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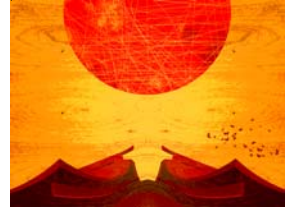


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NLRB RULINGS TIGHTEN NONUNION EMPLOYER POLICY RIGHTS

An organization's risk in implementing broadly worded policies is illustrated by two recent National Labor Relations Board (NLRB) rulings. While these rulings address two different employment policies, both rulings illustrate that overly broad wording in policies that restrict employee action or activity will face tough NLRB review. These rulings remind both unionized and nonunion employers that employment policies governing any type of employee activity should be narrowly targeted to address legitimate business concerns or considerations. The employee activity at issue in both cases is the right to consider joining or not joining a union, which typically involves employees meeting together to discuss terms and conditions of employment. This employee activity is protected by Section 7 of the National Labor Relations Act ("the Act"). One term of employment is compensation.

In the first case, the NLRB invalidated the employer's rule prohibiting loitering by employees on Company property after hours. The rule was determined to be invalid because it was open to interpretation that employees might think they were prohibited from engaging in legally protected activities. On that basis, the NLRB overruled the administrative decision and concluded the rule violated the Act. (*Tecumseh Packaging Solutions, Inc.*, June 2, 2008). Despite safety and security concerns that support the need for a no-loitering policy, the conclusion points out that a blanket prohibition isn't the way to go.

The second case's ruling also found an employer's policy in violation of the Act because the scope of the policy interfered with employee's protected rights under Section 7 of the Act. (*The NLS Group*, June 27, 2008). That policy attempted to restrict employees' ability to discuss their compensation with outside parties. In finding that the policy was improper because employees would feel prohibited from discussing terms and conditions of employment with union representatives, the NLRB felt the employees' rights outweighed the employer's interest in maintaining confidentiality of its compensation information. When reaching its decision, the Board rejected the administrative law judge's balancing test between the employer's interest and the employees' rights under the Act to talk to a union representative.

Although this second ruling addresses compensation being discussed outside of the organization, it is important to understand that the same considerations apply to attempting to prohibit employees' discussions of compensation with co-workers. The language regarding discussion of any terms or conditions of employment cannot be so restrictive that it interferes with the employees' Section 7 rights. While a policy may caution employees on the sensitive nature of compensation, a prohibition regarding discussing pay with other employees goes a step too far.

The financial risk in situations with illegal policies involves the potential discipline or discharge of an employee for violating policy. If the policy is determined to be unlawful then the employer's action would also be unlawful. The likely result is that the employer will be required to offer back pay and reinstatement to the employee.

Both cases illustrate that it is not enough for an organization's policies to be based on specific and valid business reasons. The wording and impact of the policy must be targeted to those business reasons while, at the same time, not inhibiting legally protected rights of the employees. As you begin to review your employment policies, Employee Handbook, or draft new ones, we can help make sure those policies are business-based and specific to the needs for the policy, without restricting employees' protected activities.

WHO'S WATCHING YOUR EVERY MOVE?

Who's watching your every move? Your employees. It may sound like an exaggeration but . . .

Leadership is an art and those who have mastered it know that at the heart of every great leader is integrity. We often think of integrity in the lofty sense—full financial disclosure and timely product recalls. While truth in these situations is essential for credible leadership, every action a leader or supervisor takes, no matter how seemingly insignificant, influences employees' judgments about that individual. After all, integrity is about being honest and being credible.

What kind of leader are you? Consider the daily opportunities you have to communicate with your employees face-to-face, on the telephone, and by email. Do your words, gestures, and actions reinforce your values, commitment, and honesty? For example: leaders, like many people, hate to deliver bad news, so they sometimes withhold feedback from employees who are performing poorly. Many think of this as kindness rather than dishonesty. In fact, most employees want to know how they are doing and how they can improve because they want salary increases and promotions, and because they take pride in their work. When employees are underperforming, the organization suffers, and so do other employees. Co-workers take on additional responsibility to compensate for poor performers, creating resentment and even low morale. Often, customer expectations are also not met. This vicious circle has a way of growing larger.

Another example of leading without integrity is withholding information when financial performance is sub par. In these circumstances, a leader may fail to communicate for a variety of reasons—personal frustration and embarrassment over their inability to change the tide, or concern about demotivating employees. A leader’s silence in the face of difficulty can be disastrous. Information inevitably leaks, rumors circulate, and the downward spiral of lost trust, respect, and confidence begins. Negative momentum becomes difficult to control or reverse. Years of “great” leadership and supervision can quickly be destroyed. Managers and Supervisors are torn between loyalty to the leader or their employees. Confident in their skills, top employees look for new jobs. Customers start doing business with the competition. Employees don’t respect a leader who praises employees in public, but criticizes them behind closed doors. Or a leader who espouses diversity, but has a homogeneous management team. They also do not respect a leader who declares respect as a core value, but never speaks to employees in the hallway.

Employers have the responsibility to provide input and education to those leaders who fall short. Skills can be acquired. What is needed are motivated individuals who see a need for things to change and to have a good “teacher.” The courage to be a great leader requires following your moral compass.

MENTORING MANAGERS MOMENT

Good management is good stewardship

One of your many responsibilities as a manager is helping employees get what they need in order to be successful in their jobs. You may play many roles in your efforts to accomplish this: mediator, negotiator, cheerleader, disciplinarian, friend, coach, mentor. Training consultant Len Sandler, author of *Becoming an Extraordinary Manager* (AMACOM), offers these suggestions for the task:

- **Negativity.** When things get tense in the office, ask employees what it is they want. This helps deflect attention away from kvetching and blame-shifting, and turns it toward what can be done.
- **Change.** When there’s a decision to be made, try to give others ownership in the outcome. When management decides, for instance, that there’s going to be a new seating arrangement in the office and imposes it on the employees, it is often resented. When employees are allowed input, you may find that they’ll come to the same conclusion themselves. The only difference is that now there’s no resentment and management is perceived as caring and trustworthy.
- **Future.** Look ahead. Workers respond positively to those who have clear ideas about where you’re all going. Commit to your vision and help workers overcome obstacles along the way. You’ll bring out the best in everyone around you.

CALIFORNIA READERS

California Employers Relieved from Ensuring Employees Take Meal Periods

California employers have scored a major victory regarding meal and rest periods as the result of a new California Court of Appeal decision, *Brinker Restaurant Corp. v. Superior Court*. Within days of the decision, California’s Labor Commissioner directed all Department of Labor Standards Enforcement (DLSE) staff to follow the rulings in *Brinker* effective immediately, and to apply the *Brinker* decision to all pending matters before the DLSE.

Here are the highlights of the decision:

1. Employers must provide meal periods by making them available, but need not ensure that they are taken. This is perhaps the most important aspect of the court’s ruling, and it resolves (for now) the ongoing debate about whether employers must monitor employees’ meal breaks.

Editor: Deborah Jeffries, PHR, CPC. Advantage is published monthly and is designed to provide information on regulations, HR practices and management ideas and concerns. The intended audience is managers, supervisors, business owners, human resource and employee relations professionals. If you have questions about the content, an opinion about the information, questions about your subscription, or if you need additional Advantage binders, please give us a call at (503) 885-9815 or e-mail djeffries@hranswers.com.



2. Rejecting the “rolling five-hour” meal period requirement, the court ruled that employers are not required to provide a meal period for every five consecutive hours worked.
3. Employers must provide rest periods, but need not ensure that they are taken. Employers need only authorize and permit rest periods every four hours or “major fraction thereof,” a phrase the court interpreted to mean the time period between three and one-half and four hours. Also, employers are not required to provide a first rest period before the first meal period. So long as employers make rest periods available to employees and strive, whenever practicable, to schedule them in the middle of the first four-hour work period, employers are in compliance with the law.
4. Employers cannot impede, discourage, or dissuade employees from taking meal or rest periods

This issue isn’t settled yet. The California Supreme Court may grant review of the appellate court’s decision in *Brinker*. If and when that happens, the appellate decision will be depublished and superseded by the Supreme Court’s decision. The legislature may also address meal and rest periods in connection with ongoing budget negotiations. So use caution before making drastic changes to your meal and rest period policies and practices. Until further notice, however, the *Brinker* ruling will be applied to all cases filed with the DLSE.

Special appreciation to Stael Rives for their continued support of allowing the alerts to appear in our newsletter.

THOUGHTS TO THINK ABOUT

“One of the secrets in life is to make stepping stones out of stumbling blocks.”

- Jack Penn

“What we see depends mainly on what we look for.”

- John Lubbock

“A good sense of humor is essential to deal with the world’s reality.”

- Anonymous

“Failure is an event, never a person.”

- William Brown

“Peace is not an absence but a presence”

- Gerald O. Petersen

OSHA UNDER FIRE: REPORTING, ENFORCEMENT CRITICIZED

Don’t look now, OSHA, but the shoe is on the other foot.

According to a growing number of reports, OSHA has been seriously understating workplace injuries and illnesses—and relying on flawed audits rather than addressing the problem.

The agency that inspects America’s workplaces is itself coming under increasing scrutiny, with lawmakers and academics accusing OSHA of lax enforcement and grossly underreporting workplace injuries and illnesses.

The result, they claim, is a distorted picture of worker injuries and illnesses statistics—and workplaces that are becoming increasingly dangerous.

Recently, the U.S. House Committee on Education and Labor released what many termed a highly critical report titled “Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses.”

“Top officials at the Department of Labor (DOL) and Occupational Safety and Health Administration (OSHA) often cite declining injury, illness, and fatality numbers to demonstrate the effectiveness of their programs and to fight off criticism that OSHA has abandoned its original mission of setting and enforcing workplace safety and health standards,” the report states.

“But extensive evidence from academic studies, media reports, and worker testimony shows that work-related injuries and illnesses in the United States are chronically and even grossly underreported,” the report continues. “As much as 69% of injuries and illnesses may never

make it into the Survey of Occupational Injuries and Illnesses (SOII), the nation's annual workplace safety and health "report card" generated by the Bureau of Labor Statistics (BLS). If these estimates are accurate, the nation's workers may be suffering *three times as many injuries and illnesses as official reports indicate.*"

Despite these reports, many on the committee feel that, "OSHA has failed to address the problem, relying on ineffective audits to argue that the numbers are accurate."

Secretary of Labor Elaine Chao announced last fall that workplace injury and illness rates for 2006 were the lowest ever recorded and marked the fourth straight year of rate declines for private sector employers. Many believe this was misleading and that the actual drop in workplace injuries and illnesses were a result of OSHA recordkeeping rules and regulations changes to how they record the statistics. (While OSHA statistics show a 35.8% decline in occupational injuries and illnesses between 1992 and 2003, "83% of the decline can be attributed to the change in the OSHA recordkeeping rules," reports a study by Lee Friedman and Linda Forst.)

The House committee found a major cause of injury and illness underreporting is OSHA's reliance on self-reporting by employers. The agency currently is conducting fewer inspections and issuing fewer fines, leaving businesses to police themselves.

ARE YOU AN EFFECTIVE COMMUNICATOR?

Effective communication is essential to every organization and to successful relationships. What you say is important, but how you say it often determines how you're viewed and whether you'll get what you are after.

Are your communication skills hindering you with others? Try these tips to clearly communicate with co-workers, customers, and bosses.

1. Respect others. Respect requires trust, equality, and empathy. It's essential for cultivating relationships. Don't just treat others as they wish to be treated; rather, treat them as they wish to be treated and keep an open mind, allowing you to understand and value their opinions.

2. Listen. Attentive listening requires participation, openness, and receptivity. You can practice this by:

Clarifying. Ask questions when you're unsure. Instead of saying, "Why do you want to enroll in the program?" try: "What do you want/what do you think I can learn from the session?" Make sure your message is understood as well. Try: "I'm not sure I'm being clear. What did you hear/say/ask?"

Repeating. To minimize misunderstanding, summarize what you understood. Then you and your boss will be clear on what's expected from you.

Reflecting feelings. Let co-workers know that you hear and understand their thoughts and observations. Consider what someone is feeling, but not saying to you. Try empathy: "If that happened to me, I think I could be angry too."

3. Think before responding. Always think before you speak. It is not a good idea to say too much when you're angry or upset. Instead, take time to regroup. Take a deep breath, a small time out to prepare and rehearse before confronting a potentially difficult conversation. Practice and visualization of what you want to convey in advance will help manage your nerves and emotions.

4. Avoid gossip. Do not engage in idle and nasty chat about co-workers. It's not nice, and it has a way of coming back to haunt you. Also, you don't appear as if you value others when you are talking badly about someone.

5. Develop an appropriate speaking style and body language. How you speak is just as important as what you say. Be positive and brief. Radiate energy, enthusiasm, friendliness, competence, and confidence while maintaining eye contact. Avoid grimaces, lip biting, rolling your eyes, and fidgeting. Sit erect and lean forward. Stand tall, shoulders back.

6. Be assertive. Make your needs and requests clear in a friendly way. Stick to the facts and set boundaries. Separate people from tasks. You can refuse requests without rejecting requesters. Always ask, rather than complaining or whining.

7. Recognize and respect differences. Gender, cultural background, birthplace, occupation, and personality all influence communication. Recognizing and respecting differences can help reduce misunderstandings.

8. Give lots of praise and recognition. Support and advice at the office are essential for good relations. Show your appreciation for a job

A WORD FROM THE WISE™ SUCCESSFULLY MEETING THE DOCUMENTATION EXPECTATION

Like it or not, there is an expectation in today's workplace that management, which includes front line supervisors, will meet certain expectations for compiling then presenting work-related documentation. This expectation, whether express or implied, can be seen when dealing with any workplace related proceeding. The expectation even goes beyond any legally required documentation, such as I-9 forms or employment applications. So, what is this expectation? And how can managers and supervisors successfully meet this expectation?

The expectation boils down to a manager or supervisor having documentation supporting any work-related incident, decision, or action. While such documentation can range from investigative notes to an employment termination record, the key is that management is expected to document. This expectation then extends to the documentation being either required or requested when that specific workplace situation comes under scrutiny or review. Realizing that this expectation applies to a broad range of situations can create a problem for management, as managers and supervisors struggle to adapt their documenting practices for each of those situations. Rather than take that approach, a manager or supervisor can follow some general guidelines that can be consistently applied across the broad spectrum of work-related incidents, decisions, or actions.

There are essentially two types of documentation for management to compile for their own benefit or protection. First, there is **Record Documentation**, which is compiled to record an action or decision. This tends to be more formal, such as a written warning issued to an employee. Second, there is **Memory Documentation**, used by a manager or supervisor to remember a particular situation, including a specific discussion or behavior. While this documentation tends to sometimes be more informal, the same concepts outlined below still apply. Successful use of both types of documentation can be increased if the following principles are utilized.

1. **Know the purpose of the document.** Before you start, determine what the document will be used to accomplish. A document communicating a message is very different from one that is simply recording information.
2. **Keep the document short.** This is not a high school class where the "grade" or quality of the document is based on how long it is! Record only what is relevant to the purpose of the document; don't think that the more you say, the stronger or better the document.
3. **Keep the document focused.** The broader the document, the more there is to attack or argue. Why add hassle?
4. **Stick to observations, not opinions.** Anything you see, hear, smell, or touch is an observation. Adding interpretation to that is not, e.g. "the employee's eyes were bloodshot and I smelled alcohol" is okay; however, adding "the employee was drunk" is not.
5. **Stay within your expertise.** Your expertise is job performance and behavior tied to your workplace's standards, expectations, and policies. Focus your document on that expertise.
6. **Pick your words carefully.** Use simple wording so that you can best understand, explain, and prove what you've written is true and accurate. Using broad or legal terms like "insubordination" just adds unnecessary complications.
7. **Don't make it personal.** Comments that relate to the person make your document personal and take you outside your expertise. Don't make a conclusion that reflects a personal assessment, e.g., "Sally was tardy because she is too lazy to get up on time."

While various types of documents may include additional, specific ingredients, the key factors outlined above increase the likelihood that any document will successfully meet the documentation expectation. HR Answers offers various sessions that focus on documentation expectations that cover the realm of workplace related documentation required of today's managers and supervisors. For more information, contact us at 503-885-9815.

6 TOP-PAYING GREEN JOBS

As nations across the globe look for ways to prevent global warming, they're spurring a "green" revolution - and focusing on everything from environmentally friendly house additions to how to make business environmentally friendly. The movement's swelling popularity is also fueling growth of new industries and some top-paying green jobs.

Green Job 1: Venture Capitalist. VCs invest early in organizations with potential to revolutionize an industry or create a new one, says a report by the Cleantech Group and Environmental Entrepreneurs. VCs work with the organizations to help them grow, and sell their stake within a few years, hoping to make a handsome profit.

According to the Cleantech Group, in the third quarter of 2007 North American VCs invested close to \$1.3 billion in clean technologies, a 50% increase over the second quarter of 2007 and a 36% increase over the third quarter of 2006.

Green Job 2: Chief Executive Officer. *Annual median salary, 5-9 years of experience: \$120,674.* Skilled and savvy leaders are in high demand for green organizations, and they can command sizable salaries, especially at outfits supported by venture capital.

Many of these endeavors are startups backed by venture capital firms. There are young people who see an opportunity and bring the idea to the investment community and they want what some call “adult supervision” (AKA: someone who has done it all before). It is safe to think that the demand for CEOs in this industry will continue.

Green Job 3: Chief Technology Officer. *Annual median salary, 5-9 years of experience: \$102,280.* According to experts, as green technologies gallop apace CTOs are highly sought after, and often hard to find.

There is no need for a deep talent pool here. An organization simply must pull talent from other industries that have some correlation to the technology or the process the organization is going through.

Green Job 4: Vice Presidents of Research and Development; Manufacturing. *Annual median salary, 5-9 years of experience: \$125,202 (R&D); \$80,158 (manufacturing).* Positions shepherding advancements in green technology and taking them to market are crucial, experts say.

Any industry with ongoing technology developments, the critical piece for organizations to make something more standard is that you have to be able to take a technology out of a lab and put it into high-volume manufacturing capacity. Research, development, and manufacturing are critical to these organizations.

Green Job 5: Vice President of Government Affairs. *Annual median salary, 5-9 years of experience: \$96,816.* As the U.S. government offers more funding for green initiatives, positions that interface between an organization and Uncle Sam are increasingly important. The government or grant funded programs can provide the finances and sources of capital for an organization. Providing a business plan is often needed, as well as continuing to hit the milestones.

Green Job 6: Vice Presidents of Sales; Marketing. *Annual median salary, 5-9 years of experience: \$96,541 (sales); \$103,371 (marketing).* Keeping people apprised of initiatives, products, and services is key to keeping green industries blooming. According to Lawrence Comras, founder of Greenhome.com, an online green department store, “There’s a ton of green products out there. There are tons of jobs in sales, and sales [are] well-paying, often highly professional jobs.”

CAREER FUN BEGINS AT 50

According to a Vodafone UK Working Nation report that asked 3,800 people about “negative feelings” regarding work, the 31 to 35 year-old group came in the top in every category:

- Feeling undervalued (59%)
- Feeling unfulfilled (49%)
- Being demotivated (43%)

An interesting note was that 70% of those 50 and older said they were fulfilled at work and with their jobs.

These results have significance to employers who have 30-40 year-olds in supervisory roles. The organization should address these concerns before the risk of having uninspired managers becomes real. These individuals are in a position to motivate and inspire those who report to them, but only if they are “feeling the love” themselves.

Optimizing your workplace means remembering that individuals have needs, and that expressing empathy will take you far. Good, clear, and solid communication is needed at all levels. Embrace flexibility, and empower employees to take appropriate risks and show their responsibility for self and others.

REMINDER DUE DATES – VETS REPORTS

The filing deadline for the 2008 VETS-100 Report is September 30, 2008. The Department of Labor’s Veterans’ Employment and Training Service (VETS) annually collects and compiles this information from federal contractors with federal contracts that were entered into before December 1, 2003 and have a value of \$25,000 or more. Each year, the VETS-100 reporting cycle begins on August 1 and ends September 30. Accordingly, VETS began accepting reports on August 1, 2008.

FOR YOUR CALENDAR

Open up your Daytimers, computer calendars, Palm Pilots, and of course those Blackberries. The following is a look at upcoming events, special days and other diverse and fun activities you will want to be aware of and get scheduled. To register for our workshops, please call any of our offices, send an e-mail to Melissa Sambuceto at MSambuceto@hranswers.com, or simply register online at www.hranswers.com and click on the "Workshop Registration" tab at the top of the homepage.

AUGUST

American Artist Appreciation, National Hug, National Coffee, Happiness Happens, National Parks, and National Smile Month.

August **HRA Workshops on Hiatus**

August 16th Tell a Joke Day

August 22nd Be an Angel Day

August 25th National Park Day

August 29th College Colors Day

August 31st Eat Outside Day

SEPTEMBER

September 1st Labor Day
HRA Office Will be Closed

OCTOBER

Each Thursday; Beginning Supervision Series
2nd through 30th Tualatin HRA Office
8:30am – 12:30pm

ON MY SOAPBOX

Have you ever had one of those experiences where you wake up in the middle of the night with a brilliant idea and by morning it has been dispelled by the early light of the sun? Or have you had that brilliant idea and even taken the step to ensure that it doesn't evaporate by writing yourself a midnight note, only to discover that the hieroglyphics mean nothing when examined in daylight?

Well, thanks to Deborah on our staff, my brilliant idea remained intact when I woke up from sleeping. (She had given us Capture Cards to jot down our random thoughts or To Dos whenever they occurred so that we wouldn't lose them.) Who knows what I was dreaming about? I have no idea or recollection. But as I struggled to only half-asleep, I was thinking about questions we ask and should ask at work. I turned over to get comfortable; to try to return to that world of slumber, and the phrase sprang to mind, fully formed and complete – incandescent questions! I scribbled it on a capture card.

Incandescent questions are those that, when asked, illuminate something not yet seen or perceived. They shed bright light on an aspect or perspective not previously noticed or considered. It's like the cartoon when the light bulb over someone's head pops up!

Let me give you some examples. Consider the unique question you ask of an applicant that instantly shows you an entirely different side of their work history or character (or lack thereof). Consider the employee who courageously, and innocently, raises a question of "Why don't you do it this way..." causing an entire room of people to re-think something they were so certain of just moments ago. Consider when someone reframes a usual question in an unusual way so that it generates fresh thinking about a problem or a new product/service.

Incandescent questions are those often unexpected, but inspired, inquiries that help us learn. They can eliminate the most intimidating barriers by illuminating a path previously hidden in shadows. Incandescent questions have the power to brighten our spirits and encourage us to believe that something that seemed impossible can now be accomplished.

I heard a story once from Lou Tice, an honored speaker and trainer of people. He talked about scotomas. He said it was a Greek word for scales on our eyes. His example was about the new cars we buy. Prior to purchase, we rarely notice that make and model on the road. But once we own the new car, we see it everywhere around us. He said that we had a scotoma before the purchase (scales on our eyes that prevented us from seeing what was around us because we had no reason to notice it). Upon owning the new car, our scotoma fell away and we became observant, seeing it on the street, in our neighborhood, on the freeway.

A similar thing happens when an incandescent question is offered. We all know and recognize that enlightening question as soon as it is asked. It surprises and startles us. We say things like, "I never thought of it that way," and "I wonder why no one ever asked that question before." The question changes the dynamics in the room. People sit up straighter, show more interest in the subject; they come alive with greater energy to act on this new outlook.

So where do these questions come from? Do they spring from an innate ability or are they something we all can learn? Sometimes they are as simple as turning the question around. Instead of asking, "Why are we talking about this again, we know we can't do it?" we pose the question, "What do we think would actually occur if we tackled this?" Sometimes the questions have their genesis in looking for the root cause of something, instead of dealing with the recurring symptoms of an issue. They help us look at potential instead of risks. An inquiry like, "Maybe we shouldn't be trying to address what do we do about this, but we should be asking, why do situations like this keep happening to the staff in the X department?" Sometimes the questions show us a connection between one situation and another that hasn't been identified by anyone before. Identifying that nexus allows us to approach the situation from an entirely different perspective.

There are lots of opportunities for incandescent questions, but far too few of them are asked. As HR people and/or managers of enterprises, our job is to ensure that there is thinking time, that our employees are encouraged, nudged, and rewarded for asking unusual, difficult, insightful, and exploring questions. Incandescent questions are creators of inspiring moments. They are the chance for innovation and invention. Without these moments, without incandescent questions, we are condemned to the ordinary and much is lost for all of us. Watch for those opportunities to "turn on the light bulb" with a question.

- Judy Clark, President



"Whatever the Question"

PLEASE FEEL FREE TO VISIT OUR WEBSITE:

WWW.HRANSWERS.COM