



EEO-1 SURVEY REPORTS DUE SOON

The U.S. Equal Employment Opportunity Commission (EEOC) collects workforce data from employers with more than 100 employees (lower thresholds apply to federal contractors). Employers meeting the reporting thresholds have a legal obligation to provide the data; it is not voluntary. Employers use the EEO-1 form to report anonymous annual data about the number of women and minorities in broad occupational categories and sub-categories. The EEOC uses the data to support its enforcement of Title VII of the Civil Rights Act. The EEO-1 report originally dates to 1966.

The EEOC approved new forms and requirements for its EEO-1 employer report that went into effect in 2007. These changes were the first major amendments to the EEO-1 process in 40 years—and they haven't made the process any easier. Most employers are still unsure about how to comply with these new obligations.

If you are an employer with federal government contracts of \$50,000 or more, and 50 or more employees, or an employer who does not have federal contracts but have 100 or more employees, you have just a short time left to gather data on your workers and prepare the 2010 EEO-1 report **due September 30th each year**. With new classification and job categories on the form, resurveying your workers and classifying them properly is more confusing than ever before. Give yourself enough time to get the form completed right.

The EEO-1 Joint Reporting Commission prefers online submission of the report through their Web portal. The online filing system can be accessed here: <http://www.eeoc.gov/eeo1survey/>. For more information about the changes that were made, the period from which employment figures may be used to complete the form, self-identification techniques, or other EEO-1 survey assistance, contact Ms. Koumas at ejk@koumaslaw.com.

INSIDE THIS ISSUE:

**EEO-1 Survey
Reports Due Soon** 1

**Federal Court Reverses
State Ban On Same-Sex
Marriage** 2

**Employee Files: What's In
Yours?** 2

**An Employee's Happy
Place: Create A Satisfying
Work Environment** 4



FEDERAL COURT REVERSES STATE BAN ON SAME-SEX MARRIAGE

On August 4, 2010, a San Francisco federal judge concluded that California's Proposition 8, which bans same-sex marriage in the state, thwarts the equal rights of gay and lesbian couples. Specifically, Chief U.S. District Judge Vaughn Walker said: "Moral disapproval alone is an improper basis on which to deny rights.... The evidence shows conclusively that Proposition 8 enacts, without reason, a private moral view that same-sex couples are inferior to opposite sex couples."

Reminder: Same-sex couples married in other states who are employed in California are not recognized as married here, pursuant to the Defense of Marriage Act (DOMA), passed in 1996. Regardless of marital status, California provides protection to domestic partnerships entered into in the state, pursuant to the criteria set forth in California Family Code §297(a). As a reminder, pursuant to California Family Code §297.5, California employers are required to provide the same benefits to registered domestic partners as those afforded to married couples.

This controversial decision has already resulted in the inevitable appeal, that will most likely make its way to the U.S. Supreme Court. The court has permitted both sides to file briefs by Friday, setting forth their respective positions whether the District Court decision should be suspended pending the appeal.

EMPLOYEE FILES: WHAT'S IN YOURS?



The phrase "[T]his is going in your personnel file" strikes fear in adults almost everywhere. The employee file, though it is not technically permanent, is an important part of the employer-employee relationship. Therefore, employers need to make sure it is accurate and up to date.

Why? California Labor Code section gives an employee and former employee equal rights to inspect their personnel file upon reasonable request. Additionally, the California Wage Orders and the Labor Code permit employees the right to obtain copies of their payroll records. Upon compliance with either request, an employer wants to be sure that the employee has access to the most updated files to avoid claims that documents were created *after-the-fact*, especially if a legal claim arises subsequent to the file access.

What the "Employee File" Should Contain

California Labor Code section 1198.5 identifies what items should be included in the personnel

(Continued on page 3)

(Continued from page 2)

file. Put in awards, performance appraisals, leave and absence records, discipline records, acknowledgement of handbook receipt, and training records, especially for training required by law. Employers should include both negative and positive information.

Other types of records that constitute an individual's employment file include:

--**Payroll and compensation.** Be aware of what state and federal laws require. Labor Code section 226 (b) requires employers to maintain certain payroll information. Additionally, most, if not all, Industrial Welfare Wage Orders mandate employer preserve certain records under section 7 (Records).

--**Time off.** Vacation, sick time, jury duty, grievance leave, personal and other unpaid time-off records must be meticulously maintained. This is especially true to ensure proper and full payment of any accrued vacation or Paid Time Off since California treats such as earned wages once accrued and subjects the employer to Labor Code section 203 waiting time penalties, if not timely paid.

--**Discipline.** Progressive discipline records are particularly important, because they are difficult to challenge. But all employee-counseling, even a verbal one, should result in some form of documentation making it to the employee's file.

--**Medical records.** Keep medical records in a *separate, locked file with limited access on a need to know basis only*. This file may also include family leave records and disability related medical records. (See below for more on FMLA/CFRA and ADA/FEHA.)

--**FMLA/CFRA.** The Family and Medical Leave Act (FMLA) and the state counterpart, California Family Rights Act (CFRA), trigger recordkeeping requirements that include timed notices and responses. Be especially careful to track and document the use of intermittent leave, payment of premiums during leaves and any requests and responses for second and third opinions for a questionable medical certification relating to the condition of an employee only.

--**ADA/FEHA.** The Americans with Disabilities Act (ADA) and its state counterpart, the Fair Employment and Housing Act (FEHA), require an interactive process between the employee and employer for discussing reasonable accommodation, and you must have records that this interactive discussion took place. Many employers overlook this important documentation process.

--**Employee Benefits.** Include plan-related records, notifications, enrollment or declination forms, payment of premiums and employee benefit records.

--**Workers' Compensation.** Industrial-related injuries generate a series of documents, relating to leaves of absence, releases to return to work with and without restrictions/limitations, and if available, transitional work opportunities. Be sure to place any documents that discuss medical conditions into the confidential medical records file discussed above.

(Continued on page 4)

(Continued from page 3)

--**Safety Records.** You may generate records relating to training, required safety protocol, toxic exposure or hearing tests, by way of example only.

--**Promotions.** This is one area that employers often overlook. Although an individual who is promoted is not likely to sue, *the one who didn't get the promotion might*. Be sure to fully document the reasons for selecting an employee for the promotion (just like you would when deciding layoff selections.)

PRACTICE TIPS:

1. Upon receipt of an employee or former employee's request for a copy of the worker's payroll records, be sure to produce the copies within 21 days or you will be subject to a \$750 fine as a penalty.
2. Monitor any employee or former employee request to inspect personnel records, to ensure no modification occurs to the file; respond promptly to such requests and memorialize the date of such inspections directly in the file to keep track of the occasions.

AN EMPLOYEE'S HAPPYPLACE: CREATE A SATISFYING WORK ENVIRONMENT

Employees do not preach "show me the money" as the only incentive sought to remain loyal, productive workers. Research surveys reveal that other *intangibles* are desired equally, if not more heavily, by employees in evaluating whether they are satisfied in the workplace.



1. A Good Supervisor

"People don't leave companies, they leave bosses." In a recent Robert Half survey, 1,000 Gen Y workers ranked "working with a manager I can respect and learn from" as the most important aspect of their work environment.

2. Appreciation

Praise tops the list for many individuals, and it *does not cost the employer anything*. A sincere thank you or a short note can be priceless to an employee.

3. Respect

This is another no-cost factor that packs a big payback to employers. Respect goes hand-in-hand with appreciation and let's employees know that their work is valued. By giving respect, employers treat

(Continued on page 5)

(Continued from page 4)

workers like adults, while concurrently being fair in your interactions with them.

4. Trust

Employees do not want to be micro-managed. Trust is the action side of respect. If an employer trusts an employee, it will also trust the employee to work under little to no immediate supervision for regular tasks. People need guidance, but they also need to know that their supervisor trusts them to get a job done on their own.

5. A Sense of Purpose

Workers want to know that by doing their job, they are contributing to a larger purpose-- something worthwhile. They need to know what the company's core goal is and how it is trying to achieve that mission. The key to providing this *sense of purpose* is letting the employee know how their particular job fits into the big picture.

6. Compatible Environment

The environment and people they cross paths with in it are very important to employees, since many spend the majority of the day at work. Employees want a work environment that fits their needs (*e.g.*, high paying, flexibility, highly motivated, creative, significant attention to work/life balance). Additionally, working with people you like (and respect) is very important. Spending the day—every day—with people who are disliked does not make for a productive workplace.

7. Individual Growth

Today's workers—especially the Gen Y group—want training, want to take on new challenges, and want to advance based on their new abilities. Giving a raise without increasing responsibilities could actually backfire, notes Gardner. As one expert says, if you give more money to an unhappy employee, you end up with a wealthier unhappy employee.

There is a disconnect between what managers and employees think about what leads to happiness at work. Management tends to believe that salary and benefits are the main motivators, while employees consistently reveal that human factors such as those mentioned above are often more important. To be successful, organizations will have to ensure a good balance of all of these factors to retain their best workers.

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