



**JDI**

# Prospective

Preparing you for the road ahead.

"I have found it advisable not to give too much heed to what people say when I am trying to accomplish something of consequence. Invariably they proclaim it can't be done."

-- Calvin Coolidge

## Court Holds that FMLA Provision in Handbook May Create Employer Liability Despite Employee's Ineligibility Under FMLA Statute

The United States Seventh Circuit Court of Appeals in *Peters v. Gilead Sciences, Inc.*, 2008 WL 2719579 (C.A. 7 (Ind.)), recently concluded that an employee may rely on language contained in an employee handbook to support his claim for family and medical leave benefits regardless of the employee's actual ineligibility for such benefits under the Family and Medical Leave Act ("FMLA" or the "Act"). This decision highlights the importance of a carefully drafted employee handbook, as well as proper attention to detail when determining whether an employee is eligible for various company benefits.

There are several precautions to avoid potential pitfalls that can cost a company significant time and money:

specific needs of your particular business and its employees. Remember that one size does not fit all! Obtaining standard boilerplate language that may not be suitable for your industry, or which is not tailored to your business, can lead to serious problems.

1. The handbook – A well drafted employee handbook contains an introductory section explaining that nothing contained in the handbook shall create a contract, and that all provisions can be modified at the sole discretion of the employer, even without notice to employees. Despite this caveat, however, it is still good practice to make sure that all handbook provisions are properly drafted to meet the

2. Record keeping – The *Peters* case also highlights the importance of accurate record keeping. When evaluating an employee's request for company benefits, it is important to determine whether that employee is eligible. For example, has the employee worked for the company a sufficient amount of time? Is he or she otherwise qualified under other requirements such as the FMLA's 50/75 Rule?
3. Take responsibility – When mistakes occur, take responsibility for the error and correct the problem going forward. In many instances, when it appears that an employer has not acted in good faith, the employer will be at a disadvantage in the lawsuit right from the beginning.

Robin Foret, 8/4/08

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## 2009 Maximums for HDHP Out-of-Pocket Expenses

Updated information is now available for employers regarding the maximum out-of-pocket expenses for HDHPs per the IRS 2009 guidelines.

out-of-pocket expenses for HDHPs in 2008 for individual coverage was \$5,600, and for 2009 it will be increased to \$5,800.

for 2008 was \$11,200, and for 2009 it will be increased to \$11,600.

(MHM Resources LLC, [www.mhmResources.com](http://www.mhmResources.com))

Previously, the maximum

The maximum out-of-pocket for family coverage

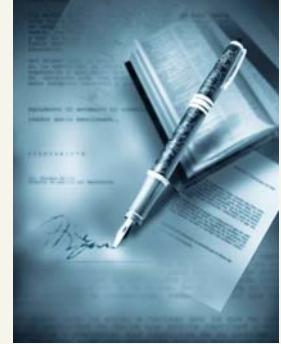
## Immigration Law & Employer Compliance: A New Era for Employer Liability

President George W. Bush signed an Executive Order requiring all federal government contractors to use E-Verify to confirm the employment authorization of new hires and persons assigned to perform work on future federal contracts. E-Verify is the internet-based system operated by the Dept of Homeland Security in partnership with the Social Security Admin to electronically verify employment eligibility of newly hired employees. The June 6 order amends

Executive Order 12989 (1996) to "promote economy and efficiency in Federal Government Procurement." While some observers have expressed concerns with the accuracy of E-Verify, Secretary Chertoff claims that the system is a "tremendous success" with approximately 1,000 new employers signing up to use the program each week. At a press conference, he stated that the system can handle an increase in participation prompted by the amended

Executive Order, which could affect "hundreds of thousands of employers and perhaps as many as one million workers" depending on "the number of government contracts over the next few years.

(The attorneys of Ogletree Deakins, a national labor and employment law firm that represents management. )



**DID YOU KNOW?** Researchers from Johns Hopkins University School of Medicine studied 13,000 initially healthy men and women from 1994 to 2000, comparing the mortality rate between those with low and normal levels of vitamin D in the blood, and found that of the 1,800 people who died by December 31, 2000 -- 700 from cardiovascular diseases -- 400 were deficient in vitamin D, which translated to a 26 percent increased risk of death. Doctors recommend a 10-15-minute daily exposure to the sun for adequate levels of vitamin D, which can also be obtained from fatty fishes. (WASHINGTON (AFP) 8/11/08)



### Preparing Yourself for Surgery

In the days before surgery, it's important to make sure that you are physically healthy, and that your mind is relaxed and prepared.

Here are suggestions from the National Women's Health Resource Center on what to do before your operation:

- Maintain a healthy, balanced diet. Be sure to get enough vitamin C, which will help your body heal.
- Quit smoking and avoid alcohol.
- Get regular exercise.
- Don't use blood-thinning medications, including aspirin, for one week before surgery. If you have a need to take such medications, discuss this with your doctor.
- Keep a positive attitude.
- Talk to your doctor about how to control post-surgical pain.
- Try deep breathing techniques and relaxation exercises.

(HealthDay News, 8/12/08)

**Don't Let Gout Get You!**

"In a study, the more of a common soft-drink sweetener called fructose that men consumed, the greater their chances of gout. Gout is characterized by sharp crystals that form in the foot or leg joints -- the big toe most often -- causing sudden and severe pain... fructose may be a factor in the disease, because it increases uric acid in the body -- and too much uric acid can set off the gout-provoking process. Go really overboard on soft drinks and the risk of gout may skyrocket -- as much as 85 percent higher in a recent study. But tea doesn't appear to affect risk. And coffee may even reduce it!"

(Soft drinks, fructose consumption, and the risk of gout in men: prospective cohort study. Choi, H. K., Curhan, G., BMJ 2008 Feb 9;336(7639):309-312.)

# September 2008

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

**T i t l e I o f H I P A A ( P a r t I o f 2 )**

By now, just about all HR staffers should be well aware of HIPAA (Health Insurance Portability and Accountability Act). Enacted by Congress in 1996, HIPAA imposed a series of regulations to guarantee health insurance to a broader population, as well as secure individually identifiable health information.

HIPAA's Title I protects health-insurance rights for individuals and their families if they change or lose jobs. Employers' plans must now give workers insurance credit for the amount of time that they had prior credible health coverage without a break of 63 days or more.

Individuals may also qualify for health coverage under Title I's special-enrollment rights, which guarantee insurance for those who lost it due to circumstances such as separation, divorce, unemployment, mar-

riage, or the birth or adoption of a child.

Title I also limits the nature and number of restrictions that health-insurance companies can impose in regard to covering care for candidates' pre-existing conditions. After HIPAA became law, group health plans could not exclude an individual's pre-existing condition for more than 12 months after enrollment.

Not all health care plans must comply with Title I's stipulations. Limited plans, such as dental or vision, do not need to meet the law's standards. An all-encompassing health care plan that includes such benefits, however, does need to adhere to HIPAA's rules.

(part 2 continued in next month's issue)  
(Lea Hartog, 4/24/08, HR World)



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