



LEADERSHIP ... FROM THE GROUND UP WCHRMA

WILLIAMSON COUNTY HRMA

Member News

September Member Meeting

Get What You Want: Harness the Power of Positive Influence, Persuasion and Negotiation

Wouldn't it be great to get what you want? You can if you know how to harness the power of influence, negotiation and persuasion. Join us at our monthly meeting at 8:00 a.m. on Friday, September 12, to learn the secrets of making the most of each interaction and business opportunity. Understand how to effectively respond to others, no matter what their personality style or ability. Learn how to create trust and build successful relationships, evaluate individual bargain-

ing strengths and needs, identify common tactics and implement counterattacks, calculate risks without alienating others, avoid bad decisions and common mistakes, stop leaving things "on the table," and know a good deal and when to walk away.

This program, led by Linda Byars Swindling, will enhance your decision-making skills, help hone your management skills towards your employees and your boss, and add to your professionalism no matter

what your role within your organization!

Linda Byars is the president of the Center for Influence. She started her professional career as an employment attorney in a Dallas law firm. She is also a respected author and authority on negotiations and influence as well as a former TV and stage personality.



Linda Swindling, JD, CSP



September 2008

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President's Corner

WCHRMA strives to provide professional development opportunities that are applicable to us as Human Resources professionals. However, we believe that it is very important to bring topics that are interrelated and relevant to all managers/supervisors in all aspects of our businesses. We believe that a broader part of our mission is to support the business community at large. This

mission is not unlike the mission at our day jobs.

Our Programs Committee has found a perfect match for our September half-day seminar, "Get What You Want: Harness the Power of Positive Influence, Persuasion and Negotiation." Ms. Swindling is a nationally known speaker who is a respected author and authority on negotiations and influence. She is a former television

and stage personality who is quick on her feet. She is also a motivational speaker with practical business expertise.

Much of our success depends on our ability to influence and/or persuade others. According to Wikipedia, "Persuasion is a form of social influence. It is the process of guiding people toward the adoption

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President's Corner from p. 1

of an idea, attitude, or action by rational and symbolic (though not always logical) means. It is strategy of problem-solving relying on 'appeals' rather than strength."

Influence and persuasion are key competencies that we all use on a daily basis. When implementing a change of process, don't we have to convince our team that the change will be more effective or efficient? As we are conducting performance coaching, our job is to inspire employees to take on growth opportunities. New organizational initiative rollouts may be met with resistance unless we "win over" the team by demonstrating the positive impacts expected.

Negotiation is a dialogue intended to resolve disputes, to produce an agree-

ment upon courses of action, to bargain for individual or collective advantage, or to craft outcomes to satisfy various interests. It is the primary method of alternative dispute resolution. Negotiation skills are just as important to HR as they are to our managers throughout the organization. Think of the various times that we use negotiation skills to resolve internal conflict, settle on reasonable rates for insurance premiums, or merge business units.

Schoonover (2000) described leadership competencies as "the success characteristics that help professionals focus on future needs and opportunities; produce strategic competitive advantage; and produce motivation, alignment and change." What better way to test your skills of persuasion, influence and negotiation

by convincing your managers and supervisors to come along with you to our September program.

The Round Rock Higher Education Center (RRHEC) is a wonderful learning environment and uniquely suited for this type of program. There will be a full breakfast served and time to meet and network.

I look forward to a very successful seminar and the opportunities not only to learn more about developing my skills but also to see you and the managers and supervisors from your organization.

Susan Word, SPHR
2008 WCHRMA President



Legal Briefs for HR

1. R U Monitoring IMs? The 9th Circuit recently held that employer review of employee text messages (by receiving copies from their IM service provider without IM users' consent) violated federal and state privacy laws, despite the existence of "no expectation of privacy" language in the employer's policy. *Quon v. Arch Wireless Operating Co.* (9th Cir. 6-08). Do not make the mistake of disregarding this case simply because it involved public sector employees (not private) and happened in CA (which has a state constitutional right to privacy that pops up in employment cases regularly). Two key lessons learned are [a] complete bans on personal use of employer-provided electronic communications are almost never enforced; and [b] where your "operational reality" (i.e., nonexistent or inconsistent enforcement of a ban) is inconsistent with the ban, your "no expectation of privacy" defense to monitoring is likely to fail. As men-

tioned in past LB4HRs, just because your handy IT folks can help you access employees' electronic communications, it does not mean it's OK to do so under all circumstances.

2. Tech Toy Trouble It's not unusual for employers' electronic time-keeping systems to include a manager override feature, which allows the working time inputted by employees to be modified by others. Unfortunately, it's also not unusual for managers who lack wage and hour savvy to misuse this feature, to the detriment of the employer. Such manipulation of a nonexempt employee's time was cited as evidence that the employer failed to keep proper and accurate records, as mandated by the FLSA, so the employee is relieved of her burden of producing proof of the time she claims to have worked "off the clock." *Brown v. Family Dollar Stores* (7th Cir. 7-08). And, no surprise, she's claiming a lot of time. If you're going to use a time-keeping

system with an override feature, be sure to train anyone who can effect a change to employees' inputted data (e.g., supervisor, layers of local and regional management, payroll staff) about the importance of accurate record-keeping and periodically audit employees' submitted time against their paychecks, to make sure the message stuck.

3. More Tech Toy Trouble An employer may have violated state privacy law (i.e., unreasonable intrusion upon seclusion of another) and federal wiretap law if it's shown that the plaintiff/former employee did not consent to having her workplace phone conversations with clients monitored by her supervisor via a baby monitor. *Smith v. NWM-Oklahoma LLC d/b/a LA Weight Loss Centers* (W.D. Okla. 7-08). Employer's response? Wah!!

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4. What's Up? The federal minimum wage, of course! Don't forget that an automatic increase was triggered, effective July 24, raising the rate from \$5.85/hour to \$6.55/hour (and will take a final hop to \$7.25/hour on July 24, 2009 unless legislators enact further increases in the interim). Some states' minimum wage rates are higher than the federal rate, so plan on paying that rate if you're in interstate commerce. Go to www.dol.gov/esa/whd/ and click on Minimum Wage Laws in the States to see a chart displaying all states' rates.

5. Not That You Would Add Missouri as the fourth state (in addition to CA, ND and WI) enacting legislation to prevent employers from requiring employees to be micro-chipped as a condition of employment. The legislative history will make you howl with laughter, as it implies that some employers might involuntarily "chip" their employees, if not statutorily barred from doing so. Chips are generally inserted at the doctor's office via a large syringe, so I'm having a hard time envisioning your supervisors chasing down employees while wielding big needles. Although it's really tempting for the individual who keeps losing his security badge, right?

6. Religion Revisited EEOC has rewritten the Compliance Manual section (79 pages) and prepared a 10-page Fact Sheet and a 4.5-page Best Practices list on the issue of religious discrimination and accommodation under Title VII. The new guidance does not change the applicable regulation (29 CFR sec. 1605) and is intended to explain rather than change EEOC's view of these issues. The reasonable accommodation standard is still *de minimis* (i.e., less than that required for reasonable accommoda-

tion under the Americans With Disabilities Act [ADA]) and harassment claims are to be judged by the same standards that apply to other protected categories under Title VII. EEOC's view does not always track with the courts, so remember that this is guidance, not gospel. All three docs are available at www.eeoc.gov.

7. Gas Pains Thanks for the thoughtful responses to last month's query about employer efforts to soften the pain of employees' commuting expenses due to rising gas prices. One astute question asked was whether employers should treat the value of "gift" gas cards as taxable income to the employee. The IRS has rules for employer-provided transportation benefits (e.g., transit passes, paid parking) under Section 132, but gas cards are not on the list of items to which this exclusion from taxable income applies. Further, the Employer's Tax Guide to Fringe Benefits (Publication 15-B) does mention exclusion of "*de minimis* transportation benefits" from employees' taxable income, but the example provided, of "occasional transportation fare you give an employee because the employee is working overtime" does not seem to encompass mass distribution of \$50 gas gift cards. The good news is that under the "gift" exclusion in the FLSA regulations at 29 CFR sec. 778.212, you probably don't have to add the value of the gas card into nonexempt employees' "regular rate" (as part of the overtime rate calculation) unless it's tied to the number of hours worked or the amount is so substantial that employees will reasonably consider it to be a part of their wages. We all know that good deeds often do not go unpunished, so heads' up!

8. Hot Stuff Don't forget to take extra measures to protect your workers who spend some or all of the

workday outdoors. If you're in CA, you are subject to mandates about providing frequent breaks, fresh drinking water and shade. Even if no mandate applies to your business, a little consideration goes a long way to prevent harm and build goodwill. Hats' off to the employer who pondered ways to provide a shady spot for employees to park their motor-cycles . . . no toasted buns, please!

9. More Fun With FMLA

- **Pop Top** No FMLA interference found, where an employee was fired for violating a United Auto Workers CBA provision prohibiting other employment while on FMLA leave. The worker, who took intermittent leave for chronic anemia, claimed she was going to a bar for a couple of hours nightly, in order to relax and feel better, and would occasionally find money on the floor or have her drinks paid for. The employer's investigator said that on more than one occasion, she would take a suitcase into the bar, change clothes, and dance in lingerie while removing layers of clothing and receive tips. Sing it with me . . . she works hard for the money! *Stanley v. Volvo Parts North America* (S.D. Ohio 6-08)
- **Flip Flop** An employee who was technically ineligible for FMLA (due to less than 50 employees within 75 miles of his worksite) may be able to sue his employer for breach of contract or promissory estoppel, where the [a] the employee handbook provided for 12 weeks of leave and did not mention the 50/75 requirement; and [b] the employer sent two letters to the employee, OK'g FMLA leave. Even if the handbook and letters do not amount to a contract, the court may find that the "promise" of job-protected

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leave that the employee relied upon must be enforced.
Peters v. Gilead Sciences Inc. (7th Cir. 7-08)

10. Let's Talk Don't forget to register for HR Southwest Human Resources Conference and Exposition, an exceptionally good HR-fest to be held from October 14 to 17, in Fort Worth. Go to www.hrsouthwest.com for details and registration info! Please include WCHRMA #577 as your SHRM Texas Chapter.

Until next time!

Audrey E. Mross
Labor & Employment Attorney
Munck Carter P.C.
600 Banner Place
12700 Coit Road
Dallas, TX 75251



972.628.3661 (direct)
972.628.3616 (fax)
214.868.3033 (cell)
amross@munckcarter.com
www.munckcarter.com

Legal Briefs for HR is provided to alert recipients to new developments in the law and with the understanding that it is guidance and not a legal or professional opinion on specific facts or matters. For answers to your specific questions, please consult with counsel.

Our Sponsors!

Thanks to our platinum sponsor:



And to our Gold sponsor:



Plan Ahead:

**Celebrating Diversity Month with
Debi Dault, GPHR
Senior Global Consultant, TheMIGroup**

October Session: “What Is Your Global IQ?”

Date: October 10, 2008
11:30 a.m. to 1:00 p.m.

Place: Wingate Hotel and Conference Center
1209 N. IH 35, Round Rock, TX

Cost: \$20 for WCHMRA or affiliate chapter members
\$25 for non-members

CEUs: Have been requested

Visit www.wchrma.org to sign up!



Williamson County Human Resource Management Association
P.O. Box 2042
Georgetown, TX 78627
www.wchrma.org