

REGION 4

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ASHHRA REGION 4 NEWS

VOLUME 1, ISSUE 4

DECEMBER 2011

News from Region 4:

As the end of 2011 is drawing to a close, I would like to thank all of the chapters in Region 4 for their efforts and commitment in promoting the HR profession. I have enjoyed getting to know you and being part of your meetings and conferences. I look forward to 2012 and working on the goals we have set for ourselves.

I had the opportunity to attend the West Central Florida Healthcare Human Resources Association holiday meeting November 11 at Maggiano's Restaurant in Tampa, Florida. Craig Blythewood did an outstanding presentation on "Managing Positive Energy in the Workplace" and I must say the lunch selection was fantastic!

Please don't forget to sign a new chapter affiliation agreement by December 30th. We will keep this agreement for a one year term and an enhanced agreement will be available in January of 2013. For your convenience, the agreement is attached at the end of this newsletter.

The deadline for submissions for the chapter management program is May 4th. I will be happy to assist any of you with this process. I urge you to prepare this submission with enough time allowed for my review.

The winter 2011 issue of HR Pulse is available online. This issue contains articles on background checks, onboarding and retaining nurses, and the current state of human resources.

I wish all of you a Merry Christmas and a Happy New Year!



We had our fourth Region 4 conference call on November 16th, which was attended by Rosalie Gibson from the Tennessee Chapter. The dates of our 2012 calls are March 7th, June 6th, September 5th and December 5th. I will forward the dial in information to the chapter presidents and will send a reminder 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 : *Think Your Hospital Is Non-Union - Think Again!*

By: W. Jonathan Martin II and Leigh E. Tyson

For more information on FLSA trends in health care, contact Jonathan Martin at jmartin@constangy.com or 478-621-2407, or any other Constangy attorney at www.constangy.com.

It's an easy trap for employers—if your health care facility doesn't have a union, you may feel like the National Labor Relations Act doesn't have much application in your workplace. After all, the NLRA was designed to handle labor relations problems, and you have to have a union before labor issues can arise—right?

Unfortunately, this misconception is far from the truth. In reality, it is those facilities which are *not* unionized that most frequently run afoul of the provisions of the Act—and they often do so by simply enforcing their own policies and rules. And, under the expanding laws, a company's social media policy may be the biggest trap of them all.

What is the National Labor Relations Act?

First, it is important to understand exactly what the law does. The National Labor Relations Act ("NLRA") defines the rights of employees to organize to join a union, and to bargain collectively with their employers through union representatives; however, in addition to conducting union elections and overseeing the collective bargaining process, the Act also protects employees in exercising additional rights, including the right to engage in protected, concerted activity. Employees receive this protection whether a union is involved or not; as such, this is where most employers run unto trouble.

Traditionally, the NLRA has protected concerted employee actions which are undertaken for the benefit of others, and which relate to working conditions. As such, it is a violation of the NLRA for an employer to discipline employees (including non-union employees) for discussing wages or working conditions. And, although normally more than one employee must be involved (thereby making the activity "concerted,"), even a single employee can be engaged in protected concerted activity if that employee purports to be acting on behalf of a group, or preparing for group action. Finally, even when the activity is somehow defamatory or damaging to a company, the Board still applies a high standard, and holds that all communications concerning working conditions are protected so long as they are not so disloyal, reckless, or maliciously untrue as to lose the Act's protection.

Today, however, the members of the National Labor Relations Board—the federal agency charged with administering the Act (the "NLRB")—have expanded the notion of what constitutes protected concerted activity. While previously, the "concerted" concept necessarily meant two or more employees working together (or one employee acting on behalf of other employees), the new Board members take a less restrictive view. Consequently, they have begun to find cases in which individual employees, seemingly acting alone, can still receive protection; one particularly controversial example of this new approach occurred in the "Facebook case."

The Facebook Case: A New View Of Concerted Activity

Recently, the NLRB filed a complaint against American Medical Response of Connecticut, alleging the company engaged in unfair labor practices by firing an emergency medical technician after she posted negative comments about her supervisor and the company on her private Facebook page. The NLRB has also contended that the employer's blogging and internet posting policy was overly broad, based on the employer's prohibitions on disparaging the company or individual supervisors, and on depicting the company on the internet in any way without permission.....**CONT'D ON PAGE 4**

Upcoming Regional Events:

- Florida Society for Healthcare Human Resources Administration** will be hosting their annual conference at the Hammock Beach Resort in Palm Coast, Florida March 28-30, 2012. This resort is located near St. Augustine and boasts a lazy river, signature golf courses designed by Jack Nicklaus and Tom Watson, spa and a host of other recreational amenities.
- South Carolina Healthcare Human Resources Association** will be hosting their annual conference at the Hilton Resort in Hilton Head Island, SC. Located within the world class Palmetto Dunes resort community, the Hilton offers the ultimate in both golf and tennis as well as a spa that reflects the elements of their coastal setting.

Reminder:
Be sure to use the ASHHRA website for all your
HR resource needs:
www.ashhra.org

SAVE THE DATE:
September 22 - 25,
2012
ASHHRA Annual
Conference to be held
In Denver, Colorado

ASHHRA Mentoring Program

ASHHRA is currently seeking mentors and mentees for the 2012 ASHHRA Mentoring Program.

You can find more information about the Mentoring Program at the following website:

<http://www.ashhra.org/learning/mentoring.shtml>.

If you are interested, you can download the application to complete. The program starts in January 2012.

PREVENTATIVE MEDICINE: (CONT'D FROM PAGE 2)

The Facebook exchange, which the employer released to the media, went as follows:

Employee: *looks [sic] like I'm getting some time off. Love how the company allows a 17 to be a supervisor!*

[A "17" is the employer's code for a psychiatric patient.]

Commenter: *What happened?*

Commenter: *What now?*

Employee: *Frank being a [expletive deleted].*

Commenter: *I'm so glad I left there!*

Commenter: *Ohhh, he's back, huh?*

Employee: *yep has a [expletive deleted] as usual [sic]*

Commenter: *I am sorry, hon! Chin up!*

The employee was terminated in December 2009, although company representatives claimed that it was because of "multiple, serious complaints about her behavior," and not because of her Facebook posting. To this end, the company claimed that it received two complaints in 2009 that Souza was rude to patients.

Still, what is noteworthy here is not the company's defense, but the fact that the NLRB took the position that, by posting her complaints on her Facebook page, the employee was engaged in protected concerted activity. To this end, Lafe Solomon, Acting General Counsel for the NLRB, was quoted by *The New York Times* as saying that Facebook is no different from a water cooler—and that discussions on Facebook or other social media are just as protected.

Nevertheless, there may be several problems with the NLRB's position. First, as noted by many commenters, it defies common sense to bash one's supervisor and employer in a semi-public arena where the evidence may exist forever. Second, is calling one's supervisor a "psychiatric patient" and "expletive deleted" necessarily a discussion of working conditions at all? Third, based on the exchange quoted above (which may not be complete), it does not appear that the commenters responding to Souza's post were co-workers at all, but were actually *former* co-workers. Indeed, there are an estimated 500 million active users of Facebook, the vast majority of which would not be co-workers of the posters. Finally, although most courts would probably find that Souza's calling her boss a "17" (psychiatric patient) was mere opinion and hyperbole (and therefore not defamatory), it seems there is at least an argument that this was a defamatory statement which should not be protected by the Act.

But even if the statements themselves were not protected, this was only half of the issue. The other consideration is the fact that the Board further contended that the ambulance service's internet and blogging policy unlawfully deterred protected concerted activity because it prohibited (1) online disparagement of the company and supervisors, and (2) *any* depiction of the company on the internet without prior permission. Whether the Board's position here is correct is a much closer call, and something with even more universal application—if *any* employer's social medial policy is too overbroad, and places too much restriction on what employees can say online, then the employer may be violating the Act simply by having the policy in place.

Thus, even though the Facebook case involved a unionized employer, it is important to remember that there is nothing that prevents the same fate at a non-union facility. Merely maintaining an overbroad rule can be seen as a violation of the Act; terminating an employee under the rule could constitute a further violation, and would make an employer liable for back pay.....**CONT'D on PAGE 5**

PREVENTATIVE MEDICINE: (CONT'D FROM PAGE 4)

As such, the following are some other tips on social media policies in light of the NLRB's action:

Don't give up on having a social media policy.

Having a realistic and enforceable social media policy in place before issues arise is still highly recommended. In addition to providing helpful and proactive guidance to employees who may or may not be very sophisticated about who actually reads their Facebook postings, such policies are also helpful in defending cases of online harassment or discrimination. Make it clear that the policy is for the mutual protection of the employer and employees, and that the company respects the individual's right to self-expression and concerted activity. Ensure that every employee receives and signs a copy of your policy. Make it clear that any violation will subject an employee to disciplinary action, up to and including termination. But, by all means, revise the policy regularly in light of changes in technology and in the law.

Make sure your employees don't forget their day jobs.

In addition to these broader guidelines, an employer should also make it clear that social networking should not interfere with job performance, and that employees should avoid harming the image and integrity of the company—for example, by making an unflattering (or potentially libelous) portrayal of the company to the general public or customers. Also make it clear that the publication of any confidential or proprietary information will be grounds for discipline or termination, as will publication of statements that falsely purport to be made on behalf of the company.

Posting at home can still violate the policy if it affects the workplace.

A good social media policy should convey that harassment, bullying, discrimination, or retaliation that would not be permissible in the workplace is not permissible between co-workers online, even if it is done after hours, from home, and on home computers. In sum, respectful communication is still a requirement for the well being of all parties.

"Drink responsibly," as they say.

Encourage responsible use of the internet and social media forums when discussing the company or its employees. Many employees actually believe that their social media communications are "private," and it is worthwhile to caution them that such is not the case. Warn them that if they wouldn't say it directly to a supervisor's face, then they may not want to publish it to Twitter, which is estimated to hit 200 million users by the end of the year, or on Facebook, with 500 million users. Moreover, electronic communications live forever: an employee can deny calling his boss an "SOB" at the water cooler (not that we condone lying), but the MySpace post saying the same thing can never be denied.

Don't Fall Into The Trap!

The Facebook issue was ultimately settled, and so the case law on the matter is not yet solidified; however, from the statements of the Board and the General Counsel, it is clear that the view of concerted protected activity is expanding. In light of the NLRB's position, it is prudent for employers to consider a legal review of their social media policies, as well as other potentially damaging handbook provisions, to ensure compliance with the Board's expanding view. Remember, even if your hospital is union-free, don't forget that the NLRA traps are still out there—and you don't want to be the next to fall in!

Welcome, Region 4 New Members!

Name	Title	Organization	Address	Zip	Email Address
David Anderson	Executive Vice President & Chief Compliance Officer	WellStar Health System	805 Sandy Plains Rd, Marietta, GA	30066	David.anderson@wellstar.org
Angela Beaudry	Director, Human Resources	Wuesthoff Health System	110 Longwood Avenue, Rockledge, FL	32955-2828	Angela.beaudry@hma.com
Lisa Bryant	Director, Human Resources	Cannon Memorial Hospital	PO Box 188, Pickens, SC	29671-0188	lbryant@cmhsc.org
Donna Damico	Director, Human Resources	Carolinas Hospital System	805 Pamplico Highway, Florence, SC	29505-6050	311damico@roadrunner.com
Leila Devaughn	Sr. Human Resources Consultant	Wellstar Cobb Hospital	489 Lindbergh Pl Ne, Apt 902, Atlanta, GA	30324-3357	Leila.devaughn@wellstar.org
Ruth Dow	HR Specialist	NF/SGVHS- Lake City VAMC	619 S Marion Ave, Lake City, FL	32025-5898	Ruth.dow@va.gov
Lisa Garver	Sr. Human Resources Consultant	Wellstar Cobb Hospital	1162 Harrowgrove Ct SW, Marietta, GA	30064-4632	Lisa.garver@wellstar.org
Connie Gee-Abate			105 Adalia Ave, Tampa, FL	33606-3303	Connie.gee@med-vision.com
Volante Henderson	Human Resources Manager	Walton Rehabilitation Health System	4807 Apple Court, Augusta, GA	30909	vhenderson@wrh.org
Diana Hodge		MCG Children's Medical Center	4244 Riverside Dr, Evans, GA	30809-5012	dhodge@georgiahealth.edu
Pamela Jackson	Sr. Human Resources Consultant	Wellstar Cobb Hospital	1420 Gentry Ct, Powder Springs, GA	30127-5509	Pamela.jackson@wellstar.org
Betsy Jacobs	Director of Client Services	Sterling Executive Recruitment & Consulting	5235 Rollins Ave, Jacksonville, FL	32207	sterlingBHJ@comcast.net
Marina Konchak	Sr. Manager of Human Resources	Catholic Hospice	14875 NW 77th Ave, Ste. 100, Miami Lakes, FL	33014-2568	HRmarina@aol.com
Arthur Mastrapa	Project Manager Payroll		1035 Greenwood Blvd, Lake Mary, FL	32746	amastrapa@ahss.org
Cindy Murphy	Medical Social Worker	Covenant Hospice	4907 Bell Ridge Lane, Apt 207, Pace, FL	32571-2698	Cindy.murphy@covenanthospice.org
Chad Naylor	Recruiter	Baptist Health South Florida	4000 Ponce de Leon Blvd, Ste 470, Coral Gables, FL	33146	chadn@baptisthealth.net
Kelly Plaia	Benefit/Compensation Manager	Laurens County Healthcare System	22725 Highway 76 E, Clinton, SC	29325-7527	kplaia@lchcs.org
Scarlett Price	Human Resource	Continue Care Home Health	401 Bailey Dr, Hollandale, MS	38748-3206	scarlettprice@continuecare.com
Beth Rogers	Employee Relations	Floyd Healthcare Management	420 E 2nd Ave, Suite 101, Rome, GA	30161-3209	brogers@floyd.org
Sharon Thomas	Human Resources Manager	Correctional Medical Associates	4821 Clove Dr SW, Mableton, GA	30126-1186	stthomas@correctionalmed.com
Audrey Virden	Human Resources	Continue Care Home Health	401 Bailey Dr, Hollandale, MS	38748-3206	audreyvirden@continuecare.com
Katherine Wilson	Director, Women's & Children's Services	Spartanburg Regional Healthcare System	823 Willet Ct, Boiling Springs, SC	29316-5378	kwilson6@srhs.com