

The EMS™ Connection

Volume 13, Issue 3

A publication of Employee Management Services

Keeping our Clients Connected

Welcome!

Staffmark and Employee Management Services Welcome Burt Huber to the Leadership Team



Burt Huber joined the Staffmark team in May 2012 as Vice President and General Manager of the Employee Management Services (EMS) division. Burt has a great deal of business and outsourcing experience, and he and his family have lived in the Cincinnati area for over 27 years. Many of you have already had an opportunity

to meet Burt as he has spent his first days with the company visiting as many of our client companies as schedules have allowed.

Background

Burt has a strong background in Professional Services and started his career in the Information Technology field working for Wehr Corporation, Cincom Systems, AT&T, and NCR. He founded two companies — Knowledge Transfer, Inc. and Ariel Performance Centered Systems, Inc. While with Ariel, he bought the company from investors and ran it for 13 years. During this time, Ariel had partnered with a PEO, so Burt understands the role an HR partner must play for a business owner. Most recently, Burt worked for Convergys HR Management and had complete responsibility for two large global and national outsourcing clients producing over \$25,000,000 in annual services. These client outsourcing programs represented all aspects of global human resources including payroll, benefits, compensation, information technology, customer service, recruiting, and global mobility services.

Continued on page 2



Payroll

DOL Ramps Up Wage and Hour Enforcement

The U.S. Department of Labor's (DOL) wage and hour enforcement under the Obama administration has become markedly more hostile toward employers, according to Paul DeCamp, former administrator of the Wage and Hour Division under President George W. Bush and an attorney at Jackson Lewis' Washington, D.C., regional office.

'New Normal'

Speaking at the 2012 Jackson Lewis Corporate Counsel Conference in Washington, D.C. on May 11, 2012, DeCamp said the division's investigators are being instructed to seek civil penalties even in a first investigation of a site. He described this as unusual, saying it used to be that penalties were only for second or third violations.

DeCamp said he's also seeing a broader effort to resolve claims on an enterprisewide basis. It used to be that an investigation would be resolved at a site. Now if there is a violation at a site, a companywide investigation may follow.

Continued on page 2



"Welcome" continued from page 1

Direction and Looking Forward

During his first two months with the company, Burt has taken this chance to meet with EMS clients to identify areas of opportunity to improve our services. He plans to continue his client visits to get the "pulse of EMS clients". As part of his assessment, he has stated "we must continue to understand our client's business and bring critical services to them at a value that they can rely on us to deliver. The future of our business depends on us working as hard for our client's business as they would."

EMS is proud to be your business partner and trusted advisor, and we work with you to ensure that you can focus on what you do best and let EMS do what we do best—develop strategic and tactical employee management solutions that help you save time and money, attract and retain talent, and reduce your employer liability. Burt's vision for the company is simple, "Employee Management Services has a great industry and client reputation. Our tenured staff is there to address any need and care for our clients' businesses, and we have a renewed focus to grow those relationships and make new valued services accessible to our clients."

We are thrilled to have Burt on our team, and we're excited about the unique experience that he brings. He is looking forward to working with each of our clients, and you can reach him at burt.huber@emshro.com or 513.852.4687.

HR Challenge

HR Challenge

An employee misses two weeks of work because he is called as a witness in a criminal case. The employee is discharged for his absence. Could this be considered wrongful termination?

- A. Yes, federal law prohibits employers from discharging an employee who must appear in court.
- B. No, there are no laws protecting employees while appearing in court
- C. Maybe, Depends on State Law



**Find the
answer
on
page 3.**

"Wage & Hour Enforcement" continued from page 1

Liquidated damages are the "new normal," even at the administrative stage, he said. It used to be that just back pay would be recovered at the administrative stage, not back pay and liquidated damages. He described this change as "daring employers to litigate."

There are 50 percent more federal wage and hour investigators now than in 2008, he said, noting that in its 2013 requested budget, the DOL sought 1,839 full-time investigators. In 2008, there were just 1,208 investigators.

Wage and hour claims continue to grow. DeCamp said that from April 1, 2010, through March 31, 2011, plaintiffs filed 7,008 Fair Labor Standards Act (FLSA) cases in federal courts, which was an increase of more than 15 percent over the prior year. Plaintiffs today bring more than three and a half times as many FLSA cases as they did 10 years ago, when the annual filings for the year ending March 31, 2001, totaled 1,961 cases.

Targeted Industries

Industries targeted in FLSA class actions and Wage and Hour Division investigations include:

- Construction, specifically residential construction
- Hospitality, specifically food/beverage and housekeeping
- Janitorial
- Home health care
- Child care
- Transportation
- Warehousing
- Meat/poultry processing
- Staffing companies
- Franchisor/franchisee
- Corporate parent/subsidiary
- Gentlemens' clubs

Increasingly, class-action wage and hour complaints name individual officers, such as vice presidents of HR, and managers as defendants, DeCamp noted. Courts have been reluctant to dismiss claims against individuals who arguably had some role in setting or implementing the policies at issue, particularly where there is an ownership interest, he noted.

Continued on page 3

Safety Corner

Stretching

Stretching all muscle groups, for any type of job, is beneficial before the start of the workday. Just like an athlete needs to warm up before performing, it is important to warm up for work.



Benefits of conducting pre-shift stretching exercises include:

- Increased flexibility
- Improved circulation
- Minimized muscle pain

The benefits of pre-shift stretching exercises can lead to:

- Greatly reduced risk for muscle strains
- Increased productivity
- Workers feeling better at the end of the shift/day

The benefits of conducting pre-shift (and during shift) stretching exercises can be maximized by:

- Avoiding awkward positions/postures
- Alternating repetitive motions
- Maintaining a neutral position
- Adjusting the workstation

HR Challenge

HR Challenge Answer

C. Maybe, Depends on State Law

Appearing as a witness, defendant, in court is compulsory and can be enforced by subpoena and arrest, if necessary. Official committees and boards of federal and state agencies often have the same power as the courts to subpoena individuals. Several state laws prohibit employers from discharging or otherwise discriminating against an employee who must appear in court, but federal law does not address the issue. In addition, some states offer the same protections to any employee who is the victim of a crime, the immediate family member of a crime victim, or someone who attends juvenile court as a legal parent or guardian of a youth.

Exempt Positions Scrutinized More Closely

Positions receiving particular scrutiny in the professional exemption include accountants, engineers and information technology. "There is a lot of activity with the professional exemption," DeCamp remarked.

The executive exemption hasn't seen as much attention, he said, but there have been challenges to the classification of retail and restaurant store managers and assistant managers under this exemption as well as construction superintendents.

The amorphous administrative exemption is the hardest exemption to satisfy, he said, noting that mortgage underwriters, mortgage loan officers and "everybody else" who tries to fit in this exemption are being targeted by the DOL and plaintiffs' attorneys.

And under the outside sales exemption, there is litigation over whether pharmaceutical sales employees and account reps should be exempt, including one case before the U.S. Supreme Court, *Christopher v. SmithKline Beecham Corp.*

Timekeeping Practices

DeCamp highlighted timekeeping practices that can lead to class actions, including:

- Automatic meal deductions.
- Supervisors editing employee time.
- Rounding.
- Required early arrival.
- Off-the-clock pre-shift meetings.
- Off-the-clock shift exchange.

The automatic meal deduction is only unlawful if a meal is not taken, but often the DOL will conclude it has not, particularly in the health care industry, he noted.

In addition to complying with the FLSA and state wage and hour laws, DeCamp recommended that employers tell employees that if their time records are not accurate, they should let employers know immediately.

Source: www.shrm.org

Managers Don't Know What Motivates Employees

A research study showed that when managers were asked to rank five employee motivators—recognition, incentives, clear goals, progress in the work and interpersonal support—they placed recognition and clear goals at the top of the list and progress in the work at the bottom. According to the researcher, Teresa Amabile, Ph.D., professor of business administration and director of research at Harvard Business School, her research shows that making progress on meaningful work is the No. 1 driver of “inner work life”—the combination of perceptions, motivations and emotions employees experience during the workday.

The researchers discovered that employees’ “best days” were those in which they made progress on projects considered “meaningful” to the organization’s mission, while their “worst days” were those in which they faced setbacks.

Employees often don’t show their emotions at work when faced with setbacks. The inner work life is just that—inner, Amabile noted. “You don’t get to see it, especially if you are in a position of power.”

Yet it’s something employers need to understand, because inner work life drives the bottom line. For example, Amabile said the perceptions, motivations and emotions that make up the inner work life lead to higher levels of creativity, productivity, commitment and collegiality.

Fortunately, Amabile found that “The Progress Principle” is activated even when people make small steps toward completion of meaningful work; what she called “The Power of Small Wins.”

Thus, when employees have big audacious goals, managers should try to break them down into smaller components to give employees a sense of progress along the way.

The payoff can be significant, because progress and a positive inner work life combine to create what Amabile called “The Progress Loop,” in which one feeds the other in a continuous loop.

There are a number of basic actions managers can take to support progress and to enhance inner work life.

1. The Catalyst Factor - Catalysts make it possible for employees to make progress toward work. They include:

- Clear, meaningful goals.
- Autonomy.
- Sufficient resources to do the work.
- Help with the work, such as access to information.
- Ability to learn from problems and successes.
- Open idea flow.
- Sufficient time.

2. The Nourishment Factor - Nourishers are those things that occur in the work environment, naturally or intentionally, that enhance inner work life, including:

- Respect and recognition.
- Encouragement.
- Emotional support.
- Affiliation and camaraderie.

What makes people happy and motivated at work, Amabile said, is “progress with a steady diet of nourishers.”

Yet Amabile noted that HR managers don’t have to delve too deeply into employees’ inner work lives. Instead, she encouraged attendees “to keep progress in the work at the top of every manager’s agenda.”

Source: www.shrm.org



Pain Pills Add Cost and Delays to Job Injuries

Workplace insurers are accustomed to making billions of dollars in payments each year, with the biggest sums going to employees hurt in major accidents, like those mangled by machines or crushed in building collapses.

Now they are dealing with another big and fast-growing cost — payouts to workers with routine injuries who have been treated with strong painkillers, including many who do not return to work for months, if ever.

Workplace insurers spend an estimated \$1.4 billion annually on narcotic painkillers, or opioids. But they are also finding that the medications, if used too early in treatment, too frequently or for too long, can drive up associated disability payouts and medical expenses by delaying an employee's return to work.

Workers who received high doses of opioid painkillers to treat injuries like back strain stayed out of work three times longer than those with similar injuries who took lower doses, a 2008 study of claims by the California Workers Compensation Institute found. When medical care and disability payments are combined, the cost of a workplace injury is nine times higher when a strong narcotic like OxyContin is used than when a narcotic is not used, according to a 2010 analysis by Accident Fund Holdings, an insurer that operates in 18 states.

"What we see is an association between the greater use of opioids and delayed recovery from workplace injuries," said Alex Swedlow, the head of research at the California Workers Compensation Institute.

The use of narcotics to treat occupational injuries is part of a broader problem involving what many experts say is the excessive use of drugs like OxyContin, Percocet and Duragesic. But workplace injuries are drawing particular interest because the drugs are widely prescribed to treat common problems like back pain, even though there is little

evidence that they provide long-term benefits.

Along with causing drowsiness and lethargy, high doses of opioids can lead to addiction, and they can have other serious side effects, including fatal overdoses.

Between 2001 and 2008, narcotics prescriptions as a share of all drugs used to treat workplace injuries jumped 63 percent, according to insurance industry data. Costs have also soared.

In California, for example, workplace insurers spent \$252 million on opioids in 2010, a figure that represented about 30 percent of all prescription costs; in 2002, opioids accounted for 15 percent of drug expenditures.

As a result, states are struggling to find ways to reverse the trend, and some of them have issued

new pain treatment guidelines, or are expected to do so soon. These states include New York, Colorado, Texas and Washington. Insurers are also trying to influence how physicians prescribe the drugs.

Doctors in four states — Louisiana, Massachusetts, New York and Pennsylvania — appear to be the biggest prescribers of the drugs for workers' injuries, according to a review

of data from 17 states by the Workers Compensation Research Institute, a group in Cambridge, Mass.

Painkiller-related costs are also hitting taxpayers, who underwrite coverage for public employees like police officers and firefighters, experts say. In February, one major underwriter, the American International Group, said that it would no longer sell backup coverage to workplace insurers, citing rising pain treatment expenses as one reason.

There is little question that strong pain medications can help some patients return to work and remain productive. But injured workers who are put on high doses of the drugs can develop chronic pain and face years of difficult treatments. It is not clear how, or if, the drugs are involved in the process, but when pain becomes chronic, the cost of a commonplace injury can equal a crippling one, experts said.



"Pain Pills" continued from page 5

"Some of these claims look like someone who fell down an elevator shaft and had multiple injuries," said Dr. Edward J. Bernacki, the director of the division of occupational and environmental medicine at Johns Hopkins University in Baltimore. For decades, workers' compensation plans, which vary by state, have been plagued by problems like lengthy legal battles over an injury's financial value. But it is in recent years that opioid painkillers have emerged as a major driver of costs, experts said. Accident Fund Holdings examined its claims and found that the cost of a typical workplace injury — the sum of an employee's medical expenses and lost wage payments — was about \$13,000. But when a worker was prescribed a short-acting painkiller like Percocet, that cost tripled to \$39,000 and tripled again to \$117,000 when a stronger longer-acting opioid like OxyContin was prescribed, said Jeffrey Austin White, an executive with the insurer, which is based in Lansing, Mich.

In a sense, insurers are experiencing the consequences of their own policies. During the last decade, they readily reimbursed doctors for prescribing painkillers while eliminating payments for treatments that did not rely on drugs, like therapy. Those policies may "have created a monster," said Dr. Bernyce M. Peplowski, the medical director of the State Compensation Insurance Fund of California, a quasi-public agency.

For patients, such policies had consequences. Dr. Eugenio Martinez, a physician in the Boston area who specializes in rehabilitative medicine, said one patient, a former waitress who hurt her back five years ago in a fall, recently won a court fight to force her insurer to pay for physical therapy. The insurer had cut off those payments five years ago after a few sessions, and the woman, now disabled, had no option but to take strong painkillers, Dr. Martinez said. "It certainly did not help that she was cut off," he said.

Nationwide, data suggests that a vast majority of narcotic drugs used to treat occupational injuries are prescribed by a tiny percentage of doctors who treat injured workers; in California, for example, that figure is just 3 percent. Also, the bulk of such prescriptions go to a relatively small percentage of injured workers, including those who might be addicted to the drugs or those who sell them, experts said.

Several companies, like Accident Fund Holdings and Liberty Mutual, have set up programs in which pain experts contact doctors identified as high prescribers to discuss their practices. The State Compensation Insurance Fund of California has also instituted a policy that requires approval for a doctor to prescribe an opioid for over 60 days.

Insurers say they are making progress in reducing overuse of the drugs. But their ability to influence physicians is limited because workers' compensation plans can allow employees to see any doctor. So several states have or will soon adopt new pain treatment guidelines for doctors who treat workers.

In New York, one proposal would require a doctor to refer a patient who is not improving to a pain specialist when an opioid dose exceeds a certain level, said Dr. Elain Sobol Berger, the associate medical director of the state's workers' compensation board. Washington State has already adopted such a policy.

Dr. Sobol Berger added that the New York rules, which are expected to be proposed this year, will also emphasize nondrug treatments for pain. "We know that there is a significant problem with the management of chronic pain and the use of opioids," she said.

Some insurers, like the California state fund, have also started paying for alternative approaches like specialized psychotherapy or are trying to get addicted workers into treatment. Other companies are also checking on long-disabled workers.

Mark Kulakowski, a 57-year-old former warehouse worker from Peabody, Mass., injured his back more than three decades ago while lifting a box. He has not worked since 1995. Since his injury, he has taken narcotic painkillers and has had a long list of failed treatments.

Recently, his insurer, Liberty Mutual, sought to have a nurse accompany him to his next doctor's appointment, a suggestion he welcomed if it could lead to taking fewer painkillers.

"It just drains everything out of you," he said.

Source: *The New York Times*

Home Safety

Home
Safety

June was Home Safety Month and it's the perfect time for you to make sure your home is as safe as possible for you and your family. The Home Safety Council provides the following tips to help you avoid various hazards in your home:

- Put a non-slip mat in your shower.
- Keep stairs clear of clutter and ensure proper lighting at the top and bottom. Use safety gates if you have young children.
- Make sure you have sturdy handrails on all stairs (indoors and outdoors).
- Wipe up spills when they happen.
- Keep the Poison Control phone number **(800-222-1222)** by each telephone and programmed into your cell phone.
- Install smoke and carbon monoxide detectors and regularly check the batteries.
- Read labels of all products you use in your home. Any that say "caution," "warning" or something similar should be stored away from children, either locked up or on a high shelf.
- Keep all medications out of reach of children. Make sure they are not in purses, pockets or drawers where children could easily access.
- Keep original label on all medication and cleaning supplies.
- Always stay by the stove or grill when cooking.
- Keep grills at least 10 feet away from your house, garage and any trees or bushes. Keep children and pets away.
- Only light candles when an adult is in the room, and never leave candles burning unattended.
- Have a fire escape plan and hold a fire drill with your family. Make sure all adults in the house know how and when to use a fire extinguisher.
- If you have a pool or hot tub, install a fence around it.
- Always watch children carefully when in the bathtub or pool, even small, child-sized pools.

Source: www.wellsfargo.com

Grilled Pork Tenderloin & Apricot Salad



This grilled pork dish offers a triple hit of the fruit with an apricot preserve glaze for the tenderloin plus a grilled apricot and watercress salad with an apricot-spiked vinaigrette. Serve

with a chilled Chardonnay, which will harmonize beautifully with the smoky-sweetness of grilled apricots.

Ingredients:

- 1 pound pork tenderloin, trimmed
- 1/2 teaspoon salt, divided
- 1/4 teaspoon freshly ground pepper, more to taste
- 3 tablespoons apricot preserves, divided
- 4 ripe but firm fresh apricots or nectarines, halved and pitted
- 2 tablespoons white-wine vinegar
- 2 tablespoons minced shallot
- 2 tablespoons canola oil
- 1 4-5-oz bag watercress or baby arugula (8 cups)

Preparation:

1. Preheat grill to high.
2. Sprinkle pork with 1/4 teaspoon salt and pepper. Oil the grill rack (see Tip). Grill the pork, turning occasionally, for 10 minutes. Brush the pork with 2 tablespoons preserves and continue grilling until an instant-read thermometer inserted into the thickest part registers 145°F, 2 to 5 minutes more. Grill apricot (or nectarine) halves on the coolest part of the grill, turning occasionally, until tender and marked, about 4 minutes. Transfer the pork and apricots to a clean cutting board and let rest for 5 minutes.
3. Meanwhile, whisk the remaining 1 tablespoon preserves, vinegar, shallot, oil, 1/4 teaspoon salt and pepper to taste in a large bowl. Cut the fruit into wedges and add to the dressing along with watercress (or arugula); toss to coat. Thinly slice the pork. Serve the salad with the sliced pork.
4. Tips: To oil the grill rack, oil a folded paper towel, hold it with tongs and rub it over the rack. (Don't use cooking spray on a hot grill.)