

# E *The Childcare Professional* EXPERIENCE

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## On the Inside...

### H1N1: Page 1

Recommendations for dealing with the upcoming Flu Season.

### Children's Book Corner

#### Big Pumpkin Page 2

By: Erica Silverman

### Interview

#### Questions: Page 2

### Disciplinary

#### Actions Page 3

#### COBRA Page 4

#### Pay Freezes Page 5

#### Fair Pay Page 5

Overview of the Lilly Ledbetter Pay Act.

### Rise in EEOC

#### Claims Page 6

### Where in the

#### World... Page 8

## Gearing up for H1N1 this winter...

By: Janice Nieliwocki

The CDC has reported that the number of confirmed H1N1 influenza cases in the United States is on the rise. With that in mind, it is recommended that child care programs across the country implement certain procedures and strategies in an attempt to control the transmission and/or spread of the H1N1 virus (more commonly known as Swine Flu) within their program and community.

Undoubtedly, controlling the spread of the Swine Flu within the child care community is a unique challenge. However, it is a challenge that must be addressed, because child care programs service the very population that is most at risk. Children under the age of five are at increased risk of complications from the Swine Flu, the risk being greatest for children under the age of 2. In addition, infants less than 6 months of age are especially vulnerable because they are too young to receive the influenza vaccine. Pregnant women are also at increased risk and many of our mothers are of child-bearing age. Adding to the unique challenge is the fact that children in child care have close interpersonal contact with one another and readily share toys, other items and GERMS. To make matters worse, young children often have limited understanding and/or ability regarding proper hand washing technique and respira-

tory hygiene.

The CDC is recommending that the public get vaccinated against the Swine Flu as this is the best form of protection. Swine Flu vaccinations have been dispensed to certain areas of the country and are now becoming available for those most at risk. The five primary groups for vaccination against the H1N1 Swine Flu include pregnant women, people who live with or care for children under the age of 6 months, health care workers, people age 6 months to 24 years, and people age 25 through 64 who have underlying medical conditions that may put them at increased risk for complication associated with the flu. The CDC has reported that Swine Flu vaccinations should eventually become available for the entire population.

Although transmission of Swine Flu cannot be completely prevented in *any* setting, there are steps child care programs can take that can have a significant impact on the spread of the disease.

### Recognize symptoms:

According to the CDC, symptoms of the 2009 H1N1 flu virus (Swine Flu) can include fever, sore throat, cough, runny or stuffy nose, body aches, headache, chills, fatigue and sometimes vomiting and diarrhea.

continued on Page 7

# CHILDREN'S BOOK CORNER

By: Janice Nieliwocki

With Halloween right around the corner, why not rouse some Halloween spirit amongst your pre-schoolers by reading the delightful tale, Big Pumpkin written by Erica Silverman and illustrated by S. D. Schindler?

Big Pumpkin is the story of a "not too scary" witch who wants to bake a pumpkin pie. She plants a pumpkin seed and after a great deal of watering and nurturing, the pumpkin grows and grows. Unexpectedly, the pumpkin grows so large that the witch can't get it off the vine. She elicits the help of the ghost, who is equally unsuccessful in his attempt to remove the pumpkin from the vine, then the vampire, who fails, and finally the mummy, who does no better. All seems lost until a small bat comes along, and saves the day by initiating some teamwork. Through some mutual cooperation, the pumpkin is plucked off the vine and once at the witch's house, pumpkin pie is enjoyed by all!

Not only will your youngsters love the storyline, they are sure to enjoy the easy flowing, rhythmic text. Sure to be a reread, don't be surprised to find the children "reading" along with you as you recite the repetitive phrases.

S.D. Schindler's wonderful illustrations truly compliment the story. The familiar Halloween "monsters", often deemed frightening, are portrayed in a comical, non-frightening and appealing manner. As you turn the pages, both you and your youngsters will delight in the various Halloween images!

Because Big Pumpkin teaches important lessons about teamwork, cooperation and camaraderie, why not use it as a teaching tool to compliment your lesson plan? In addition, the story easily lends itself to follow up activities, such as dramatic play (whereby your preschoolers reenact the pumpkin pulling scenario), counting pumpkin seeds or discussion on the growth of a pumpkin, from seed to fruit. You might even want to bake a pumpkin pie with your youngsters!

## Interview Questions You Should Never Ask...

1. Are you married? Divorced?
2. Do you have children? How old are they?  
Do you have childcare?
3. Have you had a major illness recently?
4. How many days of work did you miss at your last job/last year due to illness?
5. Are you taking any prescription medications?
6. Have you ever been treated for one of the following? (With a checklist)
7. Are you getting married? Starting a family?
8. What are your childcare plans when you have children?
9. Are you going to return to work once you have a family?
10. Have you ever been treated for drug or alcohol dependency?
11. Do you have any disabilities that will prevent you from doing certain parts of the job?
12. There is a gap in your employment history, please tell me why you didn't work then.
13. Have you ever been treated by a psychologist/psychiatrist?
14. Do you suffer from anxiety or depression?
15. What is your political affiliation?
16. Do you own or rent your home?
17. What church do you go to?

## *The Childcare Professional* EXPERIENCE

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## Last Chance Agreements

By: Dawn Martini

A Last Chance Agreement has become an increasingly popular human resource tool which is aimed at giving a poorly performing or frequent policy violating employee one last chance to save their position. Employers, in an effort to stave off termination lawsuits such as wrongful termination and/or unemployment compensation claims, will enter into these agreements to show that the employees failure to comply with employment practices and policies was the ultimate reason for termination.

Employers will often use this where past documentation of the employees poor performance or failure to follow policies has been lacking or where an employee has made claims of harassment, discrimination or reported the agency for failure to comply with regulations/standards and the employer is worried about a claim of retaliation.

Employers should begin by thoroughly documenting the incident that has, at present, lead to the employee's job to be at risk. The incident should be one where the employee would likely be terminated if not for the effort to enter into the Last Chance Agreement. The employer should meet with the employee to discuss the incident, the policies/regulations/standards that were violated and the expected behavior or actions.

The employer must make several things clear in the agreement in order for the Last Chance Agreement to have teeth. First, that the employees conduct is grounds for termination and that the employer will wait on issuing the termination if the employee agrees to comply with the provisions of the agreement.

Second, the agreement should cite all previous disciplinary actions and discussion related to the conduct leading to the Last Chance Agreement.

Third, a clear, thorough explanation of the expected performance of job duties and conduct must be included.

Fourth, that the employee is not only responsible for complying with the Last Chance Agreement but ALL workplace rules, policies and expectations.

Fifth, that improvement must be immediate, continued and sustained.

Sixth, that any violation of the Last Chance Agreement will result in immediate termination. If the employer truly intends for this to be the "Last Chance" they must be prepared to follow through with it.

And finally, that the employee will remain at all times an employee at-will.

Last chance agreements may also help supervisors who find it difficult to terminate by providing that one last chance for the employee to accept responsibility.

## 5 Ways to Avoid Termination Lawsuits

1. In as many cases as possible articulate the real reason for the termination, especially if the employee fits into a protected class.
2. When resigning, ask an employee to document the "I quit" and include their a reason. This may ward off a constructive discharge claim.
3. When the employee's performance begins to slip be sure to document all related discussions and offer constructive coaching/corrective action so expectations are clear.
4. When dealing with accusations of misconduct first place the accused employee on a suspension while you investigate the misconduct. Be sure to get written statements from everyone, including the accused.
5. New employees, who, for whatever the reason are not performing as expected during the provisional period often claim lack of training or knowledge of expectations. Be sure to document all new employee orientation/training and have the new employee sign for receipt of the Personnel Policy Manual asserting that they: received, read, had the opportunity to ask questions about, understand and agree to abide by the policies.



## CHILD CARE PROVIDER RETAINER PROGRAM

Ronald V. McGuckin  
and Associates  
is proud to announce the  
expansion of this program

With the recent addition of **Attorney Jason D. Dalton**, we have been able to open the retainer program to a limited number of new clients in **Pennsylvania and New Jersey**. The Child Care Provider Retainer Program offers special discounted rates to Private Child Care Agencies, Corporate Agencies, Head Start Programs, Family/Home Based Providers, and School Age Programs.

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Please Contact Dawn Martini at  
(215) 785-3400

## COBRA Subsidy under ARRA: Further Definition

By: Dawn Martini

As a follow-up to the article in the April 2009, Volume 3 Issue 3, COBRA: Premium Reduction Under ARRA, here is further discussion and definition of some of the key provisions and terms used in the ARRA legislation.

The COBRA Subsidy is scheduled to expire on January 1, 2010, but if the current jobless rate holds or worsens as we approach the New Year it is possible the program will be extended. Employers should watch for updates from the Federal Government on this.

As employers and employees have made their way through this new program the IRS has offered further clarification and definition of specific aspects of the law. The ARRA states that employees who have lost their job through "involuntary termination" are eligible for the COBRA Premium reduction subsidy. In general employees who "quit" or "resign" would not be covered under the "involuntary termination" provision. However, the IRS has offered some guidance

which will lead to some employee initiated terminations to be considered eligible for subsidy under this program.

The IRS defines involuntary termination as "a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services." Further, the IRS states that some "employee initiated" terminations would be covered under the "involuntary termination" definition if the employee initiates a termination as a result of a "material negative change in the employment relationship for the employee." The IRS did not further define "material negative change." Even without clarification this exception will allow for certain employee resignations to be considered eligible for the subsidy. For example, if the employee is offered the opportunity to resign in lieu of an involuntary termination, the employee would be considered eligi-

ble for COBRA Subsidy. If an employee resigns and claims "constructive discharge" in an unemployment compensation claim and is determined to be eligible for unemployment compensation, this situation may be considered eligible for COBRA Subsidy.

Where employees are offered severance or buy-out packages, the IRS will consider these situations as "involuntary terminations" even if the employee voluntarily opts into the severance/buy-out program.

Many employees who have "employee only" coverage have attempted to add dependents to their policy believing that they will receive the COBRA Subsidy for all persons on the policy. The COBRA Subsidy is only available to the parties insured on the employees termination date. If an employee adds a dependent to their coverage on or after the termination date, the employee is responsible for the full COBRA premium for the added individual(s).

For more information on COBRA visit the Department of Labor's website: [www.dol.gov](http://www.dol.gov)

### ADMINISTRATIVE SUPPORT RESOURCES FOR CHILD CARE PROGRAMS

Model Personnel Policy Manual for Child Care Agencies: 4th Ed.  
Model Parent Handbook for Child Care Agencies  
Model Forms for Child Care Agencies  
Current Issues in Child



Available at [childproviderlaw.com](http://childproviderlaw.com) by downloading and completing the ORDER FORM and mailing or faxing it according to the instructions. The MODEL publications come with a workbook and a CD for your computer to make them easy to use. CD is WORD formatted but can be converted to MAC applications easily. These are the most valuable and child care specific administrative resources available nationwide.

## No Pay Increases = No Performance Evaluations? Think Again!

By Janice Nieliwocki

Ask any employer or manager what task they dread the most amongst their managerial duties and chances are their response will be the "employee performance evaluation". Why has such a valuable managerial tool gotten such a negative rap? Perhaps it is because performance evaluations are time consuming and can involve a great deal of preparation, especially if dealing with a large staff. Or perhaps it's because child care professionals tend to be caring, nurturing individuals who dislike passing judgment and dread the possible confrontation that can accompany employee evaluations.

Whatever the reason, some supervisors dislike the task of performance appraisals so much that they completely abandon the practice all together. This seems to be especially true today in these difficult economic times. As child care agen-

cies have seen their budgets and incoming revenue decline, many have understandably eliminated salary increases for their employees. And as employers have stopped pay raises, many have stopped performance evaluations as well, the rationale being that if the employee isn't going to get a raise regardless of his/her performance, then a performance appraisal is unnecessary. Nothing could be further from the truth. Performance appraisals serve a valuable purpose regardless of the economy and/or a program's budget.

Performance evaluations provide information as to how the employee is performing at his or her designated job. It outlines what the employee is doing *right* and/or what the employee is doing *wrong*. It should also include goals for the employee to work towards.

Performance appraisals, and related documentation, can also serve as written evidence should an

employer need to terminate an employee. Suppose an employer has an employee who consistently underperforms but the problem goes unaddressed because the employer fails to conduct performance appraisals. Eventually the employer terminates the employee but without performance evaluations documenting the employee's poor job performance, the termination can look suspicious. The employer may end up facing illegal termination and/or discrimination charges.

Employers should conduct performance appraisals regardless of the economic situation. Even if you've had to forgo employee pay increases this year, don't forgo performance evaluations. Not only are performance appraisals important for the betterment of the *program*, the related documentation can serve as important evidence should a terminated employee file charges related to improper termination.

## The Lilly Ledbetter Fair Pay Act: A Step Towards Ending Unequal Pay

By Janice Nieliwocki

On January 29, 2009, President Obama signed into law the Lilly Ledbetter Act of 2009. This Act basically makes it easier for workers to sue for pay discrimination and is a step forward towards putting an end to unequal pay.

This law bears the name of Lilly Ledbetter, a Goodyear Tire worker who discovered that, after 19 years of dedicated work, she was being paid significantly less than her male counterparts. Ledbetter sued and *initially* was awarded a large settlement for back pay and punitive damages. However, a higher court later took away Ledbetter's award, saying that the 180 day filing limit for filing such suits had begun way back when the **first** paycheck for lower pay was issued. The fact that

the continued wage discrimination continued for eighteen years seemed to have no bearing on the court's decision. The court's decision was viewed by some to be a setback for both women's and civil rights.

Although attempts were made to supersede the court's decision in the Ledbetter case, none succeeded. However, a new version of the bill was re-introduced to the first session of the 111<sup>th</sup> U.S. Congress, gained the necessary support and was then signed into law by President Obama.

Under the new law, workers may now bring a lawsuit for up to six months after they receive **any** paycheck which is allegedly discriminatory. So even if a worker received large raises over the years, suit could still be filed if the raises were applied to a discriminatory baseline salary.

In addition, a retired worker, who received unequal pay while on the job, could now file suit with each pension check, because the pension payment was based on a discriminatory salary.

With the Lilly Ledbetter Act in mind, make sure you are tightening the reins on ways in which you and/or your supervisors determine starting salaries. Be sure to base starting salaries on factors such as education, experience, and training. When setting pay scales, avoid any action or determination that can be viewed as discriminatory. Failure to do so may result in unwanted lawsuits which can involve monetary settlements and have long term ramifications. It is of utmost importance that employers strive to establish an environment that reflects fairness and equality for all.

## Current Economic Situation equals an Increase in EEOC Claims

By Dawn Martini

As many agency owners and directors are seeing, the number of EEOC and state-level employment discrimination claims has jumped in recent years. In 2008 the number of EEOC claims increased 15.2% over 2007 and 26% from 2006 as reported by the EEOC. Typically, claims filed with the EEOC are also jointly filed with the state-level employment discrimination office, so it stands to reason that those numbers would reflect a similar trend.

In times of economic downturn, the EEOC and state-level employment discrimination offices are flooded with new claims from employees. Many are current and former employees who fit into a protected class and who may be upset about having to face the harsh and uncertain economic climate. These employees are turning to the EEOC to seek outlet for or relief from their own situation. Many of the claims are a result of the changes in business practices that a company makes to weather the economic storm. The employees perception and/or dissatisfaction with the changes will result in the employee seeking outside intervention.

While making adjustments to business policies and practices to come out whole and healthy on the other side of a recession/depression is smart business; it is equally important to make sure employees are in the loop regarding the need for

the changes and that the changes are made without regard to an employees protected class. Discussing the general financial impact the recession/depression is having on the business, ie. Lower then expected enrollment reduced/slowed cash flow etc., and your plans to turn it around or weather it with the employees will help assuage some of the anxiety they may be experiencing. It is important to remember that while you are stressing and worrying over the business and the impact these times will have on your personal finances, the employees are equally worried about the how the changes will impact their personal situation. Communicating with employees about the hardships the business is facing doesn't have to reveal all nitty-gritty details and numbers but should provide a realistic picture of where you are headed if the particular trends continue.

Making changes that make sense and relate to the overall health of the business is equally important. Adjusting staffing patterns and schedules, freezing wages, eliminating overtime, rearranging the children in various classrooms, eliminating extra services, changing hours of operation and cutting employer paid benefits such as health care, retirement contributions and/or PTO are all general changes that can be made across the board which have no relation to a particular employee's protected status. How these changes are presented to

the employees can also eliminate misunderstandings and assumptions. If the changes effect only a small group of employees, long-term and valued members of staff it may be best to present the changes in a private meeting where you can related one-on-one with the employee. If the changes will effect virtually every employee, then drafting an empathetic letter and holding a staff meeting in advance of the changes may be appropriate. It is important for employers to be in touch with the collective mood of the staff as well as the individual personality of the employees when rolling out changes.

Conversely, using this as a opportunity to weed out staff that have been driving you nuts, but you have done nothing about will likely lead to claims of discrimination.

The EEOC reports that the most common discrimination complaint filed in 2008 was on the basis of race followed by retaliation, gender, age, disability, national origin and finally religion.

If you have been presented with an EEOC or state-level employment discrimination complaint it is important to seek legal advice immediately. How you respond, the documentation you provide and/or the position you take will make or break your case. For more information or assistance on EEOC issues please contact Dawn Martini or Jason Dalton at (215) 785-3400 or visit our website [childproviderlaw.com](http://childproviderlaw.com).

**Review and enforce policies regarding sick children and attendance:**

Children with flu like symptoms should remain at home until at least 24 hours after they no longer have a fever (without the use of fever reducing medication) or other symptoms. Some experts are recommending that children stay home for a longer length of time, perhaps until all lingering signs of cough are gone. Check with your local health department to see if they are recommending longer periods of exclusion. Remind parents of your policies and make sure you are enforcing them across the board.

If the Swine Flu should increase in severity, state officials may *need* to adjust certain policies. In some states, for instance, reimbursement for certain state supported child care initiative programs only occurs if the child attends the program 80% of the time. Such policies may have to be revised should the H1N1 spread increase.

**Review policies regarding staff sick leave:**

You may want to review *and possibly revise* your policies regarding staff sick leave. Although you don't want staff to take unnecessary or unwarranted sick time, you certainly don't want staff coming into work if they are showing signs or symptoms of flu illness. Remember, the goal is to decrease the spread of flu in the child care program, so you may want to be more flexible and revise policies during this flu season.

**Observe children and staff for signs of illness:**

The CDC is recommending that early childhood programs perform daily health checks, observing children for any signs of illness. Staff should also be watched for signs of illness. If signs or symptoms are noticed, the child or staff member exhibiting those symptoms should be separated from the general school population until the person can be sent home. If the staff member must continue to work for some reason, perhaps until a substitute or other staff member can take over, the affected person should wear a surgical mask so as not to infect others.

**Review and encourage good hand washing and respiratory etiquette:**

Review good hand washing techniques with the children who attend your program and then make sure they are being implemented. This may take some practice and reinforcement, but the time spent will hopefully limit spread of illness. Children should also be taught to keep their hands away from their eyes, nose, mouth and face. In addition, teach children to "cover up" their coughs and sneezes *with a tissue* or to cough or sneeze into a shirt sleeve or elbow if no tissue is available.

**Perform routine cleaning:**

At this time, the CDC is not recommending any additional cleaning measures above that of routine cleaning. It is important however, to stay on top of regular cleaning, taking special care to thoroughly cleanse items such as toys, table tops, play areas, door handles and anything else that may have frequent hand contact. In addition, bathrooms, sinks, and cots/mats should be thoroughly cleaned.

**Be aware of flu severity in your community and keep in touch with local health departments:**

As we have seen in the news, some communities are already showing large numbers of H1N1 cases, where as others are not. Local health officials can keep you informed of the severity of the Swine Flu in your particular community. Be prepared to take action, including temporary closures, if the flu hits your area particularly hard. Local officials again can help advise you if need be.

The upcoming flu season will certainly present some challenges for ECE programs. Visit the CDC website, [www.flu.gov](http://www.flu.gov), for information on the Swine Flu in the childcare setting. Be proactive and prepared by putting policies and procedures in place now that will make dealing with spreading flu illness easier, should the flu affect your child care program. It is of the utmost importance that you have open and regular communication with parents. In addition, stay in touch with local health officials regarding recommendations and/or severity of flu in your community. By following these measures and working together, we can hopefully keep our children healthy this flu season.



## WHERE IN THE WORLD...

Ron, Dawn and Jan will be traveling to the following cities for Local, State, Regional and National Conferences on the dates indicated. We welcome you to attend the conferences. Information has been provided so you can contact the organization conducting the training/conference.

If we are going to be in your state or area, we welcome you to contact us about coming to your program or organization to do a private training. The cost of bringing us in to your program or organization is significantly reduced because we are already traveling to your area. We certainly don't mind adding a day or two to our travel schedules to work with you.

**Contact us at (215) 785-3400 to see if we can visit your program when we are in town.**

**Oct 23 and 24:** NJAEYC Annual Conference at the Atlantic City Convention Center. For information go to [www.njaeyc.org](http://www.njaeyc.org)

**Oct 26 - 28:** PACCA Annual Conference at State College, PA. For info go to [www.pacca.org](http://www.pacca.org)

**Oct 31:** KACEI/SEA Professional Development Conference, Reading, PA. For more information contact Reading Area Community College: (610) 607-6236

**Nov 4 and 5:** HR BOOT CAMP for Early Care and Education Administrators: Orlando, FL. For more information please contact Dawn Martini (215) 785-3400

**Nov 10:** The Early Childhood Director Association, Branchburg, NJ. For more information contact Maureen DeMarco: [sbrcpreschool@verizon.net](mailto:sbrcpreschool@verizon.net)

**Nov 14:** Early Learning Coalition of Florida's Gateway, Live Oak, FL. For information contact

Melissa Brady (386) 961-0129

**Nov 18 and 19:** HR BOOT CAMP for Early Care and Education Administrators: Dallas, TX. For more information please contact Dawn Martini (215) 785-3400

**Dec 4 to 8:** National Head Start: 26th Annual Parent Training Conference, San Jose, CA. For more information go to [www.nhsa.org](http://www.nhsa.org)

**Dec 15 and 16:** HR BOOT CAMP for Early Care and Education Administrators: Valley Forge, PA. For more information please contact Dawn Martini (215) 785-3400

**Mar 9 and 10:** HR BOOT CAMP for Early Care and Education Administrators: Chicago, IL. For more information please contact Dawn Martini (215) 785-3400

Additional HR Boot Camp dates available at [childproviderlaw.com](http://childproviderlaw.com)

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