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President's Message

Focus on community in 2006

By Vickie McCardell, PHR

Happy New Year! Thank you for your vote of confidence in allowing me to serve a second term as President of the Delaware SHRM Chapter. The Board of Directors met in December to plan for the new year. We are pleased with what was accomplished in 2005 and look forward to a new focus for 2006.

Celebration, communication, and certification were key words for 2005. We celebrated the Delaware SHRM Chapter's 30-year anniversary, made chapter communication a priority, and encouraged professional certification for our members.

We will continue to celebrate chapter achievements and honor deserving members. Chapter communications will continue to improve as we make changes to our website (www.deshrm.org). We will continue to encourage members to seek professional certification through the Human Resources Certification Institute (www.hrci.org). However, the focus for 2006 will be giving back to the community!

We want to gift the community in 2006 as we gifted our individual members in 2005. How can we as HR Professionals reach out and make a difference in our community? Perhaps we will collect professional clothing for an organization that assists individuals in transition with workforce readiness. Perhaps individual chapter members will volunteer to help small businesses with their HR needs. We hope that you will offer help and ideas as we move into the new year.

I look forward to my second year as Chapter President and thank you for the support you have shown me and the Delaware SHRM Board of Directors. We will strive to remain a Superior Merit Chapter of SHRM National by supporting their mission of serving the HR professional and advancing the HR profession. I encourage you to be an active member of Delaware SHRM and help us support our local HR professionals and give back to the community.

Best wishes for a successful new year!





2005--A year to remember for Delaware SHRM

By Cindy Crompton-Barone, PHR, President-Elect, Delaware SHRM

The Delaware SHRM Board of Directors recognizes YOU, the chapter members, for your commitment to the HR Profession and continued Delaware SHRM chapter membership. Without your membership and participation in the monthly programs, resources of the Delaware SHRM website (www.deshrm.org), readership of the newsletter and attendance at the State Conference, we would not be able to achieve these and other accomplishments that contribute toward our goal of retaining Superior Merit Award Chapter status from SHRM National.

The activities your Board of Directors delivered to you, our members, are endless but here is a snapshot of some 2005 accomplishments:

* Nine Monthly Program Meetings—More than 50 Chapter Members attended each of the monthly programs to network and advance their knowledge on topics such as “What’s New in Delaware Labor Law” and “Why Be a Certified HR Professional?”

* 30th Anniversary Celebration—Each month was dedicated to recognizing the Chapter’s 30 years of growth and advancement of the Human Resources profession.

* Delaware SHRM Newsletter—Your membership gave you a valuable subscription to a quarterly newsletter that profiled local Human Resource leaders, updated you on both State and Federal Human Resource legislative issues, announced local certification course opportunities and much more.

* Delaware Valley Human Resources Award—Your chapter partnered with Chester County HR Association, Greater Valley Forge HR Association, Philadelphia Regional Chapter of SHRM, and Tri-State HR Management Association to sponsor and organize an event that allowed you to nominate your peers for recognition as outstanding leaders in the Human Resources Field. Delaware SHRM was able to reach out to the community and elect Child, Inc. as a Delaware non-profit to receive a \$17,000 contribution from proceeds from the event.

* Annual State Conference—Thanks to an outstanding Conference Committee, your Chapter organized and delivered the Fifth Delaware SHRM State HR Conference “Delivering Business Results.” More than 300 Professionals and 40 vendors attended this event.

Delaware SHRM is proud of its 2005 accomplishments and looks forward to an exciting 2006. Your continued membership is important and allows us to continue to offer you valuable networking, programs and connection to your community. We look forward to seeing all of you in 2006.

Join Delaware SHRM!

Enjoy new special membership benefits

By Anna C. Marcotte, Co-chair, Membership

It’s that time of year to renew your annual Delaware SHRM membership. Benefits of joining include gaining invaluable networking contacts, receiving legislative updates and alerts, and participating in members only professional development opportunities.

Corporate Memberships are available now. Register five employees from a company and pay for only four memberships!

New for 2006 Delaware SHRM Membership Benefits!

Join now and take advantage of:

- Two Members Only “Advance the Profession” Seminars
- Official Delaware SHRM Membership Card
- Delaware SHRM logo gift or book for new members
- Discounts to our monthly programs and annual conference
- Access to Members Only section on the Delaware SHRM Website

Delaware SHRM offers an extensive network of contacts when you join one of our monthly programs, annual conference or special events. Here’s a list of the current companies represented in the Delaware SHRM

Membership:

AAA Mid-Atlantic
Abrams & Laster, LLP
Accenture
Anton Associates
Artemis Path, LLC
Brandywine Asset Management
Cabrini College
Camdel Metals, Inc.
Career Concepts, Inc.
Concord Consulting International
Connolly Bove Lodge & Hutz, LLP
Continuing Education Services, Inc.
Cotler Orthodontics
Delaware Economic Development Office
Delaware State Education Association
Delaware Technical & Community College
Delmarva Power
Delmarva Systems Corporation
Devereux NJ Treatment Network
Dover Downs Inc.
E.I.DuPont de Nemours and Company
Easter Seals
EG&G Technical Services
Endo Pharmaceuticals
First Data Corp
Goldey Beacom College
Goodwill Industries of Delaware, Inc.
Granatt, LLC
Hagley Museum & Library
Handy & Harman
Health Partners
Horty Consulting, LLC
HRValue Group
IBC
ING Direct
Integrity Staffing Solutions
J.P. Morgan Chase & Co.
Johnson Controls, Inc
Lincoln University
LMG Services
Marriott Execustay/Buccini Pollin Group
MBNA
Pepco Holdings Inc. (PHI)
Perdue Farms
Pinnacle Foods Corp.
Rental Service Corporation
Richards, Layton & Finger
Right Management Consultants
Schaller Anderson of Delaware
Shirley H. Farrell, Inc.
State of Delaware
TA Instruments Waters LLC
TCIM Services, Inc.
The Rosen Group Inc.
Union Hospital
United Way of Delaware
University of Delaware-Facilities
Upper Bay Counseling & Support Services
W. L. Gore & Associates, Inc.
Wilmington College
Wilmington Trust Company
WSFS Bank



Ron Gray--VP, HR at AAA Mid-Atlantic

By Irene Monley, SPHR, Chair, Communications

Until my recent meeting with Ron, AAA meant maps, guidebooks and rescue from flat tires. Having spent some time with him at AAA Mid-Atlantic's new headquarters on the Riverfront in Wilmington, my views are forever changed...2,600 associates, multiple products and services, and 3.5 million members across five states. Behind those cold statistics are highly valued associates who work in a growing organization with a warm and friendly culture, powered by the best practices in HR that we often hear about. As you read on, you might think of AAA's human resources model as a road-map for HR excellence.

The company

DESHRM: To start off, would you tell us a little bit about AAA Mid-Atlantic—its business, customers, locations and employees?

RG: AAA Mid-Atlantic was founded 105 years ago as Keystone Automobile of Southeast Pennsylvania. Since then we have combined with other AAA clubs and in the last 25 years we've had ten mergers. Today, we serve over 3.5 million members and have 2,600 associates in five states and the District of Columbia.

It's a growing, healthy organization that values people and is a great place to work. While most people know AAA for emergency road service, TripTiks, tour books and roadmaps, we also provide travel, insurance, automotive and financial products and services. We have a "Show Your Card & Save" program that allows members to receive significant discounts through a large and growing number of business entities throughout our territory.

We were founded to and still protect and advocate for motorists' rights, better roads and traffic safety and education. Along the way, we founded the School Safety Patrol and driver education which are important aspects of who and what we still are today.

We are a not-for-profit organization, although we do pay taxes. We have a central organization to which we pay a portion of member dues. They publish maps and other materials and negotiate strategic alliances with major theme parks and cruise lines to leverage the 47 million members nationally. But we don't really report to the central organization hierarchically. Each club goes through an accreditation process and is somewhat autonomous, playing within the general rules of AAA.

What advantages does AAA experience being located in Delaware? Challenges?

In 2004, we opened an Operations Center in Newark, Delaware and in June 2005, we moved into our new Corporate Headquarters on the Wilmington Riverfront. We also have several AAA retail offices in the state. At present, over 800 AAA associates work in Delaware. A significant number have relocated their personal residences into Delaware.

Our new headquarters location on the Wilmington Riverfront serves us well, as many of our member population clusters and administrative and operations centers are located in close proximity to the I-95 corridor. The ease of access by auto or train is a real plus.

Regarding challenges posed by the new location, we have not encountered any major challenges as yet, although the jury is still out as to the degree to which the labor market may prove to be a challenge.

We have been pleased beyond our most optimistic expectations with the warm welcome and support that we have received from the city and state's business and political leaders and from so many individuals and organizations in the communities in which our associates live and work. Thank you for the warm welcome! We are very glad to be here.

HR at AAA

What role does HR play in AAA?

In two words, we are "business partners." There is an HR representative on every business team throughout our five-state area and Corporate "experts" in the areas of specialization. We participate in developing and achieving business goals and strategies.

AAA Mid-Atlantic is, in my opinion, very fortunate to have an experienced HR team that has a passion for helping associates and the organization to achieve their goals and aspirations in a mutually-beneficial manner. The HR team is so good that I feel guilty that I am the one being interviewed rather than those who do all the work!

What is the most challenging HR issue at AAA currently?

My initial reaction to this question is that there is no such thing as an "HR issue." Rather, there are associate-related business issues that are addressed by the HR team in partnership with the business teams. The HR Mission is "Partnering to be an Employer of Choice." In today's competitive recruiting world, it's important, because we're somewhat new to this area. Not too many people know us yet or know that we are here.

High on the list of associate-related business issues is creating and maintaining the culture and capabilities that are needed to provide differentiated products, services and solutions to an increasingly diverse and knowledgeable member base when, where and how they prefer.

Culture

Would you tell us more about the culture at AAA?

The culture is rather unique versus my experience in the corporate world and academia. Historically AAA has been a very service-oriented culture. We hire friendly people who are service-oriented, and our turnover is rather low.

Our leaders are very down to earth, practical, highly ethical business people who really value associates. They walk the talk, unlike at many companies that say people are their most important asset, but don't necessarily behave that way.

We do surveys periodically and focus groups to find out what's working, what's not working; opinions about benefits; satisfaction with pay plans. The survey data is used to identify appropriate improvement opportunities.

On the business side, AAA has worked in silos historically—here's the financial services business, and over here's automotive services, and travel and insurance. We are learning that by providing cross-selling opportunities to our members, we actually provide them a useful service. So we are shifting from a culture of exclusively high service-orientation to a service- and sales-orientation. It's called "Solutions," to help members solve their issues through our many products and services.

We also are learning how to take better advantage of the capabilities of our people through development and by enriching jobs, particularly for frontline associates in our Retail Offices and call centers. The basic shift is to find ways to energize our associates to solve members' issues, within reasonable parameters.

We offer extensive training and learning opportunities on-line and in the classroom. Pre-assessment testing is used, and core competencies are being defined for every job and pre-employment assessment testing is being utilized.

We're also training internal applicants for promotional opportunities. An associate can go online and see the competencies that are required for an assignment or opportunity they want in the future. Then, with assessment tests, they can see how their capabilities compare. To build their skills, we refer them to specific training programs or learning opportunities.

We want people to take advantage of career development opportunities by managing their own careers with the tools provided by the organization.

We advocate promotion from within, and we are getting better at providing developmental tools and opportunities for associates.

Is that culture shift reflected in the human resources organization?

Very much so, in a number of ways. I feel very strongly that HR people need to be connected to the business, understand the business.

We have HR people assigned to support each major business unit, and they report jointly within HR and to the

business head. They are on the staff of the business and get involved in all the strategic planning and business issues. From an HR standpoint, they can identify right at the outset what the business may need, such as recruiting and training needs.

We also have regular communication meetings within HR. The business people are invited to come in and tell us what's going on.

We have pretty extensive online learning opportunities about all the businesses. Certain courses are mandated, others are optional. Constant, continual learning is one of our key themes in AAA.

It works rather well, particularly in the field with the generalists who are really integrated in the business.

HR Technology

What are you doing on the HR technology front?

We are very committed to a technology focus and are moving towards what I call an e-culture in which paper forms are replaced by online processes and associate access to self-service applications.

We've also implemented online applications in recruiting, including HR Smart and Interview Direct. And, of course, as I mentioned earlier, employees can view job opportunities, job competencies, self-assessments and take advantage of training, all online. About 20,000 online classes were taken during the first six months of 2005. This is an increasingly valued complement to our classroom training.

Our Director of Technology and his small team have done some very good things.

The HR profession

Let's move from the world of AAA to the profession in general. What do you see as the top three issues facing HR people in the next five years?

Just as AAA must remain relevant to our members through the products, services and solutions that we provide and the way that we deliver these products, services and solutions, HR must do the same with our internal customers.

We must stay in touch with emerging business and technology developments and continually refine and improve our products, services, solutions and delivery methods to remain relevant and to continue to add value to the organization.

A second area that continues to grow in importance is cultural diversity in the marketplace and in the workforce. In 2005, only 16 percent of new workforce entrants in the U.S. were white males. The organizations that are proactive in capitalizing on this cultural diversity will gain a significant competitive advantage.

A number of other issues come to mind such as recruiting challenges; HR skill development; benefits cost/value optimization; the effective use of outsourcing; capitalizing on technological advances; and improving communication effectiveness.

For my third key issue, I would suggest that we must get better at measuring (and communicating) the value of HR services. Senior leaders are driven by bottom-line results, and they need to understand the ROI of proposed expenses. For HR, this means quantifying the business value of recruiting, training, incentive pay plans, benefits, recognition programs and all other "discretionary" expenses.

The current business environment presents unique challenges for employees. How can HR professionals help employees develop the skills necessary to meet these challenges?

"Continual learning" is critical to individual and business success. Several thoughts for assisting with employee skill development:

- Institutionalize a culture where "continual learning" is valued, starting with the senior leaders.
- Make it easy for employees to engage in learning experiences by providing classroom programs; on-line programs; links to external learning sources; access to outside learning forums; educational reimbursement and on-the-job training and learning experiences.
- Track each employee's learning accomplishments. Report on results. Share success stories. "What gets measured gets accomplished."
- Recognize and reward learning-related achievements. Build it into reward programs and performance appraisals. "What gets rewarded gets repeated."
- Budget funds for relevant outside leadership development programs. Create an annual process for the executives to select participants. Role model the value of learning at the senior management level.
- Role model "continual learning" within HR. Walk the talk!

Your background and experience

Please tell us a little bit about yourself. What was your first job?

The first part of my career was spent in the Information Technology profession, first with Johnson & Johnson, then with Scott Paper Company where I subsequently headed the function.

And your career?

While at Scott, I requested and was fortunate to receive a career shift into Human Resources based on my

desire to help the company to achieve a greater measure of the full potential of our employees by creating a win-win environment.

I worked through a number of H.R. roles and subsequently became V.P. & Chief Human Resources Officer for this Fortune 135 firm with 48,000 employees in 28 countries. Some years later, following substantial downsizing and restructuring, I decided to leave the corporate world.

I joined St. Joseph's University as Assistant Dean for the College of Business & Administration with responsibility for graduate degree programs and executive education. Through a consulting engagement, I became familiar with the AAA organization, and in 1995, I accepted the opportunity to join AAA Mid-Atlantic as Vice President, Human Resources & Strategic Planning.

What is your educational background—schools, majors, professional certifications?

My undergraduate degree is in Business (Marketing major) from Penn State University, and I received a M.S., Training & Development degree from St. Joseph's University.

Recent grads

What advice would you give to a recent graduate beginning an HR career today?

When asked, I advise recent high school and college graduates in Human Resources or other fields to keep their minds and options open and to keep learning. Business guru, Tom Peters, says that people who are now coming out of school will work in four different occupations during their lifetime; three of which do not currently exist. It was not too many years ago that there was no Internet; and today millions of people have Internet-related careers. I also suggest pursuing jobs, careers and workplaces that provide learning, growth and fun.

For fun

Ok, let's take a little diversion. If you had to pick an alternative career to HR, what would it be?

I've always enjoyed sports, so an alternative career might have been as a high school or college coach or athletic director; or possibly as a sportscaster or sportswriter.

Ron, it's been a pleasure to talk with you. Thank you very much for spending time with us.

I've enjoyed it. Thank you.





Federal legislative activity

By Richard Burton, MBA, Legislative Liaison

Federal

EEOC approves revised EEO-1 form

For the first time in 40 years, the Equal Employment Opportunity Commission (EEOC) overhauled its EEO-1 form. The revised form cannot take effect until the federal Office of Management and Budget (OMB) gives it the final thumbs-up or thumbs-down. The OMB will accept comments from the public on the revised EEO-1 form for 30 days. If it approves the new form, it will take effect in 2007. The reason for the change is to modernize a report that has been marginalized by changing events, a shift in demographics, improvements in technology and changes in society. The old EEO-1 form played a major role in the early development of civil rights case law and the identification of potentially discriminatory actions but does not accurately reflect the realities of the present.

The final proposed changes to the EEO-1 Report's race and ethnic categories include:

- Adding a new category titled "Two or more races not Hispanic or Latino";
- Separating "Asians" from "Pacific Islanders";
- Adding a new category titled "Asians not Hispanic or Latino";
- Adding a new category titled "Native Hawaiian or Other Pacific Islander not Hispanic or Latino";
- Extending the EEO-1 data collection by race and ethnicity to the State of Hawaii
- Strongly endorsing self-identification of race and ethnic categories, as opposed to visual identification by employers.

The final proposed changes to the EEO-1 Report's job categories include:

- Dividing "Officials and Managers" into two levels based on responsibility and influence within the organization: "Executive/Senior Level Officials and Managers" and "First/Mid-Level Official and Managers"
- Moving non-managerial business and financial occupations from the "Officials and Managers" category to the "Professionals" category. Definition of 'Internet job applicant' clarified for contractors

In October, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) clarified recordkeeping provisions concerning who is an "applicant" in the context of the Internet and related technologies. This stemmed from the need for a federal explanation of employers' record keeping obligations for job applicants in light of increased reliance on the Internet for job searches. The magnitude of Internet applications continues to increase exponentially. Characterized by massive amounts of information transmitted rapidly between job seekers and employers, new technologies encourage employers and job seekers to explore the labor market broadly and freely causing lots more applicants to apply via the internet relative to other channels used by companies to advertise jobs.

This final rule will enable OFCCP to effectively evaluate whether federal contractors are recruiting a diverse pool of qualified applicants and hiring new employees on a non-discriminatory basis. It also helps contractors by clarifying an ambiguity that, until now, left contractors guessing at what information they needed to collect from internet applicants.

A key feature of the OFCCP regulation is that only a job applicant who meets the basic requirements for a particular position should be considered an applicant for the position. That makes an important distinction between someone who sees a job advertised on a web site and e-mails a resume and someone who e-mails an organization expressing a general interest in work. As published in the Federal Register, the regulation says that "Internet Applicant" means any individual satisfying all four of these criteria:

1. The individual submits an expression of interest in employment through the Internet or related electronic data technologies.
2. The contractor considers the individual for employment in a particular position.
3. The individual's expression of interest indicates the individual possesses the basic qualifications for the position.
4. The individual at no point in the contractor's selection process prior to receiving an offer of employment from the contractor removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.

This will force people to be more clear in their advertising about what the minimum qualifications are for a position since now this is such a legally binding aspect of the selection process. While the OFCCP is taking this step, the EEOC and other agencies are on the fence and their definitions of an internet job applicant could cause waves if they conflict with that of the OFCCP.

Two minimum wage proposals defeated in the Senate
The Senate voted Oct. 19 to reject two proposals to raise the federal minimum wage from \$5.15 to \$6.25 per hour. The effort to increase the minimum wage started with a proposal by Sen. Edward Kennedy, D-Mass., that would have raised the wage level to \$7.25 per hour over two years. On Oct. 17, Kennedy announced that he would introduce the proposal as an amendment to the appropriations legislation for the departments of Treasury and Transportation.

Sen. Mike Enzi, R-Wyo., and Sen. Kit Bond, R-Mo., countered Kennedy's announcement almost immediately by offering an amendment that would raise the minimum wage to \$6.25. The Republican amendment included provisions designed "to offset the burdens to businesses" created by a minimum wage increase. The Senate rejected a similar attempt in March to amend a bankruptcy reform bill and voted to reject the Kennedy amendment by 51-47. The vote to reject the Republicans' counter proposal was by the slightly wider margin of 57-42.

In donning, doffing case, Supreme Court defines workday expansively
Once it starts, the workday is continuous and compensable; the U.S. Supreme Court clarified on Nov. 8. In a unanimous decision the court ruled that the workday includes the time employees spend walking from changing areas where they don protective clothing to the production area and the time walking back. Compensable time also includes the time employees have to wait before doffing, or removing, the gear, but not the waiting time before donning it, or putting it on, the court held. The decision solidifies the concept that once the workday starts there generally is not time that is not involved in a compensable principal activity. The court rejected the argument that donning is not the principal activity that starts the workday and that walking immediately after donning and before doffing therefore is not compensable. Time spent waiting to doff unique protective gear also is compensable because it is integral and indispensable to principal work activities, the court also ruled.

Senate clears huge rise in employers' pension fees
A budget reconciliation package approved Nov. 3 by the U.S. Senate would raise the flat-rate annual premiums employers pay to the Pension Benefit Guaranty Corp. (PBGC) from the current rate of \$19 per plan participant to \$46.75 per participant. The rate increase was rolled into [S. 1932](#), legislation designed to decrease federal government spending by \$39 billion over the next five years. The measure to raise the PBGC premium by nearly 150 percent was recommended by the Senate Health, Education, Labor and Pensions (HELP) Committee and was agreed to by the Senate Budget Committee on Oct. 27. The full Senate approved the final version of S. 1932 by a vote of 52-47. Pension reform was also supported by Senate passing of the Pension Security and Transparency Act of 2005 ([S. 1783](#)) with a vote of 97-2. The 618-page bill would create sweeping reforms for defined benefit pension plans by toughening funding requirements. It would increase employer fee payments to the Pension Benefit Guaranty Corp. (PBGC), the federally operated insurance agency that guarantees at least partial payment of individual retirement benefits when sponsoring companies cannot pay them.

The PBGC fees have not increased since 1991. The main question is will such sharp increases tempt employers to increase fiscal pension efforts or discourage participation altogether? Regardless, the full House of Representatives is expected to conclude its version of the budget reconciliation package soon. The House Budget Committee voted to approve the [legislation](#) on Nov. 3. The House bill includes a provision to raise the PBGC premium from \$19 to \$30 per plan participant. The House of Representatives version of the bill ([H.R. 2830](#)) also began moving when the Ways and Means Committee voted on Nov. 9 to approve it. The full House is scheduled to begin consideration of H.R. 2830 in early December after a recess with all signs pointing towards increased PBGC premium increases. The flurry of activity on pension legislation in both houses of Congress gives rise to new expectations that a substantive reform package could be passed before Congress adjourns for the year in December. Congress has already extended its fall session far beyond its original target adjournment date of early October. This gives us some idea as to just how critical the "retirement" issue is at this point.

Workplace Romances May Be More Trouble Than You Thought

By Robert J. Toy, Post & Schell

The idea of workplace romances – especially those between supervisors and their subordinates – is enough to make even the most seasoned human resources professionals lose sleep. Typically, HR professionals recognize, correctly, that these types of relationships are more often than not headed for trouble in the form of a sexual harassment lawsuit.

Once the relationship turns sour, there is a pretty substantial danger that the subordinate will claim that the relationship was non-consensual and constituted either quid pro quo sexual harassment or contributed to an alleged sexually hostile work environment. This is a known danger, and one that HR professionals and business managers are trained to attempt to avoid.

But there may be another reason to fear the supervisor-subordinate workplace relationship. A recent decision of the California Supreme Court may have opened the floodgates for a new twist on the legal ramifications of those relationships – even before they go sour.

In *Miller v. Department of Corrections*, the California Supreme Court held that two former employees of the California penal system had established a cognizable claim for a sexually hostile work environment by alleging that their supervisor had engaged in consensual sexual relationships with other employees (i.e., not the plaintiffs in the case). The employees' theory, accepted by the court, was that the consensual relationships between the plaintiffs' supervisor and their coworkers were widespread, and that the participants in those relationships received preferential treatment at work, including promotions, preferential transfers, and lenient discipline.

According to the California Supreme Court, although a sexual harassment claim normally may not be premised on isolated incidents of favoritism shown by a supervisor toward a person with whom he is engaged in a consensual sexual affair, the result may be different when the favoritism is more widespread. The Court held that "when such sexual favoritism in a workplace is sufficiently widespread it may create an actionable hostile work environment in which the demeaning message is conveyed to female employees that they are viewed by management as 'sexual playthings' or that the way required for women to get ahead in the workplace is by engaging in sexual conduct with their supervisors or the management."

In *Miller*, the Court found that the evidence presented – that the warden of the prison was engaged in sexual relationships with three different employees over a period of approximately nine years, and that the paramours were the recipients of widespread preferential treatment in the form of promotions, preferential transfers and lenient discipline – was sufficient to raise a triable jury question as to whether the plaintiffs had been subjected to a sexually hostile work environment.

What the California Supreme Court's decision means to employers in Delaware is difficult to assess. California is widely thought to be a liberal jurisdiction when it comes to matters such as these, and nearly every court to consider the question of "paramour discrimination" (whether a supervisor's relationship with a plaintiff's coworker, by itself, may provide the basis for a sexual harassment claim) has answered the question in the negative.

However, the United States Court of Appeals for the Third Circuit – of which Delaware is a part – has indicated in the past that, under the correct circumstances, it could envision a case in which employees are subjected to a sexually hostile work environment as the result of a supervisor's relationships with subordinates. In *Drinkwater v. Union Carbide Corporation*, a 1990 case in which the Third Circuit applied New Jersey law, the plaintiff claimed that the effect of a sexual relationship between her supervisor and her subordinate was to poison the work atmosphere and create a sexually hostile work environment.

Though the court was not presented with evidence sufficient to state a hostile work environment claim in that case, it left open the possibility that a future case could present such legally actionable facts. The court stated that a hostile work environment might exist if, as a result of the coworkers' relationship, "sexual discourse displaced standard business procedure in a way that prevented plaintiff from working in an environment in which she could be evaluated on grounds other than her sexuality." The court went on to acknowledge that "evidence of a sufficiently oppressive environment could, in theory, give courts enough evidence" to find actionable sexual harassment.

Though there is no reason to believe that *Miller* signals a crack in the foundation laid by the numerous cases holding non-actionable isolated incidents of "paramour discrimination" (i.e., where an employee engaged in a romantic relationship with a supervisor is treated more favorably than other employees because of the relationship), it certainly indicates that employers with "serial paramour discriminators" must be very careful.

A manager or supervisor who repeatedly favors employees with whom he or she is involved in romantic relationships may be a time bomb for a sexually hostile work environment claim against the employer.

Mr. Toy is an attorney in Post & Schell, P.C.'s Business Law and Litigation Department, where he practices labor and employment law. For further information, contact him at 215-587-1091 or rtoy@postschell.com.

Free speech

The technology explosion affects your employees in more ways than you probably have considered. Blogs and bulletin boards are recent hot topics among the tech-savvy. These tools offer free and ready access to anyone with something to say. A recent decision from the Delaware Supreme Court deals with blogs gone wrong—when an anonymous poster says something that hurts your feelings or, even worse, is bad for business.

What's a blog?

A blog, short for "web log," is an Internet application containing periodic postings. Blogs are accessible to anyone with access to the Internet and often allow visitors to leave public comments. Blogs are easy to access, free to use, reach a potentially unlimited audience and, of course, are often anonymous.

So what happens if anonymous postings reach the level of defamation? Or what if an unnamed blogger posts confidential information or trade secrets? For most companies, the only remedy is to resort to the courts.

Recently, to learn the identities of various "John Does," companies have initiated court actions and then issued subpoenas to the Internet provider that hosted the blogs or bulletin boards. Under federal law, a blog poster's identity may be discoverable. But in the recent Delaware Supreme Court case, the use of subpoenas to discover the blogger's identity has been called into question.

Facts

The case is being dubbed a classic "Hatfields and McCoys" story. Enter stage left a local councilman, Patrick J. Cahill. Enter stage right a local mayor, Mark G. Schaeffer. The mayor also happens to be the Councilman's next-door neighbor. They've been waging war across their picket fences in various ongoing disputes.

Enter the faceless villain. Using the alias, "Proud Citizen," the blogger posted disparaging remarks about Cahill and his performance as councilman on a local news site's blog. The Councilman filed a defamation suit and sought to obtain the Proud Citizen's identity from Comcast, his Internet provider, so he could serve him with the lawsuit papers. The trial court determined that a party suing for defamation could compel the disclosure of the other party's identity – so long as the claim was filed in good faith.

John Doe appealed the trial court's decision to the supreme court, and the plot thickened. The state's highest court sided with "Proud Citizen," setting a high standard for individuals who want to expose an anonymous poster's identity – even where the postings seem to be an attack on the individual's reputation or character.

Court's decision

The court ruled that Cahill must satisfy a notification requirement and a "summary judgment" standard before he can unmask the identity of an anonymous poster. First, he must attempt to notify the poster that he's the subject of a subpoena by placing a message on the same board where the original statements were first posted. Also, Cahill's notification provision extends beyond the Internet forum; regardless of the medium, he must attempt to notify John Doe of the discovery request and withhold action to give him a chance to respond.

Once the notification provision is satisfied, Cahill must satisfy the summary judgment standard. In other words, he must demonstrate that in the light most favorable to John Doe, there are no reasonable disputes about the main facts. In Delaware, that means that the councilman must prove that the anonymous poster published a defamatory statement about him that a third party would understand to be defamatory. *John Doe No. 1 v. Cahill*, No. 266 (Del. Oct. 5, 2005) (en banc).

How this decision affects you

This decision shows the value that Delaware's highest court places on free speech. For employers, this decision has significant impact. If your employees make defamatory postings about their workplace, their supervisors, co-workers, or the company as a whole, the court now requires you to take a few extra steps in your attempt to have the postings stopped or removed.

Immediately resorting to the courts is no longer an option. Instead, you must comply with the new notification provision and post a notice on the same message board or blog letting the poster that he's the subject of a subpoena and giving him an opportunity to oppose the discovery request.

Even after that hurdle has been jumped, you must be prepared to fast-track your case with the new application of the summary judgment standard. Before discovery can even commence, you must be able to show the elements of your claim before the poster's identity will be accessible.

One way you can deal with that development is to plan ahead. Using confidentiality and nondisparagement agreements can be an effective tactic against vindictive bloggers. The requirements of the new ruling may not apply if your company can show that it has such an agreement with all employees and that the poster claims to be an employee.

Disability discrimination

This summer marked the 15th anniversary of the passage of the American with Disabilities Act (ADA). The ADA continues to be one of the most challenging of the discrimination statutes for employers and their counsel alike. In a rare example of your tax dollars at work, the EEOC's website, www.eeoc.gov, provides an excellent resource for navigating this complicated statute. The following article reviews some of the newly issued and updated resources available on the website, in particular the guidance on cancer.

Reasonable accommodation

With respect to accommodation – perhaps the most frequent compliance issue under the ADA – the EEOC has issued several fact sheets which are available on its website. The following were all updated as of August 2005 and are particularly helpful:

- Investing in People: Job Accommodation Situations and Solutions.
- The Job Accommodation Process: Steps to Collaborative Solutions.
- Opening Doors to All Candidates: Tips For Ensuring Access For Applicants with Disabilities.

Cancer and the ADA

The EEOC has issued the fourth in a series of question-and-answer publications providing guidance related to particular disabilities in the workplace. The first three publications addressed diabetes, epilepsy, and intellectual disabilities. The fourth publication addresses cancer in the workplace. The full publication is available at www.eeoc.gov/facts/cancer.html.

The guidance addresses topics such as:

- when cancer is considered a disability under the ADA;
- when an employer may ask an applicant or employee questions about his or her cancer and how the employer should treat voluntary disclosures of that information;
- what types of reasonable accommodations employees with cancer may need; and
- how employers can ensure that they don't discriminate against applicants and employees with cancer.

While the answers to these questions generally follow the traditional ADA analysis, the specific guidance and examples provided can be very helpful.

When is a cancer a disability?

As in other areas, individuals are protected by the ADA when they currently have cancer that qualifies as a disability, have a record of having such cancer, or are regarded as having a disability based on having or having had cancer.

So cancer will be considered a disability when it or its side effects substantially limit one or more of an individual's major life activities. For example, an employee who can work full-time with some accommodation in scheduling despite being exhausted or nauseated as a result of cancer treatment, but is too exhausted when she gets home to cook, shop, or participate in household chores has a disability, because her cancer substantially limits her ability to care for herself.

Even when cancer doesn't substantially limit any major life activity (such as when it's diagnosed and treated early), the EEOC notes that cancer may lead to the occurrence of another impairment that may qualify as a disability, such as depression.

Cancer also may be considered a disability if it was substantially limiting sometime in the past and, therefore, the individual has a record of a disability.

Finally, cancer will be considered a disability if an employer treats an individual as if his cancer affects his major life activities. The EEOC's example of the latter situation is an individual with a facial scar from surgery to treat skin cancer who's denied a position as an airline customer service representative because the interviewer fears that the scar will make customers uncomfortable. Therefore, the interviewer regards the applicant as substantially limited in working in any job that involves interacting with the public.

What may an employer ask an applicant about cancer?

The response to this question reflects the traditional ADA analysis of questions that may and may not be asked before an offer of employment, questions that may be asked after a conditional offer of employment is made, and appropriate uses of disclosed information. The guidance may be most helpful, however, in spelling out the scope of responses that are appropriate if the applicant voluntarily reveals that he has or had cancer. If you reasonably believe that an applicant who has voluntarily disclosed his diagnosis will need an accommodation to perform the job, you may ask whether the applicant will need an accommodation and, if so, what type.

When may an employer discuss cancer with an employee?

As with other disabilities, you may ask questions or require an employee to have a medical examination only if you have a legitimate reason to believe that cancer, or some other medical condition, may be affecting the employee's ability to do her job, or to do so safely. You may ask an employee with cancer:

- for information, including reasonable documentation explaining the need for a reasonable accommodation requested because of cancer;

- for medical information that's part of a voluntary wellness program, so long as any medical records or information acquired as part of the program are kept confidential;
- to justify the use of sick leave by providing a doctor's note or other explanation, so long as all employees who use sick leave are required to do the same and the information requested doesn't exceed what's necessary to verify that sick leave is being used appropriately; and
- for periodic updates of his condition if he hasn't provided an exact or fairly specific date of return or when he requests leave in excess of what you've already granted.

What types of reasonable accommodations may employees with cancer need?

Of course, there are a myriad of possible responses to this question, but the EEOC guidance provides the following possibilities:

- leave for doctors' appointments and/or to seek or recuperate from treatment;
- periodic breaks or a private area to rest or to take medication;
- adjustments to a work schedule;
- permission to work at home;
- modification of office temperature;
- permission to use the work telephone to call doctors;
- reallocation or redistribution of marginal tasks to another employee; and
- reassignment to another job.

As with other disabilities, the EEOC invites discussions between the employer and employee regarding the particular need for accommodation and an assessment of whether a proposed accommodation would result in an undue hardship.

Bottomline

As with other EEOC guidance on ADA analysis, there's considerable detail in the guidance that can't be fully summarized in any type of synopsis. Because that detail and the examples provided by the EEOC will be most helpful to your analysis, we strongly recommend that you review the guidance and keep it handy for reference.

SHRM National's Diversity Conference--a local view

By Anna C. Marcotte, Past Co-chair, Diversity

SHRM National's Annual Diversity Conference, entitled "New Challenges, New Opportunities," was held in October 24-26, 2005. Each year SHRM pulls together a rich conference agenda focused on diversity topics and diversity practitioners from around the world attend. Some sessions this year focused on women's leadership, managing retention, creating value out of diversity, creating an innovative multigenerational work environment, and religion in the workplace, to name just a few.

To highlight just one of the sessions I attended, "Ouch! That Stereotype Hurts! How to Respond to Stereotypes and Other Biased Behaviors," speaker Leslie Aguilar, President of International Training and Development in Florida, gave some important advice on creating a more inclusive work environment.

Aguilar coached attendees on how to respond to stereotypes and bias in a way that furthers learning and communication. Lessons from this session included: communications should be checked to ensure that it is presented in a "bias-free and inclusive" form.

For example, when writing, leave out forms of gender and race whenever possible, and have a few members of the target audience preview the materials. Second, be prepared for a "communication recovery." Aguilar stated that "you know" when you have said something that may be perceived as offensive.

When that happens, use the five-step communication recovery model: (1) acknowledge the error; (2) describe intent and impact; (3) apologize to ALL participants; (4) state/demonstrate what you will do differently; and (5) move forward.

The conference was a great experience, and I recommend participation for human resource professionals in all fields, not just diversity leaders. As the 2004-2005 Delaware SHRM Diversity Co-Chair, I attended the conference on behalf of the chapter. I usually attend the conference each year as part of my professional job, and this year's conference was probably the best one I have attended. There is valuable networking, benchmarking opportunities, opportunities to learn about new diversity training resources, and to hear first-hand from prominent leaders in the field.

I hope to meet you there at next year's meeting!

Delaware SHRM State Council

By Rita Johnson, PHR, Chair, Delaware State Council

Happy Holidays! The Delaware SHRM State Council board set out 2005 filled with energy and enthusiasm. Let me share with you the many goals that we accomplished:

- * To raise the profile of the SHRM Foundation, we invited Foundation Director, Maribeth Dockety, to provide information at the HR Expo of the 2005 Delaware SHRM State conference.
- * Legislative Action Director, Ron Shane, worked with both chapters in Delaware (Delaware SHRM and the DelMarVa HR Group) to increase participation of chapter and at-large members' support of National SHRM lobbying efforts with the U.S. Congress on key legislative initiatives. He also attended the 2005 annual SHRM Employment Law & Legislative Conference and advised State Council members on key federal and state legislative issues
- * At-Large Director, Chris Burkhard, successfully created an avenue for awareness to at-large members in the state by sending out two e-blast messages. (At-large members are not associated with one of the in-state chapters due to their geographic location.), and
- * Certification Director, Frank Ingraham, Jr., SPHR, helped raise the importance of certification by scheduling a visit from Alisa Goldschmidt from HRCl. He also completed and mailed certification information to at-large members.

We approach 2006 with a promise that the Delaware SHRM State Council will be here to support both the Delaware SHRM and the DelMarVa HR Group chapters throughout the year.

If you are interested in supporting the State Council by joining its Board, please contact Rita Johnson, PHR, at 302-253-3939 or rita.johnson@trinitytransport.com.



SHRM Foundation

Working for you

The Foundation funds research, publications and education to advance the HR profession and enhance the effectiveness of HR professionals. Here's just a small sample of the Foundation's initiatives.

Directory of Undergraduate HR Programs

In October 2004, the SHRM Foundation created a new online directory of undergraduate HR programs. The directory includes detailed profiles of more than 270 undergraduate degree programs. Users may search the database by university name, location, public or private school, and the competitiveness of the admissions process. To facilitate use by students and faculty members, the directory is open to the general public and does not require a SHRM ID to access. The undergraduate directory is a useful tool for students researching HR programs, and for faculty interested in benchmarking their degree programs with other universities. This project was accomplished with the generous support of contributors like you. To access the directory, visit www.shrm.org/foundation.

HR in Alignment

The Foundation recently produced a new video entitled "HR in Alignment: The Link to Business Results." Narrated by Dr. Wayne Cascio, this DVD presents a real-world case study of Sysco Food Services Company. It explains how Sysco is successfully measuring the business impact of its HR strategy and aligning its mission throughout the organization, from top executives, to front-line employees, to customers. This product compliments the very successful "HR Role Models" DVD, which was introduced by the Foundation in 2003. A valuable resource for chapter programs and professional development, the video was distributed free to attendees at the 2004 SHRM Leadership Conference, and is now available for purchase through the [SHRM Store](#).

Regional Scholarships

Did you know... The SHRM Foundation provides \$30,000 annually to fund the Regional Scholarship Program? The scholarships support SHRM members working full-time and pursuing HR degrees or professional

certification. Each of the five SHRM regions receives \$6,000 to award to applicants in their part of the country. SHRM members, chapters and state councils may submit an application to SHRM by May 1 for consideration. Scholarship applications and complete details are available online at www.shrm.org/foundation.

Upcoming events

Upcoming events

2006	Program/Event
January 10, 2006	<p>Delaware SHRM monthly meeting: "FMLA Changes: In Limbo Now, But Not Forever," William W. Bowser, partner, Young Conaway Stargatt & Taylor</p> <p>Dinner meeting: 5:30 pm Registration; 6:20 pm Dinner; 6:45 pm Program Cavalier Country Club, 100 Addison Drive, Newark, DE</p> <p>Discounts for early registrations! Register online at www.deshrm.org/monthlymeeting.cfm or by phone at 302-367-7476.</p> <p>Gold sponsor: The Lyons Companies</p>
January 11	<p>DelMarVa HR Group dinner meeting for professional development and networking</p> <p>6:00 pm – 8:00 pm; Geyer's Restaurant, 556 South Dupont Highway (Route 113), Milford, DE</p> <p>Contact Marilyn Magness at mmagness@iqburton.com with questions</p>
January 17	<p>Wilmington Executive Networking Meeting: sponsored by Career Concepts and ExecuNet.</p> <p>Come and meet other senior executives who are as eager as you are to develop and expand their networking relationships. If you're in a job transition, thinking of a career change, investigating consulting possibilities or just want to expand your business contacts and have been earning \$100K or more, this meeting is for you.</p> <p>Exchange information about career opportunities and have fun doing it! You will be most effective at networking, if you are prepared with the following: * A two-minute summary of yourself, including how you can help someone else to network. * Names of your target companies and your contacts. * Copies of your marketing materials: resume, business card or executive bio.</p> <p>Facilitator: Rick Hays, Vice President, Client Services, Career Concepts</p> <p>Morning networking event: 7:30 am - 10:00 am University and Whist Club of Wilmington, 805 North Broom Street, Wilmington, DE</p> <p>Delaware SHRM members (and people whom they refer): FREE! ExecuNet members: \$10.00/\$15.00 at door Checks or cash only please--no credit cards Continental breakfast will be served.</p> <p>Registration: Contact Sharon June at sjune@cciconsulting.com or 877-882-2462.</p> <p>Make checks payable to: Career Concepts, Inc. Mail checks to: Career Concepts, Inc., 140 West Germantown Pike, Suite 150, Plymouth Meeting, PA 19462</p>
February 14	<p>Delaware SHRM monthly meeting: Topic/speaker TBA</p> <p>Dinner meeting: 5:30 pm Registration; 6:20 pm Dinner; 6:45 pm Program Cavalier Country Club, 100 Addison Drive, Newark, DE</p> <p>Discounts for early registrations! Register online at www.deshrm.org/monthlymeeting.cfm or by phone at 302-367-7476.</p>
February 21	<p>Wilmington Executive Networking Meeting: sponsored by Career Concepts and ExecuNet.</p> <p>Come and meet other senior executives who are as eager as you are to develop and expand their networking relationships. If you're in a job transition, thinking of a career change, investigating consulting possibilities or just want to expand your business contacts and have been earning \$100K or more, this meeting is for you.</p> <p>Morning networking event: 7:30 am - 10:00 am University and Whist Club of Wilmington, 805 North Broom Street, Wilmington, DE</p> <p>Delaware SHRM members (and people whom they refer): FREE! Continental breakfast will be served. Registration: Contact Sharon June at sjune@cciconsulting.com or 877-882-2462.</p> <p>For more details, refer to January 17 above.</p>
March 13 – 15	<p>SHRM's 23rd Annual Employment Law & Legislative Conference</p>

	<p>Capital Hilton, Washington, DC</p> <p>For more information: http://shrm.org/conferences/leg/</p>
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March 15	<p>DelMarVa HR Group dinner meeting for professional development and networking</p> <p>6:00 pm – 8:00 pm; Geyer's Restaurant, 556 South Dupont Highway (Route 113), Milford, DE</p> <p>Contact Marilyn Magness at mmagness@iqburton.com with questions</p>
March 20 – 22	<p>SHRM's 29th Annual Conference & Exposition of the SHRM Global Forum</p> <p>Caesar's Palace, Las Vegas, NV</p> <p>For more information: http://shrm.org/conferences/global/</p>
March 21	<p>Wilmington Executive Networking Meeting: sponsored by Career Concepts and ExecuNet.</p> <p>Come and meet other senior executives who are as eager as you are to develop and expand their networking relationships. If you're in a job transition, thinking of a career change, investigating consulting possibilities or just want to expand your business contacts and have been earning \$100K or more, this meeting is for you.</p> <p>Morning networking event: 7:30 am - 10:00 am University and Whist Club of Wilmington, 805 North Broom Street, Wilmington, DE</p> <p>Delaware SHRM members (and people whom they refer): FREE! Continental breakfast will be served. Registration: Contact Sharon June at sjune@cciconsulting.com or 877-882-2462.</p> <p>For more details, refer to January 17 above.</p>
June 25 – 28	<p>SHRM's 58th Annual Conference & Exposition</p> <p>Washington Convention Center, Washington, DC</p> <p>For more information: http://shrm.org/conferences/annual/</p>

SHRM Logo



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Visit us on the web at: www.deshrm.org.

The Delaware SHRM Board of Directors is available online at: www.deshrm.org/board_members.cfm.

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