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Virginia Department of
HUMAN RESOURCE
MANAGEMENT

DOL Clarifies FMLA Definition of "in loco parentis"

On June 22, 2010, the Wage and Hour Division of the Department of Labor (DOL) issued Administrator's Interpretation No. 2010-3, which clarifies the "the definition of "son or daughter" under Section 101(12) of the Family and Medical Leave Act (FMLA) as it applies to an employee standing "in loco parentis" to a child." The FMLA defines "in loco parentis" as employees who have day-to-day responsibilities to "care for and financially support a child." An employee does not have to have a biological or legal relationship with a child be considered as in loco parentis and to therefore have access to FMLA leave.

The Administrator's interpretation states:

> "...the regulations do not require an employee who intends to assume the responsibilities of a parent to establish that he or she provides both day-to-day care and financial support in order to be found to stand in loco parentis to a child. For example, where an employee provides day-to-day care for his or her unmarried partner's child (with whom there is no legal or biological relationship) but does not financially support the child, the employee could be considered to stand in loco parentis to the child and therefore be entitled to FMLA leave to care for the child if the child had a serious health condition. The same principles apply to leave for the birth of a child and to bond with a child within the first 12 months following birth or placement. For instance, an employee who will share equally in the raising of a child with the child's biological parent would be entitled to leave for the child's birth because he or she will stand in loco parentis to the child. Similarly, an employee who will share equally in the raising of an adopted child with a same sex partner, but who does not have a legal relationship with the child, would be entitled to leave to bond with the child following placement, or to care for the child if the child had a serious health condition, because the employee stands in loco parentis to the child."

The Administrator's interpretation also indicates there is nothing in the FMLA that restricts the number of parents a child may have for FMLA purposes and provides the following example:

> "...where a child's biological parents divorce, and each parent remarries, the child will be the "son or daughter" of both the biological parents and the stepparents and all four adults would have equal rights to take FMLA leave to care for the child." According to the interpretation, " (a) simple statement asserting that the requisite family relationship exists is all that is needed in situations such as in loco parentis where there is no legal or biological relationship."

It is important to note that the changes in the interpretation of "in loco parentis" made by the U.S. DOL does not require changes to DHRM Policy 4.20 - Family and Medical Leave, or to the medical certification procedures currently used. Contact Mike Pote if you have questions.

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Statewide Pay Action Summary Report for April — June 2010

Reason	All Actions	Salary Changes	Average Change
Agency Special Rate	40	40	5.22
Change of Duties Decrease	1	1	-5.00
Change of Duties Salary	230	230	7.17
Competitive Salary Offer	22	22	15.28
Competitive Voluntary Transfer	308	220	10.03
Disciplinary Demotion	4	4	-12.74
Downward Role Change	14	1	-5.00
End Temp Pay: Acting Status	55	55	-8.94
End Temp Pay: Addtional Duties	30	30	-7.05
End Temp Pay: Special Assgnmnt	8	8	-6.82
Exceptional Promotion	14	14	18.99
Field Change	2	2	8.59
Internal Alignment Decrease	2	2	-2.73
Internal Alignment Salary	348	348	7.51
Lateral Role Change	75	30	7.85
New Knowledge/Skills/Abilities	228	228	7.67
Non-Competitive Voluntry Trans	135	28	1.48
Non-Routine	55	55	2.63
Perf Reduction Salary/Duties	1	1	-5.00
Performance Demotion	1	1	-12.20
Promotion	206	202	16.33
Reassignment	175	1	-11.29
Retention Salary Increase	67	67	7.77
Temp Pay: Additional Duties	32	31	7.71
Temp Pay: Special Assignment	15	15	7.25
Temporary Pay: Acting Status	60	60	9.00
Upward Role Change	127	106	10.57
Voluntary Demotion	39	15	-4.30
Change of Duties Bonus	25	25	3.64
New Knowledge/Skills/Abilities	202	202	2.01
Project Bonus Pay Out	46	46	1.88
Recognition Award Leave Hours	2139		
Recognition Award Monetary	1045	1045	0.91
Recognition Award Non-Monetary	103	103	0.16
Referral Bonus Pay Out	15	15	0.56
Retention Additional Leave	1		
Retention Bonus	27	27	3.14
Retention Bonus Pay Out	3	3	1.15
Sign-On Additional Leave	3		
Sign-On Advanced Leave	3		
Sign-On Bonus Pay-Out	40	40	3.37
Total Actions	5946	3323	4.86

For the second quarter, there were 1,643 base salary increases averaging 9.62%; 174 base salary decreases averaging –8.22%; and 1,506 bonus actions, averaging 1.18%.

Workforce Planning and the Periodical's Pay Action Summary data may vary within the same reporting period based on the timing of data runs, agency retraction requests, and the manual review and extraction of erroneous PMIS entries.

How Talent Management Supports Day-to-Day HR

Have you ever felt discouraged as another talented employee resigned from your agency? Have you ever struggled with the recruiting yo-yo (turn it on, turn it off, turn it on again and have these positions staffed yesterday)? Have you ever felt concerned about your agency's ability to meet goals as functional areas retreat to their silos?

Most if not all Human Resource professionals have experienced these thoughts at one point or other in their careers. These and many related topics form an often complex web of challenges agencies face on a regular basis. And, often, it is the HR professional who sees all the intricacies of these challenges woven together within this web.

In April's periodical, we introduced DHRM's Talent Management Website. Talent Management is the systematic cycle of planning, execution, and evaluation to manage the flow of talent into, through, and out of the organization to achieve goals and meet needs. The overall cycle of Talent Management includes various employee lifecycle stages including Acquisition, Integration, Engagement, Reward, Transition, and Exit.

You may be thinking, so what? Talent Management sounds nice, but what does it really mean for me? What does it have to do with the challenges described above and the many other issues faced on a day-to-day basis? You may even be thinking that it sounds like the latest fad to hit state government Human Resource Management.

Think of Talent Management as a broad umbrella that encompasses all the different things that you do every day to facilitate the work of your organization. Things like: acquiring talent to fill critical staffing needs (Acquisition); facilitating the orientation and on-boarding of new talent or talent that has changed roles (Integration); analyzing, understanding, and implementing activities to address turnover trends in key groups (Engagement); coaching a manager on how best to reward an employee for exceptional work on a mission-critical project (Reward), working with a team to establish and implement progression paths for a key agency function (Transition); guiding a long-term employee though the retirement process (Exit); and working with agency leadership to integrate a workforce plan into the strategic plan (Talent Management).

DHRM's Talent Management Website provides tools and concepts to help support you in introducing and supporting these and other needs in your agency. There are basic tools for general Talent Management planning, organization assessment and design, acquisition overview, contingent workforce planning and guidance, on-boarding methods, and performance development techniques. More tools are under development and will be available to you in the coming months.

So, take some time to check out the Talent Management Website to see how some of these tools may help you in your work. Our goal is to provide tools and guidance to help facilitate your Talent Management activities on the "front line" of state operations. Talent Management is not the latest fad – it is the way we, as Human Resource professionals, facilitate the ability of our agencies to provide services to the citizens of Virginia. If you do not see something that you need or have a specific issue that just does not seem to improve, let us know and we will be happy to consult with you and provide what you need.

This issue's remaining articles continue our series geared toward the interests of managers and supervisors. We encourage you to share these articles, tailoring them as you need to satisfy your agency's goals and culture.

Knowledge-based Interviewing and Testing

The April 2010 issue of the ***AHRS Periodical*** contained an article on behavioral-based interviewing, a technique to assess a person's ability, such as working as a team member. It requires the person to tell about a situation in which the ability was used.

There are times when the selection standard is not the ability to do something, but knowledge of a specific subject. For instance, when selecting someone to work as a computer programmer using a specific language, a question might be posed concerning the differences between function and subroutine calls in that language. If interviewing an accountant, one might ask the person to describe the ways to depreciate an asset and to state when each might be used. This approach is similar to the oral examinations encountered in universities and may be called knowledge-based interviewing. The difference between it and behavioral-based interviewing is that behavioral interviews do not have answers that are technically right or wrong. The answers show only if the behavior has been demonstrated. In the knowledge-based interview, or oral examination, there are right or wrong answers and the interviewer must know which is which.

Many would say that the time typically allowed for a selection interview is not sufficient to accurately assess the knowledge a person must have in order to do a job. They would suggest that a paper and pencil test or a computer administered test should be used in addition to an interview. Such tests have been used extensively in civil service selections and have seen some use in the private sector. However, anyone who wishes to use them should be familiar with the "Uniform Guidelines on Employee Selection Procedures," Title 29, Part 1607, of the Code of Federal Regulations.

The guidelines are "uniform" because the U.S. Department of Labor, the Equal Employment Opportunity Commission, and the U.S. Department of Justice have all agreed to use them as the standard for judging employee selection procedures, and they are the standard by which courts judge the procedures.

Any state agency that is using, or planning to use, a written test for employee selection should contact its assigned AHRS consultant to discuss the use. The consultant will work with the agency to apply the guidelines, which require:

- Assessment of adverse impact
- Determination of validity – showing job-relatedness by:
  - ◊ Statistical methods – Criterion-related validity
  - ◊ Logical methods – Content validity
- Consideration of alternative selection procedures
- Documentation of impact and validity

Also, if an agency uses a test which gives a numerical score, it must comply with Code of Virginia § 2.2-2903 that requires the passing scores of veterans to be augmented by 5%, or 10% if the veteran is disabled.

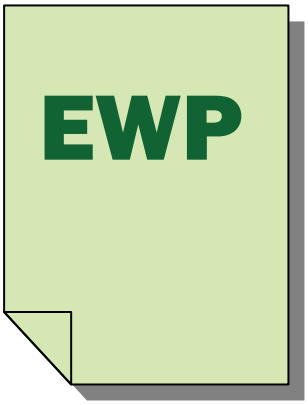
Employee Work Profile: The Primary Source Document—Part 2

The April 2010 *Periodical* introduced the Employee Work Profile (EWP) as the primary source document and listed its uses. This article describes the EWP's individual parts.

Part I identifies such position information as role title and code, pay band, FLSA status, and EEO code. It also identifies the position supervisor's position and role and the agency name and code. Agency human resource staff can help you obtain the correct codes.

The Work Description and Performance Plan (Part II) includes the following information:

- Organizational Objective: This is a broad statement explaining what the work unit does and how it links to the agency's goals and objectives. It is not a list of duties.
- Purpose of Position: brief description (2-3 sentences) of why the position exists
- KSAs and Competencies: expertise required to successfully perform the work at the position's entry level
- Education, Experience, License or Certification: requirements for the position's entry level
- Core Responsibilities: These are duties or tasks essential to the work performed. They are written as broad sets of major duties or functions at the "Contributor" performance level. They typically remain relatively consistent over multiple performance cycles.
- Measurements: qualitative, quantitative, and/or timeliness measures for each core responsibility
- Special Assignments: brief, one-time assignments that are typically not part of the position's regular duties
- Measurements for Special Assignments: qualitative, quantitative, and/or timeliness measures for each assignment
- Agency/Departmental Objectives: These are strategic business objectives set by the agency or its divisions or departments. They may include behavioral competencies that are critical to the employee's success.
- Organizational Chart: illustrates how the position fits into the organizational structure



The Employee Development Plan (Part III) provides an opportunity for the employee and the supervisor to collaborate on the learning goals for the performance cycle. Learning goals are aligned with the business needs of the organization. Specific steps are established outlining how the learning goals will be accomplished through training, coaching or other learning methods.

The Performance Evaluation component of the EWP is used to rate the employee's performance on each of the core responsibilities, special assignments, and agency/department objectives during the performance year. It is also used to summarize the accomplishments related to the personal learning goals.

Physical Demands/Cognitive Requirements is the final section of the EWP. This section documents job functions for use when responding to requests for job modifications or accommodations. This information should be maintained as part of the position information. Any medical information used to make job modifications or accommodations must be maintained separately from the employee's personnel file. Agencies can develop their own Physical Demands form or use the Physical Demands Worksheet available on the DHRM forms website.

Your agency human resource staff can assist you in completing these sections of the EWP.

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Our goal is to provide practical information that supports human resource objectives across the Commonwealth and to encourage innovative strategies in the management and delivery of agency services.

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