

The View from Level VII™

HUMAN RESOURCES

DEPARTMENT OF LABOR BRINGS THE HEAT

Earlier this month, the DOL recovered more than \$1 million in back wages and damages in two different cases from violations of the federal Fair Labor Standards Act (FLSA).

In February the DOL announced that a US District Court in Baltimore ordered Self Pride, Inc. and three of its officers to pay \$372,664 in back wages and \$155,240 in liquidated damages. The Baltimore office of the DOL's Wage and Hour Division determined that Self Pride violated the FLSA by failing to properly pay overtime and not maintaining accurate records of work hours. When the case went to trial, the court agreed with the DOL. In addition to ordering the payment of unpaid overtime wages, the court also ordered payment of liquidated damages to the employees in question – i.e., a monetary penalty imposed upon a finding that the employer's overtime and recordkeeping violations were not made in "good faith".

The DOL also announced that it recovered \$524,216 from Careerbuilder.com to resolve alleged overtime pay violations involving approximately 677 workers. The DOL claimed that Careerbuilder.com improperly classified some of its workers as exempt and failed to pay overtime rates to non-exempt workers who worked more than 40 hours a week.

The good news is these cases were preventable. Both involved FLSA issues routinely faced by employers – e.g., classifying positions as exempt vs. non-exempt, paying overtime to non-exempt employees for 40 or more hours in a week, and maintaining proper records of hours. The bad news is that many employers often wait until an investigation or employee complaint before giving wage and hour issues serious thought, which can result in significant liability.

Instead of waiting for the DOL to show up, we suggest you take the following steps to reduce exposure:

- Create or update your job descriptions.
- Carefully classify each position as exempt or non-exempt, with an eye toward the extent to which a position's FLSA classification aligns with (a) the company's current or updated job descriptions, and (b) the new FLSA white-collar regulations issued in 2004.
- Accurately record work hours and times in and out of work for all non-exempt employees, including meal and break periods, partial workdays, and after-hours work.
- Pay employees for all hours they are "suffered or permitted" to work, including after-hours work, at-home work and applicable travel and training time.
- Maintain payroll records for at least three (3) years and basic employment and earnings records for at least two (2) years.
- Work with a professional to audit and review your wage and hour practices to ensure compliance with the FLSA.

Remember it's the employer's burden to maintain proper time records for non-exempt employees, to pay minimum wages and overtime based on such records and, if such records are not maintained, to demonstrate that the record and pay requirements are not applicable because a given position or group of jobs are exempt from such FLSA requirements.

HR Professional Consultants, Inc. offers human resource services and outsourcing for businesses of various sizes.

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STRATEGIC PERFORMANCE MGMT

ARE YOU MOVING IN THE RIGHT DIRECTION?

In five years you will arrive. Do you know where? Are you so busy putting out daily fires that you can't take a step back and focus on the big picture? All organizations should have a vision and mission statement that is based on the core values of all team members. These statements will serve as a compass to guide strategic choices.

A vision statement is a tool that moves people and organizations in the direction of a desired future state. This statement shows how the organization will direct and focus its efforts and resources. It says why we come to work every morning.

In *Full Steam Ahead* by Ken Blanchard, he writes about the elements of a good vision. A vision must have a "significant purpose" which explains "Why are we in business? and What business are we really in?" This purpose statement can also be called a mission statement.

Many of you probably already have a mission statement. When was the last time you read it? Does it still apply to your operations today? Is it time to redefine your mission? A great mission statement states how we get to our vision. It should include the areas of operations, customers and employees.

Your vision and mission statement should be linked to your core values. Core values are principles that you and your team members find desirable. They tell us how we are to act within the organization. True core values do not change with the times, only the application of them. Examples of core values include: integrity, family, efficiency, growth, and knowledge. Most members of your company share the same core values, no matter their position.

Developing your vision statement should be a process or journey that all organizations undergo every few years. You should include team members' input when developing your vision and mission statement. From front line employees to top management, all members must understand this mission and live it everyday.

Stone & Associates stands ready to assist with performance measurement systems, or any of our other Strategic Performance Management, Financial Management Consulting or Business Performance review services.

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In this and/or future issues you will find short, yet meaningful articles regarding:

- Human Resources
- Risk Management
- Executive Compensation & Benefits
- Employee Benefits
- Private Wealth Planning
- Business Succession
- Strategic Performance Management

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EMPLOYEE BENEFITS

401(K) PLAN “VALUE REVIEW”

Clients routinely ask us if their 401(k) Plan administration fees, investment expenses, and investment returns are “competitive in the marketplace”. The Federal Department of Labor strongly encourages plan sponsors to review fees and expenses periodically, and they have developed a “fill in the blanks” questionnaire to help employers ask the right questions.

Support services delivered by 401(k) Plan providers are also very important in determining total value received. A complete 401(k) Plan Value Review should answer the following questions.

- Are your administrative fees comparable to those charged by other providers for plans similar to yours?
- Are your investment expenses and returns comparable to those charged by other providers for investment accounts similar to yours?
- Are the fiduciary due diligence services available from your provider comparable to those available from other providers?
- Are the investment advisory and education services (on both a plan and participant level) available from your provider comparable to those available from other providers?
- Can your current 401(k) Plan provider design, administer, and fund special “non-qualified” arrangements for key employees? Can they deliver combined reporting and information resources to key employees for both types of plans?

Please contact us if you would like to discuss a Value Review for your 401(k) Plan.

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EXECUTIVE BENEFITS

EXECUTIVE BENEFIT STATISTICS... something other than 409A for a change!

2005 industry analysis* reveals a decade of drastic development in nonqualified plans with:

- Since 1975 there have been 86,593 plans sponsored by 48,476 companies that cover 1,320,922 executives
- Average number of participants per plan is 15
- There are less than 100 participants in 90% of all plans
- There are an average 6 participants per plan when a plan has less than 100 participants
- There is only 1 participant in 25% of all plans
- 91% of companies use some nonqualified Deferred Compensation Plan; 92% in Financial Institutions
- 85% of plans provide deferral of base salary
- 97% allow all or part of their short term incentives
- 79% of nonqualified plan participants were lower/middle management (\$150,000 or less per year)
- 69% of companies have a Supplemental Executive Retirement Plan (SERP)
- 44% of companies allow Director deferrals
- 73% of nonqualified plans are informally funded
- 72% of informally funded plans use Corporate Owned Life Insurance (COLI)
- 28% of informally funded plans use Mutual Funds
- 75% of companies use a Rabbi Trust
- 66% provide financial planning as an executive benefit

*Statistics provided compiled from the *CBG EXECUTIVE BENEFITS –A SURVEY OF CURRENT TRENDS 2005 RESULTS* as well as from Department of Labor Top Hat Database 12/31/2004. *Comparative rates from previous years may be found at www.weirresources.com/new.html*

Weir Financial Resources is a financial advisory firm offering information, ideas and solutions in Executive Benefits, Business Succession and Private Wealth Planning.

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