HR COMPLIANCE LIBRARY
Ideas & Trends

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INSIDE

EQUAL EMPLOYMENT

Inclusivity, equality, and transgender in the workplace

Despite progress made towards LGBT workplace equality, nearly 90% of transgender Americans have experienced employment discrimination, harassment, or mistreatment. That astoundingly high number is discouraging. So, as today's workplace is becoming more and more diverse, how can it also become more inclusive?

Lee Schubert is transgender and also the author of Woman Incognito: Transsexual without Transition. Participating in an interview with Wolters Kluwer Law & Business, Schubert explains that there are several things transgender employees want their managers—and coworkers—to know. Knowing these things and acting on them can only help workplaces become more inclusive.

Avoid rude and insensitive questions

Schubert bottom-lines this one real quick saying, "Do not ask transgender employees questions that would be inappropriate to ask other employee. For example, do not ask a transgender employee if he or she has had 'the procedure' done. Also, don't ask a transgender employee how he or she has sex." Perhaps less obvious, Schubert also says not to ask transgender employees "when they become transgender." "They always were," Schubert explains, "whether or not they always knew it. Also, when a transgender person tells you his or her name, don't follow it up by asking what his or her 'real' name is. The name that person already told you is the 'real' name he or she lives with."

Asking a transgender employee any of these questions can obviously be incredibly offensive. However, doing so could also bring up legal issues. Asking any employee about his or her anatomy, for example, could land an employer in the middle of a sexual harassment lawsuit. As Schubert reiterated, if you wouldn't do it or say it to a non-transgender employee, then don't do it or say it to one who is.

Pronoun use matters

Pronoun use matters tremendously. "Using the appropriate pronouns for transgender people's gender identity is perhaps the strongest single indicator that you accept them as who and what they are," stressed Schubert. "Alternatively, using the wrong pronoun tells a transgender employee that you do not accept his or her gender identity. It is usually clear which gender someone identifies as, but if you are not sure, just ask what pronouns to use. And try not to look too surprised if the answer is 'they' rather than either he or she. These days some people prefer not to be defined by gender at all."

Much like pronoun use, bathroom use matters too. While this topic is currently up for debate in communities and courtrooms nationwide, Schubert explains, "Starting in early

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childhood, people are conditioned to think of which bathroom they use as a major signifier of whether they are male or female. As a result, a transgender woman feels that anyone who denies her the right to use the women's restroom is actually denying that she is a woman, and vice versa for transgender men. On the other hand, being expected to use the bathroom that corresponds to the gender they identify as gives transgender people the sense that they are being accepted as who they really are. For a transgender person, it all boils down to acceptance."

How to handle a transition

If an employee is going to transition while already working for an employer, that employer should prepare in advance. Schubert encourages management to hold a meeting for the individual's coworkers to tell them about it, lay out clearly what is expected of them in accepting the change, and give them a chance to express their own feelings about it. There are many types of professional consultants who can contribute valuably to this type of preparation. And, since the bathroom question is almost certain to come up, Schubert says one option to consider is providing a gender neutral bathroom.

Policies

When it comes to policy development and implementation, Schubert says transgender policy should flow quite naturally from general diversity policy. "The basic key to developing and maintaining a healthy, productive and diverse workplace is simply to treat everyone equally. Black and white. Male and female. Straight and gay. Cisgender and transgender. But formal policies can accomplish only so much," Schubert explains.

Management can set a positive example in the way they treat transgender employees:

1. Always use the right name and pronoun;
2. Be inclusive by ensuring that ALL employees are invited to participate fully in all company activities; and
3. Avoid focusing too much on the fact that someone is transgender. "The transgender employee does not want to be treated as a transgender man or woman, but simply as a man or woman, and as an equal part of the company," Schubert emphasized. ■

HEALTHCARE

Impact of executive action on Obamacare will depend on agency responses

Wasting no time following his inauguration on January 20, President Donald Trump signed an executive order aimed at unraveling his predecessor's signature act, the Patient Protection and Affordable Care Act (ACA). The move prompted widespread concern on top of the anxiety already mounting over exactly what will happen to health care coverage all across the nation under a Trump Administration supported by a Republican-dominated Congress that has already put the wheels in motion to roll back so-called "Obamacare."

How broad is the order? To help break down the executive order and understand its implications for both employers and employees, *Employment Law Daily*, a Wolters Kluwer Law & Business publication, reached out to benefits ace Joy M. Napier-Joyce, a principal in the Baltimore, Maryland, office of Jackson Lewis P.C. "While the Executive Order does not have the power to repeal the ACA, it clearly expresses a directive to agencies to delay, exempt, defer and otherwise not enforce certain provisions of the law that are within their discretion," she explained.

Napier-Joyce noted that many have considered the order largely targeted at penalty relief for individuals who failed to maintain the necessary coverage under the ACA's individual mandate. "The Order, however, encourages much broader relief to all who are burdened by the law's requirements, although it does not specifically mention employers," she explained.

What does this mean for employers? As to how the order will impact employers, the Jackson Lewis attorney said we're going to have to wait to see how the federal agencies react to

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it. "Employers will be most interested in knowing whether the IRS will act to delay ACA reporting requirements, which they have done in the past and is within their discretion without formal rulemaking processes," pointed out. "Employers will also be eager to understand how the IRS, HHS, and DOL plan to enforce other ACA requirements pending repeal and to what extent the agencies will go beyond their discretion via the rulemaking process to pull back regulatory requirements prior to legislative action."

"One of the byproducts of the order and its timing will be to further unsettle or destabilize the health insurance market, which will ultimately impact employers in the coverage they offer," according to the benefits expert.

Pressure on Congress. Napier-Joyce also suggested that the executive order puts additional pressure on Congress to come up with a repeal/replace plan quickly. "Several members of Congress have expressed the desire to make sure that any replacement plan is carefully designed to mitigate some of the negative effects of the repeal," she observed.

Ripple effect among states. Turning to a broader impact of the executive order, and perhaps more generally, the move to unravel Obamacare, Napier-Joyce said, "We may also see states begin to act to fill in the gaps in terms of coverage mandates that may be lost in the dismantling of the ACA." She pointed for example, to the executive order issued by New York Governor Cuomo that requires insurers to cover contraceptives and

HR QUIZ

Can an employer recover health coverage costs if employee doesn't return from FMLA leave?

Q Issue: *Melissa, an analyst in your marketing department, has been out on FMLA leave for 12 weeks. She said she was coming back to work but, at the last minute, called to say she will not be returning. Given that the company provided her with health coverage during her leave, can you recover the costs spent for that period?*

A Answer: Yes, but with a few exceptions. If an employee on FMLA leave fails to return to work after the leave expires or has been exhausted, the employer can try to recoup its cost of group health plan coverage for the unpaid portion, if any, of the FMLA leave period. For this purpose, "returning" means returning to work for at least 30 calendar days.

For self-insured plans, this amount is limited to the employer's share of allowable COBRA premiums, not including the 2-percent administrative fee. The health premiums that can be recovered are treated as a debt owed by the non-returning employee. The employer's responsibility to provide health coverage (and, for self-insured plans, to pay claims incurred) during the period of FMLA leave does not change.

Exceptions. No recoupment of the employer's cost for group health plan coverage during the leave is allowed if the employee fails to return to work due to:

1. the employee's (or employee's family member's) continuation, recurrence, or onset of a serious health condition; or
2. other circumstances beyond the employee's control.

In addition, the employer cannot recover its cost of group health plan coverage from certain key employees who are not reinstated following FMLA leave.

If the employee claims that he or she is unable to return to work because of a serious health condition affecting the employee or a family member, the employer can require a certification by a health care provider. If the employee does not provide the certification within 30 days of the employer's request, the employer may recover the health benefit contributions paid by it during the period of unpaid FMLA leave.

Examples of circumstances that qualify as "other circumstances beyond the employee's control" include a parent's choice to stay home with a newborn with a serious health condition; an unexpected transfer of an employee's spouse to a job location more than 75 miles from the employee's worksite; a need for the employee to provide care to a relative or other individual who is not an immediate family member who has a serious medical condition; or a layoff of the employee while on leave.

Permitted methods of recovery. If recovery of the cost of group health plan coverage is allowed, the employer may recover it by deducting its share of health insurance premiums from any sums owed to the employee, such as wages, vacation pay, or profit-sharing distributions, if such deductions are otherwise permitted under applicable federal or state wage payment laws or other laws. Employers also may commence legal action against the employee to recover such amounts.

Source: *29 U.S.C Sec. 2614(c)(2); Employee Benefits Management Newsletter, 622, November 15, 2016.*

medically necessary abortions under health insurance policies issued in New York.

Stay tuned. Undoubtedly, other impacts of President Trump's first executive action on the Obamacare front will soon become evident as stakeholders focus their radar. "We are carefully watching agency reactions to the executive order as they both directly and indirectly impact employers," Napier-Joyce said. ■

Source: *Article written by Pamela Wolf, J.D., and published in the January 23 edition of Employment Law Daily, a Wolters Kluwer Law & Business publication.*

BENEFITS

Survey highlights shifting top workplace benefits priorities

A new global study by the Futurestep division of Korn Ferry highlights the intense competition companies are facing to find qualified candidates, and gives insight into the shifting top priorities of those candidates. In Part One of *The Talent Forecast*, Futurestep's global survey of more than 1,100 hiring professionals, 54 percent said it's harder to find qualified talent compared to just one year ago. The same study found that identifying people with the *right skills* in a rapidly changing market is the top business issue impacting recruitment. Respondents also cited rapid business growth, millennial expectations and economic uncertainty as key reasons the right talent is difficult to find.

"Candidates with niche and specialized skill sets will become increasingly sought after as 2017 unfolds, and knowing how to gain and hold their attention should be one of the biggest priorities for talent acquisition professionals," said Jeanne MacDonald, Futurestep global operating executive and president, Talent Acquisition Solutions.

Changing Priorities in the Workforce

Today: Culture. The No. 1 reason candidates choose one job over another today is "company culture," Futurestep survey respondents said. "Millennials are absolutely looking for culture and fit. They want to feel good about where they're working and require a shared sense of purpose," said MacDonald. "Gen X, on other hand, are more interested in taking their skill set to a place where they can make an impact. Organizations with a culture of acknowledging that impact also have a greater chance of retaining top talent of that generation."

5 Years Ago: Benefits. When asked what the top reason was candidates chose a company 5 years ago, respondents cited "benefits packages." "Five years ago, the world was still reeling from the Great Recession, mass layoffs, and all-around jitters," said William Sebra, global operating executive, Futurestep. "It only makes sense that candidates felt the need for a stable paycheck plus healthcare and retirement benefits. Today, workers are generally moving beyond basic needs to different priorities."

5 Years from Now: Flexibility. When asked what would be the No. 1 reason a candidate would choose one job over another five years from now, the highest percentage of respondents chose "flexible working." According to MacDonald, a flexible environment—from working remotely to flex hours is becoming common across many industries. In addition, businesses are seeing changes due to the rise of the contingent professional workforce, or "gig economy." "Instead of looking for full-time employment, talented, high-demand people will take contingent assignments where they can showcase their unique skills and talents, then complete the project and move to the next gig," Sebra said.

Seventy-three percent of survey respondents reported that they use a contingent workforce on either a regular or as-needed basis.

The hardest roles to fill vary depending on region. While respondents say that overall it's harder to find qualified talent than it was just one year ago, the most sought-after candidate roles vary by region:

- North America: Nearly one quarter (24 percent) of respondents in this region said that information technology (IT) vacancies are most difficult to fill, followed by engineering at 17 percent and operations 14 percent.
- EMEA: The most difficult role to fill in this region is sales (22 percent), followed by engineering at 18 percent and IT at 14 percent.
- APAC: In this region, research and development (R&D) and sales tied at 22 percent for being the hardest role to fill, and operations and engineering tied at 13 percent.
- Latin America: Respondents said the most sought-after candidates are working in IT (23 percent) followed by sales at 17 percent and operations at 12 percent.

"No matter the region or position for which candidates are being sought, the stakes are high," said Sebra. "Organizations that attract the best talent will be best-positioned to achieve their goals and succeed in today's challenging and fast-changing business environment." ■

Source: *Korn Ferry.*

RETALIATION

Employee proved retaliation for seeking leave to care for autistic child

An employee proved she suffered retaliation for seeking FMLA leave to care for her autistic child, held the Seventh Circuit, upholding a jury verdict. A reasonable jury could find that the company orchestrated her firing because she asked to telecommute two days per week so she could spend some non-work hours taking care of her child, who had been expelled from day care. The FMLA entitled her to take leave necessary "to take care of a very difficult (at times violent) sick child," and evidence at trial supported the jury's verdict that she was retaliated against for exercising her FMLA rights. On a separate issue, the district court erred in reducing her attorneys' fee award 20 percent.

Trouble finding childcare. In February 2012, an order-processing employee for a company that sells products such as recycled scrap metal was granted permission to work from home two days a week. Human resources instructed her to keep a record of her time and told her she would be granted unpaid FMLA leave to the extent she worked less than a full eight-hour day. In other words, she was given permission to work from home on those two days and also was granted flexibility in how many hours she worked. (Her mother was able to watch the toddler the remaining three workdays.)

However, the following summer the financially strapped company decided to no longer permit telecommuting. On a Friday in July the employee was given an ultimatum: Show up on the coming Monday and begin working in the office full-time or else lose her job. When told this, she started to cry, she said, because she "knew that it was going to be nearly impossible" to find day care by Monday. On Monday morning she returned to the office to explain to HR that she had been unable to find day care for her son and needed to return home. HR fulfilled its threat by processing her termination that same day, according to evidence at trial.

FMLA retaliation. The Seventh Circuit held there was enough evidence to support the jury verdict in the employee's favor on her FMLA retaliation claim. The FMLA entitled her to take leave necessary "to take care of a very difficult (at times violent) sick child." She "proved, and the jury determined," that the company retaliated against her for asserting her FMLA rights.

The jury was entitled to credit the employee's version of the events leading up to her firing. "The best inference, or at least an inference that a reasonable jury could draw," wrote Judge Posner for the appellate panel, was that the employee's superiors "were angry with her" for requesting to be allowed to work two days a week from home. "Hence the phony line" from an HR official who allegedly told the employee falsely that the FMLA covers leave from work only for doctors' appointments and therapy, not for caring for a sick child.

Liquidated damages. While the company maintained that it acted in good faith and therefore should not have to pay double damages, "the district court correctly rejected that argument." The HR department's reaction to the employee's "plight could reasonably be found to be retaliation against her for asking for FMLA leave for anything other than a doctor's appointment or therapy." In short, the evidence was sufficient to uphold the jury's verdict that the employee suffered retaliation for seeking FMLA leave to care for her ill child. ■

Source: *Wink v. Miller Compressing Co., (CA-7), Nos. 16-2336 and 16-2339, January 9, 2017.*

RETALIATION

Joint fact sheet explains unlawful retaliation

The NLRB, the Labor Department's Wage and Hour Division, OSHA, and the EEOC have issued a joint fact sheet explaining that the agencies will protect all employees from retaliation by employers because the employee has tried to assert his or her workplace rights, according to NLRB Memorandum OM 17-10. The fact sheet, "Retaliation Based on Exercise of Workplace Rights Is Unlawful," notes that in some cases, employers may exploit immigration status to discourage workers from asserting their rights. Federal laws, however, including the National Labor Relations Act, generally prohibit employers from retaliating against workers for exercising their workplace rights, regardless of the workers' immigration status.

The new fact sheet is available in Spanish at https://www.nlrb.gov/espanol, and in French, Mandarin, Arabic, Vietnamese, Korean, Russian, Tagalog, Hindi, Punjabi, Urdu, Haitian Creole, Hmong, and Portuguese on the Agency's Foreign Language Publications page at https://www.nlrb.gov/news-outreach/foreign-language-publications. ■

EMPLOYMENT DISCRIMINATION

Employers should ask 3 questions before piling on work

Normally, employers are pretty free to pile on as much work as they want. If an employee doesn't like it, that employee can simply leave. Employers may not have happy employees and may have high turnover rates, but courts won't usually sit as "super-personnel" departments and find violations of employment laws. There are exceptions, though. For example, a heavy workload may not itself be an adverse employment action, but it *can* be evidence of discrimination if only certain individuals are assigned more work or more difficult tasks, particularly if an inability to do the added work leads to discipline or termination. With that in mind, and even if you have legitimate business reasons to add to someone's to-do list (e.g., recent turnover), it's a good idea to ask three simple questions first.

[A] heavy workload may not itself be an adverse employment action, but it can be evidence of discrimination if only certain individuals are assigned more work or more difficult tasks, particularly if an inability to do the added work leads to discipline or termination.

1. Are you being consistent?

When it comes to consistency, the issue is usually fairness as between employees. For example, in a Title VII suit by a maintenance engineer in New York, the employee claimed his supervisor assigned him a heavier workload because of his Indian descent. The employer allegedly provided him with no assistant, as provided for other engineers, so he did both his job and the work an assistant would do. In the court's view, this raised a plausible inference of discrimination and, combined with allegations of being yelled at and called names, was also enough to support a hostile work environment claim (*Pothen v. Stony Brook University*).

Employers should make sure they have a legitimate business reason for assigning new and more difficult tasks, particularly if the change is substantial (in terms of the effort or time required). In some cases, if an employee is assigned additional duties but has not received training on how to perform them, courts find a triable question on whether he or she was "set up to fail."

For example, a federal court in Alabama denied summary judgment against the ADEA and state-law age discrimination claims of a 63-year-old employee who was fired for poor performance despite decades of positive performance reviews. A jury could find that he was methodically set up to fail by a new supervisor who imposed requirements on the employee that were not imposed on others (*Hollis v. Southern Co. Services, Inc.*).

In another case, an HIV-positive food services manager who also had cancer was denied his request for an uninterrupted lunch and was required to work long hours despite his need for rest. He was also given additional cooking duties when he returned from medical leave and disciplined for a single deficiency found during a survey, while another manager had more deficiencies but was not disciplined. This was enough to have a jury decide whether the employer failed to accommodate his disability and otherwise violated the Washington Law Against Discrimination (*Edman v. Kindred Nursing Centers West, LLC*).

Similarly, an Iowa appeals court recently revived a state employee's retaliation claim based on her allegations that a personnel manager assigned her to a demanding supervisor and didn't provide proper training. If true, a jury could find that her subsequent termination for poor performance was causally linked to, and in retaliation for, her acting as a class representative in a civil rights class action against the state (*Couch v. Iowa Department of Human Services*).

2. Is the timing suspicious?

Related to consistency is the question of whether a change in workload comes at a suspicious time. Avoid increasing an employee's workload *immediately* after he or she has engaged in a protected activity because you do not want the change to appear causally related to protected activity.

In one case, two long-time employees of a Kentucky packaging facility avoided dismissal of their FMLA retaliation claims, and one also advanced his age- and disability-based discrimination claims under state law, based on evidence that upon their return from FMLA leave, they were immediately reassigned from their regular jobs to "the most rigorous and labor intensive job at the company." They further contended that their superiors laughed while watching the employees struggle with their new duties. Due to their ages and the physically impaired employee's health condition, they could not perform the rigorous duties and eventually resigned—or were set up to fail and

constructively discharged, as a jury might see it (*Marcum v. Smithfield Farmland Corp.*).

Based on these and similar examples, it is clear that, before substantially increasing an employee's workload, supervisors should ask whether the employee recently engaged in a protected activity. If so, make sure the change was made for legitimate reasons unconnected to that activity and be able to document those reasons. Examples of protected activities include but are not limited to: requesting or taking FMLA leave; reporting discrimination or harassment; requesting an accommodation for a disability; asking for a religious accommodation; engaging in union-related activities; taking leave for military service; whistleblowing; or participating in an investigation into potential unlawful workplace practices.

Also keep in mind that, while courts vary in how close in time a protected activity and increased workload has to be to appear suspicious, a good rule of thumb is that a month or less is suspicious. Six months is on the outer edge of suspicious temporal proximity, and in such cases there needs to be other evidence suggesting a causal link. Again, though, it depends on the court and the context. In one case for example, a federal court in Tennessee found a causal link between a Sears' employee's FLSA-protected activity and her termination even though two years had passed, because during the interim, her supervisor gave her an overwhelming amount of work, put her under increased scrutiny, and put her on an unusually long PIP (*Brabson v. Sears, Roebuck and Co.*).

3. Does the workload prompt employees to work through legally required breaks?

While the FLSA generally does not require meal or rest periods, many states do. Some states also have "day of rest" laws that require employers to provide a certain amount of time off each week. In those states, employers that assign heavy workloads should also ask whether meeting its requirements typically causes employees to skip meals, breaks, or other required rest periods. In a case out of California for example, a federal court found triable questions of fact on whether Comcast knew its schedule forced communications technicians to skip required meal times to keep up with their excessive workloads, in violation of state law. The company had policies requiring techs to take a half-hour meal break for every five hours worked, a second meal break for every 10 hours worked, and a 10-minute rest break for every four hours. It also prohibited them from working off the clock. But testimony by technicians indicated that the policies were not followed and that they had informed dispatchers and supervisors the assignments forced them to miss meal breaks. One supervisor allegedly responded that "the customers come first" (*Zimmerman v. Comcast Corp.*).

Context is key. As these questions suggest, context is extremely important. For example, even a *reduced* workload could be considered too much if it doesn't comply with an employee's injury-related medical restrictions. In one case, an employer created a "light duty" position for an employee with a shoulder injury, but the new job was still strenuous enough that it did not comply with his medical restrictions. When he complained of pain, he was sent on medical leave, and as his return approached upper management exchanged emails on what to do with him. The CEO allegedly suggested: "Have him paint every wall . . . and then when he's done with that, have him paint the . . . walls again." In the court's view, this was strong evidence of a conscious disregard for the employee's rights, and he would get to trial on his claims under California law (*Latham v. Cambria Co., LLC*).

On the other hand, the Eighth Circuit recently affirmed summary judgment against ADA and state law discrimination and retaliation claims by an employee who was a point of contact with patients who used medical devices manufactured by her employer. After she took FMLA leave and requested accommodations for cancer treatment, she was put in a new position carrying difficult responsibilities. She was required to stay until all tasks were complete and she was the only employee required to stay in the queue of answering incoming calls while working on other assignments. Despite the increased difficulty, though, it was clear to the court that there were a myriad of unrelated concerns justifying her eventual termination for poor performance. Indeed, she was the subject of multiple complaints and she gave incorrect and life-threatening advice to one patient about a pacemaker. It was also significant that the employer had granted her multiple accommodations. Thus, the context worked in the employer's favor (*Oehmke v. Medtronic, Inc.*).

Given that context can be outcome-determinative in a dispute over whether an employee's workload is discriminatory or otherwise violates federal or state laws, the three questions above should be considered merely a good starting place. In addition to asking these questions, employers and other decisionmakers should be encouraged to adopt an objective point of view and look at the *whole* picture. So long as the change is for legitimate reasons and seems fair in context, the employer is not likely to face a challenge in court. ■

Source: *Article written by Lorene D. Park, J.D., and originally published in the January 24 edition of Employment Law Daily, a Wolters Kluwer Law & Business publication.*

HR NOTEBOOK

Consumer prices rise 0.3% in December

The Consumer Price Index for All Urban Consumers (CPI-U) increased 0.3 percent in December on a seasonally adjusted basis, the U.S. Bureau of Labor Statistics (BLS) reported January 18. Over the last 12 months, the all items index rose 2.1 percent before seasonal adjustment.

Continuing their recent trends, the shelter and gasoline indexes increased in December and were largely responsible for the seasonally adjusted all items increase. The shelter index rose 0.3 percent in December, while the gasoline index increased 3.0 percent.

Recent trends also continued in the food indexes, as the food at home index again declined, offsetting an increase in the index for food away from home and leaving the overall food index unchanged for the sixth consecutive month. The energy index continued to rise, advancing 1.5 percent in December, primarily due to an increase in the gasoline index.

The index for all items less food and energy rose 0.2 percent in December, the same increase as in November. Along with the shelter index, the indexes for motor vehicle insurance, medical care, education, airline fares, used cars and trucks, and new vehicles were among the indexes that increased. The indexes for apparel and communication declined in December.

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 18. This result stems from a 0.4-percent increase in average hourly earnings combined with a 0.3-percent increase in the Consumer Price Index for All Urban Consumers (CPI-U).

Real average hourly earnings increased 0.8 percent, seasonally adjusted, from December 2015 to December 2016. This increase in real average hourly earnings combined with a 0.6-percent decrease in the average workweek resulted in a 0.2-percent increase in real average weekly earnings over this period.

Unemployment rate shows little change in December

Total nonfarm payroll employment rose by 156,000 in December, and the unemployment rate was little changed at 4.7 percent, the BLS reported January 6. The number of unemployed persons, at 7.5 million, was also little changed. However, both measures edged down in the fourth quarter, after showing little net change earlier in the year.

Job growth totaled 2.2 million in 2016, less than the increase of 2.7 million in 2015. In December alone, job growth occurred in health care (+43,000), food services and drinking places (+30,000), social assistance (+20,000), manufacturing (+17,000), transportation and warehousing (+15,000), professional and business services (+15,000), and financial activities (+13,000). Employment in other major industries, including mining, construction, wholesale trade, retail trade, information, and government, changed little in December.

IMMIGRATION

USCIS reminder: Be sure you're using the correct I-9 form

U.S. Citizenship and Immigration Services reminded employers that as of January 22, 2017, the "11/14/2016 N" version of Form I-9, Employment Eligibility Verification, must be used to verify the identity and work eligibility of every new employee hired after November 6, 1986, or for the reverification of any expiring employment authorization of current employees. This date is found on the lower left hand corner of the form.

Earlier versions of the form are no longer valid for use, according to USCIS. Employers that do not use the new form on or after January 22, 2017, may be subject to all penalties that apply under Section 274A of the Immigration and Nationality Act, as enforced by U.S. Immigration and Customs Enforcement (ICE). Employers, however, should continue to follow existing storage and retention rules for each previously completed Form I-9. ■