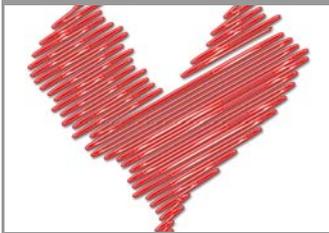




Lincoln
Human
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Volume 5, Issue 2

February, 2014

Program: Labor and Employment Law Update: What is Hot Now!
Workshop: Workplace Bullying & Harassment: Impacts & Prevention
WorkSafeBC Changes: What Employers Need to Know
Presented by: Scott S. Moore, Baird Holm Law Firm

WHEN:

Tuesday, February 11th, 2014
11:00 – 11:30 Registration
11:30 – 12:00 Lunch & Announcements
12:00 – 1:00 Keynote Session
1:15 – 3:30 Workshop

WHERE:

Wilderness Ridge, 1800 Wilderness Woods Place, Lincoln, NE

Parking is FREE!

COST:

Program Registration Fee: LHRMA members—\$15
All Other Attendees—\$25
College Student Chapter Members—FREE (You must register with Jenessa Keiser,
College Relations Chair)

Workshop Registration Fee: All Attendees—\$35

MENU: Chef Salad, Cupcake and drinks.

DEADLINE: Register/cancel your registration by **12:00 noon, Friday, Feb. 7th.**

REMINDER: 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:

The last several months have brought new developments from Federal agencies, State agencies, and the courts. In addition, legislation is being proposed which could impact the workplace. Scott S. Moore, Partner at Baird Holm LLP will set for the cutting edge developments in the labor and employment law which impact your workplace.

About our Workshop:

Workplace Bullying & Harassment: Impacts & Prevention
WorkSafeBC Changes: What Employers Need to Know
Join Scott S. Moore, attorney at Baird Holm LLP, as he explores the recent legislative

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changes to the BC Workers Compensation Act (Bill 14) , as related to compensation for work-related mental disorders and the prevention of workplace bullying and harassment. In addition, the workshop will explore strategies for identifying and preventing workplace bullying and harassment and identify the responsibilities of employers and employees under the new legislation. Lastly, Scott will discuss some of the differences and similarities between bullying and harassment. After attending this session, attendees will better understand the changes to worker's compensation, but most importantly will be able to identify bullying and/or harassment as well as prevention and intervention strategies for both.

Background Checks: Proper Procedure and Compliance

2013 saw a number of class action claims related to botched background check systems by both the EEOC and the Federal Trade Commission. Settlements in the amounts of 18 million, 3 million, and 2.5 million made headlines with regard to employer who failed to follow proper Fair Credit Reporting Act procedures. In this session, Baird Holm LLP Partner Kelli Lieurance will outline the proper steps for conducting background checks and procedures reduce potential exposure.

American Jobs for America's Heroes Campaign Makes it Easy and Free to Hire National Guard and Other Vets



The National Guard and other military branches are laying off soldiers at all ranks because of downsizing. The Army National Guard is likely to reduce between 15,000 and 35,000. The U.S. Army may lose 80,000 or more. There will be thousands more veterans looking for jobs in addition to those veterans currently looking.

In 2013, **almost 50,000 U.S. veterans of combat in Afghanistan and Iraq were homeless** or in a federal program to provide housing during 2013, three times the number in 2011, according to the Department of Veterans Affairs. They and their families need jobs!

Hiring National Guard members and other veterans creates real benefits for your company, your community and veterans and their families. The nonprofit **American Jobs for America's Heroes (AJAH)** campaign gives you free, direct access to of highly trained National Guard members and other vets who are transitioning to civilian jobs.

“Guard members bring tremendous skills and teamwork values to the workplace – they’ve had years of training at government expense in areas that are very relevant to civilian employment,” said Steve Nowlan, campaign director. “Guard members are committed to continuous evaluation and self-improvement so they naturally fit into high-performance organizations and get the job done right,” he continued.

The Guard trains in 107 occupational specialties. Most members have put this training to work in high stress situations ranging from disaster relief to combat situations. They are disciplined, reliable and drug free. Guard members are focused on continuous learning and improvement so they excel in advanced job training.

Watch this short video featuring veterans on the success Phillips 66 has had in military hiring: http://www.CenterForAmerica.org/pledge/ng/ajah_Phillips66_military.html

In the AJAH campaign, your free job postings flow directly to National Guard and other military employment counselors in the states who work one-on-one with candidates to match them to your job requirements. These counselors help you understand how military training and experience translates to your civilian requirements.

You can watch a five-minute video about the campaign – www.CenterForAmerica.org/video.html -- and then visit the website at www.CenterForAmerica.org to register online in five minutes. A campaign counselor will contact you to set up your posting and answer questions. All services are free. More than 1,000 employers are already participating.

Questions? Contact: Steve Nowlan, Center for America, 201-513-0379 or SNowlan@CenterForAmerica.org.

President's Message

Melissa Price, LHRMA President



I recently read an article in the Harvard Business Review titled “How Netflix Reinvented HR”. The article described how the company focused on trusting their people. A simple concept, yet as we look at our own practices it turns out to be something that isn’t always used. Instead of developing policy after policy to address how to handle every situation, Netflix asked their people to rely on logic and common sense. They recognized and embraced the fact that they believe they hire adults who are equipped and expected to use their own discretion when making decisions.

As human resource professionals, we can easily be distracted by the 3% of employees who cause problems instead of focusing on the 97% of employees who will actually do the right thing. If we can work extra hard to hire the right individuals who will act in the best interest of the company, we can spend less time writing policies to enforce and more time creating a culture of performance and talent.

Finding a balance between the need for the policy and trusting our employees to use common sense is tricky. It is difficult to move to this mindset with human resource professionals’ innate need to protect our companies with written policies and our jaded perspectives as we spend more and more time in our field. However, when determining what 2014 looks like for your company, utilizing the Netflix case can be inspiring! I know that I will be rereading this several times as I determine what I want to focus on and change this year.

If you are interested in reading the full article on Netflix, please feel free to contact me and I would be happy to email it to you.

— Melissa Price
mprice@nebook.com

Legal Update

Common Employment Law Mistakes in Small to Mid-Size Companies

by Susan K. Sapp, Senior Litigation Partner

Cline Williams Law Firm

Many small business owners do not get too concerned about employment law issues until after a discrimination claim is made or the Department of Labor arrives at the door to conduct a Wage and Hour audit. The best way to avoid a time consuming complaint or a costly audit is prevention. Set forth below are the most common mistakes and how to avoid them.

1. Thinking that employment laws do not apply to small offices with a limited number of employees.

Federal discrimination laws prohibiting discrimination on the basis of gender, marital status, pregnancy, disability, age and race apply whenever an employer has 15 or more employees. Local ordinances, however, reduce that number down as low as one employee (Grand Island); four employees (Lincoln); or six employees (Omaha).

Family Medical Leave Act ("FMLA") does not apply unless the employer has fifty or more employees, but employers must still be prepared to deal with maternity leave requests, employee disabilities, illnesses, injuries and discretionary leave requests.

Having an up-to-date employee handbook and providing in-house employee and supervisory training is the best defense. Our attorneys do many in-house trainings each year on a variety of employment law topics at a minimal cost.

2. Not recognizing employer responsibilities under USERRA.

USERRA protects returning veterans by prohibiting discrimination after deployment. USERRA is violated when veteran status is a motivating factor in an employer's adverse action. Recent changes to the Family Medical Leave Act provide additional leave eligibility for active duty employees and immediate family members of active duty employees.

3. Not educating employees, managers and supervisors regarding anti-harassment, Americans with Disabilities Act, USERRA, how to make reasonable accommodations and how to avoid retaliation claims.

Training for your decision-makers is crucial in protecting your company from legal liability for violation of state or federal employment laws. Providing periodic anti-harassment training for all employees is key. It is also important to have an up to date anti-harassment policy that informs employees how to make a complaint, to whom they should make the complaint, and what to expect in terms of resolution.

Harassment is illegal if it is based on membership in a protected class, i.e., gender, race, marital status, religion, national origin, disability, pregnancy and age. The most common complaint is sexual harassment, but religious harassment has grown in frequency over the last decade. Reasonable accommodations for religious beliefs is a hot topic and employers must proceed carefully when responding to an employee's concerns.

Employers need to make sure that their managers and supervisors are trained to recognize when an employee is making a Family Medical Leave Act request for time off due to a serious health condition; when an employee with a disability is asking for a reasonable accommodation; what constitutes a reasonable accommodation; and how the Americans with Disabilities Act interrelates with workers' compensation laws in the case of a workplace injury or accident. Most managers and supervisors can be properly trained during a one to two hour presentation regarding the key legal issues.

(Continued on page 5)

4. Not staying up to speed on personnel matters.

A common mistake is for owners and upper management to rely heavily on office managers or business managers to handle personnel concerns. If the office manager or business manager acts illegally, the office manager is not personally liable, the business is liable. It is important for owners to become familiar with each situation before termination decisions are made. Hiring qualified and well-trained Human Resources professionals is also a wise way to protect against legal liability.

5. Committing Illegal Retaliation against an employee.

In Nebraska, an employer cannot retaliate against an employee for making a complaint of discrimination or for having a workers' compensation injury or taking FMLA leave. If an employee has made a discrimination complaint, has had a workers' compensation injury, or has taken recent FMLA leave, and then has a performance issue requiring termination, documentation should be particularly thorough to make it clear the termination does not result from the protected activity. Make sure that the termination is consistent with how similar issues have been handled for employees who have not made discrimination complaints, had a workplace injury, or taken FMLA leave.

6. Ignoring Wage and Hour laws.

Owners of small businesses often assume they will not be audited by the Department of Labor, or if they treat their employees well their employees will not make a Wage and Hour claim. Therefore, some employers pay little attention to the Federal Wage and Hour Laws ("FLSA") and the Nebraska Wage Payment and Collection Act, resulting in some common and expensive mistakes.

a. Misclassifying hourly employees as exempt.

Only certain employees can be salaried employees. An employee who is not entitled to be salaried cannot agree to be salaried. Rather, the position has to fall within one of the specific exemptions often referred to as "white-collar" exemptions.

The most common exemptions are the **executive exemption**, which has as one of its requirements that the position must directly supervise two or more employees and have the authority to fire or hire; the **administrative exemption** which requires the employee to perform management or general business operations while exercising "discretion and independent judgment" with respect to matters of significance; the **professional exemption**, which requires a certain degree in order to be performed (lawyer, doctor, nurse); and the **outside sales exemption** which requires the employee's position to consist largely of sales or obtaining orders or contracts for services.

Problems arise when an employee is paid a salary (rather than paid by the hour) and the employee is not properly exempt. The Department of Labor can conduct an audit and make the employer go back and pay the employee overtime for the hours he or she worked in excess of 40 hours a week, along with penalties. Often, the employer does not have records to show how many hours the employee worked; therefore, the employee will be believed when he or she recounts the approximate number of hours worked, even if the number is exaggerated.

Employers should undertake a periodic legal review of all job descriptions and duties to make sure that all non-exempt employees are being paid by the hour and receiving overtime, unless their positions fall squarely within one of the exemptions that allow the employees to be salaried.

b. Failing to accurately calculate overtime pay.

If employees are paid by the hour and receive bonuses on a periodic basis, in most cases those

(Continued on page 6)

bonuses have to be included in the regular rate of pay before overtime is calculated. This does not apply to a discretionary holiday gift or unexpected bonus. If the employer has a bonus program where employees know what they need to do to earn a bonus, then it is a non-discretionary bonus which has to be included in their total wages before overtime is calculated.

c. Allowing employees to work “off the clock.”

Overtime compensation must be paid for all overtime work, whether or not overtime is formally authorized. To the extent the employer is aware, or should be aware, that employees are working overtime, the employees must be paid time and a half for all hours in excess of 40 per week. The reason for their work is immaterial. If they take work home, that has to be compensated (unless they are properly salaried). Employees cannot “volunteer” their work to the employer. If employees are paid by a time clock, they should be paid to the minute, or their time should be rounded to the nearest quarter hour, according to the “seven minute rule.”

d. Giving compensatory time off.

Many private employers mistakenly believe they can allow hourly employees to take “comp time” in lieu of overtime. Generally speaking, private employers may not use comp time. If employees work more than 40 hours in a work week, they must be paid time and a half for all overtime hours.

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Susan K. Sapp is a Senior Partner with the Cline Williams law firm in Lincoln and Omaha and can be reached at 402-474-6900 or 402-397-1700 or ssapp@clinewilliams.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 an attorney.

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Go to <http://lincolnhr.org/blog/hr-job-openings/>

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!



Wellness

Heart Healthy Eating

Karen Rehm, Corporate Wellness Coordinator
Madonna Fit for Work

Heart Healthy Eating

February is National Heart Month. A healthy lifestyle can reduce your risk for cardiovascular disease, the nation's number one killer. You can lower your risk by achieving and maintaining a healthy weight, regularly engaging in physical activity, eating a healthy diet, and not smoking.

Here are some tips to help you make heart healthy choices:

- Choose lean cuts of beef and pork, especially cuts with "loin" or "round" in their name.
- Choose skinless poultry, or take the skin off before eating it.
- Eat fatty fish twice a week, such as salmon, albacore tuna (in water, if canned) or mackerel.
- Use low-fat (1%) or fat-free (skim) instead of whole milk. This lowers the amount of saturated fat, which can raise cholesterol. You don't have to switch all at once. Go from whole milk to 2%, then to 1%, and then to skim.
- Replace full-fat cheeses with lower-fat options.
- Use 100% whole-grain products instead of refined or enriched grains. Diets high in whole-grains can reduce the risk of heart disease. Make sure "whole" or "whole-grain" appear before the grain name on labels, as the first ingredient listed.
- Add ground flaxseed to muffins, pancake, and bread recipes. Flax is high in omega-3 fatty acids, which can help protect your heart.
- Use hummus or avocado as a spread on sandwiches and wraps in place of mayonnaise to lower saturated fat.
- Season foods with herbs, spices, garlic, onions, peppers and lemon or lime juice instead of butter and/or salt to reduce your saturated fat and sodium intake.
- Bake, broil, roast, grill, stew or stir-fry foods rather than frying them.
- Use non-stick spray or a nonstick pan for cooking, or substitute broth for oil when sautéing foods.
- Use liquid vegetable oils and soft margarine instead of stick margarine, butter, or shortening.

Submitted by Madonna Fit for Work-Kelli Kennel RD/LMNT. For more information about heart healthy tips call Sande Dirks at (402) 434-5936.



Drawing Winner

Who Says There's No Such Thing as a Free Lunch?

Congratulations to
Nicholas Topp with
RMH Franchise.

Nicholas will receive free registration
for the February program.

EAP Corner

How to Take the Stress Out of a Performance Appraisal

Kelly Ethridge, Account Services
Best Care EAP

A new year is upon us—and that means we'll soon be evaluating business goals and performances. Performance appraisals offer significant benefits to an organization by ensuring that each employee's performance is contributing to business goals. Aligning everyone's goals to business objectives is the key to success.

While most organizations conduct performance reviews, only about 1/3 of the managers look forward to delivering the reviews to their team members. *Performance appraisals don't have to be a "scary" experience for the manager (or employee).*

Here are some tips to help alleviate the anxiety and stress associated with the review process:

Ensure employees know what to expect in the review process

Set clear expectations as to what is being measured and goals related to the measurement. Explain the difference between meeting and exceeding expectations so to alleviate any "gray" area. In the actual meeting, listen and ask for feedback so that the goals can be modified if need be so the goals are constantly being worked on by the employee as well as the organization.

Remain Objective

Try to be as fair as possible, dedicate time to prepare for the meeting and review previous objectives and notes you have made over the year. Gather specific performance figures and focus on as many facts as possible. By doing so, you take the emotional (subjective) angle out of the meeting and send a clear signal to the employee that you are only focusing on the outcomes of their performance.

Engage in a two-way discussion

The meeting should really be a conversation between manager and employee. It is important that you give your employee the opportunity to respond to your ratings and their performance. The more they contribute the more engaged the employee will be in the company and their performance. When talking about areas of improvement, there should be a two-way input into what your employee needs to do to meet future goals as well as how you can support them in doing so.

Provide regular feedback (not just at performance appraisal time)

In general, employees want to know how they are doing. They want to know if their efforts are meeting the needs of others in their department and the company.

So, make an effort to provide feedback more than once a year. Maybe you can schedule quarterly updates so that you can make sure to provide that regular feedback and keep your employee on the right track. This way, there are no surprises for the employee since they are already aware of how well they have been performing.

Need more help with performance appraisals or another area of management? Best Care EAP offers several training programs that can help, Management Boot Camp (whether you are brand new to management or could use a refresher course) and Conflict Resolution Boot Camp.

If you are interested in learning more about our management training, visit Best Care's website at www.BestCareEAP.org or call 800 666-8606 for more information.



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