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LEGISLATIVE ROUNDUP

Overview of labor and employment bills proposed in 2015 legislature

by Robert J. Sniffen and Jeff Slanker
Sniffen & Spellman, P.A., Tallahassee

Here's a look at the status of the noteworthy bills related to labor and employment law or employers and businesses in Florida as the regular 2015 Florida legislative session concludes. The summary is broken down into notable bills that were passed and are either awaiting the governor's signature or have already been signed into law and notable bills related to labor and employment law that did not pass.

Notable bills passed by legislature

Senate Bill (SB) 982 amends the Florida Civil Rights Act (FLCRA) to prohibit discrimination on the basis of pregnancy, adding "pregnancy" to the law as a protected class. The Florida Supreme Court has recognized that pregnancy is a protected characteristic under the previous version of the FLCRA.

SB 456 modifies the manner in which day laborers must be paid and the methods for labor pools required to compensate day laborers. Labor pools are defined under Florida law as a business that operates a labor hall in one of several ways delineated in the law, revolving around the use of day laborers. The legislation provides for certain notice requirements and guidelines for payment by debit card. It also authorizes electronic delivery of wage statements to day laborers upon request.

House Bill (HB) 369 imposes requirements related to human trafficking issues on certain employers. Under the bill, the Florida Department of Transportation must post a notice about human trafficking at every public rest area, turnpike service plaza, weigh station, primary airport, passenger rail station, and welcome center in the state. Emergency rooms at general acute care hospitals, strip clubs or other adult entertainment establishments, and businesses or establishments that offer massage or bodywork services for compensation that are not owned by regulated healthcare professionals must also display the notice. County commissions can adopt ordinances enforcing the bill's provisions, and violation of the posting requirements by strip clubs, adult establishments, and massage parlors is punishable by a fine.

SB 172 is aimed at reforming local government pensions—specifically, pensions for firefighters and police officers. The proposal increases the minimum accrual rates for benefits and changes how municipalities use insurance premium tax revenues to fund pensions.

Bills that did not pass

HB 47 and **SB 114** would have increased the state's hourly minimum wage to $10.10. **HB 977** and **SB 214**

would have prohibited employers from inquiring into or considering job applicants' criminal background on an initial employment application unless they are required by law to review and assess such information at that point in the hiring process. Some Florida municipalities have already put such a prohibition in place by passing local ordinances.

SB 156 and **HB 33** would have amended the FLCRA to add sexual orientation and gender identity to the list of classes protected from discrimination under the statute. **HB 433** and **SB 1396** would have amended the FLCRA to allow unpaid interns to sue their employers or former employers for employment discrimination under the statute.

SB 1358 and **HB 1009** would have provided extra employment protections for military servicemembers' spouses employed by Florida state agencies. Under the proposal, a state agency would have been prohibited from mandating that an employee who is married to a servicemember work extended hours during the spouse's active military deployment under certain circumstances and from penalizing the employee for failing or refusing to work extended hours during the spouse's active military deployment. State agencies also would have been required to grant such employees' requests for unpaid leave under certain circumstances.

HB 297 and **SB 892** would have created the Safe Work Environment Act to protect employees from workplace bullying. The legislation would have made subjecting employees to an "abusive work environment" unlawful, and an employee wouldn't have been required to establish that a protected class was the motivation for creating an abusive environment.

HB 25 and **SB 98** would have created the Helen Gordon Davis Fair Pay Protection Act, aimed at addressing disparate pay between men and women. **HB 455** and **SB 890,** also known as the Florida Overtime Act of 2015, would have required the payment of time and a half to employees who work more than eight hours a day, more than 40 hours in a week, or on the seventh day of any workweek.

SB 126 would have prohibited employers from requiring or asking for access to employees' and job applicants' social media accounts under certain circumstances. It would also have made it unlawful to retaliate against someone for refusing to allow such access and provided for a civil claim for violations of its provisions.

SB 1096 was intended to prohibit the disqualification from unemployment compensation of domestic violence victims who leave their work voluntarily. **HB 1185** and **SB 1490,** the Florida Healthy Working Families Act (sometimes referred to as the mini Family and Medical Leave Act, or mini FMLA), would have required Florida employers to provide employees a certain amount of sick and safe leave. Employers with nine or fewer employees would have been required to provide unpaid sick and safe leave, and employers with more than nine employees would have been required to provide paid leave. The proposal created a civil claim for violations of its provisions.

The Florida Supreme Court has recognized that pregnancy is a protected characteristic under the FLCRA.

HB 589 and **SB 1318** would have made it a third-degree felony to obtain labor for less than minimum wage with the intent to deceive or defraud the person who is induced to work below minimum wage. **HB 683** and **SB 528** would have permitted the medical use of marijuana, which would obviously have implications for many employers and employment-related drug testing. **HB 121** and **SB 356** would have provided incentives (namely, a tax credit) for employing a person previously convicted of a felony.

Finally, **HB 1, SB 192,** and **SB 246** could have been significant for many employers, including companies that employ drivers to make deliveries. The legislation would have changed the manner in which Florida's ban on texting while driving is enforced and applied.

Bottom line

Employers should take note of those bills that passed and make sure that their policies and procedures are in compliance with any changes in the laws. While there were many labor and employment laws that did not pass this session, they may come around again in future sessions. Time will tell if any of these efforts are ultimately successful, but compliance must begin now for employers affected by the new laws.

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DOCUMENTATION

DOL releases revised FMLA forms

by Lisa Berg
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On May 19, 2015, the U.S. Department of Labor (DOL) released revised Family and Medical Leave Act (FMLA) notices and forms with a new expiration date of May 31, 2018.

Which forms have been revised?

The revised notices and forms, which may be downloaded at www.dol.gov/whd/fmla/, include the following:

- WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition
- WH-380-F, Certification of Health Care Provider for Family Member's Serious Health Condition
- WH-381, Notice of Eligibility and Rights & Responsibilities
- WH-382, Designation Notice
- WH-384, Certification of Qualifying Exigency for Military Family Leave
- WH-385, Certification for Serious Injury or Illness of Current Servicemember for Military Family Leave
- WH-385-V, Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

See the expiration date in the top right corner of the forms. Before the new forms were issued, the old forms were scheduled to expire on May 31, 2015. Employers can now rest easy until 2018.

Why do the forms expire?

Under the Paperwork Reduction Act of 1995, the DOL is required to submit its FMLA forms to the Office of Management and Budget (OMB) for approval every three years. The OMB can then review the DOL's information requests and the time employers spend responding to the requests.

The OMB approved the previous FMLA forms in 2012 for a maximum of three years, and in May 2015, it approved the revised forms. The DOL is allowed to continue using the forms after they expire while it seeks renewal of the OMB's approval.

What's changed on the new forms?

Aside from the new expiration date, the latest version of the FMLA forms includes two references to the Genetic Information Nondiscrimination Act (GINA). GINA is a federal law that prohibits employment discrimination based on an individual's genetic information, restricts employers from acquiring such information from employees or job applicants except in limited circumstances, and instructs employers how to maintain such information when it's collected. The statute defines "genetic information" to include not only genetic tests of individuals and their family members but also the manifestation of a disease or disorder in family members (i.e., family medical history).

The first reference is a reminder that employers must keep employees' medical information confidential under the Americans with Disabilities Act (ADA) and GINA. The Equal Employment Opportunity Commission (EEOC), which enforces the employment provisions of the ADA and GINA, requested that the reminder be added to the forms. If you haven't done so already, check personnel files to make sure confidential medical information has been removed and stored in a separate file.

The second reference to GINA on the new forms addresses the disclosure of genetic information. Mindful that employers routinely collect medical information when employees request leave under the FMLA or reasonable accommodations under the ADA, the EEOC has carved out certain exceptions to GINA's general prohibition on acquiring genetic information. Specifically, the agency's regulations provide that when an employer receives information in response to a lawful request for medical information (e.g., when an employee requests FMLA leave for her own serious health condition), the receipt of genetic information will be treated as "inadvertent" as long as the employer affirmatively warns the employee and her healthcare provider not to provide genetic information.

The "safe harbor" language in the regulations reads as follows:

> [GINA] prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic Information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Takeaway

In November 2014, the EEOC requested that the DOL revise the FMLA medical certification forms to

AGENCY ACTION

EEOC launches digital pilot program. The Equal Employment Opportunity Commission (EEOC) announced in May that 11 of its 53 offices are beginning a pilot program called ACT Digital to digitally transmit documents between the EEOC and employers regarding discrimination charges. This is the first step in the agency's move toward an online charge system that will streamline the submission of documents, notices, and communications. The system applies to private and public employers, unions, and employment agencies.

OSHA issues confined space rule. The Occupational Safety and Health Administration (OSHA) in May issued a final rule to increase protections for construction workers in confined spaces. Manholes, crawl spaces, tanks, and other confined spaces aren't intended for continuous occupancy. They also are difficult to exit in an emergency, and workers in confined spaces face hazards such as toxic substances, electrocutions, explosions, and asphyxiation. The rule provides construction workers with protections similar to those that manufacturing and general industry workers have had for more than two decades, according to an OSHA statement. Protections include requirements to ensure that multiple employers share safety information and continuously monitor hazards.

Agencies release toolkit to protect hospital workers. OSHA and the National Institute for Occupational Safety and Health (NIOSH) in May released the Hospital Respiratory Protection Toolkit, a resource for healthcare employers to use to protect hospital staff from respiratory hazards. The toolkit covers respirator use, existing public health guidance on respirator use during exposure to infectious diseases, hazard assessment, the development of a hospital respiratory protection program, and additional resources and references on hospital respiratory protection programs. OSHA's Respiratory Protection Standard requires that healthcare employers establish and maintain a respiratory protection program in workplaces where workers may be exposed to such hazards.

OSHA cites DuPont over fatal lethal gas release. On May 14, OSHA cited DuPont for 11 safety violations and identified scores of safety upgrades the company must undertake to prevent future accidents at its facility in La Porte, Texas. Four workers died there in November 2014 after a lethal gas release. DuPont was cited for one repeat, nine serious, and one other than serious OSHA violations. The repeat violation was assessed for not training employees on using the building's ventilation system and other safety procedures. ✤

include the safe harbor language quoted above. Unfortunately, the DOL forms do not include that language. Rather, they instruct healthcare providers not to provide information about genetic tests or genetic services.

It's unclear whether the EEOC and the courts will agree that the DOL's disclaimer on the new FMLA forms provides employers sufficient protection from liability under GINA. Consequently, the conservative approach is to continue attaching the GINA safe harbor language to FMLA medical certification forms.

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MISCLASSIFICATION

Jury will decide whether FedEx drivers are independent contractors or employees

by Tom Harper
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In a long-running dispute involving a number of courts, the federal appeals court with jurisdiction over Florida has decided that the question of whether certain Florida FedEx Ground delivery drivers are employees or independent contractors is fact-intensive and should be decided by a jury.

Background

The Florida FedEx drivers filed suit back in 2005, claiming they were actually employees instead of contractors. Among the remedies for their claims, they sought reimbursement for business expenses and back pay for overtime. Drivers in 40 other states have filed similar lawsuits going as far back as 2003.

The Florida drivers asked the court to certify their claims as a class action. FedEx opposed their request, arguing that each driver was required to sign a standard contract known as the "operating agreement," which indicated that the drivers were contractors. The drivers countered that FedEx's internal policies, practices, and procedures pointed to a conclusion that they were actually employees.

At that point, the court agreed with the drivers and certified a Florida class that could go forward with their suit. After the parties conducted discovery (the pretrial exchange of evidence), FedEx requested dismissal of the case because the drivers had signed a written agreement saying they were independent contractors. The court agreed and dismissed the case. On appeal, our federal court of appeals disagreed and ruled that the question should be decided by a jury.

Employee vs. independent contractor

Courts and judges decide questions of law, and juries decide questions of fact. In this case, the appeals court began its

analysis by noting that "it is well-established [in Florida] that the question of an employer/employee relationship is generally a question of fact, and therefore a question for the trier of fact (the jury)." Historically, courts in Florida have looked at the following factors in deciding whether someone is an employee or an independent contractor:

(1) The extent of control that, by the parties' agreement, the employer exercises over the details of the work;

(2) Whether the worker is engaged in a distinct occupation or business;

(3) The kind of occupation, with reference to whether the work is usually done in the locality under the direction of an employer or by a specialist without supervision;

(4) The skills required in the particular occupation;

(5) Whether the employer or the worker supplies the instrumentalities, tools, and place of work;

(6) The length of time the person is employed;

(7) The method of payment, whether by the time or by the job;

(8) Whether the work is part of the regular business of the employer;

(9) Whether the parties believe they are creating a relationship of master and servant; and

(10) Whether the principal is a business.

The fact that FedEx had a written contract with each driver almost created a presumption that the drivers were independent contractors. In addition, the operating agreement stated that the manner and means of delivering the packages was within the discretion of the drivers and that "no officer, agent or employee of FedEx . . . shall have the authority to direct [the drivers] as to the manner or means employed to achieve [the work]." That meant the drivers determined their own hours of work, their routes, and other details of their performance.

FedEx also gave the drivers 1099 forms instead of W-2s and didn't withhold anything from their pay for income taxes, payroll taxes, Social Security taxes, health insurance, or similar deductions. The drivers could sell part or all of their service areas with 30 days' notice to FedEx, and they could acquire service areas from other drivers.

As it analyzed the facts, however, the court questioned how the arrangement worked in practice. For example, the drivers were allowed to hire replacement drivers, but they were responsible for ensuring that the replacement drivers conformed fully to all the requirements in the written agreement. Moreover, the replacement drivers had to be approved by FedEx.

FedEx also reserved control over the type, configuration, and appearance of the drivers' trucks and the "tools" they used to deliver packages. The drivers weren't required to use the trucks exclusively for FedEx business, but before using the trucks for another purpose, they had to remove or mask all identifying logos and insignia.

In the end, the court concluded that the written agreement, although relevant and important, wasn't dispositive of the contractor or employee question. According to the court, "Other provisions of the Operating Agreement, together with FedEx's standard practices and procedures, seem to 'belie the creation of the status agreed to by the parties.'" *Carlson v. FedEx Ground Package Systems, Inc.,* Case No. 13-14979 (11th Cir., May 28, 2015).

Bottom line

If you have workers you consider to be "independent contractors," now would be a good time to check your facts and make sure you're right. The consequences of being wrong can be huge! Of course, any analysis starts with a look at the written contract. But you should also make sure that you distance yourself from the details of how the work is accomplished.

It might be a good idea to study the court's opinion or get your employment counsel to bless your contractor arrangement. Send an e-mail to tom@employmentlawflorida.com if you'd like a copy of the decision.

Tom Harper is board-certified in labor and employment law. He is also a Florida Supreme Court Circuit civil and appellate mediator and a panel member of the American Arbitration Association. ✤

RELIGIOUS DISCRIMINATION

Guidance for HR after EEOC's victory in Abercrombie religious bias case

The U.S. Supreme Court sent employers a clear message in early June that a hesitance to accommodate an applicant's religion constitutes religious discrimination. The ruling against a major clothing retailer and in favor of the Equal Employment Opportunity Commission's (EEOC) stance on what constitutes religious discrimination leaves employers in need of advice on when and how to accommodate employees' and applicants' religious beliefs and practices. Here's some guidance.

Abercrombie facts

In an 8-1 ruling, the Supreme Court on June 1 sided with the EEOC in *EEOC v. Abercrombie & Fitch Stores, Inc.* The case centered on Samantha Elauf, a young Muslim woman who interviewed for a job at an Abercrombie store in Oklahoma in 2008. She met the basic requirements but wasn't offered the job because she wore a

WORKPLACE TRENDS

Study finds employees want employer help on retirement planning. A study from financial services firm Northern Trust shows that employees favor their employers playing a more active role in their defined contribution retirement plans, but plan sponsors are reluctant to do so. More than 1,000 employees were surveyed, and they overwhelmingly favored employers providing tools to help determine if they are saving enough. But plan sponsors have reservations about encouraging specific levels of saving and providing projections of retirement savings or income for participants.

Promotions, raises top steps for stemming turnover. A survey of CFOs shows that promotions and salary increases top the list of tactics employers are using to fight turnover. Accounting staffing service Accountemps asked CFOs what steps they are taking to boost retention. Sixty-three percent said promoting top performers, 52% said raising salaries, 50% said increasing investment in professional development or training programs, 48% said enhancing employee benefits such as health insurance or retirement packages, 32% said reinstating or increasing bonuses, and 21% said they aren't taking any steps.

Survey shows how employers leave applicants with bad impression. A study from CareerBuilder shows that actions employers take during the hiring process often leave job candidates with a bad impression that can even take a toll on business. According to the study, the experiences candidates have with a company throughout the application process can make or break their impression of a company, affecting not only their decisions to apply and accept a job offer but also their loyalty as customers. The study found that 82% of employers think there's little to no negative impact on the company when a candidate has a bad experience, but 58% of respondents said they're less likely to buy from a company to which they've applied if they don't get a response to their application, and 69% said they are less likely to buy from the company if they have a bad experience in the interview. Sixty-five percent said the same if they didn't hear back after an interview.

Office parties come at a price, but most employees don't mind. New research from staffing service OfficeTeam finds that 54% of senior managers responding to a survey say employees are asked to contribute money for celebrations such as birthdays, anniversaries, and baby showers at least once a year. Fifty-one percent of the employees surveyed said they don't mind chipping in occasionally, and 25% said that "it's totally fine because it's for a good cause." Sixteen percent of employees said being asked to contribute is "annoying." ✤

hijab. At the time, Abercrombie had a "look policy" that prohibited employees from wearing head coverings on the job.

The interviewer didn't ask Elauf if she would need a religious accommodation, but the interviewer said she suspected the applicant wore the Muslim head scarf for religious reasons. The Court said that suspicion was enough to trigger an accommodation; it wasn't necessary for the applicant to specifically request one.

Understanding Title VII and religious accommodations

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer with 15 or more employees to discharge or otherwise discriminate against or harass applicants or employees on the basis of religion. In addition, Title VII requires employers to provide a reasonable accommodation for an employee's sincerely held religious beliefs or practices unless it would cause the employer an undue hardship.

How do we define religious beliefs or practices? Title VII defines "religion" to include "all aspects of religious observance and practice as well as belief." Beliefs aren't protected under Title VII merely because they are sincerely held (e.g., many people adhere to a vegan diet for purely secular reasons). The definition of religious practice isn't exactly clear, but it's safe to say that wearing a head scarf in observance of the Muslim faith met the definition in this case.

Other religious practices include, but are not limited to, a Christian wearing a cross, a Sikh wearing a turban, or a Jew wearing a yarmulke; taking breaks during the workday to pray; fasting; being home by sundown on the Jewish Sabbath or holidays; and attending religious services on certain days or at certain times.

What is a reasonable accommodation? Employers are required to reasonably accommodate the religious practices of an employee or applicant unless the accommodation would cause an "undue hardship," which may occur when the accommodation would require more than ordinary administrative costs. For example, adjusting rest breaks to accommodate daily prayers likely wouldn't involve an undue hardship.

Employers aren't required to accommodate employees if doing so would require changing a bona fide seniority system. For instance, if shift schedules are determined by a seniority system, such as one described in a union contract, the employer isn't required to give a shift to an employee as an accommodation if it would require bumping an employee with seniority.

Options for reasonable accommodations include flexible arrival and departure times, floating or optional holidays, flexible work breaks, use of lunchtime in exchange for early departure, staggered work hours, and permitting an employee to make up time lost because of the observance of religious practices. Voluntary swapping of shifts also may be a reasonable accommodation.

Lessons from Abercrombie

In the *Abercrombie* case, the assistant manager assumed that the otherwise qualified applicant was wearing a head scarf

during her interview because she is Muslim. After confirming with the district manager that the head scarf wasn't permitted under Abercrombie's uniformly applied dress code, the assistant manager declined to make a job offer because the applicant was believed to be Muslim and would need to wear the head scarf at work. Here are some of the lessons we can learn from this case:

- You are prohibited from denying employment opportunities to an applicant or employee on the basis of her confirmed or suspected religious beliefs or practices.
- You shouldn't ask applicants about religious beliefs during the interview process or assume, based on appearance, that an applicant has certain religious beliefs or requirements.
- You may explain to all applicants the job requirements—e.g., the work schedule—and ask if they can meet those requirements.
- If an applicant or employee requests an accommodation, you should engage in an interactive process to determine what accommodation is needed and the effect it will have on the business.
- Reasonable accommodations should be made if they won't create an undue hardship.
- You may be required to accommodate dress and grooming habits based on a religious practice or belief unless you have a policy against the dress or grooming habits that is justified by a business necessity. For example, you aren't required to accommodate head scarves or long garments in an industrial plant where loose clothing may get caught in moving machinery. ✤

CYBERSECURITY

Hackers gonna hack: Know the security threats facing your business

Almost anybody can be a hacker, and almost anyone (or any business) can be a target. To understand the threat hackers may pose to your organization, you need to understand what you are up against—who the hackers are, what they're doing, and why they're doing it.

What motivates hackers?

Before they founded Apple, Steve Wozniak and Steve Jobs' first joint tech venture was essentially as hackers. They made and sold blue boxes, which were used to make free long-distance calls by mimicking the tones used to route calls. Why did they do it?

Some hack for the thrill of it. In *Exploding the Phone: The Untold Story of the Teenagers and Outlaws Who Hacked Ma Bell,* Jobs recounts, "It was the magic of the fact that two teenagers could build this box for $100 worth of parts and control hundreds of billions of dollars of infrastructure in the entire telephone network of the whole world."

Some hack to see what they can do. In 1986, Wozniak told the *LA Times* that learning the "codes and tricks" to make the blue box work "was a technical game." He maintained, "I was so pure," but he acknowledged that "others were not as pure, they were just trying to make money."

Some hack for profit. As the Woz points out, some hackers are just in it for the dishonest buck. These are usually the hackers who make the evening news, stealing credit card and personal information from customers of major retailers.

Some hack out of malice. According to Dan Nelson, a trial attorney who is the coleader of Armstrong Teasdale LLP's privacy and data security practice, the number one hacking threat for organizations is disgruntled employees. Nelson says the "vast majority" of hacks are "inside jobs," and if an organization experiences a compromise, it most likely will be caused by an employee, not an external actor.

Almost anybody can be a hacker, and almost anyone (or any business) can be a target.

How do they hack?

The tools and knowledge needed to hack are easily accessible. Nelson calls YouTube "Hacker University," with thousands of hacking tutorials offering step-by-step instructions. There is also a lot of open-sourced (free and available to the public) software and tools for hacking that are updated (by other hackers) more frequently than Microsoft updates its products. "Hacking isn't so much about writing code as picking the right tool from the free open-sourced toolbox," Nelson says. Here are some of those hacking tools.

Remote admin (or access) terminal (RAT). A RAT is a Trojan horse that allows the hacker to control your computer. It can be delivered with an infected e-mail attachment, with a "drive-by" download from an infected website, by being bundled with software, or with infected peripherals.

The Onion Router (TOR). TOR uses proxies to allow someone to act anonymously. Its name comes from the layers you have to peel back to find the originator. Every TOR user is a proxy for another user, allowing malware to bounce from the hacker's computer through the computers of proxies in several

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countries—many with governments that won't help with or even allow tracking cybercriminals. So it's almost impossible to find out where the malware originated, keeping the hacker hidden.

Social engineering. This is the most efficient and effective form of attack because it generates an emotional response to get a human to bypass the usual technological barriers. Phishing is an impersonal blast e-mail that seems like a personal e-mail. This is the "Nigerian Prince" e-mail or an e-mail that looks like it's from your bank asking for your credentials.

Spearphishing uses personal information (such as vacation plans, company events, or hobbies) that is usually easy to find on social media. For example, an e-mail that looks like it's from a boss who is actually on vacation saying, "Having a great time! Need you to click on this link," leading to a malicious download. Ego spearphishing is sending out e-mails like "You've been invited to participate in 'Most Awesome Teachers'" to everyone with a teaching license.

Physical intrusion. According to Nelson, the first rule of hacking is that if you can touch it, you will own it. If hackers can get you to install a USB flash drive or can do it themselves, they can gain total control of your systems. How do they get in? Once again, disgruntled employees will be the most likely culprit, but outside hackers can get creative.

Hackers may make an ID that looks like it's from the phone or electric company and wave it around making vague statements about how they need to check the lines. Nelson calls that the "Jedi wave." This can work with a variety of fake IDs and easy-to-fake work outfits. Nelson also warns of "piggybacking" or "tailgating," where a hacker joins a group of employees on a smoke break because the smokers' area is usually somewhere that requires no special access, such as the back of the building. The hacker smokes and then walks in with real employees when they flash their credentials.

Bottom line

Now that you know all you need to be a hacker is an Internet connection and a decent knowledge of searching Google, you might be nervous and wondering if any current or ex-employees hold a grudge strong enough to spur them to hack. But knowing really is half the battle. Educate your employees about the ways they might accidentally let a hacker in so they can help protect your systems. ✤

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