



Who pays for uniforms?

Q We require employees to wear uniforms. Can we deduct from their paychecks the money to buy and clean the uniforms? — L.B., Massachusetts

A You can, but with caution. Under federal law, the payroll deductions—whether for the uniform cost, cleaning or both—cannot reduce an employee’s wages below the minimum wage. Similarly, the deductions can’t reduce the amount of overtime pay due to employees in any workweek. **Note:** Some states require employers to foot the bill for uniforms.

Don’t require employees to visit psychologist

Q Can we require an employee to receive psychological counseling or treatment if his behavior has become a hindrance to his job performance? — N.M., Kansas

A No, you can’t require employees to receive any medical treatment—psychological or otherwise—as a condition of continued employment. But you’re not without recourse. Even if an employee is protected by the ADA (i.e., he or she has a mental condition that rises to the level of a “disability”), that employee is still subject to discipline, up to termination, if he or she violates your policies regarding misconduct. **Final tip:** Remember the “golden rules” of employee discipline: evenhanded enforcement and careful documentation.

Must we post job openings in-house?

Q We rarely post high-level management jobs internally. Must we post all jobs internally so that someone can’t file suit claiming “pre-selection” or that he or she never had a chance to apply? — K.L., California

A While no law specifically requires that all vacant jobs be posted in a particular way, the failure to post vacancies internally opens the door to “glass ceiling” discrimination claims. This is especially true if your practice has resulted in a

homogeneous group of high-level managers. **Bottom line:** Cut the chances of lawsuits by regularly posting *all* job vacancies.

References: Stick to the facts

Q An employer asked us for job verification on an employee we fired. It has a written consent form from the worker allowing the query. Can I release information regarding the ex-employee’s history with us? — R.F., Colorado

A Don’t even think about providing a negative job reference before your attorney reviews the release! In recent years, courts have become more and more tolerant of defamation claims based on job references. From a liability perspective, your safest bet would be to provide nothing more than to verify the former employee’s job, title and dates of employment.

‘Porn spam’: Is it sexual harassment?

Q Some of our employees get a lot of spam email that advertises porn sites. I’m concerned that an employee will consider this junk as creating a hostile work environment. What can we do? — M.C., Minnesota

A Yours is a problem facing many employers. To protect your organization, attack it in three ways:

1. **Adopt a communications policy** that says employees may use computers for business purposes only, and that visiting a website containing sexual material is grounds for discipline.
2. **Invest in software** that filters and screens your email system based on sexual content.
3. **Instruct employees** to delete pornographic spam without opening the messages. Employees who get lots of porn spam may be accessing porn sites. Investigate and act promptly.

Run FMLA time concurrently with sick leave

Q We have an employee who is going to be out eight weeks for a qualifying serious health condition. The employee isn’t requesting to use FMLA leave because she has enough paid sick leave. Can employees choose *not* to use FMLA leave even though they meet the qualifications? And if they qualify for FMLA leave, can we make them use it whether they want to or not? — C.T., Georgia

A It is the employer’s obligation to designate leave as FMLA-qualifying whenever it becomes aware of an FMLA-qualifying event. It’s not up to your employees to pick and choose when they want to use FMLA time, even if they have sick time or other forms of paid leave in the bank. You should immediately designate this employee’s eight weeks as FMLA time, to run concurrently with her paid sick leave. That way, she’ll only have four weeks of unpaid FMLA time remaining for the year after she uses up her paid leave. You also should check your FMLA policy to make sure that it requires employees to use FMLA time concurrently with their sick time.

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