

**REGION 4**

- Alabama
- Florida
- Georgia
- Mississippi
- Puerto Rico
- South Carolina
- Tennessee

**INSIDE THIS ISSUE:**

Regional News | & 4

Regional Consultant 1

FLSA News 2

2011 Annual Conference 3

Advocacy Committee 4

New Members 5

# ASHHRA REGION 4 NEWS

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JUNE 2011

## News from Region 4:

Spring was a busy time in Region 4! It has been my pleasure to have attended three state conferences during this quarter. In April, I attended the Tennessee Society of Healthcare Human Resources Association (TSHHRA) in Memphis, Tennessee, the South Carolina Healthcare Human Resources Association (SCHHRA) in Hilton Head, SC, and the Georgia Society for Healthcare Human Resources Administration (GSHHRA) in Greensboro, GA.

The minute I stepped off the shuttle at the Doubletree in Memphis, I was delighted by the smells of barbeque. I inquired inside the hotel and was directed to Rendezvous, where I feasted on their famous barbeque ribs. The conference was also a great success! A couple of the many highlights were the keynote speech by the mayor of Memphis, A.C. Wharton and the program “When Eminem Becomes a CNA” presented by Jonathan Martin with Constangy, Brooks and Smith...outstanding! Our dinner event was also at the Rendezvous restaurant-only this time there was an Elvis impersonator! Great food and a great time was had by all. Many thanks to Rosalie Gibson, Karen Faught and the Tennessee folks for allowing me to be part of their “family”!.....Cont’d on page 4



We had our second Region 4 conference call on May 25th, which was attended by Joey Boyce from South Carolina and Cathy Roberts from the West Central Florida Chapter. I encourage the chapter presidents or designee to participate in the calls so that I will have information about your chapter to add to the newsletter. The dates for future calls are August 31st, and November 16th. I have sent dial in information to the chapter presidents and will forward again prior to the dates.

### Region 4 Consultant

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Please feel free to call or email me if you have any questions, ideas, comments, or suggestions.

# PREVENTATIVE MEDICINE : *Legal Tips for Healthcare Employers*

## Have You Taken Your Hospital's Pulse Lately?

### *FLSA Collective Actions Are Healthcare's Next "Big" Thing!*

By: W. Jonathan Martin II

For more information on FLSA trends in health care, contact Jonathan Martin at [jmartin@constangy.com](mailto:jmartin@constangy.com) or 478-621-2407, or any other Constangy attorney at [www.constangy.com](http://www.constangy.com).

While healthcare executives have been bracing themselves for the impact of 2010's healthcare reform, another threat to the well-being of your healthcare system has gone largely ignored. Wage and hour actions targeting the health care industry have exploded recently, exposing hospitals to expensive and time consuming litigation. This trend is expected to continue into the immediate future. A recent \$8.5 million settlement involving a Massachusetts hospital illustrates the vulnerability hospitals face. In that case, attorneys sued claiming that the hospital failed to appropriately pay hourly workers for time worked before and after their scheduled work shifts and during interrupted or missed meal breaks. Workers also claimed that they were not properly compensated for training time. The same law firm extracted a \$9 million wage and hour settlement from a New York hospital.

The threat comes from not only the plaintiffs' bar, but from the federal government as well. Secretary of Labor Hilda Solis has made it clear that the U.S. Department of Labor (DOL) is "back in the enforcement business." As a result, wage and hour investigations are on the rise. This initiative by the DOL (creatively titled "We Can Help") promises to catch many employers, especially healthcare employers, unaware. The healthcare industry is a particular target. The DOL has stated that one regional investigation of Fair Labor Standards Act (FLSA) compliance among healthcare employers found only a 36% compliance rate. With the cost of non-compliance stretching in to the millions of dollars, healthcare employers should give immediate attention to engaging in a compliance self-assessment.

#### **Recent Trends:**

***Automatic Meal Deductions***—The FLSA does not require that an employer provide employees with lunch or coffee breaks. However, when employers do offer short breaks (usually 5 to 20 minutes), the FLSA requires that this time be considered work time—pay is required and time is included when determining if overtime was worked. In contrast, genuine meal periods (typically lasting 30 minutes), are not work time and are not required to be paid, as long as the employee is truly not working.

Many recent class-action suits regarding wage and hour violation of the FLSA have involved automatic mealtime deductions. Settlements for these suits have reached into the millions of dollars. The common manifestation is a claim of violation of the FLSA by employers who *automatically* deduct a 30-minute meal period. While this practice itself is not unlawful, many hospital employees, like nurses, sporadically work during the "break period." It is ultimately the hospital's responsibility to ensure that the meal break is uninterrupted. Although this unpaid time may only amount to a few minutes a day, over the course of multiple years and thousands of employees the back pay can be staggering, particularly when one considers that the law provides for automatic liquidated damages in an amount equal to the unpaid overtime. On top of that, attorneys' fees can be awarded to the employees.

***Off the Clock Work***—In addition to lawsuits regarding improper meal deductions, another trend is lawsuits for unauthorized hours of work. In such a situation, off-the-clock work is performed by the employee, but it is not recorded by the employer as time worked. In a non-health care setting, the most common example of off-the-clock work is time spent by employees at home during weekend and other non-business hours. In health care, "off-the-clock" work includes employees who may "come early" and start working before the official start time of their shifts and nurses who continue to work after their shift ends. Such time counts as work time and must be included in the FLSA pay computations, provided only that the employer knew or should have known that the employee was beginning work early or working late (and, of course, to the extent that the employee spent pre-shift or post-shift time actually performing work activities). It does not matter that the hospital has a policy prohibiting overtime without pre-approval.

Similarly, pre-shift "roll calls" are also considered work time, as is time spent setting up equipment before the official start time of a shift. The FLSA mandates that off-the-clock work by non-exempt workers must be recorded by the employer. If these off-the-clock hours include overtime, the employer must pay overtime wages for this time.....

**Cont'd on page 5**

# ASHHRA Annual Conference: Schedule at a Glance

## Pre-Approved for 18.5 HR Certification Institution

### General Recertification Credit Hours!

#### Saturday, September 10th

7:00am-6:00pm	Registration / Resource Library / Cyber Café
7:30am-8:30am	Breakfast for Pre-Conference Sessions
8:30am-12:30pm	Pre-Conference Learning Tracks
8:30am-4:30pm	Chapter Leadership Workshop (CLW)
12:45pm-1:45pm	Networking Lunch for Pre-Conference and CLW
2:00pm-4:00pm	Legislative Track
4:00pm-5:00pm	Special Recognition Reception

#### Sunday, September 11th

7:00am-5:00pm	Registration / Resource Library / Cyber Café
7:45am-9:00am	Regional Breakfasts
9:15am-11:00am	Opening Ceremony: Chip Madera
11:00am-1:00pm	Exhibit Hall / Lunch
1:15pm-2:45pm	Learning Sessions
3:00pm-4:30pm	Learning Sessions
4:30pm-6:30pm	Exhibitor Appreciation Social
7:00pm	MetLife Social Event

#### Monday, September 12th

7:00am-5:00pm	Registration / Resource Library / Cyber Café
8:00am-9:45am	ASHHRA Motivational Breakfast: Henry Winkler
10:30am-11:30am	Learning Sessions
11:30am-2:00pm	Exhibit Hall / Lunch
2:00pm-3:30pm	Learning Sessions
3:45pm-5:15pm	Learning Sessions
5:15pm	Attendees free to plan social activities on their own

#### Tuesday, September 13th

8:15am-9:45am	Learning Sessions
10:00am-12:00pm	Closing Ceremony Brunch: Ian Morrison

**Please forward me any topics that you would find helpful in managing your chapter and I will forward those to ASHHRA. Thanks.**



#### Reminder:

The Chapter Leadership Conference will be held on Saturday, September 10, 2011 in Phoenix, AZ in conjunction with the annual conference. ASHHRA will still honor the payment for the one night stay of your chapter president or chapter appointed leader to attend, and one Chapter Leadership Program Registration Fee for all affiliated chapters.

You are now able to make your hotel reservations upon registering for the annual conference. The ASHHRA room rates are good for three days prior and three days following the conference if you would like to make plans to visit Phoenix and its surroundings a little longer!

Register for the annual conference:  
<http://www.ashhra.org/conference/2011/registration.shtml>

## From the Department of Labor - Office of Labor-Management Standards

### Labor-Management Reporting and Disclosure Act Interpretation of the "Advice" Exemption

**SUMMARY:** The Office of Labor-Management Standards of the Department of Labor (Department) is proposing revisions to the Form LM-10 Employer Report and to the Form LM-20 Agreements and Activities Report, which are required under section 203 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), 29 U.S.C. 433. These reports cover agreements or arrangements between employers and labor relations consultants whereby the consultant undertakes activities to persuade employees concerning their rights to organize and bargain collectively. The Department proposes to revise its interpretation of the "advice" exemption to such reporting, by limiting the definition of what activities constitute "advice" under the exemption, and thus expanding those circumstances under which reporting is required of employer-consultant persuader agreements. The Department also proposes to revise the forms and instructions to make them more user-friendly and require more detailed reporting on employer and consultant agreements, as well as to require that Forms LM-10 and LM-20 2 be filed electronically. The Department invites comments on any aspect of this proposed rule.

### News from Region 4 (Cont'd from Page 1)

Speaking of family, I flew in from Memphis on a Friday night and left the next morning for my "home" conference in Hilton Head, where Joey Boyce and the South Carolina folks put on a great conference! Best practices were presented by several of the members and have become a popular segment of the annual agenda. Several attorney groups were also present, sharing information on topics such as wage and hour, FMLA, and harassment and discrimination cases. Lee Shreter, with Little Mendelson, opened the conference with "Wage and Hour Challenges for Healthcare Employers: Achieving Compliance and Avoiding Litigation." Wage and hour actions have increased within recent months and Lee addressed many of the issues facing us as healthcare professionals. Her ability to keep us engaged in an otherwise tedious topic is to be complimented. Our dinner event consisted of a smorgasbord of delectable goodies and a band in the outdoor pavilion area at the hotel. Congratulations to Joey and the South Carolina board for exceeding all of our expectations again this year!

I just returned from the Georgia conference which was held at the Ritz Carlton, Reynolds Plantation, on Lake Oconee. This is one of the most beautiful properties I have ever had the privilege to visit. Jeff Thompson with Constangy, Brooks and Smith presented a Georgia and Federal law update that included the ADA and the new regulations, unions in the workplace, and the current state of healthcare. When Dan Cathey, CEO of Chick-Fil-A, took the floor, you could feel the excitement and every person in the room was absolutely captivated and he didn't disappoint! The Ritz Carlton and Dan Cathey...need I say more? Jason Hopkins and his board put a lot of effort in this conference and it did not go unnoticed!

The conference season is over for Region 4 and I'm looking forward to attending a function in Tampa in November for the West Central Florida chapter. I am proud of our region's accomplishments in promoting healthcare HR and our attention to providing opportunities for both the personal and professional growth of our employees. I have enjoyed forming new relationships and reconnecting with "old friends" in my travels and look forward to seeing you again in Phoenix.

**Reminder:  
Be sure to use the ASHHRA website for all  
your HR resource needs:  
[www.ashhra.org](http://www.ashhra.org)**

**Training and Seminars**-Most training time is “work time.” Training time is work time if it occurs during an employee's regular shift, or if it is required by the employer. Training time need not be counted as work time only if it meets the following criteria: a.) It occurs outside of an employee’s normal work schedule, b.) It is truly voluntary (where there is neither direct nor indirect pressure on the employee to attend, and no “come back” if the employee chooses not to attend), c.) It is not directly related to the employee’s current job, (i.e., the training is designed to disqualify the employee to get a new job, and not to enhance the skills used by the employee on the existing job), and d.) The employee does no other work during the training.

**What should you do?** The best defense is a good offense. Since the clear trend is toward wage and hour litigation in health care, it is important for hospitals and other health care providers to take proactive steps to address the potential liability before a lawsuit arises. We recommend the following: a.) If possible, eliminate “automatic” deductions from employee time for meal breaks. Require people to clock in and out, b.) If it is not possible to eliminate “automatic” deductions, develop a policy addressing interruptions during meal breaks and accounting for that time worked, c.) Have employees certify hours of work (and make appropriate corrections for missed meal breaks) each payroll period, d.) Audit all job categories to address misclassifications, e.) Clearly communicate to employees that off-the-clock work is not accepted, and have a reporting mechanism for bringing underpayments to the management’s attention, f.) investigate and address all wage and hour complaints, and g.) train managers & supervisors on their requirements under the Fair Labor Standards Act.

**Welcome, Region 4 New Members!**

Name	Title	Organization	Address	Phone	Email Address
<b>Kirby Beaver</b>	Dir. Human Resources	Quality Correctional Health Care	200 Narrows Pkwy Suite A, Birmingham, AL 35242-8624	(205)437-1512	kirby.beaver@qchcweb.com
<b>Mike</b>	Chairman & CEO	Wheless Partners	1740 Oxmoor Road, Birmingham, AL 35209	(205)870-1550	mwilliams@whelsspartners.com
<b>Derek Carpenter</b>	Manager of Strategic Partnerships	PPR Healthcare Staffing	333 First Street North #200, Jacksonville Beach, FL 32250	(866)318-5038	derek.carpenter@pprhealthcare.com
<b>Tina Jackson</b>	Dir. Human Resources	Barrow Regional Medical Center	206 Raven Rdg, Jefferson, GA 30549-7276	(770)307-5455	tina.jackson@hma.com
<b>James Wiederhold</b>	Principle	Wiederhold & Associates	12195 Hwy92, Ste114, Box 347, Woodstock, GA 30188	(800)618-2650	jim@wiederholdassoc.com
<b>Gregory Justice</b>	Vice President	Stratford Fidelity	2002 Summit Blvd, Ste 300, Atlanta, GA 30115	(678)428-1932	greg.justice@stratfordfidelity.com
<b>Erin Davis</b>	Dir. Human Resources	Emory Healthcare, Inc	1817 Clifton Rd, Atlanta, GA 30329-4021	(404)728-6858	erin.davis@emoryhealthcare.org
<b>Cheryl Wisnieski</b>	Employee Relations Specialist	Dept Of Veterans Affairs	400 Veterans Avenue, Biloxi, MS 39531	(228)523-5557	cheryl.wisnieski@va.gov
<b>Davis Bourne</b>	Employment Manager	Palmetto Health	239 Greystone Blvd, Columbia, SC 29210	(803)296-7895	davis.bourne@palmettohealth.org
<b>Mary Lara</b>	Recruiter	Baptist Memorial Hospital	6484 Copper Leaf Cv W, Memphis, TN 38141-8347	(901)226-4506	beth.lara@bmhcc.org
<b>Linda Curle</b>	HR	The Urology Group PC	6029 Walnut Grove Rd Ste 300, Memphis, TN 38120-2112	(901)767-8158	linda@memphisurology.com
<b>Kim Brady</b>	Dir. Human Resources	Acadia Healthcare	725 Cool Springs Blvd Ste 600, Franklin, TN, 37067-27169	(615)732-6250	kbrady@acadiahealthcare.com
<b>Michelle Oglesby</b>	Dir. Human Resources	Knoxville Comprehensive Breast Center	640 Harold Dr, Maryville, TN, 37803-8152	(865)584-0291	moglesby@knoxvillebreastcenter.com
<b>George Bell</b>	Manager, Compensation	Palmetto Baptist Medical Center	129 Drake Hill Dr, Lexington, SC, 29072-7101	(803)296-5813	ed.bell@palmettohealth.org
<b>Denise Gentry</b>	Occupational Health Nurse	Sterilite	1939 Charlottes Rd, Clinton, SC 29325-5131	(864)938-1600	dgentry@sterilite.com
<b>Terri Sharp</b>	Human Resources Manager	Tennessee Health Management, Inc	30 Beaver Rd, Linden, TN 37096-5221	(931)589-5960	tsharp@thmgt.com