DEDUCTING AND Rounding PAY PRACTICES: THE DEVIL IS IN THE DETAILS

FLEXIBLE WORK ARRANGEMENTS: DO THEY HELP OR HURT YOUR BOTTOM LINE?

U.S. SUPREME COURT MAKES IT EASIER TO SUÉ FOR RETALIATION

PROTECTING YOUR BUSINESS WITH RESTRICTIVE COVENANTS

THE FUTURE OF EMPLOYEE COMMUNICATION

FEDERAL AGENCIES STEP UP ENFORCEMENT INITIATIVES. ARE YOU READY?

STATE EMPLOYMENT LAW UPDATES

WHAT ADP TOTALSOURCE® CLIENTS ARE SAYING
3 Deducting and Rounding Pay Practices: The Devil Is in the Details

Think you have the absolute right to deduct? Think again.

7 Flexible Work Arrangements: Do They Help or Hurt Your Bottom Line?

Studies show that such arrangements can increase productivity and decrease turnover, but many wonder if employees who aren’t in the office are really working.

13 U.S. Supreme Court Makes It Easier to Sue Employers for Retaliation

Understanding how a “pro business” court has issued two rulings that favor employees.

15 Protecting Your Business With Restrictive Covenants

These invaluable business tools should not be overlooked.
17 The Future of Employee Communication
The way we communicate is changing—we “pull” information that interests us instead of wading through all the information “pushed” at us. How can businesses leverage this transformation to engage their employees?

21 Federal Agencies Step Up Enforcement Initiatives. Are You Ready?
A list of hot regulatory initiatives to watch this year.

25 State Employment-Law Updates
Helping you stay on top of recent legislative changes at the state level.

26 What ADP TotalSource® Clients Are Saying
How ADP TotalSource helped one client streamline its outsourced vendor relationships—and reduce the cost of managing HR.
DEDUCTING AND ROUNding PAY PRACTICES: THE DEVIL IS IN THE DETAILS
Viewers of late-night television are often barraged by a string of attorneys’ wage-and-hour commercials and public service announcements from the U.S. Department of Labor’s “We Can Help” wage-and-hour awareness campaign. This should come as no surprise. The U.S. Department of Labor (DOL) says that two-thirds of the employers it audits are violating the Fair Labor Standards Act (FLSA), which is the federal law governing pay. While lawsuits under the FLSA are already prevalent, growing public awareness of wage-and-hour claims will trigger more lawsuits and even bigger resulting settlements.

Businesses are not going to be rescued from this storm anytime soon; Congress isn’t likely to change the 72-year-old FSLA in the foreseeable future. While the intensity of regulatory enforcement by the DOL may change from one administration to the next, lawyers will not abandon profitable and relatively easy-to-win wage-and-hour cases. Nor is there much chance that the courts will curtail the law’s provisions.

Nonetheless, many businesses still choose to take their chances by continuing improper pay practices and behaviors. This is akin to deciding not to seek health-care coverage and hoping no medical emergencies arise, or avoiding paying taxes on the bet that an audit will not follow. Such an approach does not make sense. Businesses should make good faith efforts to comply with the FLSA. Doing so is good for business and good for employees.

This article examines two areas in which businesses commonly make pay mistakes—deductions and rounding practices—and provides practical advice for avoiding them.

**DEDUCTIONS**

Whether an employer may deduct from an employee’s pay is a tricky issue that turns on whether the employee is nonexempt or exempt. State law must also be considered. Generally speaking, a nonexempt employee is an hourly employee who is paid minimum wage, plus overtime for all hours worked over 40 in the workweek. In contrast, an exempt employee is paid on a salary basis and performs one or more of the exempt job duties set forth by the DOL. Exempt employees are not eligible for overtime.

1. **Nonexempt Employees: Deductions in General**

Nonexempt employees must be paid for all hours worked. Under the FLSA, employers may deduct from the pay of nonexempt employees so long as it doesn’t reduce the employee’s earnings below minimum wage. Deductions can be for items like tools, uniforms, and safety gear unless they reduce the employee’s earnings below minimum wage.

2. **Nonexempt employees: Deductions for Rest Periods**

The FLSA does not require that rest periods be given to workers, but some states might. If a business operates in a state that does not require breaks or meal periods, these benefits are a matter of agreement between the employer and the employee. The DOL has said that short rest periods, from 5 to 20 minutes, are common. They promote efficiency among employees and are customarily paid for as working time. Thus, even though no work is being done, such rest time must be counted as hours worked, and the employee must be paid for it.

Unfortunately, some businesses are not aware of this rule. They illegally deduct rest periods of 20 minutes or less from employees’ working time and, as a result, do not pay employees for that time. That is a costly mistake. Twenty minutes per day for one employee for one week equals $12.03 (based on $7.25 minimum wage). That rises to $601.50 for 50 weeks for one employee and $15,037.50 for 50 weeks for 25 employees. Plus, a court would double damages as punishment for the violation, along with requiring the business to pay the employee’s attorneys’ fees.
3 Nonexempt Employees: Deductions for Meal Periods

Like rest breaks, the FLSA does not require that meal periods be given to workers, although some states might. If a business operates in a state that does not require meal periods, these benefits are a matter of agreement between the employer and the employee.

The DOL has said that bona fide meal periods are not work time. These do not include coffee breaks or time for snacks; those are rest breaks. The employee must be completely relieved from duty for the purposes of eating regular meals.

The DOL has said that 30 minutes or more is usually long enough for a bona fide meal period. A shorter time may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. However, it is not necessary that an employee be permitted to leave the premises if she is otherwise completely freed from duties during the meal period.

Exempt Employees: Deductions

If an employee is exempt, there are very few occasions on which a business may deduct from her pay. Deductions can be made only when the employee is absent for:

- one or more full days for personal reasons
- one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary as a result of such sickness or disability
- jury duty, attendance as a witness or temporary military leave (for which the business can offset any amounts received by the employee as jury fees, witness fees or military pay against the salary due)
- penalties imposed in good faith for infractions of major safety rules
- unpaid disciplinary suspensions of one or more days for infractions of workplace-conduct rules
- reasons related to the initial or terminal weeks of employment
- reasons related to FMLA leave during a workweek

Businesses must follow these rules carefully. Failure to do so can result in losing the exemption, which would mean the employee must be paid back wages for any overtime worked.

State Deduction Laws

State laws governing deductions vary greatly. Many states require an employee’s voluntary written consent before a deduction can be made, while other states may not permit a contemplated deduction at all.

The overarching principle in many states is that employers are not supposed to engage in self-help when it comes to addressing what they believe to be debts owed by their employees.
ROUNDING

Though nonexempt workers must be paid for all time worked, some businesses round start and stop times to the nearest five minutes or to the nearest one-tenth or quarter of an hour instead of tracking the exact time worked. The DOL has found that in some industries, particularly those that use time clocks, employees’ start and stop times are rounded up or down. The DOL presumes that these computations average out so that the employees are fully compensated for all the time they work. This method of computing work time will be accepted, provided that it doesn’t result in failure to accurately compensate the employees.

This means the DOL expects about half of employees’ time to be rounded down and half to be rounded up. In reality, it doesn’t always work that way, and businesses don’t often audit their pay practices to confirm compliance.

If a business insists on rounding, it should mitigate its risk. For example, it should have a written policy in place to explain how the rounding system works, and time-keeping systems should be programmed to ensure that employees are not disadvantaged by the rounding. Employers should also regularly audit pay records to make sure their system averages out in a way that fully compensates employees for all time they work.

More than just a payroll processor, ADP TotalSource® provides its clients with dedicated payroll representatives to help clients comply with the myriad of wage-and-hour laws and access to ADP’s state-of-the-art time-tracking systems. Additionally, its Human Resources Business Professionals are available to conduct wage-and-hour assessments of clients’ pay practices and help them navigate the often confusing—and sometimes conflicting—requirements of federal and state wage-and-hour laws.
Flexible Work Arrangements: Do They Help or Hurt Your Bottom Line?

Juggling professional and personal responsibilities is no easy task—there never seems to be enough time to get it all done. To help employees strike a balance between their work and personal commitments, a growing number of organizations are turning to flexible work arrangements. But if employees aren’t in the office from 9 a.m. to 5 p.m., are they really working? On the flip side, does a rigid work schedule cause unnecessary stress and reduced productivity for your employees?

Many employees crave flexible work arrangements to help them manage a healthy work/life balance, and these arrangements can be an important tool in employers’ efforts to recruit and retain key workers. However, many employers also worry that less structure could equal reduced performance. To help you determine whether flexible work arrangements are right for your business, let’s define flexible work arrangements and discuss what they entail.

Flexible Work Arrangements

The two most common types of flexible work arrangements are compressed workweeks and telecommuting.

Compressed Workweeks

A compressed workweek allows employees to complete the same number of weekly hours in fewer days, typically by working more hours each day. For example, instead of working the traditional schedule of eight-hour days five days a week (Monday-Friday, 9 a.m.-5 p.m.), an employee might work 10-hour days four days a week. The employee works the same 40 hours as in a traditional workweek but gains a three-day weekend to attend to personal responsibilities and activities.

Telecommuting

Telecommuting allows employees to work outside the traditional office setting. They can work from home, a regional office or other any other location—even the beach or a Starbucks.
EXAMPLE OF A COMPRESSED WORKWEEK

Employees work:
• Monday-Thursday
• 7 a.m.-5 p.m.
• Weekly Total: 40

TELECOMMUTING

Employees typically work standard business hours outside the office setting:
• Home
• Coffee shop
• Company location other than the one where the employee’s manager/team is located
Business Benefits of Flexible Work Arrangements

According to a recent survey from Microsoft†, remote-working programs benefit both employees and employers:

- Increased productivity, reduced overhead and happier (read: more engaged) workers improve an organization’s bottom line.

- Sixty percent of employee respondents said they are actually more productive and efficient working remotely than working in the office, as there are fewer interruptions and less time spent on the daily commute.

- Employees reap direct cost savings from reduced commuting expenses and parking.

- Employers may find obtaining key talent easier, since they can recruit from a larger area.

† Microsoft 2010 US Remote Working National Survey
The Importance of Leadership Support

Merely telling your employees that they can work flexible hours or away from the office is not enough to reap the benefits—this type of arrangement must become part of your company culture. According to the Microsoft survey, only 15 percent of people feel that their company really supports flexible working arrangements. Once it’s ingrained in your culture and your employees understand that their careers won’t suffer if they work different hours or in a different location, flexible work arrangements can drive organizational success.

For example, Best Buy’s flex-time program, dubbed ROWE for “Results Only Work Environment,” reduced turnover at the company’s headquarters by 45 percent while improving productivity. The goal at Best Buy is to judge performance on output instead of hours worked.

Allowing staff to call the shots about when and where they work can reduce turnover and increase productivity, according to a recent Best Buy study.

Digging In: How Effective Was Best Buy’s ROWE?

A University of Minnesota study followed 600 workers for eight months after the start of the Best Buy program: 300 who worked under the flex-time program and 300 who continued working a traditional 9 to 5 day. The study, published in the April edition of the American Sociological Review, showed that 6 percent of the employees working under the flex-time program left Best Buy during the study period, while 11 percent of the control group left during that time.

What’s more, attrition results were about the same regardless of the workers’ gender, age, tenure, job satisfaction or stage of life. This facet of the findings rebuts the arguments of skeptics who say these initiatives benefit only parents or women and that employees who work remotely are less productive because they’re at home wearing pajamas. According to University of Minnesota sociology professor Erin Kelly, “Most employees like to go to work most of the time for the social interaction. However, employees are free to deal with personal issues or just decide to come in two hours later to avoid traffic, without the fear of getting in trouble with the boss. Many staff still work the 9 to 5 shift but appreciate knowing the flex option is available.”

Researchers said the study was so successful that Best Buy continues to allow its headquarters employees to work under the ROWE program. Phyllis Moen, another University of Minnesota sociology professor reporting on the Best Buy study, said 90 to 95 percent of the company’s 4,000 HQ staff work under ROWE today.

Many other organizations, especially technology companies, embrace flexible work arrangements, but how do you know if a flexible work program will flourish or flop in your organization?
Is Your Organization Ready for a Flexible Work Arrangement?
Flexible work arrangements require a leap of faith for any organization, but there are steps you can take to tell if your employee population will thrive in a less structured environment:

**ENSURE** that workers operating remotely are engaged.

**IDENTIFY** jobs that lend themselves to remote work.

**MANAGE** the virtual workforce.

**ESTABLISH** policies for the virtual work environment.

**DETERMINE** your organization’s readiness to accept a virtual workforce.

**SELECT** employees who can work remotely.

**DEVELOP** a change management and communication strategy.

Assess your organization’s readiness for flexible work arrangements today, and you can begin reaping the benefits tomorrow.
HIRING REMOTE-READY EMPLOYEES

When hiring a new employee specifically for a remotely managed position, there are certain traits you’ll want to consider during the interview:

• **Time-management skills** – Since remote employees will be working without your direct supervision, they’ll need to be able to demonstrate that they can manage their workload and meet deadlines.

• **Ability to take initiative** – It’s important to ensure that remote employees are willing to ask questions, enabling them to work on the right tasks and not hold up projects in the absence of constant interaction.

• **Reliable results** – You must have confidence in your employees to consistently deliver results you can count on. And since the work generated is valuable only if it helps achieve your business objectives, it is crucial that each team member understands his or her role within the overall goals of the organization.
U.S. SUPREME COURT MAKES IT EASIER TO SUED FOR RETALIATION

Last year, a record number of individuals filed claims of retaliation with the U.S. Equal Employment Opportunity Commission (EEOC). Two recent decisions from the U.S. Supreme Court that expand employee rights will push those statistics even higher. This means that businesses will need to be more vigilant than ever when it comes to legal compliance.

A Quick Refresher

What is a retaliation claim? Employment laws protect employees who lodge complaints about unlawful pay practices, discrimination or harassment. This rule applies to internal and external complaints. For example, if an employee complains internally to human resources about harassment, the employer cannot retaliate against the employee with an adverse employment action, such as termination. The same is true if an employee complains to the EEOC by formally filing a charge of discrimination.

Of course, nothing in the law prevents an employer from terminating an employee for legitimate reasons that are unrelated to a complaint.

A New Legal Claim: Association Retaliation

To be protected from retaliation, employees no longer need to personally complain—or do anything at all. In Thompson v. North American Stainless, the U.S. Supreme Court ruled that it’s good enough if a relative, friend or close associate complains.

In that case, Miriam Regalado filed a charge with the EEOC alleging that her supervisors discriminated against her based upon her gender. Approximately three weeks after the EEOC notified the employer of the charge, Regalado’s then-fiancé, Eric Thompson, who worked for the same company, was discharged.

Thompson filed his own EEOC charge, claiming he was terminated in retaliation for his fiancé’s filing an EEOC charge. In response, the company said that Thompson never personally complained, so he was not protected.

The Supreme Court disagreed. It ruled that a relative, friend or close associate who complains is also entitled to protection from retaliation. The Court recognized that employers run the risk of having to defend against claims anytime they fire an employee who happens to have some connection to another who made a complaint of unlawful conduct. Nonetheless, the Court believes that such a generalized class of employees is within the zone of interest of those deserving of protection.
> Oral Complaints Are Protected Too

Sometimes business owners take oral complaints less seriously than written complaints. The Supreme Court has reminded employers not to make that mistake.

Under most employment laws, oral complaints are protected. With respect to the Fair Labor Standards Act (FLSA), which governs certain pay practices, there was an open question as to whether oral complaints were sufficient. To erase any doubt, the Supreme Court ruled, in *Kasten v. Saint-Gobain Performance Plastics Corp.*, that they are just as good as written ones.

Kevin Kasten filed a lawsuit against Saint-Gobain Performance Plastics Corp., his former employer. He claimed that he was terminated because he orally complained that the location of the time clocks violated the FLSA. In response, the company argued that oral complaints are not protected by the FLSA.

The Supreme Court disagreed and held that an oral complaint is sufficient to be protected under the FLSA. It set forth the following standard for determining whether an employee has filed a complaint: A complaint is filed when “a reasonable, objective person would have understood the employee to have put the employer on notice that the employee is asserting statutory rights under the act.”

Fortunately, the Supreme Court recognized that not every offhand comment in the hallway or break room will qualify as a complaint. It said that to be protected by the FLSA, a complaint must be sufficiently clear and detailed for a reasonable employer to understand it, in light of both content and context, as an assertion of rights protected by the statute and a call for their protection.

> Implications for Your Business

While the Supreme Court may generally be known to be pro-business, these two rulings are surely pro-employee. As a result of these rulings, employers are likely to experience an increase in both alleged complaints and claims of retaliation under various employment laws.

In response, employers must keep two points in mind. First, these rulings emphasize the need for employers to take all internal complaints seriously, whether they are written or oral, and to be able to defend employment actions taken against its employees with legitimate, nondiscriminatory reasons. Second, when deciding to take adverse action against an employee, an employer must take care not only when the employee has engaged in protected activity himself but also when he is closely associated with someone who has. Again, nothing in the law prevents an employer from taking adverse action against an employee for legitimate reasons that are unrelated to a complaint. Nonetheless, an employer must recognize the suspicious timing that may be associated with taking such action against an employee who recently complained.

Avoiding retaliation claims can be tricky, particularly when the employee’s complaint may not have merit or his behavior may warrant termination. The Human Resources Professionals of ADP TotalSource® are available to conduct investigations into employee complaints and provide advice and guidance to help employers avoid retaliation claims.
Imagine the scene: You’ve worked hard for years to make your business a success. You had some good ideas, put together a good business plan, made sacrifices and, with a little good fortune along the way, are finally enjoying the fruits of your labor. Of course, you couldn’t have done it alone, so along the way, you hired an operations manager to help mold your company’s direction and focus on profitability.

Various types of restrictive covenants can protect one or more of these interests:

- A noncompete covenant generally restricts an individual from working for a competitor or starting his or her own competing company. It can protect confidential information, customer relationships, employee relationships and specialized training.
- A customer-nonsolicit covenant generally prohibits an individual from asking your customers for their business, typically those with whom he or she had contact during employment. As the name suggests, it mainly protects customer relationships.
- An employee-nonsolicit covenant generally prohibits an individual from asking your employees to leave your company and go work for his. This type of agreement mainly protects your investment in hiring, training and supporting your staff.
- A nondisclosure covenant generally prohibits an individual from using or disclosing your confidential information and trade secrets.
- A return-of-property covenant provides that an employee will give back your property upon termination.

Determining exactly which covenants should be used in a given situation will depend on the kind of information you seek to protect as well as the employee’s job responsibilities. By analyzing what is important to your business and then figuring out who in the company deals with that interest, you can decide which covenants would be best to use and which staff members should be asked to sign them.
**BUSINESS**

**RESTRICTIVE COVENANTS**

Things work well until one day, your operations manager walks in and announces that he’s quitting and starting a competing business. While this is a substantial setback, that’s the rough and tumble world of business. You are understanding—at first, anyway. Then, four weeks later, one of your most important clients stops doing business with you for no apparent reason. Before you have a chance to collect your thoughts, your best salesperson resigns and goes to work for your former operations manager.

At this point, reality sets in. Your business—your livelihood—is at risk. You call your attorney and demand that she make your former operations manager stop poaching your employees and clients. Unfortunately, there is little your attorney can do because you never had the operations manager sign an agreement that would prevent him from competing. How could you have made such a mistake?

**Know Your State**

A challenge in drafting restrictive covenants is that they are governed entirely by state law. There are differences in each state, and that affects what you can restrict. Make sure that the covenants you choose are enforceable in the state(s) where you conduct business.

**You Decide Whether to Sue**

Most of the conduct you want to prohibit occurs shortly after an employee leaves. But you don’t necessarily have to run to court to do it. Restrictive covenants often successfully deter former employees from competing against you, without your having to file a lawsuit. If you do encounter a “bad apple,” you can decide whether legal action is appropriate and worth the money. The individual may have been a poor performer who, in your opinion, couldn’t take any of your clients or employees regardless of how hard he tried. In that case, there is no apparent need to sue.

**Keep Them Updated**

One frequent mistake employers make once they have an employee sign a restrictive covenant is that they let it get stale. Employees change jobs. They change territories. They move to a different location. Use the annual performance review as a time to go over the employee’s job duties and determine whether the restrictive covenants need to be updated. Some courts will refuse to enforce stale ones.

**Use Exit Interviews**

When an employee announces that he is leaving, this is a good time for you to assess the potential for risk and whether you might want to enforce the restrictive covenants. How can you do that? Ask the employee during his exit interview where he will be employed next, what his job duties and responsibilities will be and whether he will comply with his restrictive covenants. Also, make sure he has returned all company property.

These steps will not solve all disputes. After all, some employees will lie if they are planning to violate their restrictive covenants. Still, this approach will dissuade some employees from violating their covenants and will put you in a better position if litigation ensues.

**The Bottom Line**

Restrictive covenants are an invaluable tool for businesses to protect important assets and should not be overlooked. Careful attention to the matters discussed above can result in significant protection for the information and relationships that businesses rely upon for profitability and survival.

Employers that may need restrictive covenants such as noncompete agreements should seek the advice of competent legal counsel. Through a strategic alliance with Jackson Lewis, a nationally renowned employment-law firm, clients of ADP TotalSource® may obtain the legal services of the firm at a reduced rate.
The Future of Employee Communication

It’s 2011, and if you’re like most people, you don’t leave the house without your smart phone, laptop, Kindle or iPad. You’re connected 24/7. You log onto Facebook, Twitter and LinkedIn to receive real-time updates on the lives of your friends and family, and your feed reader captures news stories and blog posts from the companies and thought leaders that interest you. You feel more connected than ever before, but you may find that you’re actually communicating less. How? The way we communicate is changing significantly—from “pushing” information to “pulling” information.

Today, individuals, including your employees, can “pull” the information that interests them instead of wading through all the information that is “pushed” at them. How can businesses leverage this transformation to engage their employees?

Before we look at what the future holds, let’s take a look at the disconnect that exists between the way organizations currently communicate and the way employees prefer to communicate.

**PRE-COMMUNICATION TRANSFORMATION**

- Your employees worked at the desktop computers in your workplace.
- The employee with a cell phone that took pictures was the coolest kid in the office.
- Employees kept all their contact information in Rolodexes.
- The “employee grapevine” existed physically, around the water cooler.
- Your company’s communication looked like this:

**POST-COMMUNICATION TRANSFORMATION**

- You and your employees can work anywhere.
- Data and information are accessible any time, day or night, from almost any location imaginable.
- Any employee who doesn’t have a smart phone is in the minority.
- The “employee grapevine” is no longer dependent on employees’ presence in the office—it’s electronic and global.
- Your company’s communication still looks like this:
The evolution of communication tools and resources is dramatically changing the way we live, work and interact with each other, yet many in the business world—especially small organizations—lag behind. The result can be dangerous: Businesses using stale communication methods will fail to engage their employees. And employee engagement is known to be key to business success. According to Gallup data, engaged employees:

- Have a 44% higher rate of retention
- Are 56% more effective when providing customer service
- Are 50% more productive
- Are 33% more profitable

While some organizations’ communications have evolved to include websites, video and social media, it’s important to remember that there’s a fine line between effective communication and communication overload. Organizations frequently focus on educating employees, which often translates into bombarding them with too much information. This overwhims workers and results in employees “tuning out” the message”.

**A CASE FOR CHANGE**

Employee communication is critical to the health of any organization. According to the 2009 Aon Consulting Benefits and Talent survey, one-third of employers believe communications have a significant impact on employee appreciation of the employment “deal”.

Over the past several years, job satisfaction has been on the decline, with only 45% of Americans being satisfied with their jobs, as reported in the 2009 edition of The Conference Board’s annual job-satisfaction survey. In a recent study by CareerBuilder, 24% of workers report that they no longer feel loyal to their company and 19% intend to leave this year. If organizations don’t embrace new communication techniques, attracting, retaining and engaging top talent will become increasingly challenging, especially as employee demographics and expectations change.

The millennial generation, born between 1980 and 2000, is 92 million strong and will become the largest generation in the workforce within 10 years. Often referred to as Trophy Kids or the Me Generation, millennials are known for being technologically savvy, highly engaged and driven. They are multitaskers who can juggle their email while listening to their iPods, sending text messages and surfing the Internet. But they’re also known for demanding immediate feedback and making decisions based on consensus and peer influence. As Baby Boomers retire, the gap between available labor and the demand for highly qualified candidates widens. If employers don’t shift their communication and business techniques to engage this generation, they will struggle. How can organizations engage their employees and motivate them to deliver on their business objectives through communication?
EMPLOYEE COMMUNICATION TOMORROW

The future of employee communication is about providing information to motivate and engage employees. It’s about making data easily accessible so employees can pull the information they need, when they need it.

The one-size-fits-all communication method of the past is about as efficient as using dial-up Internet: You’re still communicating, but you won’t get the results or experience you’re seeking. Motivate and engage your employees to achieve your business results by using this approach:

- **Objectives**: What’s the problem you’re trying to solve? What business outcomes do you need to achieve?
- **Attitudes and preferences**: What do you know about your people? What moves your audience?
- **Touch points**: What media, channels and tactics can you leverage? How can you make this information easy for employees to pull?

After establishing your criteria, make sure the content is simple, relevant, motivating and actionable. Your employees want to know: What’s in it for me? What action do I need to take? What will happen as a result of this action? Where can I pull more information if I need it?

Another key element to the “push vs. pull” communication transformation is the ability to allow employees to push information back to the employer. Historically, companies push information to employees from the top down, ignoring valuable data that could flow from the bottom up.

| The Old Way: Newsletters, Emails, Presentations from Company Leaders | The New Way: The Old Way plus channels through which to receive feedback and ideas from all levels of the organization |

Communication of the future harnesses feedback and input from all areas of the organization to drive organizational change and achieve business results. Creating dialogue not only engages and motivates employees, but it also encourages information sharing and knowledge transfer.
Businesses can use an internal social network as a communication tool that will also improve relationships among employees and foster a collaborative work environment. Many companies implementing social networks have had great success so far. For example, the average employee turnover rate in the retail industry is 40% to 60%. But after Best Buy launched its internal social network, called Blue Shirt Nation, turnover rates for employees who took part in it dropped to only 8%.

Internal social networks give employees a feeling of belonging, increase their opportunity to gain knowledge from other employees (regardless of their geographic locations) and allow them to provide instant feedback on company matters, thereby becoming a part of the communication process.

Soon, relevant, motivating and actionable communication will become an expectation of employers. Employees will demand the ability to pull the information relevant to them and push information back to the organization to drive positive change. You must decide if your organization wants to be on the forefront of transforming its communication strategy to attract and retain highly qualified candidates, or remain reactive to changing employee preferences.
THE BOTTOM LINE

Federal Agencies Step Up Enforcement Initiatives
FEDERAL AGENCIES STEP UP ENFORCEMENT INITIATIVES.

ARE YOU READY?

While the chances are slim that Congress will move forward on labor and employment legislation in 2011, regulatory changes that would pose significant challenges for employers are already happening. Here is a list of hot regulatory initiatives to watch this year.

Department of Labor

The Department of Labor (DOL) is the agency that enforces the Fair Labor Standards Act (FLSA), the federal law that governs pay practices. From an employer’s perspective, one of the most difficult challenges associated with the FLSA is properly classifying employees as exempt or nonexempt. This is an important distinction. Exempt employees are not entitled to be paid overtime, while nonexempt employees are.

DOL has proposed the “Right to Know Under the Fair Labor Standards Act,” which would require employers to produce a written “classification analysis” to justify exempt employee status (and/or independent-contractors status) for each employee. This proposed rule is raising a lot of eyebrows because it would be extremely costly to employers, whether the analysis is performed by human-resources personnel, in-house counsel or outside counsel.

DOL has been busy in other areas, too. Its “Plan/Prevent/Protect” initiative would require employers to create, implement and monitor “compliance action plans” under the FLSA, the Occupational Safety and Health Act and Executive Order 11246 (which requires affirmative action plans from most federal government contractors). The plans must be adopted after employees have participated and commented and then be made available to workers.

Lastly, President Obama has tapped a veteran prosecutor to head DOL’s Wage and Hour Division, another sign the agency is getting tough on employers that violate labor laws.
Federal Agencies Step Up Enforcement Initiatives

**Occupational Safety and Health Administration**

The Occupational Safety and Health Administration (OSHA), the federal agency responsible for workplace safety, is developing a proposed rule for injury- and illness-prevention programs. OSHA used to identify specific standards for employers to meet so that they would be legally compliant. The proposed new rule represents a potential significant departure from this practice. It would require employers to develop and implement a program that minimizes worker exposure to safety and health hazards. Instead of waiting for an OSHA inspection or a workplace incident to address such hazards, employers would have to create and implement a plan for identifying and correcting them. Workers would also participate in the development and implementation of such a plan.

OSHA also announced a directive entitled the “Severe Violator’s Enforcement Program” to increase penalties on employers who have committed willful, repeated or failure-to-abate violations. This initiative, although it targets only “serious” offenders, was issued without any public input. An unintended consequence of OSHA’s emphasis on increased penalties is that employers will have a greater incentive to contest citations, therefore potentially delaying remedial measures or settlements.

Finally, OSHA has issued new guidance to its Compliance Safety and Health Officers on how to enforce its personal protective equipment (PPE) standards in general industry. This provides enforcement protocols related to PPE selection, use and payment.

**Office of Federal Contract Compliance Programs**

The Office of Federal Contract Compliance Programs (OFCCP) administers the federal affirmative action requirements for government contractors, pursuant to Executive Order 11246. The mandates for written affirmative action plans apply to contractors or subcontractors with annual federal contracts totaling $50,000 or more and at least 50 employees. These contractors and subcontractors must create and implement affirmative action plans every year.

OFCCP announced that it will increase the scope and breadth of its auditing process of affirmative action plans under a new “active case enforcement” initiative. This initiative states that the agency will conduct a full compliance review of every 25th supply and service federal contractor, including onsite visits by compliance officers, even where there is no indication of potential discrimination or other violations. Contractors can expect more comprehensive desk audits, more onsite investigations and an expanding group of potential victims.

In addition, OFCCP announced it will rescind “compensation guidelines” issued during the Bush administration that were previously used to determine whether a government contractor was discriminating. This makes it easier for OFCCP to allege compensation discrimination without using the generally accepted method of establishing it (known as multiple regression analysis).

**Equal Employment Opportunity Commission**

The Equal Employment Opportunity Commission (EEOC) enforces many of the country’s discrimination laws, including Title VII of the Civil Rights Act of 1964 that prohibits discrimination based on race, sex, religion, color and national origin.

EEOC has released long-awaited final regulations implementing the ADA Amendments Act (ADAAA), effective May 24, 2011. The rules reaffirm the purpose of the ADAAA: to make it easier for individuals with disabilities to obtain the ADA’s protection.

EEOC has also sued several companies to halt their use of pre-hire credit histories. EEOC claims that credit checks during employee selection results in a disparate impact on various minority groups and that the practice is not justified by business necessity. The use of credit checks in the hiring process is currently permitted, with various restrictions, under the federal Fair Credit Reporting Act.

With constant changes in policy by federal and state agencies, it is difficult to keep up with all the new rules, determine how they affect you and stay in compliance. ADP TotalSource® closely follows state and federal regulatory developments and provides its clients with timely updates on new employment-law developments that affect your business.
## STATE EMPLOYMENT LAW UPDATES

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

The following updates reflect sample developments from January to April 2011.

| Florida | The governor of Florida recently issued an executive order requiring state agencies and contractors to use E-Verify, the Internet-based system operated by the United States Citizenship and Immigration Services (USCIS) that enables employers to verify the employment eligibility of newly hired employees, regardless of citizenship. Under federal law, participation in E-Verify is generally voluntary unless an employer has certain federal contracts. | Alerted clients to the change; highlighted a conflict with federal law and made recommendations for compliance. |
| Illinois | The Illinois Religious Freedom Protection and Civil Union Act, which takes effect June 1, 2011, extends state law protections and responsibilities to all committed couples in Illinois, allowing same-sex couples to enter into a civil union. Because Illinois is one of 22 jurisdictions that protect individuals from employment discrimination based on sexual orientation, employers should review their health and benefit plans, as well as general policies and procedures, to determine whether the new law will provide greater benefits to their employees. | Alerted clients to the change; planned update to ADP TotalSource Health and Welfare Plan as necessary to remain compliant with Illinois state law. |
| Maryland | The recently enacted Healthy Retail Employee Act requires Maryland employers operating retail establishments that are not restaurants or wholesalers with 50 or more employees to provide nonexempt employees with break periods based on the length of shifts they work. | Recommended that clients assess their policies regarding break times; provided general guidance and best practices to ensure compliance with the law. |
| New York | The New York State Department of Labor has issued guidance on the Wage Theft Prevention Act, which took effect April 9, 2011. The Act steps up enforcement of existing wage-and-hour laws, modifies and expands recordkeeping requirements for employers and allows employees to recover significantly greater damages for violations of New York State Labor Law. | Alerted clients to new requirement, developed webcast focusing on the new law and assisted clients with required notices and employee acknowledgements. |
| Rhode Island | The governor of Rhode Island recently issued an executive order immediately repealing the state’s previously enacted E-Verify mandate for state agencies and contractors. | Alerted clients to the change. |
Maximizing Efficiencies and Managing Costs—With ADP TotalSource

It’s no surprise that employees at smaller companies typically wear many hats. However, as a company grows, it’s often necessary to outsource certain functions so employees aren’t stretched too thin. Yet, managing outside vendors can entail special challenges, especially when one person is charged with coordinating the activities of numerous organizations. To help streamline the use of its outsourced relationships and reduce costs, Timbuk2 Designs turned to ADP TotalSource.

Timbuk2’s biggest challenge was managing an increasingly unwieldy array of HR vendor relationships, including benefits, workers’ compensation and other related areas. Keri Sedor, Timbuk2’s head of HR, says, “It was difficult to build any continuity, and I was spending a lot of my time getting them up to speed on challenges we were facing. It also took longer than we’d like to respond to specific HR issues, such as a problem employee.” With ADP TotalSource, Sedor has direct access to a host of HR specialists, including her ADP TotalSource HR Business Partner. “We now get quick answers to HR, payroll, 401(k) and other questions.” CEO Mike Wallenfels adds: “ADP TotalSource has eliminated the need to hire a number of outside consultants or add internal HR staff. This equates to a significant cost saving for the company.”

Other drains on Sedor’s time were processing new hires and responding to employees’ HR-related questions. Thanks to My TotalSource, ADP TotalSource’s web-based HRMS and the Employee Service Center (ESC), those are no longer issues. “Our employees can now either call or go online and quickly find answers to their questions about their health-plan benefits, flex plans, 401(k) account and more.” Sedor can also now enter new employees into the company’s payroll system and update existing employee information via My TotalSource: “It used to take several hours to process new employees and sign them up for our various benefits programs. I can now handle this in a matter of minutes with ADP TotalSource’s online system.”

Given Timbuk2 Designs’ manufacturing facility, it’s imperative to have a safe work environment and also to meet San Francisco’s workplace regulations. As Sedor explains, ADP TotalSource’s Risk Management & Safety program was invaluable: “Our dedicated ADP TotalSource safety specialist visits us periodically to review our operations and recommends new ways to improve them. This helps to reduce the chance of employee injuries and downtime, as well as minimize potential litigation expenses.”

“ADP TotalSource makes our life easier. It really is a total HR solution.” Wallenfels summarizes his comments by explaining how ADP TotalSource helps him to concentrate on building the company: “It allows me to focus on the future direction of Timbuk2 Designs and our strategic initiatives, rather than getting involved in HR issues. Going forward, ADP TotalSource will grow along with us, as we’ve just begun to tap into its suite of features and services.”
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 1-800-HIRE-ADP or visit us at www.adptotalsource.com