

E *The Childcare Professional* EXPERIENCE

July 2012
Volume 4 Issue 4

A Quarterly Journal for Childcare Providers Discussing Legal, Administrative & Professional Issues

On the Inside...

Employee FB
Comments Page 1

Understanding
The Hajj Page 2

The NLRB's
Statutory
Authority Page 3

The FLSA
Turns 74! Page 3

Religious
Accommodations
A Recent
Case Page 5

Children's
Book Corner Page 6
A Sick Day for Amos
McGee
By: Philip C. Stead

NACCP:
Annual Cruise
Information Page 6

Where in the
World... Page 8

Dealing with Employee Comments on Social Networking Websites

By: Dawn K. Martini

Over the last year or so we had more than a fair share of Director's call us in the office or approach us at conference with the following scenario: A disgruntled employee (could be a terminated former employee, or a current problematic employee) has posted on a social media website comments about the center, the manager in charge and/or fellow employees with whom they do not get along. We are inevitably asked what can the Director do about the comments. Unfortunately the answer is not always clear and must take into consideration the nature of the comment, who the comment is sent to or who can see the comment, and the employer's existing employment policies related to confidentiality, computer/cell phone access and supervision of children.

A few years ago I was presenting with a colleague in TX and while I was holding the floor he received a Facebook notification on his cell phone. When he looked at it quickly he saw that one of his employees had updated her FB status to "I can't stand this effing place. Two more hours to go." Now, it was 3:00 in the afternoon on a Thursday and this employee was working in the classroom with children at the time this comment was posted. This center had a clear policy against employees using a cell phone in the classroom while supervising children/being counted in ratio. A quick call to the center director to determine that the employee was in fact in the classroom supervising a group of children, and not on break was all that was

needed to show a violation of the Cell Phone/Supervision Policy. This employee was terminated.

Now, take the same comment posted while the employee was on her 30 minute lunch break, where she is completely relieved of her work responsibilities and the blatant Cell Phone/Supervision violation is no longer an issue. Now the Director needs to look at other policies related to professional conduct. Ultimately, with such a brash and unprofessional comment, most Directors will be able to justify disciplinary action up to and including of this employee.

If we change the comment a bit to "I can't stand this place, this director just walks around screaming at everyone. Two more hours to go" the considerations change a bit. While this comment doesn't paint the most flattering picture of the center and may cause the Director a good deal of embarrassment, the employee may be protected in her comment here under the National Labor Relations Act (NLRA).

For employers that meet the statutory requirements to be covered under the NLRA, this comment may be considered an exercise of the employee's Section 7 Rights. (see page 3 for a brief summary of the employers covered by the NLRA) Section 7 of the NLRA discusses "Protected concerted activities" of the employee. A protected concerted activity is an act by which the employee brings unfavorable, hostile and/or unsafe working conditions to light in an effort to change those conditions.

Continued on page 3...

Hajj: - The Muslim Pilgrimage to Mecca: *An Overview*

By: Janice Nieliwocki

The complexion of the workplace has changed over the last several decades. Undoubtedly, we now see a much more diverse workforce, rich with varying ethnicity, culture, language and religion. In order to maintain a harmonious workplace amongst such diversity, employees need to be sensitive to the varying values, attitudes and behaviors of others. Perhaps one of the best ways to accomplish this is to educate oneself regarding co-workers practices and customs.

The recent religious discrimination case (see related article on page 4 and 5) is a good example. Very few of us are knowledgeable regarding the Muslim pilgrimage to Mecca known as Hajj. As the U.S. Muslim population grows, it is anticipated that requests for to employers to accommodate this religious pilgrimage will increase. Thus, it would be in everyone's best interest to gain an understanding of this religious ritual.

Hajj is the annual Muslim pilgrimage to Mecca, Saudi Arabia. It is one of the largest pilgrimages in the world and it is estimated that approximately three million people took part in the pilgrimage last year. Every Muslim is obligated to perform Hajj at least once in their lifetime, as long as they are physically and financially able to do so.

Hajj is the one of the "Five Pillars of Islam", by which Muslims are expected to live. The other Pillars of Islam involve professing one's faith, performing daily ritual prayers, paying alms for the poor, and fasting during Ramadan.

Hajj takes place in the twelfth month of the Islamic year. The Islamic calendar is based upon Lunar cycles, so that hajj falls sometimes in summer, sometimes in winter. During the five day pilgrimage, special clothing is worn, meant to strip away distinction of class and culture, symbolizing equality in front of God.

The rites of the Hajj, which are ancient in origin, involve walking around the Ka'bah, a cube shaped shrine near the center of the Great Mosque in Mecca, seven times. Participants must then go between the hills of Safa and Marwa seven times.. The pilgrims later stand together on the wide desert plains of Arafat and join in prayer to ask for God's forgiveness. Hajj also involves the sacrifice of an animal and the throwing of stones at the Jamarat pillars. The close of Hajj is marked by the festival known as 'Id al Adha.

Although, followers are only required to perform the ritual once in a lifetime if physically and financially able, many devout Muslims make this religious pilgrimage several times in their lifetime. For most Muslims, Hajj, although ritualistic in nature, proves to be a very spiritual experience.

The Childcare Professional **EXPERIENCE**

Publisher

Ronald V. McGuckin and Associates
Post Office Box 2126
Bristol, Pennsylvania 19007
(215) 785-3400
Childproviderlaw.com

Editor

Dawn K. Martini, BS Ed

Contributing Writers

Ronald V. McGuckin, JD
Dawn K. Martini, BS Ed
Janice A. Nieliwocki, BS

Guest Writer

Tymothy Smith

Copyright 2012 RVM & Associates All rights reserved. Reproduction in whole or in part without permission is prohibited. The Experience provides information about current developments, trends and issues. It does not offer solutions to individual problems and it should not be construed as legal or professional advice or opinion. You should obtain competent legal advise for an individual issue or problem.

Continued from page 1

For this comment to be considered a Protected Concerted Activity the employer would need to determine who the employee's audience was. If the employee sent this comment out to a number of fellow employees by tagging them in the comment or by forwarding it to them in an email then this would begin to look like a discussion on hostile work conditions. Even if the employee posting the comment had a number of fellow employees as their friends and you could see that the fellow employees commented on or liked the post, even without the employee directly sending the comment to or tagging the employees in the comment it would still look like the beginning of a discussion on hostile work conditions. In cases where the employee is opening up this type of discussion, the employer would be hard pressed to take disciplinary

action against the employee.

In this case, the employer would be best served by taking a look at the employee/Director relationship to determine the validity of the complaint. Attempting to bring the employee(s) into process by having a bottom-up evaluation of the Director's performance will help paint a clearer picture of how the employee's perceive the Director's actions.

As we all become more and more tangled in the Social Networking web these issues will be tested and challenged. The NLRB's agenda is focused on extending employee's rights as far as the law will allow. It is important to keep abreast of the latest positions and guidelines they are issuing on employee/employer relations, even if you are reading it with a skeptical and discerning eye.

Understanding the National Labor Relations Board's Jurisdiction... Do they have the authority to intervene in your employee relations?

By: Dawn K. Martini

Many of you don't worry about the National Labor Relations Board's statutory jurisdiction because you are not "union." We are so used to hearing references to the NLRB in heated contract negotiations with union officials or employers of unionized employees being cited for unfair labor practices. What we fail to realize is that the NLRB's authority extends well beyond unionized workplaces.

The NLRB exercises authority over most private sector employers whose level interstate commerce meets a minimum standard. Interstate commerce is a very deceiving thing for most of us. Take the average child care center owner whose clients are drawn from a small community in one state. This employer might think they aren't involved in much, if any interstate commerce. But what we are ignoring about the regulations is that interstate commerce is defined by both the inflow and outflow of monies across state lines. So...while this center's outflow is not across state lines, they may have an inflow of funds across state lines. If this center purchases supplies, food, or furniture from any major national chain; they are involved in interstate commerce...even if they always go to the Staples or Wal-Mart down the road. For non-retail employers (which a child care center would be) the inflow and/or outflow of interstate commerce monies is as little as \$50,000 in gross annual volume. This statutory jurisdiction applies to for-profit programs and non-profit programs alike.

Religiously based child care programs would not be subject to the NLRB's authority, so long as the employee's are involved in forwarding the religious mission/purpose of the church, temple, synagogue or

other type of religious institution.

By the NLRB's own statement they enjoy a very broad authority. It is important to be conscientious of our employee relations related to the National Labor Relations Act. Historically the NLRB has acted much like a playground bully when asserting their authority and have pushed the bounds of legal intent of many laws and statutes that are enacted to protect the average American worker.

To review FAQ and Fact Sheets related to the NLRA visit their website: www.nlrb.gov

June 26, 1938

President Franklin Delano Roosevelt changed the landscape of the American workplace by signing into law the **Fair Labor Standards Act.**

The FLSA brought us: A national minimum wage (\$0.25 per hour), an 8 hour work day, mandated overtime pay and child labor laws. There have been 9 amendments to the FLSA over the years to raise the minimum wage. Congress also gave states and local governments the power to set their own higher minimum wages. In 2004 Congress overhauled some main FLSA provisions in the FairPay Update. These changes were mainly to the Exemptions section of the law.

Visit the Dept of Labor's website at www.dol.gov for more information

Ronald V. McGuckin and Associates Announces:

Wednesday Webinar Series



\$29.00
per webinar

Join us on the first and third Wednesday every month from 1:00 p.m. until 2:00 p.m. for a live Webinar Professional Development Session. Each session is just \$29.00/person. Professional Development Participation Certificates will arrive in the mail to you within one week of the session. Live Webinar platform allows for discussion with the presenter as well as instant messaging questions and comments. Webcam link also allows you to see the presenter on your computer screen or you may participate by phoning in and listening to the discussion. For more details please call Dawn Martini (215) 785-3400 or email dkgt0409@aol.com.

- _____ July 18, 2012: Kindergarten Readiness
- _____ August 1, 2012: Your Contract for Service/Fee Agreement
- _____ Aug 15, 2012: Mandated Reporting/Child Abuse & Neglect (SPECIAL 2 hrs. 1pm to 3pm EST)
- _____ September 5, 2012: Custody Orders and the Release of Children
- _____ September 19, 2012: Confidentiality in the ECE Setting
- _____ October 3, 2012: Social Networking and Maintaining Professionalism
- _____ October 17, 2012: Defending against Unemployment Compensation Claims
- _____ November 7, 2012: Harmony in the Workplace
- _____ December 19, 2012: Evaluating Employee Performance
- _____ January 16, 2013: Tattoos, Piercings and Thongs...Dress Codes
- _____ Feb. 6, 2013: Mandated Reporting/Child Abuse & Neglect (SPECIAL 2 hrs. 1pm to 3pm EST)
- _____ February 20, 2013: Parent and Grandparent Involvement
- _____ March 6, 2013: Leave Policies: PTO, Sick, Unpaid, FMLA, Maternity Leave

No. of Sessions:	_____
	x \$29.00
Total Due:	_____

REGISTRATION AND PAYMENT INFORMATION

Name: _____ email: _____

Agency Name: _____ phone: _____

Address: _____ fax: _____

City: _____ State: _____ Zip Code: _____

Please select payment option:

_____ Visa/MC/Discover: _____ Exp: _____ Sec Code: _____

_____ Check payable to RONALD V. MCGUCKIN AND ASSOC is enclosed.

Mail payment to: Post Office Box 2126, Bristol, PA 19007 or fax registration with credit card payment information to (215) 785-3401. One registrant per form please. Login information will be emailed the Monday prior to your session(s) and again the morning of the session(s).

Religious Accommodations: A recent case

By Janice Nieliwocki

Inquiries regarding an employer's requirement to reasonably accommodate an employee's religious practice are commonplace in our office and it is a topic we often address when discussing personnel issues during our various employment workshops. Thus, we were quite interested in the recent outcome of a suit that was filed by the U.S. Department of Justice against a suburban Chicago school district for failure to reasonably accommodate a teacher's request for leave based on religious purposes. The outcome of this case and resulting ramifications will affect child care agencies, as well as employers in general.

The Background:

In the civil rights suit, filed on December 13, 2010, the Department of Justice alleged that the Berkeley, Illinois school district, violated Title VII of the Civil Rights Act of 1964 by refusing to grant a teacher's request for unpaid leave to partake in a religious pilgrimage. Title VII of the Civil Rights Act prohibits employees from discrimination based on race, color, sex, national origin or religion. Specifically, Title VII's religious discrimination provision includes a requirement that employers make a *reasonable accommodation* for employee's religious practices, unless such an accommodation would prove to be an *undue hardship*.

Safoorah Kahn, a middle school Math teacher, began working for the Berkeley School District's McArthur Middle School in 2007. In August of 2008, Ms. Kahn requested a 19 day unpaid leave to travel to Saudi Arabia to perform the Hajj, a pilgrimage to Mecca which every Muslim is supposed to make at least once in their lifetime, if physically and financially able to do so. (Read more about this Muslim custom in a related article in this newsletter).

The District twice denied Ms. Kahn's written request, on the basis that her requested leave was unrelated to her professional duties nor was it for any of the specific purposes as outlined in the agreement between the District and the teacher's union. Following the second denial, Ms. Kahn re-

signed, stating that based on her religious beliefs, she could not justify delaying performing Hajj.

Shortly after her resignation, Ms. Kahn filed a complaint with the U.S. Equal Opportunity Commission (EEOC), which found reasonable cause that discrimination had occurred and forwarded the matter to the U.S. Justice Department. This case was the first brought by the Justice Department as part of a project meant to ensure enforcement of the Civil Rights Act of 1964 against state and local governments by improving cooperation between the EEOC and the Justice Department's Civil Rights Division.

The complaint stated that by denying to reasonably accommodate Ms. Kahn's request for unpaid leave to partake in her religious practice, the Berkeley School District forced Ms. Kahn to choose between her job and her religious beliefs. The government requested that the court order the school district to adopt policies that reasonably accommodate employees' religious beliefs and practices, as well as reinstate Ms. Kahn and agree to compensate her for back pay and compensatory damages.

Several Key Issues:

Undoubtedly the court had to look at several key issues when deciding this case. The first significant matter was that the contract between the school district and the teacher's union required accommodations for various reasons, but not religious reasons. Another significant issue was whether Ms. Kahn's request of 19 days of leave was *reasonable*, being that the Hajj pilgrimage takes only five days. Would allowing Ms. Kahn to take the 19 days off have caused the school district *undue hardship*?

Conservative radio host Rush Limbaugh raised the question "that if teachers have the summer off why couldn't Ms. Kahn postpone her pilgrimage to summer recess, or other scheduled time off, being that the requirement of her religion is that the follower make the pilgrimage *sometime* in their lifetime?" "Islamic scholars responded that delaying Hajj to summer recess would have meant a wait of at least a decade as the annual pilgrimage is guided by the lunar year and changes annually.

Continued to page 6...

Continued from page 5...

The Court's Decision:

In October of 2011, the U.S. Department of Justice settled Ms. Kahn's lawsuit against the Berkeley School District. Seen as a victory for Ms. Kahn, the District will pay her \$75,000 in lost back pay, compensatory damages and legal fees.

The District will also be required to develop a policy to accommodate religions that is consistent with the Civil Rights Acts, in an effort to ensure that nothing similar will take place in the future. In addition, the Settlement requires that the school district provide mandatory training on religious accommodation to all

Board of Education members and school supervisors.

The Ramifications:

The court's decision in this case should have both employers and employees revisiting company personnel policies regarding religious accommodations. Contracts between employers and employees (or collective bargaining unions) may need to be revised to include accommodations for religious reasons. Employers should also be reviewing workplace religious accommodations *in general* to ensure they comply with Title VII of the Civil Rights Act religious discrimination provision.

Employers may need to provide training to supervisors and Board

members on religious accommodation. Additionally, they may need to change their thinking when considering what accommodation is reasonable and what is not.

Recognize the importance of making a good faith effort to reasonably accommodate employees' religious beliefs and practices. In addition to the legal requirement to do so, a commitment towards religious accommodation, goes a long way in establishing and sustaining a positive employer/employee relationship. Not only will it foster good morale, but it will also help to retain good employees, which in child care can sometimes be a challenge.

CHILDREN'S BOOK CORNER

By Janice Nielwocki

Having taught preschoolers for some fifteen plus years, I've probably read hundreds, if not thousands, of children's books. It was not often that I found a book that I thought was both beautifully written and illustrated, but that was exactly the case with A Sick Day for Amos McGee. Written by Philip C. Stead and illustrated by his wife, Erin E. Stead, this talented duo have created a children's book that tells an endearing story complimented by equally endearing illustrations.

Amos McGee has been a zookeeper for many years. Each day he wakens, gets dressed and reports to his job at the City Zoo. But Amos McGee is no ordinary zookeeper; he knows his animals very well and tends to them in a very special way. On any given day, Amos McGee can be found playing chess with the elephant, racing with the tortoise, sitting quietly with the penguin, caring for the rhino's runny nose and reading bedtime stories to the owl.

One day Amos wakes up feeling a bit under the weather and, thus, is unable to go to the zoo. The animals miss their caring friend and decide to take the city bus to check on Amos. Once the animals arrive at Amos's house, they care for him much in the same way he has cared for them over the years. Their simple acts of kindness and compassion quickly nurse Amos back to health.

This is a tender, sweet story that highlights the importance of friendship and reciprocity; that when we care for others, they in turn will care for us. But it is not just the text that tells the story. The illustrations, which are pencil drawings and woodblock prints with some added color, truly compliment the text. The facial expressions on the animals as they ride the bus and care for Amos are priceless. It is no surprise that this book was the winner of the 2011 Caldecott Medal!

If you are looking for a special book for naptime reading or that features the value of kindness and friendship, A Sick Day for Amos McGee fits the bill. It is sure to be a favorite!



DESTINATION...EXCELLENCE!

aboard Royal Caribbean's Freedom of the Seas

~EASTERN CARIBBEAN~

7 Night Cruise from Port Canaveral, Florida

OCTOBER 21 - 28, 2012

12 hours of Executive Level training with Ron McGuckin

Sailing from Port Canaveral, Florida to the Featured Ports of Call:
Coco Cay, Bahamas ~ Day At Sea ~ St. Thomas ~ St. Maarten ~ Two Days At Sea

TRAINING PRICE:

- \$249.00 when cruise is booked with Travel Concepts
- \$299.00 if cruise booked any other way
- Payment for training not due until Sept. 15, 2012

CRUISE PRICING INCLUDES THE FOLLOWING FEATURES:

- 7-night cruise on ROYAL CARIBBEAN'S THE FREEDOM OF THE SEAS, stateroom categories offered: Ocean View With Balcony – Ocean View - Interior
- Port charges, government fees and taxes
- All activities, meals, coffee/tea/milk/juice with meals and entertainment onboard the ship
- **Value added** – Courtesy of Travel Concepts
 - \$50.00 per stateroom Shipboard Credit
 - Cocktail Reception for the NACCP group on the ship
- Professionally managed by Travel Concepts, Inc., passport for travel highly recommended



TRAVEL CONCEPTS, INC. – Beverly Allison
9324 Rosner Drive; Lenexa, KS 66219
913-888-1671/Fax: 913-888-7870
Toll Free 1-877-200-4690

Business Hours: Monday-Thursday 8:30am-5:00pm CST ~ Friday 8:30am-4:00pm CST

beverly@travelconceptskc.com www.travelconceptskc.com

~EXPERTS IN QUALITY CUSTOMER SERVICE & UNIQUE CRUISE/TRAVEL EXPERIENCES~
JOURNEY BEYOND YOUR EXPECTATIONS!™

Cruise Deposit
Due
July 2, 2012

CRUISE PACKAGE PRICING PER PERSON

	Double Occupancy	3 rd or 4 th Person**
INTERIOR CABIN (Category K)	\$970.56	\$540.56
OCEAN VIEW CABIN (Category H)	\$985.56	\$590.56
OCEAN VIEW CABIN (Category G)	\$1005.56	\$610.56
OCEAN VIEW/BALCONY CABIN (Category D2)	\$1240.56	on request

**Cabins accommodating 3rd or 4th person are on a REQUEST BASIS and subject to AVAILABILITY.
These type cabins are on a limited basis – EARLY BOOKING IS HIGHLY RECOMMENDED.





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.

Sept 22: Lancaster AEYC Annual Conference, Lancaster Mennonite High School, Lancaster, PA. Go to www.laeyc.org for information

Oct 6: Bucks County AEYC Annual Conference, Newtown, PA. www.bcaeyc.org

Oct 8: Penn State Cooperative Extension: Delaware County, Professional Development Day. Go to PA Keys Professional Development Calendar for more information

Oct 12 and 13: Florida AEYC (formerly ECA of FL) Annual Conference, Orlando, FL. www.flaecy.org

Oct 19 and 20: New Jersey AEYC Annual Conference, Atlantic City Convention Center, NJ. www.njaeyc.org

Oct 22, 23, and 24: PA Summit Conference, State College, PA www.pacca.org

Oct 22-26: NACCP Annual Seminar at Sea, Professional Development Cruise. www.naccp.org

Oct 25-27: Texas AEYC Annual Conference: Galveston, TX www.texasaeyc.org

Nov 7-10: NAEYC Annual Conference, Atlanta, GA www.naeyc.org

Nov 12 and 13: Texas Licensed Child Care Association Annual Conference, University of Houston at Clear Lake. www.tlcca.org

Nov 13 and 14: Director's Boot Camp: Administrators Professional Development Retreat Orlando, Florida Contact Dawn Martini for registration information: dkgt0409@aol.com

Nov 14 and 15: Director's Boot Camp: Administrators Professional Development Retreat Plymouth Meeting, PA (outside of Philadelphia) Contact Dawn Martini for registration information: dkgt0409@aol.com

Nov 27 and 28: Director's Boot Camp: Administrators Professional Development Retreat Dallas, Texas Contact Dawn Martini for registration information: dkgt0409@aol.com

Nov 27 and 28: Director's Boot Camp: Administrators Professional Development Retreat Montage Mountain, PA Contact Dawn Martini for registration information: dkgt0409@aol.com

Dec 1 - 5: NHSA Annual Parent Conference, Dallas, Texas www.nhsa.org

Dec 4 and 5: Director's Boot Camp: Administrators Professional Development Retreat Austin, Texas Contact Dawn Martini for registration information: dkgt0409@aol.com

Dec 11 and 12: Director's Boot Camp: Administrators Professional Development Retreat Hamilton, New Jersey Contact Dawn Martini for registration information: dkgt0409@aol.com

Jan 29 and 30, 2013: Director's Boot Camp: Administrators Professional Development Retreat Pittsburgh, PA Contact Dawn Martini for registration information: dkgt0409@aol.com