



## President's message

By Vickie McCardell, PHR

Big News! Our chapter has received a 2005 Superior Merit Award from SHRM National. This award recognizes Delaware SHRM as a chapter that is committed to SHRM National's mission to Serve the Professional and Advance the Profession. Our chapter leaders welcome the challenge each year of planning activities and events to meet the many requirements for superior merit status.

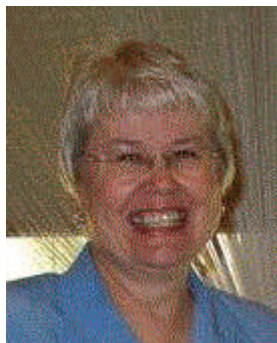
Your membership in this superior chapter gives you a wonderful opportunity to grow personally and professionally by developing supportive relationships with other HR professionals and increasing your HR knowledge. Attending the monthly meetings is key to getting the most out of your membership. We welcome your participation and your ideas for new resources and activities.

One of our activities for 2006 is giving back to the community. A way of doing this is by inviting charities to share their programs and needs with our membership. The American Heart Association ([www.americanheart.org](http://www.americanheart.org)) joined us in February and shared information about their Go Red for Women Campaign, raising awareness about women and cardiovascular disease. We learned that heart disease is women's #1 killer.

In March the American Cancer Society ([www.cancer.org](http://www.cancer.org)) promoted Daffodil Days, their fundraising event using the daffodil as a symbol of hope for a cancer-free world. You as an individual can give to the community as well. Many charities need volunteers as well as monetary gifts.

Delaware SHRM also needs volunteers. Our Board of Directors and committee members are all volunteers who give many hours of their personal time to the chapter. This may be the year that you are ready to make a commitment to the chapter that will enhance your personal and professional development.

Help us support the chapter and give back to the community!



## Ernest L. Jenkins, VP, People Strategy & Human Resources, Pepco Holdings, Inc.

By Irene Monley, ABC, SPHR, Chair, Delaware SHRM Communications

Turning on your lights this morning was simple. Just flick the switch. What's not apparent is the complex organization that makes that simple act possible. From maintaining power lines to trading energy, Pepco Holdings Inc. (PHI), the parent company of Delmarva, is in a complex industry that few people really understand.

Delaware SHRM recently had the good fortune to talk with Ernest Jenkins, PHI's HR leader. In this interview, he sheds light on the company's major culture change initiative that balances local interests with the efficiency of a large organization. His career path, which includes locomotive engineer, is unique, and his views on the HR profession are insightful.

### **The Company**

**DESHRM: PHI has grown significantly over the past few years, acquiring Delmarva Power for one.**

**Would you tell us about the company—business, customers, locations, number of employees?**

ELJ: We're a Fortune 300 company with about 5,500 employees in Delaware, Maryland, New Jersey, Virginia and the District of Columbia. We have four different IBEW local unions with four different contracts to manage.

We have three major businesses, one "regulated" and two "competitive" businesses, within the holding company, PHI. Our three regulated utility companies are: Pepco, Delmarva and Atlantic City Electric. Conectiv Energy and Pepco Energy Services are our competitive businesses.

We provide electricity to about 1.7 million residential, commercial and industrial customers in New Jersey, Delaware, Maryland, Virginia and the District of Columbia. We also serve about 100,000 gas customers in Delaware.

**What does "regulated" vs. "competitive" mean?**

In the regulated businesses, we own the power lines and deliver utilities to residential, commercial and industrial customers. These businesses answer to the public service commissions in the states in which we operate, and in the District. The public service commissions regulate what we do. For instance, we have to get their approval for rate increases or to build transmission lines.

The competitive businesses do not serve residential customers. They are out on the commodities market trading energy and dealing with other energy companies. They do not come under the same regulatory purview like the utility operations do.

We have to keep the regulated and unregulated businesses separate from an ethical, legal, operating, and public policy standpoint.

**With significant rate increases looming in the future for residential customers in Delaware, PHI has been in the local news recently. Has the controversy affected the workforce? Human Resources?**

Yes it has. Some of our resources are being used to gather information and conduct analyses to answer many questions. Other employees are out talking to regulators, politicians, customers and the media to educate them about the facts regarding this situation. The rising cost of fuel is a key driver in this rate increase.

Delmarva has not had a rate increase for at least seven years. It is important to remember that. But now that rates are going to increase, we're working to manage it as effectively as we can. We are still not the highest energy provider in the area, which is a testament to our employees and to our leadership. We've reduced costs and improved processes so that we would impact our customers as little as possible. Those are some additional facts that need to be communicated.

It impacts HR to the extent that it impacts our employees. All of our employees, whether they are frontline customer service people, linemen, executives, even staff employees are under a lot of internal and external pressure. We get questions from our friends and neighbors.

There's a direct correlation between the interface between our external customers and how we interact internally in the organization. Some of these issues come down to people-related issues, whether it's stress and wellness as a result of these increased demands, or the potential for layoffs depending on the outcome of this situation. Ultimately, they all have an HR impact.

### **The Role of Human Resources at PHI**

**DESHRM: What role does HR play at PHI?**

ELJ: We enjoy multiple roles. We play strategic, tactical, consultative, compliance and governance roles. We are "at the table" with the CEO, COO, and our senior executives, strategizing and communicating about the people-related issues. That is why we have the People Strategy title as part of our department name. We provide the typically important HR services like compensation, benefits, staffing, labor and employee relations, diversity, etc. We also play a key role in the post-integration process that we're currently going through, helping our employees adapt to change as a result of the merger between Pepco and Conectiv.

PS & HR also supports our executives from the change leadership perspective, and I make a distinction between change management and change leadership. Change management focuses on being able to deal with change; adapt to change; embrace change. Change leadership is about having the leadership courage and getting out in front; leading the change effort and having people follow you. When two different and

successful cultures merge, HR is right in the middle helping the company move forward as a "PHI company."

### **Is merging the companies your most challenging issue right now?**

It is one of our more challenging issues. Our cultural initiative is called: "The PHI WAY." Simply put, the PHI WAY is how we do things at PHI. In addition to all of the systems, functions, people and process integration work, we're helping people to move forward, the "PHI WAY," so that we can become a higher performing PHI company.

### **Yet, you're reverting to the original local company names?**

Yes. We're going back to a community-based organization at one level, whether it's Delmarva, Atlantic City Electric or Pepco. The PHI holding company will be the umbrella, providing the leadership, direction and overall structure.

It's a delicate balancing act. We're talking about multiple cultures: an overarching PHI culture; a Delmarva Power subculture; an Atlantic City Electric subculture; a Pepco subculture; and other subcultures within those. Managing and leading this initiative is very challenging for us in the PS&HR organization.

### **What approaches have been successful for promoting change in your organization?**

One important thing is to assess the readiness of the organization to embrace change. Then we identify the key stakeholders and where these people are on the change spectrum. Are they allies, or resistors or adversaries to the change? We then develop different strategies to deal with these stakeholders in order to meet them where they are. And, hopefully we can help them move forward in leading or managing the needed change.

In communications, we talk about what we're trying to do, why we're trying to do it, who is doing it, how we're going to do it. And we answer "what's in it for me," or WIFFM, which is so important. You have to continually communicate and actually go out to talk with employees.

Face-to-face communications are most important. You can use all the technology available, but face-to-face communications are the most effective. The dialogue created in the face-to-face communications between executives and employees is most important, because the people actually see you; they can ask questions; they can push back, and you can deal with them up front. It is the most powerful means of communications I've found in all the change efforts that I've been involved in.

### **How will you know when you're successful?**

Bottom line, it comes down to business results. How are you performing as a company?

We do employee surveys, conduct focus groups and have quarterly communication meetings with all the supervisors and above. We get direct feedback which tells us whether things are working. But the bottom line is when we can tie it all to results. When the company is performing at a higher level, employees are engaged and are proud to say they work here. They will go above and beyond what we ordinarily expect of them in order to serve our customers.

### **How has outsourcing affected PHI?**

It has impacted us greatly. We've outsourced in many areas where we feel it was feasible to do so. We've outsourced some areas and now are thinking that we ought to bring a few functions back in, because we're not happy with a couple of our vendor partnerships.

When you outsource, people think you automatically save money. Although you may save money at first, if it's not done the right way with flexibility and continual improvement in mind it may ultimately cost you more in the long run. You have to continually assess what you are doing, how you are doing it and the value proposition associated with the partnership.

### **The Human Resources profession**

#### **DESHRM: HR professionals in general; top three issues over the next five years?**

ELJ: Being at the strategic table; having a voice that is heard and listened to at that table; and delivering results.

Being able to get there and stay there is a key challenge. Many HR organizations don't get there. It's being able to partner as a true consultant with your internal clients and deliver the day-to-day HR services to get things done in a highly effective and efficient manner.

And the last thing is, with all the changes and M&As going on, having some change agent capability and competencies. These are some of the most important issues facing us right now.

#### **How can HR professionals help employees develop the skills necessary to meet the challenges of the workplace?**

HR can help at the individual, team/department and organizational levels. HR can help employees with development plans and effective performance management processes. We can help teams learn teaming skills to function at higher levels. And we can help companies create an inviting workforce environment to recruit and staff some of the best and brightest people, an environment that provides competitive benefits like tuition reimbursement/educational assistance, where we encourage and financially support people's developmental needs.

From a succession management perspective, HR can put processes and policies in place to determine who is in the talent pool for succession purposes, and then provide development opportunities. It's also making sure

executives are aware of the whole talent management concept and how important workforce planning is to regenerate our aging workforce. Overall, HR can help mold a workforce environment that is critical to the success of the business in many ways.

The other thing is to create an employee ownership mindset in which employees understand that they are responsible for their own development. They have to take initiative to make sure that it happens, and not wait for a boss or executive to come down and make it happen for them.

### **Your career**

#### **DESHRM: What was your first job?**

ELJ: My first job out of college was as a house parent in a juvenile delinquent state home and school in Texas, where they brought in juveniles who got in trouble with the law. Some came and stayed. The place was the central assessment center for the whole state of Texas. We saw everything, all kinds of juveniles.

Another job that was just as significant to me was as a locomotive engineer for the Santa Fe Railroad in Texas. I ran trains for four years to Houston, Fort Worth and Dallas. I attended simulator school in Wichita, Kansas, which was probably the hardest training that I have ever experienced—even more difficult than earning my master's degree. It was an intense, comprehensive training program, in which people trained on a locomotive simulator and went to night classes.

#### **Your education?**

I started out in catholic school for the first eight years of my life and was an altar boy. Then I went to public school, graduated and went to college. In college, I played basketball. That's how I got through college, on a scholarship. I was one of those guys who lived up to the term "student athlete"—it was a means to an end for me.

I have a BS degree in secondary education, with minors in psychology, sociology and health; and a dual master's degree in human resource development and management. Besides an engineer's license, I also have the SPHR certification and several other professional certifications.

#### **Your career?**

ELJ: After I hopped off the train and went home to Albuquerque, New Mexico, I joined the Public Service Company of New Mexico. That's when I actually first started my career in corporate America. I began as an educational specialist, going out to schools, from kindergarten to colleges, to talk about electric safety and conservation (Back in the 70's conservation was a big thing; we had the oil embargo and the energy crisis—kind of similar to what we have now).

Then, I went into Public Relations. I also was a spokesperson for the company, talking to the external media throughout New Mexico. That's when I became very interested in how the corporation worked internally.

So I joined the newly created internal management consulting department as an internal consultant. The department was created by the CFO and CEO to replace external consultants. We conducted operations analyses, organizational analyses, productivity studies, and things like that. That's when I started to learn the inner workings of the organization, and it was fascinating. I moved up and became the director.

After the gas and electric company merged, we integrated the training department and the internal consulting department to become the organizational development function. Following the next merger, I became director of the organizational development and business innovation department. I was also what Michael Hammer called the "reengineering czar," as the lead person for our major reengineering efforts. In addition to my OD job, I was in charge of five major reengineering projects and managed the HR generalists or business partners. It was a fun time; it was a challenging time.

In 1998, I was recruited by Delmarva Power, as they merged with Atlantic City Electric and evolved into Conectiv. The company was looking for a person who could lead the cultural integration. I began as the manager of organizational effectiveness and became manager of strategic staffing.

I then moved from the corporate staff out to become head of the decentralized HR function in the power delivery business, which represented two-thirds of the company. When Pepco acquired Conectiv, the HR functions were merged and now I'm VP, People Strategy and Human Resources for the corporation. I have two offices, in Newark, DE and Washington, DC; with my group split between the two locations and several of our regions.

#### **How does your early experience at the juvenile home and as a locomotive engineer help you in your role today?**

As a locomotive engineer, I learned teamwork. While I was responsible for the safe transportation of the train, I had to work with the crew, and we all had to work as a team. Whether it was following train orders or going into sidings or making up the train, we had to have a team and we played a role on that team. I had to balance self-sufficiency as an engineer with being able to work on a team in which everyone had a role to ensure the safe arrival of the train.

At the juvenile hall, I really started to learn about people. I learned that regardless of where you come from, if you have the desire and are willing to work at it, that people can do just about anything they want to do. You can change if you really want to change. Although some people say it's hard to change, you can change specific behaviors if you are willing to look inside yourself and reflect, get feedback, take the feedback and work on

things and be diligent and disciplined. You can actually do some great things beyond what you thought you could do. Coaching and counseling some of these kids who came from some pretty bad environments was very gratifying. To observe the kids who really wanted to turn their lives around, work and educate themselves was particularly profound to me. And I take some of those lessons learned to my role today.

**What advice would you give to a recent grad who is embarking on HR career?**

First of all, assess why you really want to come into HR. What's driving you? So many people say: "I like working with people." Well, that's a simple and short answer, but it does not necessarily mean that you will be the best HR professional or that HR is the profession for you. You can work with people in lots of other areas or careers.

If they truly want to do HR work, it is probably one of the more difficult, stressful, challenging, and rewarding jobs that they can get into. They need to learn continuously and stay in shape—emotionally, mentally, physically and spiritually, because you're going to need all of those faculties to really be a high performer in today's HR profession.

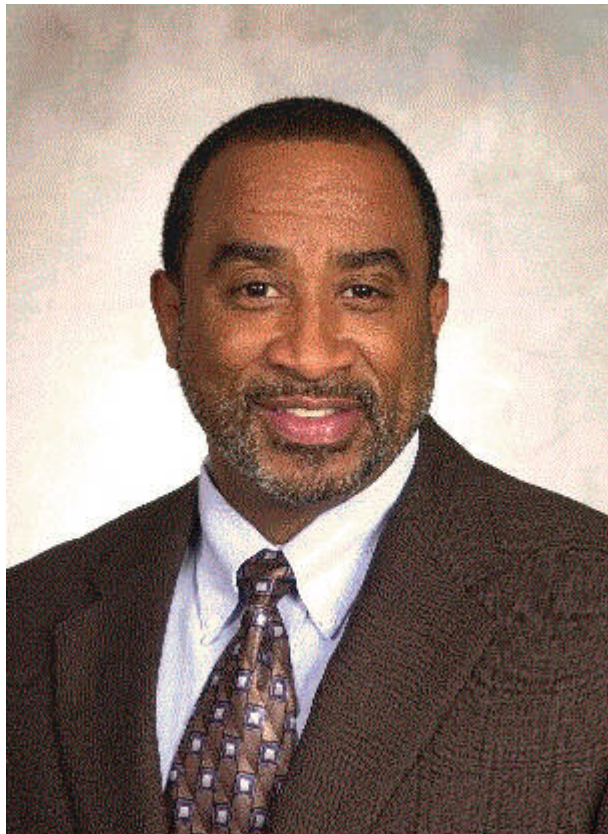
It's not an 8 to five job. It's very rewarding, because when you do well and get things right, you see employees and the organization change for the better. It's gratifying to realize that you've played an important role.

Sometimes you're out in front leading the charge; sometimes you're behind the scenes as a consultant, coaching executives and helping them do the right things.

HR is much more difficult than it used to be, because you have to wear a customer service delivery hat and a compliance and governance hat, or cop hat. You have to make sure that you stay within the confines of the law and that you do things ethically and morally right. A lot of people can't wear both hats. It takes a special skill to be able to know when to put the consultant hat on and when to put the cop hat on.

**One last question, if you had to pick an alternative career to HR, what would it be?**

I probably would be a coach at the junior high school level, because you can still have an impact on children at that age. That's what I earned my degree in. I love kids and did some coaching. I think I could help some of these kids in more than athletics. Today, a lot of young people just have a one track mind. They are so focused on going to the pros, and they don't have a contingency plan—what happens if they get injured or don't make it to the pros. Only a tiny percentage of the people make it. I could help young adults develop a contingency plan for life that would take them on another yet successful path so they could benefit and enjoy life while contributing to society a little more. That sounds idealistic I know, but you asked!



# Federal legislative activity

By Richard Burton, MBA, Legislative Liaison

## [SHRM Endorsed Workforce Health Improvement Program \(WHIP\) Act Gaining Support](#)

H.R. 1634 the Workforce Health Improvement Program (WHIP) Act, sponsored by Representative Zach Wamp (R-TN) and its Senate companion S. 772, sponsored by Senator John Cornyn (R-RX), currently have 50 and 7 cosponsors respectively. SHRM and other business organizations are working to further increase the number of cosponsors.

The WHIP Act is intended to help fight obesity and chronic diseases caused by inactivity by allowing for the favorable tax treatment of fitness center memberships as an employee benefit. Public health experts agree that people who maintain active healthy lifestyles dramatically reduce their contracting chronic diseases.

A physically fit population results in a decrease in health care costs, reduced government spending, fewer illnesses and improved employee productivity. The WHIP Act would allow for the balanced tax treatment of the cost of fitness center memberships as an employee benefit. Specifically, it would clarify an employer's ability to deduct the cost of subsidizing or providing off-site fitness center benefits for their employees. In addition, this legislation would exclude the wellness benefit from being considered taxable income for employees.

HR professionals are faced with balancing rising health care costs against the importance of offering health care benefits to recruit and retain a highly skilled workforce. To address rising health care costs, employers are increasingly interested in promoting healthy living programs for their workforce.

Employees that engage in fitness programs and activities are generally more productive, have lower incidences of workplace injuries, lower health care costs, and are healthier overall. The WHIP Act would enable employers to help their employees focus on prevention and fitness, resulting in a healthier lifestyle and fewer health-related expenses.

### **Pension Bills Poised for Conference**

Before the 109<sup>th</sup> Congress, first the House and then the Senate passed separate, but similar legislation to reform pension plan funding rules for defined benefit plans. The Senate passed the Pension Security & Transparency Act (S.1783) by a vote of 92 to 2 on November 16; the House passed the Pension Protection Act of 2005 (H.R.2830) on December 16 by a vote of 294 to 132.

The legislation is being driven by concerns over the stability of the defined benefit plan system and the potential insolvency of the Pension Benefit Guarantee Corporation (PBGC), which is facing a \$23 billion shortfall because of recent plan defaults. Although legislation is principally focused on defined benefit plans, both bills have a number of provisions aimed at defined contribution plans as well.

Both these bills are important pieces of legislation because reform to the current system is crucial to creating a secure retirement for employees. The bills would create additional avenues encouraging people to plan and save through employer sponsored pension plans. They would also encourage EGTRRA provisions to become permanent along with providing employers a safe harbor from liabilities when offering sound investment advice to employees.

### **House Passes Immigration –Enforcement Bill**

On December 16, the House by a vote of 239 to 182, passed H.R.4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005. The legislation, sponsored by Chairman James Sensenbrenner, (R-WI) of the House Judiciary Committee, would amend the Immigration and Nationality Act (INA) and is aimed at curtailing illegal immigration through stepped-up enforcement of immigration laws and enhanced border security. The reason this should be of interest to HR professionals is because H.R. 4437 contains several provisions regarding the employment verification system used to authorize work in the United States. Key provisions include:

- ***Electronic Verification System for Employment Purposes*** - H.R. 4437 would create an electronic verification system for employment. This new system will be based on the current "Basic Pilot" system and would require an employer to check, within three working days of hire, each new employee's work eligibility and identity using a toll-free telephone line or other electronic medium. The system would have three days to respond with either a confirmation or a tentative nonconfirmation of work eligibility. Employers would be required to use the electronic verification system within two years after the bill becomes law.
- ***Secondary Verification System for Employment Purposes*** – In the case of a tentative nonconfirmation, H.R. 4437 establishes a secondary verification process. The secondary verification process would be initiated to confirm the validity of the information provided and would be required to provide the employer with a confirmation or nonverification of work eligibility within ten working days after the initial nonconfirmation. Employers would not be allowed to terminate individuals that had received a tentative non-confirmation until the employer had received a nonverification or the ten-day period of time had elapsed.
- ***Reverification of Existing Employees***– H.R. 4437 requires all employers to re-verify the identity and

employment eligibility of **all** previously hired employees using the electronic verification system. Federal, state and local employers or employers that have employees working at a location that contains "critical infrastructure" (airports, nuclear energy sites, military facilities, etc), would be required to reverify employees three years after the bill becomes law. All private employers would be required to reverify employees six years after the bill becomes law.

- **Employer Attestation of Verification Process**– In addition to mandating the use of an electronic verification system, H.R. 4437, would require an employer to continue to attest on Form I-9 or a similar document that he or she had examined the new hire's employment and identification documents to ensure authenticity; record the Social Security number of each new hire; and record the verification code received through the electronic verification process. If an individual asserts that he or she is not a U.S. citizen, an employer must obtain a Department of Homeland Security (DHS) work authorization document from the employee. Employers would be required to keep the document (either electronically or in paper) and make it available for inspection by officers of the DHS, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor for up to three years after the date of hire or one year after the date the individual's employment is terminated.

- **Increased Penalties**– H.R. 4437 would increase civil penalties for hiring, recruiting, and referral violations. Failure to use the verification system or submitting information that the employer "reasonably believes" to be false would constitute knowingly hiring an unauthorized worker. For the first offense, employers would face a minimum fine of \$5,000 and the second offense, a minimum of \$10,000. For multiple offenses, employers would face a minimum fine of up to \$25,000. For paper work violations, employers would be subject to a range of fines from \$1,000 to \$25,000. Smaller employers could face a reduced penalty of up to 60 percent of the assessed fine.

- **Criminal Sanctions** -H.R. 4437 would increase the criminal penalties against employers who engage in a pattern and practice of violating the INA, who could face fines from \$3,000 to a maximum of \$50,000 for each unauthorized worker and be subject to imprisonment of up to one-year in jail.

## State legislative activity

By Richard Burton, MBA, Legislative Liaison

### Enacted Law

**Recently a military leave provision was created for state employees** Delaware has enacted legislation to ensure that state employees who are called to active military duty, whether or not through federal action, continue to receive their state compensation less any military compensation they may receive (Ch. 234 (S. 248), L. 2005).

**Use of Social Security numbers on insurance cards.** Effective January 12, 2006, it is unlawful for a group insurer to use an individual's Social Security number as the identification number on a health insurance card (S. 138, L. 2005).

### Pending Law

#### *Benefits / Prescriptions*

**H.B. 39 – Status - Hearing held and amended in committee June 16** Current version requires health insurers to cover the amended in cost of prescriptions as ordered by an insured's doctor, even if a substitute drug exists, when the doctor justifies the need for the drug, as prescribed. The justification form will be created by the Medical Society of Delaware and representatives of the insurance industry and must be in use by January 1, 2006.

#### *Employment Discrimination*

**H.B. 188 – Status - Carried over to the 2006 session.** Provides that no person shall be required, as a condition or 2006 session continuation of employment, to become or remain a member of a labor organization, pay any dues, fees, assessments, or other similar charges, however denominated, of any kind or amount to a labor organization. Requires that no person be required to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or pro rata portion of dues, fees, assessments, or other charges required of members of a labor organization. Creates a right to work law in Delaware.

#### *Wage and Hour*

**S.B. 62 – Status - Reported from committee 1/18.** Increases the minimum wage from \$6.15 per hour to \$6.65 per hour effective January 1, 2006, and from \$6.65 per hour to \$7.15 per hour effective January 1, 2007.

## Retaliatory Hostile Work Environment?

By Robert J. Toy, Post & Schell, P.C.

Cases of alleged illegal retaliation against employees for asserting employment rights have plagued employers for years. Typically, these cases involve an employee who complains to management or to a state or federal employment law enforcement agency about mistreatment in the workplace and is subsequently terminated by the employer.

Under virtually all employment discrimination laws, such retaliation against the employee for engaging in “protected activity” is illegal and actionable. Historically, the employer had a modicum of protection from such claims in the form of the legal principle that, to be actionable, the employee who claims retaliation must have suffered a “tangible” adverse employment action. In other words, minor trivialities in the workplace could not provide the basis for a retaliation claim; the alleged retaliatory action had to constitute a relatively serious employment consequence to the employee.

That may not be so anymore. The United States Court of Appeals for the Third Circuit – of which Delaware is a part – recently held that an employee may maintain a cause of action against his employer for a “retaliatory hostile work environment.” The court found that a plaintiff who suffers “severe or pervasive” retaliatory harassment may state an actionable claim against the employer even in the absence of a tangible adverse employment action.

The case is *Jensen v. Potter*, 435 F.3d 444 (3d Cir. 2006). In it, Anna Jensen was subjected to a crude and unwanted sexual proposition by a supervisor. Jensen reported the incident and the supervisor was eventually terminated as a result. A series of events followed, during which Jensen was subjected to insults and physical intimidation by coworkers, and had her car vandalized four times. Though she repeatedly complained to the employer about the treatment she was receiving from her coworkers, the employer did not put an end to the mistreatment until approximately 19 months later.

Jensen eventually brought suit, alleging sex discrimination and retaliation. One of the questions presented was whether Jensen had stated an actionable retaliation claim in the absence of any real, tangible adverse employment action against her (such as termination or demotion). The court analogized Jensen’s retaliation claim to a hostile work environment sexual harassment claim.

In doing so, the court noted that the hostile work environment sexual harassment theory is predicated on the notion that discriminatory ridicule or abuse can so infect a workplace that it alters the terms or conditions of the plaintiff’s employment. The court went on to hold that if harassment because of one’s sex can alter the terms and conditions of employment and is therefore actionable, so too should be harassment that occurs in retaliation for engaging in legally protected activity.

Because the court was essentially recognizing a new cause of action, the task still remained to define its parameters. In defining the elements of a cause of action for a retaliatory hostile work environment, the court borrowed largely from existing hostile work environment jurisprudence, and held that a plaintiff must prove (1) that she suffered intentional discrimination (i.e., harassment) because of her protected activity; (2) the discrimination was severe or pervasive; (3) the discrimination detrimentally affected her; (4) it would have detrimentally affected a reasonable person in similar circumstances; and (5) a basis for employer liability is present.

The first element essentially requires the plaintiff to prove a causal connection between the protected activity (filing an EEOC discrimination charge, for example) and the alleged discriminatory harassment. The second element requires that the alleged harassment be either severe or pervasive.

A single incident of alleged harassment can provide the basis for a hostile work environment claim if it was sufficiently severe. Incidents of lesser severity can combine to create a hostile work environment if they were sufficiently frequent. The second element therefore acts to guard against imposing liability for alleged discriminatory harassment that is not sufficiently serious to alter the terms and conditions of employment.

The third and fourth elements require the plaintiff to prove both that the alleged harassment was subjectively offensive to her and that it would have been objectively offensive to a similarly situated person. A plaintiff obviously should not be permitted to recover for harassment that did not bother her, and by the same token liability should not be imposed for alleged harassment that a reasonable person would not find offensive, even if the plaintiff herself found it offensive.

The final element requires that the plaintiff prove that there exists a reason for holding the employer liable for the harassment occasioned by its employees. Under the facts presented in *Jensen*, because the alleged harassers were Jensen’s coworkers (as opposed to supervisors), the court determined that Jensen would have to prove that “management knew or should have known about the harassment, but failed to take prompt and adequate remedial action.” The court specifically left open the question of how best to treat supervisory harassment that is spurred by a retaliatory motive.

In applying the foregoing elements to the facts of Jensen’s case, the court found that Jensen had produced sufficient evidence to overcome the employer’s motion for summary judgment, and the court therefore remanded the case to the district court for trial.

The court’s overt recognition of a cause of action for a “retaliatory hostile work environment” is not a surprise. It means, however, that employers must be even *more* cautious with an employee who engages in legally

protected activity under the employment statutes. Because mistreatment short of tangible adverse employment actions can now provide the foundation for a retaliation claim, Human Resources professionals must be ever more vigilant to ensure that "protected" employees are not mistreated by coworkers or supervisors.

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## Electronic Workplace

*Navigating blogs in the workplace*

By William W. Bowser, Esq

Blogs are putting Delaware on the map. While we're most often known as the state of incorporation for many Fortune 500 companies or for our thriving credit card industry, that new technology has recently brought new national attention to the Diamond State.

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. They're easy to access and free to use, and they can reach a potentially unlimited audience, which may include your employees, customers, and competitors.

*A gathering storm?*

The firing of a reporter by the *Dover Post* for comments on his personal blog and the continuing saga involving Smyrna town officials have been covered intensely by the national press. The reason is clear. These cases represent the first in what may be a deluge of cases involving the role of blogs in our workplace and in our society, a deluge caused by the sheer number of blogs combined with an unprepared legal climate. One study estimates 60 million blogs exist worldwide and 100,000 new blogs are created every day!

*Uncharted reef?*

While the number of blogs is exploding, statistics show that most employers have failed to take steps to shield themselves from potential liability by developing a clear blogging policy. A recent national study indicates that only 15 percent of employers have specific policies regarding blogging. Nevertheless, blogs by your present and former employees pose workplace risks, including the following:

- \* **Breach of confidentiality.** A blogger may reveal confidential information about the company, including trade secrets. For example, a blogger complaining about a project assignment may, without thinking about the implications, reveal details of a new product that's under development. Or an accounting department blogger complaining about having to work an all-nighter on a big stock deal may inadvertently be revealing insider information.
- \* **Defamation.** The freewheeling culture of blogging may encourage people to say things online that could defame their employer, management, co-workers, customers, or competitors.
- \* **Harassing or otherwise offensive content.** Imagine, for example, a situation in which an employee with a disability is being accommodated with a modified work schedule in compliance with the Americans with Disabilities Act. The employer has properly responded to inquiries about the arrangement by saying only that the company is handling the individual's situation in accordance with federal law. A blogger complains that that "slacker" is being allowed to come and go as he pleases while the rest of the department suffers for it and speculates about the person's possible medical condition.
- \* Or imagine a blogger spreading completely speculative rumors that a recently promoted colleague got the job by performing sexual favors for the boss. Conversation that shouldn't go unaddressed in the workplace can be extremely difficult to curb when it occurs anonymously in cyberspace.
- \* **Inappropriate content.** Such content can range from postings that are disrespectful to your company to those that are completely unrelated to employment but may still reflect on you.

*Safe harbor?*

It's important that you cover blogging in your Internet or electronic communications policy. The policy should prohibit disparaging the company or its employees, customers, or competitors either by name or implication. As with your other policies, it should be communicated to employees when they're hired and periodically thereafter. It also should caution them that they must avoid creating the impression that the views expressed on a blog are anything more than personal opinions.

Following are some points you may want to cover in a corporate blogging policy:

1. Persons who broadcast information regarding the company or its employees, customers, or competitors must make clear that views expressed in the blog are theirs alone and don't represent the views of their employer.
2. In blogging, as in any other communication, employees must respect the company's confidentiality and proprietary information. Employees should be reminded of the confidentiality provision in the employee handbook and, if they're required to sign confidentiality agreements, of their commitments under those

agreements.

3. Employees who have questions about the blogging guidelines should direct their questions to a designated company official who will serve as the authority on the policy and on helping employees understand how it applies to their situations.

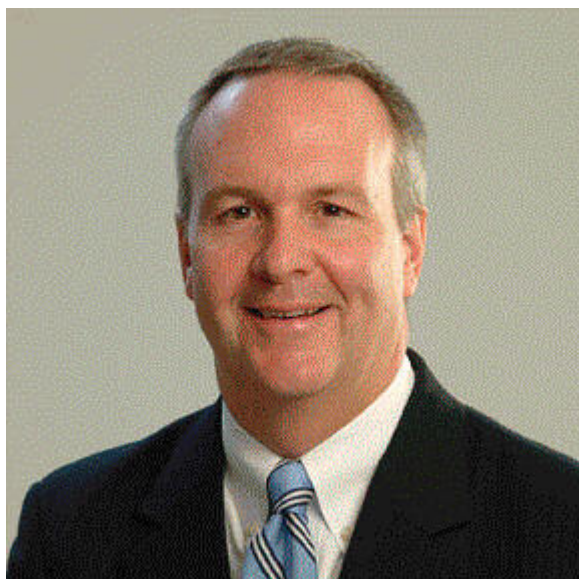
4. As with all communications, persons communicating through blogs are expected to treat the company and its employees, customers, and competitors with respect.

5. The company may ask that certain topics not be disclosed for confidentiality or legal compliance reasons, and employees are expected to honor those requests.

6. Employees are responsible for ensuring that their blogging activity doesn't interfere with their work commitments, and they should be familiar with the company's other policies regarding Internet use, which also apply to blogs.

Smooth sailing.

The benefit of a blogging policy is that it puts your employees on notice of the standards of conduct that apply to blog postings. If you then learn that an employee has violated the policy, you can address the situation through the normal disciplinary process. Before imposing discipline, however, remember that state laws differ and certain types of communications may be protected under state and federal law. You might consider consulting counsel before taking disciplinary action.



## Upcoming events

### Upcoming events

2006	Program/Event
April 4, 2006	<p><b>Advocates of Hope – Raising Cancer Awareness in the Corporate Community</b>, sponsored by the Delaware State Chamber of Commerce.</p> <p>As you may know, the cancer rate in the state of Delaware is alarmingly high, and HR professionals dealing with an employee with cancer can be overwhelmed. Please join us at this program where panels will discuss the HR and financial implications, as well as the emotional side of Cancer. One of the panelists will be Phyllis Shurn-Hannah, from national SHRM.</p> <p>Seats are limited, so please register early. For people who are PHR, SPHR, or GPHR certified, this course has been approved for <b>5 recertification</b> credit hours through HRCI. This half-day event will be held at the Hotel duPont and includes lunch. For more information and online registration: <a href="#">Link</a>.</p>
April 11, 2006	<p><b>Delaware SHRM monthly meeting</b> "Ethics and Integrity—From Beliefs to</p>

	<p>Behaviors," Steven E. Glauser, Ph.D., Vice President for Organizational Consulting, Right Management Consultants</p> <p><b>1.25 HRCI Credit Hours</b></p> <p>Breakfast meeting: 7:30 am Registration; 8:00 am Breakfast; 8:25 am Speaker. Program ends at 9:30 am. Cavalier Country Club, 100 Addison Drive, Newark, DE</p> <p>Discounts for early registrations! Register online at <a href="http://www.deshrm.org/monthlymeeting.cfm">www.deshrm.org/monthlymeeting.cfm</a> or by phone at 302-367-7476.</p> <p>Gold sponsor: Goldey-Beacom College and Right Management Consultants</p>
April 12, 2006	<p><b>DelMarVa HR Group</b> for professional development and networking</p> <p>Contact Marilyn Magness at <a href="mailto:mmagness@igburton.com">mmagness@igburton.com</a> with questions</p>
April 18, 2006	<p><b>Wilmington Executive Networking Meeting</b> 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 <b>earning \$100K or more</b>, 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:</p> <ul style="list-style-type: none"> <li>* A two-minute summary of yourself, including how you can help someone else to network.</li> <li>* Names of your target companies and your contacts.</li> <li>* Copies of your marketing materials: resume, business card or executive bio.</li> </ul> <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): <b>FREE!</b> 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 <a href="mailto:sjune@cciconsulting.com">sjune@cciconsulting.com</a> 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>
April 20 – May 4, 2006	<p><b>SHRM 2006 Executive HR Network Regional Summits</b> for senior HR professionals. Co-sponsored by SHRM and Harvard Business School Publishing.</p> <p>April 20: "Can You Make your Leadership Stick?" Hyatt Regency Chicago April 27: "Can you tell HR management myths from reality?" Grand Hyatt Denver May 4: "Can you tell HR management myths from reality?" The Alexis Hotel, Seattle, WA</p> <p>Earn up to <b>four (4) hours to fulfill HRCI's strategic requirements</b> for recertification. For more information: <a href="http://www.shrm.org/exechr/">www.shrm.org/exechr/</a></p>
May 9 2006	<p><b>Delaware SHRM monthly meeting</b> "Technology Advances in Human Resources." 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>Gold sponsor: Colonial Benefit Communication Services and Merrill Lynch Private Client Group Association</p> <p>Discounts for early registrations! Register online at <a href="http://www.deshrm.org/monthlymeeting.cfm">www.deshrm.org/monthlymeeting.cfm</a> or by phone at 302-367-7476.</p>
May 10, 2006	<p><b>DelMarVa HR Group</b> for professional development and networking</p> <p>Contact Marilyn Magness at <a href="mailto:mmagness@igburton.com">mmagness@igburton.com</a> with questions</p>
May 16, 2006	<p><b>Wilmington Executive Networking Meeting</b> sponsored by Career Concepts and</p>

	<p>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 <b>earning \$100K or more</b>, 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): <b>FREE!</b> Continental breakfast will be served. Registration: Contact Sharon June at <a href="mailto:sjune@cciconsulting.com">sjune@cciconsulting.com</a> or 877-882-2462.</p> <p>For more details, refer to April 18, 2006 above.</p>
June 13, 2006	<p><b>Delaware SHRM monthly meeting</b> "HR Metrics—How can we measure success?" 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>Gold sponsor: Health Advocate</p> <p>Discounts for early registrations! Register online at <a href="http://www.deshrm.org/monthlymeeting.cfm">www.deshrm.org/monthlymeeting.cfm</a> or by phone at 302-367-7476.</p>
June 14, 2006	<p><b>DelMarVa HR Group</b> for professional development and networking</p> <p>Contact Marilyn Magness at <a href="mailto:mmagness@igburton.com">mmagness@igburton.com</a> with questions</p>
June 20, 2006	<p><b>Wilmington Executive Networking Meeting</b> 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 <b>earning \$100K or more</b>, 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): <b>FREE!</b> Continental breakfast will be served. Registration: Contact Sharon June at <a href="mailto:sjune@cciconsulting.com">sjune@cciconsulting.com</a> or 877-882-2462.</p> <p>For more details, refer to April 18, 2006 above.</p>
June 25 – 28, 2006	<p><b>SHRM's 58<sup>th</sup> Annual Conference &amp; Exposition</b></p> <p>Washington Convention Center, Washington, DC</p> <p>For more information: <a href="http://shrm.org/conferences/annual/">http://shrm.org/conferences/annual/</a></p>
November 14 - 15, 2006	<p><b>Delaware SHRM State HR Conference</b></p> <p>Chase Center on the Riverfront, Wilmington, DE</p> <p>Diamond sponsor: W.L. Gore Associates, Inc. Silver sponsors: AAA Mid-Atlantic and Integrity Staffing Solutions</p> <p>For more information: <a href="http://deshrm.org/2006_shrmde_conference.cfm">http://deshrm.org/2006_shrmde_conference.cfm</a></p>

## Sponsors of Delaware SHRM Meetings

*Second quarter 2006*

[Goldey-Beacom College](#)

[Right Management Consulting](#)

[Colonial Benefit Communication Services](#)

[Merrill Lynch Private Client Group](#)

[Health Advocate, Inc.](#)

## **SHRM Research Foundation**

### **Effective Practice Guidelines**

If you are like most HR professionals, you probably have trouble keeping up with the latest research findings in human resources. To help make research-based knowledge more accessible, the SHRM Foundation has created a new series entitled Effective Practice Guidelines. The guidelines compile and summarize the HR practices in a given area that have been shown to be effective based on research studies. A subject matter expert with both research and practitioner experience distills all relevant findings and expert opinion into specific advice on how to conduct effective HR practice. The first report in the series covers Performance Management and was written by Elaine Pulakos. The report may be downloaded free from the SHRM Foundation website.

### **The SHRM Information Center**

The SHRM Foundation supports the SHRM Information Center through a quarter million dollar grant. The Information Center, a free service to SHRM members, publishes the online White Papers series, maintains the Competitive Practices Database and answers more than 70,000 HR inquiries annually. The Foundation grant ensures that the Information Center has the latest technology and the most current resources to help HR practitioners get the answers they need quickly and easily.

### **The Masters Series**

When you attend the SHRM Annual Conference, you'll have the opportunity to participate in the Masters Series. The SHRM Foundation sponsors this series of in-depth learning sessions featuring internationally known experts in the field of management science. The Masters Series focuses on timely and provocative issues that affect your career and industry. Open to all attendees, these senior-level programs offer insight into the HR profession from thought-leaders and top academicians.

For more information on Foundation sponsored educational programs, visit [www.shrm.org/foundation](http://www.shrm.org/foundation).

## **Delaware SHRM State HR Conference**

Mark your calendar now for November 14 - 15, when the 2006 State Conference will take place. This year's theme is "Employee Engagement in a Changing World."

Two national speakers and three sponsors have already signed on. To stay up-to-date on the latest developments, check out the conference web page with this [link](#).

## **Delaware State Council update**

By Rita Johnson, PHR, State Council Director

We have a broad charter: to provide state-wide resources, support and a forum for SHRM chapters in Delaware to share successful practices.

Now we have a new web site, too!

Find out more about who we are and what we do. Visit us now at: <http://delawareesc.shrm.org>

## **...and the HR Bottom Line**

By Alisa Goldschmidt, HRCI Marketing Manager

It wasn't too long ago when we were riding high on the technology wave. Let's face it—it was a job seeker's paradise—too many jobs and not enough workers. Today, workers are struggling to keep their jobs, job seekers are finding new jobs scarce, and employers are trying their best to keep up with the changing economy without sacrificing the quality of their products and services.

During these challenging times, an effective HR staff must be able to demonstrate more than "good people skills." "Good people skills" won't help overhaul an organization's compensation structure, won't develop and assess an organization's training program, won't help an organization be proactive in developing a culture free of sexual harassment, and won't develop an OSHA-compliant health safety program.

One way to assess the effectiveness of an HR professional is by certification. An HR department whose staff is professionally certified can—and should—make a significant contribution to the management and strategic direction of an organization. They can ensure that the organization's people strategy is correctly aligned with its business strategy.

How do you determine which professional certification to look for when staffing your HR department? The most respected certifications for HR professionals are the Professional in Human Resources (PHR), Senior Professional in Human Resources (SPHR) and Global Professional in Human Resources (GPHR) from the Human Resource Certification Institute (HRCI). Earning one or more of these designations validates that a professional possesses significant knowledge and experience in all areas of HR, including strategic management; workforce planning; human resource development; compensation and benefits; employee and labor relations, and occupational health, safety and security. Today there are more than 70,000 HR professionals certified by HRCI.

Most HR professionals who take on the challenge of the PHR, SPHR, and GPHR exams demonstrate more than knowledge. They display a true dedication to the HR management profession. They show it when they agree to study in excess of 40 hours and when they arrive at the testing center to take the four-hour multiple-choice examination. Certificants continue to demonstrate their dedication to the profession when they maintain their designation by re-certifying every three years through professional development or by retaking the examination. They are leaders in the HR profession. Recruiters should take note of the designations as well. Although there may not be an abundance of jobs available today, the lack of jobs has not eased the skills shortage. The lack of a skilled labor pool is still a serious long-term issue.

Recruiters should routinely include "PHR, SPHR or GPHR preferred" in advertisements for professional-level HR jobs. Recruiters need not worry that adding this preference may decrease the applicant pool. In fact, stating this preference may likely increase the pool of qualified candidates for the position and help separate the wheat from the chaff.

Many certified professionals are members of local chapters of the Society for Human Resource Management (SHRM). This organization is an excellent source for certified HR talent and resources. To learn more about how professional certification for HR professionals can benefit your organization, please visit the HRCI web site at [www.hrci.org](http://www.hrci.org).

## SHRM Logo



## PUBLISHING INFORMATION

The Delaware SHRM newsletter is published five times a year for members of and those interested in Delaware SHRM. Publishing schedule: January 2006; April 2006; July 2006; October 2006; Conference Edition November 2006. The newsletter is compliments of Irene Monley, ABC, SPHR, [IM Associates](http://IM Associates).

Visit us on the web at: [www.deshrm.org](http://www.deshrm.org).

The Delaware SHRM Board of Directors is available online at: [www.deshrm.org/board\\_members.cfm](http://www.deshrm.org/board_members.cfm).