

# **Claremont Management Group Presents Dealing with Hard Times and the Flu November 10, 2009**

**By**

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## **1. Watch Out for New ICE Initiative:**

### **A. US Immigration and Customs Enforcement, "ICE," Raids:**

1. With unemployment at 10.2%, pressure on to avoid hiring illegals
2. Memo from ICE dated 4-30-09. Recently obtained under FOIA
3. Watch out for Criminal Enforcement of immigration laws – make an example of employers to create deterrence. "WSE" – Worksite Enforcement
4. I-9 Audits first on list – Watch for "Discrepancy" and "Suspect Document" Letters
5. Disbarment of Government Contractors

### **B. Civil Enforcement:**

Backup if there is not enough for criminal prosecution – Notice of Fine  
"NIF"

Take advantage of IMAGE – ICE Mutual Agreement between Government and  
Employers

## **2. Dealing With Hard Times:**

### **A. Reducing Costs:**

1. For Non-exempts, reducing hourly wages cannot bring them below the minimum wage. For exempts, you cannot bring their salary below the FLSA standard of \$455/week. For commissions sales persons, do not cut commissions, but you might cut the draw.
2. Many companies have temporarily cut 401(k) matching.
3. Reduce benefits and increase co-pays:
  - Health and dental insurance
  - Disability
  - Require employee to cover dependents
  - Reduce or eliminate other cash-cost benefits like memberships

4. Ban overtime by Non-exempts:

Make sure they are paid for all hours worked.

5. Furloughs:

- Generally applies to government sector and unionized companies.
- See rules above for non-exempt vs. exempt issues. Key element is full pay for part of a week worked rule for exempts.
- May avoid severance payments, but do not use if end is not in sight.

6. Deferred hiring:

This applies to organizations that hire from colleges.

Risk is that candidate will move on before actual hire date

May not have the work at the future date for hire.

7. Reducing Work Hours:

Rules similar to reducing pay. Watch for differences between exempt and non-exempt treatment.

**B. Longer-term Strategies:**

1. Voluntary retirements: Many employees over 50 are waiting for their “package” of severance benefits. How much can your organization afford to provide? With the end of DBP, harder to put together a good package except for someone who is already motivated to leave. COBRA aid discussed at last mini-seminar may make forced retirement more attractive.
2. Reduction in Force: There is a system that works:
  - Identify the Must-haves in your workforce by function
  - Identify the best performers within each function
  - If all else fails, follow seniority
  - If trendline is up, do not cut too deep.
  - Cut everyone at one time if you can
  - Great time to clear out the deadwood – but watch what you tell them!
3. Hiring Freeze – this one is pretty obvious

**C. Other Observations:**

1. Layoffs and similar employment reductions strategies can really hit the unemployment experience rating and cause the cost of unemployment insurance to be a real factor.
2. Employees may also drag out Workers’ Compensation which will cause that experience rating to also go up.

3. Watch out for employees with recent EEOC charges or claims for Workers' Compensation or FMLA.

### **3. Flu times:**

#### **A. General Observations**

- Really do not care about H1NI vs. Seasonal Flu
- However, H1NI may have more impact on FMLA claims with employees with children.

#### **B. Flu Shots:**

- Do not force flu shots – except healthcare
- Make available flu shots at work? Good or Bad idea?

#### **C. Dealing with the Spread of the Flu:**

- Medical Release to return to work from flu?
- Does telecommuting help in dealing with this problem?
- Meetings by phone to avoid bringing people together.

#### **D. The ADA and EEOC:**

Yes, the EEOC has stated that there are EEO issues related to flu claims – what can you do to avoid problems? Focus on ability to report for work, not whether there is a “disability.” Family responsibility and national origin on EEOC hit list, as if anyone really cares. Mothers may be targets is the suspicion or employees from countries hard hit with the Swine Flu.

If longer than a few days, keep FMLA in mind so notice is provided if you are subject to coverage.

## DAVID D. SCHEIN

President and General Counsel of Claremont Management Group, Inc., he provides consulting on employment and business matters to many businesses and entrepreneurial ventures. His expert analysis and counsel in employment and business law matters is based on over thirty years of practical experience, including a decade with Fortune 50 companies.

During his extended career, he has had the opportunity to work with some of the world's largest corporations and some of the country's smallest. He enjoys the challenge of making business function at the next level. His business philosophy is founded in courses at the Wharton Graduate Business School and an earned MBA at the Colgate Darden Graduate Business School of the University of Virginia. His skills have been sharpened by extensive and varied business situations. Dr. Schein describes his management approach as: "Applied Linear Thought." This involves doing things that make sense and avoiding complex "solutions" that many times do not work as well as common sense. Dr. Schein works nationwide with businesses in achieving a more productive workforce. Dr. Schein is also assisting health care providers, insurers and employers in compliance issues related to the privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). His extensive experience in legislative analysis, policy development and training makes him a valuable resource.

Known as an excellent speaker in person and in the media, he has done numerous seminars and lectures from New York and Florida to California. On the lecture circuit, he is known as the "Employment Guru" due to his depth of understanding of employment issues, and his ability to explain the possible approaches and solutions. He is presently teaching graduate courses in employment law, business ethics, human resources, labor law and business law. His primary topics involve employment issues, HIPAA implementation, business law and dispute resolution matters.

He has been published in numerous national and regional publications and is the editor of Claremont Management Group's *Employment Notes* newsletter. He is also host of the *Its Your Job!* radio program.

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