



# Your Advantage

*News and information to help you and your business succeed*

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## Employer Advantage announces

Have you seen it? **“Getting back to the business – of your business”** is a new video on the Employer Advantage website (employeradvantage.com).

The short video is for any business owner who ever wondered how a Professional Employer Organization (PEO) would benefit their business. Some featured clients of Employer Advantage also talk frankly about how EA has helped their operations.

We invite you to view the video and tell us what you think. Feel free to share the link with other business associates to show how Employer Advantage can help their company.

## States with WARN Laws

On January 1, 2010, New Hampshire enacted the New Hampshire Worker Adjustment and Retraining Notification Act which requires employers with 75 or more employees and laying off one third of the workforce or more to give 60 days notice.

New Hampshire joins 16 other states with WARN acts in the event of mass layoffs or closings.

**California:** Applies to “facilities” that have employed 75 or more persons within the last 12 months; 60 days of notice required.

**Connecticut:** In the case of plant closings or relocations to another state, the employer must pay to continue existing health insurance of terminated employees for as long as 120 days.

**Hawaii:** Applies to employers with as few as 50 employees, but is limited to layoffs caused by sales of businesses or relocations of operations to out-of-state (though a recent revision calls this limitation into question); 60 days of notice required.

**Illinois:** Applies to employers with as few as 75 employees, and to layoffs of as few as 25 employees; 60 days of notice required.

**Kansas:** Certain employers must apply to the state secretary of labor for permission to limit or cease operations.

**Maine:** Applies to facilities employing 100 or more persons during the 12-month period preceding a relocation or termination of operations; requires 60 days of notice to the state and severance pay to employees.

**Massachusetts:** Employers with 50 or more employees at a facility must provide notice; the state bills employers for re-employment assistance it provides up to a 13-week maximum, which amount is reduced for every week of advance notice provided by the employer.

**Michigan:** Employers follow the Federal WARN act with the addition of providing a written notice of action to the Rapid Response Unit and the local elected government official.

**Minnesota:** In 2009, Minnesota House of Representatives proposed a bill to help enforce an existing law requiring “as early as possible” notice of company closures.

**New Jersey:** Applies to employers with as few as 50 employees, and requires severance pay if proper notice is not given, and has many departures from federal WARN, including timing of notices in sequential layoff—first layoff triggers notice to everyone involved; 60 days of notice required.

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**New York:** Applies to any business enterprise with at least 50 full-time employees and to layoffs of as few as 25 employees; 90 days notice is required.

**Oregon:** Follows the Federal WARN act.

**Rhode Island:** Follows the Federal WARN act and requires that written notice be given to the appropriate local chief elected official, the Dislocated Worker Unit, and the collective bargaining official of affected employees or to each employee affected if there isn't a collective bargaining unit.

**South Carolina:** Follows Federal WARN with additional written notices.

**Tennessee:** Applies to employers with at least 50, but not more than 99, full-time employees within Tennessee, and to layoffs of 50 or more employees let go within a three-month period; 60 days of notice required.

**Wisconsin:** Applies to employers with at least 50 employees in state, and to layoffs of as few as 25 employees; 60 days of notice required.

If your company is considering downsizing or location closure, please consult your Human Resource Representative as soon as possible to ensure compliance with Federal WARN notice as well as state WARN notices.

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## E-Verify Update

### Oklahoma has been added to the list of states requiring E-Verify

The 10th US Circuit Court of Appeals ruled on February 2, 2010, that the State of Oklahoma can require public employers, contractors and subcontractors to participate in E-Verify. This ruling overturns the injunction against one of three hotly contested provisions in the 2007 Oklahoma Taxpayer and Citizen Protection Act. The Court of Appeals returned the remaining two issues to the US District Court in Oklahoma City to see if a permanent injunction will be issued. The remaining two issues concern the retention of unauthorized workers when US citizens are terminated and withholding of taxes for workers without proper documentation.

### Illinois Public Act 096-0623 paves the way for voluntary E-Verify participation

The Right to Privacy in the Workplace Act was amended and Illinois employers who voluntarily choose to enroll in E-Verify are urged to review the Illinois Department of Labor's website for information on the accuracy of the E-Verify program and employers' legal responsibilities in the use of the program. This change took effect January 1, 2010.

### Other States with E-Verify Legislation

**Indiana** – The Indiana Senate passed Senator Mike Delph's E-Verify bill and moves it to the House for approval. The bill requires state agencies to verify newly hired employees through E-Verify as well as prohibits contracts with non E-Verify companies.

**Michigan** – The Michigan House of Representative is considering two bills: HB 4355 which would require contractors and subcontractors with any public agencies to E-Verify employees and HB 4969 which would prohibit personnel agencies from referring employees to public agencies without first using E-Verify for the referral.

**Pennsylvania** – The Pennsylvania House of Representatives is currently considering two bills concerning verification of employee social security numbers. House Bill 1502 concerns projects with public money and 1503 specifically targets the construction industry. As of December 9, 2009, these bills were sent to the Appropriations Committee.

**Virginia** – House Bill 737 would require that contractors and subcontractors with the Commonwealth of Virginia must use E-Verify.

**Washington** – An all citizen action group, "Respect Washington" has filed a petition for a state-wide vote for a law to require all Washington state employers to use E-Verify. The group must gather 241,153 signatures by July 2, 2010 for ballot qualification.

**Nationwide** – Currently, 13 states, AL, AZ, CO, GA, ID, MN, MO, NC, NE, OK, FL, SC, and UT, have E-Verify requirements. As of this newsletter, 5 states, IN, MI, PA, VA and WA, have action pending.

If your company is a state or federal contractor, or if you would like for your company to participate in E-Verify voluntarily, please contact your Human Resources Representative to discuss your options.

# Can Managers be Held Personally Liable for Employment Decisions?

It's a sticky question, but can you, as a manager or supervisor, be held responsible for employment decisions that adversely affect an employee? The answer is "it depends."

Generally, courts have held that a supervisor cannot be held individually liable for employment claims, but, that determination is centered around who falls under the definition of "employer".

## Wage and Hour

The Fair Labor Standards Act (FLSA) defines an employer as "any person acting directly or indirectly in the interest of an employer in relation to an employee." Even though a broad view of this definition could identify a supervisor or manager as an "employer", Federal courts typically look at the "economic reality" of the individual's status in the workplace. The courts consider factors such as 1) job description, 2) financial interest in the company, 3) ability to hire and fire employees, and 4) involvement in shaping terms of employment and compensation of employees.

However, some state courts, such as New Hampshire, have held that an "officer or agent" of the company who knowingly violates labor laws may be personally responsible for the unpaid wages. So, a supervisor could face liability issues under a state court as opposed to Federal court.

## FMLA

In 2007 several decisions were made by US District courts that held that department managers and line supervisors can be held liable for FMLA decisions, even though if they were not the decision maker. The employees only have to have some involvement in the FMLA decision or decision making process in order to assume liability for it.

## Title VII and ADA

Most courts hold that supervisors and co-workers who do not qualify as 'employers' may not be held individually liable for violations of Title VII or the ADA.

## How can we minimize our risk and the company's risk?

There isn't an easy answer as every individual and every claim is different. However there are some basic steps that every company and member of management can take:

- Training – Managers don't have to become experts on employment law, but training can help with low level decisions and identifying red flags before making decisions.
- Get all the facts – Fact gathering is time-consuming, but so is defending yourself and your company in a lawsuit. Take time to get as much information up front, before making a decision.
- Involve HR and legal counsel – It just makes sense to involve Human Resources prior to making a significant decision. The Human Resources Department at Employer Advantage can assist management in the decision making process and help determine if the situation warrants legal advice.

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## Silver Dollar City and White Water Passes

White Water (2-Day)*	\$ 37.00/adult	\$ 31.00/child
SDC (2-Day)*	\$ 53.00/adult	\$ 43.00/child
SDC Season Pass	\$ 77.00/adult	\$ 67.00/child
2-Park Season Pass	\$ 128.00/adult	\$ 108.00/child (Includes Silver Dollar City & White Water)



Adults are age 12+  
Child is age 4-11

\*2-Day Pass Guidelines: The second day FREE portion must be used within 2 days of first scan of ticket. For example: if first use was on Friday, then the 2nd use must be by the following Sunday.

Tickets may be purchased through payroll deduction, but must be paid in full before receiving.

Prices and fees are subject to change

# Burn Awareness

February 7th through February 13th has been designated as “**National Burn Awareness Week**” for homes and businesses and unfortunately, burns can be a common workplace injury. When they aren’t too serious, they can be effectively treated with first aid on the job. However, some burns can be serious, or even life-threatening, and they require immediate professional medical attention.

Employers should know how to treat minor burns and how to care for serious burns until help arrives. How bad a burn is depends on how many layers of skin it affects.

Minor heat burns just affect the outer layer of skin and are known as “first degree” burns. They can be uncomfortable but not a big health risk. These burns are easy to identify as the skin becomes red but doesn’t blister.

“Second degree” burns are deeper burns that injure or destroy the next layer of skin. Second degree burns may cause blistering of the skin which could cause infection. Employees who sustain a second degree burn should have professional medical attention.

The most serious burns are those that are deep and injure or destroy muscle and nerve tissue. These are called “third degree” burns and the skin may look charred and/or white where tissue has been destroyed. Companies should get employees to the medical provider as quickly as possible to assess the damage and begin treatment.

## Burn Hazards on the Job

Employer Advantage Risk Management Department can assist clients with identifying potential burn hazards on the job. Hazards may include:

- Flammable liquids such as oil, solvents, and many chemicals
- Smoking on or near the job
- Welding and cutting operations that create flames and sparks
- Hot machines and processes
- Space heaters
- Very hot water

Electrical burns can also happen on the job. Some electrical hazards include:

- Wiring with frayed or worn insulation
- Overloaded circuits, fuses, motors, or outlets
- Loose ground connections
- Lights or machinery that come in contact with combustible materials
- Direct contact with power lines or other live wires

If you have questions or would like a Loss Prevention Specialist to assist you in ensuring your work place is safe for employees, contact the Employer Advantage Risk Management Department. They can assist with a safety walk-through inspection as well as safety manuals and on-site training.