

in the news

Labor and Employment



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New Year's Resolution — Protecting Your Business: 10 Employment Law Questions to Test Your Knowledge

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As you head into 2014, here is a set of 10 questions to test your employment law acumen and see if you are prepared for the coming year. We will release the answers after the first of the year. From all of us at Polsinelli, we wish you and yours a safe and happy New Year.

Employment Law New Year's Quiz

1. **An employee** has complained that he has been working long hours recently, but has not received any overtime pay. The employee is paid a salary and not hourly, so the company:
 - a. Can ignore the employee's complaint because salaried employees are not entitled to overtime.
 - b. Should offer the employee "comp time" to compensate him for the extra work.
 - c. Should take steps to confirm that the employee is properly classified as "exempt" under the Fair Labor Standards Act and any applicable state laws.
2. **The U.S. Supreme Court's decision** in *U.S. v. Windsor* struck down a portion of the Defense of Marriage Act of 1996, which barred federal recognition of same-sex marriage. In light of this recent Supreme Court



ruling, health and welfare benefits provided under an employer sponsored benefit plan must:

- a. Be extended to all same same-sex spouses of employees regardless of the terms of the plan document.
 - b. Be extended to all same same-sex spouses of employees who reside in states that recognize same-sex marriage, and to registered domestic partners in those states that do not recognize same-sex marriage.
 - c. Be extended to only those spouses that meet the criteria as a "spouse" as that term is defined under the controlling benefit plan document.
3. **An employee** has developed a medical condition that requires him to take a leave from work. He has now used all of his allotted leave under the Family and Medical Leave Act, and he is not entitled to any other leave pursuant to any company policy. However, the employee needs more time to recover and has requested some additional leave. In response to this request, the company:
- a. Should inform the employee that he has used all of the leave to which he is entitled under the FMLA, and that his employment is terminated as a result, but that he is free to reapply when he is able to fully return to work.
 - b. Should inform the employee that it will try to keep his position open if possible, but that if a qualified candidate is found before he is able to return to the job, he will be replaced.
 - c. Should treat the employee's request for additional leave as a request for an accommodation under the American's with Disabilities Act and evaluate in good faith whether the request can be granted.
4. **If an employer asks** a part-time, hourly employee to work on the weekend, the employer must pay that employee:
- a. The employee's regular rate because the Fair Labor Standards Act does not apply to part-time employees.
 - b. Time and one-half because weekends and nights require overtime compensation.
 - c. The employee's regular rate of pay, unless the weekend work will push the employee over 40 hours of work during that work week.
5. **An employee** with a history of reporting late to work has come to your office and reported that her supervisor has repeatedly asked her out for dates despite the fact that she has always declined and told him to stop asking. An hour later, the employee's supervisor stops by your office and informs you that the employee was 20 minutes late for her shift. You should:
- a. Do nothing because it is clear that the employee and the supervisor just don't like each other.
 - b. Treat both issues independently, *i.e.* investigate the harassment claim and discipline the employee in accordance with the company's tardiness policy.
 - c. Investigate the harassment claim, but ignore the employee's tardiness because it is just too dangerous to discipline an employee who has made a complaint of sexual harassment.





6. **An employee** has reported that he suffers from migraine headaches, and has sought intermittent leave under the Family and Medical Leave Act. He has a history of taking his sick days on Mondays or Fridays, and often fails to follow company policy regarding the need to call in to report an absence. You should:
- Deny the request because, in your opinion, the employee is clearly faking.
 - Grant the request because the FMLA allows for intermittent leave.
 - Obtain a medical certification from the employee's medical provider in order to evaluate the request and remind the employee of his obligation to properly report absences.
7. **Your company** is a network provider for TRICARE, pharmacy services and/or medical equipment, and you have just been asked whether the company could be considered a federal subcontractor with affirmative action obligations?
- No, the OFCCP has acknowledged that the National Defense Authorization Act of 2012 (NDAA) excluded TRICARE network providers from the jurisdiction of the OFCCP.
 - Yes, if the company with whom my business has a contract to be a network provider is creating such network as a prime federal contractor.
 - Yes, according to the OFCCP if the only basis of coverage is TRICARE.
 - B and C.
8. **The Company** hired a new HR director two weeks ago. During the intake process of completing the I-9 form for his first new hire, the COO receives an urgent call from the director. He has discovered that there are I-9 forms only for employees hired in the last year; all others for the nearly 1000 employees are missing. The Company has no foreign national employees so it:
- Can tell the HR director to complete, as best as he can, I-9s for those employees without one, leaving blank the sections he can't complete, and put them in a file, saying nothing to the employees.
 - Do nothing, relying on a five year statute of limitations defense to the potential fines and penalties (which the HR director read about in an HR publication), if ever needed in a federal investigation.
 - Immediately notify all current employees, and those who have left employment if possible, that as a result of a self-audit, HR will need to review their documents from the official list; complete new I-9s with the original hire date, the actual completion date, the employee's signature and a brief explanation.





9. **Every year**, one of your major customers holds its annual New Year's Eve party at an out of town resort. Employees are not required to attend, but you "highly recommended" that your sales employees attend the party. You pay for a block of rooms at the resort so employees won't be tempted to drive home drunk. A sales employee over-indulges during the festivities and, unfortunately, is found dead in his hotel room the next morning. The coroner rules death by asphyxiation and acute alcohol intoxication. Do you have to report the death to OSHA?
- a. Yes. OSHA requires that an employer report a fatality from a work-related incident within 8 hours.
 - b. No. The fatality is not reportable because the fatality is not work-related as the employer did not require attendance at the customer's New Year's Eve party.
 - c. No. Even though the death may have occurred in the work environment – as attendance was "highly recommended," the fatality is not reportable as it solely resulted from the employee drinking alcohol for his personal consumption .
10. **Your superintendent** of manufacturing rushes into your office and tells you that he was accidentally copied on an internal email from an employee, who was soliciting other coworkers to meet a Union organizer for beers after work. Although the employee handbook prohibits personal emails from being sent and received on the employer's internal email system, the policy never has been enforced. Fearing what Union representation would do to your bottom line, you should:
- a. Discipline the employee for violating an express handbook policy.
 - b. Not discipline the employee for this violation, but issue a memorandum a) reminding all employees of the policy and b) your intention to enforce it starting the first of the month.
 - c. Go to the meeting, buy the first round for all attendees, and listen to why a Union is necessary at your workplace. ■





For More Information



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