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Waller Lansden proudly presents the inaugural issue of *The Healthy Employer*. This newsletter will be published to clients and friends when issues of importance arise in the healthcare workplace.

The Clock is Ticking: Is Your Mandatory Fraud and Abuse Education Program in Place?

By [Paula D. Walker](#)

With 2007 upon us, does your facility have in place the policy and handbook provisions required by the Federal Deficit Reduction Act (DRA)? The DRA, effective Jan. 1, 2007, requires health care providers receiving \$5 million or more in Medicaid payments to have in place a False Claims Education Program. As a part of this Program, covered providers must:

- (A) establish written policies for all employees, contractors and agents of the provider detailing information about state and federal False Claims Acts, administrative remedies for false claims, whistleblower protections and the role of such laws in preventing and detecting fraud, waste and abuse in federal healthcare programs;
- (B) include in their policies detailed provisions about the policies and procedures to detect and prevent fraud, waste and abuse; and
- (C) include in employee handbooks (if any) a specific explanation of the laws described in subparagraph (A), the rights of employees being protected as whistleblowers and the entity's policies and procedures to detect and prevent fraud, waste and abuse.

These new requirements typically involve either revising existing policies or drafting new policies in a coordinated effort between human resources and compliance departments.

Some providers also have in place ethics codes or codes of conduct that address these issues in some form. The DRA does not specifically address this conflict but it seems consistent to include the new required handbook provisions in those separate code of conduct documents, especially where annual updating, publication and training take place.

Employment Rx: Legal Updates

“Holiday” Bonuses and Overtime Calculations

Many employers choose to celebrate the holidays by giving employees a little something “extra” in their paychecks. While spreading good cheer, employers should not overlook the impact these “gifts” may have on overtime for those employees who are not exempt from overtime. Generally, if a bonus is a gift (whether money, a gift card or other non-monetary



item) and is not tied to performance or attendance, it need not be included in the employees' wages for overtime calculation purposes. Holiday bonuses typically fall into this category. Where the bonus is tied to performance, attendance or some other criteria, it must be included in the employees' wages (and overtime calculation) for the period in which it is paid. Facilities may provide extra compensation to exempt employees with no overtime concerns. As always, it is wise also to check the laws in those states where your facilities operate and company policy before making decisions related to bonus payments and overtime.

No Private Right of Action for HIPAA Violations

The Fifth Circuit Court of Appeals recently joined other federal courts by ruling that HIPAA does not create a private right of action to individuals when a facility's employees violate HIPAA's confidentiality requirements. The Court reaffirmed that enforcement of the civil and criminal penalty provisions is delegated to the Secretary of Health and Human Services. *Acara v. Banks*, 06-30356.

Union Pins – Do They Trump Your “Uniform” Policies?

The National Labor Relations Board (NLRB) recently ruled that employers may ban union pins or stickers worn by employees but only when able to establish special circumstances for doing so. Special circumstances may include situations where the employer can establish that the pins “unreasonably interfere with the public image the employer has established” or where they pose a health or safety risk. A hospital or other facility cannot simply claim “public image” or generic “safety risk” but must have documentation of its efforts to present a specific image vis-à-vis its employees and specific patient/employee safety reasons to support a ban. In addition, rules regarding pins must apply to all types of pins or stickers regardless of content and must be uniformly applied. *Starwood Hotels & Resorts Worldwide, Inc. v. NLRB*.

If you have suggestions for future articles, please contact *Healthy Employer* editors [Andy Naylor](#) or [Paula Walker](#) or any Waller Lansden Labor and Employment or Healthcare attorney at (800) 487-6380. Please visit our website www.wallerlaw.com.

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