

HUMAN RESOURCE CONNECTION MONTHLY NEWSLETTER

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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



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.

Contact Information:

E-Mail - sgall@gallgall.com
Toll Free 1-800-759-4255
www.gallgall.com

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SHRM (www.shrm.org) • **OHIO SHRM** (www.ohioshrm.org) • **MVHRA** (www.mvhra.org)

Union Violated Employees' Privacy Rights by "Tagging"

Pichler v. UNITE, Nos. 06-4522 and 06-4721 (3d Cir., September 9, 2008) – The Third Circuit Court of Appeals found that defendant Union violated the federal Driver's Privacy Protection Act, by accessing a group of employees' motor vehicle records as part of a long-running union organizing campaign. Union officials watched the company's parking lot and recorded the license plate numbers on the cars. The Union sought out the names and addresses of the vehicle owners, a process referred to as "tagging," by using an online database and private investigators to get the information. The Union then appeared at the employees' homes seeking to discuss the organizing campaign. The Third Circuit affirmed the district court's finding against the Union and the award of \$25,000 in compensatory damages, and remanded the case back to the lower court to determine whether punitive damages should be awarded.

EEOC Issues New Guidance on Religious Discrimination

By Richard Meneghello
(Labor Letter, October 2008)

In light of the ever-expanding number of religious discrimination complaints arising in workplaces across the country, the EEOC recently issued a new set of guidelines to assist employers in this area. The revised portion of its employment compliance manual provides an overview of religious discrimination law, and offers "best practices" for employers to avoid discrimination charges. Every employer should be familiar with this comprehensive publication, but don't worry if you don't have time to slog through 73 pages of material – we've done it for you.

Why New Guidance?

The EEOC issued the new guidelines on July 22, 2008, noting that charges of religious discrimination filed with the agency have more than doubled since 1992: from 1,388 charges in 1992 to 2,880 in 2007. Of course, that only begins to tell the story, as there has also been a corresponding rise in discrimination charges at the state agency level, not to mention lawsuits filed in federal courts or state courts, and confidential settlements reached before the legal process has begun.

Although there is no single reason to explain the rise in filings, some common theories include enhanced awareness of employee rights, the continued growth of diversity in the workplace, and increased tension after the September 11, 2001 attacks. It is not a coincidence that, when providing examples of improper conduct, the EEOC guidance frequently mentions the 9/11 terrorist attacks as a starting point for discussion.

Clarifying "Religion"

The guidance begins with a section informing employers that the concept of "religion" has a very broad definition. Employers should understand that religion is not limited to the more common faiths – it also includes non-theistic moral or ethical beliefs as to what is right and wrong, and unique views held by a few (or even one) individual.

The EEOC provides an example of a man who practices the Kemetic religion, based on ancient Egyptian faith, with a group numbering fewer than ten members. Nevertheless, the guidance explains that an employer should not reject his faith principles – including his wrist tattoos expressing his servitude to the sun god Ra – simply because the religion is "incomprehensible" to the average person.

The EEOC suggests that employers provide wide deference to an employee's claim that a certain practice or appearance standard is religious in nature, generally accepting that the sincerity of the belief is not in dispute. But it does point out that employers can call a supposed religious practice into question if the employee has behaved in a manner markedly inconsistent with the professed belief in the past (e.g., history of working on Sundays), if the benefit sought is likely sought for secular reasons (e.g., cushy work schedule), or if the timing is suspect (e.g., following an earlier request for the same benefit that was rejected).

Religious Discrimination, Summarized

The new guidelines explain what most employers already know: that it would be a violation of Title VII to make a hiring, firing, disciplinary, or salary decision based on religion. It provides some depth to this blanket statement – for example, the EEOC states that it would consider it to be a violation for an employer to limit recruitment efforts to one religion (such as posting a job

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announcement only at a Hindu temple and asking only fellow Hindu friends if they are interested in the job). It also reaffirms the EEOC's position that customer or co-worker preference cannot serve to justify an otherwise discriminatory action, such as forcing a Sikh employee to remove his turban due to customer complaints.

The EEOC recommends a three-pronged approach to minimize the risk of discrimination claims: 1) establish written criteria for hiring and discipline, such as a policy handbook; 2) record the business reasons for disciplinary action through proper documentation; and 3) train managers on proper company policies.

Religious Harassment In A Nutshell

The guidance then tackles religious harassment, which bears the same hallmarks as the common sexual harassment standards: it is improper to require or coerce an employee to abandon, alter or adopt a religious practice as a condition of employment (i.e., "quid pro quo"), and you should ensure that your employees are not subjected to unwelcome statements or conduct that is based on religion and is severe and pervasive enough for the employees to find the atmosphere hostile or abusive (i.e., "hostile work environment").

Moreover, if the employer exercises reasonable care to prevent and correct any harassing behavior, and the employee unreasonably fails to take advantage of preventive opportunities, the employer can escape liability. The bottom line is that as an employer, you should treat religious harassment as you do other forms of harassment: make sure you have a well-publicized anti-harassment policy, and immediately and consistently apply the policy if you receive a complaint.

Untangling the "Reasonable Accommodation" Provision

The religious discrimination prong of Title VII goes one step further than other protected class categories by requiring an employer to reasonably accommodate an

employee's religious belief, practice or observance. The EEOC defines an accommodation as any adjustment to the work environment that will allow the employee to comply with his or her religious beliefs. The most frequent accommodation requests relate to work schedules, dress and grooming, and religious expression or practice at work.

As with the ADA, there are no "magic words" required for an employee to request an accommodation. Employees do need to initiate the accommodation process, but as long as they make the employer aware of both the need for accommodation ("I need to leave early this Friday...") and that it is being requested due to a conflict between religion and work ("...to attend Mass"), they have satisfied their burden.

Although an "interactive process" is not required, the EEOC strongly recommends a discussion about the request where the employee can share information about the accommodation need, and the employer can share information about its workplace needs. The employer is entitled to make a limited inquiry about the claim that the belief/practice at issue is religious and "sincerely held," but it is not recommended that this inquiry take place unless objective, reasonable doubt exists.

What is "reasonable" will be a fact-dependant analysis, but certainly the employer need not automatically concede to the employee's requested accommodation. If another accommodation will solve the problem in a more efficient or preferred manner, the employer has the ultimate say in implementing the request.

The employer can reject an accommodation request if it would pose an undue hardship, defined as "more than de minimus [token] cost." The EEOC expressly states that this burden is much less onerous than the undue hardship concept found under the ADA.

An employer can look at the nature of the employee's duties, the cost of the accommodation, the number of other employees impacted by the accommodation, and other similar factors in making this determination. Employers will be better able to rely on this defense if they can show that the accommodation diminishes efficiency, infringes on other employees' job rights, impairs workplace safety, or causes other workers to carry a heavier burden.

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The most common accommodations include flexible scheduling, voluntary substitutions or shift swaps, lateral transfers or changes to job assignment, and modifications to workplace policies or practices. The EEOC explains that a Muslim employee who wishes to take more frequent breaks to pray would need to be accommodated, so long as it does not interfere with the timely completion of work and the total amount of the breaks does not exceed the time otherwise allotted. Additional break time may also need to be added if the employee flexes his schedule to work a full shift.

Allowing modifications to a company's appearance policies may also be considered a reasonable accommodation. The EEOC provides several examples of situations where facial hair or religious garb needed to be allowed despite violating neutral company policies. It does provide a few exceptions, including the possibility that the need for uniformity of appearance, or safety and health concerns, would outweigh the accommodation request.

In a victory for employers, the EEOC noted that company Christmas decorations do not have to be thrown in the trash simply because someone objects to them on religious grounds, and moreover, there is no requirement that an employer allow additional holiday decorations associated with other religions.

Where Can I Learn More?

The full compliance manual can be found at www.eeoc.gov/policy/docs/religion.html. If you are not in the mood to read all 73 pages, the EEOC has also issued a nine page question and answer sheet, as well as a 4 page "best practices" summary. They can be found at www.eeoc.gov/types/religion.html. Or, if you have more specific concerns, give us a call. <http://www.laborlawyers.com>

FTC Will Grant Six-Month Delay of Enforcement of 'Red Flags' Rule Requiring Creditors and Financial Institutions to Have Identity Theft Prevention Programs

The Federal Trade Commission will suspend enforcement of the new "Red Flags Rule" until May 1, 2009, to give creditors and financial institutions additional time in which to develop and implement written identity theft prevention programs. Today's announcement and the release of an Enforcement Policy Statement do not affect other federal agencies' enforcement of the original November 1, 2008 deadline for institutions subject to their oversight to be in compliance.

The Red Flags Rule was developed pursuant to the Fair and Accurate Credit Transactions (FACT) Act of 2003. Under the Rule, financial institutions and creditors with covered accounts must have identity theft prevention programs to identify, detect, and respond to patterns, practices, or specific activities that could indicate identity theft.

The Rule applies to creditors and financial institutions. Federal law defines a creditor to be: any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or

continuation of credit; or any assignee of an original creditor who is involved in the decision to extend, renew, or continue credit. Accepting credit cards as a form of payment does not, in and of itself, make an entity a creditor. Some examples of creditors are finance companies, automobile dealers, mortgage brokers, utility companies, telecommunications companies, and non-profit and government entities that defer payment for goods or services. Financial institutions include entities that offer accounts that enable consumers to write checks or to make payments to third parties through other means, such as other negotiable instruments or telephone transfers.

The Commission staff launched outreach efforts last year to explain the Rule to the many different types of entities that are covered by the Rule. The agency published a general alert on what the Rule requires, and, in particular, an explanation of what types of entities are covered by the Rule – <http://www.ftc.gov/bcp/edu/pubs/business/alerts/alt050.shtm>. During the course of these efforts, Commission staff learned that some industries and entities within the FTC's jurisdiction were uncertain about their coverage under the Rule. These entities indicated that they were not aware that they were engaged in activities that would cause them to fall under the FACT Act's definition of creditor or financial

institution. Many entities also noted that, because they generally are not required to comply with FTC rules in other contexts, they had not followed or even been aware of the rulemaking, and therefore learned of the Rule's requirements too late to be able to come into compliance by November 1, 2008. The Commission's delay of enforcement will enable these entities sufficient time to establish and implement appropriate identity theft prevention programs, in compliance with the Rule.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online Complaint Assistant or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 1,500 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's Web site provides free information on a variety of consumer topics.

IMPORTANT NOTICE:

We have just confirmed with the FTC that there is no delay in the enforcement of the Notice of Address Discrepancy Rule in the Identity Theft Regulations. The extension of enforcement to May 1, 2009 is only applicable to financial institutions and creditors--not users of consumer reports.

House Democrats Contemplate Abolishing 401(k) Tax Breaks

Powerful House Democrats are eyeing proposals to overhaul the nation's \$3 trillion 401(k) system, including the elimination of most of the \$80 billion in annual tax breaks that 401(k) investors receive.

House Education and Labor Committee Chairman George Miller, D-California, and Rep. Jim McDermott, D-Washington, chairman of the House Ways and Means Committee's Subcommittee on Income Security and Family Support, are looking at redirecting those tax breaks to a new system of guaranteed retirement accounts to which all workers would be obliged to contribute.

A plan by Teresa Ghilarducci, professor of economic policy analysis at the New School for Social Research in New York, contains elements that are being considered. She testified last week before Miller's Education and Labor Committee on her proposal.

At that hearing, the director of the Congressional Budget Office, Peter Orszag, testified that some \$2 trillion in retirement savings has been lost over the past 15 months.

Under Ghilarducci's plan, all workers would receive a \$600 annual inflation-adjusted subsidy from the U.S. government but would be required to invest 5 percent of their pay into a guaranteed retirement account administered by the Social Security Administration. The

money in turn would be invested in special government bonds that would pay 3 percent a year, adjusted for inflation.

The current system of providing tax breaks on 401(k) contributions and earnings would be eliminated.

"I want to stop the federal subsidy of 401(k)s," Ghilarducci said in an interview. "401(k)s can continue to exist, but they won't have the benefit of the subsidy of the tax break."

Under the current 401(k) system, investors are charged relatively high retail fees, Ghilarducci said.

"I want to spend our nation's dollar for retirement security better. Everybody would now be covered" if the plan were adopted, Ghilarducci said.

She has been in contact with Miller and McDermott about her plan, and they are interested in pursuing it, she said.

"This [plan] certainly is intriguing," said Mike DeCesare, press secretary for McDermott.

"That is part of the discussion," he said.

While Miller stopped short of calling for Ghilarducci's plan at the hearing last week, he was clearly against continuing tax breaks as they currently exist.

Savings rate

“The savings rate isn’t going up for the investment of \$80 billion,” he said. “We have to start to think about ... whether or not we want to continue to invest that \$80 billion for a policy that’s not generating what we now say it should.”

“From where I sit that’s just crazy,” said John Belluardo, president of Stewardship Financial Services Inc. in Tarrytown, New York. “A lot of people contribute to their 401(k)s because of the match of the employer,” he said. Belluardo’s firm does not manage assets directly.

Higher-income employers provide matching funds to employee plans so that they can qualify for tax benefits for their own defined-contribution plans, he said.

“If the tax deferral goes away, the employers have no reason to do the matches, which primarily help people in the lower income brackets,” Belluardo said.

“This is a battle between liberalism and conservatism,” said Christopher Van Slyke, a partner in the La Jolla, California, advisory firm Trovena, which manages \$400 million. “People are afraid because their accounts are seeing some volatility, so Democrats will seize on the opportunity to attack a program where investors control their own destiny,” he said.

The Profit Sharing/401(k) Council of America in Chicago, which represents employers that sponsor defined-contribution plans, is “staunchly committed to keeping

Immigration Update

This update discusses recent developments in immigration law from the U.S. Departments of Homeland Security, Labor, and State.
Department of Homeland Security
H-2B Cap Count Numbers

The H-2B visa program allows U.S. employers to respond to one-time occurrences that require a temporary increase in labor forces (i.e., peak loads, seasonal needs). The H-2B visa is particularly useful in the areas of construction, resort/hospitality services, and landscaping.

Every year, U.S. Citizenship and Immigration Services (USCIS) allocates 66,000 visa numbers for H-2B visas, allocating 33,000 for each fiscal half-year. As of July 30, 2008, USCIS reported that it had received sufficient petitions to meet the first half of the FY 2009 allocation. Petitions received by July 29, 2008, for employment start dates prior to April 1, 2009, would be counted within this cap. Petitions received after July 29, 2008, for employment start dates prior to April 1, 2009, will be rejected and returned with the applicable fees uncashed.

As with the H-1B CAP, USCIS will use a computer-generated random selection process for the cap-subject H-2B petitions received. Note that USCIS continues to accept and process the following H-2B petitions that are not subject to the cap:



- Extension of stay for beneficiaries currently in H-2B status
- Amendments to previously approved employment for beneficiaries currently in H-2B status

- Request to change/add employers for beneficiaries currently in H-2B status

Special Immigrant Visas Are Now Available For Certain Iraqis.

On July 7, 2008, the USCIS issued a memorandum revising the Adjudicator's Field Manual (AFM) by adding new guidance on adjudicating Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, for persons claiming Special Immigrant status under the National Defense Authorization Act for Fiscal year 2008. The guidance is effective immediately.

Per the AFM guidance, principal applicants under this provision must be Iraqi nationals who have been employed in good standing by the U.S. government, or on behalf of the U.S. government, for at least one year after March 20, 2003. Note that Iraqis who worked for private contractors on behalf of the U.S. government are also eligible. Applicants must have experienced or be experiencing an ongoing serious threat as a result of U.S. government employment. Any approved applicant will need to pass a security background check and must be otherwise eligible to receive an immigrant visa to the United States.

The legislation establishing this special immigrant visa program authorized resettlement benefits for visa recipients, similar to those received by refugees. These benefits include transportation (recipients sign a promissory note and must ultimately repay airfare) to the U.S. and housing, health care and access to other programs for up to eight months to help new immigrants settle in the United States. Spouses and minor unmarried children of principal applicants are eligible for the same immigrant visa without counting toward the annual cap of 5,000 per year. All applicants are strongly advised not to make any travel arrangements, sell property, or give up employment until they have been issued a visa by the U.S. Embassy.

USCIS Will Extend Work Authorization For Refugees

The USCIS recently announced that it would extend the validity period of initial Employment Authorization Documents (EADs) issued to refugees to two years after their arrival in the U.S. Previously, the USCIS required renewal of the EAD within one year after the refugee's

arrival. The new policy is designed to provide better customer service to, and reduce the financial burden on, refugees by eliminating the need for refugees to apply for renewal of their work documents before they are able to adjust status to permanent residency. The policy change also ensures consistency in the validity periods for initial EADs issued to both refugees and asylees, as USCIS began issuing two-year initial EADs to asylees in 2006.

While there is no fee for the initial application for a refugee EAD, renewal applications require a fee of \$340.

New Address for Chicago Lockbox

The Chicago Lockbox, where forms associated with family-based adjustment of status, Petitions for Alien Relative (Form I-130) and Temporary Protective Status are now processed, has a new address, as follows:

USCIS

Attn: [Please check Form Instructions on USCIS for proper information]
131 South Dearborn, 3rd Floor
Chicago, IL 60603-5517

The change in address only affects mail sent by private courier (i.e., UPS, FedEx, DHL, etc.) and not mail sent by regular U.S. mail.

USCIS Modifies Vaccination Requirements for Applicants to Adjust Status to Legal Permanent Resident

On July 24, 2008, USCIS announced a new rule regarding the vaccinations required in connection with Applications to Adjust Status to Legal Permanent Resident (AOS). This change is in accordance with guidance issued by the U.S. Department of Health and Human Services, Center for Disease Control and Prevention (CDC). An AOS applicant processing his/her medical examination on or after August 1, 2008, must use the June 5, 2008, version of the Form I-693, Report of Medical Examination and Vaccination Record.

The Technical Instructions to Civil Surgeons for the new vaccination requirements are posted at <http://www.cdc.gov/ncidod/dq/civil.htm>, including instructions pertaining to additional ageappropriate vaccinations on

the following:

- Rotavirus
- Hepatitis A
- Meningococcal
- Human papillomavirus
- Zoster

Department of Labor Clarification on Attorney Role in Labor Certification Process

On August 29, 2008, the U.S. Department of Labor (DOL) Employment and Training Administration, Office of Foreign Labor Certification issued a Restatement of PERM Program Guidance Bulletin on the Clarification of Scope of Consideration Rule in 20 CFR 656.10(b)(2). The initial PERM Program Guidance Bulletin was issued on June 13, 2008.

The DOL has a statutory obligation to ensure that no foreign worker is admitted for permanent residence based upon an offer of employment absent a finding that there are no sufficient U.S. workers who are able, willing, qualified, and available to fill the position and that the admission of such worker will not adversely affect the wages and working conditions of U.S. workers employed in similar positions (see 8 U.S.C. 1182(a)(5)(A)(i)). The DOL fulfills this obligation by determining the availability of minimally qualified U.S. workers before approving a PERM application and by ensuring that U.S. workers are fairly considered for all job opportunities that are the subject of a PERM application. Accordingly, the DOL relies on employers who file PERM applications to recruit and consider U.S. workers in good faith.

The DOL has long held the view that good faith recruitment requires that an employer's process for considering U.S. workers who respond to PERM-related recruitment be consistent with the employer's normal consideration process. Usually the normal consideration process does not involve a role for an attorney or agent, as defined in 20 C.F.R. 656.3, in assessing the ability of applicants to fill the employer's minimum requirements. However, given that the permanent labor certification program imposes recruitment standards on the employer that may differ from the employer's normal recruitment

process, the DOL understands and appreciates the legitimate role attorneys and agents play in the labor certification process and respects the right of employers to consult with their attorney or agent during that process to ensure that they are complying with all applicable legal requirements.

As described in 20 C.F.R. 656.10 (b)(2)(i) and (ii), attorneys, agents, and foreign workers are prohibited from interviewing and considering U.S. workers during the PERM process. The DOL does not, however, prohibit attorneys and agents from performing analyses necessary to counsel their clients on legal questions that may arise with respect to this process. The employer must be the first to review the applications for employment and must determine whether a U.S. applicant's credentials meet the minimum qualifications for the position unless the attorney or agent is the representative of the employer who normally performs this function for positions, which are not the subject of a PERM application. The initial review of the applications and the final determination of all applications by the employer ensure the DOL that the consideration process is as close to the employer's non-PERM-related hiring process as possible. The employer can seek advice from the attorney and agent throughout the consideration process on legal questions concerning compliance with governing statutes, regulations, and policies.

In addition, types of actions prohibited by 20 C.F.R. 656.10(b)(2)(i) and (ii) include:

- Attorneys and agents may not receive resumes and applications directly from the U.S. workers who respond to the employer's recruitment efforts. Attorneys and agents may not conduct any preliminary screening of applications before the employer does, other than routine clerical organizing of résumés, which does not include any assessment of or comments on the qualifications of any applicants, unless the attorney or agent normally performs this function for positions which are not the subject of a PERM application. The attorney or agent may not withhold any résumés or applications from the employer that it receives from U.S. workers.
- Attorneys and agents may not participate in the interviewing of U.S. applicants, unless the attorney or agent normally performs this function for positions

that are not the subject of a PERM application. The DOL may audit applications if they find evidence of improper attorney, agent, or foreign worker involvement in considering U.S. applicants, and it may subsequently require supervised recruitment to determine whether the employer's recruitment and hiring processes were conducted in good

faith and to ensure adherence to all statutory and regulatory requirements. The DOL will scrutinize the processes that the employer used to reach its determination that there are no qualified, available, able and willing U.S. workers, including evaluating whether the employer deviated from its normal processes in evaluating the qualifications of U.S. applicants.

Department of State Ending Exchange Visitor Program for Flight Schools

In a reversal of existing policy that has been in place for 20 years, the Department of State (DOS) has determined that it will terminate the Exchange Visitor Program sponsor designations (J-1) of the eight current sponsors of flight training programs. The policy changes will take effect on June 1, 2010.

Since 1949, the DOS has designated certain entities to conduct training programs for eligible foreign nationals. For the past 20 years, flight training activities have been included in these training programs, and eight organizations are currently involved facilitating legal entry into the United States for the purpose of flight training. However, in December 2007, the DOS issued a Final Rule permitting the termination of certain programs that were determined to either no longer further the department's

public diplomacy mission or otherwise compromise the national security of the United States. Pursuant to this rule, the DOS has determined that the flight training programs involved in this program no longer further the public diplomacy mission of the department, nor does the DOS have the expertise or resources to fully monitor the flight training programs.

Note that with respect to an exchange visitor who already is in the United States at the time of the program termination, flight training sponsors must continue to fulfill their obligations until the exchange visitor's program is completed. Sponsors must also notify prospective exchange visitors who have not yet entered the United States that the program has been terminated.

DOS Publishes October 2008 Visa Bulletin

The DOS published its Visa Bulletin summarizing the availability of immigrant visa numbers for the month of October 2008. For employment-based immigrant visa petitions, visa numbers are current for nationals of all countries in the first preference category. In the second preference category, visas are available for nationals of China (mainland born) with a priority date of April 1, 2004, and India with a priority date of April 1, 2003. Visa numbers are current for all other nationals in the second preference category. For the third preference category, visas are available for nationals of China (mainland born) with a priority date of October 1, 2001; India with a priority date of July 1, 2001; Mexico with a priority date of July 1, 2002; and the Philippines of January 1, 2005. Visas are available for nationals who fall within the third preference category from all other countries with a priority date of January 1, 2005.

Searches of old criminal records end school jobs Sweeping changes in state laws intended to keep students safe have uncovered criminal offenses -- some decades old -- that are costing school employees their jobs.

The impact has been especially evident among nonteaching employees who, until this year, did not have to undergo the kind of comprehensive background checks done for teachers.

Now, staffers such as custodians, secretaries and cafeteria workers may face dismissal for newly unearthed offenses committed years ago.

John Reccord, a night supervisor for the Orange school district, has worked there for nearly two decades. But he stands to lose his job for an offense to which he pleaded guilty 35 years ago and was sentenced to probation.

"I have been at the school for 19 years without any problems," Reccord said. "This is going to affect people who did something when they were young. Why should they lose their jobs now?"

He is one of a handful of Orange school employees facing an uncertain future as a result of the background checks.

Statewide, it's unclear how many school employees are in a similar predicament. The Ohio Department of Education doesn't keep track of nonlicensed employees, and a union representing such nonteaching staff also had no tallies available.

Shaker Heights is among the area school districts grappling with the issue.

"We absolutely need to protect children by checking the background of school employees. The problem we're struggling with is that schools are being forced to let some exemplary employees go," said Robert P. Kreiner, business administrator for the Shaker Heights school district.

"It doesn't make a lot of sense to me that a school district has to dismiss a veteran employee who was convicted of assault after getting into a fistfight at age 22, paid his debt to society, has stayed out of trouble, and has a spotless work record," he said.

It wasn't until 1993 that nonteaching school employees who had direct contact with students were required to undergo an Ohio Bureau of Criminal Identification and Investigation background check.

State legislators expanded the employee misconduct reporting laws last year to require that all school employees -- teachers and nonteaching employees regardless of whether they have student contact -- undergo background checks by both the Ohio Bureau of Criminal Identification and Investigation and the FBI.

For nonteaching employees, the checks will be performed when someone is hired and every five years after that.

Rep. Brian Williams, an Akron Democrat and a supporter of the new laws, said they were put in place to protect children by ensuring accountability at the state and local levels. School districts should be responsible for the conduct of employees, he said.

"We need to do everything we can to create a safe haven for kids," Williams said.

Some offenses uncovered in the background checks require immediate dismissal; others allow employees to keep their jobs if they can show they have been rehabilitated.

Reccord, then 22, pleaded guilty in 1972 to a crime that triggers automatic dismissal.

Although he maintains his innocence, Reccord said he pleaded guilty to what is now known as robbery on the advice of his court-appointed attorney. He said the attorney told him he could face jail time if the matter went to court, so the young man opted for the guilty plea and five years' probation.

Orange school officials wouldn't comment directly on Reccord's situation, citing privacy issues. However, the district acknowledged that it's reviewing the employment of a handful of staffers after offenses turned up in their criminal background checks.

David Burnison, director of human resources at Orange, said it's difficult for an employee with a long history of successful employment to be confronted with an offense that occurred 20 or 30 years ago.

"They would feel that their debt to society has been paid," Burnison said. "But it's also hard to argue that an employer wouldn't want to know about certain offenses."

In the Cleveland Metropolitan School District, criminal background checks have so far turned up two employees, both laborers, with serious violations -- burglary and aggravated assault. Both resigned before hearings could be conducted.

The status of about 60 Cleveland school employees is unclear because they have not yet submitted to the background checks.

In Shaker Heights, two nonteaching employees have left the district as a result of their criminal background checks. One was terminated and the other resigned. A third employee's case is pending after the background check revealed a dismissable offense, according to Peggy Caldwell, a school spokeswoman.

Eight other nonteaching staff was found to have lesser offenses. They must provide evidence that they have been rehabilitated to keep their jobs.

Some of the cases are quite old. One dates to 1983, Caldwell said.

That's too long ago for Charles See, executive director for Lutheran Metropolitan Ministry's community re-entry program, which supports people adjusting to life after prison. He said it's unfair not to take into account how a person has lived after committing a crime.

"People change. People are rehabilitated," he said. "We need to make sure our laws allow people to rebuild their lives and contribute to the community."

Officials at the Ohio Association of Public School Employees said they argued for a "grandfather" provision in the General Assembly, but the proposal never gained traction. The 37,000-member association represents custodians, secretaries, food service workers, bus drivers, and maintenance personnel.

Hollie Reedy, director of legal services at the Ohio School Boards Association, said the new laws revamping background checks were layered on top of an existing system.

And that has created some confusion at school districts.

"Sometimes the new requirements don't mesh with the already existing requirements," Reedy said. "This wasn't put together in the most thoughtful way."

Best free resources for workplace law

by Marcia McCormick

There are many resources that lawyers rely on to keep them up to date on the latest developments in workplace law and business practices. And because costs associated with labor are so significant, company executives and HR professionals, too, join lawyers in creating a big market for newsletters, databases, and commentary on workplace law. That demand has created quite an industry in fee-based resources.

So it might surprise you to learn that some of the best resources on workplace law are free. Here are some of the highlights.

The single best resource on federal workplace laws is U.S. Department of Labor's Website, www.dol.gov, provides resources on all of the laws that the Department enforces. The site is indexed by subject, wages, benefits, unemployment insurance, etc. It's also indexed by audience: workers, employers, job seekers, veterans, and more. The DOL enforces the largest variety of federal laws governing the workplace.

One division of the Department of Labor deserves special mention, even though it is not technically a source of legal information, and that is the Bureau of Labor Statistics, www.bls.gov. This is a great place to go to find workplace statistics.

For workplace safety issues, consult the Occupational Safety and Health Administration, www.osha.gov. That,



too, is a separate agency within the Department of Labor.

The best resource for federal equal employment opportunity laws is the Equal Employment Opportunity's website at eoc.gov. In addition to links to the laws the EEOC enforces, the EEOC has posted its guidance publications.

Although a relatively small percentage of the private workforce is represented by a union, the National Labor Relations Act, which governs collective bargaining, also governs almost every workplace in the country and protects workers even if they do not join unions. The best resource on this law is the National Labor Relations Board, nlrb.gov.

State laws are a little more difficult to track down, but Cornell University and the Legal Information Institute have collected links to state laws at Wex, a collaborative database: topics.law.cornell.edu/wex/table_labor.

For newsletters, a great site for analysis and commentary on the employer side is the Employment Law Information Network, www.elinonet.com, and on the employee side is Workplace Fairness, www.workplacefairness.org.

Steven E. Gall, President
Gall & Gall Company, Inc.
The Information Source



Contact Information:

Phone: 937-264-4900

Fax: 937-264-4903

sgall@gallgall.com

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
- Piqua Area Chamber of Commerce
- Tipp City Area Chamber of Commerce
- Trotwood Chamber of Commerce
- Troy Area Chamber of Commerce
- Vandalia-Butler Chamber of Commerce



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