



Lincoln  
Human  
Resource  
Management  
Association



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



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December, 2012

## Join Us for the Annual LHRMA Social!

**When:** Tuesday, December 11th, 2012  
Starts at 4:30

**Where:** Grata Bar and Lounge  
2755 Jamie Lane, Lincoln, NE

Join us as we celebrate the end of another successful year! It's sure to be a great time!

There will be Free Drink Tickets for everyone, as well as Door Prizes!

We will also recognize our Volunteers – For all of you who donate your time on behalf of LHRMA, your hard work throughout the year is crucial to our success, so we hope you will attend so we can say “Thank You!”

(No need to register – just stop by after work.)

### **MEMBERSHIP RENEWALS**

Your membership renewal is payable on or before December 31, 2012. Annual dues are \$50 per individual, and are based on the calendar year, January 1st – December 31st. You may mail your check or you can pay with a credit card – see link below.

Please verify the information we have listed for you on our website under the Members tab. If changes are needed, please email them to [lhrma0048@yahoo.com](mailto:lhrma0048@yahoo.com).

Renew your LHRMA membership before December 15th, 2012, and you will be entered into a drawing to win a free registration for a regular LHRMA luncheon meeting AND workshop in 2013 – this is a \$50 value!

Please contact Kathy Harper at [lhrma0048@yahoo.com](mailto:lhrma0048@yahoo.com) with any questions.

### **Upcoming Meetings:**

**Monday, January 7th** – Cy Wakeman

(Note: this is a Monday, not our regularly scheduled Tuesday)

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## Best Places to Work in Lincoln—Are You One?

What does Atlanta, Boston, San Francisco, and 39 other locations across the United States now have in common with Lincoln, Nebraska? All participate in the Best Places to Work initiative that honors organizations that deliver an outstanding work experience. The Lincoln Human Resource Management Association, Woods & Aitken LLP and the Lincoln Journal Star are proud to sponsor the Best Places to Work in Lincoln competition, which is designed with several goals in mind:

- To recognize and honor those companies that have created positive work environments;
- To recognize and share best practices;
- To promote Lincoln and its area employers; and
- To provide valuable feedback and data to participating companies that will assist them in measuring levels of employee satisfaction and engagement.



The first annual Best Places to Work in Lincoln event will begin accepting nominations on November 5, 2012. It is free to participate in the program using the online survey. All Best Places to Work winners are determined exclusively on the basis of their employees' responses to an Employee Engagement Survey, which is developed and confidentially administered by Quantum Workplace.

The results of this survey will provide employers valuable information about their organization from their most important asset—employees. This feedback can help organizations identify what is going well and what needs improvement in the workplace.

Awards will be given in each of the three categories: small companies (20 to 50 employees); medium companies (51 to 150 employees); and large companies (more than 150 employees). Winning organizations will be celebrated at the Best Places to Work awards celebration on April 17, 2013, and featured in a special supplement of the Lincoln Journal Star.

If you have any additional questions, you may contact Pam Bourne at Woods & Aitken LLP at [pbourne@woodsaitken.com](mailto:pbourne@woodsaitken.com) or 402-437-8523; or Judy Ganoung at [Judy@drne.org](mailto:Judy@drne.org) or 402-474-3183.



### Jobs, Jobs and More Jobs!

If you are an employer with an employee that is a current LHRMA member, then you can post your HR-related job opening on our website for **FREE!** Just email Kathy Harper at [lhrma0048@yahoo.com](mailto:lhrma0048@yahoo.com).

If you are looking for a human resource position, then check it out! Go to <http://lincolnhr.org/blog/jobs/>

This is also an excellent resource for students who are seeking an HR position or for companies to advertise if they have summer internships available. Take advantage of this great resource—you can't beat the price!

## President's Message

Judy Ganoung, LHRMA President



Happy Holidays! Hope your Thanksgiving was wonderful and the food magnificent.

Last month as I brainstormed for a topic for my monthly, highly-informative "Presidents Message", I also came up with December's topic. As I am starting to write December's message, I'm thinking well I should probably write about the holidays and family or maybe about our fantastic volunteers. I could save my topic for the January newsletter. I was very excited to think that I had two month's worth of topics already picked!

As I sat down to write my message I pondered my choices then decided to throw caution to the wind and write about all three items.

The first part of my message is in follow-up to our November presenter, Kyle Bruss from Talent+. As Kyle was having us complete the thank you card, I thought golly I really don't tell Jill thank you enough. Jill is my assistant and she is awesome. A thank you communicates that you value a person and tells them that they are appreciated. Not receiving a thank you may suggest that you are taking them for granted. An expression of thanks can make all the difference in any relationship but especially in a professional relationship.

We are taught as children to say thank you. My two year old grandson says "thank you" and "no thanks, Nana" every time I get him something or ask if he needs something. It warms my heart each and every time I hear it.

Those two words can carry a lot of weight particularly in my role as LHRMA President. I want to say thank you to my fellow board members and the other volunteers that make LHRMA great. I hope I have made the members of the LHRMA feel appreciated. They work very hard and I really do appreciate all that they do.

Here is my opportunity to remind LHRMA members that volunteers are always needed to serve on committees, work at the registration table, or work on special projects. We will be honoring our volunteers at the December Social. Hope to see you all there.

In closing my message, I want to wish each and every one of you happy holidays and also to thank you for being a part of LHRMA.

Enjoy your families and friends and Happy New Year!

— Judy Ganoung



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the conversation.

# Legal Update

## Wellness Programs, the ADA, HIPAA, and the Affordable Care Act: The Legal Implications Can Make You Queasy

*By Robert Evnen and Erin Ebeler, Woods & Aitken LLP*

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The concept of wellness is seemingly everywhere these days, but the many (and arguably conflicting) federal laws on employer wellness programs are difficult to navigate and understand. On November 20, 2012, the legal landscape became even more interesting with the proposal for additional wellness program regulations relating to the Affordable Care Act. The stated purpose of these regulations is to “encourage appropriately designed, consumer-protective wellness programs in group health coverage.” However, the proposed rules would not go into effect until January 1, 2014 (assuming no delays), and were only opened for public comment in the last weeks of November 2012. As such, these proposed rules are far from concrete and likely to change between now and when, if ever, they become effective. So, what are employers to do in the meantime? Generally speaking, employer wellness programs must be designed with the restrictions of the Americans with Disabilities Act (ADA) and the Health Insurance Portability and Accountability Act (HIPAA) in mind.

### **ADA**

The basic components of wellness programs are often directly at odds with general principles that exist under the ADA. As HR professionals know, the key purpose of the ADA is to protect individuals with disabilities against employment discrimination. Therefore, the ADA limits the circumstances in which an employer may require physical exams or answers to disability-related inquiries. Unless otherwise exempt, such exams or inquiries must be job-related or subject to a business necessity exception to comply with the ADA.

Under the ADA, an inquiry is “disability-related” if an individual's response to the inquiry could reasonably be expected to disclose the presence of a protected disability. This presents an interesting dilemma because health risk assessments, generalized medical exams or health screens are typically part of an employer wellness program. Because these types of assessments do not focus on specific job functions of an individual employee, they are not deemed job-related or subject to business necessity under the ADA and, therefore, would be prohibited. The ADA, however, does permit generalized disability-related inquiries if they are completely voluntary.

The ADA also has safe harbors for bona fide employee benefit plans which exempt such plans from the restrictions of the ADA. Among these safe harbors is a statutory exemption that permits employers to establish plans based on underwriting, classifying risks or administering risks as long as the exemption is not used as a subterfuge to evade the purposes of the ADA.

### **HIPAA**

The Health Insurance Portability and Accountability Act (HIPAA) also regulates wellness programs. Notably, the proposed regulations for the Affordable Care Act are expected to replace the HIPAA regulations on wellness programs. At the current time, though, HIPAA specifically allows wellness programs that condition eligibility to participate in the employer's group health plan on an employee's completion of a health risk assessment prior to enrollment.

### **EEOC Induced Confusion on Intersection of ADA and HIPAA**

Although HIPAA's express allowance of wellness programs appears to state the legislative view on the

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legality of wellness programs, the Equal Employment Opportunity Commission (EEOC) has created uncertainty. Specifically, the EEOC issued and then withdrew an opinion letter stating that requiring a health risk assessment as a condition for enrollment (i.e., what HIPAA specifically allows) meant that the wellness program could not be considered voluntary (i.e., the ADA requirement). The EEOC's ultimate position has not been further stated, and it has created a great deal of employer uncertainty regarding the ability to effectively maintain a wellness program that is in compliance with the ADA.

### **Recent Court Action**

Meanwhile, the Eleventh Circuit Court of Appeals weighed in on this issue in an August, 2012 decision. This decision affirmed a district court ruling which held that a \$20 per pay period decrease in the employee share of health insurance premium payments upon completion of a health risk assessment did not violate the ADA. *Seff v. Broward County, Florida*, No. 11-12217, (11th Cir. 2012). In this case, the employee claimed that the County's wellness program violated the ADA's prohibition on non-voluntary employee medical examinations and disability-related inquiries. The screening and assessment were intended to identify participants who had one or more of five medical conditions. Those who were identified as having one or more of the five conditions became eligible to participate in disease management programs or for additional benefits aimed at treating and managing those conditions.

The appellate court held that the wellness program was part of the County's group health plan, making it exempt from the ADA's restrictions under the ADA's safe harbor for bona fide plans. As a result, the question of voluntariness under the ADA was irrelevant.

### **Moving Forward**

The Eleventh Circuit's decision is helpful because it affirms that it is unnecessary to consider whether examinations or inquiries are voluntary when the bona fide plan safe harbor applies. However, whether the EEOC or other courts will agree is unknown at this time.

To qualify for the exemption under the rationale of the Eleventh Circuit case, employers will need to show that their wellness program is part of a bona fide plan. Whether or not the wellness program is provided under the same contract as the employer's health insurance plan, the wellness program needs to be designed in such a way that it is considered part of the overall group health program. The wellness program should be described as constituting a part of the group health plan in all official communication and should be described in the summary plan description. Additionally, the wellness program should not be made available to persons who are not participants in the group health plan.

The Eleventh Circuit decision probably will not be the last word, and the fact that all that was involved was \$20 per pay period also may be an important fact. An employment lawyer should be consulted in designing a wellness program to ensure that the design is compliant with the ADA and the possible new regulations that could be forthcoming.

*Editor's Note: This article is not intended to provide legal advice to our readers. Rather, this article is intended to alert our readers to new and developing issues and to provide some common sense answers to complex legal questions. Readers are urged to consult their own legal counsel or the author of this article if the reader wishes to obtain a specific legal opinion regarding how these legal standards may apply to their particular circumstances.*

## EAP Corner

### 2012 “Wrap-Up” - on Gratitude and Appreciation

*Kari Hasemann-Herbert*  
*Directions EAP*

Recently, my eighth grade daughter took part in an “Urban Plunge”. For 30 hours over a weekend, she and her group volunteered at various non-profits and community agencies that serve the homeless and poverty-stricken individuals and families in our community, **walking** several miles in the process, picking up trash along the way. They learned some staggering statistics about how many of our fellow Lincolmites are living on the streets, including many children. They heard from the Food Bank about the Backpack Program, and now have an understanding of just how many of their fellow students all across Lincoln rely on those backpacks for their weekend meals, something most of them take for granted. They cooked and served at Matt Talbot, and had very little to eat themselves throughout the weekend, intentionally, to help them understand what it might really be like to be “hungry”. They met and talked to individuals who are living through the situation, day to day. Their experience was capped off by sleeping outside, overnight, in November, in cardboard boxes and sleeping bags. As cold as they did get, they were very fortunate that the day’s temperature had been 60+ degrees prior to their night outside AND they had a group of about 35 to be next to and ban together when the temperature dipped to the lower 30’s. More luxury than the typical homeless person might have. They were “grateful” when it was “over”, but for some it was just the beginning of a new appreciation for what they take for granted. Quite an experience for all of them, and one we all probably could benefit from.

Here we are - between Thanksgiving, (a time when we dedicate a special day and are reminded to say thanks for all we have and for those around us) and the end of the year, which includes a variety of holidays depending on which you celebrate – from Hanukkah, to Christmas, to Kwanzaa. But do we just go through the motions? Do we eat the turkey and trimmings, put away or eventually throw away the leftovers? Start the holiday shopping, find time to wrap them in pretty paper and make it to as many parties and functions as we have the time and energy for? It’s a rush, rush, rush for most of us, going through the motions, headed for the finish line – another year is “over”.

Quick, before the year IS “over”, what can we do? Have we shown appreciation and gratitude to our employees and co-workers? The motivational power of appreciating someone’s work is proven time and time again. Start each day with the attitude of gratitude. Say thank you – silent gratitude isn’t much use to anyone. Tell people you appreciate them and what they do. Remember to single people out, family, friends, employees, colleagues, etc., and tell them the difference they make in your life. It’s the end of the year, plenty of time to finish something, end something, and start something new! Do all three! Make things right with someone before the end of the year. Start 2013 out with the goal of doing two to three small gestures of gratitude and appreciation per week, and by the end of the year it’s 100-150! Let’s not just go through the motions in 2013.

I want to “wrap-up” 2012 by offering the following on thankfulness and gratitude that I found.

#### **BE THANKUL**

Be thankful that you don’t already have everything you desire. If you did, what would there be to look forward to?

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Be thankful when you don't know something, for it gives you the opportunity to learn.

Be thankful for the difficult times. During those times, you grow.

Be thankful for your limitations, because they give you opportunities for improvement.

Be thankful for each new challenge, because it will build your strength and character.

Be thankful for your mistakes, they will teach you valuable lessons.

Be thankful when you're tired and weary, because it means you've made a difference.

It is easy to be thankful for the good things. A life of rich fulfillment comes to those who are also thankful for the setbacks.

GRATITUDE can turn a negative into a positive. Find a way to be thankful for your troubles and they become your blessings.

— Author "unknown"

Directions EAP appreciates the continued partnerships we have in Lincoln and the surrounding communities, and looks forward to creating new relationships, as well! We're just a phone call away! Best wishes to you all in 2013!

## **WELCOME NEW MEMBERS**

### **Tamara Cass**

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**Welcome! You've joined an outstanding organization!**



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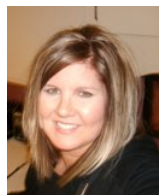
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