

A Publication of D. Gallant Management Associates



May I dock an employee's pay as a disciplinary penalty?

This question recently came into D. Gallant Management Associates from one of our clients. Dooly, Holt and Feister in the August 2007 Issue of HR Magazine explain it best:



Although it is discouraged by many experts, employers may in some circumstances dock pay to penalize an employee for violating a written policy.

While an employer cannot refuse to pay a nonexempt worker for hours that the employee has worked, the Fair Labor Standards Act (FLSA) does not prohibit employers from reducing a nonexempt worker's hourly wage rate as a disciplinary action. Therefore, unless there is a union contract or other employment agreement that provides otherwise, under federal law employers are entitled to reduce pay of nonexempt workers, as long as workers are still paid the minimum wage. Employers may not dock the pay of a minimum wage earner.

Exempt employees are usually paid salaries, and any reduction to those salaries must comply with the FLSA regulations, or the employees' exempt status will be jeopardized. Under 29 C.F.R. 541.602, deductions from exempt employees' pay can be taken for disciplinary suspensions, but they must be made on a full-day basis only.

In addition, the suspension must be imposed as a result of a serious violation of workplace conduct rules, such as engaging in dangerous behavior in the workplace or committing sexual harassment. The Department of Labor excludes suspensions related to performance issues and poor attendance from the definition of "violations of workplace conduct rules."

Finally, the suspension must be part of a "written policy applicable to all employees." Courts interpreting the FLSA rules, however, also have ruled that if an employer routinely makes salary deductions of less than a full week for disciplinary reasons or has a policy that creates a significant likelihood of such deductions, the salary requirement for exempt employees is not satisfied. **The short answer: Find another way to discipline your employees!**

AMENDMENTS TO MAINE FAMILY MEDICAL LEAVE: Effective 9/20/07

Governor Baldacci recently signed into law two bills that expand Maine's Family Medical Leave Law for employees.

Domestic Partner Leave: Amendment allows qualified employees to take up to 10 weeks of protected, unpaid leave from work in a 2-year period to care for the employee's domestic partner, or domestic partner's child, with a serious medical condition, or when the domestic partner gives birth to, adopts or becomes a foster parent to a child. Domestic partnership is defined in the statute to mean two mentally competent adults living together for at least 12 months, who are not legally married to or separated from another individual, are the sole partners of one another and expect to remain so, and are jointly responsible for one another's common welfare as evidenced by joint living arrangements, joint financial arrangements, or joint ownership of real or personal property.

Intermittent Leave: A second amendment adopting intermittent leave resolved what had been some confusion in the law. Prior to the amendment, an employee covered by the MFMLL who needed to be out of work sporadically, such as for 3 days a month for cancer treatments, arguably had the time out of the office protected only for those treatments occurring within 10 weeks of when the first leave occurred. The state law, as amended, now clearly allows that same employee to take protected leave for treatments until the employee has taken a total of 50 days of leave within a 2-year period. This aligns the law more closely with the federal law which always permitted intermittent leave. The statute provides that when medically necessary, an employee may take intermittent leave or work a reduced work schedule without fear of job repercussions, so long as the total amount of leave taken does not exceed 10 weeks in a two year period.

Breast Cancer Report

80

Percentage of women with breast cancer who have no family history of it.

4

Number of hours of exercise per week that may reduce breast cancer.

40

Age at which all women should start to get annual or biannual mammograms.

98

Percentage of women who catch tumors early who are alive five years later.



D. Gallant Management is committed to raising breast cancer awareness.

Early detection saves lives.

A New Relationship has been Created:

d.gallant MANAGEMENT ASSOCIATES is partnering with
Tuohey Associates for the benefit of our clients and prospective clients, to host:

Get 'em ... Keep 'em ... Grow 'em !

A training program specific to attracting the right employees for your business, implementing the best retention strategies known today, and teaching employees the fundamentals to grow and develop into your organization's tomorrow!

A one-day public seminar being held in Portland on:

Friday, November 16th 9:00 a.m. – 4:00 p.m.

See flyer insert for details.

2008 Budgeted Pay Increases

- According to Mercer HR Consulting's US Compensation Planning Survey of 1,000 employers across the United States, the 2008 Budgeted Pay Increase is **3.8%**.
- According to a recent survey of companies throughout New England conducted by D. Gallant Management Associates, the 2008 Budgeted Pay Increase is **3.6%**.

Deborah Gallant, SPHR has just received designation as a:

Certified Compensation Professional (CCP)



The designation is known throughout the global rewards community as a mark of expertise and excellence in all areas of compensation. The CCP designation requires a passing score on nine examinations.

Congratulations Deb!

CURRENT SEARCHES

Physician Assistant/Nurse Practitioner:

Northern Adirondack Planned Parenthood - located in the heart of the Adirondack Mountains in New York, is searching for a qualified candidate for their Franklin County Centers.

VP of Operations and VP Finance/CFO:

TruChoice Federal Credit Union - located in Portland is searching for qualified individuals to fill both of these high-level positions.

**For immediate consideration,
please forward a resume and
letter of interest to:**

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75 Pearl Street - Portland, Maine 04101
E-Mail: resumes@dgalant.com Fax: (207) 773-0101

We gladly accept referrals.