



Lincoln  
Human  
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Association



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



Volume 5, Issue 3

March, 2014

**Program: Employee Life Cycle - Round Table Discussions**

**Workshop: Generational Diversity in the Workplace**

**Presented by:** Andie Gordman, SPHR, Silverstone Group

**Gold Sponsor:** Aureus Group

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**WHEN:**

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

**WHERE:**

Lincoln Firefighter's Hall, 241 Victory Lane, 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:** Catered by Tastefully Yours—Assorted salads, sandwiches & desserts.

**DEADLINE:** Register/cancel your registration by **12:00 noon, Friday, Mar. 7<sup>th</sup>.**

**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:**

Share your ideas and return to your office with valuable new ideas by attending this monthly meeting. Facilitators of each round table discussion will lead a discussion on best practices and hot issues in each of these areas. Participants will be able to attend at least 3 round table discussions during this monthly meeting. The topics that will be discussed are:

- Identifying Mental Health Issues in the Workplace and How to Deal With Them by Susan Merwick, Continuum EAP
- Managing Workplace Conflict by Mark Pankoke, Madonna

(Continued on page 2)

- Wellness Ideas on a Low Budget by Tonya Vyhliadah, Workwell
- Effective Onboarding
- Best Practices for Dealing with Generational Differences by Lesa Decker, Best Care EAP
- Unique and Effective Workplace Recognition by Adam Parrish, Hudl
- Best Practices on Handling Terminations – Erin Ebeler, Woods & Aitken LLP

### About our Workshop: Generational Diversity in the Workplace

Are you tired of hearing about generations in the workplace? It seems that the conversation never moves beyond descriptions of the different generations into real workplace solutions. Organizations need to focus on how to get these different groups of people to work together effectively and thrive off of the wonderful commonalities that make up a generation, instead of using negative stereotypes to thwart work progress. This presentation will focus on moving beyond the understanding of different generations into actual solutions for maximizing these different generations in the workplace.

## Free Webinar to Watch on How to Achieve Greater Success in Hiring National Guard Members and Other Veterans



Are you looking for expert tips on ways you can more successfully identify, interview and hire veterans and National Guard members?

You can watch a high quality recording of a 50-minute webinar featuring two experts whose nonprofit organizations helped employers hire more than 3,700 veterans in 2013. No registration is necessary. Here is the link:

[www.CenterForAmerica.org/webinar.html](http://www.CenterForAmerica.org/webinar.html)

Stacy Bayton and Erin Voirol discuss ways to make job postings more precise to attract veterans and Guard members who truly meet your expectations and requirements. They also identify mistakes made during interviews that cause recruiters to miss learning about the candidate's skills that are relevant to the workplace.

The webinar was developed by the nonprofit **American Jobs for America's Heroes (AJAH)** campaign to help business owners and HR managers learn how to make military recruiting easier and more successful. "Many times an employer will have the ideal candidate come for an interview but this won't culminate in a hire," said Steve Nowlan, campaign director. "This can happen because the interview doesn't bring out how the veteran's skills and experience match to the company's needs and culture. Stacy and Erin describe ways to make interviews more productive for both the employer and the candidate."

The webinar also describes how employers benefit from having their job postings flow through the AJAH campaign at no cost directly to hundreds of military employment counselors who are working one-on-one with Guard members and other veterans to match them with jobs.

"Employers benefit when their job postings are being actively matched by employment counselors in the Guard, the Army and other services," said Todd Young, Center for America's chief operating officer. "When a counselor gets a posting, he or she actively matches this with the current candidates and then helps the qualified candidates apply for the job. This is a more proactive and effective source of help than just posting the job on a traditional job website."

In the webinar, Stacy and Erin describe how employers can get the most from posting jobs in the AJAH campaign and the benefits that military employment counselors bring to facilitating matches.

You can watch a five-minute video about the campaign – [www.CenterForAmerica.org/video.html](http://www.CenterForAmerica.org/video.html) -- and then visit the website at [www.CenterForAmerica.org](http://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. Phillips 66 is the lead national corporate sponsor of the AJAH campaign.

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



## President's Message

Melissa Price, LHRMA President

As HR professionals, I often feel that the phrase “stuck between a rock and a hard place” describes the decisions we have to make and issues we deal with on a daily basis. We are required to navigate the legal waters while also considering the need of the company and employee. It is a juggling act.

At our February meeting, we had the pleasure of hearing a legislative update from Scott Moore of Baird Holm Law Firm. Scott addressed the National Labor Relations Board, social media, I-9 audits, workplace investigations, family medical leave, accommodations for disabilities, etc. If you were able to attend the session, I am sure that you felt just as overwhelmed with all the changes and potential changes as I did.

As you juggle everything, please remember to utilize LHRMA as a resource -

- Continue to read our monthly newsletter where so many experts partner with us to offer our members great information
- Attend our monthly lunch programs and workshops where speakers equip us with knowledge and ideas
- Utilize the membership. Please take advantage of the networking opportunities to share ideas and ask questions

In addition, our legislative committee is doing a great job of watching bills in our state legislature. They will continue to keep our members updated and represent LHRMA's stance at hearings. Please consider being an active individual in the legislative process and make your voice heard too.

— Melissa Price  
mprice@nebook.com

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# Legal Update

## Hey! Is that the Company's Cell Phone or Your Cell Phone?

by Jack L. Shultz and Robert B. Truhe

HARDING & SHULTZ, P.C., L.L.O.

In 2013, two federal district courts issued decisions involving cell phones in the workplace. The decisions, taken together, provide valuable guidance to employers in writing company policies about cell phone use. One case involved an employee's personal cell phone and the other case involved a company's cell phone which was turned back to the company when the employee left employment. The rapidly changing pace of technology is leading to a growing number of court decisions concerning cell phones. Prudent employers should follow the guidance of these decisions when rewriting employment policies.

### I. THE CALIFORNIA SITUATION

An employee of Wal-Mart Stores, Inc. was terminated. The employee filed an action in state court alleging discrimination (national origin, race and sex) and wrongful termination. The case was removed to federal court.

#### THE SUBPOENA

The employer issued a subpoena to AT&T Mobility requesting:

1. All incoming and outgoing cellular phone and text message records for the terminated employee's cell phone number for a designated period of time;
2. All records regarding any data used by the device associated with the terminated employee's cell phone number for the same period of time; and
3. Invoices for the terminated employee's cell phone number for the same period of time.

#### THE ARGUMENTS

The terminated employee argued that she was never counseled about cell phone use and that her employment records do not contain any documentation about her using her cell phone during work hours. She contended that she was terminated for not taking her required breaks and that the subpoenaed records are therefore not relevant.

Wal-Mart argued that since the plaintiff brought the action alleging wrongful termination, the records are necessary to defend the claim and to show that the plaintiff was terminated for stealing time. Wal-Mart argued that the plaintiff committed gross misconduct while on the job and that the misconduct is why she was terminated.

#### PRIVACY

The plaintiff contended that she has a right to privacy in her cell phone records under both the California State Constitution and California state law. Wal-Mart argued that the subpoena was narrowly tailored to obtain the dates and times of cell phone use but not the content.

#### THE CALIFORNIA DECISION

The federal magistrate judge ruled against the plaintiff and denied the motion to quash the subpoena for the cell phone records. The judge noted that the records were directly relevant to Wal-Mart's defense that

*(Continued on page 6)*

the plaintiff was terminated for misrepresenting her working hours. The court also concluded that no privacy interests were violated because Wal-Mart was not seeking the content of any messages and because the records being sought were held by a third party and do not contain any content information. The magistrate judge also ruled that since Wal-Mart did not request the identity of any individuals whose telephone numbers would be shown in the records, no privacy violation concerning such individuals was present.

## 2. THE OHIO SITUATION

A former employee of Verizon Wireless returned her company-issued Blackberry when she left employment. When the employee was provided the company-issued phone, she was told that she could use it for personal e-mail. The employee had an account with G-Mail. The employee believed that she had deleted that account from the telephone before turning it in because she understood that Verizon would "recycle" the phone for use by another employee.

The G-Mail account was not closed and during the following 18 months, the former employee's supervisor read (without her knowledge or authorization) approximately 48,000 e-mails sent to her personal G-Mail account and disclosed the contents of some of those e-mails to others.

The former employee filed a lawsuit claiming a violation of both the federal Stored Communications Act (SCA) and a state law violation of privacy.

### THE OHIO DECISION

The federal judge ruled against the numerous (and inventive) arguments of Verizon that the SCA did not apply. The judge concluded that just because the phone was a company owned Blackberry did not mean that authorization to read the personal e-mail had been granted. The court agreed that the former employee was negligent by not having deleted the G-Mail account from the Blackberry before turning it into the company. In ruling against Verizon on this point, the Court stated:

Negligence is, however, not the same as approval, much less authorization. There is a difference between someone who fails to leave the door locked when going out and one who leaves it open knowing someone will be stopping by.

The court also refused to dismiss Verizon from the lawsuit and concluded that both Verizon and the supervisor were proper defendants. With respect to the state law claim, the Court found that the e-mails were "highly personal and private" and that a reasonable jury could conclude that the actions of the supervisor in reading "tens of thousands of such private communications, if proven to have occurred," would be "highly offensive."

### CONCLUSION

The first lesson from these two decisions is that company cell phone policies should apply to **both** company issued cell phones and private cell phones. In addition, if private cell phone use on personal matters (whether through a company issued cell phone or with a privately owned cell phone) are prohibited, that prohibition should be clearly stated. Moreover, if company issued cell phones are turned in by departing employees to be "recycled" to other employees, it would be prudent for the employer to ensure that **no** private information or e-mail accounts remain on the company's cell phone **before** recycling the cell phone to other employees.

Finally, in the instance of company cell phones, employers should be sure to add in-service training for supervisors to ensure that supervisors are at least as intelligent as the Smartphone. At a minimum, such in-service training should cover reasonable expectations of privacy, an admonition to all supervisors involved in the recycling of such company owned cell phones to be sensitive to privacy rights of former employees, and a

*(Continued on page 7)*

reminder of Ron White's statement that "stupid never takes a day off." Now that federal court decisions are being issued on both federal and state law claims concerning privacy about both company owned cell phones and personal cell phones, prudent employers should take these decisions into account when writing personnel policies. Prudent employers should also increase in-service training for supervisors on this topic.

**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. The authors of this article, Jack L. Shultz and Robert B. Truhe, can be contacted at 402/434-3000, or at Harding & Shultz, P.C., L.L.O., P.O. Box 82028, Lincoln, NE 68501-2028, [jshultz@hslegalfirm.com](mailto:jshultz@hslegalfirm.com) or [btruhe@hslegalfirm.com](mailto:btruhe@hslegalfirm.com).

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## EAP Corner

### Mental Health Issues in the Workplace

Susan Merwick, LCSW, Workplace Consultant/Counselor  
Continuum EAP

Did you know . . .

- That mental illness leads to more loss of work/work impairment than many other common chronic medical conditions like diabetes, asthma, and arthritis?
- That roughly 20% or 1 in 5 adults will suffer from a mental illness at some point in their life that will be severe enough to require treatment or disrupt their daily functioning?
- Two thirds of people who meet criteria for a diagnosable mental health condition do not receive adequate treatment?
- Indirect costs of untreated mental illness have a huge impact on employers, estimated to be over \$193 billion a year?

But there is good news . . . there are things you can do in the workplace to reduce the costs associated with mentally unhealthy employees.

1. Obtain good, accurate information about mental health. Mental health awareness training can enable employers to recognize and identify behaviorally at risk employees and learn how to appropriately respond.
2. Promote a comprehensive concept of wellness that goes beyond physical wellness and includes emotional wellness as an important component of maintaining a healthy lifestyle.
3. Look for ways to include emotional health in your wellness assessments and incentives. If you are hosting a Health or Wellness Fair, make sure you have at least one vendor that supports or represents emotional health.
4. Be champions of healthy work/life balance in your organization and recognize the connection that often exists between emotional and physical health, i.e. that employees with poor emotional health often have a harder time committing to healthy lifestyle choices.
5. Look for opportunities to reduce the stigma that often prevents people from seeking assistance for mental health issues.
6. Know the applicable laws, such as the *Mental Health Parity and Addiction Equity Act* and the *American Disabilities Act* and keep an open line of communication with your organization's leadership.
7. Provide resources for your employees to support good emotional health . . . such as an Employee Assistance Program. EAPs help employees and family members maintain good emotional health through EAP counseling services, but EAPs can also support workplace efforts of having an emotionally healthy workforce through training for managers and supervisors and hands on support in managing and responding to behavioral risks.
8. If you do have an EAP, consider integrating EAP services into your return to work programming to assist employees who are transitioning back to work following an injury or medical leave of absence.

Susan Merwick, LCSW is a Workplace Consultant/Counselor at Continuum EAP. She can be reached at 402-476-0186 or 800-755-7636 or [smerwick@continuum.com](mailto:smerwick@continuum.com).



# Wellness

## Sitting is the New Smoking

Dr. Randy McCracken

McCracken Chiropractic Clinic

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I came across some recent articles regarding the hazards of prolonged sitting in which they compared its detrimental effects to those from smoking. They both can result in earlier death. Research has revealed that people who spend four hours sitting in the evening showed a 50% increase in dying then those who only spent two hours sitting. They also noted increased sitting doubled their risk of developing heart disease and metabolic diseases, as well as the risk of dying from all causes. Researchers in another study linked cancer with prolonged sitting due to the lack of movement or physical activity.

Some of my patients have said they exercise three to four times a week to counteract the amount of sitting they do daily. Unfortunately exercising for only three to four times a week can not undo the damage from prolonged periods of immobility.

We all have been informed, if you are active for 60 minutes a day every thing will be OK! Well, we are learning that is not true. Long periods of sitting slow your circulation and suppress compounds your body needs for healthy blood.

Dr. Robert Glatter, in his article “Why Sitting at Work Can Be So Deadly,” offered these take home points:

1. Reduced sitting would benefit overweight individuals the most because they already have a higher baseline risk for mortality.
2. People would likely benefit from spending more time standing at work.
3. Using a “stability ball” as opposed to a chair may be beneficial to engage core muscles.
4. If you do spend a fair amount of time sitting at work, take frequent breaks to stand. Added tone from standing will allow your muscles to expend energy.

In the article: “Death by Sitting...? Your Desk Job is Out to Kill You,” they recommended:

1. Change positions often, use of a treadmill, schedule walking meetings.
2. Set a timer for 15 minutes then stand up for one minute. Perform stretching when standing, jump up and down a few times to get the blood circulating. This will make you more productive by making you more alert and energetic.
3. Adding more motion to your job will help your body process fats and sugars the way it's supposed to and improve circulation.

All in all, the more you move the better it is for your health and longevity. Also, it will significantly decrease the stress to your lower back resulting in fewer lower back problems.

Dr. Randy McCracken of Stress-Less Consulting provides on-site workshops and initial assessments free-of-charge. In office screenings, alleviation and treatment for the effects of stress on the mind and body is available in-office. For more information, contact him at [drmccracken@windstream.net](mailto:drmccracken@windstream.net).

## Workforce Readiness Committee Needs Your Help!

The Workforce Readiness Committee (WRC) is sponsoring year two of the “1<sup>st</sup> Job-Lincoln” project that will again focus its efforts on working with high school youth who are interested in the information technology field. We are **reaching out to employers of all sizes and industries who want to give back to our community and sponsor an intern for our 2014 project.** The WRC has put together two short videos that profile last year’s internship successes with our Champion Employers and students. Please click on these links:

### Champion Employer Video

[https://drive.google.com/file/d/0BxIAWSXXegk\\_TTR0Q2IkWIFHWU0/edit?usp=sharing](https://drive.google.com/file/d/0BxIAWSXXegk_TTR0Q2IkWIFHWU0/edit?usp=sharing)

### Student Video

[https://drive.google.com/file/d/0BxIAWSXXegk\\_RFZOaUpMR2k3YUk/edit?usp=sharing](https://drive.google.com/file/d/0BxIAWSXXegk_RFZOaUpMR2k3YUk/edit?usp=sharing)

Our 2013 Champion Employers were: ALN Medical Management, Assurity Life Insurance Company, Cabela’s, Infinite Systems/Binary.Net, Lincoln Electric System, NCEE Labs, Nebraska Global (Don’t Panic Labs), Phoenix Web Group, Region V Systems, and TMCO, Inc.

**We hope you will consider joining this win-win endeavor as recognized leaders in our community.**

Please contact me with your interest and questions. **The registration deadline for employers to sign up is March 14** and can be easily done on-line at: <http://lincolnhnr.org/blog/1st-job-lincoln-project/employers/>

Kim Michael, PHR  
Workforce Readiness Committee Chair  
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Web site: <http://lincolnhnr.org/blog/1st-job-lincoln-project/>

LinkedIn: <http://www.linkedin.com/groups/1st-JobLincoln-6553524/about>

Facebook: <https://www.facebook.com/1stJobLincoln>

Woods & Aitken LLP, the Lincoln Human Resource Management Association, and the Lincoln Journal Star invite you to attend **Lincoln’s 2014 Best Places to Work awards luncheon.**

Please join us at this celebratory event honoring the area’s top businesses that have created positive work environments for their employees. Find out about their company philosophies and learn how they keep their employees happy! Winners were determined based on the results of the Best Places to Work in Lincoln survey conducted in early 2014. The final rankings for each category will be announced at the awards celebration on April 16.



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#### **Medium:**

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Hudl

**You must pre-register to attend this event.**

#### **For additional information contact:**

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