



Lincoln
Human
Resource
Management
Association



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



Volume 7, Issue 1

January, 2016

Program: Kicking Out Disengagement in 2016 Workshop: A Review of ACA Section 6055 and 6056

WHEN:

Tuesday, January 12th, 2016
11:00 – 11:30 Registration
11:30 – 12:00 Lunch & Announcements
12:00 – 1:00 Keynote Session
1:15 – 2:45 Workshop

WHERE:

The Space—5900 S 58th Street, Lincoln, NE 68516

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—\$25

MENU: Catered by Annette's – Chicken and Biscuits Casserole, Asparagus Cheese Soup,
Spinach Salad, assorted desserts and iced tea or water.

DEADLINE: Register/cancel your registration by **12:00 noon, Friday, Jan. 8th**.

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:

Regardless of your industry, one thing remains constant ---Managing people is really, really hard. Why? People are messy. Motivating, and more importantly, engaging employees, is critically important to the success of your business. Discretionary effort is directly correlated to engagement, as is turnover, productivity, and well-being.

This session will take aim at understanding the basics of employee engagement, how to fix disengagement, and share some things we do at Chick-fil-A to create a "REMARKable" experience.

Presented by: Charlie Colón, Owner/Operator

Chick-fil-A, SouthPointe Pavilions FSR
6810 South 27th Street, Lincoln, NE 68512

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About Our Workshop:

A Review of Section 6055 and 6056

Our discussion will include a review of ACA Section 6055 and 6056 as they relate to the responsibility for Applicable Large Employers to transmit and report affordable and essential health coverage for plan participants. The presentation will include step-by-step examples for completion of the Form Series 1094 and 1095 and Include a summary of the provisions of IRS Notice 2016-4 extending such filing deadlines. Finally, we will address the likely effect on the delayed filing deadline on plan participant taxpayers.

Our Workshop Presenters:

Tony Sorrentino, ChFC, CLU, CPA, CFCI

Tony has over 25 years of experience with Group Health and Welfare Plan compliance under IRS, DOL and HHS regulations. As Principal of Regulatory Compliance / General Counsel, he frequently lectures on Healthcare Reform Legislation, Section 125 plan compliance, Wellness initiatives, Consumer Driven Health Plans, HIPAA Privacy and Security, COBRA interpretation, ERISA fiduciary responsibilities and, most recently, the healthcare reform Patient Protection and Affordable Care Act (PPACA). Tony is a member of several professional associations including the Nebraska State Bar Association and Nebraska State Society of CPAs and serves as a member of the Adjunct Faculty of the Creighton University School of Law.

Michael Vech, ASA, MAAA

Michael has more than 9 years of actuarial experience helping clients find solutions that fit their individual and organizational needs. As a Vice President / Actuary in Group Benefits, he performs post-retirement medical valuations to satisfy ASC 715-60, GASB 45 and NAIC reporting requirements, as well as actuarial work for self-funded health plans. Michael has worked as a pricing actuary in several sectors, including individual health, Medicare supplement, disability, critical illness and long-term care and also assists clients as they plan for the impact of healthcare reform. He is an Associate of the Society of Actuaries, a member of the American Academy of Actuaries, and a member of the Nebraska Actuaries Club.



President's Message

Joel Scherling, LHRMA President

Try something NEW in the New Year

I'm not big on New Year's resolutions and don't bother setting any. Experience tells us that people rarely follow-through with them. A case in point is the swelling numbers of people at the gym in January and the dwindling number that are still hard at it in late February.

However, there *are* some ways to ingrain some new behaviors, whether cutting back on something (e.g., drinking less pop) or doing more of something (e.g., reading). One strategy is to try something new for thirty consecutive days. If you really want something bad enough, you can do almost anything for 30 days.

January in Nebraska is hard enough. Think about starting with something you'd enjoy (rather than depriving yourself of something). For example, I like to mess around with photography. So, I might commit to taking at least one photo every day during the month of January.

- What's something new you've always wanted to try?
- What work goals do you obsess about but never seem to make any headway?
- What personal goals do you have?

Remember, small changes are easier to make and more likely to sustain over time. So, be realistic with your 30-day goal. Give it a try and let me know how it goes (president@lincolnhr.org). Happy New Year!



Need some additional inspiration?

Listen to this Ted Talk: [Try Something New for 30 Days – Matt Cutts](#)

It's only 3½ minutes long. You can spare that much time.

Legal Update

Obesity—A Portly Problem for Employers

Mark A. Fahleson

Rembolt Ludtke LLP

Obesity is a medical issue in America. It is also a workplace issue. A study published in the American Journal of Health Promotion found that normal weight employees cost an average of \$3,830 per year in medical costs, short-term disability, and workers' compensation claims. That figure jumps to \$8,067 for those having a body mass index (BMI) of 35 or more.

The problems that arise when obesity enters the workplace is on full display in *Morriss III v. BNSF Railway Company*, 2014 WL 6612604 (D. Neb. Nov. 20, 2014), *appeal docketed*, No. 14-3858 (8th Cir. Dec. 20, 2014). Depending on how the Eighth Circuit rules, the end result could lead to the 36 percent of working-age adults classified as obese as having an impairment for purposes of the Americans with Disabilities Act (ADA), and thus they would become entitled to reasonable accommodations and other workplace protections.

In March 2011, Melvin Morriss III applied for a machinist position with BNSF Railway Company (BNSF). BNSF considered this position to be safety sensitive. Morriss was interviewed and extended a conditional offer of employment contingent upon a post-offer medical review. On the medical questionnaire, Morriss reported he was 5'10" and 270 pounds. He also included that he had been diagnosed with diabetes or prediabetes in 2009, but that his treating physician in January 2011 determined that he was not diabetic. Morriss also disclosed that he was taking a medication to suppress appetite. Morriss described his health as "good" with no difficulties or limitations in his daily activities. Morriss indicated that he did not have sleep apnea and reported no cardiovascular or heart problems or history of stroke.

BNSF's medical contractor spoke with Morriss regarding his answers to the questionnaire and requested additional information from his physician concerning a history of possible diabetes and weight loss. In May 2011, Morriss attended his pre-employment medical examination. At this exam, Morriss weighed 285 pounds with a BMI of 40.9.

Shortly after the medical examination, BNSF determined that Morriss was "not currently qualified" for the position due to significant health and safety risks associated with a BMI of 40 or higher. BNSF had a qualification standard by which it declined to hire applicants for safety-sensitive positions, which included the position Morriss applied for, if their BMI equaled or exceeded 40. Other than this BMI reading, BNSF had no documentation indicating that Morriss had a diagnosed illness, impairment, disability, or record of disability.

Morriss brought suit against BNSF claiming that he was not hired because of a disability, or a perceived disability, in violation of the ADA. During discovery Morriss indicated that he had no impairments that limited his ability to perform the functional duties of the machinist position, he required no accommodation to perform his job duties safely, he had no medical reports describing a disability, he never had any work restrictions, and he did not feel that he had a physical disability. Morriss further testified that he was not aware of any underlying medical condition that contributed to his obesity or made it difficult to lose weight.

BNSF's chief medical officer (CMO) testified that BNSF was concerned with health conditions that lead to sudden incapacitation, especially heart disease, which may cause sudden cardiac death; diabetes, which may cause hypoglycemic episodes; stroke, which may cause loss of movement; and sleep apnea, which may cause excessive daytime sleepiness. BNSF's CMO also testified that the probability that people with Class III obesity will develop one of these medical conditions was so high that it was unacceptable to accept that level of risk for the safety-sensitive positions.

The U.S. District Court for the District of Nebraska granted a summary judgment to BNSF on Morriss's claims of discrimination (1) on the basis of an actual disability, morbid obesity, and (2) because BNSF regarded him as disabled. The district court granted a summary judgment to BNSF on Morriss's actual disability claim because Morriss could not show that he had an impairment under the ADA. The district court concluded that Morriss was required to show that his morbid obesity was caused by a physiological disorder. Because Morriss could not show that he had an underlying physiological disorder or show that his weight affected one or more body systems, Morriss could not establish discrimination based on an actual disability. The district court also granted summary judgment on Morriss's regarded-as claim and focused on language from the EEOC interpretive guidance: "[t]he definition [of impairment] does not include characteristic disposition to illness or disease." 29 C.F.R. Pt. 1630, app. § 1630.2(h). The district court concluded that BNSF did not regard Morriss as having an impairment because his risk of developing health conditions qualified as "characteristic predisposition to illness or disease." *Morriss v. BNSF Ry. Co.*, 2014 WL 6612604, at *3 (D. Neb. Nov. 20, 2014).

Morris appealed the district court's dismissal to the U.S. Court of Appeals for the Eighth Circuit, which heard oral arguments on December 17, 2015. Morriss argued on appeal that morbid obesity, in and of itself, is a physiological disorder or condition affecting one or more body systems; therefore, dismissal of his claims was improper because his morbid obesity is an actual impairment under the ADA. In making this argument, Morriss reasoned that the ADA and regulations do not require Morriss to prove that his impairment was caused by a physiological condition. Simply put, Morriss appears to advocate that if weight is outside the "normal" range it is always an impairment for purposes of the ADA. The federal EEOC and AARP filed briefs supporting a liberal interpretation of the ADA when it comes to obesity protection.

LESSON: The Eighth Circuit decision—expected in early 2016--will hopefully bring clarity to the appropriate analysis of obesity disability discrimination claims under the ADA. In the event that the EEOC's and plaintiff's position in *Morriss III* prevail, the ADA would be transformed from a broad statute prohibiting disability discrimination into a catchall protection for all physical attributes and characteristics that an employer may find disqualifying or otherwise undesirable. Every employment decision would become subject to a disability discrimination claim based on some perceived dislike of an applicant's appearance or physical attribute that could be considered "abnormal" with no required showing of any actual or perceived impairment. Before the Americans with Disabilities Act Amendments of 2008 (ADAAA) was adopted, obesity was not considered a disability except in "rare circumstances," and generally it was not considered to be an impairment by itself for purposes of the ADA unless it was a symptom of a physiological disorder. That may no longer be the case.

The outcome in *Morriss III* will hopefully shed light on the proper analysis and hopefully provide direction to employers about how to address obesity in the workplace. Employers are encouraged to keep a watchful eye on this developing area of law and to take proactive strategies to avoid potential liability.

Fahleson is an attorney with the Lincoln-based law firm of Rembolt Ludtke LLP and may be reached at (402) 475-5100 or 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.

Wellness News

Helping Your Employees Set S.M.A.R.T. Goals for the New Year

Lauren Merchant, WorkWell Coordinator

WorkWell, Nebraska Safety Council

A new year symbolizes a new start for many individuals and serves as a perfect time to reevaluate their goals for the year ahead. Come January 1st you will see many employees setting New Year's resolutions with the all too familiar goals: *This year I will get healthy. This year I will eat better. This year I will finally lose weight!* According the University of Scranton more than 40% of American's will set a New Year's Resolution but only a mere 8% will achieve them.

The reasons many individuals have for being unsuccessful at reaching their goals encompass the never ending excuses of: *I don't have enough time. What is the point? I procrastinated too long; I will start again next year. I can't do it.* In order to help motivate your employees to achieve their New Year's resolutions, you must first start by looking at their initial objectives. Were they realistic in their goal setting? Did they outline their plan of attack? Did they evaluate their barriers and make solutions for each one? Did they communicate with their friends, family, and co-workers about their goals? Were they tracking their progress throughout the goal? Was the goal S.M.A.R.T.?

S.M.A.R.T. goals focus on the five key areas of goal setting:

Specific: What do you want to achieve in your area of focus?

Measurable: How will you measure your progress to know if you are successful?

Attainable: Is this goal something that YOU can realistically accomplish in the set amount of time?

Relevant: Do you want to change your health behavior for the right reasons?

Time-Bound: Have you given yourself enough time to prepare and plan for your goal?

Individuals that set SMART goals and accomplish them demonstrate higher self-worth, increased self-esteem, improved mood, better concentration and performance at work and enhanced overall wellbeing and happiness. They also suffer less from stress and anxiety. Employers can help their employees set SMART goals this New Year's for both health and career related areas.

It is important to focus on wellbeing related goals as well as career goals. Wellbeing is defined as the state of being happy, healthy, or prosperous. In this case prosperous does not necessarily mean achieving wealth, but more of achieving success. Mental wellbeing is a state in which we are able to realize our own potential and cope with the everyday stresses of home and work life. When an individual accomplishes a goal they recognize their potential of being successful thus attaining a higher scope of wellbeing. Being well rounded in your overall sense of wellbeing allows individuals to be happier, healthier and more productive at work.

The key to having a successful business is to have happy, healthy, and hardworking employees. Employees that are able to set and achieve SMART goals demonstrate the ability to be more self-sufficient and have a higher sense of wellbeing. Employees that take care of themselves and take pride in their work will lead to a more successful company. This year take time to talk to your employees about their goals and help them make the goals SMART. Not only will the employees reap the benefits of being successful, but so will the employer.

EAP Corner

How to Improve the Engagement of Your Employees

Greg Brannan, Director of Business Development & Training Consultant
Deer Oaks EAP Services

Organizations that have an engaged workforce experience significant increases in the productivity and retention of their employees. Research has found that highly engaged workers believe that they positively impact the quality and service provided by their organization. In addition, one study reported that engaged employees are 35% more likely to stay in their current jobs.

Drivers of Employee Engagement

Below are several management practices that can drive increased levels of employee engagement in an organization:

- **Proactively connect with your employees** - Supervisors who prioritize spending quality time with their employees tend to have a more engaged team. Get to know your employees needs and goals, so that you can assign work to them in the areas of their strengths and interests.
- **Communicate the importance of the work that they do** - An employee's perception of the importance of their job has a greater impact on loyalty than any other factor. Help your employees to see how their role is contributing to the organization's success and future (the overall mission, departmental goals, financial performance, etc.)
- **Give employees input into the work they're assigned** – Whenever possible, solicit employee input into department goals, project plans, etc. As you assign work, provide the “what” (project, task, goals, etc.), but let the employees decide the “how” (specific work plan, methods, etc.).
- **Provide consistent communication** - Keep your employees informed about what's going on in the organization - knowledge is empowering. In addition, give continual feedback about their performance, and regularly provide recognition & appreciation for their contributions. Recognition is a powerful motivator!
- **Maintain a positive workplace culture** – Create an emotionally safe environment for your team that is respectful and non-punitive. An environment like this encourages employees to be creative, share innovative ideas, etc.

Deer Oaks is a leading national provider of EAP and Work/Life services that enhance employee health, morale and productivity.

For more information, contact Greg Brannan at (301) 829-0364 or gbrannan@deeroaks.com.



NEW MEMBERS

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Valerie Kimble

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Brandi Shepler

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Stuart Zetterman

Director of Human Resources
Telcor
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Welcome!

You've joined an outstanding organization!

LHRMA Secretary Board Position Open

The LHRMA Board is looking for an individual to fill the Secretary board position. Among the traditional tasks, such as taking minutes of board meetings, we are looking for someone to:

- Develop/maintain an electronic archive of important chapter documents;
- Review the chapter policies and procedures document on an annual basis and bring recommendations for revision to the Board for approval;
- Assist with the chapter's strategic planning efforts and produce an annual document reflecting the chapter's key goals and objectives for the calendar year; and
- Assist with the administration of the compensation study.

See the attached job description for more information. In order to be considered, individuals must be a SHRM member in good standing and be able to devote approximately 4 hours per month to duties. Board members must be able to attend monthly board and chapter meetings as well.

If you are interested, contact Joel Scherling at president@lincolnhr.org or (402) 471-4736.



Drawing Winner

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

Congratulations to **Kathy Vandenberg**
with the State of Nebraska.
Kathy will receive free registration
for the January program.

LHRMA Board Member Profile

President: Joel Scherling

Q. How did you come to a position in HR?

A. I first worked in postsecondary education providing support to first-generation, low-income and disabled students. In 1994, I came to the Nebraska Department of Education (NDE). First, I was the executive director of the Excellence in Education Council, a group appointed by then Governor Nelson to award grants funded by the educational proceeds from the Nebraska Lottery. After the lottery funding was diverted for other purposes, I administered a grant program for before- and after-school programs. When the HR director was thinking of retiring, she asked me if I had any interest in HR. I told her “no,” but she had planted a seed. A year later, the position was posted and I applied. The rest is history. I’ve held the position for twelve years.

Q. Tell us about your employer.

A. NDE has just over 500 employees who perform a variety of jobs. We have education consultants, accountants, attorneys, and staff members who provide services to individuals with disabilities (Vocational Rehabilitation) and adjudicate claims for social security disability claims (Disability Determination Section). Most of our employees office in Lincoln, but the VR staff are spread out in offices across the state. I have an excellent staff of five, which includes our department receptionist.

Q. Outside of work, what do you enjoy doing?

A. I enjoy photography. I put together photo books, posters and slide shows for my son’s high school tennis team. I also dabble in genealogy. I wish I had more time and energy for that. I recently did some research on my paternal grandmother’s side and heard some great stories.

Q. Tell us about your family.

A. I grew up in a blended family. My mother, who was a widow with four children, married a widower with five children. So, there were eleven of us in a four bedroom farm house with one “real” bathroom.

I’ve been married for over thirty years to my wife Lorie, who also works as an HR director. We have two children. Megan works at UNL and just graduated with her MBA and our son Jared attends Nebraska Wesleyan.



Q. What’s your educational background?

A. I have a bachelor’s in psychology from Doane College and a master’s in educational psychology (counseling) from UNL.

Q. What kind of work did you do to get through college?

A. I worked at a restaurant and held every position they had. I started as a dishwasher, then became a fry cook, moved on to waiting tables and finally was a bartender.

Q. What certifications do you hold?

A. I hold the PHR and SHRM-CP certifications.

Q. What is your biggest HR challenge now?

A. Convincing managers to invest time and effort in performance management.

Q. Tell us something about yourself that we would never guess.

A. When I was around 11 or 12, I preached a “sermon” at my church. For a while, my mom was worried that I would become a minister.

Q. What are you reading right now?

A. The Chief HR Officer: Defining the New Role of Human Resource Leaders, edited by Patrick Wright, John Boudreau, David Pace, Elizabeth Sartain, Paul McKinnon, and Richard Antoine.

(Continued on page 9)

Q. If you could retire tomorrow, and money was no issue, what would you do?

A. I would own and run a fine art gallery.

Q. The thing I enjoy most about being on the LHRMA board is...

A. I enjoy building on the past successes to advance the organization.

Q. What advice would you give to those new to the HR field?

A. Expose yourself to as many facets of HR as you can. Volunteer on LHRMA committees or for other organizations to grow your leadership experience. Get your SHRM certification!

Board Member Responsibilities - President

- Conduct the business of the chapter in accordance with the bylaws and serve as the chairperson of the chapter's board.
- Preside over the activities of officers, as well as standing committees, to ensure the accomplishment of chapter goals, objectives, and strategies.
- Monitor the use, accounting, and handling of chapter funds.
- Chair meetings of chapter officers and members.
- Attend State Council meetings and actively participate in council matters. Provide information as an elected representative of the chapter.
- Maintain a current active SHRM membership.
- Communicate state, area, and/or national goals, policies, and programs to chapter members. Represent LHRMA on the State Council.

Your 2016 LHRMA Board of Directors

- ◆ Certification – **Amy Spellman**
- ◆ College Relations – **Jenessa Keiser**
- ◆ Community Outreach – **Shannon Rowen**
- ◆ Marketing/Social Media – **Kelly White**
- ◆ Membership – **Jamie Mohrman**
- ◆ Past President – **Melissa Price**
- ◆ President – **Joel Scherling**
- ◆ President-Elect/Gov. Relations – **Lindsay Selig**
- ◆ Programs – **Judy Ganoung** and **Michele Spadt**
- ◆ Secretary – **Open**
- ◆ SHRM Foundation – **Denice Sears**
- ◆ Treasurer – **Laurie Gyhra**
- ◆ Workforce Readiness – **Kim Michael**



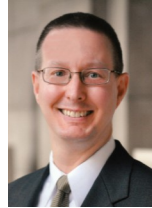
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We're on the web!
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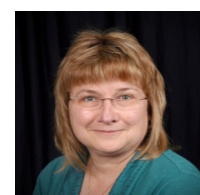
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