

# Employers grapple with telecommuting

Introduction of computer technology in the workplace and the desire of employees to strike a balance between family and work have forced many employers to grapple with the concept of telecommuting. Telecommuting can increase employee productivity, curb turnover, limit overhead expenses and allow employers to recruit and employ workers from a wider geographic area. Telecommuting, however, may not be feasible for all work environments and business operations. So what are the legal considerations regarding telecommuting arrangements or when an employee asks, "Why can't I work from home?"

The Americans with Disabilities Act (ADA) is the primary legal consideration for telecommuting requests. Many employees request to work from home to accommodate a medical condition due to difficulties associated with getting to work or working in an office environment. The Equal Employment Opportunity Commission Enforcement Guidance On Reasonable Accommodations states that employers are obligated to evaluate telecommuting requests and determine whether the request poses an undue hardship on the company. Notwithstanding, several courts have ruled that employers generally are not required to accommodate employees through telecommuting. Their rationale is that attendance at the job site is typically an essential job function.

A federal case involving Delta Air Lines illustrates courts' sensitivities for required office attendance. There, a reservation sales agent sued Delta for failing to provide telecommuting accommodations. The sales agent suffered reactions to certain chemicals that made her unable to perform her job activities outside her home. The court ruled that the company's need to evaluate, monitor and

counsel its agents, as well as security concerns related to the agent's equipment, proved that working at home was not a reasonable accommodation. Further, the company did not allow any other sales agent to work from home.

Additional legal considerations surface when an employer permits some employees to work from home, but denies other workers the same option. In such circumstances, discrimination claims are possible on the basis of a protected class such as race, gender or religion. To successfully defend such employment decisions, nondiscriminatory business reasons must be used in denying a telecommuting request. Unreasonable expenses and unavailability of home office equipment are examples of legitimate business reasons for denying telecommuting requests. A record of poor job perfor-

mance or poor attendance also can serve as a legitimate business justification because employees with such records typically require on-site supervision and observation. Wage classifications also may be used, as overtime exempt employees have less incentive to "fudge" on their hours.

Worker's compensation laws and Occupational Safety and Health Administration regulations play a role in telecommuting practices. Employees who are injured while working in their house are subject to worker's compensation coverage.

Based on these legal considerations, employers should construct detailed job descriptions and telecommuting policies and agreements to ensure that there is a consistent and legal application of telecommuting practices. Reviewing the

telecommuting policies and agreements with the company's human resources director and employment attorney is also advisable.

**Editor's Note:** *Business Matters* is pleased to present this column, *Legal view* by Scott Callen. Mr. Callen is an attorney practicing in the Tallahassee office of the national law firm of *Foley & Lardner*. He is a member of the firm's labor and employment practice group and exclusively represents companies in the area of employment law compliance and employment litigation defense. Questions for future issues of *Legal View* or comments concerning this column can be sent via email to [businessmatters@tallahassee.com](mailto:businessmatters@tallahassee.com). Mr. Callen can be reached at (850) 222-6100 or [scallen@foleylaw.com](mailto:scallen@foleylaw.com). ■

## Training is key for profits

Training, from p.5

### Full service

Full service in the computer software training business means a trainer or company where you can get everything you need. Here, Computer Tutors advises by example. The training firm offers three classifications of training: technical, application and "softskills." Computer Tutors also comes with a guarantee. Any time former students need retraining on a software application, they get it at no additional cost. That guarantee does not expire, Mr. Fernbach said.

Technical training is for IT professionals. Those folks are network administrators

and the like. According to Mr. Fernbach, that has grown to be the lion's share of Computer Tutors' training service.

Application training is comprised of courses (often stepped classes for beginners, intermediates and advanced learners) in a single kind of software. Examples would be Microsoft Word, Adobe Acrobat, PowerPoint or any of a number of proprietary software titles.

Just recently, Computer Tutors added what they call "softskills" to their curriculum. Customer service, telephone skills, and gender bias training are available among others. Leave it to a computer

company to call "people skills" soft skills! Mr. Fernbach admitted that a lot of IT folks can cause problems inadvertently in their companies through lack of communications and human nurturing skills.

### References

If you aren't sure of your selection once you have looked at who, why, what and where and asked about full service and guarantees, go ahead and ask for references or ask around town. Nothing tells the story like a satisfied (or unsatisfied) customer.

Happy hunting. ■



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## Legal View

# US Labor Department revises overtime rules

By Scott Callen

The United States Department of Labor (USDOL) released its most ambitious initiative to revise overtime laws on April 20. The deadline for employers to comply with the new regulations is fast approaching. August 23 is the effective date, assuming efforts afoot in Congress to block provisions are unsuccessful. Top USDOL officials recently announced that they believe congressional blocking efforts ultimately will fail, and political insiders agree.

Ostensibly, the new regulations update, clarify and simplify the compensation, education and job duties required to exempt employees from overtime. The current overtime regulations were last updated about 20 years ago. As many employers can attest, the regulations are difficult to reconcile with today's workplace. There also are numerous conflicting legal rulings and interpretations regarding overtime exemption standards. Only time will determine whether the new regulations diminish employer compliance frustrations and the pervasive overtime litigation and investigations resulting from such legal morass.

The USDOL expects millions of workers to collect overtime predicated on the new regulations. Approximately 6.7 million employees are estimated to receive overtime based on a change to the threshold salary requirement alone. The new regulations require exempt employees to receive annual salary compensation not less than \$23,660 (\$455 per week).

A salary ceiling was established for overtime eligibility, albeit few employers will likely benefit from the new regulation. Employees annually earning \$100,000 or more and performing primarily non-manual work will be exempt from overtime as "highly compensated professionals," the new regulations state.

Employers will benefit from the revisions to salary deductions. The new regulations permit employers to suspend exempt employees without pay for less than a week for violations of work rules. Employers also will be permitted to remedy impermissible deductions to avoid forfeiting an overtime exempt status.

In addition to the compensation requirements, exempt and nonexempt employees will continue to be legally distinguished by job duties. A bulk of the cur-

rent wage and hour disputes pertain to the executive, administrative and professional overtime-exempt classifications. These classifications will remain, but job duties, standards and educational requirements for professional employees were modified.

The new regulations also go as far as to clearly delineate certain job titles that will be considered clearly exempt or nonexempt. Exemption standards for outside sales persons, computer personnel, and health care workers also were modified.

How should employers respond to the fast-approaching August 23 effective date considering congressional efforts to block the new regulations? Employers should consider conducting both a comprehensive review of current overtime practices and an analysis of the new regulations. This will assist employers with operational planning and ensure legal compliance.

Discussed above, some employers may benefit from the new regulations while others may be faced with a substantial financial impact due to numerous employees newly entitled to overtime. And, even if the regulations are blocked, periodic audits of overtime practices are always advisable. Job

duties, compensation and company structures typically evolve and change over time. Furthermore, courts and the Department of Labor routinely release new legal interpretations regarding exempt overtime requirements.

In short, overtime practices audits can prevent and/or assist the company in defending against overtime practices litigation and governmental investigations. Seemingly every week, one can read about legal challenges and astronomical settlement amounts based on alleged overtime violations. Attorneys are entitled by wage and hour laws to recover fees for representing employees, and employees these days do not hesitate to contact employment attorneys and governmental agencies regarding perceived pay violations and "unfair treatment." Recently, one client advised that an employee had threatened to sue for not receiving a holiday bonus. Does that sound familiar?

**Editor's Note:** R. Scott Callen is an attorney with the national law firm of Foley and Lardner LLP, and he exclusively represents companies in labor and employment matters. He can be reached at [SCallen@FoleyLaw.com](mailto:SCallen@FoleyLaw.com) or 850-222-6100. ■

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