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# TOP ISSUES OF 2010

Colleen Baybutt

HR Business Solutions, Inc.

# HR Business Solutions, Inc.

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- Incorporated ten+ years
- Experienced HR professionals
  - 3 SPHR, 2 CCP, 1 MBA
- SWaM designation (female owned)
- Over 90 clients in VA, NC, GA
- Services:
  - Human Resources Management
  - Compensation
  - Benefits Compliance
  - Project Management
  - Specialized in Senior Living

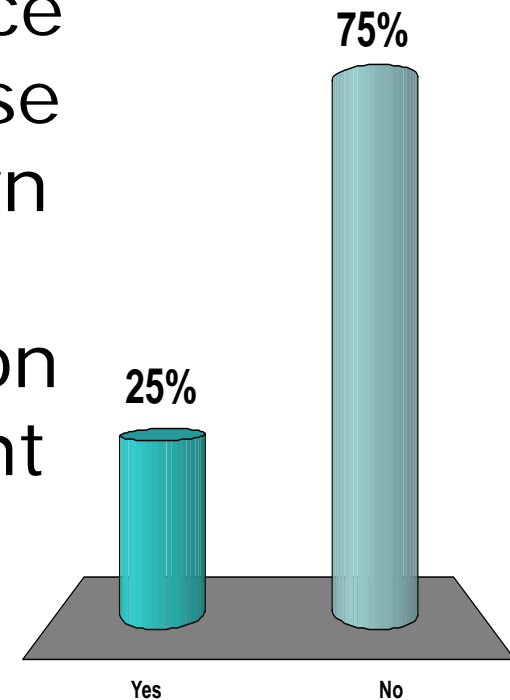


# Your Role is Interactive Today

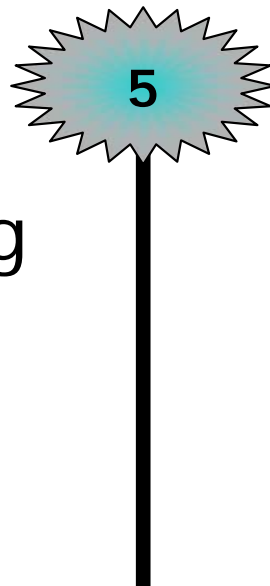
- Use remote to answer the questions on the left of the slide




Audience response is shown in the graph on the right



- The ball will countdown the seconds remaining to answer the question.

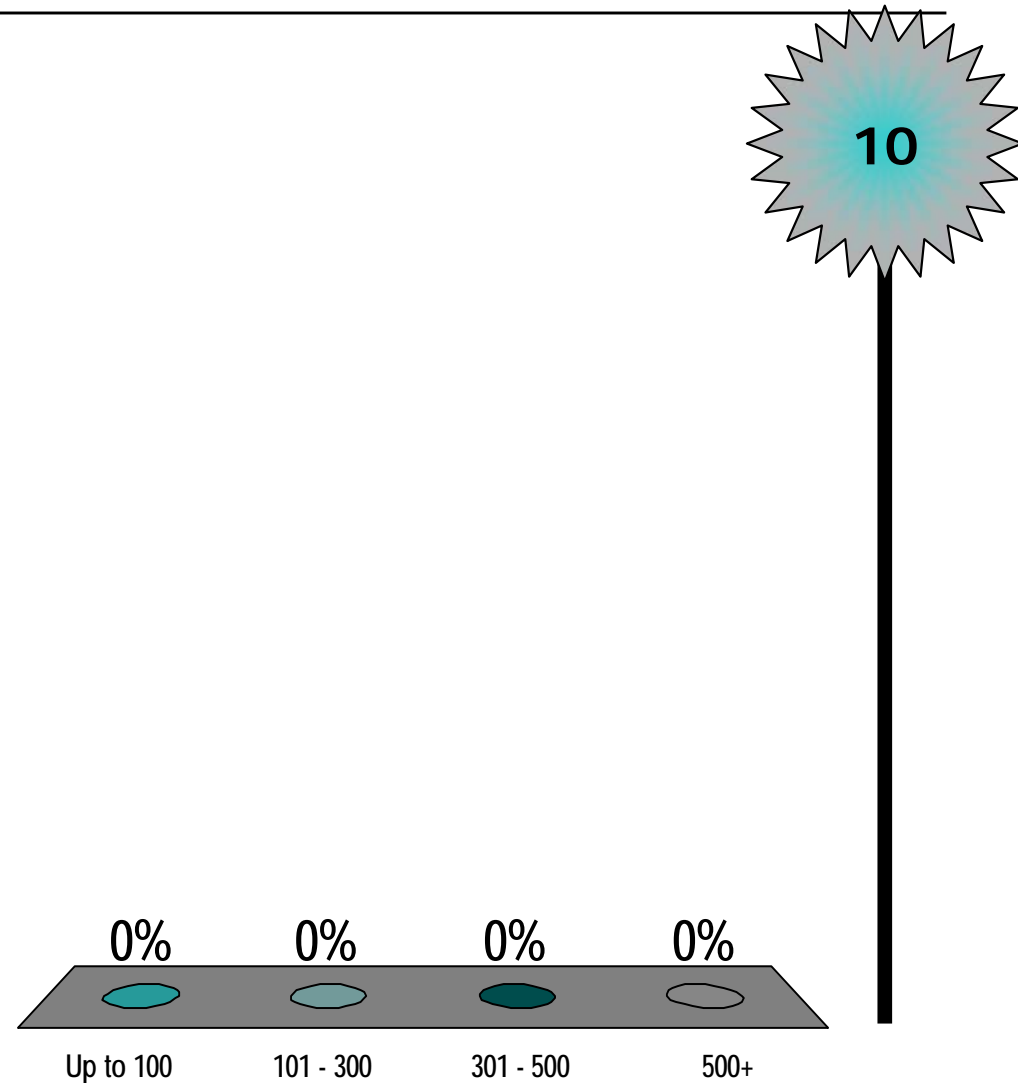


-  = Correct answer

# # Employees at Your Company

1. Up to 100
2. 101 to 300
3. 301 to 500
4. Over 500

**Let's Practice**



# Session Objectives

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Increased understanding of:

- Complaint trends and class actions
- Wage and hour compliance
- Impact of pending legislation on misclassification of workers
- Tax breaks for new hires
- Health care reform
- Employee engagement



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# Trends, Class Actions, and Wage & Hour Compliance

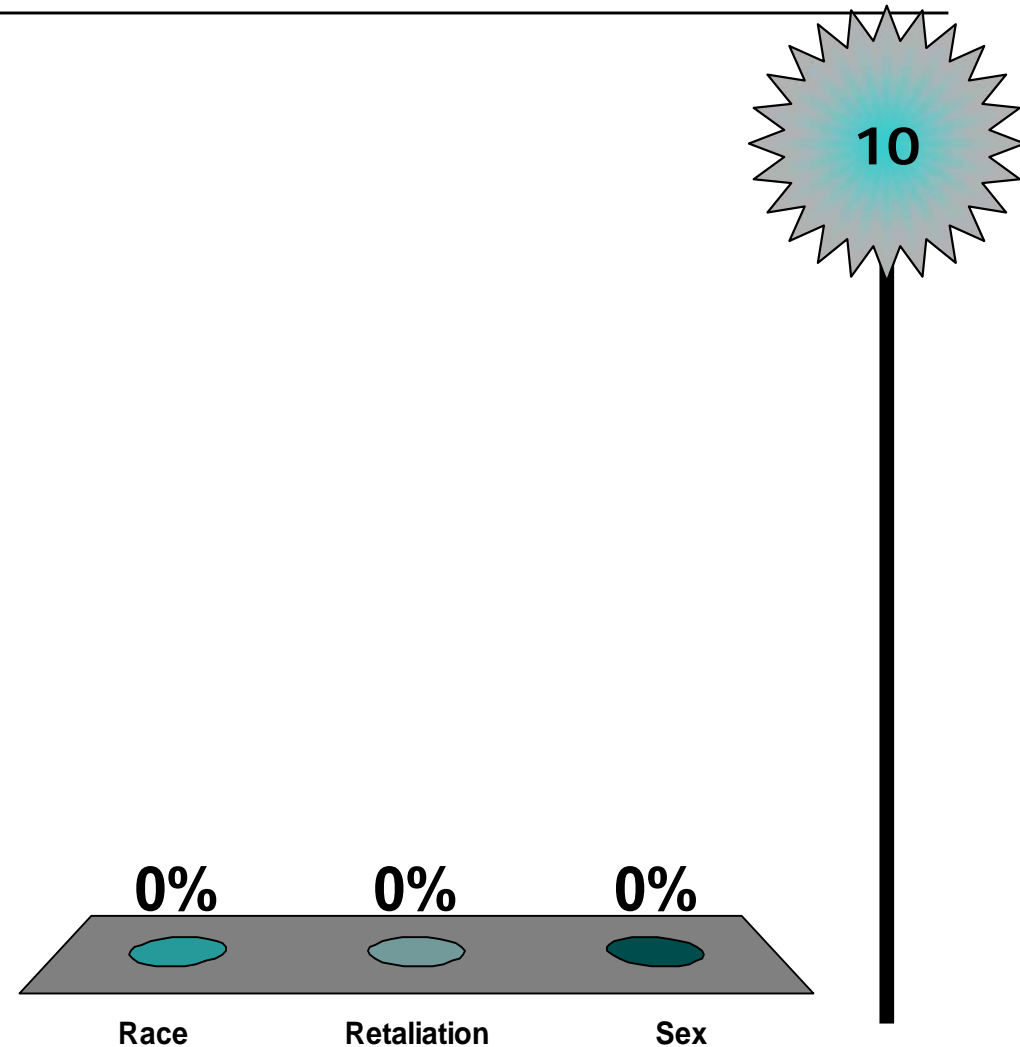
# EEOC Outlook

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- 93,277 charges filed
- \$294 Million in monetary relief
- 111 class action suits
- 200+ new staffers
- Focus on disability and pay discrimination
- Anticipate passage of sexual orientation and gender identity protections

# Most Prevalent Type of Discrimination Claim in 2009?

1. Race
- ✓ 2. Retaliation
3. Sex



# What Constitutes Retaliation?

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- Participation in protected activity, at any level
- Adverse action was taken by the employer such as a firing or failure to promote
- "Causal connection" between the protected activity and the adverse action (meaning an ability to show that one caused the other)



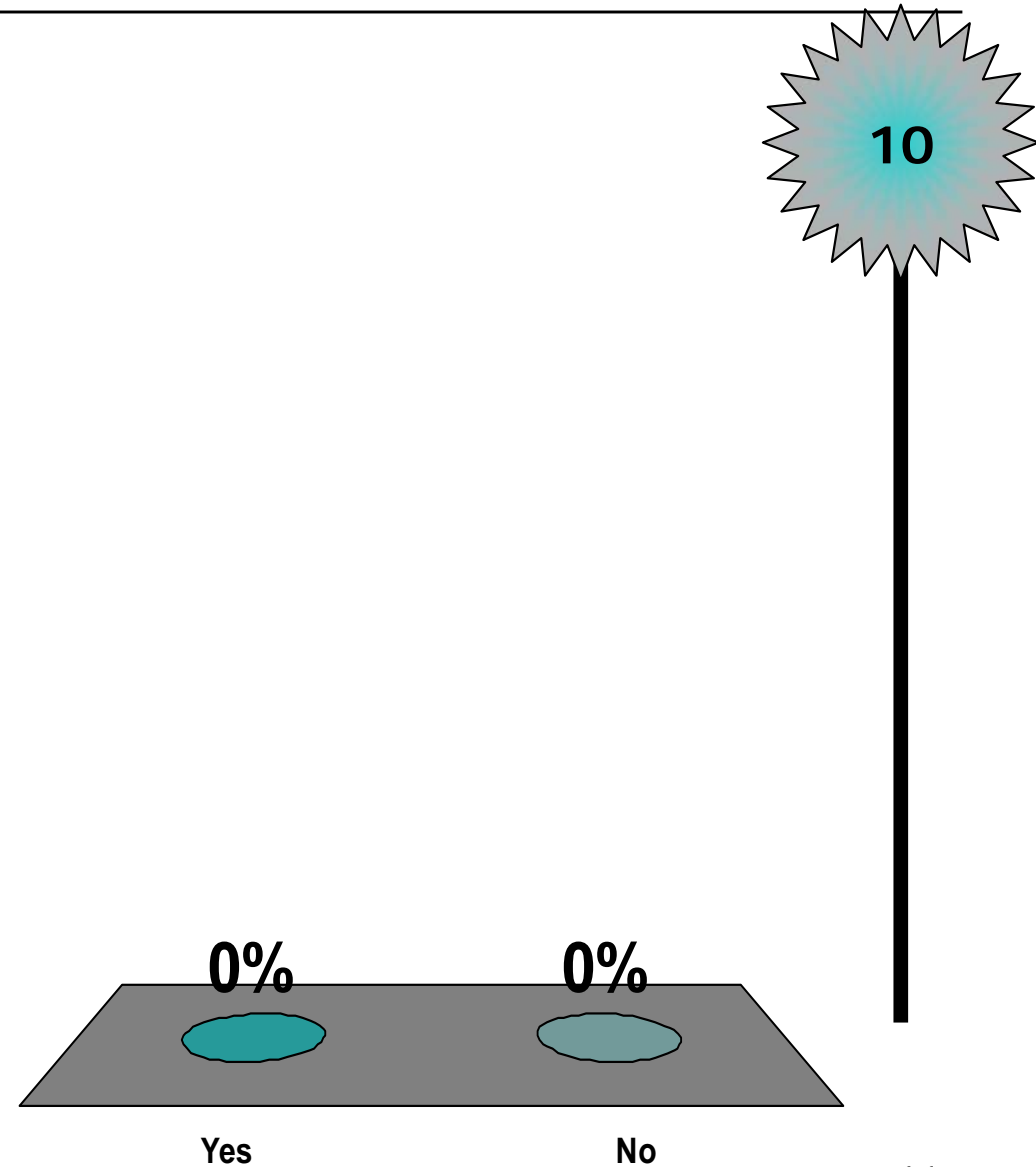
# Miguel and IMPCO Technologies

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- Miguel is assembly supervisor
- Based on comments from two employees, reported missing OT pay as a possible time clock error
- Manager approved OT without investigation
- HR Director later reviewed clock vs. security gate entries, reversed OT
- Miguel offered to repay OT, but was fired

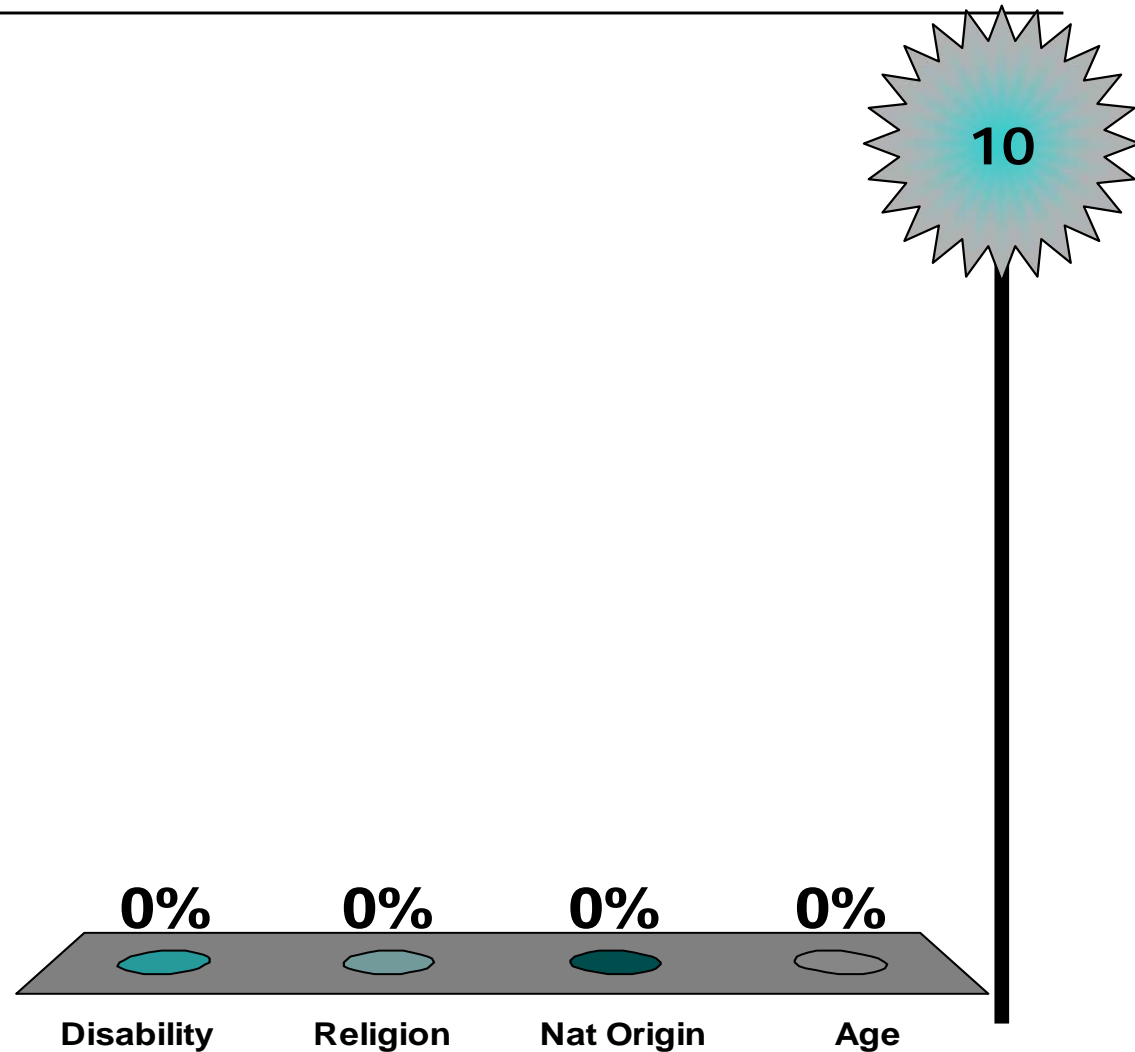
# Can the Employee Be Fired for Making False Claim for Overtime?

- 1. Yes
- ✓ 2. No



# What Classes Had Record High Discrimination Claims in 2009?

- ✓ 1. Disability
- ✓ 2. Religion
- ✓ 3. National Origin
- 4. Age



# FLSA Collective Actions on the Rise

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- Strict liability statute, good faith is not defense
- Burden on employer to prove exemption
- FLSA “collective action” easier than a “class action” under Federal Rule 23
- Double damages, plus attorneys’ fees covered by employer
- 93% recovery is unpaid Overtime
- Economic forces to increase productivity but lower labor cost will continue

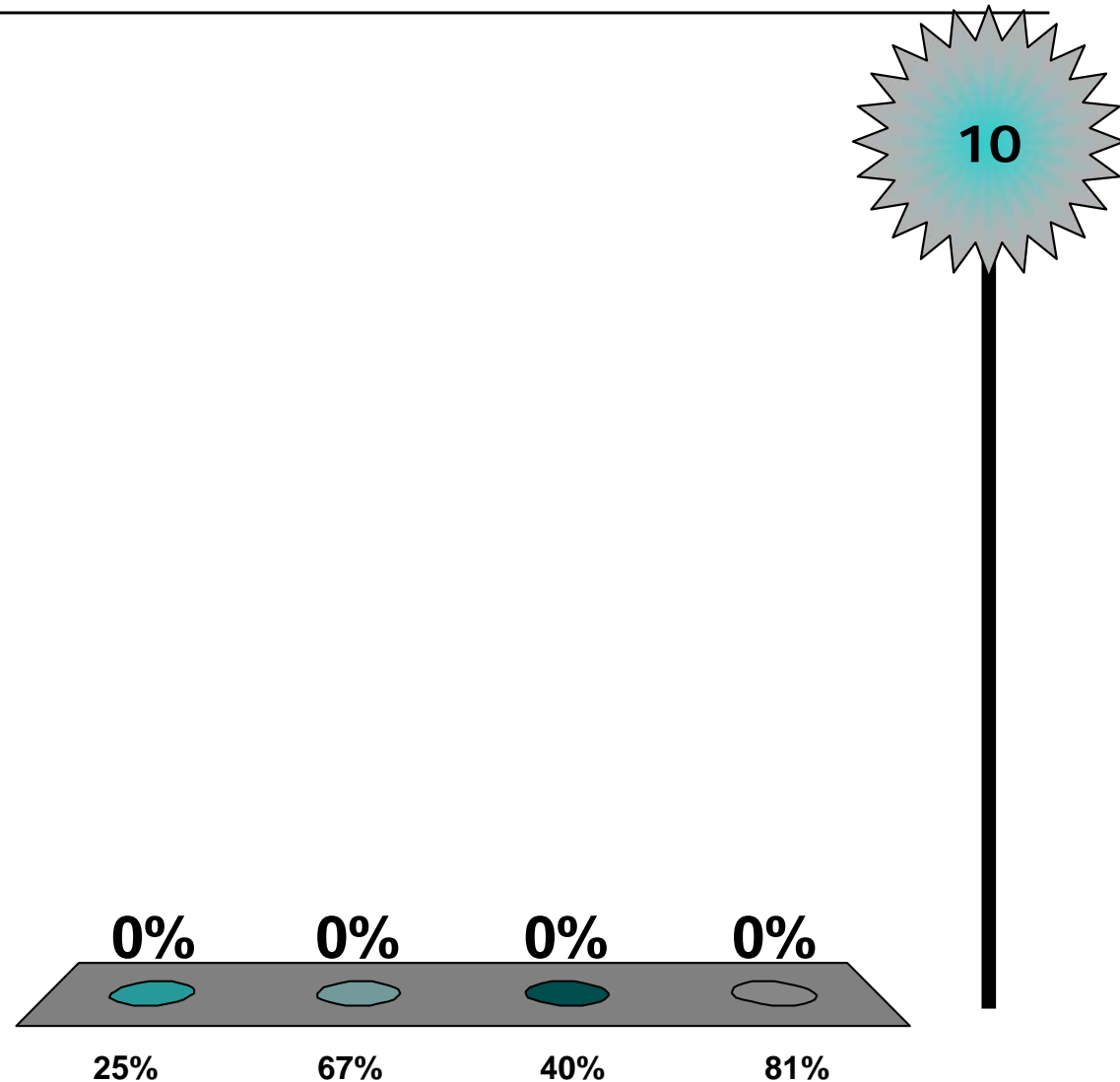
# Recent Wage & Hour Developments

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- DOL increased enforcement staff by 30%
- Claim for \$1 Billion in overtime pay for “first level managers with minimal supervisory role”
- Managers held individually liable
- No more opinion letters
- Healthcare reform includes unpaid breaks for nursing mothers

# % of Employers Out of Compliance with FLSA and State Wage/Hour Laws?

1. 25%
2. 67%
3. 40%
- ✓ 4. 81%



# FLSA Fact Sheet #31 (7/2009)

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- Specific to Nursing Homes
- Most Common Errors – uncompensated time for non-exempt employees
  - Before and after a worker's scheduled shift
  - Meal periods and automatic deductions
  - Staff meetings and compensable training
- Misclassification as exempt – cooks, activity directors
- Use of unpaid volunteers

# FLSA Fact Sheet #31 (7/2009)

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- On Call Pay – failure to pay and to include in OT rate
- Deductions or demand for cost of required uniforms or equipment
- Failure to include shift differential, bonuses and on-call fees in OT
- 8 and 80 Overtime (i.e. part timers)

# Common Misclassification Errors

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- Administrative exemption – which office staff are Exempt?
  - Managers and Supervisors?
  - Title and job description doesn't matter
  - Exempt only if work includes use of discretion, independent judgment with respect to matters of significance
  - Review whenever changes happen
  - Operations vs. Office ("business of the business" vs. traditional back office)



# Common Misclassification Errors

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- Computer systems analysts, programmers, software engineers, or similarly skilled workers, primary duties:
  - Design of computer systems or programs
  - Application of systems analysis
  - Design of machine operating systems

# Permissible Deductions from Exempt Employees

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1. ½ day absence if PTO is Exhausted
- ✓ 2. Safety Infraction
- ✓ 3. FMLA Intermittent Leave
- ✓ 4. Suspensions
5. Medical test for CDL license



# Switching Shifts

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- Nurse asked to cover another employee's weekend shift
- She declines, then tells manager that she will only do it in exchange for her daughter's upcoming birthday

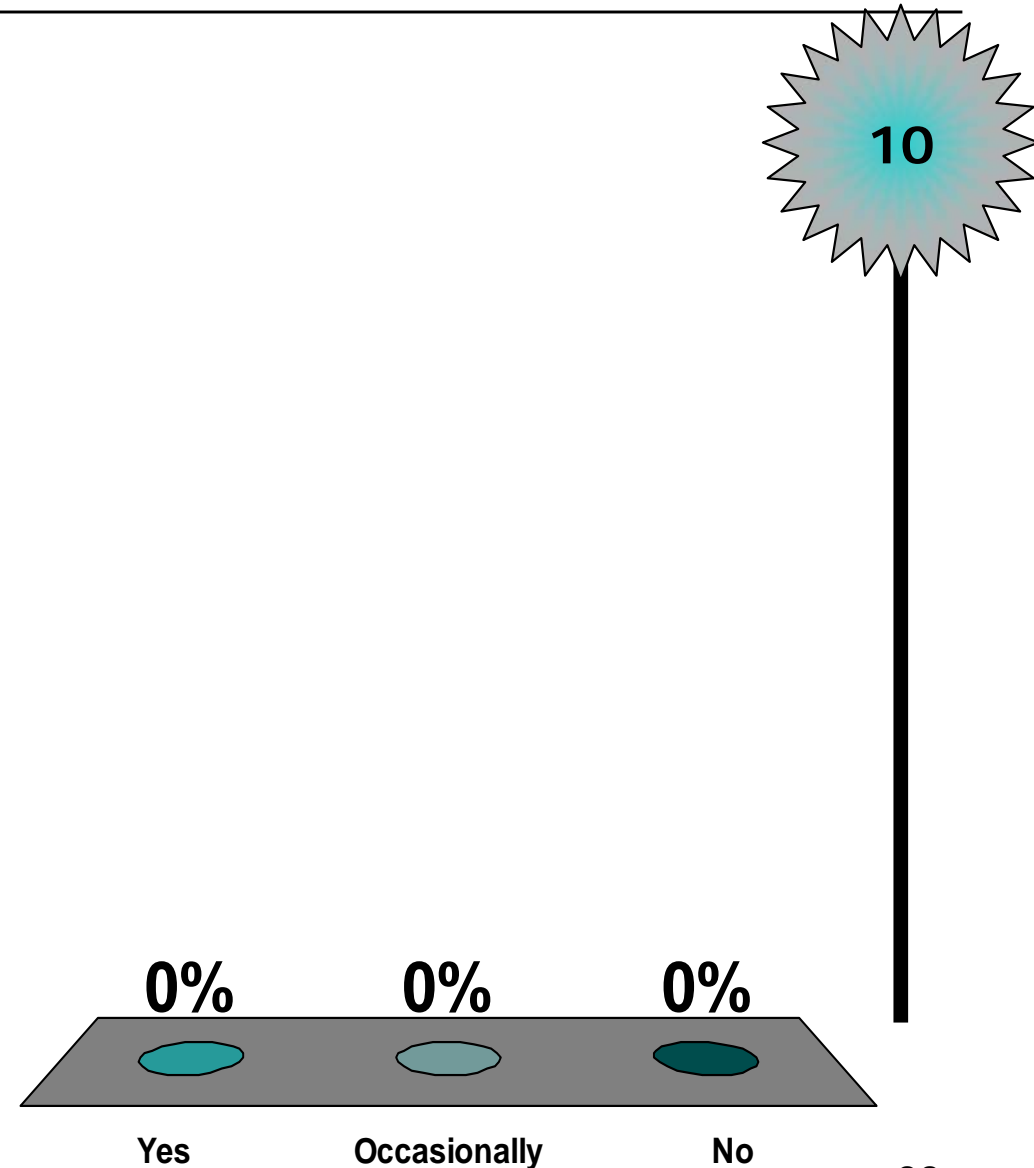
# Can you grant the nurse's request for an day off in lieu of overtime?

- ✓ 1. Illegal
- 2. Legal
- 3. Only legal if they give compensatory time at rate of 1.5



# Does your company use Independent Contractors?

1. Yes
2. Occasionally
3. Never



PENDING

# Employee Misclassification Bill

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- Prohibits misclassification as to *employee* or *contractor* status
- Adds recordkeeping and worker notice requirements
- \$1,100 penalty per worker or \$5,000 per worker for willful violation
- Currently: Definitions inconsistent (federal & state regulations)

PENDING

# Independent Contractor Proper Classification Act

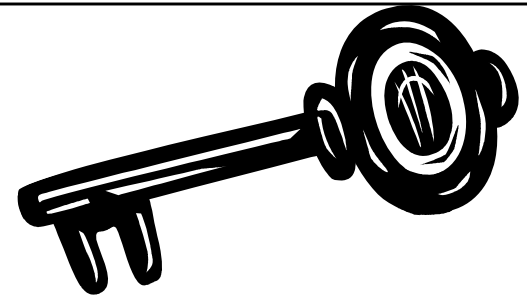
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- Increase role of IRS in classifying workers, targeted audits
- Workers can ask IRS for determination of their proper classification
- Employers required to notify individuals
- Change safe harbor definition and remove industry standards as a reasonable basis for designating someone as an independent contractor

# Independent Contractor or Employee?

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- Key considerations:
  - Control exerted
  - Party with financial risk
  - Permanency / duration of relationship
  - Role in employer's operation – integral or extraordinary?



# Independent Contractor or Employee?

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- Contractors typically:
  - Work for several businesses
  - Provide own tools and resources
  - Work with low level of control – focus on the deliverable, not how / when work is done
  - Are compensated on a project, not hourly, basis
  - Relationship ends / changes upon project completion



# New

## Unemployment Integrity Act

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- Draft legislation delivered to Congress May 17
- Reduce improper benefit payments
- Target employer tax evasion through misclassification of employees – 5% fund created
- Employer incentive for improved reporting of terminations
- National new hire reporting




# 2012

## 1099 Forms Abound

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- 1099 tax forms not just to contract workers but to any individual or corporation from which you buy more than \$600 in **goods or services** in a tax year
- Goal to capture unreported income to generate more government revenue and help offset the cost of the health bill.
- Rep. Lungren (R-Calif) introduced bill to repeal this provision

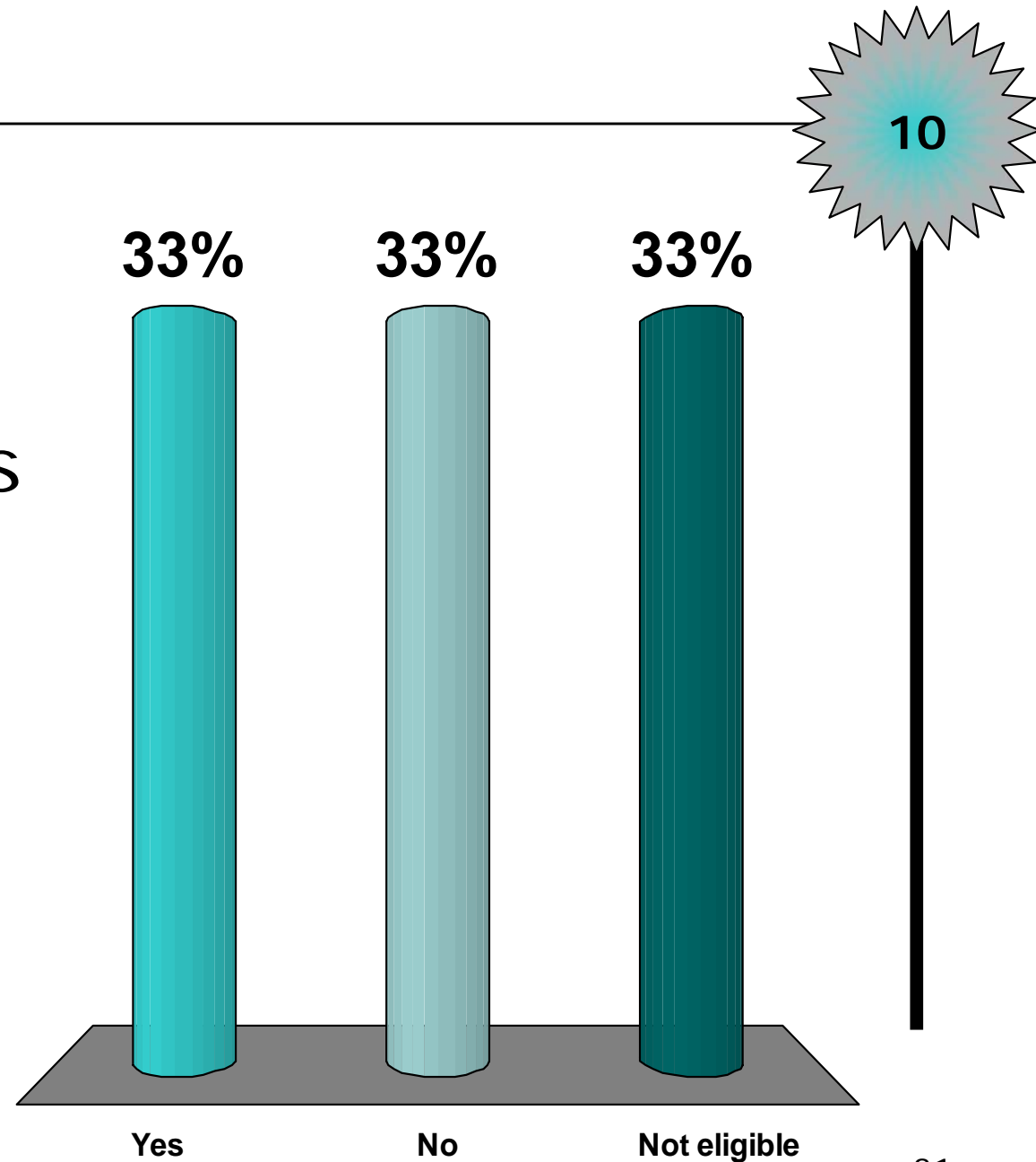


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# Hiring Incentives to Restore Employment (HIRE) Act

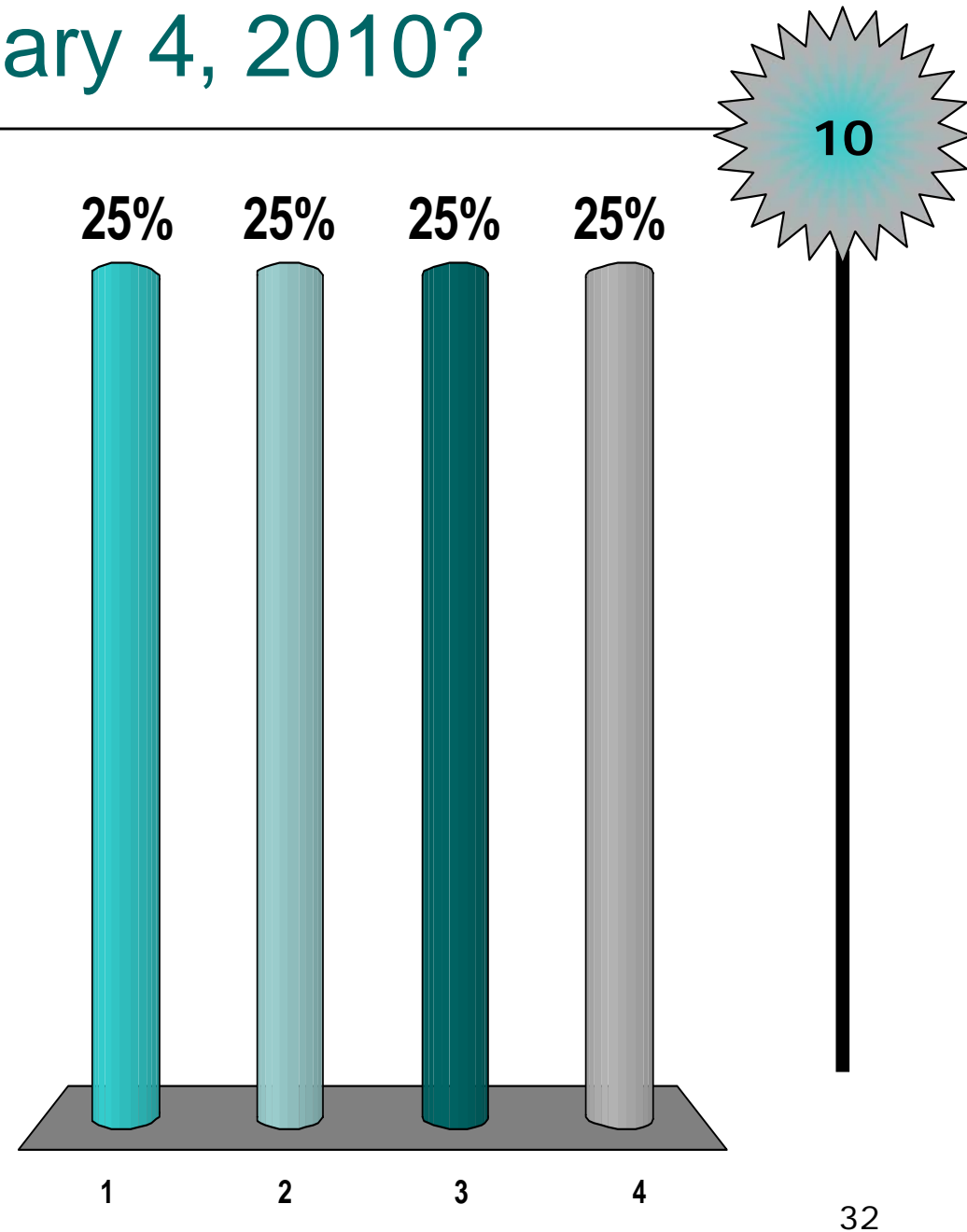
# Will you apply for the HIRE tax credit?

1. Yes
2. No
3. Non-profits are not eligible



# How many employees have you hired since February 4, 2010?

1. Less than 10
2. 11-20
3. 21-49
4. Over 50



March 18

## HIRE Act

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- Tax Credit for hiring unemployed and/or under-employed employees
  - Employer's share of social security (6.2% up to \$106,200)
  - \$2,000 in savings for employee making \$36,000/yr in 2010
- Tax Credit for retaining these qualified employees for 52 weeks
  - Up to \$1,000 per qualifying employee

# Qualifying New Hires

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- Hired after Feb. 3 and before Jan. 1, 2011
- Unemployed for the 60 days prior to hire date
- If previously employed, worked less than 40 hours for anyone during the 60 days prior to hire
- If hired for an existing position, the departing employee left voluntarily or terminated for cause....layoffs do not qualify
- If re-hired, unemployed during prior 60 days/worked less than 40 hours for anyone
- Cannot be related to the “qualified employer”

# Retention Credit

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- Must be qualified, hired before Jan 1, 2011
- Remain employed 52 consecutive weeks
- Credit is lesser of 6.2% of qualifying wages or \$1,000
- Wages during last 26 weeks (of the consecutive 52 weeks) are at least 80% of first 26 weeks



# Steps to obtaining your HIRE credits

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- Employee to complete W-11 form
- Claim on your upcoming IRS Form 941
- W-11 must be signed and received by the Form 941 deadline
- Use Form 941-X for corrections/late W-11
- Report the exempt wages on the employee's W-2
- Apply for the Retention Credit on your Annual Business Tax Return as a General Business Credit



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# Health Care Reform

# Health Care Reform

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- Patient Protection and Affordable Care Act (PPACA) – Mar. 23, 2010
- Health Care and Education Affordability Act (the Reconciliation Bill) – Mar. 31, 2010
- **BIG** changes for employers, providers, insurers, pharmaceutical companies, and employees
- Effective dates of changes range from March 2010 to January 2018

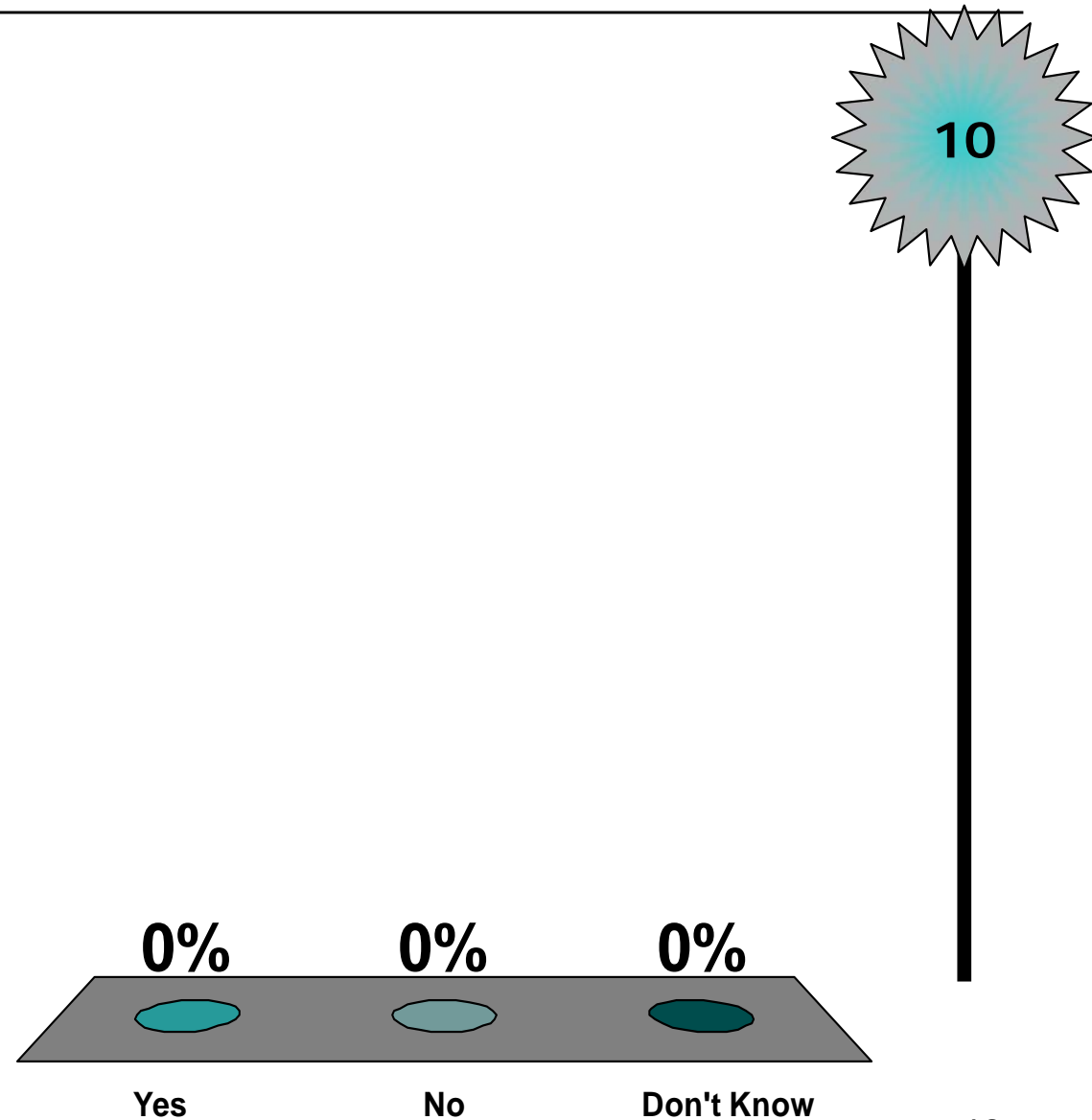
# Health Care Reform – In a Nutshell

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- Minimal essential coverage by 2014
- Dictates what is covered and who is eligible for employer sponsored plans
- Play or pay mandate
- Auto enrollment for large employers
- No pre-existing conditions
- Limits on terminating coverage
- Health insurance exchanges for small employers, unemployed, self-employed

# Do You Have a Grandfathered Plan?

1. Yes
2. No
3. I don't know



# Health Care Reform – 2010

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- Preserve employee health plan materials in effect as of Mar. 23, 2010 to document your “Grandfathered Plan”

- Why?





# Grandfathered Plan Status

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- Exempt from many health care reforms:
  - Requirement to offer preventive services
  - Limits on cost sharing
  - Nondiscrimination rules imposed on fully-insured plans
  - Certain reporting requirements
  - Changes to Appeals Process
  - Selection of doctors and referral requirements
  - Coverage of clinical trials

# Health Care Reform – 2010

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- Identify any plan amendments needed to comply with law
- Discuss plan design changes with insurance broker/consultant
- Limit plan changes for open enrollment
- Ensure that your Plan Document and Summary Plan Description is in place

# Health Care Reform – 2010/2011

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Effective first day of new plan year after Sep. 23, 2010:

- Coverage for children to age 26
- Eliminate pre-existing conditions exclusion on children under age 19
- Eliminate lifetime or annual \$\$ limits on cost of essential health benefits
- Cannot rescind (terminate) enrollee coverage except in limited circumstances...no retaliation allowed

# Health Care Reform – 2011

## New and Grandfathered Plans

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- Over-the-counter drugs require prescription in FSA, HRA, HSA
- W-2 reporting of health care coverage
- SIMPLE cafeteria plan for employers with 100 or fewer employees
- HSA penalty increased to 20% of the withdrawal for non-medical use

# Health Care Reform – 2011

## New Plans Only

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- No cost sharing for preventive care
- Cannot limit eligibility in favor of more highly-paid employees
- Revised, written internal and external appeals processes
- Section 105 nondiscrimination rules apply to insured plans (previously only self-insured)
- Any PCP allowed/OB/GYN no referral



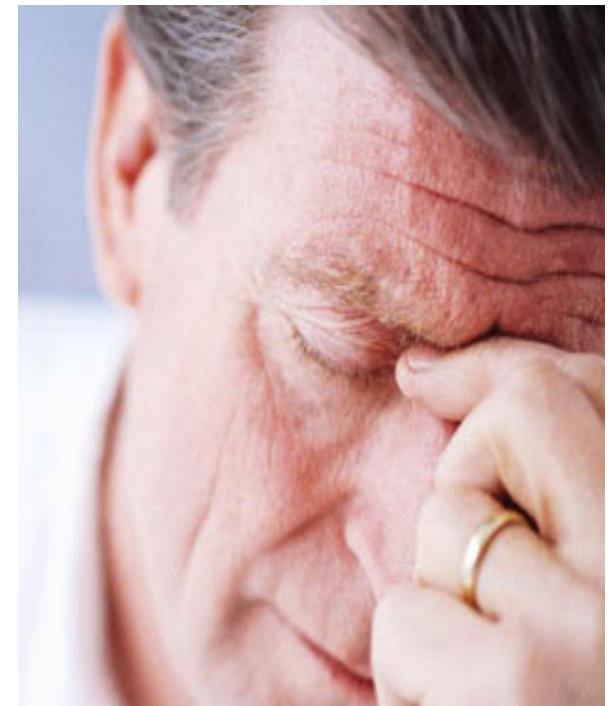
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# Employee Engagement

# Employer / Employee Disconnect

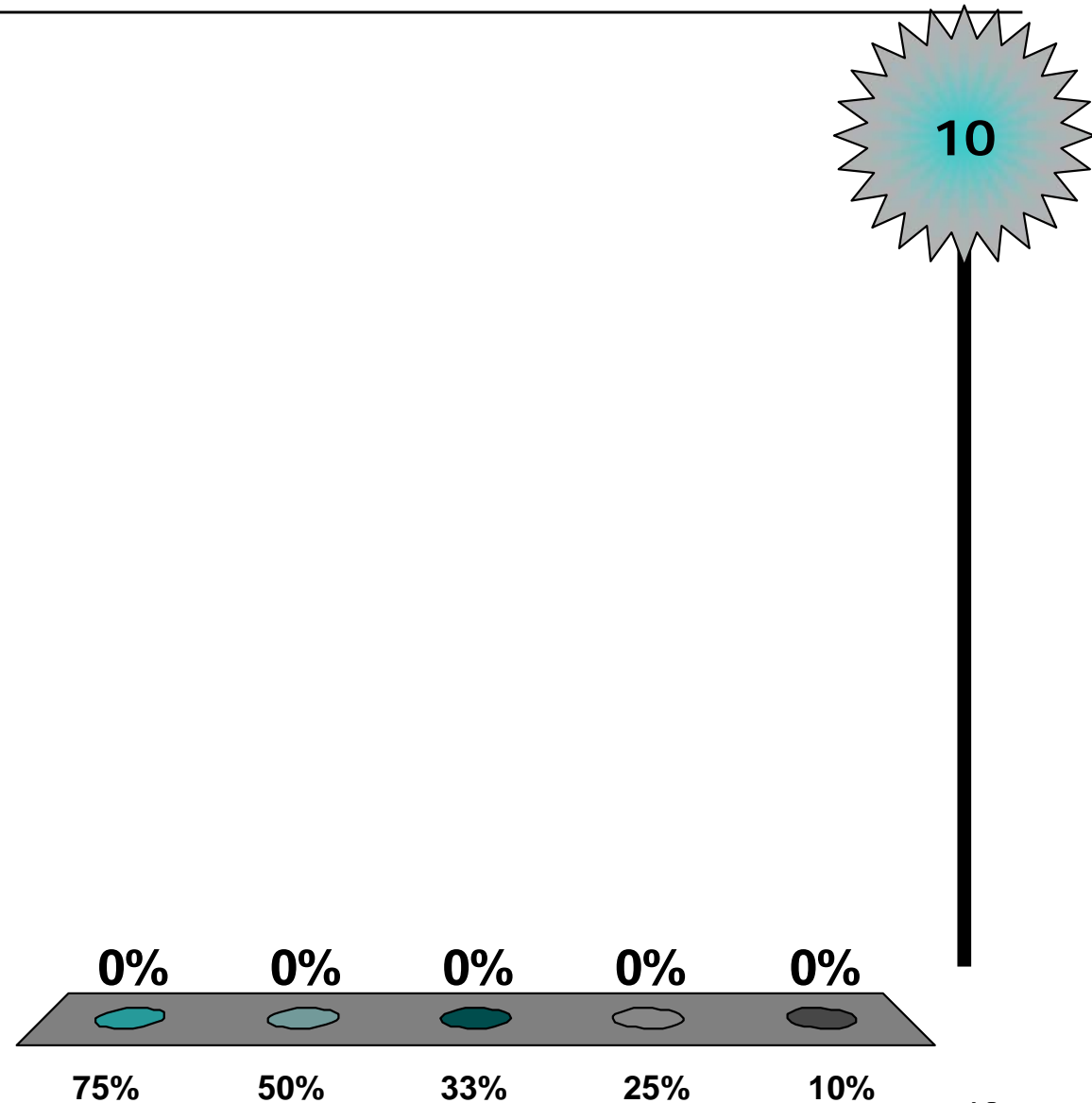
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- The “simmering malaise”
  - Employer:  
“Employee should be happy they even have a job.”
  - Employee:  
Pervasive dissatisfaction and anger



# Employees Not Engaged in Job

1. 75%
- ✓ 2. 50%
3. 33%
4. 25%
5. 10%



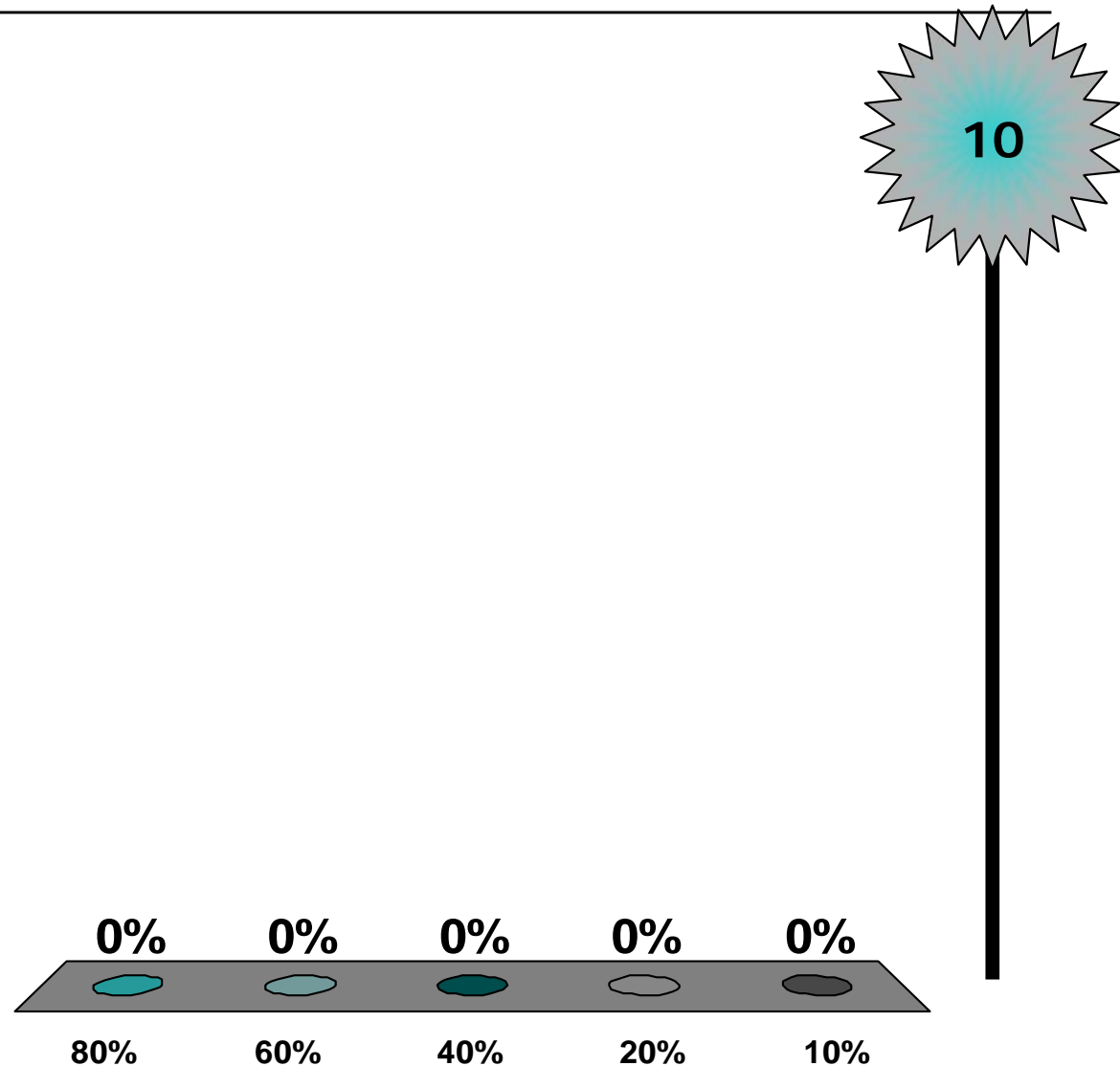
# Does Engagement Pay?

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- Disengaged workers cost \$350 billion a year in US
- "Connection between employee engagement and business performance is [a stronger] indicator than any other measure of employee attitude and business performance."

# Percent of Employees Who Intend to Pursue Other Jobs in 2010

1. 80%
- ✓ 2. 60%
3. 40%
4. 20%
5. 10%



# Harvard Business Review

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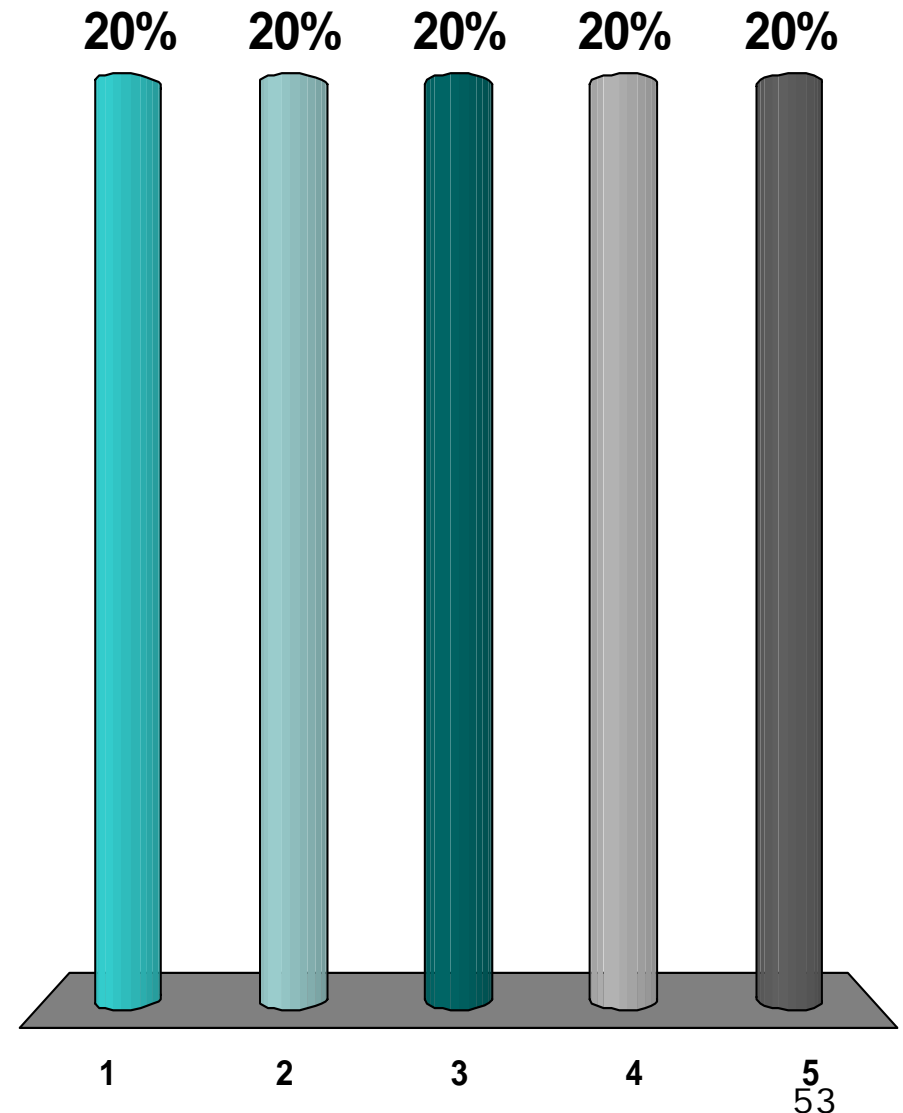
- McGill Institute for Health and Social Policy Study Findings:
  - “The way you treat employees at the bottom rung of the company ladder has an impact on your bottom line.”
  - “Employees determine 90% of most business’ profitability.”

# Take your pulse...

## How do you feel now?

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1. Enlightened
2. Prepared...I got the info I needed
3. Terrified...but at least I understand
4. Overwhelmed...this only made me feel worse
5. Annoyed...I hate remotes



# Questions and Comments

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**[colleen@hrbsolutions.com](mailto:colleen@hrbsolutions.com)**

**[www.hrbsolutions.com](http://www.hrbsolutions.com)**