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EXAMINER

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Welcome

Welcome to the January 2009 issue of the Credential Check Examiner! Please feel free to offer your feedback. We appreciate hearing from our subscribers.

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Failure To Accommodate + Resignation = Constructive Discharge?

According to a recent Americans with Disabilities Act (ADA) case from the Sixth Circuit Court of Appeals, a failure to accommodate an employee's disability may result in a constructive discharge and expose the employer to the same kind of liability it would face had it terminated an employee because of a disability. Constructive discharge occurs when the employer makes working conditions so intolerable that a reasonable person would feel compelled to resign.

In *Talley v. Family Dollar Stores of Ohio, Inc.*, Pearlle Talley, a former store cashier could not stand for long periods of time without experiencing severe pain because of arthritis. Talley requested a stool to sit on while working, but the employer denied those requests because employees complained of "favoritism" and wanted stools of their own. After the employer denied Talley's verbal and written requests for a stool, Talley did not report to work and five months later the employer terminated her for "job abandonment." Talley sued for disability discrimination under the American with Disabilities Act (ADA), claiming that her employer's refusal to accommodate her had forced her to quit.

The Sixth Circuit held that there was sufficient evidence for a jury to conclude that Talley's resignation was both intended and foreseeable, when she made several requests for an accommodation and those requests were denied, and no other reasonable alternative was offered. Therefore, the court found that there was enough evidence for the case to go to a jury for a determination as to whether "Talley's working conditions would have been so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign."

Surprisingly, in light of this newest case under the ADA, an employer who does not provide a disabled employee with accommodations may face liability, even if that disabled employee resigns or otherwise fails to return to work.

Source: Legal Affairs Committee of the Human Resources Association of Greater Detroit and was written by Committee member Thomas Schramm who is an employment attorney at Nemeth Burwell in Detroit.

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Sick Time Policy Crucial for Small Businesses

Many business owners might not think about a policy for sick or medical days until an employee starts taking a lot of time off. Or, when a prospective worker asks, "how much sick time do you give?" Before formulating a policy, owners should be aware that they're not required under federal or most state laws to grant employees paid time off when they're sick, but the federal Family and Medical Leave Act of 1993, known as the FMLA, might require that companies give workers unpaid sick leave. However, not granting any paid sick time at all is probably a bad idea; not only is it a morale-buster, it will make it harder to recruit good workers. Many owners trying to come up with a sick time policy might not be sure



how many days to give staffers. Rick Gibbs, a senior human resources specialist with Administaff, a Houston-based company that provides human resources outsourcing, said owners need to decide "how many days a year can they afford not to have people working from a productivity standpoint." But they also need to be sure that their policies will make them competitive with other employers in the same industry and community. "Ask around other business owners what they typically offer," Gibbs said. He also noted that typically, companies link sick time to tenure the longer workers have been with a business - the more time they are likely to get. Sick time gets more complicated when employees use up their allotment. Should the boss dock their pay? Make them dip into vacation time or personal days? Borrow from next year? Or should the owner just shrug and keep paying them? This can be a thorny issue, but generally, the advice from human resources consultants and small business owners alike is to be flexible, but also fair to the entire staff. Keep in mind that docking an employee's pay may come across as punishment and could motivate a good employee to leave. One solution that many companies are turning to is to grant employees paid time off that in effect lumps together sick time, personal days and vacation.

Source: The Associated Press

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The FBI Wants You. Agency Launches Hiring Blitz

The FBI says it's going on a hiring blitz, posting job openings for 850 special agents and thousands of staffers to support law enforcement activities. Since the Sept 11, 2001, attacks, the FBI has been criticized for not having enough employees fluent in foreign languages and for not moving fast enough to upgrade its computer system. FBI Assistant Director John Raucci of the Human Resources division said the federal law enforcement agency is seeking to bring more people on board with skills in critical areas, especially language fluency and computer science. "We're also looking for professionals in a wide variety of fields who have a deep desire to help protect our nation from terrorists, spies, and others who wish us harm," Raucci stated. He said the FBI, which has been investigating corporate wrongdoing in connection with the current financial crisis, also needs finance and accounting experts, along with those skilled in physical surveillance and various other employees. The hiring initiative for FBI headquarters in Washington, D.C., and for its field offices would replace departed staff and add some employees, officials said.

Source: Reuters

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Survey Reveals Cost of Employee Absence

The costs of employee absence average 36 percent of base payroll. That's among the major findings of a new survey on the financial impact of employee absences. The Mercer survey, conducted among 455 organizations, found that direct costs (such as pay provided to an employee for time not worked) and indirect costs (such as replacement labor expenses and lost productivity) of employee absence average 35.8 percent of base payroll. Most of these costs (26.6 percent) are attributed to "planned" absences, such as vacations which have likely been approved in advance. However, "unplanned incidental" absences such as casual sick days, account for 6 percent of payroll. These type of absences result in the highest net loss of productivity per day "i.e., work that is missed or postponed by not being covered by others" according to the survey. While the direct costs of incidental employee absences are just 2 percent of payroll, the total costs (including the indirect costs of replacement labor) were three times as high at 6 percent, according to Mercer. About one third of respondents use paid time off (PTO) banks that combine vacation and incidental sick days to help manage incidental unplanned absences. The survey further found that "extended" absences, those that are unplanned and last more than one week account for 3.2 percent of payroll. These two categories, unplanned incidental and extended absences, account for 9.2 percent of payroll, representing more than half the cost of healthcare, which is about 15.4 percent of payroll, according to Mercer. Using the example of a company with 1,000 employees with an average annual salary per employee of \$50,000, 9 percent of the \$50 million payroll—for unplanned incidental and extended absences—would be \$4.5 million in costs per year. Mercer and Kronos, who sponsored "The Total Financial Impact of Employee Absences" survey, say that employers should focus on 3 areas in order to improve the situation: 1) Plan design and policies, such as benefit level and attendance policies; 2) Absence management and administration; and 3) Tackling the underlying causes of employee absence.

Source: HR.BLR.COM

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Airlines Fly Into New Year With Wave of Fare Sales

A wave of fare sales has spread across the airline industry in the early days of the new year as the economy continues to put pressure on carriers to fill seats. Even after drastically reducing capacity, some airlines expressed willingness to cut more. Many experts and even executives at some airlines had expected that after deep capacity cuts went into effect starting in September, the number of fare sales going forward would be fewer and farther between. Fuel prices have come down significantly, however, and the economy has eroded demand for air travel. Even so, on average, base airfares outside of the travel periods for the recently launched sale fares are higher today than in the last few years, said Rick Seaney, head of airfare research site FareCompare.com. Seaney noted that there

were 30 attempted airfare hikes between summer 2007 and summer 2008, two-thirds of which were successful. It's not unusual for airlines to announce fare sales in January—there were approximately 18 announced in January 2008. But what's different for several carriers this year is that the discounts are for travel extending as late as April, May or June, Seaney said. The sales last January were typically for travel through March, he said. A handful of major carriers and discount carriers have launched fare sales since December 31. Others are expected to follow with sales of their own or to at least match discounts offered by rivals on competitive routes, Seaney said. Discount carrier AirTran Airways, a subsidiary of Orlando, Florida-based AirTran Holdings Inc., announced on Tuesday that they will be offering a nationwide fare sale with one-way fares starting as low as \$39. The fares, available for purchase through January 15, are good for travel to and from Florida and San Juan, Puerto Rico through March 11, while all other sale fares are good for travel through May 20. Other carriers that have launched fare sales recently include Dallas-based Southwest Airlines for travel between January 15 and April 30; Fort Worth, Texas-based AMR Corporation's American Airlines for travel within the U.S. between January 14 and March 4 and between March 5 and April 30 at slightly higher fares; and Chicago-based UAL Corporation's United Airlines for travel within the U.S. from January 14 to March 4 and for travel to several foreign destinations as late as April 30. United Airlines' fare sale was launched on December 31. United has offered a New Year's fare sale for several years now, spokeswoman Robin Urbanski said.

Source: Jacksonville Daily News

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Thank you! We'll see you next month!

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