

BEST PRACTICES *in HR*™

December 3, 2005

www.blr.com

Issue 802

CONTENTS

Case Study.....3

- A Strategic Plan for Employee Communications

From the Courthouse4

- Worker Alleges Wage Disparity Is Due to National Origin Discrimination

The HR Professional.....5

- Definition of Internet Job Applicant Finalized by OFCCP
- Veterans' Job Rights Protection Streamlined
- Other USERRA Initiatives

Tips & Tactics6

- The Trials and Tribulations of E-mails
- An Employee Directory that Fulfills HR Needs

Case Study.....7

- Community Service Leave Program Is an Effective Retention Tool

HR Tool Box8

- Controlling Bad E-mail Habits

BLR[®]
BUSINESS & LEGAL REPORTS
Making your job easier!

New Orleans Law Firm Survives Katrina, Helps Stricken Clients

PUTTING EMERGENCY PLANNING INTO PRACTICE

After New Orleans experienced near misses with back-to-back hurricanes 3 years ago, officials at a law firm here met to assess how they would fare in a direct hit. The news wasn't good, so the firm decided to develop a more thorough disaster recovery plan.

That proved to be a wise decision for Jones, Walker, Waechter, Poitevent, Carrère & Denègre, LLP (www.joneswalker.com). Although its New Orleans office building sustained limited structural damage from Hurricane Katrina in late August, employees could not return to work there until mid-October when a problem on the electrical grid was finally resolved, water pressure was secured, the water was deemed potable, and other remedial measures were taken.

H. Mark Adams, chairman of the firm's labor relations and employment law practice and a member of the firm's executive committee, says, "This experience really put us to the test."

Thanks to the successful implementation of its disaster recovery plan, the firm was able to quickly reconnect with its employees to begin any necessary assistance and determine if they were ready to help clients address numerous employment law issues.

Communications Key to Recovery

As part of its planning process, Jones, Walker had stored over 200 preprogrammed computers in Baton Rouge and established a system for keeping in communication with employees and clients in the event of an emergency.

As Katrina approached New Orleans, the firm sent out an e-mail giving employees alternate phone numbers to call after the storm had passed. Lawyers, senior managers, and paralegals received instructions on how to use their BlackBerry handheld devices to communicate BlackBerry®-to-BlackBerry, without having to go through the company's e-mail servers, which the firm shut down in advance of the hurricane to avoid loss of data and systems.

Back to Business Off-site

Adams explains that management also decided to physically move the servers to the firm's Baton Rouge office before the storm hit.

Within 24 hours after the hurricane had passed, the firm's information technology staff was setting up temporary office space in Baton Rouge for its New Orleans workers.

HR started contacting over 300 New Orleans lawyers and support staff members. "By the third day after the hurricane, almost all of our lawyers were working somewhere [in one of the firm's other offices in Baton Rouge, Houston, Miami, Lafayette, or Washington, D.C.]... and we had made contact with over 90 percent of our staff," Adams says.

Some staff members couldn't return to work right away. "Provided they gave us a commitment to return, we kept them on the payroll," he says. The firm expects its New Orleans office to be at full capacity by January.

(continued on page 2)

ADVISING CLIENTS ON STORM-RELATED ISSUES

Although its New Orleans employees were working in five different cities, Jones, Walker was able to resume business almost immediately. Within 3 days of the hurricane, the firm started contacting affected clients to see how it could help them.

“Many clients asked for information about hurricane-related assistance for their employees,” says Jennifer L. Anderson, another partner in the firm’s labor relations and employment law practice.

However, clients also needed help with a variety of employment law issues. Some employers wanted to put employees on furlough and amend severance packages so that employees would be eligible for severance pay and insurance coverage.

Others wanted help writing agreements that would keep employees on the payroll even if they couldn’t return to work right away, or advice on Katrina-related tax relief measures, such as accessing 401(k) plans, Adams says.

WARN Act

“Unfortunately, there were a lot of employers who were in the position where they had to look at layoffs or had to relocate plants,” Adams says, noting that that triggered certain Worker Adjustment and Retraining Notification (WARN) Act requirements.

The WARN Act includes employee notification requirements in certain cases involving mass layoffs or plant closings by employers with at least 100 employees at all locations, according to Adams.

In the event of a natural disaster or other event beyond the employer’s

control, notice of an impending layoff or closing must be given “as soon as practicable,” he says.

Notification Problems

Employers’ legal challenges regarding WARN Act requirements, severance benefits, and COBRA notices were compounded by the fact that many employers had no way of communicating with their employees, Adams says.

“That created a problem—particularly when people were being laid off or provided with severance pay. How can you send a COBRA notice or severance check when you don’t know where to send it? We were kind of dealing with uncharted territory, because nothing like this has ever happened before,” says Adams.

In all cases, employers were advised to send notices to employees’ last known addresses, and in some cases, employers were told to keep funds in an escrow account earmarked for particular employees and to take out newspaper, television, and radio advertisements in a “good-faith effort” to reconnect with those employees, according to Adams.

In other cases, clients were advised to mail checks to areas where mail delivery had been restored with the hope that employees had made arrangements to have their mail forwarded, says Anderson.

If an employee later claims that he or she never received a paycheck, the company can see whether the check ever cleared.

What Employers Can Do

Adams and Anderson offer the following advice to employers:

Establish a communication system.

Set up alternate phone numbers that employees can call after a disaster, and ask employees where they could likely be reached following a disaster.

Be creative, but treat all employees equally. Employers shouldn’t feel bound by their existing policies after a natural disaster, but they should make sure that any revised policies are applied consistently, Anderson says.

For example, if employers offer unpaid leave after a natural disaster, they should grant such leave in a fair and equitable manner.

Seek legal advice about applicable laws. Certain disaster-related injuries and illnesses might qualify an employee for leave under the Family and Medical Leave Act, and some employers might have obligations under the WARN Act.

In addition, employers should be cognizant of Fair Labor Standards Act requirements. For example, Adams says when salaried exempt employees need to take time off to deal with insurance, home repairs, and other hurricane-related personal issues and don’t work a full workweek, employers must pay those employees their full salary for that workweek or lose exempt status for that employee.

Don’t be too quick to make layoffs.

After Katrina, some employers, considering the initial projections of how long it would take to make New Orleans habitable again, felt compelled to make layoffs, says Adams.

Then when conditions began to stabilize sooner than anticipated, and employers realized they could, in fact, reopen, some employers had to begin the complicated process of “unraveling” layoffs and severance pay issues.

Note: The American Society of Safety Engineers (ASSE) offers a guide, *Business Resumption and Disaster Safety Checklist*, on its website.

Go to www.asse.org, click on ASSE newsroom, then select this title.

Robert L. Brady, J.D., *Publisher*; Margaret A. Carter-Ward, *Editor in Chief*; Chris Ceplenski, *Managing Editor*; Elaine Quayle, *Editor*; Karen Barretta, Kelly Griffin, *Contributing Editors*; Rebecca MacLachlan, *Graphic Designer*; Sherry Newcomb, *Layout Production*; Marianne Graham, *Marketing Manager*. *Best Practices in HR* is issued by BUSINESS & LEGAL REPORTS, INC. Editorial and business offices are located at 141 Mill Rock Road East, P.O. Box 6001, Old Saybrook, CT 06475-6001. ©1997-2005 Business & Legal Reports, Inc.

Issued bimonthly. Subscription price: \$298.00 for 24 issues. Periodicals mail postage paid at Old Saybrook, CT 06475-9998, Standard Mail enclosed. POSTMASTER: Send address changes to *Best Practices in HR*, 141 Mill Rock Road East, P.O. Box 6001, Old Saybrook, CT 06475-6001.

Authorization to photocopy items for internal or personal use, or the internal or personal use of specific clients, is granted by Business & Legal Reports, Inc., provided that the base fee of U.S. \$0.50 per copy plus U.S. \$0.50 per page is paid directly to Copyright Clearance Center, Customer Service, 978-750-8400, or check CCC Online at: <http://www.copyright.com>. For those organizations that have been granted a photocopy license by CCC, a separate system of payment has been arranged. ISSN #1096-973x