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It has been a privilege for me to serve as the 2015 IPMA-HR president. One of the highlights has been participating in a variety of events and meeting many IPMA-HR members. The association has enjoyed a busy year, and I am devoting my final column to highlighting the association's accomplishments during 2015 and moving forward.



The members are the strength of the association, and I would like to thank the IPMA-HR Executive Council and those who served as chairs and members of the association's committees and taskforces. Your efforts contributed significantly to the success of the association and to advancing human resources management in the public sector.

While growing membership continues to be a challenge for the association, our annual member satisfaction survey, which drew more than 700 responses, showed a strong level of overall satisfaction, with 89 percent responding that they value their IPMA-HR membership and plan to remain members.

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The association remains focused on how to increase our relevance. We updated our list of emerging HR issues and added strategies for how the association can address them. This work will continue on an annual basis. We also undertook and partnered on several HR-related surveys including, including studies to

- Benchmark HR serving as a strategic partner
- Identify 2015 workforce trends
- Characterize benefits employers offered during 2015

We also updated and reorganized the human resources policies that are posted on our website under the HR Resources tab.

We had a successful Leadership Conference in Las Vegas, with more than 70 participants from 30-plus chapters and all 4 regions. The evaluations were very positive. The regional conferences continued to provide high-quality programming. The association has 40 active chapters that offer valuable services to their members, and we had strong interest in the association's graduate fellowship, college scholarship, awards and conference scholarship programs. We continue to partner on a program that provides IPMA-HR members with financial assistance if they enroll in the online MPA or MBA program offered by the University of North Carolina.

We experienced an increase in the use of our professional development programs, especially those offered through distance learning. Based on feedback from our professional development survey, we offered a four-part webinar series on HR legal issues, and we also began developing a workforce and succession planning seminar. We have created a new training program for non-HR managers that was piloted in October, and we have continued to sponsor complimentary HR managers' meetings and to offer several free webinars.

The International Training Conference & Expo in Denver saw increased attendance, higher numbers of exhibitors and sponsors, and very positive evaluations.

We are proud to have the first competency-based HR certification program. Since the inception of the program, we have certified more than 14,000 people in 18 countries. The Executive Council also recently approved the establishment of an entry-level certification program that will be available for the first time in 2016.

IPMA-HR remained active in government affairs, serving as the voice for public HR in Washington, DC. We filed comments on proposed revisions to overtime regulations under the federal Fair Labor Standards Act (FLSA), endorsed several Affordable Care Act-related bills and filed comments on wellness guidelines from

CONTINUED ON PAGE 15

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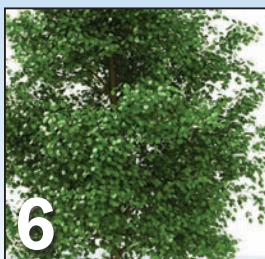


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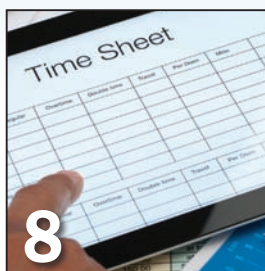
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IPMA-HR is a nonprofit, membership organization dedicated to providing resources and advocacy for public human resource professionals at all levels. Comprised of four U.S. regions and more than 40 chapters, IPMA-HR represents individuals and agencies in local, state and federal levels of government worldwide. IPMA-HR provides a focus and forum for the discussion and exchange of views and best practices among public sector human resource professionals throughout the United States and abroad.

Coming up in the January issue of
HR NEWS

**Impacts of the
Affordable Care Act**

Grow a Culture of Learning Organically

By Christina Winting and Carla Morberg

In 2012, human resources managers for the City of Santa Monica, Calif., initiated a conversation with staff aimed at improving internal customer service. Those interactions organically grew into discussions of how to create a culture of learning.

During many focus groups that were co-facilitated by the city manager's office and human resources, staff shared that receiving additional training would be helpful for improving customer service. It also became clear that there was an employee base that was interested in learning. The convergence of the need for skill-building and the desire to learn was presented to the leadership team, whose members were instrumental in helping to identify where to begin cultivating staff.

This very organic progression culminated in the establishment of the Santa Monica Institute (SMI), a program that is much more comprehensive than the individual skill-building classes staff had requested. The timing proved perfect, and the SMI continues to operate with the tagline "The City That Learns."

Step 1. Assessing the Field— Conducting a Gap Analysis

Division managers, department heads and city manager staff made up the leadership team. They identified topics that would be beneficial for building the skills, knowledge and abilities of their staffs. These topics were then grouped into

- Soft skills that help staff interact with co-workers and customers
- Hard (technical) skills required for various classifications
- Administrative skills to organize work and utilize resources efficiently



Employees were surveyed and asked to rank these skills. With a 25.8 percent response rate, the topics listed in the accompanying table were selected.

Soft Skills	Hard Skills	Administrative Skills
Public speaking	Budgeting	Using Outlook as a productivity tool
Conflict management	How to research, analyze and present information	Managing projects

Step 2. Call to Action— Creating an Internal Training Program

Following identification of the course topics, we focused on finding the right trainers from our internal talent pool. A call to action was issued for employees interested in becoming trainers to audition by presenting on a topic of their choice for 10 minutes to a panel of three. Brief interviews were also conducted with each trainer candidate to determine why they were interested in being a part

of SMI. Based on their ability to teach to the topic and their enthusiasm for being part of an internal training program, 24 trainers were selected.

“The desired outcome was to ensure that participants were able to take what they learned back to their everyday work and apply it.”

The trainers were matched with courses and participated in a customized train-the-trainer program. Each course was designed to be team taught by multiple trainers. The purposes for this were to offer participants additional insight and resources, as well as to ensure that making time commitment required to be a trainer was feasible for each trainer. A side note is that trainers did not want to break up their groups; they continue to team teach in groups of four whenever possible.

We incorporated content on team dynamics in the train-the-trainer program, while also providing instruction on adult learning, public speaking and curriculum development.

The goals for teaching the SMI way were made very clear. Each course was designed to

- Be taught in person;
- Be interactive and suitable for adult learners;
- Include multiple learning activities and
- Conclude with a task designed to help trainees solidify and measure learning.

We emphasized staff participation and worked to create a classroom environment in which staff could network and learn from each other. The consistency of the course components provided a framework for the trainers, as well as a set of expectations for the participants. Finally, the desired outcome was to ensure that participants were able to take what they learned back to their everyday work and apply it.

In order to accommodate course registrations and advertise the courses, we worked with our internal technology staff to create an online course catalog and sign-up system available to employees only. Although, we recognized there are a multitude of options within this realm, we decided to create our own versions in house. This allowed us to customize the system to our needs, utilize internal talent and work within time and monetary limits.

At the end of each course participants are asked to provide their feedback using an anonymous course evaluation.

Step 3. Sharing Recommendations and Key Take Aways

The leadership team and HR department learned the importance of doing the following:


- **Surveying the organization**—Be sure responses cover a wide cross-section of the organization to ensure the greatest impact and identification of areas for skill-building.
- **Market the request for trainers as an opportunity to audition**—This makes the process fun and inviting, which increases the likelihood of attracting motivated and knowledgeable learning champions.
- **Creating a train-the-trainer program**—This yields two major benefits. First, existing staff have an opportunity to hone and expand their skills and share them. Second, the city was able to establish consistency across the SMI curriculum and course delivery.
- **Focusing on organizational customization**—Ensuring courses have common elements that reflect the needs and operation of the city provides consistency in expectations and outcomes among participants. Also, using internal talent affords the opportunity to further customize training offerings and systems.
- **Developing mechanisms for course feedback**—Having trainers and participants evaluate courses using standard criteria helps ensure course objectives for developing staff and strengthening the organization are being met.

Step 4. Reaping the Fruits of Our Labor

Since launching the SMI in 2013, Santa Monica has benefited from

- Increased employee engagement;
- Organizational skill-building;
- Increased staff promotions and
- Cost savings from using internal trainers.

Our harvest from the SMI has been rich, and the program has proven to be a wise investment on many fronts. The future is bright, as we see our culture of learning only growing over the coming years.

Christina Winting is the human resources manager of the Employment and Organizational Development Division for the City of Santa Monica, Calif., which includes the Santa Monica Institute. She can be reached at christina.winting@smgov.net. Carla Morberg is the organizational development and training administrator for Santa Monica and is responsible for all SMI activities. She can be reached at carla.morberg@smgov.net. —

Public Employers Must Prepare for New Federal Overtime Rules

FLSA Changes May Require Annual Employee Reclassifications

By Ed Lamb

One of the most significant changes to how U.S. employers classify and pay workers is on track to occur in 2016. No exact date has been set, but significant revisions to Fair Labor Standards Act (FLSA) overtime pay rules published by the Department of Labor on July 6, 2015, remain set to take affect within months of the closing of a public comment period in early September.

The new requirements, labeled “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees,” promise to leave organizations from convenience stores to state and local government agencies struggling to meet budgets, write job descriptions and assign tasks. Under that rule, the minimum salary an organization must offer to make an employee exempt from overtime would more than double. At the same time, the proposed annual adjustments to that salary basis test for exempt/nonexempt status could necessitate yearly determinations of how to categorize workers.

Complicating that last issue is a vague statement in the proposed rule that the Labor Department is “considering” rewriting the criteria used to exempt administrative personnel, professionals, outsides salespeople and certain computer workers from overtime eligibility regardless of salary. Any such changes to the so-called duties tests would impact government agencies, public safety departments and educational institutions particularly hard because the distinction between roles are often fluid, with individuals doing whatever is needed in order to serve constituents and respond to crises.

Challenges to budgeting, personnel management and professional development loom large. Whatever ways public sector employers address the new requirements, IPMA-HR Executive Director



Reichenberg is sure of one thing: “The HR department will be at the center of these discussions and decisions.”

Existing Overtime Exemptions as Outdated, Unfair

DoL’s Wage and Hours Division created a webpage (www.dol.gov/whd/overtime/NPRM2015/) for the proposed overtime rule revisions. A statement from the office explains that the Obama administration believes that “failure to update the overtime regulations has left an exception to overtime eligibility originally meant for highly-compensated executive, administrative, and professional employees now applying to workers earning as little as \$23,660 a year.”

Consequently, federal regulators want to raise that salary threshold to \$50,440 per year, or \$970 each week. Any worker who earns less than this amount would become eligible to earn time-and-a-half after working 40 hours during a workweek. Employees earning more could still be eligible for overtime pay if they qualified as nonexempt under a duties test. Regardless of their duties, highly compensated employees earning in excess of \$122,000 each year would remain exempt from overtime eligibility under the revised rules.

Outside of the DoL, the greatest proponent of changing the overtime rules in the way proposed has been the Economic Policy Institute. In a list of frequently asked questions on its website (www.epi.org), the institute wrote, “The overtime salary threshold of \$455 per week (\$23,660 per year) is ... less than the poverty threshold for a family of four.”

The think tank also noted that “the greatest share of salaried workers in the occupation who would directly benefit would be office and administrative support occupations (48.8 percent); transportation and material moving occupations (44.3 percent); construction and extraction occupations (43.3 percent); installation, maintenance, and repair occupations (41.4 percent); and production occupations (38.6 percent).”

IPMA-HR Asks for Greater Flexibility

IPMA-HR and its members recognize that the current salary basis is often too low to ensure all employees receive fair pay. In comments prepared and submitted in conjunction with the International Municipal Lawyers Association (IMLA), the association alerted the DoL that “our associations acknowledge the need to adjust the current salary basis.” The large jump, however, does not accommodate different economic realities, according to the associations.

Noting both that the cost of living varies greatly by locality and that cities and counties have recovered more slowly from the Great Recession than other government units, IPMA-HR and IMLA requested either locality adjustments or a smaller increase. Surveys of IPMA-HR members revealed majority support for the latter option, with most calling for a salary basis increase to either \$685 per week or \$800 per week.

The full comments are available on the IPMA-HR’s website at <http://bit.ly/1iqBVzk>. The two other greatest concerns shared with federal regulators were that requiring yearly adjustments to the salary basis test could lead to perpetual employee reclassification and greater numbers of lawsuits regarding classifications under the FLSA.

For instance, IPMA-HR and IMLA noted, changing the salary basis every 12 months would compel employers to make one of three decisions each year

- Keep workers in exempt positions.
- Change formerly exempt salaried workers to nonexempt hourly status.

- Rewrite job descriptions to meet duties test definitions for exemptions from overtime pay.

Regarding the potential legal fallout from revising the duties tests, IPMA-HR and IMLA wrote that setting an “arbitrary” standard of engaging in exempt activities at least half of the time while working fails to recognize how often public sector employees engage in team efforts, cross-functional duties and self-directed assignments. Imposing a 50-percent exempt standard could, according to the associations, “encourage additional litigation by employees who could allege that they only spent 45 percent rather than 50 percent of their time on exempt activities.”

If no other action occurs before new FLSA overtime rules go into effect, Reichenberg said “any changes to the duties tests should be subject to a new notice and comment period.”

Congress Also Concerned


Led by Republicans in the U.S. House of Representatives, some members of Congress have also asked the Labor Department to reconsider the new overtime rules. Focusing mostly on small businesses, elected officials have requested local adjustments to the salary basis and clarifications on how to classify service sector workers like fast-food shift managers who supervise small crews while also performing hands-on tasks like operating the register.

During an Oct. 8, 2015, hearing before the House Subcommittee on Investigations, Oversight and Regulations, Nevada Rep. Crescent Hardy, who chairs the group, called the rules “tone deaf” and unhelpful for “the bottom line.” Industry representatives from restaurants, home builders and retailers shared that assessment, criticizing the proposed overtime rules as unrealistically “one-size-fits-all.”

Do Not Wait on Compliance

Despite the criticisms and requests for further revisions, organizations will likely need to begin complying with the new overtime rules soon. Reichenberg said to expect the final rule to “be close to the proposed rule for the increase in the salary basis test, annual [salary basis] indexing, and the highly compensated employees exemption.”

When that happens, he continued, “each organization will need to decide if it wants to increase the salaries to keep employees exempt or convert them to nonexempt employees who would be entitled to overtime. IPMA-HR intends to provide members with information about the final regulations, and we will be looking at developing a training program that will assist governments to comply with the new rules.”

Ed Lamb is a freelance editor and writer in Virginia Beach, Va. He can be reached via email at thoroughcursor@gmail.com. —

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An Easy Approach to Innovation

By Julius E. Rhodes, SPHR

Innovation has been a hot topic since before Ben Franklin first decided to fly a kite in a thunderstorm with a key attached to it to search for electricity. The major differences between Ben Franklin and what we do today in the name of innovation are about 200 years and the enormous amount of information that people are continually bombarded with.

This reminds me of a quick anecdote involving a conversation with my son when he was much younger. While discussing his history grade. I said to him, "Son, history is easy. It's really just memorization." He looked at me with a quizzical expression and said, "But, Dad, there's so much more of it to remember now than there was when you were my age."

Wow. That was a head-knocker.

I later came to realize that the reason many people and firms are unable to innovate is because they use institutional memory (i.e., things that happened in the past) as a way to retain the status quo. Herein lies the rub: Maintaining the status quo does not favor anyone, not even incumbents. At some point, even the most jaded person will grow tired of being fed the same old things and demand new options. You only need to look at the history of political systems to recognize this.

I titled my article "An Easy Approach to Innovation" despite knowing that you know that nothing of worthwhile ever comes easy. Still, what I share here about innovation seems easy and may even seem like common knowledge. The devil is in the details of implementation.

What follows is very valuable information that is also very scarce because no one really talks about it. If correctly implemented, though, the advice can yield a lifetime of positive results.

Ready? Here it is: We need to learn how to ...

Wait for it ... How to ... Not yet ...

OK. Innovation is a process that, by definition, has no defined starting or stopping point. So get out of your own way and out of the way of others so everyone can begin innovating. The process can commence at any given time without shifting through the always-growing mound of data, as we continue doing our regular jobs and while balancing work duties with personal lives.

While, of course, I was not there for the actual events, I believe Benjamin Franklin was so successful at looking at familiar situations in new ways and drawing productive connections between seemingly unrelated phenomena because he did not allow himself to become bogged down with minutiae. Even while playing a key role in leading the American Colonies in breaking away from the British Empire, he took it as a central priority to do other things.

Creating a professional and intellectual environment like Franklin's could be beneficial. Our world is too connected, and I do not just mean by email and social media (although that is a big part of it). I mean we always have to be doing something. People may not necessarily need more downtime in order to become more innovative, but we could all benefit from keeping our plates less full. The only way to get there is to identify how we can simplify things and then consistently replicate our plate-clearing efforts.

If you do not buy into this idea, look at the old General Motors—or, as some people I know who worked for GM in its heyday called it, "Generous Motors." Industry analysts, company executives and many others understood that GM's too many product lines (Buick, Pontiac, Oldsmobile, Chevy, Cadillac, etc.) were bad for business, but they reasoned that as long as producing all those vehicles generated revenues and incomes, there was little reason to revamp the process. Meanwhile, offshore competitors realized that if choices were limited, they could produce their products faster and people could make quicker decisions and.

So this is what I am talking about: We need to simplify and learn how to get out of our way and the way of others. I would like to know what you think about this, so send me your thoughts.

Julius E. Rhodes, SPHR, is the founder and principal of the mpr group, a human resources and management professional services firm located in Chicago. He can be reached at jrhodes@mprgroup.info or (773) 548-8037. Follow him on Twitter [@jerhodes42](https://twitter.com/jerhodes42). —N

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Why Your Organization Must Screen Volunteers

By Katie Zwetzig

While most volunteers are honest people who genuinely want to help, there will always be questionable individuals trying to get through the door. Government agencies and other organizations need to stay ahead of the curve and maintain volunteer screening processes that protect their assets and the people they serve.

Approximately two out of three nonprofits currently screen some of their volunteers. Why aren't the other third screening, and why are others screening only certain volunteers?

Sometimes, screening is viewed as too costly, time-consuming or inconvenient. But, with roughly 8 percent of background screens revealing undisclosed criminal offenses, it is necessary to screen. Here are the other reasons.

Participant Safety

The safety of volunteers, staff and the community served must come first. Organizations often work with children and other vulnerable members of society. The last thing any nonprofit wants is to inadvertently place those individuals in harm's way.

Asset Protection

Volunteer screening helps protect nonprofits that often work with very limited resources from becoming victims of theft. According to an investigation reported by the *Washington Post* on Oct. 26, 2013, more than 1,000 nonprofit organizations reported a "significant diversion" of assets since 2008, most of which was the result of theft or embezzlement.

Reputation Protection

The nonprofit and public sectors are no strangers to media outlets calling attention to criminal charges being brought against volunteers. One negative incident involving a volunteer can irreparably damage a program's credibility, fundraising and recruitment of new volunteers. On the flipside, if the volunteers and individuals served know that an organization works hard to foster a safe environment, community trust will increase.



Recruitment of Quality Volunteers

Volunteer screening helps organizations ensure they are recruiting reliable and trustworthy volunteers to help fulfill the mission of their organization. Finding quality volunteers upfront often improves retention and, thereby, reduces the amount of time and resources needed for additional recruitment and training.

Saving Money

According to the U.S. Small Business Administration, every \$1 invested in background screenings results in a return on investment of \$5 to \$16. How?

- It decreases exposure to lawsuits arising from negligently onboarding and retaining volunteers, which lowers insurance premiums.

CONTINUED ON PAGE 15



How does your organization *stack up* on employee engagement?



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Value: The real value of these reports is that you can compare yourself to other organizations, assess where you need to invest in improvements and make necessary changes to retain your most valued public servants.

For more information, go to: <http://ipma-hr.org/resources/surveys/employee-engagement>

Screen

CONTINUED FROM PAGE 13

- It prevents fraud. According to the Association of Certified Fraud Examiners, 12-13 percent of all reported workplace fraud occurs in the nonprofit sector.
- It maintains credibility and the ability to fundraise.
- It helps identify more reliable, dedicated volunteers.

Any organization that thinks screening is too expensive should know that many volunteers are willing to pay for, or contribute towards, the cost of their background checks. For instance, volunteers want to help pay for more than 50 percent of the cost of Verified Volunteers' background checks. Broader industry statistics suggest that two-thirds of volunteers to nonprofits are also donors.

Choose a Quality Screening Method and Vendor

Keep in mind that not all screens are created equally. Just because you have volunteers "check the box" on criminal history does not mean you should feel confident in the self-reports. Make sure you are:

- **Getting up-to-date, accurate information that is validated by a primary source.** This cannot be done instantly, but the results are worth the wait. At Verified Volunteers, we conduct what is called a Complete Criminal Locator that involves county searches based on address history, county searches based on alias and maiden name searches, sheriff's office checks across the country, a real-time national sex offender check and more.

Using this process, we catch significant criminal history that would be missed with simple nationwide database checks. For instance, a volunteer program serving vulnerable populations in the eastern United States identified a volunteer applicant with a long history of arrests and convictions, including strangulation, assault on an elderly person and breach of peace. This individual would have made it through the background check had the organization been using its prior screening provider and its more-limited search.

- **Receiving monthly updates and rescreening volunteers on a regular basis.** After all, crimes can be committed after a volunteer has started. Recently, a youth-serving organization in the Southeast found new criminal history eight months after a volunteer was screened. The individual was convicted of child abuse. Without monthly updates, the organization would never have known about the later conviction.

These examples are truly scary—and hopefully eye-opening for any organization that does not currently screen and rescreen all volunteers. Reconsider your screening policies and make sure you know who you have on board at your organization even if you feel you know them well.

Katie Zwetzig is executive director of Verified Volunteers. She has been at the forefront of the screening industry for the last 14 years and feels strongly that nonprofits and volunteerism are at the heart of a strong community. She can be reached at katie@verifiedvolunteers.com. —*N*

President

CONTINUED FROM PAGE 1

the EEOC and on the excise tax to be levied on so-called "Cadillac" health plans under the ACA. We also filed amicus briefs with the U.S. Supreme Court on cases that impact public human resources management.

In the area of communications, we continue to publish our monthly magazine and our *HR Bulletin*. IPMA-HR members continue to get free online access to *Public Personnel Management*, which is now published by Sage. We remain active in social media, with a growing number of Facebook fans, LinkedIn group participants and Twitter followers.

We continue to provide valued assessment products, primarily to assist in hiring and promoting public safety staff, and we now offer online testing for many of our assessment products.

We are continuing our international activities, offering three programs in China where we have two new partners. We also offered training and certification in Saudi Arabia, and additional

training is planned for the coming months. Staff participated in a public sector HR conference that was offered by the government of the United Arab Emirates in Dubai. We continue to have exchange programs with local government groups in Great Britain and South Africa. We are exploring possible partnerships with HR associations in Egypt and Liberia.

IPMA-HR remains strong financially, holding significant reserves and owning our headquarters. We continue to invest in new programs, products and services and to develop partnerships with other organizations that enable us to expand our influence and the scope of our offerings. The association remains vibrant and positioned for future challenges.

Best wishes for a happy holiday season. —*N*

Sincerely,



Richard Stokes, IPMA-CP
2015 IPMA-HR President

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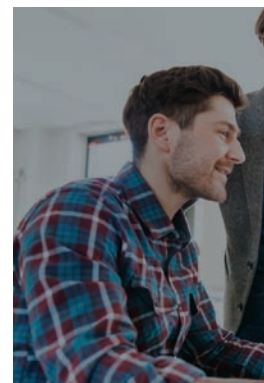
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are increasingly “social enterprises” - where social media and pervasive mobile platforms that’s transforming the workplace - the last solutions haven’t kept up. In fact, relying on previously hamstringing your enterprise’s culture

ction



Checklist

Employee Tasks

All Tasks

Progress



Group 1

<input type="checkbox"/>	Schedule Meet & Greet	Employee	5 days overdue
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Group 2

<input checked="" type="checkbox"/>	W-4
<input type="checkbox"/>	Direct

Group 3

<input checked="" type="checkbox"/>	Wate
<input checked="" type="checkbox"/>	Bring meeti

Attac

Performance Evaluation Rating

Submit

Total Score: 0.54 | Overall Rating: Exceeds Expectations

Evaluation Name	Direct Manager	Due Date	Type	Overall Rating	Numeric Scoring
Management 2013	Pamela S. Lesowyk	5/10/2013	Periodic	Yes	Yes

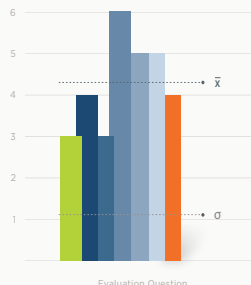
Performance Reports

Rating Comparison

< Prev Next >

COMMUNICATIONS

02 The candidate demonstrates extensive job knowledge during meetings and actively contributes to discussions.



Raters

	You Edit Score (manager)	5
	Alex Bottom (self-rater)	3
	Henry Lopez	5
	Paul Rodriguez	3
	Yvonne Rainer	2
	Jennifer Smith	2
	Anthony Davis	3

● Manager Rating ● Peer Average Rating ● Self-Rating ... Average Rating

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Giving City Employees an EDGE in Lynchburg, Va.

By Heather Brown and Margaret Schmitt

Employees with the City of Lynchburg, Va., love to learn. Well, maybe “love” is a little strong. They certainly *like* the opportunities afforded them through EDGE.

Short for Engaging and Developing Great Employees, EDGE is the city’s integrated workforce development system. It brings workforce planning and development under one umbrella to coordinate general employee training and programs for new supervisors, high-potential employees, tuition assistance and wellness.

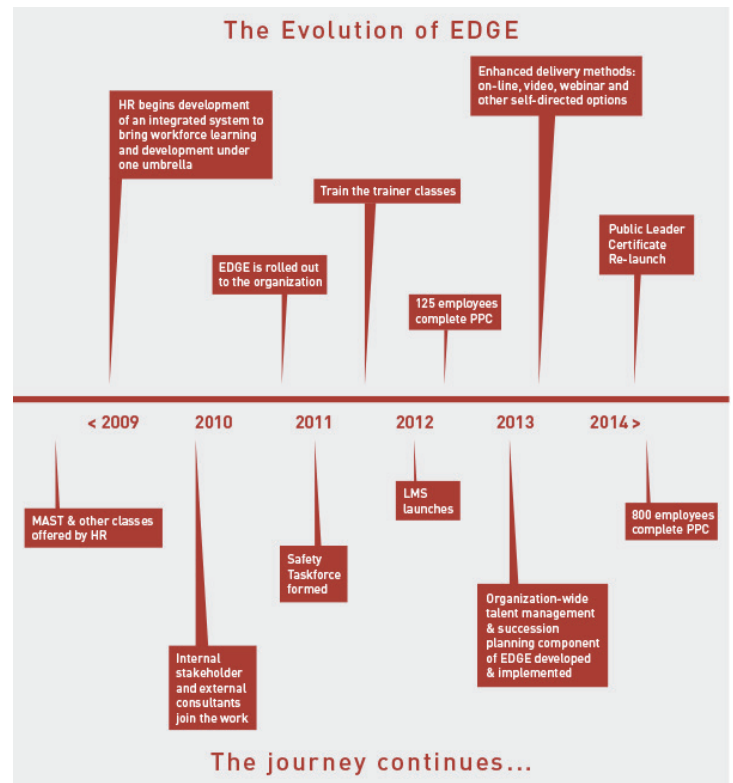


The cornerstone of EDGE is the internally developed and delivered Public Professional Certificate (PPC) that all long-term employees must earn. Completing certification requirements ensures all staff have a firm foundation of learning geared specifically toward successfully doing local government work. Foundational classes include civics, organizational values, ethics, appreciating differences, performance management and understanding benefits, as well as two National Incident Command System courses. The city-designed courses are facilitated by Lynchburg employees, which saves costs and provides valuable experiences for the trainers.

Employees are expected to earn their PPC during their first year with the city, and they must participate in at least 10 hours of professional development each year thereafter. Since full implementation in 2011, 853 employees have received PPCs.

Classes for EDGE are tracked through a learning management system that allows participants to register for instructor-led training, upload external training and manage their learning transcript. With their supervisors, employees create and update personal learning plans that provide roadmaps for growth. A second certification, the Public Leader Certificate, is available to those employees who want to develop or strengthen their supervisory and management skills.

Like many other localities, the City of Lynchburg will be faced with a large number of retirements over the next several years. At the leadership level, more than 50 percent of current department directors are eligible to retire. To prepare high-potential employees to be competitive in recruitment processes, the city put together an emerging leaders initiative through which targeted programs are offered to help strong performers hone leadership skills and develop strategic abilities. To date, 15 of the 85 employees identified as emerging leaders have moved into higher-level positions with broader responsibilities.



Additionally, EDGE offers a variety of development opportunities to help employees grow personally. Some of the most popular are healthy cooking classes, reading groups, dance fitness and financial management. Tuition assistance, provided on a first-come, first-served basis, provides money for college classes and professional training. During the recession, the city affirmed its commitment to development by increasing the budget allocation for both training and tuition assistance. This year, changes to the tuition assistance policy ensured that employees who choose to study at the local community college can take up to four classes per year tuition-free.

Since 2009, the city has been on a journey to provide high-quality learning and development opportunities for all its employees. While no program is perfect, EDGE offers a little something for everyone. The system continually grows and evolve to meet the ever-changing needs of Lynchburg and its employees.

Heather Brown is a human resources manager with the City of Lynchburg, Va. She can be reached at heather.brown@lynchburgva.gov. Margaret Schmitt is the director of human resources for Lynchburg. She can be reached at margaret.schmitt@lynchburgva.gov. —*N*

Recognizing the Value of Recognition

By J. Peter Leeds and James Tsugawa

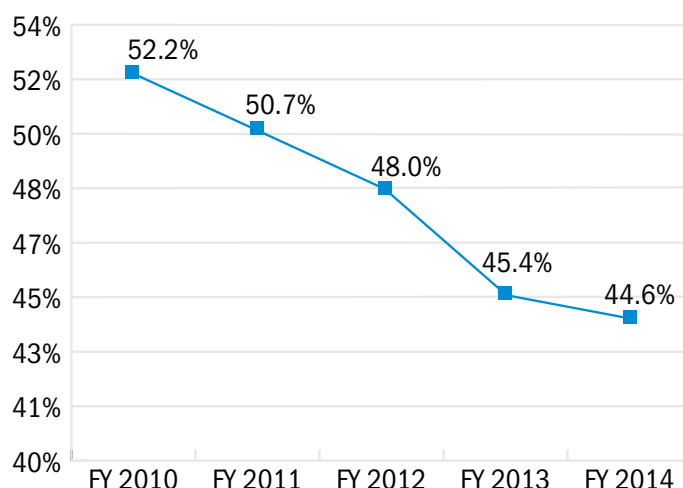
Results from a 2012 American Psychological Association survey of working Americans indicate that feeling valued is a key driver of engagement and job performance. Among employees who said they were valued, 93 percent agreed that they were motivated to do their best at work and 88 percent reported that they felt engaged. That compared sharply with the 33 percent and 38 percent, respectively, who felt motivated and engaged despite not feeling valued.

An important part of feeling valued is being recognized for one's contributions, because such recognition can lead to more motivation. For example, according to the Spring 2014 Workforce Mood Tracker survey conducted by Globoforce, 86 percent of employees are motivated by recognition. This survey also revealed that recognition directly affects employees' happiness at work and in general, with the effect being magnified when recognition is tied to organization values.

The U.S. Merit Systems Protection Board's (MSPB) has confirmed that appreciation is similarly important to federal employees and federal agencies. An analysis the board conducted for a study of employee motivation revealed that employees who believed that their effort would result in higher performance and that higher performance would be recognized were, in fact, more likely to perform well. In the 2010 Merit Principles Survey, MSPB researchers measured the degree to which feeling appreciated in one's work drove employee performance motivation and the resulting job performance. The findings suggest that, compared to peers with low appreciation motives, having a very strong appreciation motive was associated with an increase in an employee's likelihood of delivering a top performance. Conversely, MSPB also found that the less employees believe that their contributions will be recognized, the less motivated they will be to perform well on the job.

For these reasons, showing appreciation and recognition for a job well done is more than a matter of courtesy for supervisors and organizations. Unfortunately, the trend in federal employee experience is not positive. According to the Office of Personnel Management's annual Federal Employee Viewpoint Survey (FEVS), which asks employees "How satisfied are you with the recognition you receive for doing a good job?" we see year-over-year decrements, as shown in Figure 1.

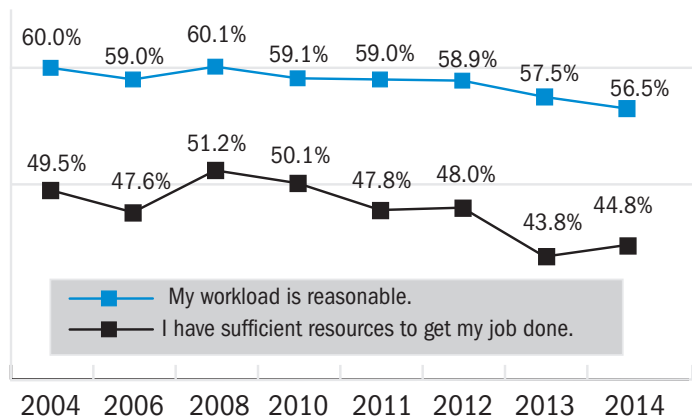
Figure 1. Federal Employees Satisfied With Recognition Received for Doing a Good Job



FEVS results for 2015 were not available when this article was written. Nevertheless, the trend is concerning because it may reflect something more than fiscal austerity and agency leaders' inability to tangibly express appreciation. Employees responding to the recognition question may well have a far broader definition of the concept than the survey creators envisioned. In recent years, federal employees, like many of their counterparts at the state and local levels, have heard a continuing stream of criticism and diminution of their work from both elected officials and media. Those critiques, combined with proposals to limit employment protections and reduce pay and benefits, may lead federal employees to believe that positive recognition of their work is increasingly scarce on the job and in the community they serve.

Also, given projected budget deficits and public debate about the proper role of government, many federal employees work under financial constraints and staff freezes or reductions. The FEVS trends shown in Figure 2 suggest that austerity may be taking a toll even when stakeholders are supportive or silent. So even employees who find more satisfaction in public service than in public recognition may see the current environment as more demotivating than energizing.

FIGURE 2. Agreement With Federal Employee Viewpoint Survey Statements Related to Resources & Workload, 2004 Through 2014*



* Results from the Federal Human Capital Survey, which predates FEVS, are included. The wording of the item on resources has been paraphrased from its full version of "I have sufficient resources (for example, people, materials, budget) to get my job done."

Leaders of public sector organizations cannot silence direct or implied criticisms from elected officials, media or members of the public. Nor can they erase them from employees' memories. Nevertheless, it is important that leaders take positive steps to counter the negative effects. Leaders, then, should do the following five things:

1. **Reaffirm the value of the agency's mission and how employees contribute to the accomplishment of that mission.** Every employee plays a vital role in the success of the organization. Helping each employee see how his or her tasks directly or indirectly support the mission is one way to communicate value and recognize each employee's contribution.
2. **Recognize individuals for their successes.** In 2014's *The Power of Thanks: How Social Recognition Empowers Employees and Creates a Best Place to Work*, Mosely and Irvine suggested that leaders train themselves to express appreciation daily. The authors wrote that one way to do this is keeping a gratitude journal to remind oneself of the need to show appreciation each day and to keep track of positive employee actions for performance management purposes.
3. **Recognize organizations for their successes.** In every agency, there are examples of mission accomplishment that demonstrate the value the organization provides to the American people. When leaders can express in concrete terms why an agency, function or work unit is important to the mission they can also express how what individual performers do is important.
4. **Set high standards,** but be honest about what can and cannot be accomplished with available resources. In these challenging times, agencies are not only being asked to do more with less, they are being asked in many cases to do everything with nothing. Agency leaders must have the courage to say when expectations for performance and productivity are inconsistent with resources allocated. One telling example of this comes from testimony IRS



Commissioner John, A. Koskinen gave before the U.S. Senate Finance Committee on Feb. 3, 2015. He candidly pointed out that service reductions were necessary tradeoffs for lower spending.

5. **Advocate for the workforce and for investments in employee development and recognition.** Koskinen was also quick to recognize both the accomplishments of his agency and the performance of his employees when addressing the senators, saying, "As part of this investment in our workforce, the IRS will continue to recognize qualifying employees who do exceptional work. Performance awards are a necessary incentive to motivate the workforce and retain highly qualified employees, and in that regard, I firmly believe they provide the agency and taxpayers with a good return on the dollar."

Federal employees may continue to find recognition and the resulting feelings of appreciation to be in short supply, but there are things agency leaders can do to recognize and defend the value added by their agency and the employees who make them work.

J. Peter Leeds is the senior research psychologist and James Tsugawa is the deputy director for the Office of Policy and Evaluation at the U.S. Merit Systems Protection Board. Leeds can be reached at peter.leeds@mspb.gov and Tsugawa can be reached at james.tsugawa@mspb.gov. —*N*

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By Jim Fox and Bruce Lawson, Fox Lawson & Associates, a division of Authur J. Gallagher's Human Resources Consulting Practice

Question: For years, our agency has had a pay structure where each job classification falls into a specific salary range. Our operational managers have been applying pressure on human resources and the CEO to abolish the structured ranges and go to a modified version of broadbanding in order to provide them with greater flexibility in adjusting pay for employees in their business units. At first blush, this seems relatively easy to do, but we are concerned about unintended consequences. Have you dealt with this issue in other agencies? If so, can you shed some light on the pros and cons of going in this direction?

CompDoctor™: Unintended consequences? Ya think?

This is one of those questions that reminds me of something my father used to say to me when I was a kid: "Everything I like to do is either illegal, immoral or fattening." In this case, while transitioning to a broadband pay structure is not illegal or immoral, it has major potential to be highly fattening.

In simple terms, when we have seen public agencies contemplate doing something like this, broadbanding was introduced as an attempt to move to a more progressive pay system when it was really just a workaround to pay topped-out people more money. The most common argument is that employees who have been with the organization for a long period of time deserve more money than the old system allows managers to authorize—that narrow pay bands do not adequately reward loyal and long suffering employees.

Pay progression/performance pay may be the answer to compensating highly valued performers with more money. At the end of the day, however, if people are topped out at what the market says the job they are doing is worth, they are being paid appropriately.

Now, to the pros and cons, or pluses and minuses, of making a change such as the one being requested.

We have written numerous articles over the years about broadbanding and what it

takes to make such a system work. One of the first ground rules is that not everyone can or should get to the top of the band, regardless of how wide it is. All employees must be made to understand this reality.

As for how the broadbanding could operate, consider this example, which is typical of many organization. A management pay band is created with a maximum salary of anywhere from 100 percent to 300 percent greater than the minimum salary within that pay band. The organization will then need to have some mechanism in place to determine what segment of the broader pay band is appropriate for any specific job or level of job that falls within the pay band. A management pay band could include both mid-level and top-level managers or just one level. Within the single level, one would often find jobs that have substantially different market values. For example, in some markets, IT, engineering, medical and legal jobs may have vastly different values than HR or finance jobs. Consequently, the most common approach is to define zones or segments of the broader pay band that can be used for specific jobs. The zones can be structured to look like pay ranges, or they can be specific dollar amounts that serve as target rates for specific jobs but with a range of consideration that might be plus or minus 20-25 percent of the target rate. Either way, there are parameters that limit the range of pay for a specific job.

The other primary control mechanism tends to be the basis for which pay increases can be given within a designated range. Performance and/or skill/competency acquisition and development tend to serve as the criteria.

To further ensure that departments or business units do not simply raise everyone's compensation to the upper limits of the range, budgetary controls are also usually put in place. We have found that the best way to control the system in this way is to simply budget all positions at the designated job rate, which could be the market rate or the mid-point of the range. That way, if a manager wants to pay some people above the market rate for their jobs, then other people with the same jobs need to be paid less than the market rate. Otherwise, there is no incentive to

control costs and average salaries within the organization quickly climb to above market rates, which, using our earlier analogy, can become very fattening for an organization's budget. Policymakers in public agencies tend to frown on this happening, so sticking to diets is mandated. Unfortunately, as most of us who have had to lose a pound or ten know, this can be less than pleasant.

So, the pro side of the equation for broadbanding is that managers gain a degree of increased flexibility while some classification and budget controls continue to exist. The con side is that if managers' flexibility is not reined in, payroll costs will tend to increase much more rapidly than originally planned. In addition, if one manager or department sees other managers granting pay increases, the pressure mounts for other managers to do the same.

As we said at the beginning, and also in our previous columns and articles about broadbanding, it can be an incredibly useful tool when broadbanding is integrated with appropriate performance management-based or skill/competency-based systems and when the appropriate fiscal controls are in place. In the absence of those tools and systems, broadbanding can be an open invitation to substantial payroll weight gain.

Good luck!

The Comp Doctor™ is the team of Jim Fox and Bruce Lawson of Gallagher Human Resources Consulting (formerly Fox Lawson & Associates), a compensation, benefits and human resources consulting firm that specializes in assisting governments in fixing their compensation, benefits and classification systems. You may find them on the Web at www.foxlawson.com. If you have a question, you would like to have them answer, please write to them at jim_fox@ajg.com, or bruce_lawson@ajg.com. They will try to include it in the next issue of Comp Doctor™.

—X

By David B. Ritter, Partner & Kaitlyn N. Jakubowski, Associate, Barnes & Thornburg LLP

Seventh Circuit Finds Limitations Period Begins When Absence Is Classified as Non-FMLA Rather Than at Termination for too Many Absences

The U.S. Court of Appeals for the Seventh Circuit affirmed summary judgment in favor of an employer on a former employee's claim of interference with her rights under the Family and Medical Leave Act (FMLA) (*Barrett v. Illinois Department of Corrections*, No. 12-CV-2024, Oct. 20, 2015).

The plaintiff began working for the defendant as an account technician in 1995. At that time, the defendant “maintained a progressive discipline system for repeat unauthorized absences,” according to the appeals court’s summary of facts. Disciplinary measures started with an oral reprimand and increased to suspensions of increasing duration. An employee could be fired after 10 unauthorized absences. The court also noted that “unauthorized absences accrued on an employee’s record until the employee went two years without receiving one; at which point the record was expunged.”

The plaintiff’s first unauthorized absence occurred on Dec. 15, 2003. According to the plaintiff, this absence was one of three that were protected under the FMLA and, therefore, should not have been classified as unauthorized. With respect to the Dec. 15, 2003, absence, the plaintiff alleged that she visited the emergency room the day before, was diagnosed with pneumonia and received instructions to stay home from work the following day. On Dec. 16, 2003, when she returned to work, “she presented her supervisor with a copy of her diagnosis and a hospital wristband, but was

told she lacked sufficient sick leave to cover the absence.” She challenged the absence through the Employee Review Board but was found her “guilty” of being absent without authorization and issued a verbal reprimand.

The second absence that the plaintiff claimed was protected by the FMLA occurred on Dec. 22, 2004, when she missed work to attend to her hospitalized daughter. The plaintiff had requested the absence on December 21 and completed paperwork explaining her absence on December 23. The Employee Review Board again found her guilty of being absent without authorization and issued a three-day “paper suspension,” meaning she could (and did) report to work and earn pay.

The third absence that the plaintiff claimed was protected by the FMLA occurred on Aug. 10, 2005, when she left work to receive physical therapy. Again, the Employee Review Board found the plaintiff guilty of an unauthorized absence and issued a five-day paper suspension.

The plaintiff did not contest the remainder of her unauthorized absences. The court pointed out one of those remaining unauthorized absences resulted in the defendant suspending the plaintiff for three days after accumulating an eighth unauthorized absence on Oct. 7, 2003. Pursuant to the attendance policy at that time, that latter suspension was not “on paper” but enforced, which resulted in the plaintiff losing three days of pay.

The last unauthorized absence occurred on May 14, 2010, after which the defendant suspended the plaintiff without pay on Sept. 30, 2010, pending termination for excessive absenteeism. The plaintiff’s employment was terminated on Oct. 15, 2010.

The plaintiff sought review before the Illinois Civil Service Commission but did not raise an FMLA argument at the hearing. Nor had the plaintiff raised an FMLA argument with her supervisor or before the Employee Review Board. An administrative law judge recommended that the plaintiff’s

termination be sustained, and the civil service commission adopted the recommendation.

On Jan. 27, 2012, the plaintiff sued the defendant in federal court for violating her rights under the FMLA. The district court found that the plaintiff’s claim was barred by the FMLA’s two-year statute of limitations. The plaintiff urged the court to find that the limitations period began to run when her employment was terminated. In countering this reasoning, the defendant argued that the alleged FMLA violations accrued many years earlier when the plaintiff was denied leave for each of the three absences she claimed were protected by the FMLA. The Seventh Circuit agreed with the district court in accepting the defendant’s interpretation.

In reaching its decision, the appeals court noted that resolving the limitations question—an issue of first impression in the Seventh Circuit—required it to interpret and apply the law in the context of an absenteeism policy based on a system of progressive discipline. Reviewing the statutory text, the court further noted that the FMLA provides that “an action may be brought under this section not later than 2 years after the date of the last event constituting the alleged violation for which the action is brought.” Further, “to prove an FMLA claim based on a denial of qualifying leave,” the court noted, “a plaintiff must show some impairment of his or her rights and resulting prejudice.”

The plaintiff alleged that the defendant improperly denied leave in violation of the FMLA on three specific occasions, occurring in 2003, 2004 and 2005. According to the court, when an FMLA plaintiff alleges that her employer violated the act by denying qualifying leave, the last event constituting the claim ordinarily will be the employee’s rejection of the employee’s request for leave. Each time the Employee Review Board ruled against the plaintiff, an actionable FMLA claim accrued, and the limitations period began to run. Further, according to the court, with each ruling, the plaintiff’s “FMLA rights were impaired

and she suffered prejudice.” The plaintiff was harmed by the classification of her absence as unauthorized, which increased the number of unexcused absences on her record. Accordingly, the plaintiff’s FMLA claim was barred by the statute of limitations because it was brought seven years after the last actionable event.

W.D. Kentucky Orders Former Employee’s Wife to Produce iPhone for Forensic Examination in CFAA Suit

The U.S. District Court for the Western District of Kentucky granted an employer’s motion to compel the inspection of the iPhone of a former employee’s spouse for purposes of discovery (*Brown Jordan International, Inc. v. Carmicle, Con. Case Nos. 14-CV-60629-Rosenberg/Brannon & 14-CV-61415-Rosenberg/Brannon*, Oct. 19, 2015).

The plaintiff’s former employer filed suit against the plaintiff asserting numerous claims, including a violation of the Computer Fraud and Abuse Act (CFAA). The plaintiff also filed suit against the defendant asserting numerous claims, including wrongful termination and a violation of the CFAA.

During the course of discovery, the parties entered into a Jointly Stipulated Order Setting Computer Forensic Investigation Protocol. Pursuant to that protocol, the plaintiff submitted his electronic devices and storage sites for forensic examination during discovery. Based upon the review of those devices and sites, the defendant believed that the Apple iPhone owned by the plaintiff’s spouse might contain information relating to the claims in the action. Specifically,

based on a forensic examination report, the defendant believed that the spouse’s phone contained company e-mail messages from and relating to the defendant.

On Sept. 5, 2015, the defendant served a subpoena on the plaintiff’s spouse requesting production of her iPhone by Sept. 11, 2015. The plaintiff’s spouse objected and refused to produce her phone. After the parties could not reach an agreement regarding forensic review of the phone, the defendant filed a motion to compel.

In reaching its decision to grant the defendant’s motion, the court determined that the information sought from the spouse’s phone appeared to be relevant to the claims asserted in the action. It noted that the phone belonged to the spouse of a party in the related action and that the underlying litigation involved claims relating to improperly accessing computers and computer systems. Further, during the course of discovery, the defendant received a forensic report indicating that the phone may have contained discoverable information. Finally, the plaintiff testified that he may have used his wife’s phone. Accordingly, the court determined that the defendant presented sufficient evidence to convince the court that the phone may contain information relevant to the claims asserted in the litigation and that there was good cause to seek forensic examination of the phone.

The burden then shifted to the plaintiff’s spouse to establish that the material either was or was not relevant, or was of such marginal relevance that the potential harm resulting from production outweighed the presumption in favor of disclosure. In response to the argument that she recently purchased the phone, the court noted that, many times, data from old iPhones are backed up and uploaded to new iPhones. Additionally, the court found unpersuasive, in light of potential spoliation issues and the forensic report, the spouse’s argument that the defendant already had the information it sought and that the information would be duplicative. Further, the court

determined an inconvenience argument unpersuasive, given that the examination could be performed in under four hours and at a time when the spouse would be sleeping. Finally, an argument that the spouse lacked sufficient time to review the forensic report was not enough to deny the motion to compel; the court merely modified the review period.

Accordingly, the plaintiff’s spouse did not meet her heavy burden, and the court granted the defendant’s motion to compel.

Third Circuit Finds Fired Officer Did Not Establish He Reported Department ‘Misconduct’ in Whistleblower Case

The U.S. Court of Appeals for the Third Circuit upheld the dismissal of a former employee’s claims under, among other laws, the New Jersey Conscientious Employee Protection Act (CEPA) and the New Jersey Law Against Discrimination (LAD) (*Young v. Township of Irvington et al.*, No. 13-4353, Oct. 19, 2015).

Prior to his employment with the defendant, the plaintiff served as a sergeant in the U.S. Air Force from 1982 until July 1986, when he left the service with an honorable discharge. The plaintiff has worked for the defendant as a patrol officer and detective since December 1990. Around March 2010, the plaintiff took the Civil Service Commission’s (CSC) sergeant’s promotion exam. At that time, military points were counted like every other category of points to be awarded and were included in the total used to determine where an individual would be placed on the promotional

CONTINUED ON PAGE 26

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eligibility register. Based on his scores, the plaintiff placed seventh on the May 4, 2010, final promotional eligibility register. He was not promoted.

Another promotion exam was scheduled to be offered on March 12, 2014. Prior to that date, one of the plaintiff's fellow officers filed a grievance asserting that the procedure for determining a candidate's position on the promotional eligibility register violated an Illinois statute. Subsequently, the CSC changed the scoring system so that each candidate would first receive a combined score of up to 100 points for the written exam, oral assessment and merit and efficacy categories. Seniority points would then be added to determine the candidate's position on the preliminary promotional eligibility register. After a candidate had been placed on the preliminary promotional eligibility register, he or she could request up to 3.5 military preference points to determine his or her final score and placement on the final promotional eligibility register. Accordingly, the new scoring system gave more weight to military preference points than the system used in 2010.

The plaintiff claimed that had his military preference points been weighted the same in 2010 as they were beginning in 2014, he would have placed as high as third on the final promotional eligibility register. The plaintiff further alleged that the defendant's interim chief informed the plaintiff on or around Aug. 12, 2011, that had the plaintiff been in the top third of candidates, the plaintiff would have been chosen for the position of investigative sergeant.

Further, the plaintiff alleged other incidents that he claimed demonstrated the "disdain held for officers who served in the military, including statements by the Chief of Police and a Sergeant criticizing those who had served in the military and complaints from other patrol officers who claimed that their active military status prevented them from being promoted."

The plaintiff filed a formal complaint with the defendant on Feb. 22, 2014, regarding the scoring method. The defendant responded, disagreeing with the plaintiff's position. The plaintiff complained that the defendant subse-

quently retaliated against him by not providing him with examination preparation materials for the 2014 exam that nonmilitary officers received, denying him a promotion despite his having the most relevant experience and subjecting his work to greater scrutiny than that given to the work of other officers.

With respect to the plaintiff's claim under USERRA, the court noted that a plaintiff must establish that he was subject to an adverse employment action and that his military service was a motivating factor in that action in order to allege a violation of USERRA. The court determined that the plaintiff's allegations regarding the dilution of his military preference points failed to substantiate a claim under USERRA. In reaching this decision, the court noted that USERRA requires equal treatment for military and nonmilitary employees but is not intended to protect an employer's decision to provide additional preferential treatment to military employees beyond that provided to nonmilitary employees. The preference points at issue were only available to employees with military status. Accordingly, the court determined, the decision by the defendant to weight military status differently at different times did not constitute a violation of USERRA. Further, the court determined that the comments alleged to have been made by supervisors were not actionable under USERRA because they were not alleged to be in any way connected to the denial of a benefit of employment.

The court did find, however, that the plaintiff could pursue his claim of retaliation under USERRA. In reaching its decision, the court determined that a failure to promote may constitute an adverse action under USERRA. It further noted that the plaintiff must allege that the purported adverse actions were taken to retaliate against him for pursuing USERRA protections. The court determined that the plaintiff should have the opportunity, through discovery, to prove his claims relating to his inability to secure a promotion.

Second Circuit Finds Withholding a Discretionary Bonus May Constitute an Adverse Action

The U.S. Court of Appeals for the Second Circuit held that withholding a discretionary bonus may constitute an adverse employment action for the purposes of a claim under the Americans with Disabilities Act (ADA) (*Davis v. New York City Department of Education*, No. 14-1034-cv, Oct. 19, 2015).

The plaintiff first worked for the defendant as a substitute teacher in December 1998. She subsequently became licensed to teach health at another school administered by the defendant around 2000. In September 2002, she transferred to yet another school, where she taught from 2002 to 2009. The terms and conditions of the plaintiff's employment were governed by a collective bargaining agreement (CBA) between the defendant and the plaintiff's union.

Pursuant to the CBA, in the 2008-2009 school year, the school at which the plaintiff worked participated in a school-wide performance bonus program under which the school as a whole would receive a lump sum award if students met certain achievement goals. The school was mandated to establish a compensation committee composed of its principal and other staff members and to charge that committee with determining how any award money would be distributed.

The language of the CBA implied that all eligible staff would share any school-wide bonus, but the committee would exercise discretion over whether to pay bonuses equally to all eligible individuals, to vary bonuses by title or to pay differential bonuses. The appeals court's factual summary states that "while bonuses were not to be allocated based on seniority, the committee could make particular determinations for individual staff members who served at the school

for less than a full academic year.” An oversight committee had “the power to modify an award if it found that the award decision was arbitrary, capricious or in clear violation of the law or the procedures and standards governing the program.”

On Oct. 29, 2008, the plaintiff was injured in a car accident. She applied to take medical leave without pay, and the defendant approved her request for the period of Dec. 8, 2008, through Jan. 30, 2009. Despite being cleared to return to work at the end of the leave period, the plaintiff did not return to work until March 1, 2009, due to grand jury duty.

On or about Nov. 1, 2009, staff members at the plaintiff’s high school were awarded bonuses. The plaintiff’s union chapter leader informed her that the plaintiff would be sharing her award with the substitute teacher who filled in for her during her absence and that her portion of the \$3,000 total bonus was \$1,000. One teacher on leave for the entire year received no bonus. Another

on maternity leave for less than two months received \$3,000, and a third who was reassigned from the school at the end of March and thus missed more than two months, received a \$3,000 bonus. The plaintiff filed a charge of disability discrimination with the Equal Employment Opportunity Commission and ultimately filed suit in court alleging discrimination under the ADA.

The district court determined that the plaintiff did not make out a prima facie case of discrimination under the ADA because reduction of her bonus from \$3,000 to \$1,000 did not constitute an adverse employment action under the act. The Second Circuit disagreed with the district court with respect to its determination regarding the adverse employment action.

In reaching its decision, the appeals court noted that “to qualify as an adverse employment action, the employer’s action toward the plaintiff must be ‘materially adverse’ with respect ‘to the terms and conditions of employment’ ... [and]

must be ‘more disruptive than a mere inconvenience or an alteration of job responsibilities.’” Because the Second Circuit determined that “the fact that an employer has discretion whether to grant bonuses or raises does not support the conclusion that an employer may freely allocate them on the basis of racial or religious bias, or disability discrimination,” it held that the district court erred in ruling that denial or reduction of a bonus could not constitute an adverse employment action solely because the employer had discretion whether to pay a bonus.

Contact David B. Ritter, partner at Barnes & Thornburg LLP, either by email at david.ritter@btlaw.com or by phone at (312) 214-4862. Contact Kaitlyn N. Jakubowski, associate at Barnes & Thornburg LLP, either by email at kaitlyn.jakubowski@btlaw.com or by phone at (312) 214-4860. —*N*

2015 IPMA-CP Recertifications Due by December 31

If you were certified in 2000, 2003, 2006, 2009 or 2012, then it’s time to get recertified (http://ipma-hr.org/files/certification/IPMA-HR_RecertificationCriteria.pdf)!

Make sure your career stays on track! Our records indicate your IPMA-HR recertification is due this year. As a certified professional or specialist, you are required to recertify every three years in order to maintain your designation. Keeping your certification up-to-date encourages continuous learning. In turn, your continuous learning will help you adapt to changing work and life demands.

To be recertified, an individual must accumulate 40 points every three years and submit a completed Criteria for Recertification Report Form (http://ipma-hr.org/files/certification/IPMA-HR_RecertificationCriteria.pdf). We know the current economic situation has made it harder for everyone to

find training dollars. IPMA-HR has once again reduced the number of recertification points from 50 to 40. You can receive professional development points for any type of human resource training you receive regardless of who is providing the training.

Please return the completed recertification report by **December 31, 2015**. We recommend you complete your form early to avoid the end of year crunch! The recertification fee is \$200 for IPMA-HR members and \$250 for nonmembers. Anyone who is retired from human resource work can qualify for lifetime certification. Please provide a letter requesting lifetime certification and if approved, the recertification requirement will be waived. If you are still having problems completing your form due to questions or the economy, please contact us.

Please contact Debbie Tankersely-Snook at (703) 549-7100 or tankersely@ipma-hr.org if you have any questions. —*N*

Member News

Cleve Brooks, is the new human resources/risk director for Jackson County, Ore. He previously worked as the deputy HR director for the City of El Paso, Texas. He also has served on the IPMA-HR Benchmarking Committee.

Larry Gillis, IPMA-CP, was presented with the Walter Gattis Award by the IPMA-HR Kentucky Chapter. He serves as the assistant director of the Kentucky Personnel Cabinet.

Kim Marshall, IPMA-CP, is the new HR director for the City of Olathe, Kan. She previously worked as the human resources director for the City of Lenexa, Kan. —*N*

IPMA-HR Recognizes New Members

IPMA-HR would like to recognize the following individuals and agencies for recently becoming members.

New Agency Members

Central Carolina Community College
Sanford, N.C.

City of Greer Fire Department
Greer, S.C.

City of Manhattan Beach
Manhattan Beach, Calif.

City of Corpus Christi
Corpus Christi, Texas

City of Durant
Durant, Okla.

City of Los Angeles, Recreation & Parks
Los Angeles, Calif.

City of Schertz
Schertz, Texas

Southern California Association of Governments
Los Angeles, Calif.

New Individual Members

Stacey Barbereia
Visalia, Calif.

Rian Bishop
Torrance, Calif.

Gavin Cohen
Rockville, Md.

Roxanne Combs
Columbia, Mo.

Bonnie Crankshaw
Elgin, Texas

Gelise David
St. Thomas, V.I.

Ana Diaz
Alexandria, Va.

Ryan Donnelly
Mount Holly, N.J.

Kathryn Drewry
Camarillo, Calif.

Sandra Dutson
Woodbridge, Va.

Bernadette Elszy-Perez
Visalia, Calif.

Sheila Eslinger
Walla Walla, Wash.

Lucinda Gaisor
Alexandria, Va.

Natasha Hampton
Miramar, Fla.
Joseph Januszyk
Belleville, Mich.

Amy Jarvis
High Point, N.C.

Sarah Jimenez
Merced, Calif.

Esther Laird
Las Vegas, Nev.

Lulis Lopez
Visalia, Calif.

Darchelle Love
Berkley, Mich.

Kenya Moore
Atlanta, Ga.

Crissy Naranjo
Deer Park, Texas

Thien-Kieu Nguyen
Alexandria, Va.

Cris Randall
Lake In The Hills, Ill

Emily Reaves
Virginia Beach, Va.
Julius Rhodes
Chicago, Ill

Francisco Rios
Doral, Fla.

Bridget Robertson
Newport, Ore.

Victoria Robertson
Milwaukee, Wis.

David Schoen
North Little Rock, Ariz.

Jenicia Stephens
St Thomas, V.I.

Vida Summers
Riverdale, Ill

Michael Trotman
St. Thomas, V.I.

Kathleen Walker
Visalia, Calif.

Donald Williams
Augusta, Maine

Sam Williams
Austin, Texas



Certification Corner

Congratulations to these newly certified individuals!

Kathy Baker
Assistant HR Director
Columbia, Mo.

George Baldwin
Human Resources Manager II
Alexandria, Va.

Gloria Banuelos
Human Resource Program Assistant
Ventura, Calif.

Warren Benson
Management Analyst III
Alexandria, Va.

Stacey Barbereia
Human Resources Analyst III
Visalia, Calif.

Nate Brown
Assistant to the Director of Administrative
Services
Kansas City, Mo.

Rachel Buckley
Assistant HR Director
Visalia, Calif.

Charlene Carmon
Senior HR Analyst
Alexandria, Va.

Cheri Cunningham
Personnel Coordinator
Jackson, Calif.

Ana Diaz
Human Resources Technician II
Alexandria, Va.

Kelvin Driscoll
Management Fellow
Los Angeles, Calif.

Bernadette Elszy-Perez
Human Resources Analyst III
Visalia, Calif.

Laura Fernandez
Staff Services Analyst
Visalia, Calif.

Lucinda Gaisor
Human Resources Analyst
Alexandria, Va.

Renee Gatewood
Administrative Supervisor
Kansas City, Mo.

Torah Greenlaw
Administrative Officer
Kansas City, Mo.

LaTrenda Hardy
Human Resources Generalist
Tuscaloosa, Ala.

Sheree Harmon
Senior HR Analyst
Alexandria, Va.

Mark Hauer
Human Resources Analyst
Leesburg, Va.

Michael Lampert
Human Resources Director
Los Angeles, Calif.

Lulis Lopez
Fiscal Manager
Visalia, Calif.

Bob McLees
Human Resources
Kansas City, Mo.

Genelle Moore
Personnel and Education Commander
Lincoln, Neb.

Laura Morrison
Business Systems Manager/HRIS Manager
Alexandria, Va.

Thien-Kieu Nguyen
Human Resources Manager
Alexandria, Va.

Kristine Nilsen
Senior Human Resource Specialist
Austin, Texas

Patrick Pendleton
HR Fiscal Manager
Alexandria, Va.

Gelien Perez
Human Resources Director
Hialeah, Fla.

Dawn Prince
Human Resources Manager
Peoria, Ariz.

Bridget Robertson
Assistant Personnel Director
Newport, Ore.

Robert Rodriguez
Human Resources Analyst
Visalia, Calif.

Meredith Rund
Human Resources Specialist
Kansas City, Mo.

Sandra Sheard
Training & OD Manager
Alexandria, Va.

Jolita Smith
Senior Human Resources Specialist
Kansas City, Mo.

Kathleen Walker
Administrative Services Officer II
Visalia, Calif.

Chief Human Resources Officer

County of Orange
Santa Ana, Calif.

High Salary: \$200,000

Job Description: The County of Orange is recruiting nationally for a highly experienced human resources professional with a proven and verifiable track record of confident leadership, continuous process improvement, and excellent human resources and human relations abilities to focus on the critical needs of both the organization and the workforce. The Chief Human Resources Officer oversees the County's Human Resource Services Department (140 employees; \$5.6 million budget) that provides advisory and consultative support for a workforce of approximately 18,000 employees. The annual salary range for this executive level position is up to \$200,000 with excellent benefits including 1937 Retirement Act with CalPERS reciprocity.

Job Requirements: This position requires the equivalent of a Bachelor's degree and 7 years of professional human resources experience with at least 3 years of senior management experience in a unionized environment for a public agency. A Master's degree is highly desirable.

To Apply: Submit cover letter, resume, and salary history to apply@ralphandersen.com by December 20, 2015. Recruitment brochure available at www.ralphandersen.com. Confidential inquiries welcomed to Teddi Anderson at (916) 630-4900.

Manager, Office of Employee Relations and ADA Compliance

The Maryland Judiciary
Annapolis, Md.

Job Description: The Manager of the Office of Employee Relations and ADA Compliance directs and manages all functions and activities of the office and its staff. This position oversees employer/employee relations activities, performance management, the employee assistance program and state medical director referrals. This position also manages the administration of the leave bank and leave donation program, unemployment insurance, worker's compensation and ADA issues, HR policy development and interpretation, and compliance with all HR policies, and Federal and state employment laws. This position advises judges, Judicial Branch Leadership and employees concerning workplace situations including employee conduct and performance issues, and workplace safety. This position consults with the Administrative Office of the Courts Legal Counsel and the Office of the Attorney General when necessary. This position designs and develops HR professional development courses and presentations, and monitors related State legislative initiatives. This position prepares and defends HR-related fiscal documentation submitted to the State legislature by the Judicial Branch and may be required to testify before State legislative committees. This position may represent management in formal hearings such as grievances, disciplinary appeals, unemployment insurance, and workers' compensation. This position performs all other essential functions as assigned.

Job Requirements:

- Education—Bachelor's Degree from an accredited college or university.
- Experience—Five to seven years of professional human resources experience in the areas of employer/employee

relations including policy development; conducting workplace investigations; oversight of workers' compensation, FMLA and ADA programs; and the grievance process. Two years of experience supervising or managing Human Resources staff.

- Preferred—Training in conflict management and dispute resolution. Experience working in a unionized environment and working with collective bargaining agreements. Knowledge of the concepts of collective bargaining. Any Human Resources certifications.
- Skills/Abilities—Extensive knowledge of the Judiciary's mission, culture, structure and human resources policies and procedures; Extensive knowledge of principles and practices of human resources management as well as Judicial branch precedents in such matters; Extensive knowledge of employment related Federal and state laws and regulations; Knowledge of payroll and leave accounting procedures and practices; Ability to demonstrate leadership skills; Ability to demonstrate skills in mediation and facilitating and negotiating agreements between individuals or groups where conflicting interests and viewpoints exist; Ability to demonstrate skills in developing, organizing and presenting cases in grievance and appeal hearings; Ability to demonstrate skills in conducting such hearings as the hearing officer; Ability to demonstrate public speaking skills; Ability to demonstrate skills in developing and presenting professional development and general information programs; Ability to independently plan, develop, and carry out activities and functions in assigned areas; Ability to work on multiple projects and initiatives simultaneously; Ability to communicate clearly and concisely, orally and in writing, and be persuasive when necessary; Ability to express accurate, constructive and cogent ideas; Ability to work well with employees at all levels of the organizations, including internal and external customers; Ability to work within a culturally diverse environment with the ability to handle all situations with diplomacy, tact, and confidentiality; Ability to be self-directed and handle multiple projects simultaneously; Ability to demonstrate good organizational skills and ability to manage time and work responsibilities effectively and efficiently; Ability to maintain a harmonious and effective working relationship with judges, Judicial Branch leadership and employees; Ability to maintain composure and rationality when confronted with anger and hostility, and the ability to diffuse volatile situations; Ability to perform all essential functions of this position.

To Apply: Interested applicants must submit a Maryland Judiciary application to jobs@mdcourts.gov. To obtain an application go to www.mdcourt.gov/jobs. EOE

Learning Development Specialist

Kansas City Water Services
Kansas City, Mo.

Salary Range: \$3239-5588 per month

Job Description: Full-time position available with the Water Services Department, Human Resources Division located at 4800 E. 63rd St. Kansas City, MO 64130. Normal Work Days/Hours: Monday - Friday, 8:00 a.m. to 5:00 p.m. Water Services is searching for a Learning Development Specialist with a solid background in adult learning strategies, instructional design and comprehensive classroom facilitation skills that both enlighten and engage. Responsibilities for this position include authoring training content, testing training procedures and evaluating the effectiveness of the

training programs offered to our associates. An ability to research, write and communicate well is critical. This position will interact with a wide variety of associates at all levels of the organization and requires someone who can build positive relationships and support a productive learning culture.

Note: Non-residents, if appointed, must establish residency within the city limits of Kansas City, Mo., within 9 months.

The City of KCMO is an equal opportunity employer committed to a diverse workforce. EOE.

Organization Information: Kansas City Water Services protects and enhances one of Kansas City's most precious resources by delivering safe and reliable drinking water, wastewater, and storm water services to our customers. Our focus is on continuing to provide quality products and an excellent experience to our customers today, as we prepare for the water needs of the next generation.

- Industry/Type - Utilities/Government Agency
- Company Size - 800-1000 employees
- City of KCMO website - <http://kcmo.gov>
- KCMO Water Services website - www.kcwaterservices.org

Job Requirements: REQUIRES an accredited Bachelor's degree in public or business administration, liberal arts or a related field and at least 3 years of progressive professional experience in governmental administration or in private sector administration at the level of Administrative Assistant; OR an equivalent combination of qualifying experience and education. Preference is given to applicants with ASTD certification; and/or an accredited Master's Degree in Organizational Development or Adult Education and/or demonstrated experience researching, developing, and conducting successful training programs.

To Apply:

- Website: <http://kcmo.gov>
- Job Posting: #505328
- Job Posting Deadline: 12/7/2015

IPMA-HR Provides Training and Certification Programs in China

IPMA-HR is in its 11th year of providing training and certification programs in China. Earlier this year, the association signed a new agreement with three Chinese partners that include the National Education Examinations Authority of the Ministry of Education, the China Education Association for International Exchange and the Training Center of the State Administration of Foreign Experts Affairs. IPMA-HR has certified more than 10,000 people in China.

IPMA-HR Executive Director Neil Reichenberg was in China during October for meetings with our partners. He also gave presentations on international human resource developments in Beijing at a conference sponsored by the Financial Talent Committee of the Talent Research Association, as well as in Shanghai at an event sponsored by the Shanghai Foreign Services Corporation and the Shanghai Municipal Commission of Commerce.

Please contact nreichenberg@ipma-hr.org for additional information about the association's programs in China. —



IPMA-HR Executive Director Neil Reichenberg in Shanghai with representatives of the Shanghai Foreign Services Corporation and the Shanghai Municipal Commission of Commerce.

News From the IPMA-HR Executive Council Meeting in Denver

The IPMA-HR Executive Council met on September 26, 2015, in Denver. IPMA-HR President Richard Stokes, IPMA-CP, presided. Highlights included the following:

- The Executive Council discussed the annual membership satisfaction survey that was completed by more than 730 IPMA-HR members. As in past years, the survey results show a strong level of member satisfaction, with 89 percent of respondents saying they value their membership and plan to continue as long as the association meets their needs.
- The recommendation of the Member Alignment and Relevance Taskforce that the association undertake an HR 2020 project next year that will focus on the future of the government workforce and what skills HR professionals will need to address challenges was approved by the Executive Council.
- Several minor revisions to the IPMA-HR Long-Range Strategic Plan were approved, as was a recommendation that the association explore the development of an emerging leaders program to enhance the public HR profession.
- The Executive Council discussed both the 2015 International Training Conference in Denver, which had an increase in the number of participants as compared to the past several years, and the planning for the 2016 International Training Conference in Kansas City, Mo.
- The Executive Council voted to continue sponsoring the International Training Conference and to have IPMA-HR staff explore another multiyear contract with a hotel company since the current four-year contract with Marriott will end in 2017.
- The Executive Council received an update on professional development, where the association has seen an increase in

the use of its programs. Based on the results of a professional development survey undertaken earlier this year, the association has offered a four-part webinar series on HR legal issues and is developing a seminar on workforce and succession planning. Additionally, a new course titled Understanding the Elements of Human Resource Management: A Roadmap for Non-HR Managers was scheduled for piloting at the end of October.

- The Executive Council was informed that the association had certified more people so far this year than in either of the past two years and that an alternate certification exam has been developed.
- The Executive Council approved the establishment of an entry-level certification program. Anyone seeking the new certification would need to complete the eight-module Public Sector HR Essentials training program and pass an examination that will be developed.
- The Executive Council approved the 2016 IPMA-HR budget that includes some modest fee increases.
- The Executive Council received an update on the association's government affairs activities, including the submission of comments on proposed Fair Labor Standards Act overtime regulations and opposition to the excise tax that is part of the Affordable Care Act.

The next meeting of the Executive Council will be held March 5, 2016, in Alexandria, Va. For additional information on the Executive Council meeting in Denver, please contact IPMA_HR Executive Director Neil Reichenberg at nreichenberg@ipma-hr.org. —N

CALENDAR

December 9 **Conducting Employee Investigations Online Webinar**
For more information, visit <http://bit.ly/1Kt7iEt>

April 3-6 **2016 IPMA-HR Eastern Region Training Forum in Newport, R.I.**
For more information, visit <http://ipma-er.org/>

April 27-29 **2016 IPMA-HR Western Region Conference in San Diego, Calif.**
For more information, visit <http://wripma-hr.org>

September 17-21 **IPMA-HR International Conference & Expo**
Speaker proposals being accepted
<http://ipma-hr.org/webform/conference-speaker-proposal>



Essentials of Employment & Labor Law | Webinar Series

Presented by renowned employment and labor law attorney David Ritter, of Barnes & Thornburg, IPMA-HR's Essentials of Employment & Labor Law webinar series provides the most comprehensive, practical, up-to-date employment law training available for public sector HR practitioners.

The Legal Implications of Social Media in the Workplace | Available On-demand

The most current laws regarding social media in the workplace, including the activities of the National Labor Relations Board (NLRB), privacy concerns, social media policies and more.

The FMLA & Americans with Disabilities Act | Available On-demand

The FMLA and ADA offer numerous ways for employees to “game the system.” Through the use of actual court cases, learn what practices employers have engaged in with success — and which have backfired.

Fair Labor Standards Act (FLSA) | Available On-demand

Lawsuits citing the FLSA are filed more than any other type of employment law violation, and the penalties are high. Learn how you can avoid these types of costly lawsuits by employing a few easy steps.

Conducting Employee Investigations | December 9

Whether employee investigations are a routine task for you, or you're a bit rusty, this webinar will help enhance your skills and knowledge so you can confidently conduct your next investigation.

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