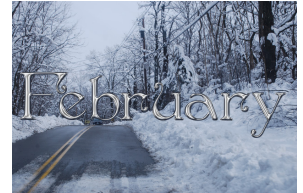




# advantage



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## SUMMARY: FLSA CHANGES IN “REGULAR RATE OF PAY”

The Department of Labor issued a “Final Rule” on January 15, 2020 (also the effective date) regarding the calculation of the “Regular Rate of Pay”. “Regular Rate” is the pay rate used in calculating overtime for eligible employees. For full language of the rule see The Fair Labor Standards Act of 1938, as Amended.

**The DOL has clarified language regarding the allowable exclusions to a “Regular Rate” of pay calculation.**

- the cost of providing certain parking benefits, wellness programs, onsite specialist treatment, gym access and fitness classes, employee discounts on retail goods and services, certain tuition benefits (whether paid to an employee, an education provider, or a student-loan program), and adoption assistance;
- payments for unused paid leave, including paid sick leave or paid time off;
- payments of certain penalties required under state and local scheduling laws;
- reimbursed expenses including cellphone plans, credentialing exam fees, organization membership dues, and travel, even if not incurred “solely” for the employer’s benefit; and clarifies that reimbursements that do not exceed the maximum travel reimbursement under the Federal Travel Regulation System or the optional IRS substantiation amounts for travel expenses are per se “reasonable payments”;
- certain sign-on bonuses and certain longevity bonuses;
- the cost of office coffee and snacks to employees as gifts;
- discretionary bonuses, by clarifying that the label given a bonus does not determine whether it is discretionary and providing additional examples and;
- contributions to benefit plans for accident, unemployment, legal services, or other events that could cause future financial hardship or expense.

For more detailed analysis regarding these changes, we recommend the following article by JacksonLewis: “U.S. Department of Labor Issues Final Rule on Calculating FLSA’s ‘Regular Rate’ of Pay,” by Jeffrey W. Brecher, Eric R. Magnus, Justin R. Barnes and Tony H. McGrath. JacksonLewis, January 14, 2020. [See it here.](https://www.jacksonlewis.com/alerts/2020/01/14/us-department-of-labor-issues-final-rule-on-calculating-flsa-s-regular-rate-of-pay)

<sup>1</sup> See: <https://www.federalregister.gov/documents/2019/12/16/2019-26447/regular-rate-under-the-fair-labor-standards-act>.

<sup>2</sup> See: <https://www.dol.gov/agencies/whd/overtime/2019-regular-rate>.

## EMPLOYERS GET “JOINT EMPLOYER” CLARIFICATION

In January, the Department of Labor (DOL) announced a final rule on the definition of a “Joint Employer” under the Fair Labor Standards Act (FLSA).

In the final rule, the DOL provides a four-factor test for determining joint employer status in cases where an employee does work for one employer that simultaneously benefits another. The test looks at whether a potential Joint Employer:

- Hires or fires the employee;
- Supervises and controls the employee’s work schedule or conditions of employment to a substantial degree;
- Determines the employee’s rate and method of payment; and
- Maintains the employee’s employment records.

The FLSA requires covered employers to pay their employees at least the federal minimum wage for every hour worked, and overtime for every hour worked over 40 in a workweek. Besides their own employer, an employee may have one or more joint employers — other individuals or entities that are jointly responsible for the employee’s wages.

If one or more employers are responsible for wages and there is a violation, such as failure to pay minimum wage or overtime, then the joint employers could be sued. However, if they are not Joint Employers, then only the business directly controlling employees would be liable.

In addition to the four-factor test, the final rule clarifies when other factors may be relevant to determining Joint Employer status and identifies certain business models, contractual agreements with the employer, and business practices that do not make Joint Employer status more or less likely.

These updates will give employers more clarity regarding what business practices may result in joint employer status. The final rule also promotes more uniformity among court decisions by providing a clearer interpretation. These benefits, in turn, likely will improve employers' ability to remain in compliance with the FLSA and will help reduce litigation costs.

## SUSTAINABLE HUMAN RESOURCES MANAGEMENT: THE RELATIONSHIP BETWEEN CORPORATE SOCIAL RESPONSIBILITY AND HUMAN RESOURCES

*BY PAUL HUTTER, SPHR, SENIOR CONSULTANT*

Corporate Social Responsibility (CSR) had its origins in the 1950's where the public began to voice concern over business profit's importance over the environment, community, employee well-being, and our society in general. In the 1990's CSR came into the limelight. Poverty, environmental challenges, poor business practices dealing with profit versus employee rights and needs, child labor practices, and egregious corruption was exposed by the media.

In today's socially conscious environment, both employees and customers place a premium on working for and spending their money with businesses that prioritize CSR. Public perception of your company can lead to the success or lack of success in business. The complex and rapidly changing needs of our society means the role of organizations of all sizes are changing. In addition to being profitable, an organization's role must now incorporate a different mindset of growing pressures, demands and expectations of different stakeholders and individuals. And doing so is no longer an activity practiced for public relations or marketing objectives.

In order to make this happen, organizations need to embed socially responsible beliefs and actions directly within their strategic planning activities and business practices. But we need to keep in mind that a realistic blend between "profit" and CSR must remain. In other words, the organization's efforts must be sustainable. Sustainability has been defined as "capable of being sustained; of, relating to, or being a method of harvesting or using a resource so that the resource is not depleted or permanently damaged."<sup>1</sup>

HR's role is to contribute to both the design and implementation of socially responsible actions. The HR function should help create environmental and social goals while keeping in mind traditional financial performance objectives. The HR function can serve as a partner in determining what is needed or what is possible in formulating corporate values and sustainability strategy. At the same time, HR should play a key role in ensuring that employees implement the strategy consistently across the organization. Sustainable Human Resource Management (HRM) can be defined as using the tools of HR to create a workforce that has the trust, values, skills, and motivation to achieve both the act of social responsibility and a profitable bottom line.

Human Resources and the act of being socially responsible tend to interface in the following area: Environmental stewardship, employee communication and engagement, diversity management, and community relationships. The Society for Human Resource Management has defined some examples of sustainable HRM practices which include:<sup>2</sup>

- Capitalizing on education and compensation to encouraging employees to reduce the use of environmentally damaging products;
- Developing activities that connect environmentally friendly actions (recycling) in ways they can be utilized by their local communities (playgrounds in underdevelopment neighborhoods);
- Policy, practice and process built into a company's HRM system to foster diversity, equity, inclusion and well-being for employees and the communities they affect; and
- Emphasizing long-term employment security to avoid disruption for employees, their families and communities.

In order to create sustainability, Human Resources must be an integral part of an organization's strategy. HR can support a sustainable socially responsible culture through the development and implementation. Second, to be considered a strategic partner and value-added function, HR must recognize the new sustainability context of business and align its practices accordingly. To do this, HRM needs to

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Editor: Judy Clark, CPC, SPHR, IPMA-CP: Advantage is published monthly and is designed to provide information on regulations. HR practices and management ideas and concerns. The intended audience is managers, supervisors, business owners, human resource and employee relations professionals. If you have questions about the content, an opinion about the information, or questions about your subscription, please give us a call at (503) 885-9815 or e-mail [info@hranswers.com](mailto:info@hranswers.com).

provide realistic HR solutions that balance profit and social responsibility in a sustainable way. This is done through the adoption of an iterative process for creating foundational sustainability values and understanding, engaging HR stakeholders, reviewing and developing HR policies and practices, and tracking and reporting performance and effects.

<sup>1</sup> Merriam-Webster Dictionary, accessed January 20, 2020. [See it here](#)

<sup>2</sup> Elaine Cohen, Sully Taylor, Ph.D., and Michael Muller-Camen, Ph.D. SHRM Foundation Executive Briefing HR's Role in Corporate Social Responsibility and Sustainability. Accessed January 19, 2020. [See the data here](#)

## ICE CONTINUES APPLYING HEAT TO EMPLOYERS

The odds that federal agents will scrutinize your work authorization practices and paperwork keep going up.

In Fiscal Year 2019 (which ended Sept. 30), U.S. Immigration and Customs Enforcement (ICE) opened 6,812 new investigations into employers suspected of violating immigration laws—everything from hiring undocumented workers to making errors on their I-9 Forms. That's a 14% increase from 2018, but a whopping 400% jump from the number of investigations filed in 2016 and 2017.

While most media attention on President Trump's immigration crackdown has focused on efforts to build a wall on the southern border, this data shows the administration's simultaneous emphasis on erecting a "virtual wall" to block undocumented workers from getting and keeping jobs.

To bolster the enforcement effort, ICE has increased its technology efforts by electronically scanning I-9s to flag suspicious activity. And the agency made a formal budget request last year to hire dozens more junior compliance officers to audit employers' I-9 records and cut into a sizable backlog of pending I-9 audit reviews.

Despite the spike in enforcement, the number of employers (managers, executives, HR directors) arrested for hiring undocumented immigrants has actually declined each year since 2016. Only 40 employers and managers were arrested last year, down from 72 in FY2018. That may be changing. ICE Deputy Director Matthew Allen told *The Wall Street Journal* that the agency hopes to "arrest many more employers" in the coming years. Allen admitted it's "much more difficult and longer-term to get employers and managers in the company charged," because federal law requires investigators to prove that the employer knew about the workers' illegal status.

Our advice: Review your I-9 records before ICE shows up to conduct their own audit.

## THOUGHTS TO THINK ABOUT

"Before you are a leader, success is all about growing yourself. When you become a leader, success is all about growing others."  
– Jack Welch, former CEO of General Electric

"If it weren't for the mistakes I've made, I wouldn't be where I am today."  
– Unknown

"There's nothing that can help you understand your beliefs more than trying to explain them to an inquisitive child."  
– Frank A. Clark

"A man is not where he lives, but where he loves. (He that truly Loves, dwells not where he lives, but where he Loves.)"  
– Latin proverb

"I like coffee because it gives me the illusion that I might be awake."  
– Lewis Black

"Time is the most valuable thing a man can spend."  
– Theophrastus

"Be a pineapple. Stand tall, wear a crown and be sweet on the inside."  
– Unknown

"One kind word can warm three winter months."  
– Japanese Proverb

"Just when the caterpillar thought her life was over, she began to fly."  
– Barbara Haines Howett

## TALENT ACQUISITION AND RETENTION 20/20 VISION

BY GAIL MULLER, DIRECTOR OF RECRUITING & STAFFING HR ANSWERS

A New Year's goal of our recruiting and staffing department is to shine a spotlight on topics that are important to candidates when they apply, interview, and obtain new positions within organizations. This month we're focusing on issues that are essential for hiring managers to know.

### **Did you know that?**

The "Top five dealbreakers (for candidates) to not make it through the interview process to obtain a job offer" are:

- Hires or fires the employee;
- Lying (or appearing to lie) about something;
- Answering calls or texts (during an interview!);
- Acting entitled or arrogant; Showing lack of accountability; and
- Swearing or cursing.

<https://fortune.com/2020/01/06/bad-job-interviews-advice-for-interviewing/>

The "Number 1 Employee Perk" by a Harvard Study is...(drum roll!) flexible work arrangements.

<https://www.inc.com/bill-murphy-jr/bill-gates-says-this-1-employee-perk-is-most-important-now-a-new-harvard-study-backs-him-up.html>

### **"Warren Buffet's 10 Leadership Lessons"**

1. Love what you do;
2. Learn how to communicate effectively;
3. Choose your business associates wisely;
4. Don't micromanage;
5. Plan for the future;
6. Transparency is highly appreciated;
7. Patience is a virtue;
8. Manage your time wisely;
9. Be prepared to take risks and learn from mistakes; and
10. Treat everyone equally.

[https://www.google.com/search?q=warren+buffett+leadership+lessons&rlz=1C1CHBF\\_enUS865US865&oq=warren+buffett+leadership+lessons&aqs=chrome..69i57j0j8&sourceid=chrome&ie=UTF-8/](https://www.google.com/search?q=warren+buffett+leadership+lessons&rlz=1C1CHBF_enUS865US865&oq=warren+buffett+leadership+lessons&aqs=chrome..69i57j0j8&sourceid=chrome&ie=UTF-8/)

## HR LINK

February is home for Random Act of Kindness Day (17<sup>th</sup>) and Week (16<sup>th</sup> – 23<sup>rd</sup>).

If you or your organization would like to celebrate, become a RAKTIVIST, or would like one of their calendars, then we encourage you to visit this link: <https://www.randomactsofkindness.org/>

We challenge you to spread Random Acts of Kindness. Here are several ideas:

- You could smile at 25 people
- Take a treat to your local firefighters
- Thank a school bus driver
- Donate something to an animal shelter
- Read a book to a young child
- Leave a flower on a desk or doorstep
- Call and say hello to your grandparents

Of course, this is just the beginning. There are so many ideas out there – you are only limited by your imagination.

## HR BY THE NUMBERS

Talent is an organization's most important asset. And yet, a [study](#) found that in 2018, 41.4 million American employees left their jobs voluntarily. This converts to roughly 27 out of 100 employees that quit! If organizations let this trend continue, voluntary turnover will hit 35% by 2023, placing companies in continuous and enormous risk.

\* \* \* \*

### **Policy. Culture. Benefits. Diversity.**

These are more than just buzzwords around the workplace or jargon used to fill a job description. The way an organization operates impacts more than just the handbook. In fact, **1 in 5 American workers have left a job due to a toxic workplace culture.**

When workers feel unheard, they feel inhibited from performing their best at work and ultimately, can be driven into the arms of more inclusive employers. Key issues barring some of the best talent from thriving in your organization are:

- Almost half of American workers say they've been treated unfairly due to their age —young and old;
- People with disabilities are twice as likely to be unemployed;
- Roughly three-fourths of people released from prison remain unemployed for more than a year; and
- More than 50% of veterans have trouble finding work.

\* \* \* \*

U.S. Citizenship and Immigration Services (USCIS) final fiscal year (FY) 2019 agency statistics are now available [online](#). These statistics include naturalizations, green cards, employment authorizations and protected populations, among other categories. The agency's FY 2019 asylum statistics are available [here](#).

### **Highlights Include:**

- USCIS also [processed](#) more than 40 million cases through E-Verify.
- USCIS naturalized 834,000 new citizens in FY 2019 – an 11 year high in new oaths of citizenship. USCIS granted lawful permanent residence to nearly 577,000 individuals and in FY 2019, the number of applications pending for green cards and naturalizations was reduced by 14 percent and 12 percent respectively.
- The agency received nearly 2.2 million employment authorization applications. Furthermore, USCIS approved more than 500,000 petitions for non-immigrant workers in FY 2019, including specialty occupation, temporary agricultural and non-agricultural, and other workers.
- USCIS granted immigration relief to more than 25,000 individuals, including victims of trafficking, crime and Violence Against Women Act (VAWA) recipients – an 8% increase from FY 2018.
- USCIS is committed to administering our nation's immigration system and safeguarding its integrity while fulfilling our mission to efficiently and fairly adjudicate the applications of those seeking lawful status in the U.S.

## FOR YOUR CALENDAR

Open up your Daytimers, Outlook, and all those Smartphones. The following is a look at upcoming events and workshops, special days, and other diverse and fun activities you will want to be aware of and schedule. **To register for our workshops, go to [HR Answers Events](https://hranswers.com), or email your registration form to [info@hranswers.com](mailto:info@hranswers.com).**

### **FEBRUARY**

National Month of Black History; Children's Dental Health; Heart; Hot Breakfast; Fasting; Great American Pies; Library Lover's; Snack Food; and Weddings.

- Feb. 11 HRA Workshop – Portland/ Tigard  
[Reinforcing A Respectful Workplace](#)  
1:00pm – 4:30pm
- Feb. 13 HRA Workshop – Portland/ Tigard  
[Job Search Workshop](#)  
11:00am – 1:00pm
- Feb. 14 Valentine's Day
- Feb. 17 National Random Acts of Kindness Day
- Feb. 16-22 Random Acts of Kindness Week
- Feb. 18 HRA Webinar – Online / Teleconference  
[Employee Recognition Made Easy](#)  
9:00am – 10:30am
- Feb. 18 Drink Wine Day
- Feb. 20 HRA Webinar – Online / Teleconference  
[Job Descriptions: Writing Effective Job Descriptions with Measurable Standards](#)  
9:00am – 10:30am
- Feb. 18 Fat Tuesday
- Feb. 25 HRA Workshop – Tigard  
[Self-Awareness Through DiSC](#)  
8:30am – 12:30pm
- Feb. 26 National Tell a Fairy Tale Day
- Feb. 28 National Chocolate Souffle Day

### **Coming Up:**

- Mar. 4 HR Lunch Bunch Online –  
Webinar/ Teleconference  
[Topic: On-Boarding – Ensure That New Hires Succeed](#)  
12:00 – 1:00pm
- Mar. 10 HRA Webinar – Online/ Teleconference  
[Is It Time To Update Your Handbook? \(Probably Policies & Forms Too\)](#)  
9:30am – 11:00am
- Mar. 19 - HRA Workshop Series – Portland/ Tigard  
May 14 [Spring Supervisory Success Series](#)  
8:30am - 12:30pm  
**This Series is over half full!**

- Mar. 24 HRA Webinar – Online/ Teleconference  
[Managing Leaves Of Absence](#)  
9:00am – 10:30am
- Mar. 26 HRA Webinar – Online/ Teleconference  
[Recruiting – Sourcing Options](#)  
1:00pm – 2:30pm

### **Looking Ahead:**

- Apr. 1 HR Lunch Bunch Online –  
Webinar/ Teleconference  
[Topic: Employee Coaching](#)  
12:00 – 1:00pm
- April 8 HRA Workshop – Corvallis  
[Reinforcing A Respectful Workplace](#)  
1:00pm – 4:30pm
- Apr. 22 HRA Webinar – Online/ Teleconference  
[Employer Branding – Part of Talent Acquisition](#)  
9:00am – 10:30am
- Apr. 29 HRA Webinar – Online/ Teleconference  
[Performance Review for Executive Directors](#)  
9:00am – 10:30am
- May 6 HR Lunch Bunch Online –  
Webinar/ Teleconference  
[Topic: Improving Communication](#)  
12:00 – 1:00pm
- May 21 HRA Webinar – Online/ Teleconference  
[Pay Equity](#)  
9:00am – 10:30am

View more details and register for our workshops on our website at [hranswers.com](https://hranswers.com).

## ON MY SOAPBOX

I am embarking on a new way to work at the end of this month. I will be working from home for most of the week. I will still come to the office for our staff and consultants' meetings, but other than those, I will not be here often. We have been having conversations about how we pass work back and forth, what kind of technology set-up I should have, and what will be my regular assignments. (At this point, it appears that I will retain Soapbox so I am happy about that.)

I have been thinking about what will change for me when March arrives. I think the one thing that I know for sure is that at times I will be lonely. Since my husband died about four years ago, the house and my life has had fewer dedicated responsibilities. That has been compounded by my health situation which has necessitated the use of a wheelchair. That significantly limits my mobility. I am hopeful for hip replacement surgery in the next couple of months. It has been delayed for a loooooong time and I am excited about the prospect of finally having the wait behind me!!

One of the things that I have been doing to prepare myself for this transition is reading articles and studies about remote working. I find it somewhat humorous that when I find one that speaks positively about this mode of operation; the next one I find has negative things to say about working from home.

Here are a few of the comments I have found:

- A 2016 U.S. Government Accountability Office report on federal telework stated the agencies they studied, "...had little data to support the benefits or costs associated with their telework programs."
- One article by the *Washington Post* said, "Now is not the time to experiment with working at home."

But Gallup which has been researching this for several years now says, "Remote work is becoming more common." They suggest that the reason for this is a change in the workforce. They found that 54% of office workers say they'd leave their job for one that offers flexible work time and arrangements. They cite finance, insurance and real estate industries as having the largest surge in remote work. Interestingly, the industries that follow these are transportation, manufacturing and construction. I must admit I am not sure how some of this work is done at home. The first key finding from the Gallup research is that job flexibility engages remote workers which drive performance. The second one is that companies save about \$8,000 for each employee who primarily works from home.

An environment with less distractions and interruptions should increase productivity. So, attention must be paid to the type of work, the work style of the employee, and what is going on at home that would detract from the ability to be productive.

Our office is growing, and space has become a consideration for all our decisions. One of the easy ones was to volunteer to work from home and let someone else work from the space I currently occupy. I haven't signed up to be a research subject for remote work, but it will be interesting, and perhaps fun, to discover how much I agree with the research and how hard or easy the transition will be. This will be my second step to some kind of retirement. Late last year, I cut my work hours by about 25%. I will be working on investigations, expert witness work, business development, and writing so this feels like a scope of work that fits with working from home.

I will let all of you know how it works out. And, if you ever have a couple of free minutes, call the office and ask for me. I will get your message and call you right back. That should help me feel connected, and I would always appreciate it!

PS – Last month I wrote about Samara and her efforts to become a US citizen. Her Oath Ceremony is February 20<sup>th</sup>. We are closing the office that morning so everyone can attend. We are so proud of her and inspired by her!

- Judy Clark, President



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"Whatever the Question"

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[WWW.HRANSWERS.COM](http://WWW.HRANSWERS.COM)