



Lincoln Human Resource Management Association



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[www.lincolnhnr.org](http://www.lincolnhnr.org)

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## Retaliation Cases in the Workplace: An Emerging Trend



### When:

Tuesday, April 10th, 2012  
11:00 – 11:30 Registration  
11:30 – 12:00 Lunch & Announcements  
12:00 – 1:00 Keynote Session

### Where:

Country Inn & Suites  
5353 N 27th Street  
Lincoln, NE

Parking is **FREE** to all attendees.

### Cost:

Luncheon: LHRMA members—\$15  
All Other Attendees—\$25

**Menu:** South of the Border Buffet

**Deadline:** Register or cancel your registration by: **Noon, Friday, April 6th.**

**Please remember:** There is a \$10 fee for late registrations and for no-shows. This \$10 fee is in addition to the regular registration fee. Please try your hardest to register on time, as late registrations and no-shows make it difficult on everyone involved.

### About our Program:

Attorney Steve Bogue will lead a one-hour presentation and discussing on the increasing trend of retaliation cases in the workplace. Using the Supreme Court decision set forth in Burlington Northern as a case study, there will be an in-depth look at and discussion on the appropriate standard for determining when an action would be considered an “adverse action” so as to be actionable under the law was set forth. It will also cover how many retaliation charges are being filed, how retaliation cases are being proven, and steps an employer can take to prevent a retaliation case from being filed against it.

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## At the Luncheon....

### Retaliation Cases in the Workplace: An Emerging Trend

#### Presented by Steve Bogue, Attorney with McGrath, North, Mullin & Katz

- ◆ Employees are retaliating against their former employers at an increasing rate, and it's imperative that you protect yourself against such cases.
- ◆ Learn how the law is changing, how cases are being proven, and what you can and can't do to avoid and protect yourself from these cases.

### About our Presenters:

**Steve Bogue** practices in all areas of employment law, providing advice and litigating in the areas of wrongful discharge, employment discrimination, employment contracts and covenants not to compete. He also advises management clients on union relationships such as union elections, contract negotiations, and the termination or discipline of unionized employees. He advises clients on workplace safety issues including OSHA inspections, preventative maintenance and litigation.

Steve is also engaged in the practice of immigration law with primary emphasis on business related functions such as short and long term employment authorization in the U.S. on behalf of business clients for non-U.S. nationals or citizens. He also advises clients on complying with immigration related employment authorization requirements relating to the proper completion and maintenance of I-9 forms and implementation of programs designed to reduce exposure due to immigration requirements during the hiring and employment process.

Steve has been a shareholder in McGrath North since 1984.



### Upcoming Meetings

May 8<sup>th</sup> – Joe Gerstandt, “What Diversity and Inclusion Mean Today.”



#### Board Meeting Recap

- Next SPIG on Recruiting: April 24th @ Madonna
- 13 New LHRMA members in the last month
- Several basket donations for the May Basket raffle to be held at the May program
- LHRMA will mail out paper renewal invoices next year
- Auditor will present report at the April Board meeting
- Melissa Price attended SHRM Legislative Conference in Washington, DC. Watch for her newsletter article.
- Looking for speakers at the UNL student chapter monthly meetings. Contact Nate Elgert if interested.

#### Drawing Winner

Who Says There's No Such Thing as a Free Lunch? Congratulations to **Marcia Scheinost** with the NE State Treasurer's Office. She will receive free registration for the April program.





## President's Message

Judy Ganoung, President

Happy Spring! As I mentioned in last month's letter, the board has been busy creating and implementing the LHRMA goals and initiatives for 2012. They have brought some terrific ideas to the table for you as members of LHRMA.

The Program Committee, chaired by Dave Hunt, is working to bring to you not only relevant HR topics and trends but also assuring that you get HRCI credits for attending. The interesting thing to know about this committee is that there are some new, as well as "seasoned" folks, on this committee so you will be well represented.

Amy Spellman and Joel Scherling are doing an awesome job on certification. They have continued to offer distance learning. There are 32 people participating in the current session. That has to be a record! One goal that they will be focusing on is a mentoring program between study groups.

I'm sure you have all heard the phrase "kicking butt and taking names". That's how I would describe Nate Elgert in his position as College Relations Chair! He really has gotten involved with the student chapters as you saw at February's meeting. One of his goals is to provide scholarships for two students to take the SHRM Student Assurance of Learning Exam.

Denise Sears is working hard at increasing our annual donation to SHRM. She truly has her mind set on fundraising for LHRMA as well as SHRM. Remember, May baskets will be raffled at the May meeting!

Amanda Henry will be working with the board to design and implement a new member orientation which will include all of the benefits available to members of LHRMA. She will also be working to increase membership for SHRM.

Melissa Price is the Governmental Affairs chairperson. She has already attended a SHRM Governmental Conference in DC. See her article for more details on what is going on in the area of legislation. In August, plan to attend a legislative update presented by this committee.

Kelly White is working on marketing and social media aspects of LHRMA. By the end of the year, I predict that members will be using the different social media avenues to do a good portion of networking and problem solving for LHRMA members.

Kim Michael and the Workforce Readiness committee is working on an initiative entitled "100 jobs for 100 Kids". This project will start on a smaller scale, then build from there.

Barb Benes is Diversity Chair; she and her committee are working on several projects including Juneteenth.

Other members of the board that have been working on budgeting and initiatives include Kathy Harper, Lindsay Selig, and Mark Pankoke. The whole board will be working on updating the by-laws and policies and procedures. Not exciting activities but still necessary. If you are interested in serving on any of these committees or just have ideas please contact me or any other board member.

— Judy Ganoung

## Legal Update

### Omaha Expands Class of Who Can Sue—Is Lincoln Next?

By Mark A. Fahleson, Rembolt Ludtke LLP

Currently, federal and Nebraska law do not include “sexual orientation,” “gender identity” or “transgender status” among the classes protected from discrimination in employment. While some states (e.g., California, Colorado, Iowa, Minnesota) protect against such discrimination, a growing number of municipalities have entered the picture by adopting protections governing employers employing individuals within their specific jurisdictions.

Recently, Omaha became the first Nebraska municipality to move in this direction. On Tuesday, March 13, 2012, the Omaha City Council voted 4-3 to approve an ordinance that adds protection for the gay and transgender residents from discrimination in the workplace. The measure, called the Equal Employment Ordinance, was introduced by Councilman Ben Gray and signed into law by Mayor Jim Suttle. It adds sexual orientation and gender identity as additional protected categories under the City of Omaha’s prohibitions against discriminatory practices.

Sexual orientation is defined in the ordinance as “[a]ctual or perceived heterosexuality, homosexuality or bisexuality.” Gender identity is defined in the ordinance as “the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person’s designated sex at birth.”

These changes to Omaha’s Human Rights Ordinance allow individuals to file complaints with Omaha’s Human Rights and Relations Department if they believe they have been terminated, suffered workplace discrimination or were refused services at restaurants, hotels or other places that serve the public because of their sexual orientation or gender identity. Employers are prohibited from discriminating against any individual with respect to compensation, benefits, or the terms or conditions of employment based on an individual’s sexual orientation or gender identity. The adopted version of the ordinance provides a narrow exemption for some religious organizations.

The new ordinance takes effect March 28, 2012 and impacts Omaha employers with six (6) or more employees.

**LESSON:** Unlike cities like Atlanta, Austin, New Orleans and now Omaha, the City of Lincoln has thus far declined to extend the list of protected classes to include “sexual orientation,” “gender identity” or “transgender status.” While in 2003 then-Lincoln Mayor Don Wesely issued an executive order barring discrimination against city employees and applicants on the basis of “sexual orientation,” this applies only to the city, and not private-sector employers operating within Lincoln.

Legitimate policy concerns exist with respect to an expansion of the number of protected classes and further watering down of the employment-at-will doctrine. This concern is especially true for new protections for transgendered individuals given the significant new regulatory burdens and costs that result for employers, including the possible mandated construction of separate showering and dressing facilities.

While we cannot predict what Congress, the Nebraska Legislature or the Lincoln City Council may do in the future, Lincoln employers can rest assured that policy-making bodies will continue to expand the protections for employees and create additional headaches for employers. Regardless of what the future holds, Lincoln employers are well-advised to have well-documented, legitimate business reasons for all employment decisions—reasons that do not offend existing protected classes or those on the horizon.

*Fahleson is a partner with the Lincoln-based law firm of Rembolt Ludtke LLP and may be reached at (402) 475-5100 or [mfahleson@remboltlawfirm.com](mailto:mfahleson@remboltlawfirm.com). This article is provided for general information purposes only and should not be construed as legal advice. Those requiring legal advice are encouraged to consult with their attorney.*

## SHRM 2012 Employment Law & Legislative Conference Report

I had the privilege to represent LHRMA at SHRM's 2012 Employment Law & Legislative Conference at the beginning of March in Washington DC. Not only did I get to see a lot of wonderful, historic sites but I also got to experience a fantastic conference. One of my favorite parts was the opportunity to lobby my representatives – Senator Johanns, Senator Nelson, and Representative Fortenberry. I was able to share my views on several significant upcoming issues in Congress and how they affected businesses, employees, and the Human Resource profession. Below are the issues that HR professionals from across the country lobbied to Congress –

**Nullify NLRB's "Quick Election" Rule** – Senator Enzi (R-WY) and Representative Gingrey (R-GA) introduced a joint resolution to nullify the new, upcoming "Quick Election" Rule that will become effective April 30<sup>th</sup>. It has been assigned Senate Joint Resolution 36 and House Joint Resolution 103. If adopted by Congress, these joint resolutions will nullify the National Labor Relation Board's new "quick election", which will shorten the time employers have to respond to union petitions to an expected 15 – 19 days (currently an average of 38 days).

**Make Section 127 Permanent** - The Employee Educational Assistance Act of 2012 (H.R. 4137) would make employer provided education assistance (Section 127 of the Internal Revenue Code) a permanent provision. Section 127 allows an employee to exclude from income up to \$5,250 per year in assistance provided by their employer for any type of educational course at the associate, undergraduate, and graduate level. This has been extended nine times since it was created in 1978 (most recently in 2010) but is set to expire at the end of the year. Instead of another extension, HR Professionals are asking for it become permanent as it will cut-down on confusion and since educational assistance programs have become an attractive part of the benefit packages offered by companies.



Too often we take a backseat when it comes to making sure we voice our views. However, I encourage everyone to make sure their voice is heard! If you would like to lobby your representatives on the issues above, use the SHRM Advocacy Action Center (<http://capwiz.shrm.org/shrm/issues/?style=D&>) for additional information and for assistance in emailing your representatives.

Questions or concerns can be addressed to [mprice@nebook.com](mailto:mprice@nebook.com).

Melissa Price  
LHRMA's Government Relations Chair

### **WELCOME NEW MEMBERS**

**Ryan McClure**  
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**Kristi Oltman**  
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**Holly Verkamp**  
Human Resources Assistant  
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### **CONGRATULATIONS!**

**Jane Flynn** of Li-Cor, Inc. was a lucky gal at the March program meeting! Jane won two drawings that day—she won a Kindle that our program sponsor, Celbrity Staff, gave away, as well as the LHRMA drawing for a FREE Program Meeting and Workshop for renewing her membership before December 15th, 2011.

Way to go Jane!

# Wellness

## Less Stress—How Businesses Can Help Employees Manage Stress

*Michelle Willet, WorkWell Small Business Coordinator*

*Lincoln Lancaster County Health Department*

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It may seem that we constantly hear about stress, but there are so many reasons to listen. Stress is the body's response to any change in its inner or outer environment, and is as much a part of life as eating and breathing. However, high amounts of stress can cause many negative outcomes, including: sleep irregularity, changes in appetite, fatigue, irritability, anxiety, depression, and poor concentration, among others. Over time, a highly-stressed individual may turn to negative coping strategies to deal with inescapable stress, such as: smoking, heavy alcohol consumption, avoidance of people or problems, and procrastinating. Constant stress combined with negative coping behaviors can lead to long term effects such as chronic pain, ulcers, high blood pressure, heart attack, stroke, or substance abuse.

Clearly, stress is costly to individuals' health and well-being, but did you know that the American Institute of Stress estimates that stress costs American businesses up to \$300 billion annually through absenteeism and productivity losses? Since poorly-managed stress can have such a negative impact on both personal and organizational health, it can be highly effective for your business to help your employees manage stress. This primarily happens through the creation of a healthy culture at your workplace.

Organizational-level changes that allow your employees more "control" over their jobs can significantly reduce stress at work. For example, when employees clearly understand their role in an organization, the processes and tasks they are responsible for, and are assigned a manageable workload, they can perform efficiently. When possible, allow employees opportunities to participate in the decision-making process. Furthermore, quickly communicating any change that will affect your company as a whole, a group of employees, or even a specific employee can reduce stress often caused by the unknown.

Your business can also help employees manage unavoidable stress through worksite wellness program activities. To promote work-life balance, offer opportunities for social interaction, such as on-site fitness classes, walking groups, book clubs, workplace-sponsored sports leagues, or company picnics. Events that encourage physical activity are great avenues to aid in stress management. When possible, include your employees' families in these activities as well.

Providing information to your employees about how to effectively manage stress using positive coping strategies is another way your business can be part of the solution. Assure your employees that stress can be managed through conscious effort and helpful stress management techniques. Valuable techniques to promote to employees are: spend time with people you care about, relax and/or meditate, get organized, use good time management, seeing a doctor or mental health professional, or consider counseling. This information can be provided through your company's newsletter, email, payroll stuffers, or a Lunch & Learn. Or your business can take the next step towards lasting behavior change by offering an incentive challenge focusing on stress management. If your organization has an Employee Assistance Program, take efforts to promote and highlight the confidentiality of this important resource.

For more information about developing effective worksite wellness programs, contact Michelle Willet at 402-441-5538.

## EAP Corner

### The Importance of Respect in the Workplace

*Tricia L. Branchaud, LMHP, CEAP*

*Directions EAP, LLC*

I was recently asked to come to one of our member companies and speak at the all-staff meeting on “Respecting Each Other in the Workplace.” The company was noticing that although for the most part their employees treat each other with respect, during stressful times (like many are having these days), some slip-ups were occurring. The training was responded to favorably, employees gave feedback that the information was a good reminder, and it personally reminded me to be ever watchful about my own behaviors with my coworkers and those I supervise.

I decided that the topic was important enough for one of our regular EAP articles in this newsletter. As an EAP professional, I firmly believe that mutual respect at work is an important building block of good teamwork. I am confident that as Human Resources professionals, you would agree. One of our widely distributed handouts entitled “Five Keys to Building Healthy Workplace Relationships” states: “It is nice, but not essential that all co-workers like each other. It is **crucial** however, that people treat each other with respect.”

Why is respect in the workplace vital? Well, if common sense alone doesn’t convince you, or remembering work settings where you have seen respect flourishing or where it is lacking, I invite you to Google search the topic. Respectful behaviors in the workplace affect employee loyalty and morale, team work and team cohesiveness, employees’ attitudes towards work, employee turnover, leadership effectiveness and even potential risk of liability to the employer.

So what is included in this important issue? It covers everything from respectful communication (good listening, direct and open feedback, regular praise, paying attention to non-verbal language, avoiding gossip) to privacy, to respecting differences (personality, gender, age, culture, values). Even respecting others’ time and personal property is included.

Remember – we all create our corporate mood. When you come in, greet your coworkers, make eye contact, smile, say hello out loud, say goodbye at the end of the day. Everybody needs acknowledgement. Look for opportunities to praise, out loud, often. On your way to work, do a self inventory of your attitude. Leave behind your sour face, negative disposition, gloom and doom thinking, constant complaining, sullenness, avoidance, pouting, hysterics, stubborn resistance to change. Bring instead a positive disposition, optimistic outlook, openness to take on new challenges. Be grateful for your job – and let it show!

Be respectful of others’ time. Whenever possible, be on time – don’t make others wait for you. If you say you will call someone back by a certain day or time, make every effort to do so. If you need to talk with someone, ask if it is a good time for him/her first. Being sensitive to others’ schedules and time limits shows respect.

Be respectful of other’s property. Ask before borrowing. Return items where you got them – in a timely manner.

After all, don’t you want this from YOUR coworkers? As is so often the case in life, following the “Golden Rule” (Do unto others as you would have others do unto you) is a good rule of thumb to stay on the respect tract.

So remember, everyone deserves and appreciates respect, your workplace will be better for it, and respecting others is good common sense. Like all healthy behaviors, being respectful takes practice. Most of us can continue to improve on this. But, if you get stuck, your EAP can help. Give us a call.

Directions EAP, LLC





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