

HUMAN RESOURCE CONNECTION MONTHLY NEWSLETTER

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Table of Contents

(Click on any page below to jump to that page)

| | |
|---|---|
| Greetings..... | 1 |
| Companies Crack Down on Internet Use | 2 |
| Georgia's New "Parking Lot Law" Permits Employees to Bring Concealed Weapons to the Workplace | 3 |
| Steps to Avoid Job Reference Litigation..... | 5 |
| Employers Beware – Resume Fraud A Major Problem..... | 5 |
| California: Keep Your Hands Off the Cell Phone!... | 6 |
| Ohio: License Applicants Must Undergo Criminal Background Checks | 7 |
| Washington: Fair Credit Reporting Act Amended ... | 8 |



Steven E. Gall
President
Bio

Gall & Gall Company, Inc. was founded in 1987, with corporate offices in Dayton, Ohio. We presently partner with customers in 19 foreign countries and all 50 states in the United States.

Gall & Gall was founded by **Beverly Gall**, Ohio's first female Police Chief and the third female Police Chief in the nation and **Steven Gall** a former Police Officer with over 27 years in Human Resources.

Together, their background is varied and extensive in information gathering and Human Resources.

Gall & Gall has always been looked to as a leader in Employment Background Screening Services.

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GREETINGS

Welcome to the all New...

Human Resource Connection Monthly Newsletter

Our aim is to reduce your HR headaches by providing the information and tools you need to make life easier! We will provide you with up to date Human Resource Information that will help you in your day to day operations.

If there is information that you are interested in seeing in this newsletter, please let us know by email at sgall@gallgall.com.

If you have a HR question email us and we can do a blind post (you will not be identified) in the newsletter and others can answer by email and we will do a blind post to you answer in the next months Newsletter.

Thank You, Steven E. Gall

QUICK LINKS

(CLICK ON ANY LINK BELOW TO VISIT THE SITE)

Below is a list of websites you may find useful:

SHRM (WWW.SHRM.ORG)

OHIOSHRM (WWW.OHIOSHRM.ORG)

MVHRA (WWW.MVHRA.ORG)

Companies Crack Down on Internet Use

By DAVID P. WILLIS

Gannett New Jersey www.thedailyjournal.com

Employers have ways to monitor the e-mail you send and the Web sites you visit on your computer at work.

And some have fired workers who have surfed inappropriate Web sites or written harassing or offensive e-mails.

"In summary, employees really have no expectation of privacy at all in the workplace," said Manny Avramidis, senior vice president of global human resources for the American Management Association. "In many ways, their privacy is checked at the door."

More than half of employers fire workers for e-mail and Internet abuse, according to the AMA's 2007 Electronic Monitoring & Surveillance Survey. In the survey, 66 percent said they monitored Internet connections and 65 percent block Web sites at work, up from 27 percent in 2001.

Companies are concerned about workers spending too much time on the Web, decreasing their productivity. They also seek safeguards to protect them from sexual-harassment issues that come from inappropriate Web surfing, as well as leaks of customer data or trade secrets, said Avramidis. Some companies even use software that allows them to watch the words you type on your screen in real time.

"If someone is going onto questionable sites ... clearly that is not only creating a problem in terms of violating corporate policy," said Jeanne Achille, owner of The Devon Group, a Shrewsbury marketing and public relations firm. "You are potentially creating a harassment issue if you are sitting in an office" with co-workers, she said.

Most employers have policies that dictate what's acceptable and unacceptable Internet use. While policies may vary from company to company, there are some common elements.

For instance, companies want to make sure workers don't use their systems for illegal activity, such as downloading child pornography, or visiting sexually explicit sites, said

Kathleen M. Connelly, a lawyer at Lindabury, McCormick, Estabrook & Cooper in Rumson.

An inappropriate image on a computer screen can be viewed by others and become an issue of sexual harassment, she said.

"There is another concern; they want to ensure that employees are not essentially defaming or badmouthing the employer to third parties," Connelly said.

They also want to make sure their computer systems are not compromised with spyware and viruses. "As more and more threats lurk out on the Internet, more and more companies have to be aware of it," Achille said.

Policies also limit personal use, but Connelly said she would discourage an outright ban on employees using the Internet occasionally for personal business.

"I don't think we want to live in a world where there is not some recognition that all of us from time to time probably utilize these systems for purely personal reasons," Connelly said. "A no-tolerance policy, I think, is just not very practical or desirable in the workplace."

It all comes down to productivity, Avramidis said.

If a worker's production becomes an issue, the company has the ability to go back and track e-mail and Internet use, he added.

And monitoring will become more widespread among employers, Avramidis said.

"The technology continues to get cheaper and cheaper and easier and easier to implement," he said. "Corporations are probably going to do more and more of this, not less of it."

Achille said her company's employees need unfettered access to the Internet for their jobs, but personal use is discouraged. "Shopping on Pottery Barn.com is not what one should be doing if they are supposed to be at work," she said.

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Georgia's New "Parking Lot Law" Permits Employees to Bring Concealed Weapons to the Workplace

Over heavy opposition from Georgia employers and advocacy groups, Georgia Governor Sonny Perdue has signed into law a bill that allows individuals who lawfully possess a concealed weapon to store it in a locked vehicle in their employer's parking lot. The law, approved on May 14, 2008, dubbed the "parking lot bill," prohibits employers from maintaining or enforcing a policy that bans concealed weapons from company property and significantly limits an employer's right to search private vehicles of employees or invited guests.

Rights of Employers

Any employer that owns property on which employees park their vehicles is exempt from the law and may restrict access to their property as a property owner. Accordingly, an employer may bar firearms from property it owns and search employees or guests in the same manner as permitted before the new law. The new law also exempts from the restrictions on vehicle searches areas that are used temporarily for parking. Moreover, employers have the right to prohibit employees who have completed a disciplinary action or have one pending from bringing a concealed weapon onto company property.

Employers who are not property owners still have some rights to search the vehicles of employees for firearms under the new law:

(A) Employers may search vehicles owned by the employer

(B) Where a reasonable person would believe that searching an employee's car might prevent an immediate threat to human health, life or safety, an employer may search the locked vehicle of an employee.

(C) An employer may also search an employee's vehicle where a private security officer has probable cause to believe that the employee unlawfully possesses employer

property and the employee consents to a search of the vehicle.

Furthermore, employers are protected where searches are made by law enforcement personnel pursuant to a valid search warrant or valid warrantless search.

In addition, employers that provide a secured parking area that restricts public access with a gate, security officers, or security guards may search employee vehicles as long as they search all vehicles.

Exempt Industries

Employers in certain sensitive industries are exempt. The new law does not apply to prisons, jails, or other detention facilities, public utilities, or Department of Defense contractors located on a U.S. military base or within one mile of an airport. Parking lots near facilities involved in the storage or supply of water or energy, and deemed in writing to be vital to the State of Georgia by the Department of Homeland Security, also are not covered by the law.

Limitations on Employer Liability

Given employers' significant concern over possible liability stemming from this law, the Georgia legislature included provisions limiting employer liability. An employer, private property owner, or property owner's agent may not be held criminally or civilly liable for actions

resulting from the transport or use of a firearm unless the employer commits a criminal act involving the firearm or the employer knew the criminal act would be committed on its premises. This limitation on liability also extends to acts

involving or resulting from the theft of a firearm from an employee's vehicle.

Significantly, the law states that it imposes no new duty on employers and it does not create an exception to the employee-at-will doctrine or give at-will employees a greater interest in employment than they otherwise had.

The law's limitations on employers' right to search do not create a private right of action for employees. Any action for a violation of the law

(Continued on Page 4)

"Despite the limitations on liability, the new law will probably not deter legal action against employers by injured employees, patrons or invitees in the event of a violent incident involving an employee's weapon."

must be brought by the Attorney General.

In the event that an employee brings suit against the employer and the court finds: (1) the employer was in compliance with the law, and (2) the plaintiff was seeking to make his employer liable for the criminal use of firearms in the workplace, the plaintiff may be liable for all of the employer's legal costs under the new law's attorney-fee provision.

The new law does not require employers to provide additional security for employees.

Impact on Georgia Employers

Despite the limitations on liability, the new law will probably not deter legal action against employers by injured employees, patrons or invitees in the event of a violent incident involving an employee's weapon. Employers, particularly those who restrict access to company property with gates or security personnel, should consider updating existing policies or adopting new policies to reflect these changes in the law and should assess their security procedures to ensure compliance with these new requirements. Employers also should train their supervisors regarding compliance with the new law.

In a related development, Florida residents will be permitted to bring their guns to work under the Preservation & Protection of the Right to Keep & Bear Arms in Motor Vehicle Act of 2008 signed into law by Governor Charlie Crist on April 15, 2008. This law bars public and private employers from prohibiting a customer, employee, or invitee from possessing a legally-owned firearm that is kept inside a locked, privately-owned motor vehicle which is parked in a parking lot, in most cases, even on an employer's private property.

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Steps to Avoid Job Reference Litigation

by Stanford G. Wilson and Lisa N. Knottek

Providing meaningful job references has become an increasingly difficult task for employers. The well-intentioned employer is stuck between a rock and hard place, seeking to provide helpful information on one hand, while wanting to avoid potential liability on the other. As most employers are aware, often, what you say – or even what you don't say – can land you in court.

This problem only gets worse in the current economy. When terminated employees have problems finding a new job, they have time to focus more on their former employment, and often become convinced that they cannot find new employment because of a reference a former employer may have provided. The result is an increase in what is called "job reference litigation," in which a former employee brings an action for defamation or other claims against a former employer because of a negative job reference.

Although the specific elements of a claim for statement may differ from state to state, a statement generally may be considered defamatory if it causes shame, disgrace, or a bad opinion of the individual in the minds of others. Normally, a person claiming defamation must show a specific, identifiable financial loss; however, when the statement tends to injure an individual's professional reputation, a plaintiff may not be required to show

financial injury, but rather, only that his or her reputation was damaged in the eyes of others.

While it is impossible to eliminate the threat of a defamation claim completely, employers can take certain steps to reduce the threat and limit liability.

First, be consistent. Every employer should establish, disseminate, and enforce a written policy regarding what information it will provide in a reference and who is qualified to give the reference. Communicate the policy to all employees. For most employers, simply communicating the dates of employment, positions held, and ending pay will be an effective way to respond to requests for references. Do not give the reason for termination or whether the employee is eligible for rehire, or any personal information regarding the employee.

Finally, only provide references at the request of an employee or prospective employer. Have employees authorize the information to be released with a signed waiver. Respond to oral requests from other companies with a call back to verify that the request is legitimate, or require that the request be submitted in writing on company letterhead. Document all requests for references by including the party requesting the information, the purpose for which the reference is requested, and the information that is provided.

Following these steps can greatly reduce the risk of job reference litigation.

EMPLOYERS BEWARE – RESUME FRAUD A MAJOR PROBLEM

A recent article in the Boston Business Journal reported that according to hiring managers and human resource professionals, the falsification of a resume is a widespread problem.

Misrepresentation on a resume or employment application can take two forms:

- The making of a false or misleading statement, or
- Omission of significant details about an applicant's

background or employment history. According to this article, stretching dates to cover up employment gaps is the most commonly-caught resume lie. An applicant may believe that he or she will not be viewed in a favorable light if the resume reflects periods of unemployment. Also, an open period of employment may suggest that the reason for leaving the prior employer may have been for reasons unflattering to the applicant.

"Also, the interviewer might simply use the person's name as a search term in Google."

Other resume misrepresentation may include the following:

- A false claim that the applicant has obtained a particular academic degree or certificate
- Received a degree from a particular college or university

(Continued on Page 6)

- Has achieved certain technical skills
- Has received various certifications
- Exaggerating or misrepresenting certain accomplishments

To deter these types of misrepresentations, the employer's application or hiring materials should include a statement that any false or misleading representations during the application process or the failure to disclose an important fact will immediately disqualify the applicant from any further consideration for employment.

The employer should usually conduct a background check on the applicant. A routine background check is relatively inexpensive. Identifying an applicant who is falsifying his or her resume will justify such an expense.

The more critical the position, the more the employer may wish to attempt to verify information provided on a resume. For example, verifying that a college was attended, or a degree received might be important if the position the employer is seeking to fill requires a certain level of intellectual accomplishment. This will also be true if the job must be filled by an individual with a particular level of skill in a technical area.

Another technique frequently overlooked by interviewers is the simple step of examining the public record. Today, especially with younger applicants, you may be able to locate interesting, and sometimes revealing, information about the applicant on such Internet pages as MySpace, Facebook, or YouTube. Such pages might confirm the person's resume, or more importantly, show false statements or character or personality traits that the

employer may find disturbing. Also, the interviewer might simply use the person's name as a search term in Google. Many times, such a search will be useless, but there is that occasional time when valuable information is revealed.

Finally, even though examining and verifying representations on a resume may be important, there is no substitute for excellent interviewing skills. Simply walking a person through his or her resume is usually not very helpful. It is preferable to ask questions that the applicant will not anticipate. It may be useful to give the applicant specific problems and issues, and ask the person how he or she would deal with the problem. Such tactics will give you a glimpse of the applicant's ability to express him/herself and respond to very concrete issues the applicant may have to face on the job. A skilled interviewer will structure the interview so that the applicant is doing most of the talking, while the interviewer is listening and observing.

Finally, you should resist the temptation, and more importantly convince management to resist the temptation to overlook misrepresentations during the application process "because we really need someone." Misrepresentations on a resume or in the application process may reveal a character flaw which could prove harmful to the company in the future if such a person is employed today.

Recognize that in a tough job market, applicants may bend the truth, or lie - be prepared!

California: Keep Your Hands Off the Cell Phone!

By Jackson Lewis

Just as the summer driving season takes off, California drivers will need to take their hands off of their cell phones. Effective July 1, 2008, under the California Wireless Telephone Automobile Safety Act, California drivers will be prohibited from using handheld wireless telephones while driving unless the devices are configured to allow hands-free listening and talking. Drivers under the age of 18 are prohibited from using wireless telephones while operating a motor vehicle, even if equipped with a hands-free device, and from using "mobile service devices," such as Blackberries, pagers and laptops. Violations of the act are infractions, and violators will be subject to a fine of \$20 for the first offense and \$50 for each subsequent offense. Although a violation is a reportable offense to the California Department of Motor Vehicles, no violation point will be assigned to the violator's driver's license.

Exceptions

Drivers are allowed to use a wireless telephone for emergency purposes, such as an emergency *(Continued on Page 7)*

call to a law enforcement agency, health care provider or fire department. Emergency services professionals, who use a wireless telephone while operating an authorized emergency vehicle in the course of their duties, are exempt from the act.

The act does not apply to drivers over age 18 using a digital two-way radio that utilizes a wireless telephone that does not require immediate proximity to the user's ear, if the driver is driving one of the following:

- A motor truck or a truck tractor that requires either a commercial class A or class B license to operate.
- A vehicle that is used exclusively in the conduct of agricultural operations.
- A farm vehicle that is exempt from registration and displays an identification plate as specified in the Vehicle Code.
- A commercial vehicle used in conducting certain commercial agricultural operations, as long as the vehicle is registered to and driven by a farmer or an employee of the farmer.
- A tow truck.

School bus and transit vehicle drivers are exempt from the act, as are drivers over the age of 18 driving a motor vehicle on private property.

Other States with Similar Laws

With this act, California joins four other states

(Connecticut, New Jersey, New York and Washington), the District of Columbia, and the U.S. Virgin Islands in banning use of a handheld cell phone while driving. In addition, New Jersey and Washington prohibit drivers from sending text messages while driving.

What's an Employer To Do

The new law does not impose any specific requirements on California employers, but employers should consider a policy on cell phone use while driving company or personal vehicles and conducting company business, particularly where employees are reimbursed for business-related cell phone charges. Such a policy may include a statement requiring the use of hands-free cell phones while driving to conduct company business. Employers may want to make clear that, if employees receive citations for violating the new law, the fines and penalties are the employees' responsibility. To encourage compliance with the new law, employers may consider supplying hands-free devices to employees.

"Drivers under the age of 18 are prohibited from using wireless telephones while operating a motor vehicle, even if equipped with a hands-free device, and from using "mobile service devices," such as Blackberries, pagers and laptops."

Jackson Lewis represents management exclusively in employment, labor, benefits and immigration law and related litigation. For more information about this article, contact Jamerson C. Allen or Mark S. Askanas. Republished with permission. © 2008 Jackson Lewis. All Rights Reserved.

Ohio: License Applicants Must Undergo Criminal Background Checks

By Business and Legal Reports, Inc.

House Bill 104, effective March 24, 2008, requires applicants for professional licenses to obtain criminal background checks before the issuance of their licenses. Until now, the licensing agencies themselves would ask the Ohio Bureau of Criminal Identification and Investigation to conduct the check. Now the applicants for licensure must request the check themselves. The bureau will charge \$15 to perform a state criminal records check and an additional \$24 in the event that the requirements for a particular license also require information from the Federal Bureau of Investigation (FBI).

The new law applies to applicants for initial licensure in a number of professions, including accountant, dentist, dental hygienist, funeral director, optometrist, pharmacist, physician, psychologist, school psychologist, occupational therapist, and social worker. As before, the licensing agency may not license a person who has been convicted of or pleaded guilty to any of a list of designated offenses, which varies depending on the profession.

(Continued on Page 8)

Applicants will now be required to provide the bureau with their names and addresses, as well as the name and address of the licensing agency, and ask the bureau to obtain pertinent information from the FBI. The bureau will report the results of the check, and any information received from the FBI, to the licensing agency for its use in determining whether an applicant should be granted a license under the agency's authorizing statutes. The agency must make the results available to the applicant or the applicant's representative. Otherwise, as under prior law, the results and report may not be made available to any other person or for any other purpose. Licensing agencies will be required to adopt administrative and procedural requirements for the checks.

Washington: Fair Credit Reporting Act Amended

By Lisa Burden

The Evergreen State's Fair Credit Reporting Act has been amended to forbid the use of consumer credit reports in hiring decisions unless the need for the information contained within the report is related to the employee's job duties.

Under the amendment, employers are prohibited from using information concerning an applicant or current employee's creditworthiness unless that information is substantially job-related and the reason for the information is disclosed to the individual in writing.

The purpose of the law is to require employers to establish the need for a credit report based on the actual job duties of current or prospective employees.

If an employer fails to hire an applicant because of information contained in a credit report, the employer must offer the applicant an opportunity to respond and dispute the information in the credit report. Violations of the amendment may result in triple damages and attorney's fees.

The change in the law became effective in 2007.

One expert has observed that the amendment does not define when a credit report's information is substantially related to an employee's duties—an omission that could lead to litigation. "It is vague," said Bellevue, Wash., attorney Christopher Green, who added that it could be years before the courts start issuing rulings that provide guidance as to when credit report information is substantially related to an employee's job tasks.

But, as any consumer knows, credit reports can be fraught with errors. Green said he gets "lots of calls" from people in the military whose quest for a security clearance gets impeded by inaccurate information in their credit reports.

Other provisions of the FCRA remain unchanged by the amendment, including provisions that:

- Employers cannot obtain credit reports through a credit reporting agency or some other source for job applicants unless a clear and conspicuous disclosure has been made in writing to the applicant. The disclosure can be part of the employment application.
- Employers cannot obtain credit reports on existing employees unless the employer has separately provided the employees written notice that the reports may be used for employment. That notice can be included in the employee handbook. Notice is not required, however, for current employees whom the employer has reasonable cause to believe has engaged in activity that violates the law.

Lisa Burden, J.D., is a freelance writer in Baltimore.

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Human Resource Management & Employment Law

Prior to entering the private sector, Steven worked in law enforcement and personnel administration for over twenty-seven years. He has dealt with employers and assisted them in resolving a wide variety of personnel problems and issues. Steven provides instruction and consulting to many Associations and Companies annually. His programs focus on all areas of HR Management.

Steven has conducted training sessions for Miami Valley Human Resource Association, Kentucky State Chapter of the Society of Human Resource Association, The National Apartment Association, The Florida State Apartment Association, The United States Department on Senior Care & Aging, The Cooperative State Research, Education, and Extension Service (CSREES) an agency within the U.S. Department of Agriculture as well as many other Associations and Companies Nationally. One of his areas of expertise is Employment Law, The Fair Credit Reporting Act, and Due Diligence in Employment Background Screening, Workplace Violence and other areas of Human Resources. Steven also speaks on Technology in today's workplace, "The Good, The Bad & The Ugly."

Professional Associations and Community Leadership Activities:

- SHRM Society of Human Resource Management – Professional Membership
- SHRM Ohio State Council – State District Director – West Central Ohio
- SHRM Chapter Miami Valley Human Resource Association, – Past President, Technology Director
- Miami Valley Military Affairs Association – Past President, Technology Director, Membership Chair
- Dayton Area Chamber of Commerce
- Huber Heights Chamber of Commerce
- Main Street Piqua - Technology Director
- Piqua Area Chamber of Commerce
- Tipp City Area Chamber of Commerce - Technology Director
- Trotwood Chamber of Commerce - Technology Director
- Troy Area Chamber of Commerce – Chair of The HR Council
- Vandalia-Butler Chamber of Commerce - Technology Director



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