



Question & Answer

LIVE ADVISORS IN ACTION

QUESTIONS ANSWERED BY THINKHR LIVE ADVISORS

ThinkHR provides convenient and immediate access to expert Live Advisors who provide the guidance employers need to prepare for and manage day-to-day people risk.

- Discrimination, EEO, ADA
- Employee Relations
- Performance Management
- Policies and Procedures
- Recruiting and Hiring
- Leaves of Absence-FMLA, PDL, USERRA
- Wage and Hour, Worker Classification
- Workers' Compensation
- General Benefits Compliance
- COBRA, ERISA, HIPAA, ACA
- Statutory Compliance
- Conflict Resolution
- Terminations
- Workplace Safety
- Unlawful Harassment

Leaves of Absence (LOA)

- Our company provides a bonus to all employees based on overall company performance. Do we have to pay an employee who is out on leave of absence (LOA), and would payment of bonus impact his disability payments?
- When an employee is on a LOA, must the employer continue health insurance, or is this a COBRA event?
- Our company recently had a woman return from maternity leave having used up all her CFRA, PFL and FMLA of her state and federal leave entitlements. She worked for three days and is out on disability again due to postpartum depression. When she comes back to work is she now eligible for leave again? Are we required to hold her job for her? What are our options? We are currently going through a reorganization and are thinking about downsizing; could we terminate her without liability?
- We have an employee who does not qualify for FMLA. We would like to know what other types of leave she might be qualified to use. What are the eligibility requirements for the various leaves?

Compliance

- Are employers required to notify employees if cameras are installed in the general areas?
- We want to develop an expense reimbursement policy. What expenses can be reimbursed for telecommuting employees?. Specifically, we have telecommuting employees and want to know if the company has to reimburse them for Internet and electricity expenses since they are working from home doing company work.
- We are a transportation company with 75 employees in the states of Illinois, Michigan and Indiana. What employment laws and mandatory training apply to our company?
- What are the training mandates for New York regarding sexual harassment and is there a stated timeline for training new hires, managers, and new managers?
- Now that we have more than 50 employees, we understand that HR gets a little more complicated. Do you have a list of things that need to be done to stay as compliant as possible?
- We are conducting an I-9 audit and have found that we are missing information for several employees. What do we need to do to ensure we are in compliance?

Wage and Hour

- What is the difference between exempt and nonexempt classifications and what are the requirements to classify a job as exempt?
- Can an employer make a deduction from an employee's pay or have him work a day for free because the employee broke the employer's equipment?
- Can nonexempt employees waive lunch breaks? What are the requirements for the two rest breaks for an eight-hour shift? If the company is closed for Labor Day on Monday, and an employee who works on Sundays wants to take Sunday off and work on Monday while the business is closed, is this ok?
- What are salaried employees entitled to if they work overtime hours? If they work a holiday are they entitled to get paid time and a half for that day? If they take a day or week off can we deduct that pay?
- What are the rules about providing holiday pay, sick pay, or vacation pay in my state?
- Do I have to provide paid time off to long-term independent contractors?
- How can you determine whether a worker is an independent contractor or employee?
- Do we have to pay nonexempt employees if they volunteer to help set up or clean up after a company party?
- If a nonexempt employee volunteers to help organize company social events outside of business hours, must we pay the employee for that time?
- What are the laws regarding paying hourly employees on a "piece work" basis in the state of Missouri?

Terminations

- Is it acceptable to terminate an employee because we believe he is at risk of having an accident as an older driver?
- What documentation is required to properly terminate an employee?
- I have an employee stating that he is going to quit but hasn't officially given his resignation. Can we terminate the employee now on grounds of anticipating his quitting the company? wants to take Sunday off and work on Monday while the business is closed, is this ok?
- Are separation notices required in Arizona, Florida, Indiana, Massachusetts, New Jersey, Ohio, Pennsylvania, South Carolina, Texas, Virginia or Washington? Can you provide a sample separation notice or other termination form that we can use?

Recruiting and Hiring

- We sold one of our companies and all of our former employees moved to the new company. At the time of the sale, we offered one employee the option to return to us once we open a new facility (in about a month), and both the employee and the successor company agreed to this arrangement. Can we keep this employee on our benefits and just put him on an unpaid leave of absence until he returns next month?
- When our employee's employment was terminated, we agreed to pay COBRA premiums through a specified time frame as part of the severance agreement. That time period is about to expire. How should we communicate to the former employee that the terms of agreement are coming to an end and he will be responsible for premiums?
- What information needs to be included in an offer letter we are extending to hire a new employee?
- To be in compliance with the I-9 requirements, does an employer have to re-verify an employee's driver license once it has expired?
- Who in our company, besides HR, should have access to background and drug screening for new hires?

Employee Relations

- Can we hire an intern here on an F-1 student visa to be a regular employee once the internship is completed? Are F-1 students authorized to work in the United States?
- We have an employee who went out on a 24-hour suicide watch. When should we allow him to return to work?
- We want to offer a candidate a temp-to-hire position but with stipulation of a three-month temporary position without benefits but at a higher hourly compensation rate. Then, if the position continues to be required and the temporary employee is doing a good job, we will consider making this a full-time regular job at a lower rate of pay but with full benefits. Should we mention the possibility of the regular position and the pay/benefits for that position in the initial offer letter, or will that potentially be locking us into a contract by doing that?
- I just learned that one of our employees has been incarcerated. He will not be released for three months. Can I ask his probation officer the following questions? (1) What are the current charges against him? (2) When was he incarcerated? (3) Have there been any assault/violence charges filed? (4) Why is he on probation? (5) What did he do that violated his probation? (6) When will he be released from jail? (7) Under what terms? (8) Will he need time off of work to go to counseling or to conduct community service? This is a good employee with attendance issues—we are trying to gather the facts to decide whether to terminate due to absenteeism.
- My client received a call from a former employee who is trying to get a restraining order against another former employee. While they were both employed she had lodged a sexual harassment complaint against him and is now requesting documents from that complaint, none of which are signed by either party. The client is wondering which if any documents they can provide to the first former employee.

Forms

- We would like federal and state checklists and sample letters for new hire, COBRA, leaves of absence and terminations.
- Do you have job descriptions, employee handbook, compensation, leaves of absence and performance tools available?

Workers' Compensation and Safety

- Do the OSHA rules allow employers to test employees for drugs if they have accidents in company vehicles?
- How do employers create case numbers for the OSHA 300 Log?
- Do employers have to conduct OSHA safety training in employee's primary language?
- We have an employee who is no longer disabled under workers' compensation and is able to return to work. Due to a downturn in business while he was gone, we laid off several employees and his position has been eliminated. Are we legally required to return him to work?
- We have an employee with a work injury who can now return to work on restricted duty. However, we cannot accommodate the restrictions. We need him to work a full 40 hours per week. He directs truck traffic in our yard, and the doctor's restrictions require that he not stand for long periods of time. Can we terminate his employment because we cannot accommodate the restrictions?
- We have an employee who was on a workers' compensation leave and recently returned to light duty on a part-time basis. He has now requested a leave of absence for six months for an unrelated reason. How should we handle this request and his benefits during the time off?

Investigations

- What should I do if an employee tells me that she is being sexually harassed but does not want me to do anything about it? How do I conduct a proper investigation?
- We have three former employees (all quit within last 6 months) who have made complaints about the general manager (GM) at another location. The complaints ranged from inappropriate sexual comments, gender/sexual orientation, to inappropriate behavior. The HR person at that location is related to the GM, so no one there was comfortable talking with her about the issues. One of the owners is his brother, and another owner is his best friend. One owner wants the GM to resign. We need some pointers on how to handle the conversation with this GM — our goal is to force his resignation. Do we need to have an investigation of the allegations first?

Benefits

- Can an employee add a new domestic partner to our health plan midyear?
- Are schools subject to special rules under the ACA's Play or Pay rules?
- Should we stop making health savings account (HSA) contributions into an employee's account when he turns age 65?
- Must a plan sponsor include voluntary benefit plans in an ERISA wrap document?
- Is a Marketplace plan price increase considered a qualifying event to allow the employee to drop that coverage and enroll in our group health plan midyear?
- Our business is headquartered in one state, yet we have field sales rep employees in other states. Which state disability insurance and paid family leave information should those employees outside of our headquarters state receive?
- What are disability plan options offered to an employer in the state of New Jersey? What is the New Jersey Temporary Disability Benefits Law and how does it work?
- When an employee is on FMLA leave, what is the employer required to do with her other benefits? Which benefits need to be continued and what should we do if the employee does not make her co-payments while out on FMLA?
- Can we terminate an employee from our group plan since he will be eligible for Medicare?
- When an employee goes out on USERRA leave, when does the COBRA eligibility start? Is there an extra 30 days under the employer's active plan?
- What are the ERISA rules about nondiscrimination in benefits plan designs to assist with creating benefit class carve-outs?
- What happens to the benefits plans of a company being merged with another company?
- For the Medicare Part D notice of creditable coverage that employers need to provide each year, is it acceptable to post the notice on the benefit website that all employees have access to? If so, are there any specific guidelines that we must follow?



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