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**LHRMA**  
Lincoln Human Resource Management Association

AFFILIATE OF  
**SHRM**<sup>®</sup>  
SOCIETY FOR HUMAN  
RESOURCE MANAGEMENT

## September Program

### Program on September 10: Prescription Drug Abuse

Join us for our program on Tuesday, September 10. Jackie Beau, BSN, RN and Kimberly Mundil, LIMHP, PLADC with Bryan Health will present from 12:00 p.m. to 1:00 p.m.

#### About the Presentation

The two drugs the presentation will be focusing on are Opiates and Benzodiazepines. The presentation

will include information on:

- National and State Trends
- Work Place Impact
- What to Watch For (at work)
- Different Levels of Care for Inpatient Detox/Residential Treatment
- Challenges With This Issue

**SHRM**  
**Foundation**  
2019 CHAPTER OBJECTIVES

— SHRM —  
SHRM-CP | SHRM-SCP  
**RECERTIFICATION  
PROVIDER**  
2019

**SHRM**  
**EXCEL**  
2017

## About the Presenters

Jackie Beau, BSN, RN

Jackie graduated from Wesleyan University with her BSN. She has worked for Bryan Health for 39 years. Her experience consists of Intensive Care, Progressive Care, Emergency Room, Psychiatry, as Nursing Supervisor, and the last 7 years as Nurse Manager of the Independence Center.

Kimberley Mundil, LIMHP, PLADC

Kimberley has been employed as the Clinical Manager at the Independence Center for almost 7 years, this involves supervision of the counseling staff at the Independence Center, a combination of LADC, LMHP and LIMHP staff, most of which are dually credentialed. She has been a licensed clinician for 21 years and have worked in the field, beginning my counseling career at LCC and DEC working with the sex offender, socially and developmentally impaired and mental health programs. After 9 years in corrections, she was hired to develop and coordinate the Behavioral Health Jail Diversion program after Lancaster County was given a grant to begin this program in Lancaster County, she did this for 5 years and then came to the Independence Center. Kimberley has also worked with the TASC program providing on call crisis response services to police and jails in the southeast region of Nebraska for over 10 years as well as serving as a volunteer with the Local Outreach to Suicide Survivors (LOSS) Team since its inception.

## September Program

### WHEN AND WHERE

Tuesday, September 10, 11:15 — 1:00 p.m. at Embassy Suites, 1040 P Street, Lincoln, NE

### REGISTRATION FEES:

Lunch Program Registration Fee: LHRMA members – \$15

All Other Attendees – \$25

*Luncheon attendance is free for SHRM designated student chapter members. Current SHRM designated chapters include: University of Nebraska-Lincoln. Students must register through Jenessa Keiser, College Relations Chair, [college.relations@lincolnhhr.org](mailto:college.relations@lincolnhhr.org) for free meeting*

# WELCOME NEW MEMBERS

LHRMA welcomes the following new members:

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Director, Human Resources

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HR Director

Sampson Construction

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Laurie Prettyman

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SVP, Director of Human Resources

Swanson Russell

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Colby Vesely

Talent Specialist

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## President's Message

By Lindsay Selig, LHRMA President



Hard to believe we are on the downhill slide out of 2019 - August has come and gone and we are once again already at the start of September.

August was a great month and I want to thank those members that were able to attend the HR Nebraska State Conference. We hope you found it beneficial - I know I sure did!

Also, I want to thank all of the hard-working volunteers that made the conference possible. Everything was perfect!

For me, the conference provided many valuable insights. Of course, the legal updates always bring about new ideas for on-going compliance. However, many of my take-a-ways came from the Friday key notes. These two speakers presented a similar idea, but both in very different ways.

The similar take-a-way from these speakers was the importance of an attitude of gratitude. We've all heard it before, but there are so many benefits to this type of mindset - from allowing you, as an HR professional to face a unique or tough situation or just lower your overall stress.

So the next question is...how do we get there? Here are a few ideas.

- Wake up every day and express to yourself what you are grateful for.
- Start a gratitude journal - Express gratitude in this journal every night by noting the things that you are grateful for, proud of, and excited about.
- Acknowledge yourself for what you have done and accomplished in the last day/week/month/year. Instead of comparing yourself to others, give yourself credit for the big and small things you have been doing!
- Acknowledge other people and thank them for inspiring/helping/supporting you.

If getting to the starting point of an attitude of gratitude is hard, simply start by asking yourself, "What *could* I be grateful for?", and see where it takes you.

Good luck!



## Legal Update

# IT'S NOT ALL ABOUT STRIPPERS

Mark A. Fahleson & Tara Tesmer Paulson  
Rembolt Ludtke LLP

Not a week goes by without another news story about an employer found liable for misclassifying its workers as “independent contractors” rather than employees. Case in point: The Penthouse Club in Philadelphia.

The Penthouse Club is an adult entertainment facility in Philadelphia. The Club does not pay its “entertainers” an hourly wage nor does it pay them to perform on stage. The only way an “entertainer” can earn money is either to perform dances on the Club’s stage, where patrons may compensate the “entertainer” with tips, or to give a private dance to a customer in one of the Club’s private dance rooms. To perform at the Penthouse Club, an “entertainer” must rent stage time from the Club for each shift that she works. “Entertainers” are also required to “tip-out” certain individuals (e.g., disc jockey) who work at the Club.

Sounds like the “entertainers” are independent contractors, right?

Wrong.

On August 30, 2019, the U.S. Court of Appeals for the Third Circuit affirmed a \$4.5 million verdict in favor of a class of “performers” at the Penthouse Club for unpaid minimum wages and unjust enrichment (*Verma v. 3001 Castor, Inc. d/b/a The Penthouse Club*, No. 18-2462, 3<sup>rd</sup> Cir. Aug. 30, 2019). Applying what is known as the “economic realities” test, the appeals court upheld the trial court’s determination that the “performers” were “as a matter of economic reality” employees of the Penthouse Club.

The misclassification of workers presents significant liability for all employers, not just night clubs. The determination of who is an “employee” has become more complicated in recent years with the U.S. Department of Labor implementing an enforcement initiative on worker misclassification and states such as California tightening the tests for who can legitimately qualify as an “independent contractor.”

Further complicating matters, each federal and state law has a slightly different test for determining employment status. Common factors considered include the following:

- The extent to which the services rendered are an integral part of the principal's business.
- The permanency of the relationship.
- The amount of the alleged contractor's investment in facilities and equipment.
- The nature and degree of control by the principal.
- The alleged contractor's opportunities for profit and loss.
- The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
- The degree of independent business organization and operation.

## Legal Update (continued from page 5)

Stated another way, these factors “strip” down to three considerations:

1. **Investment**—How much has the individual invested in their business? Do they operate through an entity such as a limited liability company? Do they provide their own equipment and supplies? Do they purchase their own casualty insurance? Can the individual actually sustain a financial loss or profit?
2. **Independence**—Does the individual hold themselves out to offer this same service to others? Do they have their own business cards/website promoting the service? Can the individual hire others to perform the service on behalf of their business?
3. **Control**—This is the most important factor. How much control does your organization exert over the individual? Do you tell the individual when they must show up? Do you have rules on how the work is to be performed? The less control the better if you want the individual to be categorized as an independent contractor.

**LESSONS:** In conducting employment audits for our clients it has become clear that a significant number of Nebraska employers continue to misclassify workers as “independent contractors.” The risk of doing so is significant and may jeopardize the very existence of your company or organization.

Last year we highlighted the importance of proper classification in one of our complimentary monthly “First Friday” Webinars. Joining us on the Webinar was Thomas A. Ukinksi, legal counsel for the Nebraska Department of Labor. You may access this free webinar here <https://www.gotostage.com/channel/5fb98f30dc5e49d988ed7f0520769c17/recording/bc950acbc38b469688159eb27b033506/watch?source=CHANNEL>

This issue is of importance to all employers—not just night clubs. There is no better time than the present to reevaluate your worker relationships and take proactive steps to ensure proper classification.

***Fahleson and Tesmer Paulson are attorneys with the Lincoln-based law firm of Rembolt Ludtke LLP and may be reached at (402) 475-5100 or [mfahleson@remboltlawfirm.com](mailto:mfahleson@remboltlawfirm.com) and [tpaulson@remboltlawfirm.com](mailto:tpaulson@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.***



# CBD OILS AND WORKPLACE DRUG TESTING

By: SUSAN MERWICK, LCSW, SAP, Continuum EAP Sr. Workplace Consultant

CBD (cannabidiol) oil is getting a lot of attention these days. There are a myriad of companies promoting it as a natural remedy for pain relief, anxiety and stress reduction, even improved sleep. Most of these companies claim that their products are free of THC, the psychoactive compound in marijuana, so they shouldn't lead to a positive workplace drug test. Nevertheless, stories are popping up all over about CBD oil users who claim to have tested positive for THC on a workplace drug screen. How can this be?

## A LITTLE BACKGROUND INFORMATION.....

CBD products are made from the cannabis plant. CBD is one of the many active chemical compounds in the cannabis plant. Hemp and marijuana are both cannabis plants, the main difference being that hemp contains very little or no THC, the active chemical in marijuana that is associated with "getting high." Cannabis strains must have less than .3% THC in order to be classified as hemp. Most CBD products are made from hemp, not marijuana.

There are also different types of CBD oils, some are referred to as isolates and others as full spectrum, a differentiation that has to do with how the CBD is extracted from the cannabis plant. CBD isolate products typically claim not to have any THC in them while full-spectrum oils do contain THC. Why would someone want to take a full-spectrum oil if they know it contains THC? At one time it was believed that the purest form of CBD, isolates, provided the most positive results for treating inflammation and pain. However, a follow-up study conducted by researchers later found that full-spectrum products may actually be more effective. This is one of the main reasons why full-spectrum products which contain THC are so popular.

## CBD AND WORKPLACE DRUG TESTING.....

When it comes to workplace drug testing, the distinction between isolates and full-spectrum oils is very important because it is possible for someone to have a positive drug screen if they are using a full-spectrum product that contains THC. Complicating matters further is that CBD products are currently unregulated by the FDA, which means that there are no standards for which these products must be classified or sold. Some products that claim to be THC-free, may actually have a small amount of THC in them and some that claim to be below the .3% level may have more THC in them than they advertise. This lack of consistency and regulation makes it difficult for consumers to be able to know exactly what is in any one product, even when the label claims it is pure or THC-free.

## WHAT EMPLOYEES NEED TO KNOW.....

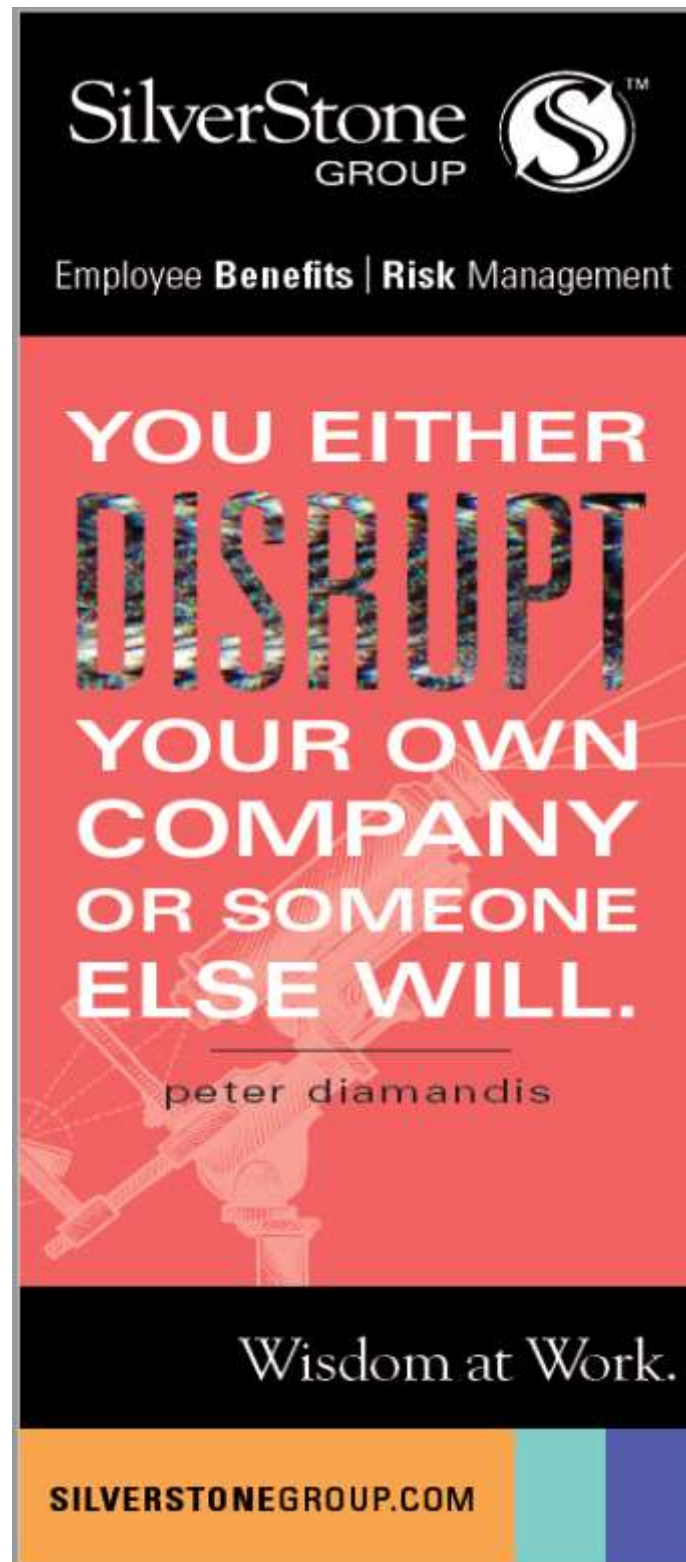
Employees who work for companies who conduct workplace drug testing, could feasibly test positive for THC on a workplace screen if they use CBD oil. For employees who work in safety-sensitive fields that are regulated by the Department of Transportation, testing positive for THC is a violation and will result in the need for a SAP (Substance Abuse Professional) process.

## WHAT EMPLOYERS NEED TO KNOW.....


Employers who conduct workplace drug testing should continue to follow their drug testing procedures and policies for how they handle positive test results. Employers should not concern themselves with the reasons or excuses employees may provide for having a positive drug screen. A drug test doesn't indicate whether the THC came from taking an oil or smoking or ingesting marijuana.

**For more information about Continuum EAP and its services, contact Gail Sutter.**

# September Sponsor SilverStone Group



The graphic features a black header with the SilverStone Group logo and tagline. Below is a red section with a quote by Peter Diamandis. The bottom section is black with the slogan 'Wisdom at Work.' and a footer with the website URL and a color bar.

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