



## Ideas and Information for Human Resources Professionals

# Stephens

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## EMPLOYEE RELATIONS

### GETTING NEEDED AT WORK -- LITERALLY

In the interest of protecting their workforce, many employers not only make certain vaccinations available voluntarily to their employees, but often require them as a condition of employment. However, the legalities of this requirement can often be complicated.

For example, a hospital or other health care facility would have an excellent reason to insist that its employees be vaccinated against certain things, but for other employers this may be more complicated and even hospitals aren't immune (pun intended) to this.

Right now, vaccinations are a hotly debated issue with many parents opting out of giving these to their children. But what happens when an employer mandates that its employees get vaccinated? Can an employer legally do this? The short answer is "yes," but there are circumstances when an employee has a legal leg to stand on and can refuse.

An article on *Workforce.com* titled, [Vaccinations in the Workplace Can Be a Prickly Issue](#), references several federal laws and religious circumstances that can negate an employer's insistence on employees getting vaccinated. According to the Civil Rights Act of 1964, discrimination on the basis of race, color, religion, sex and national origin is prohibited. Therefore, if someone has a religious objection to a mandatory vaccination, then an employer would be legally obligated to exempt them or provide an accommodation.

Furthermore, someone could have an objection due to a medical condition, or if they are allergic to any of the ingredients that make up the vaccine (e.g., most flu shots are egg- or chicken-based). The Americans with Disabilities Act specifically would prevent an employer from forcing a vaccination on someone with this issue.

There are also practical issues that the employers face, such as, what to do about employees who work off-site and



only occasionally come to the corporate office. An employee would probably need to take time off to get vaccinated and an employer may not be able to ask for proof of vaccination due to the aforementioned Civil Rights and Americans with Disabilities Acts, not to mention HIPAA. These federal laws almost always take precedence.

Fortunately for most employers that are not in the health care industry, workplace vaccination policies are not as strict and HR departments often don't have to deal with these issues. It's still a good idea for employers to provide either free or low cost vaccinations to employees -- especially to those who truly want them. The employer just needs to make sure they stress these are voluntary.

## TECHNOLOGY

### THINK BEFORE YOU TYPE

"It is better to keep your mouth closed and let people think you are a fool than to open it and remove all doubt," is a well-known quote that's often attributed to either Abraham Lincoln or Mark Twain. Regardless of who said it, the point is clear, yet is seldom heeded.

It used to be in the workplace that if someone typed something they shouldn't have, such as in a paper or email, then they could often try and retract or delete it or make the recipient swear that he or she wouldn't share it. However, in the age of social media, this often can't be done and when something is either tweeted or shared on Facebook, then numerous people see it at the same time and often share it with others.

The media is quick to point to celebrities (or those who think they are) with tweets that border on the absurd. They are stupid at best and racist, sexist, or just plain offensive at worst. But what happens when an employee does this? Obviously, it reflects poorly on their employer, but should an employer take action and if so, what?



An article on *Society for Human Resource Management's* website [shrm.org](http://shrm.org) titled, [What to Do About Employees' #StupidTweets](#), has a few examples of bad tweets. One of my favorites involves a person who made an offensive tweet, then immediately boarded a trans-continental flight and did not (or was not able to) see the feedback from this tweet. The backlash was swift and heated. In fact, it prompted the person's employer to issue a tweet in which they apologized and explained that the employee who tweeted the original message was unreachable. That employee was later fired.

Sometimes, however, disciplinary action isn't so clear-cut. While it may be a bad idea to criticize the company, or boast of a questionable activity, that doesn't automatically translate into being fired and the text may even be considered protected speech.

First and foremost, the employer should conduct an investigation and verify the exact content of the message rather than rely on word-of-mouth. Employees should remember that the Internet saves everything, so even if something is deleted, it can often still be found. Consequently, employers should remember that not everything on the Internet is true and someone's account could have been left open or hacked. Similar to a claim of employee misconduct, if the post warrants action by the employer, they should conduct an interview to avoid any doubt about whether that employee was the actual person who posted the message. That is, unless the post mentions violence or threats. In that case, urgent and immediate action may be necessary.

Assuming that the post does not fall into that latter category, an employer should consider several factors, including whether the post discloses corporate secrets or confidential/proprietary information, personal information about another employee (e.g., Social Security numbers, health conditions, etc.), whether it mentions something illegal, contains language that's racist, sexist, offensive, or harassing, etc.

Finally, there may be a time when the content of a social media post or tweet is protected by the National Labor Relations Act (NLRA). In such a case, the employer would be limited in any response they could take. Examples of this would be comments or criticisms of management, wages, or benefits.

There are certainly boundaries between protected and lawful speech, versus those that are offensive or just plain dumb. Employers should create a social media policy for their employees and inform them of it so that those boundaries are rarely, if ever, crossed.

### **PENALTIES, TAXES, AND FINES, OH MY!**

**Tuesday, June 9, 2015**

**1:00 P.M. CT**

The Patient Protection and Affordable Care Act (PPACA) introduced a variety of new penalties, fines, and taxes that employers are working hard to avoid paying. Two significant penalties include the excise tax, and penalties faced by applicable large employers that do not meet their employer-shared responsibility play or pay obligations. Finally, the implementation of the Cadillac tax is looming, and although the industry is awaiting further regulation and guidance, understanding the basics can help you in the future.

This webinar will explain:

- The excise tax and what triggers it
- Self-reporting requirements of the excise tax and what happens if you don't report
- How to file IRS Form 8928
- The HSA comparable contribution rules and taxes for violations
- When the excise tax is not imposed
- Best practices to remedy excise tax violations
- The employer-shared responsibility penalties
- How to calculate "A" penalties under play or pay
- How to calculate "B" penalties under play or pay
- When the penalties will be due
- The Cadillac tax -- what we know, and what we are waiting for
- Best practices as the industry awaits Cadillac tax implementation

This 90-minute basic to intermediate webinar will help you determine when a penalty is owed and how to report non-compliance. To view this webinar free of charge please email [insurance@stephens.com](mailto:insurance@stephens.com).

#### **About the Presenter:**

[Kathleen R. Barrow](#), a Shareholder in the Rapid City, South Dakota, office of Jackson Lewis P.C., has designed welfare benefit plans and executive compensation arrangements, and has counseled sponsors and administrators of these types of plans, for 15 years. She has appeared on behalf of clients before the national offices of the United States Treasury and the Department of Labor Employee Benefit Security Administration.

Ms. Barrow actively participates in national coalitions of counsel that assist employers in defending audits of welfare and pension benefit plans. She advises clients and counsel across the country with regard to defined contribution arrangements that provide post-retirement health benefits to employees.

Ms. Barrow received her law degree with honors from the University of Oklahoma College of Law in 1992, where she was a Managing Editor of the Oklahoma Law Review and a member of the Order of the Coif. She received her Masters in Business Administration degree in finance with high honors from Oklahoma City University in 2001. She is licensed to practice in Texas, Oklahoma, North Dakota, South Dakota, Nebraska, and the U.S. Tax Court.

## WELLNESS

### FLEX YOUR MIND

We all know that exercising the body can produce health benefits, but can we exercise our brain to make us smarter? It's easy to dismiss the times when someone has forgotten where they put their car keys, or had difficulty remaining focused at work, but what if there were a way to improve cognitive tasks and boost brain health?

In an article on [CNN.com](#) titled, [Will These Tricks Make You Smarter?](#), the author mentioned that a recent report by Harvard Medical School found that exercising your brain with challenging activities (such as strategy games like chess) will improve logical thinking and problem solving and can help build up natural defenses against diseases such as Alzheimer's. While it's undetermined whether games that specifically train the brain actually work, there are still many things people can do with their brain that will actually improve their cognitive abilities.



First on the list are games. Desktop games are a great way for people to remember and understand things visually. This type of game also helps with creativity and problem solving. Plus, because most desktop games are for a minimum of two players, it's a great way to socialize and interact with others as you try to outthink them. If high-tech is what someone prefers, then there are apps and online programs just waiting to be tried that are fun and game-like while still being challenging. If puzzles are more to a person's liking, then there are ones explicitly designed in conjunction with neuroscientists rather than the traditional crossword or Sudoku puzzle.

Not everyone likes games, so there are tasks that people can do to strengthen their mind. To help with concentration, find a quiet place, eliminate distractions, and focus your attention on just one thing, such as counting backwards from 100, or counting the number of words on a page, or holding an object and focusing on it for as long as possible. If someone doesn't have much time, then they can read a news article (either in a newspaper or online), or watch an informative video, and then work diligently to commit what was just read or viewed to memory. Later in the day, try and recall this information.

In addition to these brain exercises, it's also important to eat right, reduce stress, and stay physically active. By working out the entire body -- brain included -- it will help anyone stay at the top of their game.

## IN BRIEF

### MAKE A PLAN FOR RETIREMENT

When it comes to retirement, most people know what to do; they just don't know how to go about doing it. An article titled, "[Retirement planning a 'significant hurdle' for employees](#)," on *Employee Benefit News*, list the three main components of retirement preparation: knowledge, planning and having.

Apparently, the planning stage for retirement is the most difficult component while also having the best possibility for improvement. According to the *Voya Retire Ready Index*, devised by *Voya Financial, Inc.* and based on two surveys, nearly half of all workers have at least some type of budget or financial plan.

While people generally understand certain financial concepts, the survey found that they were not able to apply that knowledge and act on it to better prepare for retirement. Fortunately for most employees, they still have plenty of time to change that.

By calculating what they need for their monthly income based on their current spending, workers felt more confident in their ability to retire. Further boosting this confidence was the use of self-directed budgeting and financial planning tools.

The study highlighted the need for most Americans to improve all aspects of their retirement readiness and that support should be given by employers to assist workers in ensuring their financial security once they've left the workforce. With the proper planning, everyone, regardless of income, should be able to attain their retirement goals.

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