

ROUTE TO:



Tom Dailey - editor

Business Law Scope

To help keep your business informed and healthy July - September 2005

A courtesy publication by your **Neighborhood pro-Business Lawyers** at
Knaak & Kantrud, P.A. and Thomas M. Dailey, P.A.
Suite 800 • 3500 Willow Lake Boulevard • Vadnais Hts. (St. Paul) MN 55110

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Interesting Quotation

“We tend to meet any new situation in life by reorganizing, a wonderful method for creating the illusion of progress while often producing only confusion, inefficiency and demoralization.”

Petronius Arbitr
1st Century Roman Satirist

Whopping Cell Phone Bill

What do you think it will cost if, while talking on your cell phone and inattentively driving your car, you encroach on the shoulder and fatally hit a pedestrian lawfully walking along the road? In a Virginia case reported late in 2004, it cost one driver over \$ 2 million in personal liability – plus conviction on criminal hit-and-run (she claimed not realizing that she’d hit someone). Because the driver was at the time engaged in a call involving her employer’s business on a cell phone for which it reimbursed the monthly user fees, the employer was also sued by the dead pedestrian’s estate, but settled for an “undisclosed amount” before trial.

QUICK BITS – General Business Items

Sales Compensation on the Rise: The results of a recent national survey by the Alexander Group indicated an average rise of 8.2 % in the earnings of U.S. sales personnel in 2004, the largest increase in 3 years. In expectation of sales revenue growth in 2005, a further increase of

12.6 % (on average) is anticipated this year by the employers surveyed. A free executive summary of this survey can be downloaded at www.compensatingthesalesforce.com.

Trust in Management, and Performance Oversight: According to the most recent Watson Wyatt WorkUSA Survey, employee trust and confidence in senior management is on the rise – 51 % in 2004 versus 44 % in 2002. More of the 13,000 workers surveyed also said they believe information provided to them by management – 50 % versus 37 % in the same periods. But, some problem areas remain. For examples, only 31 % believed that their firms do a good job in helping poor performers improve – slightly less than the 32 % who think that appropriate action is taken when performance doesn't improve.

2005 Global CEO Survey:

PriceWaterhouseCoopers polled 1,324 U.S. CEO's from some of the world's leading companies. Most are confident about the future growth of their companies, but know it won't be easy. Particular difficulties foreseen, and expectations about specifics like off-shoring are reported in more detail in the survey results at www.pwc.com/newrealities.

401(k) and Profit Sharing Eligibility Periods: According to the 2005/2006 National Policy and Benefits survey by Employers Association (Minnesota), about 25 % of responding companies make employees eligible for 401(k) participation immediately on hire, while the same number defer eligibility for 90 days or the first calendar quarter on the job. Those numbers were down a bit from national survey results reported for 2004 by the Profit Sharing/401(k) Council of American at www.pasca.org/PDFS/elig2004.pdf. It reported that almost 60 % of the 401(k) plans with employers having less than 10,000 workers offer participations within or after the first 3 months of employment. But both numbers are up significantly from 1998 survey results of 32 % eligibility in 3 months or less. Similar accelerations are occurring with profit sharing eligibility, now about 27 % in 3 months or less (up from 12 % in 1998).

Employee Turnover Rates:

After going down in 2002 and 2003, turn-over rates due to increased employee quits edged up in 2004. The main months for quits in 2004 were January, March, August and October. As we have earlier reported on national attitudes, approximately 35 % of all U.S. employees now closely monitor their chances to “move out & up” or “move out laterally then up” in this economy.

Option for Flexible Spending Accounts:

The current rule for tax-advantaged flexible spending accounts/FSA's for health- and dependent-care expenses is that employees must forfeit any dollars set aside in the FSA but not spent on eligible expenses by the end of the plan year. This is the so-called "use it or lose it" rule. Under a new ruling by the U.S Treasury Department, employers now have the option of allowing employees an extra 2 ½ months, after close of the plan year, to spend the remaining money. To implement this option, employers must amend their cafeteria plans. See Notice 2005-42 at www.ustreas.gov/press/releases/js2456.htm.

Identity Theft – New “Disposal Rule”

The 2004 Fair and Accurate Credit Reporting Act included a provision that requires organizations to properly dispose of "any record about an individual, whether in paper, electronic or other form that is a consumer report or is derived from a consumer report" which can identify that person individually." No particular "proper" disposal method is mandated, but shredding paper files, erasing electronic files or some other "reasonable" method are suggested. To read more on the related rules of the Federal Trade Commission, go to www.ftc.gov/os/2004/11/041118disposalfrn.pdf. Also, for new legislation passed and introduced to restrict disclosures of Social Security numbers, see the site of the National Conference of State Legislatures at www.ncsl.org/programs/lis/privacy/financeprivacy.htm.

Minimum Wages go Up in August (MN)

On August 1st, the following adjustments in minimum wages will take effect in Minnesota. (A partial list of exempt employees includes taxicab drivers, babysitters, volunteers of nonprofit organizations, and persons providing police and fire protection.)

- **\$ 6.15 for “large employers”** (whose gross annual volume of sales made or business done is \$ 625,000 or more);
- **\$ 5.25 for “small employers”** (whose gross annual volume of sales made or business done is less than \$ 625,000); and
- **\$ 4.90 for “training wage”** (only for 90 days and for new employees who are under the age of 20 in that period).

Minimum wage rates apply to all hours worked, whether part time or fulltime. A “tip credit” cannot be taken against an employee’s wage in Minnesota.

Teen Labor Rules for Summer Help

Cultivating teen appreciation for responsible work and its rewards is a beneficial business objective. However, both federal and state child-labor laws regulate who you can involve and what you can assign them to do. And, where those laws differ, the Rule of Thumb is to follow the ones that are stricter. Some general guidelines are provided, below. But, they are no substitute for your own inquiries, based upon your own particular programs of involving teen labor under the age of 18.

To review federal rules, check the new website www.youthrules.dol.gov. Then, to see how Minnesota or other state's laws may differ, visit www.dol.gov/esa and click-on "State Labor Laws". Finally, for a list of the hazardous duties that are off-limits to teen under 18 years of age, go to www.dol.gov/dol/topic/youthlabor/hazardousjobs.htm.

In general, kids 13 and under are off-limits to employers, except for work in their parents' solely owned businesses, and a few other exceptions.

Youths who are 14 and 15 may work outside of school hours (e.g., in the summer) on various jobs except manufacturing, mining and hazardous positions, but the hours they can work are federally limited to –

- 8 hours on a non-school day, and 40 hours in a non-school week, and
- Between June 1 and Labor Day, to work hours between 7 a.m. and 9 p.m.

For 16 and 17 year olds, federal law (the Fair Labor Standards Act) says that they can work unlimited hours. But more than half of the States regulate the daily or weekly hours that youths in this age bracket can work. And, none can perform hazardous duties such as using power tools, operating heavy equipment, or driving a truck or car on the job.

Federal law doesn't require work permits or proof-of-age certificates, but many states do require permits for workers of certain ages. To find out what your state requires, visit www.dol.gov/esa/programs/whd/state/certification.htm

Take a few minutes to check the sites indicated, make sure that your supervisors of teenage workers are also up-to-speed on the rules, and help a kid have a great summer.

New On-Line Recruiting Development

"Jobs" Domain arrives in August: In April, the Internet's main oversight agency gave its final okay to the creation of employer web addresses that end in the ".jobs" domain. The Society for Human Resources

Management will manage the dot-jobs community, and expects the first new sites to start appearing in August. Among the advantages of using a dot-jobs address to post employment opportunities are:

- People won't have to come to your main home address (and menu) to learn about open positions at your company;
- The powerful new search engines that look across the web for new jobs, such as Indeed.com, SimplyHired.com and WorkZoo.com will now easily find employment openings at dot-job web sites and not miss those on your home page or obscure posting sites such as trade association "help wanted" pages;
- Persons interested in jobs posted at you dot-jobs web site can send their résumés to that address (if you set it up that way) and keep that traffic off your home page; and
- This will enable employers to by-pass Monster.com and other big job boards that may charge fees for listing positions available or forwarding résumés received.

Free CD-ROM's for Small Businesses

IRA and IRA-Based Retirement Plan Info: Does your firm have a Simple IRA or SEP retirement plan? Could you use some help convincing employees (or clients) to get serious about their retirement savings? The IRS has a free CD-ROM containing information on traditional and Roth IRA's plus plans based on IRA's – setting them up, investing, making withdrawals, and correcting mistakes made in operating them. You'll also find forms and publications, a calculator for estimating funds needed at retirement, investing tips, video clips, useful links, and research materials. You can order a copy of this [Publication 4395, Individual Retirement Arrangement \(IRA\) Resource Guide for Small Business Owners and Individuals CD-ROM](#) by telephone (800-829-3676) or at www.irs.gov/ep under "Educational Services."

Small Business (Tax) Resource Guide CD-ROM for 2005. This handy new, "improved" and interactive CD-ROM from the IRS includes a navigational "map" to all business tax forms, instructions and publications, tax law changes for 2005, plus many web links for business associations, government agencies and taxing organizations. It also has a survey reply in which users can suggest changes for future editions. To request a copy on line, go to www.irs.gov/businesses/small/article/0,,id=101169,00.html

Trading Partners – Europe at Mid-Year

You glance at the agenda for the business meeting:

- Outsourcing and off-shoring threatening our jobs,
- Education system not improving fast enough to promote our prosperity,
- Government can't find palatable solutions to persistent economic problems,
- Aging society – and work force,
- Promised pension and health care costs outstripping our abilities to pay, and
- Protective economic barriers to shield us from the frightening rise of China and India could retard global economic growth.

This meeting isn't about the U.S. – it's about Europe. On every one of these points, the Europeans have more current cause for worry than Americans do. And all received considerable attention in early July at the World Investment (“Project Europe”) Conference in France. With politicians in Western Europe virtually paralyzed by the push for inter-country uniformity, Project Europe is now led by business.

But, in the 12 countries that share the Euro currency, unemployment is at 8.9 % (versus 5.2 % in the U.S.) and, in most, economic growth is slow or flat. So far, the European Central Bank (unlike the U.S. Federal Reserve) seems dis-inclined to help ignite growth. Foreign direct investment in Europe is now concentrated heavily in Poland and other recent EU members in “Eastern Europe” that have low-wages but (often) skilled workforces. Only the U.K. is experiencing better foreign direct investment.

Some researchers point to the absence, in Western Europe, of two key components of a reoriented and revitalized economy: (1) research universities committed to both the advancement of knowledge and converting new ideas into profitable products and valuable services (and deriving royalties), and (2) an entrepreneurial culture which asks that creativity, productivity, wages and profitability move more-than-less in synch.

Many hurdles of Western European business can be traced to gradual concessions to workers by politicians who have courted their votes: e.g., nationalized wage schedules not pegged to productivity or profitability; vacation entitlements that cause multiple and extended factory closings

and supply chain shut-downs each year; and job tenure protected from firing or lay-offs even where warranted. These features and their economic impacts are not changeable overnight. And many in Europe resist the American model of a deregulated, market-driven economy because of capital risk, job insecurity, and wage and benefits inequality.

Our prognosis is that political introspection and economic stagnation are likely to continue for the rest of the year in Western Europe. But the job growth and investments in the EU's newer "Eastern" members will continue to be envied and should promote increasing receptiveness to modified economic behaviors throughout the Community. Without change, the "agenda" items will continue to increase and fester.

Jury Duty

No one is immune from jury duty. Even U.S. Supreme Court Justice Breyer was called for duty in his Massachusetts hometown. Although he was excused, it's getting a lot harder for others to get that treatment. Judges take jury duty very seriously, and you should do the same.

You must allow employees to take time-off for jury service, and you cannot retaliate against them for it. In most states, employees are not required to be paid their regular wages while on jury duty. But, according to one government study, 87 % of employers do offer paid leave for jury duty. Some follow the same practice they use for military reservists who are called away from their jobs for active duty – that is, paying them the difference between their military (jury) pay and their regular pay rates. Others use a leave system similar to their policies under the federal Family Medical Leave Act/FMLA, including requiring employees give advance notice of foreseeable jury duty as soon as they are notified by the court. In most cases, you can be flexible provided that (1) you give equal treatment to all employees who are called to jury duty, and (2) that you respect the job reinstatement rights that most employees have on return. To find out how flexible you can be, and how to mesh jury-leave procedures with your other policies, check the interactive map of state jury-duty laws at www.toolkit.cch.com/text/P05_4340.

Bottom lines: don't let jury duty lead to a bigger headache or employment complaint. Employees are surprised and inconvenienced just as you are. Don't make things worse by blaming them. Be fair and flexible in your processing of all calls to jury duty – and when your employees are called as witnesses.

New Veteran Rights Posting Form

To the “wall of compliance” where you display mandatory informational posting for your employees, another poster will need to be added. This one addresses employees’ rights under the Uniformed Services Employment & Reemployment Rights Act (USERRA), as amended late last year by the Veterans Benefits Improvement Act of 2004. The public comment period on the text of this new poster expired May 9, 2005. Any changes in the final version will be later published by the U.S. Department of Labor in the Federal Register. Meanwhile, print-out copies of the interim poster can be downloaded at www.dol.gov/vets.

Paying NonExempts Traveling Overnight

When you require (or authorize) non-exempt employees to take an overnight business trip, the rules for calculating and paying work time are different. It’s easiest if you look at the issue in three parts.

- **Getting from/to Home:** All time spent by a non-exempt employee getting from home to the airport, train or bus station (and back) IS included in paid work time. This an exception to the general home-to-work travel exclusion on everyday commuting and day trips.
- **Other Travel time:** Other travel time that corresponds to their normal daily hours of work must be counted and paid for as time worked. But, on Saturdays, Sundays and holidays when the non-exempt employee wouldn’t normally work, ALL travel time must be counted.
- **“Business” Time:** When away from home overnight, non-exempt employees don’t have to be paid for any time when they are completely relieved from duty. So, you look at the time actually spent in the employer’s business (or attending a seminar, etc.) during each day spent away.

If you would like to receive future editions of this Newsletter by e-mail (or if you don’t want to receive them), please call our offices and let us know. Also let us know of any topics you’d like covered in later editions. Thank you!

Knaak & Kantrud, P.A. and Thomas M. Dailey, P.A.
Suite 800 • 3500 Willow Lake Boulevard • Vadnais Hts. MN 55110 U.S.A.
Phone: 651-490-9078 • Fax: 651-490-1580