VIS. CONNECTIONS

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We are happy to provide you our publication for nonprofit risk managers, as part of our service to you. The titles in the contents section link directly to their articles, so you can navigate quickly. If you need to change the email address to which this is sent, please contact us. Be sure to include your name, organization and address. You also are welcome to call us at 800.468.4200 for assistance.

In this issue…

'Remote' risks have closed in

The change has happened gradually – not as fast as the technological innovations that have made it possible – but by now the time boundaries between "working" and being "off" have almost disappeared in many organizations…perhaps yours among them. With the plethora of communication devices available, many employees whose official work schedule is daytime hours are composing or responding to emails just before going to bed at night -- just as they might have taken some personal Web-browsing or Facebook time during "working" hours earlier that day. With smartphones, teleconferencing, Web-based presentation programs and other tools that were not so prevalent a few years ago, is easier than ever to stay plugged into work from

remote locations. According to the contact-management company Xobni, an estimated 59% of employees at least check their email while on vacation. Many will do more work than that; e.g., if everyone else wants to have a conference call the week you're at the beach, you might not mind making yourself available for an hour then, too.

This change can enhance productivity, and give employees flexibility that many love, but there also are risks:

Wage and hour issues – Are employees who are nonexempt under the federal Fair Labor Standards Act and your state wage-and-hour laws doing any work at home or other remote locations, for which they aren't being paid? You might not even be aware that a nonexempt employee who is able to check office email remotely is reading and responding to emails. He or she might be doing it because of a perceived expectation to do so (exempt employees do it, so…), or to get a head start on the next day's work, or because they like the chime that means a new email has arrived…or for other reasons. But, as Mary Hughes Cherry and Jennifer S. Cluverius of the Carolinas-based law firm Nexsen Pruet pointed out in a recent *Charleston Regional Business Journal* article, "The general rule is that all time spent in physical or mental exertion on behalf of the employer counts toward hours worked and must be compensated."

Last year, T-Mobile settled out of court in a suit filed by nonexempt employees who were being required to check email on their smartphones, but weren't compensated for the time involved.

If you have nonexempt employees, you should have a clear policy on working hours/overtime, and communicate it to employees and supervisors alike. Do not tolerate employees working at times when they are not authorized to work. Also, make sure supervisors do not create situations that could pressure nonexempt employees to work "off the clock" (such as sending those employees emails after hours). If some work at home or other remote locations is authorized, require accurate and up-to-date time logs, even for the smallest increments of work time. Make sure supervisors do not convey the impression to employees that the logs are not important.

Workers' compensation – A Risk and Insurance Management Society survey of its members found that 50 percent had participated in a conference call while driving. It has been well-established that cell phone conversations divide a driver's attention and increase the risk of an accident. Texting while driving, of course, is even worse, and some of those texts are work-related. For that matter, someone can be walking down the street and texting her supervisor, and have an accident. Or develop carpal tunnel syndrome because the keyboard setup in at-home workstation was not ergonomically sound. All these injury scenarios and many others could be compensable under workers' compensation laws. When employees are working in remote locations, the potential is there for accidents that would not occur in the more controlled office environment.

It is well worthwhile to identify these kinds of risks in your organization, and take whatever practical steps you can to minimize them. Most insurance carriers' loss control departments can provide resources.

Privacy – This risk applies particularly with respect to electronic and telecommunications equipment you provide or whose cost you reimburse as the employer – including computers, smartphones or other devices that employees use away from the office, and might use outside of normal work times. Your formal policy should protect your right to intercept and read any communications using that equipment, regardless of where it is being used.

Last year, in *City of Ontario v. Quon,* the Supreme Court ruled that the city did not violate an employee's Fourth Amendment protections against unreasonable search and seizure, when it intercepted objectionable text messages on city-issued alphanumeric pagers and took disciplinary action. But the court declined to address what it called "far-reaching issues" of privacy in the matter, on the grounds that technology is evolving so rapidly. This left federal and state courts with considerable discretion in handling future cases – a good reason to have a formal policy that limits employee expectations of privacy, even while working remotely using technology provided by the organization.

Resources

www.worldatwork.org – The "resources" section of World At Work has useful guidance on Fair Labor Standards Act compliance, among other topics. For Department of Labor information, go to www.dol.gov and click on "work hours" in the topic list.

Privacy Rights Clearinghouse – www.privacyrights.org

Please share your 9/11 "Day of Service and Remembrance" plans

As you might be aware, each September 11 is the federally recognized National Day of Service and Remembrance, organized to honor the victims and survivors of the September 11, 2001 terrorist attacks, as well as all the police, firefighters, emergency medical personnel, recovery workers, and volunteers of the many organizations that responded in the days, weeks and years following. The commemoration has evolved in scope, and undergone some name changes in the ten years since the attacks.

For the tenth anniversary observance, MyGoodDeed, Inc. and the HandsOn Network are inviting individuals and groups to post information at www.911dayofservice.org, about planned activities to commemorate the occasion.

At VIS®, we also would like to know of any special activities your organization has planned for the National Day of Service and Remembrance, and share that information in the next issue of *VIS Connections.* Please email the information to William Henry. Best wishes for those special events, as well as for all the other good work you do year-round.

403(b) plans – features and trends

The Profit Sharing/401(k) Council of America's most recent annual survey of sponsors of 403(b) retirement plans – the most widely used plans by nonprofit organizations – provides an overview of the most popular features and trends among those plans, as sponsors craft their plans to meet the needs of participants, maintain equilibrium in uncertain investment markets, and comply with Labor Department regulations on fiduciary responsibility.

Some highlights of the Council (www.psca.org) survey of 712 plan sponsors:

Organization contributions

82.6 percent of organizations make contributions to the plan. 36.9 percent make matching contributions only, 29.0 percent make non-matching contributions only, and 16.7 percent make both matching and non-matching contributions to the plan. The majority of organizations made contributions in 2010 when provided for in their plans. The average organization contribution per active participant in 2010 was $3,450, and the median contribution was $2,364.

Participant Contributions

96.4 percent of plans permit participant contributions, and 6.6 percent of plans require participants to contribute to the plan as a condition of employment.

Vesting

57.4 percent of plans provide immediate vesting for non-matching employer contributions, and 60.5 percent of plans provide immediate vesting for matching contributions. Among plans that do not provide immediate vesting, graduated vesting is the most common arrangement for both matching and non-matching contributions.

Eligible employees

84.8 percent of employees at organizations surveyed are eligible to participate in their organizations' 403(b) plans.

Participation Rates

The average participation rate of eligible employees with a balance in the plan is 74.7 percent. An average of 64.2 percent of eligible employees contributed to their plans in 2010. The average account balance for active plan participants was $70,794.

Investment options

Plans offer an average of 26 funds for organization contributions and an average of 28 funds for participant contributions.

Investment policy statements

46.2 percent of plans know they have an investment policy statement, but 34.6 percent of plans surveyed are unsure.

Automatic Enrollment

12.3 percent of plans (29.6 percent among large plans) have an automatic enrollment feature.

The most common default investment options are target-date funds (34.2 percent of plans). Just over 69 percent of plans offer a target date fund as an investment option (up from 51.2% in 2009).

Catch-up contributions

Catch-up contributions for participants age 50 and over are permitted in 93 percent of plans. Among eligible participants, 15.4 percent made catch-up contributions in 2010. Of organizations that permit catch-up contributions, 21.1 percent match them.

Plan education

The most common educational approaches still are enrollment kits (89.6 percent of organizations) and on-site one-on-one meetings (63.1 percent). But there has been an increase in the use of email (59.5 percent now), and increases in online programs or the organization's intranet (50.2 percent now) to educate participants. Webinars were used by 15.1% of organizations in 2010, up from 9.7% in 2009.

Roth contributions

16.9 percent of plans permitted Roth after-tax contributions in 2010, up from 13.9 percent of plans in 2009. Roth availability is more common at large organizations, with 27.8 percent of plans with 1,000 or more participants offering that option. Nine and a half percent of participants made Roth contributions when permitted.

Investment advice

More than 45 percent of respondents used an independent investment advisor in 2010 to help with fiduciary responsibilities, up from 41 percent in 2009.

Loans and hardship withdrawals

72.1 percent of plans allow participants to borrow against their plan assets. 49.5 percent allow loans for any reason, while 22.6 percent allow loans only in hardship situations. In 2010, 1.6 percent of plan participants allowed to take hardship withdrawals actually took them.

Preparation of the 5500

84.1 percent of plans file a form 5500. The form 5500 is prepared by the recordkeeper at 34.3 percent of organizations, by the auditor at 28.0 percent, and by a form 5500 aggregator at 14.9 percent of organizations. There was an 11 percent increase in such assistance between 2009 and 2010.

ADA amendments expand definitions, employer responsibility

Under final regulations implementing Americans With Disabilities Act amendments that became law January 1, 2009, the Equal Employment Opportunity Commission (EEOC) will focus on an employer's efforts to accommodate a disability that an employee or applicant has claimed, not on the nature or extent of that disability. The effect is that more employees and applicants can be covered by the anti-discrimination law, and employers might encounter more circumstances in which they risk violating the law if they, their hiring managers and supervisors are not aware of the employer's responsibilities.

Health conditions that the EEOC says will "virtually always" meet the standard of disability now include a number of common conditions, including diabetes. Medication or other mitigating measures (except eyewear) cannot be taken into account in determining whether a condition constitutes a disability that impairs a "major life activity." Also, the regulations state that a "major life activity" does not have to be "of central importance to daily life." A number of bodily functions, many of which might have no obvious effect on an individual's ability to do his or her work, are enumerated as major life activities.

In an analysis, the law firm of Mintz Levin notes that the expanded definitions and requirements for broad interpretation of disabilities "effectuate Congress's desire to curb extensive investigation into the existence of a disability, and focus on whether an employer unlawfully discriminated against an individual." The regulations themselves state that the "primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether an individual's impairment substantially limits a major life activity."

Resources

More information is available on the EEOC Website, at www.eeoc.gov/laws/statutes/adaaa.cfm.

Update – IRS automatic revocation of tax-exempt status

The previous issue of *VIS Connections* included an announcement that the IRS has listed over 350,000 nonprofit organizations in the United States that are at risk of losing their tax-exempt status as a result of not filing Form 990 (or the appropriate variation of that form) for three straight years. Just a day after we published the article, which included a link to the IRS list, the list was removed from that Web page, so many readers were not able to find it. Here are the [Excel spreadsheets by state](), in their new location on the IRS site. You also can find the list by going to [www.irs.gov](), and clicking the "Charities and Nonprofits" tab.

Even if you are confident you have complied with the filing requirements, sometimes mistakes are made, so it's a good idea to make sure your organization is not on the list, and contact the IRS if it is.

Protecting tax-exempt status is not the only reason to be very careful to comply with the new Form 990 requirements. In an environment where contributors have so many options, it is important that a nonprofit organization show its mission, accomplishments, and efficiency in the best light possible. The Form 990 is a public document, and might be decisive for the potential contributor who is trying to determine which organization(s) to support.

New governance, ethical practices resources available

Independent Sector, a coalition of some 550 charities, foundations and corporate giving programs, has launched the new online [Resource Center for Good Governance and Ethical Practice](), a collection of over 250 model policies, research papers and other resources designed to help nonprofit organizations operate in an accountable and ethical manner. Most are free of charge.

One featured resource is the [Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations](), which outlines 33 principles involving legal compliance, public disclosure, effective governance, financial oversight and fundraising.

"Nonprofit and philanthropic organizations have a responsibility to themselves, donors, the populations they serve, and the greater public to hold themselves accountable and operate to the highest ethical standards," said Diana Aviv, president and CEO of Independent Sector. "This Resource Center will further assist boards of directors and key staff in assessing the areas where their organizations are living up to that responsibility and where there is room for improvement."

Checklist to minimize the most common volunteer risks

A few practical measures to consider, in addressing the most common risks resulting in claims we have seen in the VIS® program:

☐ Clear walkways, building entrances, steps, etc. of anything that might cause a volunteer to slip or trip.

☐ When volunteers are assigned to another location, make sure those areas also have been freed of fall hazards, and that volunteers are familiar with all the areas where they will need to walk.

☐ If volunteers are asked to lift or carry:

☐ Is the material light enough and compact enough to lift safely?

☐ Have volunteers been trained in safe lifting techniques?

☐ Can you reduce the risk of injury by rearranging items to be lifted, assigning more (or stronger) volunteers to the task, or obtaining hand trucks, a dolly or other materials-handling equipment?

☐ Identify what equipment or tools volunteers use.

☐ Have they been trained to use these properly?

☐ Have they demonstrated that they truly can use these safely?

☐ If there a risk of cuts or scratches in the volunteer's work, require long sleeves and gloves.

☐ Consider any allergies or special medical needs the volunteer might have, before assigning tasks.

☐ Have – and enforce – a formal policy for screening and supervising volunteers. Require volunteers to follow your rules, and hold them accountable for doing so.

☐ Make sure volunteers know – and follow – the chain of command for reporting abuse or other problems they observe in the course of their work.

☐ For volunteers who are caregivers, train them in the communication aspects of their duty, so they can understand the wants, needs and fears of the person they are caring for.

☐ Obtain motor vehicle records and copies of drivers' licenses for all of the volunteers who will drive your organization's vehicles or use their own cars on organization business.

☐ Devote adequate time to vehicle safety, particularly with respect to driving in inclement weather.

☐ Monitor the driving of elderly volunteers. VIS® can suggest resources for help in doing this. Contact Executive Director William Henry for more information.

Ready for some refreshment?

Some cool ideas you might find refreshing this summer or any other time, from Susan J. Ellis, President of Energize, Inc. (www.energizeinc.com), a training, consulting, and publishing firm that specializes in volunteerism…

One potent form of recognition is to ask someone to give advice or input. It is flattering to the person and a truly effective way to get knowledgeable feedback on a wide variety of things.

Invite volunteers who have been with you for over a year to take a break from their regularly scheduled tasks and do a short special assignment. The change of pace will be welcome and affirms that each volunteer has much more to contribute than a single position. Here is a starter set of ideas for activities that can be done in 30 minutes to two hours.

- Pair off volunteers from different units or doing different work. Have each spend an hour observing the other, learning what's going on in another part of the organization. Then hold a meeting to find out what surprised or impressed them about the other's work - and consider using those comments in your next recruitment campaign.

- Consider doing the above idea by pairing volunteers from your organization with volunteers in organizations where you are friends with the volunteer program managers. Such an "exchange program" can be fun or at least interesting, and opens the door to possible new perspectives on everyone's work.

- Ask volunteers of varying longevity to look at the materials you use in orienting new volunteers, make sure all the facts are up to date, and recommend new things that might be added. Review the volunteer handbook in the same way.

- Ask all volunteers to record an audio clip sharing what the best thing is about volunteering in your organization (and give you permission to use it, with or without their names).

- On a selected day, ask volunteers to use their cell phones or digital cameras to take photographs of themselves and other volunteers at work. Collect these and post an album to a photo-sharing Web site as a "Day in the Life of Volunteers in Our Agency." When it's ready, make some lemonade and invite everyone to see the slide show projected on a screen. (You can then use these shots in all sorts of recruitment and recognition presentations.)

- If you have a good spot near your building, hold a series of volunteer meetings at a shady spot outside. Invite everyone to bring beach towels or folding chairs and use the change of environment to spark new ideas on some strategy you are hoping to implement in the next few months.

CIMA service team for VIS® members

Volunteer insurance:
Victoria W. Brooks, Account Executive
Joan R. Wankmiller, Account Executive

Directors and officers liability:
Aaron Jones, Account Executive

Laurie S. Coleman, Senior Vice President

Toll-free: 800.468.4200

We are always happy to serve our members. Please let us know, any time we can be of help!

VIS® Commitment

Volunteers Insurance Service is committed to providing its members a complete resource for the nonprofit organization's risk management needs. Our services include:

- Publishing *VIS® Connections* as one of our information resources for members;

- Maintaining for members' use a library of information relating to management of risks in the nonprofit organization;

- Researching available and appropriate insurance relating to volunteer activities;

- Designing and administering insurance programs, and compiling underwriting information;

- Providing consultation on risk management issues at no additional charge to our members, via a toll-free line (800.468.4200);

- Assisting members, on request, with matters relating to insurance.

Insurance and administrative services are provided to VIS® and its members by The CIMA Companies, Inc. and/or one of its affiliated companies.

VIS®'s Articles of Incorporation, Financial Information, and a list of the members of VIS®'s Board of Directors are available to VIS® Members upon request.

CIMA licensing information

The following licensing information is being provided in order to comply with state governmental regulations:

Volunteers Insurance Service Association, Inc. is a risk purchasing group formed and operating pursuant to the Liability Risk Retention Act of 1986 (15 USC 3901 et seq.)

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