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# NEWSLETTER

June 2017 ISSUE

## President's Address

Hello again everyone and welcome to another great NUHRA Newsletter!

Summertime is upon us and we're getting close to the three-digit degrees and although I'm not excited for the high temperatures, I am excited for the season change and some other changes we'll be seeing at NUHRA this year.

REMINDER – NUHRA Annual Golf Tournament location has changed! This year it will be held at the **Mt. Ogden Golf Course on Monday, July 31<sup>st</sup>** in Ogden, Utah. We are excited about the new location and are confident they will provide an amazing tournament! This tournament supports the NUHRA Student Scholarship Fund at Weber State University which has provided scholarships to many deserving students over the years and we appreciate everyone who has supported us in the past. We still have plenty of room for sponsors and participants! If interested, please visit [https://www.planmygolfevent.com/30579-NuhraGolf\\_2017/](https://www.planmygolfevent.com/30579-NuhraGolf_2017/) for more information and registration.

As always, thank you all so much for allowing me the opportunity to serve as your 2017 NUHRA President. I'm definitely enjoying this!

Alison Evans – President

## 2017 Board Members

- President | Alison Evans
- President Elect | Steven Maughan
- Secretary | Ronda Bateman
- Treasurer | Darrel May
- VP Membership | Dana Williams
- Communications | Trisha Clark
- Webmaster | Christina London
- Programs | Stacey Comeau
- Certification | Shauna Greer
- Hospitality | Michael Stanger
- Workforce Readiness | Tia Larsen
- Diversity | Kevin Smith
- Legislative Representative | Jesse Oakeson
- Public Relations | Kathy Hammerle
- Foundation Liaison | Heather Briskey
- Student Liaison | Pat Wheeler
- Student President | Curtis Waite
- Golf Committee Chair | Shawn Choate
- Past President | Veronica Akers

AFFILIATE OF



SOCIETY FOR HUMAN RESOURCE MANAGEMENT



# Upcoming Events

## June Luncheon

June 15<sup>th</sup> @ 11:30 a.m.

**Davis Hospital & Medical Center**  
**1600 Antelope Dr., Layton**

Presenter | Mikhail Shneyder – Nightingale College  
“Controlling Costs of Providing Medical Care to Employees”

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## July Luncheon

July 20<sup>th</sup> @11:30 a.m.

**Davis Hospital & Medical Center**  
**1600 W Antelope Dr., Layton**

Presenter | Ascanio Pignatelli – E3 Solutions  
“How to Drive Engagement with Energy Leadership”

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## Annual Golf Tournament

July 31st

**Mt. Ogden Golf Course**  
**1787 Constitution Way Ogden, UT**

Visit [www.nuhra.org](http://www.nuhra.org) for more information  
on attending or sponsoring the event

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## September – Crossroads Conference

September 19 & 20

**Utah valley Convention Center**  
**220 W Center Street, Suite 200 Provo, UT 84601**

<http://utahcrossroadsconference.org/>

# Pride Month a Reminder of LGBTQ Workplace Issues

*By: Kathy Gurchiek*

Workplace issues involving lesbian, gay, bisexual, transgender and queer (LGBTQ) individuals have been at the forefront of employers' minds the last several years, ranging from unequal treatment of benefits for same-sex spouses to bathroom accessibility for transgender employees to sexual orientation discrimination.

In 1995, October was designated as LGBT History Month by a coalition of education-based organizations, according to the Library of Congress. In recent years, the last Sunday in June has been designated as Gay Pride Day. President Barack Obama signed a presidential proclamation in May 2016 designating June of that year as LGBT Pride Month. There has been no official White House statement commemorating June as Pride Month, although President Donald Trump has said he will continue to enforce Obama's 2014 executive order creating certain workplace protections for LGBTQ individuals.

### **Why Is LGBT Pride Month in June?**

June is unofficially recognized this year as LGBTQ Pride Month, because of a demonstration that took place in 1969. The morning of June 28, 1969, New York City police raided the Stonewall Inn, a popular gay bar in Greenwich Village. Law enforcement could legally justify the raid because Stonewall was serving liquor without a license, but at that time, it wasn't unusual for police to target gay clubs. What was uncommon was for crowds to fight back. (USA Today)



## FMLA Abuse

### Serving Jail Time Moonlighting, Vacationing & more

By: Allen Smith

People who abuse the Family and Medical Leave Act (FMLA) do so for a variety of off-the-wall reasons: to serve a jail sentence, attend a criminal court hearing, travel to exotic locations, go fishing or build a family business, for example.

But even if the fraudulent conduct is outrageous, whether an employer prevails in an FMLA leave abuse case often depends on whether it has conducted an exhaustive investigation, said Jeff Nowak, an attorney with Franczek Radelet PC in Chicago.

Some employers learn this lesson the hard way. Take the employee who had a bad back and could not stand or sit for long periods. While on FMLA leave, she posted videos of herself on Facebook drinking and dancing at a local bar. The employer fired her, noting that if she could dance, she could work.

#### **A slam dunk for the employer?**

No. The U.S. District Court for the District of Connecticut refused to dismiss her FMLA claims, finding that the employer should have conducted a closer review of her health condition and that it failed to consult with a medical provider to determine if this conduct was incompatible with FMLA leave. Rather than getting a second medical opinion that "would have provided the court with helpful evidence," the employer simply relied on its "lay opinion" that she could work if she could dance.

Nowak called this a "harsh decision for the employer" but noted that "these are the risks employers take in fighting FMLA abuse."

Due diligence doesn't guarantee employers will win every time they think there's been FMLA leave abuse, however, especially if the facts tug at heartstrings. Joan Casciari, an attorney with Seyfarth Shaw in Chicago, said she handled a case that involved an employee who was put on FMLA leave for depression. The employer later discovered through surveillance that she was doing Christmas shopping with her family and having a wonderful time. But her doctor confirmed that "retail therapy" was consistent with her condition and the fact that she could shop did not mean that she did not require FMLA leave.

And in a widely reported case, an employee took her mother, who was terminally ill, to Las Vegas on a Make-A-Wish-type trip. After the employee was fired, she sued under the FMLA. The court held that she was providing care for her mother, just in another place.



### Increasingly Blatant FMLA Fraud

Sometimes, though, FMLA leave fraud is evident. For example, an employee once told one of Nowak's clients, "If you assign me to that machine, I am just going to take an FMLA day."

In one case defended by Brian McDermott, an attorney with Ogletree Deakins in Indianapolis, the employer discovered photos of an employee on the Internet holding a large fish he had caught on a day he claimed FMLA leave. The employee was fired for FMLA leave fraud, and the termination was upheld.

In another case, an employee obtained a doctor's note requiring intermittent leave from work based on back problems, then flew to Hollywood, Calif., to be a paid extra on a reality show featuring her daughter. The employer fired her because it concluded that her conduct violated company policies and constituted FMLA leave fraud, he noted.

When FMLA leave abuse isn't so blatant, employers may need to do some digging. In one instance, an employee requested time off for vacation, which was denied. Then he asked for leave for the exact same period, claiming he needed time off for a sudden panic attack. The company granted the request. But when it realized the timing was the same, it investigated and then fired the employee for FMLA leave fraud, McDermott said.

Franklin Wolf, an attorney with Fisher Phillips in Chicago, recalled one employee who sought to extend his FMLA leave beyond the initial expected period. Using video surveillance, the employer discovered that the employee was doing construction work on the roof of his home. "This should not have been possible" given the employee's serious health condition, Wolf noted.

Casciari said an executive at a social services agency requested 12 weeks of FMLA leave for the birth of his child. When the CEO learned that the executive was test-driving a new position with another agency in the same city, the CEO fired the executive for several reasons, including working for the other agency during his leave. The worker sued, alleging FMLA retaliation and interference. At his deposition, he denied having any agreement with the new employer, said he hadn't worked for it and dodged questions about the true nature of the relationship. The employer then subpoenaed records from the rival agency and discovered a written contract that identified the executive as an "independent contractor" for the agency. The executive's lawyer withdrew from the case, and the executive claimed that he forgot about the contract because he was sleep-deprived. Summary judgment was granted to the employer, along with sanctions for the executive.

### One Foot out the Door

"One of the biggest areas of abuse we commonly see are poor-performing employees requesting FMLA leave just before they are to be terminated," said Brittany Bogaerts, an attorney with Nixon Peabody in Chicago. "Typically, these employees know that the writing is on the wall—perhaps they've received multiple write-ups in the last few months or have been subject to disciplinary action."

An employer in this scenario should make sure to document when it decided to fire the worker and for what reasons, she said. This ensures that the employer can demonstrate that the termination decision was made before the employee's request for FMLA leave and that the firing was unrelated to the leave request.

## LGBTQ Workplace Issues cont.

### **Civil Rights Act Protects Gay Workers, Court Rules**

In a significant victory for gay rights, a federal appeals court in Chicago ruled April 4, 2017, that the 1964 Civil Rights Act protects gay workers from job discrimination, expanding workplace protections in the landmark law to include sexual orientation.

(New York Times)

### **Are You (& Your Boss) Doing These 11 Things to Support LGBT Employees?**

More and more employers are forging ahead to make their companies welcoming to LGBT people, even without state and federal laws in place to support equality.

One obvious way to do that is with a company-wide non-discrimination policy that says that no one will be hired, fired, promoted, or retained on the basis of sexual orientation or gender identity. But why stop there? Read about 11 things you (and your boss) can do to fully welcome LGBT people into the workplace.

(Refinery29)

### **Vast Majority of Transgender Workers Face Discrimination in Workplace, Study Says**

The study, "Paying an Unfair Price: The Financial Penalty for Being Transgender," shows that as many as 47 percent of trans workers report being unfairly denied a job. And 78 percent report being harassed, mistreated or discriminated against at work.

(Pasadena Star-News)

### **Promoting Access to Restaurant Jobs for the Transgender Community**

Challenges in the workplace for the transgender community include hostile actions by coworkers, harassment and discrimination. Some have been fired for conflicts over bathroom access. Others have felt it necessary to hide their identity.

A new Williams Institute study estimates that 150,000 youth in the United States from ages 13 to 17 identify as transgender. This finding makes promoting access to employment for the transgender community more important than ever. (KCET)

### **Appellate Ruling Sharpens Scrutiny of LGBT Employees' Benefits**

A ruling by the U.S. 7th Circuit Court of Appeals in Chicago increases the risk for employers that don't offer lesbian, gay and bisexual (LGB) employees and their spouses or domestic partners benefits equal to those provided to non-LGB employees and to opposite-sex spouses and partners.

(SHRM Online)

### **Appeals Court Rules Sexual Orientation Discrimination Is Not Prohibited**

An appeals court recently excluded sexual orientation discrimination from protection under Title VII of the Civil Rights Act of 1964, but employers should continue to investigate and not tolerate such discrimination, employment attorneys say. HR also should retain sexual orientation as a protected status under company anti-harassment and equal employment opportunity policies. Pending court decisions may change the federal courts' history of ruling this way, attorneys said.