

# The View from Level VII™

## HUMAN RESOURCES

### WHICH LAW APPLIES TO A SICK EMPLOYEE

There probably isn't one person whose life has not been touched by cancer, whether the individual has been diagnosed with it or someone they love has been. Given this probability, employers must be prepared for the day when cancer hits their workplace.

Earlier this year, the EEOC released a Q&A on cancer in the workplace and the Americans with Disabilities Act (ADA). But the ADA is not the only law you must consider. The Family and Medical Leave Act (FMLA) may also be a factor. It is up to you to determine which law applies and how to comply when they both do.

One of the areas in which these laws intersect is on the issue of time off. The danger lies in where the laws diverge on this matter. Here are some ADA and FMLA facts, which apply to medical conditions beyond cancer.

**ADA:** The amount of time an employee may take is open-ended, depending on what will create an undue hardship for the employer. **FMLA:** This law requires a maximum of 12 weeks of leave within a 12-month period.

**ADA:** Leave may be taken only for the individual's disability. **FMLA:** Leave may be taken for an employee's own serious health condition or that of his/her spouse, parent, or child.

**ADA:** There is no minimum length of employment or number of hours worked that an employee must meet before requesting leave as an accommodation. **FMLA:** The employee must have worked for at least 12 months and 1,250 hours in order to receive leave.

**ADA:** Leave may be taken only for fairly serious health conditions. **FMLA:** More minor conditions, such as the flu, may be covered.

**ADA:** Instead of granting leave as an accommodation, you may assign an employee to a light-duty position. **FMLA:** You may not require an employee to take a light-duty job in lieu of FMLA leave.

*Rule of thumb:* When provisions of the ADA and FMLA collide, you need to look at which law provides the employee with greater rights.

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

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## STRATEGIC PERFORMANCE MGMT

### IS YOUR COMPANY CUSTOMER CENTRIC?

Every company is absolutely convinced that it customer centric. Serving the customer, the CEO will say, is what everyone in this company does. Unfortunately in many companies this conviction is really a self-deceptive perception. Everyone is convinced they are doing it but in reality they don't have the basic data to effectively construct a customer centric strategy.

In a 2004 study by Stativity Group executives were asked about the costs and revenues associated with their customers. The results were surprising:

- 88.9% did not know new customer cost
- 88.5% did not know customer complaint cost
- 82.6% did not know customer average annual value
- 61.8% did not know customer annual retention rate

If you are going to build a successful customer strategy you need to build a financial model that includes qualifying and quantifying these critical success factors that help you understand the financial drivers behind customer's behavior. Obtaining and benchmarking this information will help you build customer strategies much better than any of the traditional "soft measures".

#### Scorecard on Performance Management:

- Have identified non-financial measures that drive company's success - 81%
- Have established short-term targets for those measures - 67%
- Have established long-term targets for those measures - 42%
- Have identified specific projects to achieve these targets - 62%
- Report on progress of those projects as frequently as financial results - 51%
- Percent of companies that say they do all of the above - 17%

**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

# The View from Level VII™

## EXECUTIVE COMPENSATION

### EXECUTIVE RETENTION

This article is a follow-on from the June/July 2005 Newsletter which provided recommendations as to how best to retain a company President – please refer to that article.

Private companies are increasingly learning that it is not only public companies who need to offer their executives, competitive terms and conditions, plus certain “security” arrangements.

Like public companies, senior management and executives in private companies not only face the challenges of producing bottom line results, but also a need to maintain the relationship/chemistry between themselves and the shareholder(s). This can lead to a tenuous employment situation, which is further complicated if the company is family-owned

Development of terms and conditions for executives is always a “balancing act” between the potential benefits for the executive on the one hand, and the shareholders (s), on the other. Experienced and knowledgeable advice then becomes paramount when develop the most appropriate mix of:

- Challenge, motivation and reward for the executive, plus adequate security (in the event of termination), and;
- Satisfactory financial return for the shareholder(s).

If “the balance” is not achieved, one of the parties (executive or shareholder), will potentially feel aggrieved.

Executive compensation and related terms/conditions should be designed in a way to achieve a “win – win” situation for executives and their respective companies.

**Harman & Associates** with its fortune 500 background and extensive national and international experience in executive compensation planning stands ready to assist in developing a plan that establishes value for all parties involved.

**Ray Harman**  
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## EMPLOYEE BENEFITS

### EAP = EVERYONE WINS

Employee Assistance Programs (EAP) help employers manage difficult human resources problems. These programs also help employees deal with sensitive personal and family issues. EAP help problem employees regain their identity as happy, productive co-workers: with positive results for all involved.

EAP provide guidance and consultation in dealing with complex issues through a comprehensive menu of professional services. These services are cost-effective and confidential, normally using local community providers and resources.

Following are a sampling of services that can be provided through EAP.

- Clinical assessment, referral, and short-term counseling services for employees and their family members.
- Management consultation regarding workplace issues like sexual harassment, workplace violence, and drug-free workplace initiatives.
- Consultation with Human Resources representatives and Supervisors regarding intervention strategies for impaired or “at risk” employees.
- On site seminars and health promotion programs for employees.
- On site training for managers to help them best utilize EAP resources.
- 24-hour telephone accessibility for crisis counseling and referral services.
- On-site crisis management services and critical incident stress debriefing for traumatic workplace incidents.
- Specialized consultation and referral services for eldercare, childcare, legal issues, personal budgeting concerns, and assistance with resume development.

Please contact us if you would like to discuss EAP options for your organization.

**Benefits Advantage, Inc.** provides consulting and insurance brokerage services for all types of employee benefits programs. Emphasizing *personal service, creative ideas, and positive results*; Benefits Advantage Inc. has 30 years of industry experience in working with clients.

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## EXECUTIVE BENEFITS

### 409(A) COMPLIANCE... YEAR END OPPORTUNITY!

On September 29th the IRS provided further guidance regarding nonqualified deferred compensation plans under IRC 409A

One notable aspect of this guidance was the announcement that the deadline for compliance has been extended one year to 12/31/06. While this may evoke a sigh of relief for many companies now under the gun to meet compliance by the end of this year, there are yet some 2005 year-end deadlines that must be met.

The time has come to take some action on 409(A) and at least assess the 2005 year-end deadlines do not impact you and that your deferred compensation arrangement(s) are being operated in compliance with 409A. I conclude with the following short-term action steps:

1. Identify which arrangement(s) and amounts may be grandfathered and which may be subject to 409A
2. Determine what arrangements (individually or entirely), which may be desirable to terminate or freeze before the end of 2005. This will required a participant communication plan.
3. Make appropriate year-end 2005 deferral and distribution elections for plans not terminated
4. Determine if your plan has been materially modified or operated in good faith since January 1, 2005.
5. Develop 409A compliant operational capabilities for plans not terminated, e.g., establishing an administrative system that provides real-time benefit and asset (if appropriate) data.

We stand ready to assist you and your counsel in this important and timely matter.

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

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