HR COMPLIANCE LIBRARY
Ideas & Trends

FEBRUARY 3, 2016
ISSUE NO. 779

INSIDE

EQUAL EMPLOYMENT

EEOC clarifies protections for HIV-positive workers and increases enforcement actions

HIV in the workplace recently has become a focal point for the Equal Employment Opportunity Commission (EEOC or Commission), both in terms of enforcement and guidance. Although the EEOC long has considered HIV infection to be a disability within the scope of the Americans with Disabilities Act (ADA), the Commission has not previously directed its attention to the condition in such a targeted fashion. This suggests that going forward, employers will be under greater scrutiny in connection with how HIV positive applicants and workers are treated.

Enforcement

In 2014 alone (most recently available data), the EEOC resolved more than 200 ADA-related discrimination charges involving HIV conditions. In connection with these charges, the Commission recovered over $825,000 for job applicants and employees with HIV allegedly denied employment or reasonable accommodation. Although these figures represent small fractions of the Commission's overall enforcement statistics, they are significant as a subset that involved HIV only. Employers should expect that the EEOC will continue its aggressive treatment of HIV-related cases.

New publications

On December 1, 2015, in conjunction with World AIDS Day, the EEOC posted two documents online that address the rights of individuals with HIV. Although the EEOC issued general guidance on this topic in 2012, the new publications provide a more comprehensive and detailed account of the Commission's views about protection for HIV-infected workers.

Guidance for employers and employees. In the first publication, Living with HIV Infection: Your Legal Rights in the Workplace Under the ADA, the Commission makes clear that HIV-positive employees: (1) have workplace privacy rights; (2) are protected from discrimination because of their condition; and (3) may be entitled to reasonable accommodations. With respect to privacy rights, the EEOC describes the circumstances in which employers generally are allowed to ask medical questions (*e.g.,* when the employee asks for a reasonable accommodation), but emphasizes that employers must keep the information confidential, including from co-workers.

With respect to reasonable accommodations, this publication provides examples of accommodations that might enable an employee with HIV to perform the essential functions of his or her job, such as more frequent breaks to rest or use the restroom,

Wolters Kluwer

modified work schedules or unpaid time off to accommodate medical appointments or recuperation, and/or permission to work from home. The Commission notes for the benefit of workers that "[b]ecause an employer does not have to excuse poor performance, even if it was caused by a medical condition or the side effects of medication, it may be better to ask for an accommodation before any problems occur or become worse."

Finally, the publication advises that harassment is prohibited under the ADA, and that employers must not discriminate against an employee simply because the employee has HIV infection through actions such as termination, rejection for a job or promotion, or forcing an employee to leave. The EEOC emphasizes (with generous underscoring) that employers "cannot rely on myths or stereotypes about HIV infection when deciding what you can safely or effectively do. Before an employer can reject you based on your condition, it must have objective evidence that you are unable to perform your job duties, or that you would create a significant safety risk, even with a reasonable accommodation."

Guidance for health care professionals. The second publication, Helping Patients with HIV Infection Who Need Accommodation at Work, is a guide for health care professionals who treat patients with HIV. It provides guidance about the basic requirements of the ADA, the types of accommodations to which patients may be entitled, and what physicians can do to assist their patients in securing accommodations. The publication also includes specific instructions on how to manage HIV-positive workers, describing the information that health care professionals should provide to their patients' employers, and even suggesting that physicians describe HIV infection as an "immune disorder" in the event a patient does not want to reveal his or her HIV status to an employer.

Predicaments for employers

The EEOC's heightened enforcement of employer obligations in HIV-related situations, together with the notion that at the same time, employers should be careful to maintain privacy about HIV conditions, have obvious implications. Right or wrong, many people share the perception that HIV-infected individuals pose risks to others, particularly in hazardous environments where employees work closely together. Employees likely will be surprised to know that they are not automatically entitled to know that a co-worker is HIV positive. Further, if privacy is breached in such a situation, morale issues may arise among workers who believe they were unfairly placed at risk. Notably, these concerns do not necessarily involve discriminatory bias, but simply may result from dissatisfaction with the inability to take reasonable precautionary measures both to accommodate the infected worker and to protect those around him or her.

Although some cases of undue hardship or safety risk certainly may arise, the majority of situations will require accommodations for HIV-positive workers. It will not be enough for an employer to defend itself based on general concerns about exposure among c-workers. As a result, employers are advised to revisit their employment policies to ensure that all workers understand how HIV-related situations will be managed, including the likelihood that privacy will be maintained. That way, if there is a privacy breach, the fact that HIV status wasn't disclosed will not come as a surprise. This at least should mitigate against negative morale.

It is noteworthy that most workers' compensation schemes will insulate employers from liability in the unlikely event that an employee contracts HIV as a result of exposure to an HIV-positive co-worker, even if the co-worker's HIV status was not disclosed in keeping with the Commission's admonitions about privacy. Morale, not collateral liability, is the real concern for employers in relation to HIV in the workplace.

Takeaways

Human resources professionals should read and consider carefully both of the EEOC's December 1, 2015, publications. The publications offer insight and suggestions regarding how HIV-positive applicants and employees should be protected from discrimination and what measures are available to ensure this happens. Employers should consider directing all workers to the publications and offering to address questions that workers may have relating to the EEOC's guidance.

HR COMPLIANCE LIBRARY
Ideas & Trends

Managing Editor
Heidi J. Henson, J.D.

Contributing Editors
Deborah Hammonds, J.D.
David Stephanides, J.D.

Newsletter Design
Publishing Production & Design Services

Newsletter Layout
Don Torres

No claim is made to original government works; however, the gathering, compilation, and arrangement of such materials, the historical, statutory and other notes and references, as well as commentary and materials in this Product or Publication are subject to CCH Incorporated's copyright.

HR Compliance library—Ideas & Trends (USPS 680-810)(ISSN 0745-0613), a Wolters Kluwer editorial staff publication, is published monthly by Wolters Kluwer, 4025 W. Peterson Ave., Chicago, Illinois 60646. Periodicals postage paid at Chicago, Illinois, and at additional mailing offices. POSTMASTER: SEND ADDRESS CHANGES TO HR COMPLIANCE LIBRARY—IDEAS & TRENDS, 4025 W. Peterson Ave., CHICAGO, IL 60646. Printed in U.S.A. © 2016 CCH Incorporated and its affiliates. All rights reserved.

In addition to identifying and making available the EEOC's recent guidance on HIV in the workplace, employers should revisit their policies to ensure that workers are informed about how HIV-related conditions will be managed. Privacy issues in particular should be addressed.

Further, employers in HIV-related situations should engage in the same analysis and interactive process as with any disability covered by the ADA or applicable state disability law to determine whether any reasonable accommodation can be made.

Employers need to understand that privacy is a major component of the Commission's anti-discrimination campaign relating to HIV. Many disabilities that are accommodated in the workplace are obvious and, as a result, privacy may not be top of mind in the typical ADA interactive process. HIV is different and must be approached with taking privacy rights into account.

Finally, employers must avoid considering or relying on medical myths or stereotypes about HIV in analyzing and addressing the needs of HIV-positive workers. If safety or undue hardship considerations arise, employers should consult with counsel and/or a health care professional for guidance on how to handle a given situation. ■

Source: *Article prepared exclusively for Wolters Kluwer Law & Business by John Balitis, chair of the Employment and Labor Relations Practice Group at Fennemore Craig. Mr. Balitis can be reached at jbalitis@fclaw.com.*

SUBSTANCE ABUSE

Expert talks value of EAPs in combatting employee substance abuse

According to a report issued by the Substance Abuse and Mental Health Services Administration (SAMHSA), substance and alcohol abuse has been negatively affecting key U.S. industries by way of lost productivity, workplace accidents and injuries, absenteeism, low morale and illness. A key finding of the report was that the mining and construction industries had far and away the highest rates of abuse, even when relativized for gender and age across other industries.

The mining industry is depended upon by numerous industries worldwide not just for coal (a leading global energy source), but increasingly also by the high-tech industries' total dependence upon rare earths for consumer electronics, computers and networks, communications, clean energy, advanced transportation, healthcare, environmental mitigation and much more.

The United States is the second-largest construction market worldwide, with a 10 percent share and over 8 million workers. In the U.S., private construction spending reached about $687 billion in 2014.

There is no denying that mining and construction work is inherently dangerous, stressful and physically demanding. As a result, the Drug-Free Workplace Act of 1988 gives the right to (but does not require) employers to establish drug-testing policies and to have workers submit to drug and alcohol testing. The 1991 Omnibus Transportation Employee Testing Act requires transportation industry employers who have employees in "safety-sensitive" positions, such as commercial drivers, to have drug-free workplace programs, and the U.S. Department of Transportation (DOT) enforces this act. But labor and employment laws that relate to substance abuse policy for construction employers can vary from state to state.

Will Wesch, Director of Admissions for Novus Medical Detox Center, says it's important for every industry—and particularly those with high-risk occupations—to be vigilant against alcohol and drug abuse. As the Director of Admissions, he sees people from all occupations coming to the center to get their lives back. "Drug testing is not an issue of invading one's privacy rights. It's a matter of creating and maintaining a safe working culture for everyone involved. Alcohol and/or drug abuse in a heavy machinery environment is simply suicidal."

The Occupational, Safety and Health Administration reports that almost 18 percent of all private industry fatalities in 2011 were in the construction field. The most common causes of fatalities in the industry included falls, being struck by an object, being trapped between objects, and electrocution. But while there are numerous state and local laws regulating substance abuse testing, there is no federal law on the books requiring companies to establish and enforce a policy in this regard. Creating a uniform policy and drug-free training program would help to lower the percentage of workers who wrestle with abuse, and would help employers to be more effective at handling such situations.

Wesch concurs, but notes that there is a critical element that must go hand-in-hand with drug testing and the handling of the employees; otherwise, employers may run into an unwillingness by employees to come forward. This often-missing critical element is an effective employee assistance program (EAP) which is intended to help employees deal with and overcome substance abuse, while knowing that they'll still have a job. "Giving an employee the opportunity to get straight without getting fired not only makes it easier for the worker to deal with his problem; it also helps break the workplace pattern of abuse and create a 'safe space' in which to work. EAPs have consistently proven to be effective," Wesch says. ■

© 2016 CCH Incorporated and its affilliates. All rights reserved.

EMPLOYEE BENEFITS

Employers to add more financial well-being programs in 2016

A new report from Aon Hewitt reveals that large employers plan to expand the depth and breadth of financial well-being programs in the year ahead. According to the *Hot Topics in Retirement and Financial Well-Being* survey of more than 250 U.S. employers, representing nearly 7 million workers:

- 55 percent of employers currently offer help to workers in at least one category of financial well-being such as budgeting, debt management and the financial aspects of health care.
- 38 percent provide help in at least three categories.
- By the end of 2016, 77 percent of employers will have at least one financial well-being program and 52 percent will have at least three.

"Workers have a wide variety of financial needs and challenges," explained Rob Austin, director of Retirement Research at Aon Hewitt. "Employers are realizing that they need to provide a range of financial well-being tools and resources to help this diverse workforce and to truly make an impact on workers' long and short-term savings goals."

The survey also found that most employers (85 percent) say they are creating and adding financial well-being programs because it is "the right thing to do." Another 80 percent of employers report that their programs are designed to improve employee engagement.

"Workers say they want their employer to provide them with the resources to help them obtain a more secure financial future, and it seems that employers are stepping up to this request," added Austin. "In 2016, financial well-being programs will cement themselves as part of most employers' total benefits package."

"In 2016, financial well-being programs will cement themselves as part of most employers' total benefits package." ■

JOINT EMPLOYMENT

Joint employment the DOL way: 'as broad as possible'

Broader than the common law test, broader than the recently announced test under the NLRA, broader than the OSHA test—the test for joint employment under the Fair Labor Standards Act (and the Migrant and Seasonal Agricultural Worker Protection Act) uses the same expansive "suffer or permit" language as does the FLSA's definition of employment, stresses the DOL Wage and Hour Division's Administrator's Interpretation No. 2016-1 on joint employment. Issued January 20, the 15-page guidance, released together with a Q&A on joint employment, a revised fact sheet on joint employment under the FLSA and MSPA, plus a new fact sheet on primary and secondary employers under the FMLA, "ensures that the scope of employment relationships and joint employment under the FLSA and MSPA is as broad as possible."

Protections in the "fissured workplace." In the January 20 DOL blog, Wage and Hour Administrator Dr. David Weil, who issued the Administrator's Interpretation (AI), reiterated the labor department's focus on protecting employees in what it calls the "fissured workplace—where there is increasingly the possibility that more than one employer is benefiting from their work." He cited the changing nature of work due to economic forces and technological advancements, which have resulted in different organizational and staffing models that use third-party management companies, independent contractors, staffing agencies, or other labor providers to "share employees."

This is another effort by the current administration to address the fissured workplace—"to put it back together, which is something of a challenge," Alfred B. Robinson, Jr., Shareholder in Ogletree Deakins Washington, D.C., office and former acting Administrator of the Wage and Hour Division, told Employment Law Daily. He characterized the WHD's effort as an attempt to "patch together employment relationships that formerly existed but that no longer do" because of those very economic forces and technological developments the DOL cited.

Not a policy change. In the accompanying Joint Employment AI Questions and Answers, the DOL was careful to point out that "this AI reflects existing WHD policy" and that its guidance was consistent with FLSA and MSPA regulations on joint employment "promulgated decades ago." It is also consistent, the DOL says, with "previous guidance, including fact sheets, Opinion Letters, and AI 2014-2 on joint employment of home care workers in consumer-directed, Medicaid-funded programs by public entities under the FLSA."

Although Robinson noted that the sub-regulatory guidance does cite previous opinion letters and existing regulations, he said it also develops the concepts of horizontal and vertical joint employment relationships "to new ends." In particular, the guidance's reliance on MSPA regulations highlights what he called the WHD's "tacit understanding" that the FLSA regulations on joint employment at 29 C.F.R. 791

© 2016 CCH Incorporated and its affilliates. All rights reserved.

"are not sufficient," and although clearly the agency's joint employment standard has always been broad, the "guidance seems to conflate the MSPA and FLSA regs."

Which industries are targeted? While employers in all industries would be wise to take note, the WHD called out the following industries in particular: home health care agencies; construction; agriculture; janitorial; warehouse and logistics; staffing; and hospitality. But the AI is not intended to target the franchise industry, the Q&As stress. There is "a wide range of industries where a business relies on others to supply the labor that performs the business' work," and the "form of business organization, such as a franchise, does not necessarily indicate whether joint employment is present" or create joint employment.

Joint employer definition "as broad as possible." Although the AI suggests that not every subcontractor or other labor provider relationship is going to result in joint employment, it also clearly stresses that the FLSA's expansive definition of "employ" as including "to suffer or permit to work" (which also applies to the MSPA) rejected the common-law right of control standard and ensures that the scope of employment relationships and joint employment under the statutes is "as broad as possible."

How to analyze employment relationships. The bulk of the AI discusses two types of joint employment relationships—horizontal and vertical—and provides factors or elements and examples for each.

Horizontal joint employment. According to the AI, horizontal joint employment may exist when two (or more) employers each separately employ an employee and are sufficiently associated with or related to each other with respect to the employee. Citing FLSA regulations at 29 C.F.R. 791.2, the AI notes there is typically an established or admitted employment relationship between the employee and each of the employers, and often the employee performs separate work, or works separate hours for each employer. Thus, the focus of a horizontal joint employment analysis is the relationship between the two (or more) employers.

The following factors from the AI potentially are relevant when analyzing the degree of association between, and sharing of control by, potential horizontal joint employers:

- who owns the potential joint employers (i.e., does one employer own part or all of the other or do they have any common owners);
- do the potential joint employers have any overlapping officers, directors, executives, or managers;
- do the potential joint employers share control over operations (e.g., hiring, firing, payroll, advertising, overhead costs);
- are the potential joint employers' operations intermingled (for example, is there one administrative operation for both employers, or does the same person schedule and pay the employees regardless of which employer they work for);
- does one potential joint employer supervise the work of the other;
- do the potential joint employers share supervisory authority for the employees;
- do the potential joint employers treat the employees as a pool of employees available to both of them;
- do the potential joint employers share clients or customers; and
- are there any agreements between the potential joint employers.

Vertical joint employment. According to the guidance, the vertical joint employment question focuses on whether the employee of the intermediary employer is also employed by another employer (the potential joint employer). In vertical joint employment situations, the other employer typically has contracted or arranged with the intermediary employer to provide it with labor and/or perform for it some employer functions, like hiring and payroll. While there is typically an established or admitted employment relationship between the employee and the intermediary employer, the employee's work typically also is for the benefit of the other employer. Instead of the focus being on the relationship between the employers, "the focus in vertical joint employment cases is the employee's relationship with the potential joint employer."

Notably, here the WHD relied on MSPA regulations at 29 C.F.R. 500.20(h)(5)(iv) describing seven economic realities factors (in the context of a farm labor contractor acting as an intermediary employer for a grower) as useful guidance to analyze any vertical joint employment case. These factors are used "because they are indicators of economic dependence" and should be viewed "qualitatively to assess the evidence of economic dependence." The seven factors are:

- directing, controlling, or supervising the work performed;
- controlling employment conditions;
- permanency and duration of the relationship;
- repetitive and rote nature of the work;
- integral to business;
- work performed on premises; and
- performing administrative functions commonly performed by employers.

And if there is joint employment to be found? Here's what employers can expect when two or more employers jointly employ an employee:

- The employee's hours worked for all of the joint employers during the workweek are aggregated and considered as one employment, including for purposes of calculating whether overtime pay is due.

© 2016 CCH Incorporated and its affilliates. All rights reserved.

- All of the joint employers are jointly and severally liable for compliance with the FLSA and MSPA. This means that each joint employer is individually responsible, for example, for the entire amount of wages due. If one employer cannot pay, then the other employer must pay the entire amount; the law does not assign a proportional amount to each employer.
- Where one joint employer is larger and more established, with a greater ability to implement policy or systemic changes to ensure compliance, "WHD may consider joint employment to achieve statutory coverage, financial recovery, and future compliance, and to hold all responsible parties accountable for their legal obligations."

Expert conclusions. According to Ann-Margaret Pointer, Partner in Fisher & Phillips, LLP's Atlanta office and member of the Employment Law Daily Advisory Board, the AI focuses on what "employ" means under not only the FLSA and the MSPA but, as a practical matter, the FMLA, "all of which use the FLSA definition of 'employ' that DOL admits is broader, more encompassing, than the same word under the common law." She stressed that "all businesses that depend on the work of other employers' employees are vulnerable to findings that they, along with the nominal employers, may be found liable for violations of these laws, particularly if the work is conducted on the premises of the business that needs the services the workers perform, the relationships of the contractors and staffing companies with the user businesses are long-standing, and the contractors and staffing companies are economically dependent on loans from or revenues received from the user businesses in order to meet their payrolls or operate their businesses."

Under the labor department's "even more aggressive stance," Pointer said that the DOL will look to "aggregate employees of all alleged joint employers for purposes of coverage, with rights under FMLA particularly affected." She went on to note that "at least theoretically, businesses may be 'joint employers' under these laws without meeting the common-law definition of 'employers' of their service providers' employees under ERISA, OSHA, the NLRA, the ACA and other laws that do not adopt that very liberal, all-inclusive concept of employment that is rooted in the FLSA definition of 'employ.'"

Finally, Robinson commented that while the WHD's subregulatory guidance does "shine the light" on the issues, the agency should have devoted its efforts to "revisiting the FLSA's Part 791 regs," and the fact that it did not engage in notice and comment rulemaking will result in the courts giving the Administrative Interpretation "a lower level of deference" than if it had gone through the notice and comment process. Nonetheless, he stressed that it was always a good thing for employers to reevaluate their operations and revisit the factors the agency will consider for joint employment status. ■

Source: *This article, written by Joy P. Waltemath, J.D., was originally published in the January 20, 2016 edition of Employment Law Daily, a Wolters Kluwer Law & Business publication.*

SMOKING AT THE WORKPLACE

Health care surcharge leads to decreased smoking at work

Forty-five percent of employers who have health care surcharges in place for smokers say employee smoking in the workplace decreased since the policy was implemented, according to a Society for Human Resource Management (SHRM) survey. Approximately one-fifth of survey respondents (18 percent) impose smoking surcharges, which result in higher health care premiums for smokers. In addition, about one-half of respondents (54 percent) are providing smokers with wellness information on the benefits of a smoke-free lifestyle.

According to the survey results, more than four-fifths of HR professionals (85 percent) indicated that their organizations had a formal, written smoking policy in place, and just over one-half of respondents (53 percent) indicated that their companies permitted smoking in the workplace.

Of companies that disciplined employees, two-thirds (66 percent) indicated that their organizations gave a verbal warning for first-time smoking policy offenses, while 13 percent gave a written warning.

However, smoking traditional cigarettes on company property is not the only reason an employee might get reprimanded. More than two out of five organizations (44 percent) now include electronic cigarettes and other vaporizers in their organizations' smoking policies. Two percent have a separate policy for vaping.

Over one-half of respondents (54 percent) indicated their organizations did not have a vaping policy, yet one-third (33 percent) said their organizations had plans to implement one within a year.

Of those organizations that said they had a smoking policy, 58 percent stated there were designated smoking areas (inside and/or outside common areas). Thirty-one percent said their policy banned all smoking in the workplace (both inside and outside common areas), and 1 percent said their policy allowed individuals to smoke inside personal vehicles. ■

© 2016 CCH Incorporated and its affilliates. All rights reserved.

HR QUIZ

Must an employer eliminate driving from the job duties of an employee with epilepsy?

Q Issue: *Bradley is one of the college's orientation guides who hands out information packets and gives tours of the campus. Occasionally, a guide also may be asked to drive prospective students to and from the airport. Bradley has informed his employer that he no longer has a driver's license because of epilepsy. Does this mean his employer has to eliminate driving from his job duties?*

A Answer: Generally, circumstances dictate whether an employer has to eliminate driving from an employee's job duties. If driving is an essential function of a job, an employer does not have to eliminate it. However, an employer should carefully consider whether driving actually is an essential job function, a marginal job function, or simply one way of accomplishing an essential function. If an accommodation is available that would enable an employee with epilepsy to perform a function that most employees would perform by driving, then the employer must provide the accommodation, absent undue hardship. Similarly, if driving is a marginal (or nonessential) function, the fact that an individual with epilepsy does not have a driver's license cannot be used to deny the individual an employment opportunity.

In Bradley's case, driving is not an essential function of his job. Not every guide is asked to drive prospective students to and from the airport, and there are always other guides available to perform the function if a particular individual is unavailable. Because driving is not an essential function of the job, the college cannot refuse to hire a person to be a guide who does not have a driver's license because of epilepsy; rather, it would have to assign someone else to perform that task.

Source: *EEOC Publication: Revised Questions and Answers about Epilepsy in the Workplace and the Americans with Disabilities Act, reported in Employment Practices Guide, ¶5373.*

IMMIGRATION

Final rule benefits various immigrant classifications

The Department of Homeland Security has amended its regulations to improve the programs serving the H-1B1, E-3, and CW-1 nonimmigrant classifications and the EB-1 immigrant classification. Published in the *Federal Register* on January 15, the final rule also removes unnecessary hurdles that place those workers at a disadvantage when compared to similarly situated workers in other visa classifications.

Specifically, this final rule makes these changes to DHS regulations:

- H-1B1 and principal E-3 classifications are now included in the list of classes of foreign nationals authorized for employment incident to status with a specific employer. This means that H-1B1 and principal E-3 nonimmigrants are allowed to work for the sponsoring employer without having to separately apply for employment authorization.
- Continued employment with the same employer is now authorized for up to 240 days for H-1B1 and principal E-3 nonimmigrants whose status has expired while their employer's timely filed extension of stay request remains pending.
- Likewise, the same continued employment is now authorized for CW-1 nonimmigrants whose status has expired while their employer's timely filed Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, request for an extension of stay remains pending.
- Existing regulations on the filing procedures for extensions of stay and change of status requests now include principal E-3 and H-1B1 nonimmigrant classifications.
- Employers petitioning for EB-1 outstanding professors and researchers may now submit initial evidence comparable to the other forms of evidence already listed in 8 CFR 204.5(i)(3)(i), much like certain employment-based immigrant categories that already allow for submission of comparable evidence.

DHS noted that the final rule does not impose any additional costs on employers, workers, or any governmental entity. Changing the employment authorization regulations for H-1B1 and E-3 nonimmigrants makes them consistent with other similarly situated nonimmigrant worker classifications. The agency said that the final rule minimizes the potential of employment disruptions for U.S. employers of H-1B1, E-3, and CW-1 nonimmigrant workers. DHS expects the regulatory changes to help U.S. employers recruit EB-1 outstanding professors and researchers by expanding the range of evidence that U.S. employers may provide to support their petitions.

The final rule is effective on February 16, 2016. ■

© 2016 CCH Incorporated and its affilliates. All rights reserved.

HR NOTEBOOK

CPI for all items falls 0.1% in December

The Consumer Price Index for All Urban Consumers (CPI-U) declined 0.1 percent in December on a seasonally adjusted basis, the U.S. Bureau of Labor Statistics (BLS) reported January 20. Over the last 12 months, the all items index increased 0.7 percent before seasonal adjustment.

The indexes for energy and food both declined for the second month in a row, leading to the decline in the seasonally adjusted all items index.

The index for all items less food and energy rose 0.1 percent in December, its smallest increase since August. The index for shelter continued to rise, and the indexes for medical care, household furnishings and operations, motor vehicle insurance, education, used cars and trucks, and tobacco also increased in December.

However, a number of indexes declined, including those for apparel, airline fares, personal care, new vehicles, and communication.

BLS reports real average hourly earnings increase 0.1% in December

Real average hourly earnings for all employees increased 0.1 percent from November to December, seasonally adjusted, the BLS reported January 20. This result stems from no change in average hourly earnings combined with a 0.1-percent decrease in the Consumer Price Index for All Urban Consumers (CPI-U).

Real average weekly earnings increased 0.1 percent over the month due to the increase in real average hourly earnings combined with no change in the average workweek.

Unemployment rate remains at 5.0% in December

Total nonfarm payroll employment rose by 292,000 in December, and the unemployment rate was unchanged at 5.0 percent, the BLS reported January 8.

Employment gains occurred in several industries, led by professional and business services (+73,000), construction (+45,000), health care (+39,000), and food services and drinking places (+37,000). Employment also rose in transportation and warehousing (+23,000) and information (+15,000). Mining employment continued to decline (-8,000).

The number of unemployed persons, at 7.9 million, was essentially unchanged in December, and the unemployment rate was 5.0 percent for the third month in a row.

Over the past 12 months, the unemployment rate and the number of unemployed persons were down by 0.6 percentage point and 800,000, respectively.

Organizations increasing starting salary offers to secure new hires

Companies are willing to pay a premium for top talent today, new research shows. More than half (54 percent) of chief financial officers (CFOs) interviewed for a Robert Half survey said they increased new hires' starting salaries from what they made in their previous job. The average increase, according to financial executives, was 10 percent.

"Employers who want to improve their odds of securing skilled talent are offering highly attractive starting salaries right now," said Paul McDonald, senior executive director for Robert Half. "Companies are competing not just with other businesses that are hiring but also with the applicant's current employer, who may make a counteroffer to retain the services of a valued employee."

CFOs who are paying the higher starting salaries were asked, "On average, how much did you increase (new hires') starting salaries compared to their previous employer?" The average response was 10 percent.

When asked how the pay increase compared to what they offered two years ago, 68 percent of CFOs said today's salaries were at least somewhat higher.

"Professional job seekers with in-demand skills are receiving multiple job offers," McDonald said. "Employers need to put their best bid on the table — and do so quickly — or they risk losing good talent." ■

Wolters Kluwer Law & Business connects legal and business communities with timely, specialized expertise and information-enabled solutions to support productivity, accuracy and mobility. Serving customers worldwide, our products include those under the Aspen, CCH, ftwilliam, Kluwer Law International, MediRegs, and TAGData names.