessary to comply with new requirements.</p>
	<p>Effective January 1, 2012, the California Wage Theft Prevention Act of 2011 requires employers to provide many new employees with written notices that details their rates of pay, employer name and address, workers' compensation carrier, and other information specified in the Act.</p>	<p>Alerted clients to the update; provided online access to the new notice and applicable instructions.</p>
<div>NEW JERSEY</div> <div></div>	<p>In late 2011 the New Jersey Department of Labor and Workforce Development issued a new mandatory notice pertaining to records maintenance and reporting that employers must post and distribute to all employees and new hires.</p>	<p>Alerted clients to the update; provided online access to the new notice and applicable instructions.</p>
<div>FEDERAL</div> <div></div>	<p>Following a recent ruling in federal district court, effective April 30, 2012, all employers covered by the National Labor Relations Board (NLRB) are required to post a notice that informs employees of their right to organize, provides contact information for the NLRB, and provides information regarding basic enforcement procedures.</p>	<p>Alerted clients to the change; provided online access to the updated poster; provided HR guidance and best practices to help clients stay in compliance with the law. ■</p>

## What ADP Resource® Clients Are Saying

### Streamlining HR with mission-critical services and support from ADP Resource

Founded in 1939, Heely-Brown is like many family-owned businesses whose expansion had outstripped their existing HR capabilities. The recent recession was notably harsh on construction and allied industries, but Heely-Brown emerged in relatively good shape and is poised to kick-start growth. **According to David Beavers, Heely-Brown's director of HR, the company's HR infrastructure—and its positioning for renewed growth—has been greatly strengthened by its partnership with ADP Resource.**

Prior to signing with ADP Resource in March 2009, "other than payroll, which ADP already handled, a lot of processes related to HR were being done manually," Beavers explains. "When it comes to internal HR administration, I'm basically a one-man band, so I went to ADP and asked if there was any other support they could give—anything to make my job easier."

**Beavers says his working partnership with the ADP Resource HRBP has significantly enhanced his ability to stay on top of HR administration and compliance.** "We operate in five different states, which means we need to be up to date on five different sets of state human-resources laws and regulations as well as on the federal level. Those laws are changing all the time, and the ADP HRBP has been a huge help to me in this regard. We are in contact on a weekly basis to review any ongoing issues and find solutions to any problems that might come up."

**OSHA is another area of compliance where ADP Resource has provided critical guidance to Heely-Brown.** "In addition to our inside and outside sales forces, many of our employees work out of our warehouse or as drivers, so workplace safety is definitely a top priority for us, and we have worked with ADP Resource on this," says Beavers. The ADP HRBP also helped him completely revamp Heely-Brown's existing employee handbook, to bring it up to date and in compliance with current regulations.

### Heely-Brown Company

- Industry:** Construction
- Type of Business:** Distributes roofing equipment, materials and supplies to residential and commercial builders and property owners.
- Location:** Headquarters in Atlanta; locations in Georgia, Florida, Tennessee, Alabama and South Carolina
- Number of Employees:** 106
- ADP Resource Client:** Since 2009
- Why ADP Resource?** "With ADP Resource, we really feel we have a partner in this business—and having the HRBP is like having a second set of eyes."  
— David Beavers, director of human resources

**Heely-Brown has made extensive use of the professional development opportunities available through ADP Resource.** "We use both the online skills training and the in-person training," says Beavers. "The HR-specific seminars have been great, especially those that covered how to handle conflict in the workplace and how to implement effective progressive discipline. We've learned the importance of documenting what goes on in a particular situation and how to conduct disciplinary procedures in a way that keeps the company in compliance with the relevant laws."

**Beavers concludes by circling back to his working relationship with the ADP Resource HRBP as the most important factor in Heely-Brown's ability to streamline and enhance its HR function.** "When you build a really strong rapport with someone, that counts for something, and it helps you be successful. I've been approached by other companies with similar HR offerings, but I'm very happy with ADP Resource. The difference is in the HR partnership." ■





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