



Lincoln
Human
Resource
Management
Association



Vision: Be the go-to resource on people management for the community.

PO Box 81066, Lincoln, NE 68501-1066
www.lincolnhrr.org

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December, 2014



December Social

WHEN:

Tuesday, December 9th, 2014
Starts at 4:30 pm



WHERE: Venue, 4111 Pioneer Woods Drive, Lincoln

Join us as we celebrate the end of another successful year! There will be FREE drink tickets for everyone, as well as door prizes!

We will have fabulous door prizes donated from Zelle HR, Unified Employee Benefits, Lincoln Surgical Hospital and more! Thank You to our sponsors!

We will also recognize our **VOLUNTEERS**—Your hard work throughout the year is crucial to our success, so we hope you will attend so we can properly THANK YOU!

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LHRMA will be collecting toys for Toys for Tots at the December Social.

Please bring an unwrapped toy for a child ages infant—12 years.

Each person who brings a donation will receive one bonus raffle ticket for our prize drawings! Thank you for your support in this community effort.

2015 Membership Renewals have been mailed.

While 2014 was great for us as an organization, we are also looking forward to what we wish to accomplish in the future. Your 2015 membership renewal will help strengthen and support the newly created vision and mission of the Lincoln Human Resource Management Association. See the attachment for a copy of the mailing.

Your LHRMA membership renewal, payable on or before Dec. 31, 2014, will remain \$50 for the 2015 calendar year. You may mail your check to the address below, or you can pay with a credit card at www.lincolnhrr.org.

If you renew your membership before December 15, you will be entered into a drawing to win a pair of Nebraska basketball tickets in January.





NUTRITION



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Profile is a new approach to weight loss. It revolves around the three core principles of health: Nutrition, Activity and Lifestyle. Profile helps you change and maintain these three areas by catering to your individualized needs. With a certified Profile coach at your side, you'll have a personalized meal plan, a way to track your progress with the latest technology and support every step of the way.

Visit your Profile store or profileplan.net to learn more.

**7121 Pioneers Blvd., Suite 130
(402) 858-9356**

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SANFORD

President's Message

Melissa Price, LHRMA President



Happy Holidays! I hope that you are celebrating with you family and friends this season. In addition, I hope that you come celebrate with us at our annual social on December 9th (remember that this will be instead of our normal lunch meeting). More details can be found in this newsletter.

LHRMA has had a great 2014. One of the huge projects that our board has been working on is to redefine the organization. We wanted to look at LHRMA's vision and mission to ensure that it reflected the organization that we are today and who we want to become. The LHRMA board spent a full day in September in a strategic session to find a new vision and mission that represents LHRMA. We will officially roll this out in 2015; however, we wanted to give you a sneak peek this month.

LHRMA's Vision

Be the go-to resource on people management for the community

LHRMA's Mission

Be the resource on people management by:
Connecting professionals to solve everyday problems
Providing quality education
Collaborating with community leaders
Leading change for our industry

Making LHRMA a great organization isn't possible without our volunteers. We always take the month of December to recognize individuals that volunteer for LHRMA on one of our committees. Thank you so much if you have given your time this year to LHRMA! We know how valuable that is. Volunteers will be recognized at our December Social. If you are interested in being a volunteer next year, please do not hesitate to contact me and I'll connect you with the right individuals.

Again, Happy Holidays!

—Melissa Price



Find us on Facebook.
Become a fan and join
the conversation.

Legal Update

Is Obesity Protected under the ADA: A Nebraska Federal Court Weighs In

by Bob Evnen

Woods & Aitken LLP

There has been much confusion through the years over whether obese employees and applicants are entitled to protection under the Americans with Disabilities Act (ADA), and correlatively, under the Nebraska Fair Employment Practices Act (NFEPA). In November this year, the U.S. District Court for the District of Nebraska issued an illuminating decision that helps clarify the reach of the ADA on this issue. *Morriss III v. BNSF Railway Company*, Case No. 8:13CV24.

In that case, the plaintiff had applied for a position as a diesel mechanic at the railroad and was conditionally offered the job. He was denied the position, however, after a railroad medical review officer “determined in accordance with company policy that [plaintiff] was ‘[n]ot currently qualified for the safety sensitive Machinist position due to significant health and safety risks associated with Class 3 obesity (Body Mass Index of 40 or greater).’” (Memorandum and Order, page 1.)

The plaintiff was 5’10” tall. As of May 16, 2011, two days before the conditional job offer was withdrawn, the plaintiff weighed 285 pounds. His body mass index was 40.9.

In the complaint that he filed in federal court, the plaintiff claimed that he had been subjected to unlawful discrimination under the ADA (and the NFEPA) either on the basis of (1) an actual disability or (2) a perceived disability.

The first question to be decided was whether the plaintiff was disabled under the ADA. If he was not disabled then he could not have been subjected to discrimination based on actual disability. To be a recognized disability under the ADA, one must have “a physical or mental impairment that substantially limits one or more of the major life activities of an individual...” Major life activities are not only the basic activities of life – caring for oneself, performing manual tasks, seeing, hearing, breathing, learning and the like – but also include “the operation of a major bodily function” within the body, such as the immune system, normal cell growth, digestion, brain functions and functions of other organs and systems of the body. (Memorandum and Order, page 3-4.)

In addition, the impairment must be a “condition” and not a “characteristic.” The court quoted from the EEOC’s Interpretative Guidance of Title I of the Americans with Disabilities Act: “It is important to distinguish between conditions that are impairments and physical, psychological, environmental, cultural, and economic characteristics that are not impairments...The definition of the term ‘impairment’ does not include physical characteristics such as eye color, hair color, left-handedness, or height, weight, or muscle tone that are within ‘normal’ range and are not the result of a physiological disorder...The definition, likewise, does not include characteristic predisposition to illness or disease.” (Emphasis added.)

Based on this guidance, the court noted that “a person’s weight can be an impairment when it is both (1) outside ‘normal’ range and (2) the result of a physiological disorder.” (Memorandum and Order, page 3-4.)

What is important here is that, to be an “impairment” that is recognized under the ADA, the condition of obesity must be a physiological disorder or affect body systems. This is what distinguishes a “characteristic,” which is not an impairment, from a “condition,” which might be.

In this case, the plaintiff absolutely denied any impairment at all. He said that he needed no accommodation to perform his work. He testified that he didn't think that he had a physical disability nor was he aware of any medical condition that led to his obesity. He said that his weight "has no physical limitations on me." His doctor testified that the plaintiff had no medical conditions often associated with obesity, like diabetes, hypertension, sleep apnea or heart disease.

The court held that there was no evidence that plaintiff's "obesity was caused by a physiological disorder, nor is there any evidence that his weight affected one or more body systems." For that reason, the court held that the plaintiff had no impairment under the ADA. In other words, plaintiff's obesity was a "characteristic" not a physiological disorder, nor were there any body system impairments related to the plaintiff's obesity.

Because the plaintiff was not disabled under the ADA, his first claim, for disability discrimination, was dismissed. (Memorandum and Order, pages 4-5.)

This brings us to the second claim, which was that even if the plaintiff was not actually disabled, the railroad regarded him as disabled. "Regarded as," or "perceived" disability claims also are actionable under the ADA. If an employer mistakenly thinks that an employee or applicant has a disability, and discriminates against the employee or applicant based upon that mistaken belief, then the employer can be liable.

Here, there was no question that the plaintiff was classified with Class 3 obesity, which is defined as a person whose body mass index (BMI) was equal to or greater than 40. Plaintiff's BMI was 40.9. There is little doubt that plaintiff had a high risk for serious illness or disease. According to MedlinePlus, an online service of the U.S. National Library of Medicine which is a division of the National Institutes of Health (NIH), people who have Class 3 obesity have a high risk of developing diabetes, hypertension, high cholesterol, heart attack, stroke, bone and joint problems, sleep apnea, gallstones and liver problems.

The NIH and National Cancer Institute reported that "[a]dults with extreme obesity have increased risk of dying at a young age from cancer and many other causes...according to the results of an analysis of data pooled from 20 large studies of people from three countries. The study...found that people with class III (or extreme) obesity had a dramatic reduction in life expectancy compared with people of normal weight." (ScienceDaily, July 8, 2014.)

Doesn't this information suggest that the railroad considered the plaintiff disabled on account of his obesity? That's not what happened here. The railroad's medical review officer said that the plaintiff was not qualified "due to significant health and safety risks associated with Class 3 obesity." In other words, it wasn't that the plaintiff was disabled at the time of his application, it was the risk of health and safety issues developing later. The plaintiff argued that he "was denied employment... not because of any then current health risk identified by BNSF..., but because BNSF believed by having a BMI of 40, plaintiff would or could develop such health risks in the future." (Memorandum and Order, page 5.)

But under the EEOC Interpretive Guidance, as quoted above, a predisposition to illness or disease arising from a "characteristic" is not a disability, and therefore, regarding someone with a "characteristic" as predisposed isn't "regarded as" disability discrimination either. Keep in mind that here, there was no impairment and no disability. Plaintiff's obesity was a "characteristic," not a physiological disorder, and it was perfectly lawful for the railroad under that circumstance the refuse to hire him based on the likelihood of future health and safety problems arising from plaintiff's obesity.

In this connection, the court held that all of the information known to the railroad showed that plaintiff had a "characteristic," not a condition. There was no evidence in the possession of the railroad that showed otherwise. The plaintiff admitted this.

The case was dismissed. As of the writing of this paper we have no word on whether the plaintiff intends to appeal.

What if the plaintiff's obesity was the result of a physiological disorder, or already had caused diabetes or heart disease or something similar? In that situation it seems unlikely that the "regarded as" question would have been reached because there would have been an actual disability, which would be evaluated under the analytical framework that is applied to other actual disability claims.

Bob Evnen is a partner with Woods & Aitken LLP in Lincoln where his practice focuses on advising and representing employers in labor and employment law issues.



WELCOME NEW MEMBERS

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Welcome!

You've joined an outstanding organization!



Drawing Winner

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

Congratulations to

Kate Packard with Kaplan.

Kate will receive free registration
for the January program.

Wellness

How to Enhance a Corporate Wellness Program and Be More Cost Effective!

Dr. Randy McCracken

McCracken Chiropractic Clinic

Look at the new approach to corporate wellness with the launch of "Cultivate" by Standard Process in Palmyra, Wis. They are helping their employee's wellness through onsite wellness centers led by chiropractors. "The rising costs of healthcare and employee wellness are top of mind topics for executives across all industries," said Jerry Curtin, president / general manager of Cultivate by Standard Process. "Through Cultivate and an onsite chiropractic expert, organizations of all sizes can realize tremendous employee and company benefits."

The health benefits of wellness programs have been proven to be very beneficial. Imagine improving those benefits to your company and its employees even further. Look what happens with the addition of chiropractic healthcare to your wellness program. Over twenty studies were found documenting the objective health benefits in people who were described as "asymptomatic, healthy, or free from physical injury". The research revealed once chiropractic care was initiated significant improvements were noted in:

Respiration	Range of motion
Hear rate variability	Cardio vascular function
Immune function	Muscle strength overall athletic ability

Improvements were also noted in reaction time, information processing, visual acuity, stress and reproductive hormones, healing and recovery time, general health of senior citizens, reduced labor times of pregnant women. It is plausible chiropractic care may benefit every function of the body.

From: Objective Physiologic Changers and Health Benefits of Chiropractic Adjustments/Vertebral Subluxation Research/JVSR.Com, April 26, 2004.

What About Cost Effectiveness?

A 2012 systemic review found spinal manipulation therapy to be more cost-effective for neck and low back pain when compared with general practitioner care, physiotherapy or exercise. A study in 2007 compared care costs of a patient under the direction of a chiropractor as their primary care physician (PCP) versus a medical doctor. A 7-year study over 70,000 member-months utilizing chiropractic was compared to conventional medically driven care and resulted in:

60.2% decrease in hospital admission costs
59.0% decreased cost of days spent in the hospital
62.0% reduction in outpatient surgeries and procedures
83% reduction in pharmaceutical costs

From: J Manipulative Physiol Ther 2007 (May);30(4): 263-269

A study in Spine/2012 by Keeney et al found the likelihood of surgery for workers with back injuries to be:

First point of contact: Surgeon/MD surgery 42.7%.

First point of contact: Chiropractic physician/DC 1.5%!

For more information or those interested in adding on-site chiropractic care to their wellness programs call Dr. Randy McCracken at 402-421-2277 or e-mail drmccracken@windstream.net. Dr. McCracken provides on-site workshops and would be interested in talking with you about providing on-site chiropractic care.

EAP Corner

Holiday Stress . . . At Work

Susan Merwick, LCSW, Workplace Consultant
Continuum EAP

Yep, it's here, the time of year when we think about tree trimming, sending holiday cards, party planning, and finding that perfect gift. You can find plenty of advice out there about how to slow down, not overspend, and not stress ourselves out by trying to do it all. The advice isn't bad and can actually help us focus on what is most meaningful to us at this time of year, but what about workplace stress? Our jobs don't stop at holiday time and for many of us it is as busy in our workplaces as it is at home. So, as employers, and HR professionals, here are a few ideas of how we can do our part to relieve holiday-related stress.

1. Consider planning any holiday workplace celebrations during your normal business hours or after the first of the year. As we know, time is at a premium during this time of year and so not adding one more thing to employees' schedules can be especially appreciated. And remember that celebrations don't have to be elaborate affairs; even a food day during the week can provide a nice pause for employees to take a break from their hectic work day.
2. Show appreciation for all employees and especially those who have to work on a holiday. For some workplaces, especially the service, retail, travel, and healthcare industries, the work doesn't stop just because of a holiday and somebody has to be there to do it. It's important to remember that while many of us are at home enjoying time with our families, there are people that are working; taking time to remember them and thank them for that in some way, with food or other incentives can go a long way.
3. Offer flexible work schedules if at all possible. Again, employees will likely appreciate some added time to run errands for their own holiday preparations.
4. Allow floating holidays so that employees can take time off when it will be the most meaningful for them.
5. Remember that during this time of year when we are all under added stress, sometimes we unknowingly replicate some of our family dynamics at work. Try not to take things too personally and give people the benefit of the doubt if emotions flair. Now this doesn't mean we should let someone be abusive or fail to hold folks accountable for their behavior, but by simply keeping in mind that others are being pulled in as many different directions as we are, we can temper our reactions accordingly.
6. Offer and remind employees about support resources available to them and how to access them, such as your employee assistance program.

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.

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

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



FREE!



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