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## American Recovery and Reinvestment Act

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA). This Act provides for premium reductions and additional election opportunities for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

### Changes to COBRA

ARRA provides for a federal subsidy of 65 percent of the COBRA continuation premiums

for qualified beneficiaries receiving COBRA continuation coverage due to the covered employee's **involuntary termination of employment** between September 1, 2008, and December 31, 2009. These individuals are referred to as "Assistance Eligible Individuals" or "AEI."

The subsidy applies to all COBRA-eligible group health plans sponsored by an employer with the exception of health flexible spending accounts offered under a cafeteria plan.

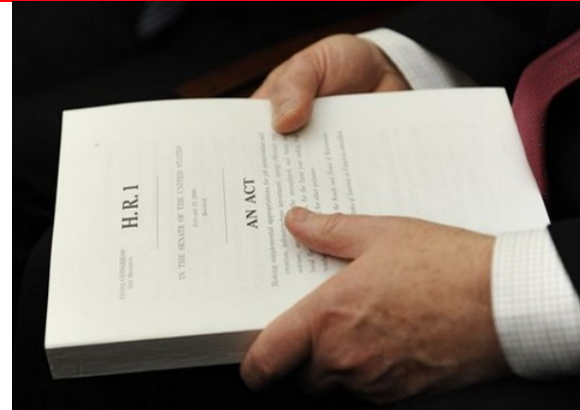
**IMPORTANT: Employers should begin to review their records to identify AEIs as soon as possible so the necessary actions can be taken when ready.**

### New Notice Requirements

ARRA requires employers to modify their COBRA election notices or provide separate, supplemental notices to all individuals who become entitled to elect COBRA continuation coverage during the period beginning on September 1, 2008 and ending on December 31, 2009.

- Plan administrators must provide notice about the premium reduction to individuals who have a COBRA qualifying event during the period from September 1, 2008 through December 31, 2009.
- Plan administrators may provide notices separately or along with notices they provide following a COBRA qualifying event. This notice must go to all individuals, whether they have COBRA coverage or not, who had a qualifying event from September 1, 2008 through December 31, 2009.

**NOTE: It is important to note that although ARRA is now law, there is still important information still in process. HR Advisors, Inc. is a compliance driven organization and we are dedicated to providing compliant solutions to all of our clients. Please feel free to contact us for more information and we will also be issuing additional information as it becomes available.**





## FIVE COMMON OVERTIME MISTAKES

Figuring out which employees do and don't need to be paid overtime is one of the most confusing tasks for most organizations. Here are some common slipups the Department of Labor looks for:

1. **Making all employees exempt** – Employees need to meet one of the FLSA's specific exemptions. Most of the exemptions require employees to be paid a salary, but that's only one test out of several.
2. **Improperly deducting from a salaried employee's pay** – For employees to pass the salary test under the FLSA, the company can't deduct their pay based on quality or quantity of work (except when an employee misses an entire day), or for lost or damaged equipment.
4. **Misclassifying assistant managers** – In most cases, managers are exempt from overtime, but don't make the mistake of lumping assistant managers in with them just because of their title. The key is the amount of authority the assistant has. In big departments, they might have the power to make their own decisions regularly. In other cases, the assistant's job might just be to make sure the manager's decisions get carried out.
5. **Misinterpreting the "administrative" exemption** – Though the same terminology is used, the administrative overtime exemption has nothing to do with administrative assistants. In fact, most admins do not qualify for an exemption. The administrative exemption refers to people involved in general business operations that use "discretion and independent judgment" in their work.

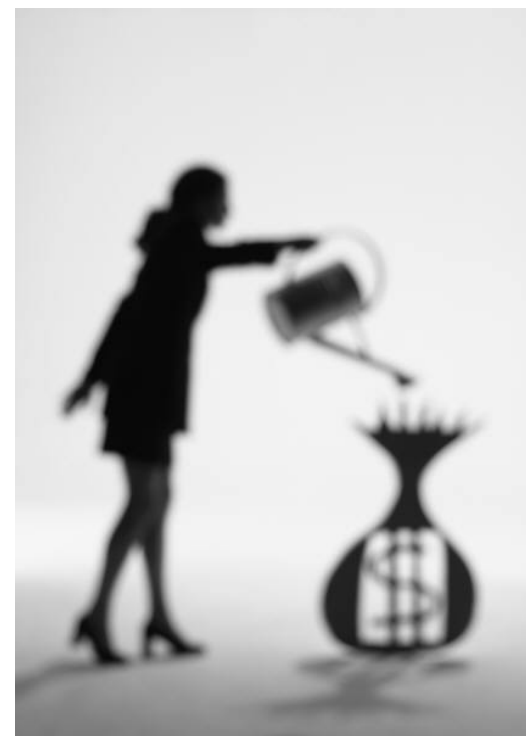
## MANAGERS DON'T SEE THE VALUE OF TRAINING? HERE'S HELP

All of us in HR have heard managers' complaints about training: "I'm too busy for this," or, "that stuff doesn't happen here," or, "It's not my job." How can you get those stubborn people on board?

We in HR understand the liability companies face when managers don't pay attention to legal training or skip it completely – but that doesn't mean all managers get it. And it's especially tough to change their minds when you don't have direct authority over the person.

It's not a lost cause, though. Here are some ways to boost the interest in training:

- **Help them out with time** – If time really is the main reason managers are reluctant to be trained, work with them to make it as convenient as possible. They may be able to complete the program in bite-sized sessions; or they might prefer to take care of it in one day.
- **Relate it to their people** – Many managers don't buy into training because, as they say, they "already know how not to harass anyone." So make sure they understand the other key topics you cover – like effectively communicating with their staff and dealing with problematic behavior of the people who report to them.
- **Look to the top** – when you notice a problem with a supervisor, talk to senior management. The executives will likely have a better grasp of how legal training relates to the bottom line – and they can discipline managers who still have a problem with attending.



# FMLA Leave Requests – How To Manage Them

Managing Leaves – Annoying for Sure, but Doable

Here are 10 tips to manage FMLA leave requests:

1. **Learn the Basic Rules** – This means your organization's policies for vacation, sick leave or paid time off (PTO) system, Family and Medical Leave Act (FMLA), worker's compensation, and other types of leave. If your employees operate

under a union contract, become familiar with leave-related provisions of the contract.

2. **Understand FMLA** – With the new changes to the FMLA, this is especially important. Many of the changes will ultimately be beneficial to employers, but most organizations are in the process of changing their policies and procedures, especially dealing with notice from and to employees.
3. **Assemble a Paper or E-File for Reference** – Create a folder (paper or online) of leave rules, forms, and so on, and keep it all in one place where you can get to it quickly when employees request leave.
4. **Set clear Expectations** – Make sure the people you supervise also have copies of your organization's leave rules. Send out a memo emphasizing the important provisions such as the procedures for requesting various types of leave, what forms to use, and what the rules are for calling in during leave or to request time off.
5. **Remind Your Staff of Expectations Regularly** – It's not enough to tell employees once on the day they are hired about your requirements. Remind people of the rules at staff meetings and general all-hands meetings. Don't discuss any specific employee's situation but do, in a general way, encourage employees to follow the rules.
6. **Enforce the Rules** – Make sure employees who exhibit any kind of attendance problem get a response from you. Let employees know that you noticed the infraction and that you are prepared to enforce the rules.
7. **Require a Written Request** – Get your people used to using a form. It's habit-forming and it keeps everybody straight.
8. **Trace Leave Usage** – You need to track usage just for management purposes, but there is also another good reason. Only careful tracking will reveal potential abusers. For example, you might discover that someone with no chronic, documented condition who often requests sick leave on Mondays, Fridays and days before holidays.
9. **Question Inconsistent or Improper Requests** – Call employees on it when their leave requests appear inconsistent with their documented conditions, or if vacation leave is requested at the last minute when heavy workloads or deadlines are imminent. It is important to let people know that you are paying attention.
10. **Contact HR Advisors, Inc. to assist you in putting together a leave process and also helping you to monitor and administer that process.**



# "I DID IT, BUT....."

## Employees may be as innocent as they say, but still guilty of harassment

Have you trained your supervisors and managers on Sexual Harassment Prevention?

This is a portion of the type of information your managers and supervisors should be given in order to help you defend your company against Sexual Harassment claims.

### Hostile Work Environment



In its search for what really happened when responding to allegations of hostile work environment harassment, HR must be on the alert during internal investigations for the difference between assertions of irrelevant innocence that won't stand up in a court of law and a true defense. Understanding this distraction can help HR identify the most appropriate corrective action.

To hold up in court, the "but" defense should relate to the alleged absence of one of the elements of a hostile work environment claim.

The following elements are generally required in every jurisdiction for a viable hostile work environment claim to exist:

- The conduct was unwelcome.
- The conduct was objectively offensive to a "reasonable" person (in some jurisdictions, the gender, race, religion, nation origin, age or disability is considered when making this determination)
- The conduct was subjectively offensive to the complainant – the employee actually had to be offended by it.
- The offensive conduct was severe or pervasive.
- The conduct was "because of sex, race, religion or other protected status".
- The employer should be held liable for the conduct based on its actions or non-actions. This determination depends in part on whether the person engaging in the offensive conduct is a supervisor, co-worker or non-employee.

### No Bad Intent

The most common response employees have to a harassment investigation is that they did not intend to make anyone uncomfortable. However, bad intent is not one of the requirements for a harassment claim. A hostile work environment can be based on the purpose (intent) or effect (impact). Accordingly, the fact that an employee did not intend to make anyone uncomfortable is not a defense to an employee's bringing a noose into a workplace, leaving a porn magazine on a desk or mimicking an immigrant's accent.

### "It Was Only a Joke"

Related to the "no bad intent" defense is the "it was only a joke" defense. Harassment is no joking matter, and the fact that an employee was only "joking about" something is not a defense to sexist jokes, religious jokes, or jokes that relate to any other protected group under federal, state, or local law. Substitute "makes fun of" for "joke about" and the emptiness of the defense becomes clear.

**If you haven't done training yet this year, you can contact HR Advisors, Inc. to come to your facility to work with your managers and supervisors on this very important mandatory training.**



## SEVEN SIGNS A PRE-EMPLOYMENT TEST MAY BE ILLEGAL

The Americans with Disabilities Act (ADA) prohibits employers from giving applicants medical tests before a job is offered – and that may include examinations used to learn about candidates' personality traits.

The key is distinguishing between personality tests and medical examinations that can be used to diagnose psychological disorders.

How can companies tell the difference? The EEOC says tests may be illegal if they are:

- Administered by a healthcare professional
- Interpreted by a healthcare professional
- Designed to reveal a physical or mental impairment
- Detailed enough to be considered “invasive”
- Designed to measure an applicant’s “psychological response to performing a task” (rather than “an ability to perform the task”)
- Normally given in a medical setting
- Administered using medical equipment.

Normally, courts will look at a combination of those factors before ruling against a company – but sometimes one is enough. For example, if a test would normally be administered in a medical setting and wasn't and even though the results weren't interpreted by medical professionals, a company could lose a case brought against them in that situation.

Because of the danger of those types of lawsuits, it is important for employers to:

- Examine what information their testing may uncover
- Make sure the tests are job-related and reveal traits relevant to the specific positions they are used for
- Only use tests that have been validated as ADA-compliant.

Posted in Americans with Disabilities Act and HR Legal News

## FIRE WITHOUT FEAR – SEVEN QUESTIONS MANAGERS MUST ANSWER

An organization must be extremely careful when an employee is terminated. Sometimes, managers jump the gun and create legal risks. These questions can help guide those people through the termination process:

1. **Are all the facts documented?** This is the most obvious one – but it's the most important!
2. **How have similar cases been handled?** As HR professionals know, an easy way to end up in court is to have a manager give a slap on the wrist for something and then fire someone else for the same reason. Sometimes there's good reason – but if the company doesn't have its story straight, he or she might be convinced some kind of bias played a role.
3. **What are you going to tell the employee?** The explanation given to a terminated employee should be planned before hand. Managers might try to soften the blow and give the employee something other than the real reason – but if the company doesn't have its story straight, he or she might be convinced some kind of bias played a role.
4. **How are you going to tell him or her?** Seasoned managers have likely terminated employees before, but less-experienced supervisors might not know how best to handle it. **Let HR Advisors, Inc. do the termination for you or sit in on your termination meeting!**
5. **What comments does the employee have?** In some cases, the employee might have legally protected reasons for not meeting the standards set by the company. Hearing the employee's explanation can help you and the manager learn if you have any obligations under ADA, FMLA or other applicable laws.
6. **What does the policy say?** Not every termination is the result of a direct violation of a written policy. But if a manager takes action that contradicts what's said in the handbook, that might be asking for trouble. Employees have sued because they were terminated before going through the disciplinary procedures listed in the company handbook.
7. **Will the employee be surprised?** Find out what action has already been taken, and if the employee's been given a chance to improve. Except in rare cases, a termination should not be a shock to an employee and can give them reason to cry “bias.”

## Contact Us



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*"Innovative, Strategic Staffing & HR Solutions"*

[HR Advisors, Inc. is a 25-year old consulting firm specializing in Human Resource & Recruiting Consultation, Payroll & Benefits Administration & Business Research of all types.](#)

**HR Advisors Human Resources Division:** Our HR practice works with your organization on- or off-site, on either an ongoing or project basis. Whether it's HR on Demand, an employee handbook or an entire HR team, we have the bandwidth to assist you with whatever your HR needs may be.

- HR on Demand
- Benefits and Payroll Administration
- HR Compliance Audits
- Employee Handbook
- Compensation Projects
- Sexual Harassment Training
- Government Compliance

Small to Medium-sized businesses have neither the time nor the resources to stay current with the rapidly changing laws and processes that directly affect their company and their employees. HR Advisors can provide the building blocks you need to select, manage, and retain valuable employees and to increase your confidence and control over employment issues. To assist our clients with this challenge, we provide HR ON-DEMAND. This program allows our clients to contact us for answers to "people" questions and issues as they arise. HR ON-DEMAND is part of a company's Risk Management solution. For a nominal fee, we will work with you to take a proactive role to help prevent employee claims before they happen!

**HR Advisors Recruiting Division:** With respect to recruiting, since we bill on an hourly basis, not per individual hired, the cost-per-hire is **significantly** lower than using traditional (contingent/retained) search firms. In cases where organizations have an aggressive hiring plan, we offer not only our experienced consultants, but also the tools, support and resources to build, maintain and run a successful staffing process.

**Scalability** - Not only are we scalable in size, but also in service. We can support an existing recruiting department with administrative support, generating fresh research, or providing extra bandwidth for a difficult to fill position/s. If a company chooses, they can outsource positions, a department or all of their recruiting by using our bundled solution.

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**Our Research Team** is staffed with highly skilled, AIRS© Certified research and cold call specialists. Our researchers have an average of 15 years research experience.

*For more complete information on any of the services offered above please contact us at [info@hradvisors.com](mailto:info@hradvisors.com) or call us at 949.497.7329*

**About Our Company...**

HR Advisors, Inc. is a 27-year old consulting firm specializing in human resource and staffing consultation.

Just as many businesses outsource functions such as payroll and benefits, our clients outsource all or part of their HR and Staffing functions to HR Advisors.

HR Advisors works with your company to provide the bandwidth needed to produce results quickly and efficiently. We become an integral part of your organization, working with you and your staff on-site to understand requirements and help you build a winning team.