A Publication Dedicated To Employers' Current HR Issues & Solutions

The BOTTOM LINE

Quarterly Magazine: January – March 2010

BOOSTING MORALE AFTER LAYOFFS

WHY CAN'T WE ALL JUST GET ALONG?

RECESSION RELIEF: PREPARING YOUR COMPANY FOR RECOVERY

STEERING CLEAR OF COMPENSATION VIOLATIONS

OSHA LAUNCHES COMPLIANCE CAMPAIGN. ARE YOUR RECORDS IN ORDER?

WHAT ADP TOTALSOURCE® CLIENTS ARE SAYING

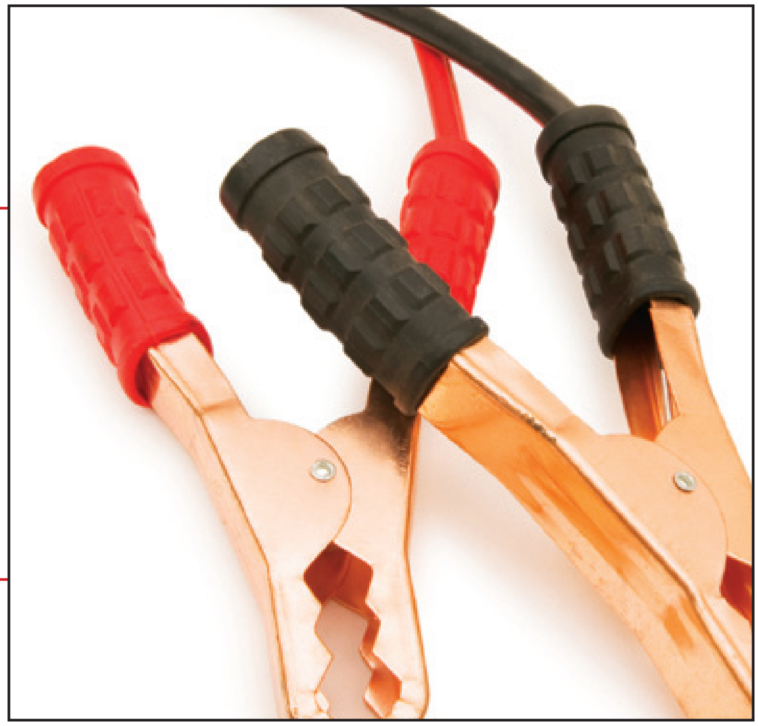
WILL YOU BE READY WHEN THE IRS COMES KNOCKING?

ADP® TotalSource

Bottom Line. Your team just got better.®

The BOTTOM LINE

January - March 2010



9 OSHA Launches Compliance Campaign. Are Your Records in Order?

The employment-law professionals at Jackson Lewis have identified eight key measures your company should take to stay in compliance with OSHA.

13 Why Can't We All Just Get Along?

Never before have four generations worked side by side. Find out the different assets and liabilities each generation brings to the workplace.

15 Steering Clear of Compensation Violations

Learn more about the three most common Fair Labor Standards Act (FLSA) blunders being committed by today's employers – and your best bets for avoiding costly penalties.

18 What ADP TotalSource Clients Are Saying

A client's perspective on how ADP TotalSource helps manage their compliance challenges.

WILL YOU BE READY WHEN THE IRS COMES KNOCKING?

All year long, employers have been hearing the steady drumbeat of expanded regulation and stepped-up enforcement from various federal agencies. Now they're hearing from the Internal Revenue Service.

In 2009, the IRS announced it would launch its latest National Research Program (NRP). Beginning February 2010, employers will be under the microscope, as the IRS employment tax audit program will randomly target up to 6,000 companies – both for-profit and nonprofit – by 2013.

What's driving the NRP is a phenomenon called the "tax gap" – the difference between what the United States Treasury is owed and what it actually collects. According to Treasury estimates, the net tax gap now stands at about $290 billion. About $28 billion of that is due to employers failing to deposit withheld employment and income taxes and another $14 billion is attributable to underreporting of FICA taxes by employers.

The NRP's audit focus will be on four primary areas:

- worker classification
- employee benefits
- reimbursed expenses
- compensation of owner/employees

AVOIDING THE EMPLOYEE CLASSIFICATION TRAP

Of those four audit targets, one of the trickiest for employers to get right is employee classification, particularly the difference between independent contractor and W-2 employee.

It's not easy to determine who an independent contractor is for tax-withholding purposes. Standards are imprecise and may vary between state and federal laws. Misclassification of employees is common in industries such as hospitality, janitorial services, construction, landscaping and delivery services. That said, employers in any industry that uses independent contractors are potentially at risk.

When an employee is misclassified as an independent contractor, the applicable FICA, FUTA, and other income and payroll taxes are not withheld and filed. The penalties for misclassifying an employee can be steep and include payment of back taxes and interest, as well as penalties for failure to file and deposit the taxes on time. There's also a potential negative impact on an employee's benefit and retirement plans, plus additional income-tax liability for the employee.

There are certain indicators employers can watch out for in making sure that their workers are classified correctly. If an independent contractor is doing the same work as employees or work for which other businesses typically use employees, such as production work, that's a sign of possible misclassification. Other indicators are an independent contractor without the ability to hire additional staff as needed, and one without any other customers.

EMPLOYEE BENEFITS: NOT A FRINGE ISSUE

Administering employee benefits is complicated enough without dealing with the tax requirements. How to proceed comes down to one question: Is each benefit taxable or nontaxable?

For every type of benefit your company offers employees – be it health coverage, moving assistance, educational assistance or commuter benefits – there are specific standards and documentation requirements. The rules are complex and can easily trap the unwary. The consequence of noncompliance can affect both the employer and employee, especially if the IRS considers noncomforming benefits to be wages subject to employment taxes.

REIMBURSED EXPENSES – REASONABLE IS THE KEY

When your employees incur job-related expenses, reimbursing them is more than a matter of simply getting a receipt and cutting a check. There are potential tax implications as well – and failure to comply creates further taxable wages for the reimbursed employee.

Reimbursed expenses can be tax-free to the employee and deductible to the employer, provided you process these expenses through an accountable plan that meets certain criteria. There must be a documented business connection, and both the expenses themselves and the accounting for them must be reasonable. Finally, all excess reimbursements must be repaid by the employee within a reasonable timeframe.

COMPENSATION FOR OWNER/EMPLOYEES

Employees who are also owners or officers of the company often receive, in addition to regular wages, compensation in the form of dividend distributions. The NRP has identified the reasonableness of such compensation as a target for scrutiny. Companies for which this is an issue likely include closely held corporations.

As with employee classification, the challenge with owner/employee compensation is that there are no precise standards. Determining how to allocate such compensation between wages, which are subject to employment tax, and dividends, which are taxed as ordinary income and not normally subject to withholding, is a tricky area for employers.

SO HOW TO PREPARE?

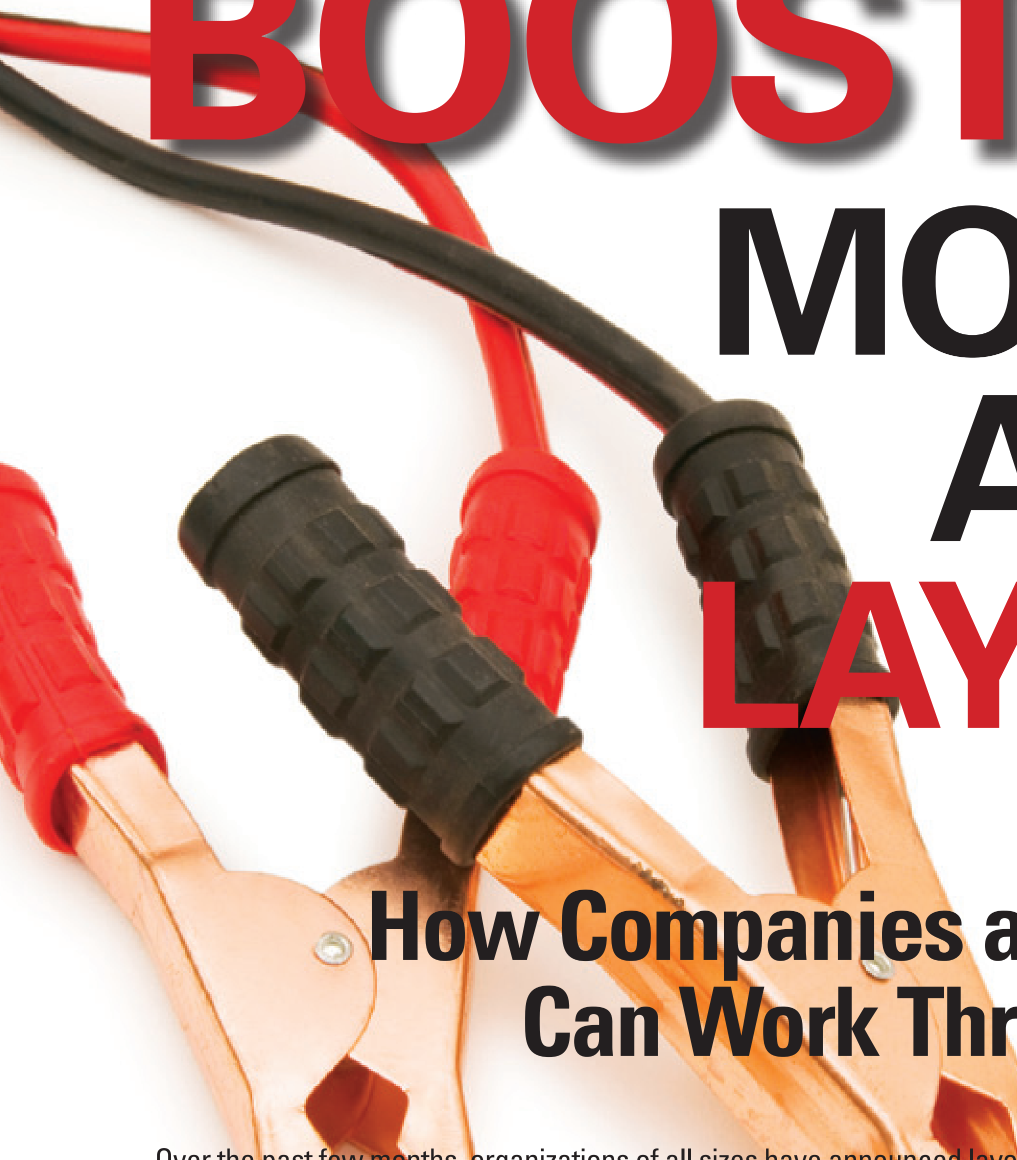
The key to surviving an IRS audit of your employment tax compliance is simple: Take the time to prepare. That means not rushing into an audit schedule before your company has had the opportunity to review and analyze all relevant documents.

Critical steps in the audit preparation process include internal reviews of all employment tax compliance issues, particularly the four we've outlined above, plus such general issues as W-2 accuracy, timeliness of deposits and filings, etc. To ensure efficient management of the process, it's a good idea to designate a key employee to coordinate the information flow, to be the primary contact with the IRS as well as external tax or legal counsel, and to liaise with internal accounting, payroll and HR representatives.

WHEN TO CALL IN EXPERTS

When preparing for the possibility of an audit, smart companies rely on guidance from appropriate legal and tax counsel. As HR experts, ADP TotalSource® enjoys a strategic alliance with a national labor and employment law firm that offers legal services to our clients at a reduced rate. When a company signs with ADP TotalSource, we assign a Human Resources Business Partner (HRBP), who makes the necessary referrals. The HRBP delivers access to additional tools and resources that can help your company avoid the noncompliance trap – and be ready when the IRS comes knocking on your door.

FOR MORE INFORMATION ON THE IRS AUDIT AND HOW TO BETTER PREPARE, CONTACT YOUR LOCAL ADP TOTALSOURCE DISTRICT MANAGER FOR A COPY OF THE COMPLETE WHITE PAPER.



BOOSTING MORALE AFTER LAYOFFS

How Companies and Employees Can Work Through the Loss.

Over the past few months, organizations of all sizes have announced layoffs, downsizing or restructuring. Whatever they're called, there's more work to be done once the reduction in force is over. Many organizations focus on helping the downsized employees move on through exit interviews, out-placement counseling and severance packages, but focusing on the remaining employees is equally – if not more – important.

That's because when workers are affected, their employers are, too. According to a recent survey by Challenger, Gray, and Christmas, Inc., companies undergoing layoffs face tough challenges in keeping their remaining employees engaged and focused. More than fifty percent of human-resources executives cited maintaining employee engagement as their biggest challenge in a post-layoff environment. Another key concern respondents said "Is easing anxiety among remaining workers about the possibility of additional job displacements."

Layoff Survivor Syndrome, a condition coined by experts, leaves employees feeling a wide array of emotions. Some feel angry, some fear they could be next, and others feel relief and even guilt about being spared. It's important to realize that this is a period of adjustment – and that everyone experiences change in different ways. People need time to let go of the past, adjust to the present and begin to focus on the future. During this transition, there are steps you can take to manage the change and boost your employees' morale and engagement.

1 Customize Communication

"When things seem to be coming apart, the normal communication links break down just as suspicion and mistrust begin to predominate," says John Shepler's *Managing After Downsizing*. Without open and honest communication, rumors can ignite – crushing morale and engagement. Let employees know what is going on. By keeping them informed as changes occur, you allow them to become part of the change process. They will be more accepting of the change if they feel they are part of the process, as opposed to victims of it.

2 Re-emphasize Vision, Mission and Values

Following mass layoffs or restructuring, your organization's mission and vision for the future will likely have changed. Take time to discuss your new course and create a plan of action. Set specific and realistic goals for employees. Susan M. Heathfield, an HR expert who writes for About.com, believes that managers must re-create the work environment so that people build their self-esteem, find work satisfying and achieve at higher levels. The foundation for this progress is to re-emphasize the organization's mission and the values.

3 Rebuild Trust

No matter the size of a layoff, once it has occurred, trust is damaged. It is crucial to work hard to restore employees' trust in the organization's leadership and communication vehicles. Transparency is a key component to building trust. Dave Schrohe, a managing director at Citigroup, explains, "When there is uncertainty, you don't need to add more uncertainty" and that employees "should know as much as possible." He adds that it's critical for managers to stay visible, not "locked up on the executive floors." Rebuilding trust can also boost morale. To speed up this process, Workforce.com advises managers to talk with employees and emphasize the value of their proven skills and the contributions they are making, but take care not to imply that their employment is guaranteed.

4 Recognize Survivors

After a layoff, employees may have heavier workloads, different jobs to learn, and fewer resources to accomplish the necessary tasks. Whether it's at a town hall–style meeting or a smaller staff discussion, identify people who have gone above and beyond. Failing to recognize high performers can result in the loss of valuable employees. According to *Harvard Business Review*, "Research...shows that employees who perform better and have more training, education and ability are the most likely to quit if dissatisfied. Provide support and encouragement, and help them see that downsizing opens new opportunities and channels for promotion."

5 Promote a Good Work/Life Balance

When times are tough, employees don't always feel there's room to focus on anything beyond problems at work, says Schrohe. "You don't want to create a crisis at home." While it isn't a formal policy at Citigroup, he tells his employees: "When you can find the time, take the time." During a layoff, changes may be occurring in other areas of employees' lives as well. It's important to acknowledge the turbulent environment and encourage employees to make good decisions to maintain a positive work/life balance. Promote your company's Employee Assistance Program (EAP) for work and personal issues they may not be able to handle on their own. Let your employees know there are resources available to help them navigate through tough changes in their lives. Following through after a reduction in force is critical to maintaining an engaged and motivated workforce – your organization's key asset as the business environment recovers. ■

RECESSION RELIEF:

PREPARING YOUR COMPANY FOR RECOVERY

In the words of Sir Isaac Newton, "Every action has an equal and opposite reaction." By making proactive recovery plans now, your organization can be more prepared for the upturn than it was for the downturn.

Depending on where you live or work, you may have noticed some interesting billboards in your neighborhood recently. The Outdoor Advertising Association of America (OAAA) is sponsoring a campaign with the theme Recession 101, using relatable and lighthearted messages to help people maintain perspective about the state of the economy. Recently spotted: "Interesting fact about recessions. They end." "It's a test. Not a final." "Stop obsessing about the economy. You're scaring the children."

One could argue that the OAAA has a vested interest in filling boards that might otherwise be empty, but the idea came from an anonymous donor who wants to remind Americans of the things that make this country great.

The point is this: Sooner or later, recovery will happen. And you have a lot more control – by making proactive recovery plans now, your organization can be more prepared for the upturn than it was for the downturn.

INVESTING BIG IN THE RECOVERY

Beyond your own company's HR strategies for recovery, there's the American Recovery and Reinvestment Act of 2009 (ARRA), which President Obama signed into law on February 17, 2009. ARRA was enacted specifically to get the economy back on track.

Billions of federal tax dollars have been allocated for initiatives such as modernizing the nation's infrastructure (roads, bridges, mass transit), revamping health care, improving our schools and investing in new energy technology. ARRA is also intended to save public-sector jobs, protect vital services and provide assistance to workers hurt by the weak economy. As funded entities hire, rehire or stabilize, the jobs created will have a ripple effect on general consumer and business demand for all types of goods and services.

The federal government has been mandated to make the process as transparent as possible; www.recovery.gov has been created so that everyone has access to information about how and where money is being distributed. By tracking where the money is going and staying aware of events in your market area, you should be able to project how and when recovery efforts will begin having an impact on your business (if it hasn't already).

GETTING YOUR BUSINESS READY FOR THE UPSWING

Use this time to assess your needs for re-entering a growth mode. For most businesses, managing increased costs for items like equipment and product is going to be less of a challenge than managing your time and people needs.

To tackle the latter challenge cost-effectively, more companies are thinking outside the box and leveraging the strategic benefits of outsourcing HR management. Those benefits are especially valuable for companies positioning themselves for renewed growth: a streamlined administrative burden, reduced liability risk, access to world-class employee benefits and state-of-the-art recruiting and retention tools, and a better handle on expanding employment regulations.

If you look outside your company – especially to a single-source provider like a Professional Employer Organization (PEO) – for HR solutions, you'll find providers that can give you an edge over direct competition and help level the playing field between your business and its bigger competitors. PEOs such as ADP TotalSource® provide a bundled-service offering that incorporates all major HR functions with the PEO as the co-employer, sharing certain employment risks and liabilities with the client company.

Anchoring the PEO service model is an assigned Human Resources Business Partner (HRBP). This experienced HR professional is the client's point of access to a whole team of HR experts, who in turn deliver the support, guidance, tools and technology that enable clients to refocus on their core operations, including comprehensive payroll and tax administration, benefits offerings and administration, workers' compensation coverage and claims handling, risk-management guidance, ongoing professional development and a whole range of employee-relations issues.

A particularly valuable component of the PEO bundle is HR compliance guidance – especially with the new and expanded regulations coming from Washington, D.C. and stepped-up enforcement of existing ones. Working with an HRBP and with access to HR experts, companies have the tools to help avoid lawsuits, minimize penalties for noncompliance and reduce the risk of costly damage awards.

PUTTING THE FOCUS ON STRATEGIC IMPERATIVES

Many companies have chosen to hunker down and ride out the current economic turmoil. Is yours among them? If so, it may be time to stick your head up and take a fresh look at the bigger picture — making sure that your team's focus is on mission-critical imperatives rather than administrative necessities.

If you're familiar with Newton's laws of motion, you'll know that for every action there is an equal and opposite reaction. It's only a matter of time before the economy that went down comes back up. Use the time in between to make plans to position your workforce for maximum productivity, and you'll be in the best possible position to take your business right back into growth mode when the recovery hits full speed.

OSHA

LAUNCHES COMPLIANCE CAMPAIGN

ARE YOUR RECORDS IN ORDER?

On September 30, the Occupational Health and Safety Administration (OSHA) formally launched its long-awaited Recordkeeping National Emphasis Program (NEP). Scheduled to last through September 2010, NEP promises to be one of the most wide-ranging OSHA enforcement initiatives ever, affecting employers in a variety of industries. OSHA's stated goal is to determine whether, and to what extent, workplace injuries and illnesses are being under-recorded and underreported.

An OSHA inspection can be a grueling experience, and the NEP is no exception. If your company is targeted for an inspection, you can expect to undergo a site inspection and produce employee medical records, workers' compensation records, insurance records, payroll records, safety incident reports, first-aid logs and any other records that pertain to injuries and illness. In addition, OSHA inspectors will want to see all pertinent records that are stored off-site.

OSHA inspectors will also be required to reconstruct OSHA log entries for employees and compare them with your logs. Another key element of the inspection process is a series of interviews with your designated record keeper, a cross-section of employees, representatives of your company's senior management, first-aid providers and related health care professionals. The aim of these interviews is to determine whether employees are being encouraged not to report injuries or illnesses through incentives, promotions or disciplinary programs.

8 WAYS TO PREPARE

Even if your company is not in one of the targeted industries, it's always good to be prepared in case OSHA does come calling. The employment-law professionals at Jackson Lewis, a strategic partner of ADP TotalSource®, have identified eight key measures your company should take to stay in compliance with OSHA recordkeeping requirements:

1 WHEN IN DOUBT, RECORD IT.

Not all injuries and illnesses are work-related and should be recorded in your OSHA log. Unfortunately, whether an injury or illness is work-related is not always clear-cut, and OSHA inspectors tend to err on the side of recordability.

2 TOUCH BASE AT LEAST ONCE A WEEK.

Hold a regular weekly meeting of your risk-management, safety and HR personnel to determine that log entries are accurately completed.

3 GATHER ALL THE FACTS OF AN INCIDENT BEFORE DECIDING TO RECORD.

Even though OSHA requires completion of incident reports and logs within seven calendar days of notification of an injury or illness, you should take the time to conduct a thorough investigation before completing the required forms.

4 ESTABLISH A REGULAR REVIEW AND UPDATE PROCEDURE.

Thoroughly review your logs at least every three months and make necessary updates to the status of injured employees.

5 COMPARE YOUR OSHA RECORDS TO YOUR WORKERS' COMPENSATION RECORDS.

Any discrepancies between the two are likely to raise a red flag with OSHA inspectors.

6 FOLLOW OSHA'S LETTERS OF INTERPRETATION.

OSHA periodically issues letters of interpretation to clarify some aspect of the recordkeeping rules; these letters are available at www.osha.gov. Review them regularly and update your policies and procedures accordingly.

7 REVIEW SAFETY INCENTIVE PROGRAMS.

Certain common safety incentive programs can potentially discourage employees from reporting injuries and illnesses. Review any such programs you may have and modify them if necessary.

8 GO BEYOND THE LOG.

OSHA inspectors will want to know what steps you have taken to correct any underlying hazards that may have caused an injury or illness. Document these steps and be prepared to talk about them.

Need Access to Risk Management Experts? The Answer is ADP TotalSource

When companies team up with ADP TotalSource, they get significant assistance with their OSHA compliance requirements, as part of the bundled PEO service. In particular, ADP TotalSource clients have access to a team of Risk Management Professionals, who provide guidance and support on OSHA's Injury and Illness Recordkeeping Standard. These professionals can help determine which record-keeping requirements apply to a client's business, provide guidance on proper injury and illness classification and assist with the required recordkeeping forms. Training seminars on OSHA recordkeeping requirements are available for managers and supervisors.

Finally – and perhaps most important for clients who are required to do so – ADP TotalSource helps maintain the OSHA 300 log and provides the annual 300A summary in advance of the required posting period. ■

BOTTOM LINE: ADP TOTALSOURCE CLIENTS CAN REST EASIER KNOWING THEY HAVE A TEAM OF RISK MANAGEMENT PROFESSIONALS TO HELP THEM COMPLY WITH OSHA RECORDKEEPING REQUIREMENTS.

WHY CAN'T WE ALL JUST GET ALONG?

Today's American workforce – a mix of races, genders, ethnicities and ages – is unrecognizable compared to just a few decades ago. Never before have four generations (Traditionalists, Baby Boomers, Generation X and Millennials) worked side by side. Each generation brings differing styles, values and strengths to the office. Without awareness and understanding, these differences can create friction, but managed well, they can add valuable depth to your organization.

Traditionalists: Born 1922-1945

The oldest generation in today's workforce, Traditionalists have built the business world as we know it. Known for their dedication, hard work and patience, they are often willing to put duty before pleasure. They share a respect for authority and adherence to rules. Traditionalists grew up in hard times, and events such as The New Deal, Pearl Harbor and the Korean War likely shaped their perspective.

Baby Boomers: Born 1946-1964

Boomers, the largest generation currently in the workforce, grew up differently than their Traditionalist predecessors. They were born during one of the greatest expansion periods in U.S. history, and as a result, their childhoods were optimistic and positive. Their parents doted on them, and for the first time, child-rearing was viewed as a pleasure and hobby, not an economic necessity. Known for their youth, involvement and team orientation, Boomers strive to succeed. They consider personal growth and gratification important. Key events during their childhood include Congress' passage of the Civil Rights Act, the first moon landing and Woodstock.

Generation X: Born 1965-1979

Sometimes referred to as the latchkey generation, Gen X is often hidden in the shadow of 76 million Boomers. A much smaller group at 51 million, Xers grew up during a struggling economy and soaring divorce rates, which left them to fend for themselves. Events such as the Watergate scandal, the stock market crash of '87 and the L.A. riots may have influenced them to distrust institutions and reject rules. Xers are accepting of diversity and are often viewed as individualistic, pragmatic and informal.

Millennials: Born 1980-2000

Entering the office within the last seven years, Millennials, or Gen Y, will soon become the largest generation in today's workforce as Traditionalists and Boomers begin to retire. Born with a computer mouse in their hands, Millennials grew up pampered, nurtured and programmed. Their overscheduled childhoods guided them to become confident, achievement-oriented and sociable. Yet some argue that they lack decision-making skills and have a sense of entitlement. Technology, extreme child focus, the Clinton/Lewinsky scandal and the Columbine High School massacre may have affected their worldview.

Understanding your employees' backgrounds and where their opinions originate can help you work together more effectively. Here are highlights of the different assets and liabilities each generation brings to the workplace, as well as their preferred leadership styles.

Generations	Assets in the Workplace	Liabilities in the Workplace	Leadership Style Preferences	Motivation Examples
Traditionalists Born 1922-1945 Ages 65-88	Industriousness, stability, loyalty, efficiency, attention to detail, focus, emotional maturity.	Discomfort with ambiguity, change, conflict; reluctant to buck the system.	Fair, consistent, clear, direct, respectful.	• Your experience is respected. • Your perseverance is valued and will be rewarded.
Baby Boomers Born 1946-1964 Ages 46-64	Team perspective, dedication, experience, knowledge, focus on service.	Not naturally budget-minded, may put process ahead of result, sensitivity to feedback, self-centeredness.	Equal treatment, warmheartedness, mission-defined, democratic approach.	• You're important to our success. • Your contribution is unique and important.
Generation X Born 1965-1979 Ages 31-45	Independence, adaptability, creativeness, techno-literacy, willingness to challenge the status quo.	Impatience, poor people skills, inexperience, cynicism.	Direct, competent, genuine, informal, flexible, results-oriented, learning opportunities.	• Do it your way. • There aren't a lot of rules here.
Millennials Born 1980-2000 Ages 10-30	Optimism, ability to multitask, tenacity, technological savvy, determination, team collaboration, social responsibility.	Need for supervision and structure; inexperience, particularly with handling difficult people issues.	Motivational, collaborative, positive, educational, organized, coachable, achievement-oriented.	• You can be a hero here. • You and your coworkers can help turn this company around.

STEERING CLEAR OF COMPENSATION VIOLATIONS

THE THREE MOST COMMON FLSA BLUNDERS BY EMPLOYERS — AND YOUR BEST BETS FOR HELPING KEEP YOUR ORGANIZATION COMPLIANT

In business, as in life, mistakes can have a certain value. But that doesn't mean they can't still be costly — especially if we don't learn from them.

Nowhere is that advice more apt than when dealing with federal regulations such as the Fair Labor Standards Act (FLSA), which governs the rules for minimum wage, overtime pay, recordkeeping and youth employment standards.

Across multiple industries, it's common to see the same FLSA violations being committed time and again, according to a recent research paper by Vicki Lambert, CPP, President of Lambert and Associates, a firm specializing in payroll training.

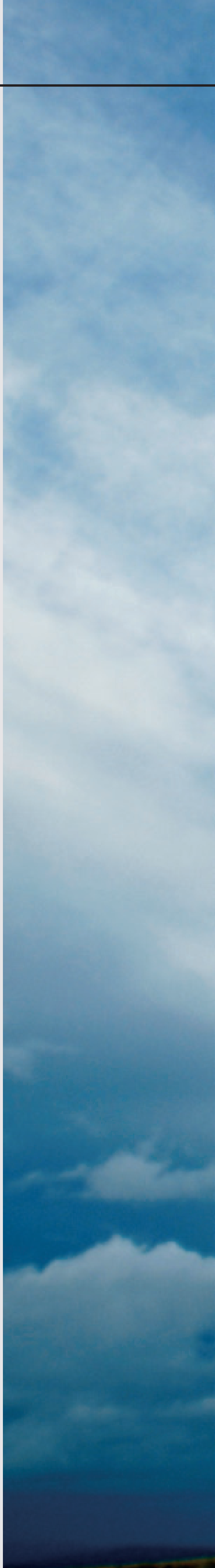
According to Lambert, companies most commonly go astray in three major areas:

- classifying employees as exempt or nonexempt
- counting the number of hours worked
- calculating overtime pay

On the surface, these three areas seem surprisingly simple. How could you possibly miscount the number of hours an employee has worked? In reality, getting it right is not so easy – and not so cheap if you get it wrong.

Tasked with enforcing the provisions of the FLSA is the Wage and Hour Division (WHD) of the U.S. Department of Labor — not exactly an agency you'd like to see knocking at your office door. In 2008, the WHD recouped an estimated $185 million in back wages — and in the process, assessed employers over $3 million in civil penalties for overtime and minimum-wage violations.

Continued on p. 17



THE CLASSIFICATION CONUNDRUM: CONTRACTOR OR EMPLOYEE?

Misclassification of an employee as an independent contractor can have serious implications for your bottom line. The IRS can reclassify independent contractors as W-2 employees, resulting in the imposition of fines, penalties and back taxes for which the employer is generally liable. Typically, an employer must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors. According to the IRS, businesses must weigh factors like these to correctly classify service providers:

BEHAVIORAL — Does the company control what the worker does and how?

FINANCIAL — Are the business aspects of the worker's job controlled by the payer? Consider how the worker is paid, whether expenses are reimbursed and who provides tools or supplies.

TYPE OF RELATIONSHIP — Are there written contracts or employee-type benefits? Is the work performed a key aspect of the business?

Correct classification requires looking at the entire relationship, considering the degree or extent of the right to direct and control, and documenting in detail the factors used to make your decision.

Continued from p. 15

BE ALERT TO COMMON COMPLIANCE PITFALLS

To avoid contributing to the WHD coffers this year, re-examine your processes to ensure you're remaining compliant in these major areas:

Exempt vs. nonexempt employees

The FLSA requires that all employees be paid at least the federal minimum wage for all hours worked and time and a half their regular rate of pay beyond 40 hours in a workweek, unless specifically exempted.

These exemptions include bona fide executive, administrative, professional and outside sales employees. It's important to note that job titles alone do not determine exempt status. To qualify for exempt status, employees must pass three tests: job duties, salary level and salary basis. In order for an exemption to apply, an employee's specific job duties, salary amount and how that salary is paid must meet all the requirements of the Department of Labor's regulations.

Accurately counting the number of hours worked

Employees must be paid for all hours worked. Sounds simple enough, right?

Unfortunately, the FLSA does not provide a clear definition for hours worked. In several U.S. Supreme Court rulings, hours worked may include any time spent in physical or mental exertion that is controlled or required by the employer and all hours an employee is required to give to an employer. This includes waiting time if it is for the employer's benefit, and all the time during a workweek that an employee is required to be on the employer's premises.

These circumstances might also be considered hours worked:

- on-call time
- attendance at meetings or lectures
- travel time
- special one-day assignments

Calculation of overtime pay

Many employers believe overtime is calculated using the employee's hourly rate and multiplying it by 1.5 and the number of overtime hours. If no other factors beyond straight and overtime hours are involved, that would be absolutely correct.

However, if the employee's regular rate of pay includes items such as shift differentials, nondiscretionary bonus or a cost-of-living adjustment, this calculation can become infinitely more complex. Employers must then determine on a case-by-case basis if these additional payments are included in the regular rate of pay, in order to calculate overtime correctly.

THE CHALLENGE FACING EMPLOYERS – AND THE CASE FOR CALLING IN HR EXPERTS

Today's business environment has made understanding the latest FLSA requirements extremely important in order to stay compliant while meeting your organization's HR needs.

More and more companies are deciding that this growing compliance burden is too much to handle on their own and are turning to outside HR experts for support and guidance. HR compliance – not just FLSA – in today's workplace requires consultation, communication and a proactive approach to training managers and supervisors on compliance essentials. The most effective compliance efforts are planned, implemented, tracked and communicated in such a way that potential problems are identified and handled before they become major issues.

Of course, the FLSA covers much more ground than just the three areas outlined above. But understanding the dynamics — and the ramifications — of the three most common violations will give your organization a head start in avoiding inadvertent and expensive contributions to the DOL. And getting compliance guidance from HR experts – like ADP TotalSource® – when you find the compliance burden too much to manage on your own is a smart investment. ■

What ADP TotalSource® Clients Are Saying

Seeing the workplace-safety forest for the trees – with help from ADP TotalSource

New Limeco, LLC

Type of Business: Grows, packs and ships avocados, mangos, limes and a variety of other tropical fruits

Location: Princeton, Florida

Number of Employees: 70

ADP TotalSource client since 2001

Why ADP TotalSource? "ADP gave us the HR, benefits, payroll and risk expertise that positioned us for growth – we simply didn't have enough internal expertise to get where we wanted to be. In particular, their Risk Management experts have helped us tremendously with our OSHA compliance and made New Limeco a safer place to work."

In the daily rush of making deadlines and getting work done, companies sometimes fail to notice workplace hazards that can potentially lead to employee injury. Or, in the words of Don Edgar, Operations Manager for New Limeco, a South Florida tropical-fruit grower and packer, "We were so caught up in our internal operational issues and constraints that we couldn't see the forest for the trees when it came to injury prevention."

It took the sharp eye, dedication and expertise of Luis Torres, New Limeco's ADP TotalSource Risk Manager, to help the company see that forest. Working closely together, Edgar and Torres resolved a worryingly high rate of back-strain injuries and strengthened New Limeco's safety programs to the point where the company is now a candidate for OSHA's Safety and Health Achievement Recognition Program (SHARP).

New Limeco signed with ADP TotalSource in 2001; previously, the company had handled HR in-house, with help from an outside insurance broker. "At the time, we were in the midst of a reorganization after having been purchased. We got to the point where we realized that we needed stronger capabilities in dealing with HR, benefits and payroll. We didn't have enough internal expertise to position the company for growth," Edgar explains.

New Limeco chose ADP TotalSource precisely because ADP offers the kind of broad-based HR solution the company was seeking. "For example, we wanted to be able to offer a good benefits plan to our employees, and without ADP, the whole process would have been much more cumbersome," Edgar says.

In the years since, it's been in the areas of risk management and workplace safety that ADP TotalSource has really delivered for New Limeco. Edgar sets the backdrop: "It's in the nature of our business that a lot of our work is manual labor – stacking 50- to 55-pound boxes of fruit on pallets to prepare them for shipping. Our worksite is an extremely busy place, and in the process of trying to meet deadlines, we got so focused on the work that we lost sight of the way we were doing the work."

New Limeco ended 2007 with a higher-than-normal rate of back-strain injuries. Torres, the ADP TotalSource Risk Manager, alerted Edgar that immediate action was needed to avoid potentially costly consequences to New Limeco's Workers' Compensation plan.

"Torres and I reviewed our operations in detail, and he helped us spot some specific situations where we were doing things in a way that increased the likelihood of injuries. Torres also helped us develop a comprehensive safety training program for all employees, and he helped me make the case for the new program with senior management. It wasn't anything especially technical – just some simple ergonomic fixes in our packing and loading procedures – but it's made a huge difference."

How big a difference became apparent earlier this year, when OSHA paid a visit to New Limeco to follow up on the 2007 report. "They looked at our OSHA 300 log and reports and went around our worksite and were impressed with both the recordkeeping and the housekeeping," Edgar says.

A follow-up consultation with a University of South Florida Safety and Health Compliance specialist found that New Limeco remains highly motivated to continue strengthening its safety program. The company is now pursuing SHARP certification, given to small businesses that operate exemplary safety and health management programs.

"Torres has a real passion for what he does, and whenever we need him, whether it's to perform hazard communications or forklift training or update our safety manual, he's there," Edgar concludes. **"Having Torres and ADP TotalSource has helped us get through those compliance challenges and achieve our goals – and it makes my job so much easier."**

ADP TOTALSOURCE® SOLUTION

With ADP's dedicated team of experts as your partner, you can:

- Increase employee productivity, which leads to increased profitability
- Focus on core competencies
- Reduce administrative burdens
- Help mitigate risk/liability and protect assets
- Become an employer of choice

Take the first step to more streamlined, cost-effective and productive HR management.

Call ADP TotalSource at 1-800-HIRE-ADP or visit us at www.adptotalsource.com

ADP publishes *The Bottom Line* free of charge to its clients and prospects. It is accepted with the understanding that the publisher is not engaged in the business of rendering legal services. If legal, HR or other professional assistance is required, the services of an attorney or other professional should be sought.

ADP® TotalSource

Bottom Line. Your team just got better.®