

# Human Resources

By Stephanie Ramsey

# HR Reality Check

✓ *Yep, the Stories are True!*

## HR CASE STUDY #16

**Scenario:** Rossi Funeral Service is a single-location business owned by Adrian Rossi, serving 250 families a year. The business employs more than 25 full-time and part-time employees. Currently, it has several full-time licensed funeral directors who are all male,

and one female apprentice, Janice. Adrian is very pleased with Janice and sings her praises. Recently a post was made on social media that was ultimately identified as belonging to Janice. Although Janice did not identify whom she worked for, she provided many details about her work situation.

**W**hile she claimed she was working her dream job, she complained that she was paid a low hourly wage. Further, she stated that she was required to work most of the removals both day and night, meet with families and handle family services more than the licensed funeral directors. She pointed out that she was not provided any paid vacation. Her post implied that she was not paid overtime (though her work schedule clearly indicated she worked overtime) and that the licensed funeral directors were provided paid vacation. In her post she claimed that the owner had promised her that when she received her license “things would change.” When another employee brought the social media post to Adrian’s attention, he elected to ignore the post and told the employee not to speak to anyone about it, including Janice. *Did he make the right decision?*

### **What are the rules?**

There are several federal laws that may apply to this situation. The Equal Employment Opportunity Commission investigates complaints regarding harassment and discrimination in the workplace as it pertains to an individual's race, children, national origin, religion, sex, age, disability, sexual orientation, gender identity, genetic information, and retaliation for reporting, participating in, and/or opposing a discriminatory practice. Discrimination is unjust treatment toward an individual based on their race, religion, gender identity, age,



sex, national origin, sexual orientation or disability. The United States Department of Labor oversees the Fair Labor Standards Act, which focuses on employees being paid fairly for the hours they have worked. Specifically, FLSA defines whether or not employees are exempt or nonexempt from receiving overtime pay.

The employer may also have a confidentiality policy that may have been violated by the employee's post. However, if such a confidentiality policy does exist, it may be countered by the employee's right to free speech. Without doubt, this is a complex situation. For this edition, let's focus on the federal laws, which may be applicable to the situation. I will address the confidentiality and the right to free speech in a future edition.

### **Is there possibly discrimination?**

On the surface, the fact that the licensed funeral directors are all male and Janice is female, and they are not being provided the same benefits does give one pause.

However, this simply means that further research is needed. There may indeed be justifiable reasons for the difference in the benefits offered between the two different classifications of full-time employees beyond what is seen on the surface. In this case, all the full-time employees except Janice were given some amount of paid vacation. There was not a formal vacation schedule that was based on seniority or job position. In fact, vacation time was not formally tracked. But other female employees did receive paid vacation.

### **Should the employee be paid for overtime worked?**

There is a federally defined exempt status for a licensed funeral director. Found on the DOL website at the following link: <https://webapps.dol.gov/elaws/whd/flsa/overtime/p42a.htm>, the definition states that the funeral director must be licensed by and working in a state that requires successful completion of four academic years of pre-professional and professional study, including graduation from a college of mortuary science accredited by the American Board of Funeral Service Education. In this case, Janice was not a licensed individual and was therefore, not exempt. This means she was eligible to receive overtime pay for any hours worked beyond 40 hours per week.

### **Did the employer make any mistakes?**

*Yes!* Ignoring this issue is not going to resolve the problem and may lead to low morale, the

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employee resigning, or in a worst-case scenario, a complaint filed with a government agency and a lawsuit. There are many potential red flags that are raised by this post.

While the comments made are not outright accusations, there are clear implications being made that need to be taken seriously. While Janice did not use the name of the firm, if she is known in the community, people will know where she works. This will lead to whispers that Adrian is not treating his employee fairly. The implications made were possible discrimination and failure to compensate her for overtime. Both can draw the attention of federal agencies. A simple call to the DOL can lead to a complete investigation of the payroll practices, not only for this single employee but all employees for the current and previous years. The

Equal Employment Opportunity Commission could possibly decide to become involved to determine if there has been sexual discrimination. Either of these circumstances being made public in the community that the Rossi Funeral Home services would be detrimental to the business.

#### **Resolution of the issue:**

Adrian should immediately make sure that Janice is tracking her time. If he does not want to pay her overtime, then she should not work more than 40 hours a week. If she works overtime, he should pay her for the overtime. Adrian should also create a written vacation policy that is fairly applied to all employees to avoid any hint of discrimination. Vacation time should be requested, approved and tracked. This creates a

formal document trail that can be used to defend any claims against him.

#### **Preventive measures:**

Funeral employers should make sure that they are properly classifying their employees in terms of their exempt or nonexempt status for overtime purposes. It can be a confusing issue, but more importantly, it can be a costly mistake if the DOL becomes involved.

A well-written employee handbook is always recommended to address policies such as vacation and nondiscrimination practices. If you don't have an employee handbook, consider having written stand-alone policies on these important issues to avoid these types of problems. •

The advertisement features a black and white photograph of a man in a suit and tie, holding a telephone receiver to his ear. He appears to be in an office environment, with papers and a telephone on his desk. In the background, another man in a suit is looking at a mobile device. The text "There is a Better Way" is prominently displayed in large blue letters, followed by "to handle your funeral home communications" in smaller blue text. The ASD logo and the phone number 1-800-868-9950 are at the bottom.

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