



AUGUST 1, 2012 ISSUE NO. 737

HR Compliance Library

Ideas & Trends

INSIDE THIS ISSUE

MOBILE DEVICES

"Bring your own device" may come at a price

We've come a long way from the humble cell phone of yore. Smart phones and other personal devices that employees bring to the office carry an astonishing array of potential liability and other risks, particularly when the same device is used for both business and personal matters. Michael J. McGuire, an attorney with the Littler Mendelson law firm, spoke at the Minnesota CLE's Upper Midwest Employment Law Institute in May, outlining a host of concerns about which employers must be wary when employees "BYOD" (bring your own device) — be it iPhone, Blackberry, Android, or tablet — to work.

Do dual-use devices really result in cost savings?

Many organizations encourage employees to adopt dual-use devices, convinced that the practice offers significant cost benefits to the company. But recent re-

BENEFITS

Support for caregiving employees can improve retention and productivity

Solutions that support employees with caregiving responsibilities are said to keep top talent productive and engaged, and can be a primary resource for employees or an integral part of a comprehensive benefits program. This is according to Chris Duchesne, vice president of Workplace Solutions at Care.com who participated in an interview with Wolters Kluwer Law & Business.

According to Duchesne, "From providing an executive with back-up childcare so she can lead a crucial meeting to helping a newly relocated employee reestablish his care network, Care.com enables employees to quickly and easily meet the demands in their personal lives so they can focus on work. Care.com's Workplace Solutions provides broad-reaching, cost-effective, high-impact solutions for employers. The service reduces costs associated with care-related absences and distractions, improves employee wellness and increases employee loyalty."

search suggests that the “total cost of ownership” tells a different story, McGuire said. He noted that IBM has 80,000 employees using personal devices for work-related activity, and its CIO recently acknowledged that the practice hasn't saved the company any money. “BYOD programs have hidden costs that actually cause companies to spend more money than they realize and make the programs more expensive to operate than the traditional model.”

What are the employment-related legal risks?

Without even considering the substantial data security issues at stake, a cost-benefit analysis of BYOD looks a bit less favorable when factoring in potential employment-related liability alone. McGuire offered just a sampling of the potential ramifications of BYOD in the employment context:

Performance management. With BYOD, the lines between work and personal time are increasingly blurred, creating performance management challenges when trying to regulate on-the-job conduct without infringing on employees' freedoms outside the office. When employees are off the clock, “they'll be doing a whole bunch of things you don't want them to be doing,” McGuire noted. “And when they have a problem with the device and they turn it over to the IT person, IT is going to encounter some things you may not want to see.”

Discrimination. It's “not just porn” that will make employers want to avert their eyes, McGuire added. “It's a diabetes management app, or information that implicates Genetic Information Nondiscrimination Act (GINA)-related concerns.” To avoid potential liability for disability discrimination, this is information employers don't want to have.

Harassment. When employers own the devices used by employees, they can more readily exert control over

their usage. But employers face a greater danger that employees' prejudices may make their way unabated into the workplace, where employers have an obligation to maintain an environment free from discrimination and harassment.

Overtime liability. The use of dual devices inevitably results in off-the-clock work and potential overtime liability for nonexempt workers. “When you have a work phone and a personal phone, you put the work device away once you leave work,” McGuire said. “But if you've blended phones into one device, you're going to check your email and get wrapped into work: unrecorded overtime work.”

Minimum wage problems. Under the FLSA's minimum wage provisions, employers may be required to reimburse employees for the personal costs of their own devices, such as their monthly phone bill, if they can be construed as employer business expenses and the cost, factored into their wage rate, brings their pay below the statutory minimum wage.

Privacy concerns. When employees own their devices, there are limits to the employer's ability to lawfully access (or delete, if need be) company data when stored there. Federal laws, including the Computer Fraud and Abuse Act and Stored Communications Act, restrict unauthorized access to computers and email.

Workplace safety. Employers, who would not have been liable for injuries suffered or caused by employees who are texting while driving on their own personal devices, may find themselves paying workers' comp costs or defending against significant third-party claims.

What are some BYOD best practices?

McGuire offered numerous pointers for managing the myriad risks, both employment and data security related:

- Plan out your BYOD program. Which devices will you allow? What technical controls and policies will you put in place?

HR Compliance Library

Ideas & Trends

Managing Editor:
Heidi J. Henson, J.D.

Contributing Editors:
Cynthia L. Hackerott, J.D.
Sandra Stoll, J.D.
Joy Waltemath, J.D.

Newsletter Design:
Kathie Luzod

Newsletter Layout:
Chris Tankiewicz

No claim is made to original government works; however, the gathering, compilation, and arrangement of such materials, the historical, statutory and other notes and references, as well as commentary and materials in this Product or Publication are subject to CCH's copyright.

HR COMPLIANCE LIBRARY—Ideas & Trends (USPS 680-810)(ISSN 0745-0613), a CCH editorial staff publication, is published monthly by CCH, a Wolters Kluwer Business, 4025 W. Peterson Ave., Chicago, Illinois 60646. Periodicals post age paid at Chicago, Illinois, and at additional mailing offices. POSTMASTER: SEND ADDRESS CHANGES TO HR COMPLIANCE LIBRARY—IDEAS & TRENDS, 4025 W. PETERSON AVE., CHICAGO, IL 60646. Printed in U.S.A. ©2012 CCH. All Rights Reserved.

- Modify or create employee agreements on BYOD use. “Spell out clearly what the consequences are of having the convenience of carrying one device and that, if they want it, employees must agree to balance some of the interests,” McGuire urged. Make clear your expectations on proper use and operating procedure.
 - Require employees to consent, in writing, to allow the company's access to its data on their devices.
 - If you have a unionized workforce, consult with the terms of the bargaining agreement for potential restrictions.
 - Any new BYOD policy would be subject to collective bargaining.
 - Restrict BYOD usage by company executives, legal, HR, and other members of your organization who are privy to highly confidential company information. “Think of those pockets of very sensitive or regulated information,” McGuire advised. “Preserve those pockets of control.”
 - Evaluate which other employees you will permit to BYOD. As noted above, BYOD by nonexempt workers creates its own set of problems. Consider also that when your sales reps use dual devices, their phone number is the number your customers have when they leave the company, McGuire cautioned.
 - Install MDM (mobile device management) software. The server-based software “is a way of giving you very granular control over the use of these devices,” McGuire explained. The technology allows employers, for example, to issue remote-wipe commands or to prevent employees from using certain apps on these devices.
 - Restrict employees from using cloud-based apps, cloud-based backup, or synchronizing with home PCs for work-related data. “This is one of the most difficult policies to enforce,” McGuire noted.
 - No use by friends and family members! “I got the most guff for this one,” McGuire told attendees, “and I imagine you probably will too. I know your kid likes to play Angry Birds, and I know you bought it with your own money,” but it's an essential control, he insisted.
 - Rethink your exit interview process. How will you preserve data on devices that you aren't paying for? When text messages become an issue in litigation and an employee balks, that's another aggravation to contend with. Once you've told someone they're leaving, they'll be far less likely to work with you to resolve the issues. “With BYOD, you've just made the exit process a lot messier.”
- McGuire made his comments during his presentation, “The Data Security, Privacy, and eDiscovery Challenges Posed by Bring Your Own Device (BYOD) Policies,” at the Minnesota CLE's 2012 Upper Midwest Employment Law Institute, held May 21-22 in St. Paul, Minnesota. ■
- Source:** Originally published in *Fair Employment Practices Guidelines*, July 1, 2012, a Wolters Kluwer Law & Business publication.

VETS-100/100A filing period now open, reports due September 30

The VETS 100/100A reporting cycle for 2012 is now open and the filing deadline for the reports is September 30. Filing information is available on the DOL's Veterans' Employment and Training Service (VETS) website at: <http://www.dol.gov/vets/vets100filing.htm>. However, the VETS reports that the batch upload functionality is currently being updated and won't be available until mid-August 2012.

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), 38 USC Sec. 4212(d), requires federal contractors and subcontractors subject to the Act's affirmative action provisions in 38 USC Sec. 4212(a) to track and report annually to the secretary of labor the number of employees in their workforces, by job category and hiring location, who belong to the specified categories of covered veterans. This reporting is done via the VETS-100 and VETS-100A Reports, which are administered by

VETS. Generally, the VETS-100/VETS-100A reporting cycle begins annually on or around August 1 and ends September 30.

The report required for contractors with federal contracts that were entered into before December 1, 2003 and have a value of \$25,000 or more is the VETS-100 report. The report required for contracts entered on or after December 1, 2003 in the amount of \$100,000 or more is the VETS-100A report. A contract modified on or after December 1, 2003, which was entered into before December 1, 2003, constitutes a new contract—and, therefore, requires the contractor to file a VETS-100A report (if the \$100,000 or more threshold is met). Contractors that have contracts that fall into both categories will be required to file both forms. An FAQ on these requirements is available at: <http://www.dol.gov/vets/contractor/main.htm>. ■

DISCRIMINATION

EEOC talks medical inquiries in the hiring process

The U.S. Equal Employment Opportunity Commission (EEOC) has released an informal discussion letter that spells out the difference between lawful and unlawful medical inquiries under the Rehabilitation Act (Rehab Act), the Genetic Information Nondiscrimination Act (GINA), Title VII of the Civil Rights Act of 1964, and the Age Discrimination in Employment Act (ADEA). Because Section 501 of the Rehab Act, which applies to federal employees, adopts the standards of Titles I and V of the American's with Disabilities Act (ADA), the letter serves as a reminder to private employers as to when and what sort of medical inquiries may be made during the hiring process without running afoul of the ADA and other federal antidiscrimination laws.

How are medical inquiries restricted under the ADA?

The letter comments on proposed changes to the application process for Peace Corps Volunteers, particularly the process for reviewing the past medical history of applicants. EEOC Legal Counsel Peggy R. Mastroianni underscored several ADA restrictions on medical inquiries of applicants:

- There is no exception to the straightforward rule that disability-related inquiries or medical examinations are prohibited in the pre-offer stage of the application process.
- If applicants must fill out any medical questionnaires prior to the receipt of a conditional job offer, use of the forms violates the Rehab Act [and the ADA].
- After a conditional offer is made, an employer may ask disability-related questions and require medical examinations as long as it does so for all entering employees in the same job category.
- Once employment begins, an employer generally may make disability-related inquiries and require medical examinations only if they are job-related and consistent with business necessity.
- In the post-offer stage of the application process, individual applicants may be asked questions not asked of other applicants if those questions are "medically related" to medical information previously received.

What are the legal risks of withdrawing an offer?

Under the ADA Amendments Act, withdrawing an offer based on the information obtained from a post-offer health history inquiry or follow-up medical questions will likely result in a finding that the applicant was regarded as having a disability, according to Mastroianni. Therefore, the employer would be required to establish that the particular impairment renders the individual unqualified to perform the essential functions of the job or, where the employer

has excluded the applicant due to safety concerns, that the applicant poses a direct threat because of the impairment.

When the applicant's impairment substantially limits a major life activity or constitutes a record of a substantially limiting impairment, the employer's determination of whether the applicant can perform the essential functions of the job must also include consideration of whether a reasonable accommodation would enable performance of the job functions or would reduce any direct threat to an acceptable level.

How do GINA-related considerations apply? Pursuant to Title II of GINA, employers are prohibited from requesting, requiring, or purchasing genetic information — including family medical history — from applicants or employees, except under very limited circumstances. Therefore, questions about an applicant's family medical history or genetic information are unlawful under GINA. "There is no exception to the general rule prohibiting employers from requesting genetic information of an applicant in a medical questionnaire," Mastroianni wrote.

Title VII and ADEA requirements must be considered as well. Part of the Peace Corps' application process included post-offer medical questionnaires required only of applicants in certain protected groups — *e.g.*, a "Mammogram Form" required only of women age 50 and over. Thus, it appeared that women and a protected age group were required to undergo medical tests not required of applicants outside of these protected groups. This requirement raised a big red flag under Title VII, which prohibits sex discrimination, and the ADEA, which prohibits discrimination against persons age 40 and over, Mastroianni, wrote.

What does all this mean for employers? The EEOC's letter points to several best practices worth keeping in mind:

- Do not subject applicants to disability-related inquiries or medical exams *prior* to a conditional offer of employment.
- *After* a conditional offer of employment, make disability-related inquiries and require medical exams *only* if the same is required of all entering employees in the same job category.
- After employment commences make sure that any disability-related inquiries or medical exam requirements are job-related and consistent with business necessity.
- Any post-offer questions not asked of others must be confined to those which are medically related to medical information already provided by the applicant.

ADVERSE IMPACT

Experts discuss the paradox of ability tests in hiring

On July 19th, 2012, the Department of Labor (DOL) announced it reached a settlement with Leprino Foods on a discrimination suit. The dispute involved the company's practice of using ability tests to assess candidates' skills in applied mathematics, locating information, and observation, for hiring laborers. The DOL held that these tests had adverse impact on Asians, Hispanics, and African-Americans. The DOL claimed that these groups of applicants scored lower on the tests, on average, than did Caucasian applicants and Leprino, therefore, did not hire them. More importantly, the DOL cited a lack of evidence from the company to prove these ability tests related to job performance. In the settlement, Leprino agreed to pay back-wages of over \$550,000 to those applicants it did not hire and will ultimately employ thirteen of the original applicants.

This illustrates a dilemma in hiring practices facing many organizations. And, it will only increase as the demographic and ethnic populations of the labor pool changes, according to Christine M. Riordan, Ph.D. and Robert D. Gatewood, Ph.D. The dilemma is that renowned psychologists such as Frank Schmidt, John Hunter, and Philip Bobko have shown that ability tests, usually written tests that measure some form of knowledge, are exceptional predictors of job performance. Thus, as a tool for determining applicants' suitability for jobs, they are among the best in predicting applicants' future job performance.

However, the use of these tests usually results in adverse impact — meaning that employers that use these tests are less likely to hire non-Caucasians. This adverse impact triggers the interest of various governmental review agencies such as the DOL and Equal Employment Opportunity Commission (EEOC).

Employers must think critically about the use of strong selection tests that also have a high probability of rejecting a larger proportion of applicants of color and ethnic diversity than Caucasian applicants. Among the implications of this pattern of rejection:

- If an offer is withdrawn based on medical information provided by the applicant, make sure it can be established that either: the particular impairment at issue renders the individual unqualified to perform the essential functions of the job; or the applicant was excluded for safety reasons because he or she poses a direct threat due to the impairment.
- Do not ask questions about an applicant's family medical history or genetic information.

applicants may file discrimination suits and government agencies may review the selection program. Perhaps as importantly, though, the organization is cutting itself off from major segments of the labor pool that are becoming increasingly larger.

The paradox these tests pose by being a strong predictor of job performance but also creating an adverse impact has generated debate among organizational and human resource professionals. Even though court cases have upheld the use of ability tests with a clear relationship to job activities, some professionals have deep reservations about their use because of their impact on society.

A study by Kevin Murphy, industrial/organizational psychologist and testifying expert at Lamorinda Consulting, LLC, reported this difference of opinion among professionals on the usefulness of cognitive ability tests for employee selection. While most professionals agreed the ability tests were valid, they disagreed among themselves about the extent to which ability tests can predict work performance. A related issue involved whether other types of tests were as effective as ability tests.

Employers can take several actions to attain high quality and defensible hiring practices that conform to the *Uniform Guidelines on Employee Selection Procedures* (1978) and related court decisions. The Uniform Guidelines explicitly state that an organization can use ability tests even if they have adverse impact if the organization can prove that the tests are job related. This proof can consist of correlation coefficients offering direct evidence that test scores relate to job performance or a series of steps that generate indirect data that show such a relationship to important job tasks.

However, employers must consider the benefits of having a highly diverse workforce. Diversity in its workforce can improve an organization's access to labor pools, its viewpoints on how to market to diverse consumer segments, a positive impact on public perceptions of the organization, an en-

- Do not make medical inquiries of or require medical exams for protected category members, such as women and older applicants, unless the same inquiries and exams are also imposed on applicants outside the protected categories.

The letter is posted on the EEOC's website at: http://www.eeoc.gov/eeoc/foia/letters/2012/peace_corps_comment_to_oira.htm. ■

Source: Originally published in *Fair Employment Practices Guidelines*, July 1, 2012, a Wolters Kluwer Law & Business publication.

BACKGROUND CHECKS

SHRM finds fewer employers using background checks

More than one-half (53 percent) of respondents to a Society for Human Resource Management (SHRM) survey say they don't use credit background checks in hiring. In a second survey, SHRM found an increase in the percentage of employers that don't conduct criminal background checks, from 7 percent in 2010 to 14 percent in 2012.

Using credit background checks in hiring decisions.

In a finding that suggests negative credit information is not often a barrier to hiring, 80 percent of employers report hiring a job candidate whose credit report contains information that reflects negatively on the candidate's financial situation. Other findings specific to credit checks include:

- Sixty-four percent of employers allow job candidates to explain the results of their credit checks before a hiring decision is made.
- Most employers focus on credit histories of two to seven years. Only 6 percent of organizations say that all years of credit history are equally important, a decrease from 17 percent in 2010.
- Of the 34 percent of employers that conduct credit checks on selected job candidates, 87 percent do so for positions with financial responsibilities and 42 percent use them for senior executive positions.

hancement of the organization's brand as an open employer and marketer, and a buttress to reduce the probability of discrimination suits and negative media attention.

Employers can put in place selection portfolios that achieve both of the following objectives: strong hiring practices and diversity goals. Generally ability tests are the least expensive and easiest type of selection instrument. However, other types of tests are clearly job related. These include work sample tests, which give the applicant part of a job task to do, and structured interviews, in which an interviewer asks detailed job-related questions.

Such instruments can have several advantages. Applicants, even those not hired, generally perceive them as fair. This perception reduces the possibility of legal complaints. Such methods also provide direct information about the job readiness of the applicant pool.

Beyond merely making a yes or no hiring decision, employers should consider other options, such as specialized

Using criminal background checks in hiring decisions.

Sixty-nine percent of organizations conduct criminal checks on all job candidates, while 18 percent conduct them on selected candidates. Other findings specific to criminal checks include:

- Checks are made most frequently for positions with fiduciary responsibilities and those with access to highly confidential employee information. There is also a heightened sensitivity to vulnerable populations. Background checks for job candidates who work with children, the elderly and the disabled are more likely than for positions for which state law requires background checks or for job candidates who have security responsibilities.
- Ninety-six percent of respondents say a convicted violent felony, and 74 percent said convicted nonviolent felony, would cause them not to extend a job offer.
- More organizations are saying that complying with state law requirements is among the primary reasons criminal checks are done, up 8 percentage points from 2010 to 28 percent.
- Fifty-eight percent of organizations allow job candidates to explain the results of their criminal checks before a decision to hire is made. ■

Source: Society for Human Resource Management; www.shrm.org.

training of otherwise qualified applicants. Members of the applicant pool may share a deficiency in a particular ability, such as simple computer literacy. Employers could easily correct these deficiencies in skills by providing training. Adding such training may open jobs to large segments of the labor pool and ultimately increase diversity in the organization.

Employers have used ability tests since the 1920's and these have been quite effective and efficient. However for most of that time, the legal environment of business and the diversity of the labor pool have been very different than they are now. These trends make it necessary for each organization to carefully consider what its selection program should be and to carefully think about the diversity, legal, and societal implications of its portfolio of hiring practices.

Source: University of Denver: Christine M. Riordan, Ph.D. and Robert D. Gatewood, Ph.D., July 23, 2012. Christine M. Riordan, Ph.D. is the dean and a professor of management at the Daniels College of Business at the University of Denver. Robert D. Gatewood, Ph.D., is Professor Emeritus at the University of Georgia. ■

HR Quiz

When an employee threatens violence, what's an employer to do?

Q *Issue: The behavior of one employee has become particularly disturbing, and you just learned that he recently threatened a coworker. How can you protect the safety of your employees and help guard against any legal ramifications of a threat or violent incident?*

A **Answer:** Be prepared. In the unfortunate event that a credible threat of violence arises, established protocols and awareness can help address the issues promptly. Sheryl Jaffee Halpern, principal with the Chicago-based law firm of Much Shelist, offers the following tips:

Establish and disseminate an anti-violence policy. Creating awareness of procedures to follow in the event of actual violence or the threat of violence is critical. An employer's personnel manual should include a policy that, at a minimum, prohibits violence and threats in the workplace (including those made in jest) and requires employees to report all related incidents.

Of course, in a crisis situation, employees likely will not have time to consult the manual. However, implementing a policy and reviewing it with employees at least annually can help keep protocols top of mind and enable employees to stay calm in the face of a threat or actual violence.

Assess the threat. In the event an employee threatens violence, an employer should first assess the seriousness of the threat in order to determine an appropriate course of action. What were the circumstances? Does the employee have a history of erratic behavior? What was the tone of the threat? How specific was it?

For example, there may be a significant difference between an employee's offhand remark ("I could just kill my supervisor for making me work this weekend instead of going to the concert. Now I'll need to sell my tickets on StubHub.") and a specific threat emailed to a coworker ("Jane turned me down for the last time. I have my brother-in-law's gun, and I'll be waiting for her when the plant opens on Monday.")

An employer should weigh all facts in order to assess the seriousness of the threat. If time permits, consider involving a forensic psychologist or an outside investigator.

Implement security measures. If a credible threat is identified, an employer should take steps to promptly implement security measures designed to protect its workforce.

The nature and extent of these measures will vary depending on the circumstances, including preexisting security in the workplace, the nature and seriousness of the threat, and the employee's behavioral history.

An employer's actions may include changing locks and access codes, securing doors that ordinarily are left open, alerting key employees to the threat, reviewing safety protocols with all employees, and hiring onsite security personnel.

If the threat involves imminent harm, an employer should immediately contact law enforcement authorities, lock down facilities, and consult with legal counsel.

Focus on maintaining peace in the workplace. Employers can protect the safety of their employees and reduce the likelihood of workplace violence by following a few simple guidelines:

Proactively create and maintain a positive work environment;

Treat terminated employees with courtesy and respect, including providing onsite outplacement support to help diffuse emotions and refocusing affected employees on productive steps to move forward; and

Provide avenues for employees to complain within the company so that they do not feel as if threatening or committing violence is the only way to be heard.

Source: *Employee Benefit News*, http://ebn.benefitnews.com/news/workplace-violence-safe-conflict-plan-2725155-1.html?ET=ebnbenefitnews:e4277:1633137a:&st=email&utm_source=editorial&utm_medium=email&utm_campaign=EBN_Legal_Alert_060812; Sheryl Jaffee Halpern can be reached at 312-521-2637 or shalpern@muchshelist.com.

Childcare options

“Care.com’s service,” for example “enables families nationwide to find and select the best primary, occasional, or back-up care possible based on detailed profiles, background checks, and references for more than a million screened providers,” Duchesne explained.

With regard to child care, employers should strive to provide caregiving employees with vetted individual providers, in-home family care providers (*i.e.*, multiple children in the caregiver’s home), au pair agencies, and companies and centers. “This provides families with a complete array of choices when evaluating their child care options and helps to ensure that families find the form of care and type of provider that is the best fit according to their preferences and needs,” said Duchesne.

Need for this service is growing. “The personal challenges families face on the home front have only grown more complicated and personal roles and responsibilities of employees more demanding,” explained Duchesne. “Today, in more than 80 percent of households, both adults work. In fact, according to the Brookings Institute, the typical two-parent family in 2009 worked 26 percent more hours than the typical family in 1975. With more than 68 percent of employees 40 years of age or older, they are often squeezed by caring for aging family members and their own children.”

Employers who seek out a service like that provided by Care.com recognize the intense demands placed on working families in today’s society and work environment. “They recognize that a holistic approach to employee wellbeing is in the best interest of both employees and employer,” Duchesne said. “Providing employees with caregiving services such as ours helps them address the demands in their personal lives so they can not only be at work, but be productive while there.”

Senior care. “Note that we have seen a particular increase in adoption of our Senior Care Planning services as more and more employees deal with aging family members,” Duchesne continued. “Our Senior Care Planning team provides counseling, assessments, facilitates family meetings, and defines action plans to help families find quality care that best suits their aging family members.”

Implementing caregiving programs

Duchesne reports that more than 73 percent of employees want more personalized benefits tied to age group, individual circumstances, and a greater variety of benefits to choose from. “The most successful programs consider not just what the employer wants, but what employees need,” Duchesne explained. “They provide employees the opportunity to choose for themselves

the components or services relevant to them. They recognize that while they must address the needs of a diverse group of employees, a one-size fits all approach will not do.”

There is not a one-size-fits-all solution. Fundamentally, employee needs and concerns differ based on life stage, and those needs layer on top of each other to become more complex over time, Duchesne said. “In their 20s, employees are paying off college loans and may have pet care concerns. In their 30s, they’re raising kids, need housekeeping services, and are thinking about their financial situation. In their 40s and beyond, they’re looking for tutors and paying for college. And in their 50s, they’re caring for aging parents, need legal assistance, and are focused on their financial readiness for retirement. These demands stack up and affect employee performance.”

Duchesne continued, “Rather than operating with a traditional one-size-fits all approach, employers must take action to craft tailored benefit programs that help address these varied employee needs. These programs boost loyalty and productivity, and increase employee engagement.”

He recommends that employers consider the different demographic groups in their workforce and seek to meet each of their unique needs. “For example, adult and senior care needs are by their nature complex — consider a solution that offers advisors to help employees navigate those difficult situations and minimize the distraction,” Duchesne suggests. “Pet care needs can be met through online tools and resources. Child care needs can largely be met with online resources, but some employees may want assistance.”

Consider the audience. In most cases, the audience is wide and varied for this type of benefit because it is provided to those that are exempt and non-exempt, part-time and full-time. Duchesne says his clients generally make the service available to all benefit-eligible employees regardless of their status. “Recognizing the value to the business, several clients make the service available to all employees,” he says. “Several college and university clients even extend the service to students, as well as faculty and staff.”

While most everyone turns to the web as a primary resource, consider too how the different cohorts and generations prefer to access and utilize resources, recommends Duchesne. “Baby boomers dealing with aging family members are likely to prefer telephonic support and live advice,” he says. “Older millennials and gen-xers will turn to mobile and web resources for child care. Seek solutions that align with how employees want to access services, and put the flexibility and choice in their hands.”

Marketing is key. The marketing and promotional plan is the key to success of the program, says Duchesne. “Spend the time upfront to identify program champions and define a strategic marketing plan. Select a partner that will develop the marketing plan and collateral for you. Partner with your IT group to

CHILD CARE

Case Study: University's commitment to onsite child care

The campus of Michigan State University (MSU) is bustling with over 57,000 students, faculty and staff. Spartan turf is energized with exceptional academics, world renowned research and of course, Big Ten Pride. But busy lives have complications. And that's where Lori Strom comes in. Director of the Family Resource Center at MSU, Strom helps the university community be productive on campus while managing the inevitable demands of personal life.

Over the years, researchers have built an impressive body of evidence to prove that such benefits as onsite child care are far more than a feel-good initiative — access to caregiver support is vital to workforce performance and productivity. According to a major study by AARP and the National Alliance for Caregiving, individuals with significant caregiving responsibilities are often forced to take a leave of absence, shift from a full-time to a part-time schedule, sacrifice specific job benefits or even resign altogether. More than 65 million people in the U.S. are family caregivers, and of these, more than 60 percent have taken time from work to deal with caregiving issues. And it's not just individual caregivers who bear the brunt of the caregiving crisis. Seventy two percent of work absenteeism is due to child care related issues, according to the U.S. Department of Labor. In addition, these incidental unplanned absences result in the highest net loss of productivity and, on average, 35 percent of base payroll is attributed to employee absences.

The MSU commitment to work-life support. Having made the commitment to work-life programs in the early 1990s, MSU is in a unique position to help reduce the stresses faced by

caregiving employees. The mission of the MSU Family Resource Center is to provide the MSU community with the best possible tools to stay productive on campus while managing the demands of family life. "Child care is the number one issue for students, faculty and other employees," Strom says. But in spite of the excellent care options on campus, she explains that there is no way MSU can possibly provide enough coverage to address the scope and variety of demand. No amount of day care centers would help support every family's needs. "We have cafeteria workers who stay on campus well into the night, physical plant staff who work 24 hour shifts," she says. "What if someone has to work late or a student has a group study project on Wednesday night?" MSU can't build 25 day care centers, but in addition to what they have built, they give students and employees the tools they need to hire at home and do so on their own terms.

Less stressed and more productive faculty, staff, and students. The MSU community has embraced their child care choices. In a recent survey, a remarkable 95 percent of MSU respondents said they would recommend the resources to a friend or colleague at the University. And 50 percent of MSU respondents said that using the resources let them work 10 or more hours on campus that they would otherwise have been forced to spend on caregiving responsibilities. Ninety five percent said that having the benefit made them less stressed and better able to focus on work.

MSU's provider of choice. MSU utilizes the services provided by Care.com to assist them in facilitating their caregiving benefits.

develop tailored marketing programs that deliver compelling messages to employees at their point and time of need."

Don't go it alone. Duchesne says his clients have told him that they cannot provide the services employees need on their own. "They have told us that they do not have the skills or resources necessary internally to build out and sustain such capabilities, particularly across large geographies. Even those clients such as colleges and universities with on-staff experts cannot handle the scope and complexity of demands of their employees."

So what can you expect from hiring a provider like Care.com to assist you in providing caregiving benefits to your employees? The benefits include:

- Allowing the organization to focus on its core competencies and driving the success of its business;
- Limited initial investment and on-going costs while maximizing the scope of available services; and
- Availability of on-going enhancements and improvements in services.

According to Duchesne, the cost of providing employees with this type of benefit is on average less than the cost of a cup of coffee per employee per month. And the rewards are real. Duchesne's clients report decreased absenteeism, increased productivity, increased loyalty, and improved retention all resulting from an employer's recognition and support of employee's caregiving responsibilities. ■

Source: Interview conducted in July, 2012, by Walters Kluwer Law & Business of Chris Duchesne, vice president of Workplace Solutions at Care.com.

SALARY INCREASES

U.S. near bottom of the list for salary budget increase

Projected salary increases for 2013 are lowest in the United States, Spain and Japan and highest in India, China and Brazil, according to the 39th annual *WorldatWork 2012-2013 Salary Budget Survey*. This is the largest survey of its kind with 4,299 responses from 13 countries representing more than 17 million employees.

- India: Actual 2012 — 11.2%; Projected 2013 — 10.7%
- China: Actual 2012 — 9.1%; Projected 2013 — 8.8%
- Brazil: Actual 2012 — 7.7%; Projected 2013 — 7.2%
- United States: Actual 2012 — 2.8%; Projected 2013 — 3.0%
- Spain: Actual 2012 — 2.8%; Projected 2013 — 2.9%
- Japan: Actual 2012 — 2.6%; Projected 2013 — 2.7%

“Salary increases in growth markets such as India, China and Brazil remain strong again this year,” said Adam Sorensen, GRP, global practice leader for WorldatWork. “Although more and more companies are implementing integrated total rewards programs to attract and retain employees, cash remains king among employees. The war for talent — particularly for

senior leaders and employees with specialized skills — rages on. Organizations must continue to be competitive in cash compensation even as they expand the range of other rewards in order to attract, motivate and retain their critical talent.”

Survey respondents from Singapore, Australia, Canada, Germany, U.K., France and Netherlands report planned pay increases ranging from 3.0 percent to 4.3 percent.

Japan, at 2.6 percent, has the survey’s lowest average 2012 actual total salary budget increase of the countries WorldatWork surveyed, and its 2013 projections are a tenth of a percentage point higher (at 2.7 percent).

“Salary budget increases in the United States and Canada, while on the low end of the global scale, have not declined despite continued mixed economic signals,” said Kerry Chou, CCP, compensation practice leader, WorldatWork. “However, it is apparent that employers still view the near term with uncertainty, and as such are not making significant changes to their salary budgets.” ■

Source: WorldatWork; www.worldatwork.org.

Founded in 2006, Care.com is the largest and fastest growing service used for finding high-quality care providers, making it easy for families and individuals to locate caregivers close to home — or anywhere in the country. “Care.com is a one-stop shop for babysitters, nannies, senior/elder care support, housekeepers, tutors and even pet sitters. The Care.com website allows you to view detailed profiles of care providers. You can search according to your requirements: experience, hourly rate, availability and more,” notes Strom.

Care.com offers a comprehensive approach to finding childcare. Designed with ease of use in mind, Care.com gives individuals 24/7 access to care providers for everyday, occasional or back-up care. Users can either search for providers or post a job to have candidates apply directly. The user-friendly interface and powerful search tools make it easy for Care.com members to use the service independently. “It’s such an easy system to use,” says Holly Brophy-Herb, Ph.D., Associate Professor in Human Development and Family Studies. “It’s not just you out there alone searching, but you in a system that offers layers of screening and security tools. That’s very comforting to a parent.”

Recruiting and retaining the best and the brightest. “It’s about quality of life,” says Strom. “We are a huge institution — we have over 500 buildings on the main campus. I try to

personalize services so that people here know MSU is sensitive to their needs. They say ‘this is the value the University places on me. I will be a better student or employee — less distracted, more focused.’ This support builds loyalty and it’s a recruitment and retention issue. If child care is falling through, you may have to quit. We don’t want that to happen.”

For faculty like Holly Brophy-Herb, the message of support comes through loud and clear. “It’s a clear, obvious action on behalf of the university that recognizes the struggle to balance work and family. MSU has responded by saying ‘here is how we can help.’ Lori Strom and the Family Resource Center do incredible things. Instead of spending time looking for child care, I am writing grants and papers.”

Return on investment. In its first year, the benefit resulted in a \$1.2 million net benefit to MSU. The benefit has contributed to decreased absenteeism through the use of back-up care, as well as elevated productivity of faculty, staff, and students. In addition, loyalty has increased as the MSU community recognizes that the University’s clear commitment to work-life helps them be more productive at work and relaxed at home. The bottom line, says Strom, is, “This kind of benefit is a way to hire and retain the ‘best and the brightest’.” ■

Source: Case study provided to Wolters Kluwer Law & Business through MSU’s onsite child care provider Care.com (July, 2012).

TALENT MANAGEMENT

Companies facing global shift in talent supply, demand

Companies facing global shift in talent supply, demand Businesses around the world are currently experiencing a profound market shift that will impact the supply and demand for skilled talent over the next decade, according to a detailed research study conducted by Oxford Economics in partnership with professional services company Towers Watson. The research reveals a race between technology and education as technology fuels demand for highly skilled workers, while emerging economies increase the supply of talent through greater access to education.

The study, which includes a global survey of 352 human resource executives and in-depth interviews with leading multinational firms, reveals that the balance between supply and demand of talent differs from market to market in ways that will significantly impact the global workplace over the next 10 years. Specifically, as the skills employers require become more complex, labor shortages are projected in many mature markets, including the U.S., Germany, Canada and Italy. Meanwhile, a surplus of skilled talent is likely to emerge in locales such as Brazil, Colombia, India and South Africa.

“The dynamic changes in global economics and ever-evolving technology necessitate that companies rethink how they address their shifting talent needs. Some of these changes run counter to what most companies have been experiencing in various markets,” said Ravin Jesuthasan, global practice leader for talent management at Towers Watson. “These new realities make it incumbent on HR executives to consider new and creative ways to access talent across the globe.”

Future global employment growth. The survey suggests that a decade from now, eight of the top 10 countries with the largest talent surpluses will be in the developing world, led by India, Indonesia, Colombia, and South Africa. In these economies, the increasing abundance of skilled workers will compress the wage premium for talent, allowing for investment in new technologies and business models that will fuel growth well beyond 2021. By contrast, mature economies like the U.K., U.S., Japan, South Korea, Canada, and Italy will confront shortages of skilled workers, in part because of their aging demographics.

The most dramatic jump in employment demand will be in emerging Asia, where the need for new employees will jump some 22.2 percent. Other emerging markets that will see above-average growth in required staff are Latin America (13.4 percent), the Middle East and Africa (13.2 percent) and Eastern Europe (10.5 percent).

Employment demand in Western Europe, by contrast, is projected to grow a rather modest 3.5 percent. In industries

such as business services, energy, travel and transport, and life sciences, staffing levels will actually decline. Somewhat stronger job growth is expected in North America, where surveyed executives expect overall employment to rise 6.1 percent over the next three years.

Structural change in the pattern of employment underlies much of the data. In North America, for instance, demand for industrial workers is forecasted to decline by 2.4 percent, while in emerging Asia, the demand will rise 37.7 percent and in Latin America by 17.1 percent during the same period.

Other findings include:

- **Business transformation requires new skills.** The vast majority of companies are engaging in transformation initiatives to rethink their global strategies, business models and organizational approaches. This transformation also requires a repositioning of employee skill sets across all levels of seniority. Digital knowledge, agile thinking, interpersonal and communication skills, and global operating capabilities will be talent areas in high demand over the next five to 10 years.
- **Companies will need to address the talent mismatch.** In the developed world, where talent shortages in a number of managerial and technical fields are expected to persist, companies will be forced to think more explicitly about the trade-offs among outsourcing work, offshoring staff, and retraining workers.
- **Sources and expectations of talent are evolving.** There will be an increased emphasis on working in several different countries throughout one's career. How and where talent works is also shifting, including the increased frequency of alternate work schedules and work locations, including working virtually.

“Our study underscores the need for executives to prepare for the major realignment of the global workforce, which is already under way,” said Lou Celi, president of Oxford Economics America. “These changes in the talent landscape, brought on by rapid technology adoption, continued globalization, shifting demographics and increasing competition, are significant — and permanent.” ■

Source: Towers Watson; www.towerswatson.com. Others contributing to the research include American Express, BAT, the Center for Effective Organizations at the University of Southern California, Cummins, Edison International and others listed in the *Global Talent 2021* research report, and in collaboration with the Organization of American States.

HR Notebook

CPI for all items unchanged in June

The Consumer Price Index for All Urban Consumers (CPI-U) was unchanged in June on a seasonally adjusted basis, the U.S. Bureau of Labor Statistics (BLS) reported July 17. Over the last 12 months, the all items index increased 1.7 percent before seasonal adjustment. Specifically, the food index rose 0.2 percent in June after being unchanged in May; the energy index declined 1.4 percent in June, following declines of 1.7 percent in April and 4.3 percent in May; and the index for all items less food and energy increased 0.2 percent in June, the fourth straight such increase.

The 12-month change in the index for all items was 1.7 percent in June, the same figure as in May. The energy index declined 3.9 percent over the last 12 months, while the food index rose 2.7 percent. The index for all items less food and energy rose 2.2 percent for the 12 months ending June, a slight decline from the 2.3 percent figure in May.

Real average hourly earnings rises 0.2 percent in June

Real average hourly earnings for all employees rose 0.2 percent from May to June, seasonally adjusted, the

BLS reported July 17. This change resulted from a 0.3 percent increase in average hourly earnings combined with an unchanged Consumer Price Index for All Urban Consumers (CPI-U).

Real average weekly earnings rose 0.5 percent over the month due to the increase in real average hourly earnings combined with a 0.3 percent increase in the average workweek. Since reaching a peak in October 2010, real average weekly earnings have fallen 0.5 percent.

In June, 1,317 mass layoff actions affected 131,406 workers

Employers took 1,317 mass layoff actions in June involving 131,406 workers, seasonally adjusted, as measured by new filings for unemployment insurance benefits during the month, the BLS reported July 20. Each mass layoff involved at least 50 workers from a single employer. In June, 267 mass layoff events were reported in the manufacturing sector, seasonally adjusted, resulting in 29,093 initial claims.

The national unemployment rate was 8.2 percent in June, unchanged from the prior month but down from 9.1 percent a year earlier. Total nonfarm payroll employment increased by 80,000 over the month and by 1,777,000 over the year.

One third of employees admit to taking confidential information

One in three (32 percent) employees have taken or forwarded confidential information out of the office on more than one occasion, according to a survey commissioned by information management company, Iron Mountain (www.ironmountain.com). When people change jobs, highly sensitive information is particularly vulnerable.

The survey shows that 51 percent of office workers who take information from their current employer when they switch jobs are helping themselves to confidential customer databases, despite data protection laws and records management policies forbidding them to do so.

Along with databases, employees who take information are walking out the door armed with presentations (46 percent), company proposals (21 percent), strategic

plans (18 percent), and product/service roadmaps (18 percent) — all of which represent highly sensitive and valuable information, critical to a company's competitive advantage, brand reputation and customer trust.

Employees who resign don't generally take information out of malice; they do so because they feel a sense of ownership or believe it will be useful in their next role. Two thirds say they had taken or would take information they had been involved in creating, and 72 percent say they believed the information would be helpful in their new job.

Note that the study reveals as many as 31 percent of office workers would deliberately remove and share confidential information if they were fired. ■