

# E *The Childcare Professional* EXPERIENCE

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

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## Gearing up for H1N1 this winter...

By: Janice Nielwocki

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.

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# 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

### Publisher

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

### Editor

Dawn K. Martini, BS Ed

### Contributing Writers

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

### Guest Writer

Tymothy Smith

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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  
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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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For Information about how to Become a Retainer Client  
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(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.

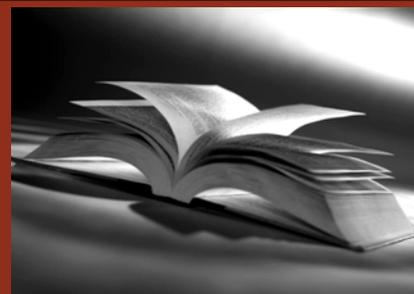
Where employees are offered severance or buy-out packages, the IRS will consider these situations as "involuntary terminations" even if the employee voluntarily opts into the severance/buy-out program.

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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## When a Union Approaches Your Staff

*This article originally appeared in Volume 4 Issue 2 of the National Child Care Bulletin. Recent questions into our office have prompted us to rerun the article. Enjoy!*

In recent months, a number of child care agencies with which we have regular contact have experienced some union organizing. We thought it might be helpful for you to know the basic rules when such activity occurs.

Everything management and its agents say or do to persuade employees to vote "no union" can and will be subject to post-election scrutiny by the National Labor Relations Board (NLRB) in connection with its administration of the National Labor Relations Act (NLRA). If the NLRB concludes that improper or unlawful conduct took place during the pre-election period, the results of the election may be set aside and a new election ordered.

### I. What Management May Not and Should Not Do:

The following campaign conduct should be avoided by management, including all members of your supervisory staff.

1. Threats—You may not threaten to discharge anyone because he/she joins or supports a union, nor may you threaten to subcontract certain work if the union is successful. The most prevalent threat is a threat to the economic welfare of the employees, indicating a loss of benefits if the union wins or the possibility that the agency may close if the employees select a union.

Obviously, threats of any type of violence would be grounds for the election to be set aside. In fact, it may be grounds for the entry of a bargaining order by the NLRB forcing the employer to recognize a union regardless of the outcome of an election or how many employees wanted the union. Moreover, you should refrain from telling employees that unionization will force the company to lay off people, require a re-

duction in vacations, or break time or otherwise adversely alter benefits and privileges presently enjoyed.

2. Interrogation or Questioning—The right of management to question employees is a very limited one and must be devoid of coercion. The mere calling of employees into your office for the purpose of campaigning can be sufficient interference with the employee's free choice and can thereby void an election. Generally, if you want to convey non-coercive statements orally you should do so in open spaces, e.g., a cafeteria, etc., which are not considered the loci of management authority, or individually at an employee's place of work, e.g., their desk, work station or classroom.

In addition, do not ask employees about confidential union matters, meetings, etc. Some employees may, of their own accord, tell you of such matters. If it is not unlawful to listen, but you should not ask questions to obtain additional information.

Do not ask employees what they think about the union or its representatives or how they intend to vote. You should not inquire whether or not particular employees support a union or have signed union authorization cards or petitions.

3. Promises of Benefits—You may neither grant nor offer wage increases or other inducements to employees during the period of a union organizing drive unless such wage increases are part of an established pattern known to the employees.

While the wage increase is the most common benefit granted for the purpose of discouraging unionization, any benefits such as additional rest periods, more overtime, and better working conditions fall under the same prohibition.

4. Withholding of Benefits—Just as you may not grant benefits unless the

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# CHILDREN'S BOOK CORNER

By: Janice Nielwocki

The other day while rummaging through a box of old books, I came across Pigs Aplenty, Pigs Galore by David M. McPhail. Once a favorite of my boys (now grown), I turned the pages and was quickly reminded as to why it was such a popular choice, not only for my sons, but for my preschool class as well.

Pigs Aplenty, Pigs Galore begins with a rather ordinary man sitting down to read a book; however, what occurs next is anything **BUT** ordinary! His home is quickly invaded by pigs of all shapes and sizes, dressed in various costumes and up to various shenanigans. As the story progresses, pigs arrive in droves, from other countries and by assorted means of transportation, and take over the man's house. When the man has reached his limit of pigs (literally) he sends them on their way, only to have them beg to stay. He concedes, letting the pigs remain but only if they clean the house. After some additional pig antics, the man settles down to sleep, only to have the pigs invade his dreams as well!

This is truly a funny story, full of clever rhymes and comical illustrations. The verses flow easily, allowing children to quickly pick up the rhyming pattern. (You undoubtedly will be asked to read this book again, so don't be surprised to have the children join in the fun by finishing the rhymes with you!) The accompanying illustrations, colorful, vivid and at times down right hysterical, genuinely complement the humorous storyline. You can't help but smile as you see pigs in underpants, pigs flying in on airplanes and pigs tossing pizzas! You may want to linger on each page, so as not to miss a single "piggy" detail.

It is not always easy to find a book that you can read to very young toddlers as well as older children, but Pigs Aplenty, Pigs Galore seems to delight all ages. You may find yourself reading it over and over and consequently dreaming of whimsical pigs!

CONGRATULATIONS!!!

Our office would like to take a moment to recognize and congratulate

**RON**

on becoming a full voting member

of the

**NACCP**

Board of Directors

For information on becoming an

**NACCP member**

to explore NAC Accreditation

and to take advantage of the

quality training opportunities

please visit the NACCP website

[www.naccp.org](http://www.naccp.org)

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### **Publisher**

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

### **Editor**

Dawn K. Martini, BS Ed

### **Contributing Writers**

Ronald V. McGuckin, JD

Dawn K. Martini, BS Ed

Jason D. Dalton, JD

Janice A. Nielwocki, BS

### **Guest Writer**

Tymothy Smith

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# VACATION AND PAID TIME OFF

By: Janice Nieliwocki

In today's tough economic times, many employers, due to decreased revenues and budgetary constraints, are making the difficult decision to lay-off or terminate employees. Termination of the employee-employer relationship can bring many uncertainties, one being whether or not the former employee is entitled to payout of unused vacation time.

It may surprise you that there are no federal laws that require employers to *offer* vacation time to its employees. However, many employers voluntarily provide vacation pay as a benefit to their employees. Vacation pay is usually based upon an agreement between the employer and the employee, either through an employment contract, collective bargaining agreement or company personnel policy. It is this very agreement, and applicable state laws, that will determine the payout of unused vacation time.

Generally speaking, if the employer promises to provide vacation time or the employee is covered by the employers vacation policy, the employee has the right to be paid for the vacation *as long as the employee obeys the employer's policy*. This policy must be documented in the employee handbook or policy manual along with the consequences for violating the policy. Thus, it is of utmost importance that employees read all vacation policy information as outlined in the

employee handbook or policy manual as well as *follow* the policy in order to maximize the prospect of receiving the vacation pay. Both employers and employees should familiarize themselves with state laws regarding vacation benefits and vacation pay.

It has generally been agreed that if the employee fails to follow the employers policy regarding vacation, the employer may deny the employee his/her vacation pay. However, certain states, and some courts, now seem to be taking a different view on this, offering additional protection to the employee.

The Wage Payment and Collection Act in a number of states define wages as "compensation for labor or services rendered by an employee, including fringe benefits" (i.e. earned vacation). In turn, the employee would be entitled to be paid for earned but unused

vacation time payable upon termination even if the employee failed to follow the employer defined conditions regarding the policy. In some states the vacation pay must be included in the employee's final paycheck.

What does this mean for employers and employees alike? As stated previously, employers and employees need to check the state laws where the business operates regarding vacation benefits and vacation pay. In an effort to be proactive, many employers are reviewing and consequently rewriting or eliminating policies that restrict payout of earned but unused vacation time for things such as failure to give notice. Employees need to know the employer's policy and familiarize themselves with the state laws to ensure they are being fairly compensated if facing termination.



## CHILD CARE PROVIDER RETAINER PROGRAM

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## Continued from Page 1

employees have reason to expect them as part of an established pattern, you may not withhold pay raises or benefit increases if you would have given such increases in accordance with an established plan.

The NLRB will ascertain if employees have reason to expect improvements in wages or benefits in accordance with past practice. If so, the increases must be given. Any increases, however, must be comparable with those given in past years to avoid the appearance that excessive improvements have been made to discourage unionization. You should consult counsel before deciding whether to grant or withhold improvements in wages, hours or working conditions.

5. Surveillance—Any attempt to spy on employee union activities, or even creating the impression of spying on such activities, or other acts of surveillance are considered by the NLRB to be inherently coercive and will be declared unlawful. Moreover, a fear of reprisal for union activity is generated according to the NLRB, where management gives the impression of spying. This is sufficient violation of the Act even though no actual spying took place.

Therefore, no members of management including subordinate supervisors should attend union meetings or park their car in the vicinity of a union meeting hall for any reason.

Do not engage in any activity which would indicate that the employees are being kept under surveillance to determine who is and is not participating in the union campaign effort. For instance, do not compile a list of union button wearers, do not poll employees, etc.

You should also avoid making statements to employees indicating

that you know which employees favor the union. If you tell employees, for example, that you know who started the union organizing attempt, this will be considered an effort to create the impression of surveillance.

6. Opinions and Predictions—Predictions such as the possibility of contracting out certain operations or a reduction in overtime or in steady employment have been considered threats sufficient to set aside an election. Care must be taken to refrain from making statements that can be construed as warnings of inevitable dire consequences if unionization should come to the company. Factual statements regarding the company's ability to meet union promises and demands should be left to top management, for they alone have all the facts and access to legal advice as to how such facts may be presented.

Do not say that your agency will never negotiate with a union, never agree to wage increases or that existing benefits will be canceled if the union wins an election. Specifically, you must avoid creating a sense of futility and hopelessness among the employees.

7. Misrepresentations—A fair amount of latitude in the dissemination of campaign propaganda is allowed by the NLRB. However, a substantial departure from the truth by a party in a position to have knowledge of the facts which influences the choice of the employees can be grounds for setting aside an election. This is particularly true when it happens just prior to the election. Timing is of central importance here, for where the other side has a full opportunity to rebut alleged misrepresentations and the employees are capable of evaluating the statements, the NLRB will not set an election aside on such grounds.

When it comes to dispensing information, it is imperative that management provide information that is correct, straight forward, and promptly disseminated. Therefore, it is important that any rumors be brought to the attention of those responsible for running the campaign so that they can be checked and the correct facts reported back to the inquiring department head, supervisor and ultimately to the employees.

8. Equal Treatment of Employees—All employees must be treated alike. Distinctions between pro-union and other employees in the assignment of overtime or other desirable work must be avoided. The same precaution holds true with respect to disciplining employees and the assignment of less desirable work.

During this critical time it is imperative that supervisors clear all proposed disciplinary action through top management and that counsel be advised as to all proposed discipline. This is particularly true of anticipated discharge cases. It is always a wise personnel practice to refrain from discharging any employee at the time such action originally appeared to be warranted. Rather, it is better to suspend employees engaged in serious misconduct immediately, as opposed to discharging them, for this enables you and other members of management to determine all facts. It also permits not tempers to cool and gives the reasoning process a chance to operate fully. The above advice is especially applicable during a union election campaign.

9. No Solicitation/Distribution Rules—Since working time is for work, you may prohibit employees from engaging in union solicitation during working time on agency property. However, non-working time is an employee's own time and no rule, whether in writing or

oral, against solicitation by employees can extend into meal time, coffee breaks, or other rest periods. If in the past you have limited employees from distributing literature of any kind at work stations, in classrooms, etc., you can continue this limitation. You may not, however, forbid employees from distributing union literature during non-working time in non-working places unless you can demonstrate that such distribution is creating a substantial safety, sanitation or litter problem. Of course, you may and should keep outsiders off all agency property at all times.

If you have allowed distribution of solicitation, e.g., for charities, sunshine clubs, etc., in the past you may not prohibit those activities now just because a union is organizing your employees. No rule is valid if it prohibits union solicitation or distribution, but allows such activity for other purposes.

Enforcement of a non-solicitation or non-distribution rules during a union campaign is an extremely sensitive task. Before enforcing such rules you should consult with counsel.

10. Business As Usual—An employer may exercise normal management prerogatives if the purpose or effect is not to discourage union activity or penalize employees for their union support. For example, you can fire a pro-union advocate during an organizing drive if s/he is caught stealing property. Be advised however, that you must have a strong case when you fire “for cause” or the NLRB will conclude that you were really firing for other purposes.

The discharge of a union adherent can be discriminatory, even assuming cause existed, if in the past you have been more lenient in correcting similar misconduct. Regardless of the fact that there may be good reasons for terminating an employee, if it can be proven that there is also anti-union animus involved in the discipline, such action will certainly be subject to an unfair labor practice charge which can result in a rerun election if the employee wins. There could also be a reinstatement order for the employee involved, coupled with a back pay award.

11. Twenty-four Hour Rule—Management may not make an election speech to an assembled group of employees on company time within twenty-four hours preceding an election. Even statements which contain no threats or promises are outlawed. Violation of this rule automatically results in an election being set aside. Any proposed variation of this campaign tactic should be cleared with counsel before it is implemented.

## **II. What Management May and Should Do:**

1. Reviewing Existing Policies—Immediately review policies and working conditions within each department in order to correct matters which are the subject

of legitimate employee grievances. This is the most positive step management can take to demonstrate to employees that their interests are being considered and that complaints brought to management are, where possible, being corrected promptly. Cite examples of improvements made that benefit individual employees or a group of employees where possible. Of course, the time to make such improvements is before a union arrives on the scene. After a union petitions for an election, changes could be construed as the granting of benefits during an election campaign in order to influence the employees and should never be undertaken without advise from counsel.

2. Management’s Door is Open—Advise the employees that managements door, up to and including the front office, is always open. If they had doubts before, you hope that they understand now that only by airing their complaints to management can the problem be solved.

3. Emphasize Personal Relationships—Inform employees that you prefer to deal with them individually, on a person to person basis, rather than through the union or any outside agent. Point out to them that it is the union who is an outsider, that it has no stake in the success or failure of the agency; that the union’s only real concern is the payment of union dues and other charges.

4. Point to Existing Benefits and recent Improvements—Inform employees from time to time of the benefits that presently enjoy. This recommendation bears implementation notwithstanding anything that management may have done previously to advise employees regarding their benefits. Few, if any employees working anywhere within the agency have a complete understanding of all the benefits which they now receive.

5. Make Reasonable and Favorable Comparisons—Inform employees how their wages and benefits compare to similar unionized and non-unionized agencies where wages are lower and benefits less desirable. This argument in most cases is better left to top management because it has all the available facts and can present them in a uniform manner to all employees, by way of letters to their homes, on bulletin boards, etc.

6. Unions Cost Money—Point out what current union dues are in the industry. Initiation fees are also usually imposed upon new employees joining the organization after a union successfully organizes a given employer which can be very expensive. Assessments, fines and other charges may be imposed from time to time as the union deems appropriate, provided they are consistent with its constitution and bylaws.

7. Strikes and Work Stoppages—Tell employees that there are other disadvantages to belonging to a union such as the possibility of a strike, serving on a picket line and the one-man or clique rule. There is no guarantee, indeed little likelihood, of recovering income lost during such activities.

The point that should be emphasized to employees is that by favoring a union they may be trading one boss for two.

8. Job Security is a Fiscally Sound Employer—Tell them that no union can obtain more for them than the agency itself is able to give. Point out that although the union may call a strike, money lost by the employees during a strike of any length might take years to make up even if the agency were to give in to the union demands.

9. The Agency Will Not Discriminate—Tell them that the agency will not discriminate. No matter how each employee votes in the election, that whether the union is voted in or not, the decision will not be held against the employee. This is an important point to make throughout the campaign.

10. Be the first with facts—Be sure to verify thoroughly all facts before attempting to advise employees regarding correct information where false or misleading facts have been given to them by the union. The agency should be the organization that employees realize they can trust. Quote the union verbatim, then state the truth, if and where applicable.

11. Economic Strikers can be replaced—Inform employees that the law permits you to hire new employees to replace those who go on strike for economic reasons. A strike called for economic reasons is simply a strike to get better wages, benefits or to improve other terms and conditions of employment. This is to be contrasted with a strike called to protest the “unlawful” discharge of a union member, etc., referred to as an unfair labor practice strike. If you replace an employee who engages in an economic strike the law requires only that s/he be reinstated to her/his job when the replacement leaves.

12. The election is decided by a majority of those who vote—Explain to employees that if an election takes place, a majority of those who vote (not a majority of all employees in the agency) will decide an election. Therefore, voting in an election is of vital importance to all eligible employees. An election is often decided by as few as one or two votes.

13. No one will know how employees vote—The election will be by secret ballot, supervised by agents of the federal government.

14. Authorization Cards have no significance in the election—No matter what the union says, the signing of a union authorization card or petition before the election does not mean an individual is bound legally or morally to support or vote for the union. The signing of a union card can be compared with the registration process which is required as a prerequisite to voting in political elections.

15. First level holds the key—Remember at all times that the most important single factor in good employee relations is the first level of supervision. Thus, it is imperative to utilize those supervisors who have the greatest rapport with your employees as much as possible in campaigning on behalf of the agency. It is at this level that the employees meet management and where the policies of the agency are carried out. Supervisors who play favorites or show preference should be reported to top management for proper corrective action.

16. Keep a log—Of primary importance throughout the entire period of an election campaign is the recommendation that each manager or supervisor keep a log of all activities which in any way can be related to the union organizational drive. Such a log will prove to be a valuable aid to the memory in the event that conduct participated in now becomes the subject of an “unfair labor practice” charge later. Important developments which occur regarding the union should be reported to top management immediately.

## 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



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## BOYS IN THE EARLY CARE AND EDUCATION SETTING

By: Janice Nielwocki

It has long been recognized that boys in early education settings can pose a challenge to teachers. Boys are often viewed as rambunctious and physical, which has led to the old adage that "boys will be boys". But there are a wide variety of boys out there and not all boys fit that mold. Statistics show that for many boys, especially young boys, school is not a good fit. It is estimated that boys are about 30% more likely to flunk out of school, are four to five times more likely than girls to be diagnosed with ADHD and make up two thirds of the students in special education.

New research indicates that it is not the rambunctiousness, impulsivity or inattentiveness of boys that is the problem, but rather a traditional education system that fails to address the ways that boys learn. As educators, we want both boys and girls to succeed in school so it is important to recognize the educational needs of boys and perhaps adapt our learning environment and teaching techniques to best address boys' temperament and development.

Undoubtedly, the education system as it stands seems to be a better "fit" for girls rather than boys. This is especially true when looking at early education where often the culture of the classroom is much more feminine than masculine. The vast majority of early educators are female and often the variety of experiences and activities in the typical early education setting are things that appeal to girls much more than boys. The very task of sitting at a table, doing art work and/or writing letters and numbers will engage the interest of girls for a longer period of time than that of boys. In addition, we need to recognize that some early childhood educators have preconceived prejudices against boy's interests in the classroom, which often focus on fighting, fantasy play, and bodily functions.

The changes that have taken place in our education system, where there is now increased emphasis on academics in kindergarten and pri-

mary grades, may be making the situation for boys worse. In order to meet state academic requirements, many schools are limiting playtime and recess, allotting more time for seat work, something boys may find difficult to adjust to.

Some education experts believe that we are simply asking too much of our boys in the early years. The average "kindergarten" boy may be less mature socially and verbally than the average girl of comparable age, thus setting the stage for failure and frustration. In addition, a recent international study revealed that boys start slower in the areas of reading and writing, which poses difficulties for them in our "language-based" elementary classrooms. When boys can't meet expectations in those areas, they quickly develop a sense of inadequacy. The unfortunate result can be disdain and avoidance of reading and writing related activities, which can carry through their school career.

Obviously, as educators, we need to address these concerns and initiate solutions and strategies to help boys succeed in school. Rather than reducing or eliminating recess and playtime, we need to recognize that physical activity is necessary for ALL children and that it actually helps them learn. Eliminating or reducing recess and playtime for boys, may only heighten their active impulses and many boys need to engage in physical activity to release some of the stress they may be feeling in a controlled learning environment. Efforts need to be made to offer opportunities for physical activity throughout the school day which, in the long run, will improve learning, especially for active boys.

There is increased evidence that boys learn "by doing", thus boys can excel if given the opportunity for hands on learning. Educators should strive to include activities that involve touching, movement, building and manipulating which will have a greater impact on boys learning.

Perhaps we also need to put aside our own prejudices and take initiatives to foster boy's interests in the class-

room. We need to allow boys to discuss things *they* find interesting such as sports, science, mechanics or machinery; subjects that otherwise might be unpopular in our feminine based classrooms. Boys who dislike and shy away from reading (or being read to), may be more interested in the task if we allow them to make their own reading choices.

Research shows that boys, whose fathers are actively involved with their son's academic pursuits, will perform better in school, showing higher cognitive competency and higher academic achievement. Father involvement seems to especially have an affect on adolescent boy's motivation in school. Thus, schools need to put in place father initiatives which will promote father involvement in school activities.

Perhaps the most important thing we can do is to try to be more sensitive and understanding of boys in the classroom. We often have the preconceived notion that boys are more aggressive than girls, but this isn't necessarily true. Boys may be more physically aggressive whereas girls tend to be more verbally aggressive. Some experts believe that boys "act out" in school to assert their masculinity in a "feminine" environment.

Talking and listening to boys, rather than lecturing as we often do, can have positive effects in the classroom. Boys undoubtedly need clear limits and rules, and teachers need to be consistent in applying those rules. When rules are broken and discipline needs to be applied, teachers need to do so without humiliation, something that can escalate a boy's adverse behavior. And even though boys may seem difficult, most boys want to please adults, both parents and teachers alike. Boys want to be respected and commended for good effort and a job well done. Educators need to recognize this and compliment boys for the things they do "right" in the classroom.

Most importantly, we need to appreciate boys for the amazing individuals they are!



## 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.**

**May 11 and 12 HR BOOT CAMP** for Early Care and Education Administrators: San Antonio, TX. For more information please contact Dawn Martini (215) 785-3400

**May 19 and 20 HR BOOT CAMP** for Early Care and Education Administrators: Boston, MA. For more information please contact Dawn Martini (215) 785-3400

**May 15 PAEYC Annual Conference**, Pittsburgh, PA. For more information go to [www.pakeys.org](http://www.pakeys.org) and view the training calendar

**May 21 and 22 Workforce Solutions**, McAllen, TX. For information contact Andrea at: [andrea.tafolla@wfsolutions.org](mailto:andrea.tafolla@wfsolutions.org)

**May 25 Pinellas County, FL, Personnel Issues Training Day.** For information please contact Janice at [Janice@childproviderlaw.com](mailto:Janice@childproviderlaw.com)

**June 1 PA NE Regional Key Directors Training**, Buck County, PA. For more information contact Susan Ritter at (610) 437-6000

**June 2 PA NE Regional Key Directors Training**, Berks County, PA. For information contact Susan Ritter at (610) 437-6000

**June 6 and 7 NAEYC Directors Institute**, Phoenix, AZ. For information visit [www.naeyc.org](http://www.naeyc.org)

**June 9, 10 and 11 Cape May Seminars: Your Agency's Personnel Policies and Parent Handbook.** For info go to: [www.childproviderlaw.com](http://www.childproviderlaw.com)

Other dates and topics are listed there as well. Or contact Dawn in the office to discuss topics and location. (215) 785-3400

**June 17 P A NE Regional Key Directors Training**, Lackawanna County, PA. For more information contact Susan Ritter at (610) 437-6000

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**E** *The Childcare Professional*  
**EXPERIENCE**

# E *The Childcare Professional* XPERIENCE

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## When An Employee is Accused of Child Abuse...

By: Janice Nieliwocki

All too often, across the country, child care agencies find themselves in the unfortunate situation whereby an employee of the agency is accused of child abuse. When this occurs, agencies often find themselves at a loss of how to proceed simply because they lack policies and procedures for dealing with this dreaded circumstance. It is in the child care agencies best interest to be proactive and have a policy in place regarding employees accused of child abuse or neglect. The following information will offer guidance and hopefully assist you in putting together your agency's policy/ procedure.

Upon learning of an employee's accusation of child abuse, whether it allegedly occurred within the facility or out in the community, the agencies first course of action must be to place the accused employee on what is known as "Investigatory Suspension". This basically involves removing the employee from having any contact with children while an investigation regarding the alleged abuse is underway. The employee needs to remain on investigatory suspension pending the outcome of Child Protective Services investigation and any additional criminal charges filed against the employee.

If the agency is lucky enough to have an alternative work place, where children are not present during any part of the day, (for example an administrative building), the agency may choose to assign the employee to that

work location temporarily. If and when the employee is cleared of all the alleged charges, the employee would then return to his or her previous work place. If your situation does indeed allow for an alternative work location, it is nonetheless recommended that your policy states that this will be considered on a case by case basis and is up to the discretion of the agency personnel assigned to dealing with the situation at hand.

Agency administrative personnel often ask us whether or not the employee should be paid while out on investigative suspension. This is a touchy situation and is up to the agency's discretion. However, it is important to consider the possible negative budgetary ramifications, should the investigation drag on and the agency continues to pay the employee who is no longer performing work duties.

One option is to place the employee on Investigative Suspension without pay pending the outcome of the investigation. If the results of the investigation find the accusations to be "unfounded", the employee is reinstated. Backpay is paid according to policy. However, if the results of the investigation determine that the accusations are "founded" the employee is immediately terminated and would not receive any restitution of pay. Another option is to place the employee on Investigatory Suspension with pay for a limited and specified period of time

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## Possible Negative Effects of Early Television Exposure

By: Janice Nieliwocki

Much of the country is experiencing record high temperatures this summer and undoubtedly parents and children are spending more time indoors to escape the heat. Increased time indoors most likely correlates with increased time spent in front of the television. But for our very youngest children this may have long lasting negative effects. At least that's what some recent studies seem to indicate.

In the past, research regarding the effects of television on children primarily focused on older children with very few studies dedicated to the effect tv has on infants, toddlers and preschoolers. A number of recent studies focused on the effects tv viewing may have on our youngest children, when brain development is critical, and television viewing may have its biggest impact. And the results of the research seem to suggest that high levels of tv exposure in early childhood may lead to future problems.

A study conducted by the University of Montreal and the University of Michigan, found that each additional hour of television viewing at age 29 months corresponded with: a 7 percent decrease in classroom engagement, 6 percent decrease in math achievement, 13 percent decrease in weekend physical activity and 9 percent decrease in general physical activity. The study also revealed a 10 percent increase in playing video games, 10 percent increase in victimization of classmates, and 5 percent increase in BMI (body mass index).

Several studies have indicated that when very young children are exposed to television programming that portrays rapidly changing images, scenery and events, levels of concentration as well as reading ability may be negatively affected. According to a study from Children's Hospital and Regional Medical Center in Seattle, Washington, early television exposure in children ages 1 to 3 is associated with attention problems at age 7. And for each hour of television watched per day in those early years, the risk of attention problems increased.

Attention difficulties aren't the only problem

early television viewing *may* be causing. It may very well have an affect on children's socialization and play. A recent study showed that when television was on the background, parent child interaction decreased and the young children involved in the study showed less focused play. And the effect seemed to be heightened among low socioeconomic families.

Undoubtedly television is here to stay, so education, parental involvement and moderation are essential in limiting the negative effects it may be having on our young children. Parents need to educate themselves about the possible ramifications of early television viewing and become involved by choosing good, educational programming for their children. And they need to limit the time their young children spend in front of the TV.

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#### **Publisher**

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

#### **Editor**

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#### **Contributing Writers**

Ronald V. McGuckin, JD  
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Janice A. Nieliwocki, BS

#### **Guest Writer**

Tymothy Smith

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# 2009 EEOC Filing Statistics Released...93,277 claims filed

By: Dawn Martini

2009 saw the second highest number of workplace discrimination charges filed. 2008 was the record year with 2,200 more charges filed. In the previous 10 years the average number of workplace discrimination charges filed nationally averaged 79,000 per year. This drastic 18,000 claims per year increase can be attributed in large part to the current status of our economy and most particularly our job market.

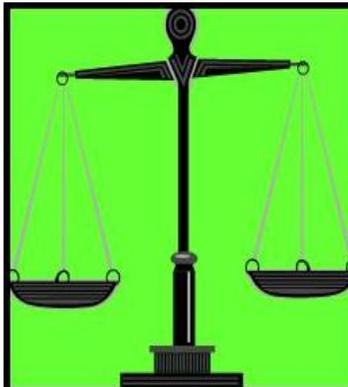
For the first time claims alleging discrimination based on race did not top the list. Retaliation claims have taken over the top spot, although only marginally. Often workplace discrimination claims are filed with more than one basis for discrimination and retaliation is frequently added to claims. A retaliation claims often assert that when an employee approached management to complain about unfair treatment related to a protected status, harassment from co-workers or supervisors, or an employee exposed another employee's policy violation they were punished for their actions. Employers should have defined policies and procedures for handling employee complaints related to harassment and whistleblowing activities to avoid any appearance of retaliation. For more information on Protected Classes and Discrimination please visit our website: [www.childproviderlaw.com](http://www.childproviderlaw.com) or attend one of our many training events on the topic.

<i>Type of Discrimination Claim</i>	<i>Number of Claims filed in 2009</i>
RETALIATION	33,613
RACE	33,579
GENDER	28,028
AGE	22,778
DISABILITY	21,451
NATIONAL ORIGIN	11,134
RELIGION	3,386

## July 26, 2010 marked the 20th Anniversary of The Americans with Disabilities Act

We have been tireless champions of this, one of the most sweeping pieces of civil rights legislation, law since it's passage 20 years ago. We would like to thank all the child care providers who have worked to reasonably accommodate children, families and staff with disabilities over the last two decades. We know it is not always easy or even clear cut, but you have opened your minds to the advantages of helping disabled Americans become active participants in our society and in their own lives and we commend you for it!

For more information on providing reasonable accommodations to staff and clients please contact us.



## CHILD CARE PROVIDER RETAINER PROGRAM

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

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. Hourly rates are discounted for child care programs by half with retainers starting at \$1500.00 depending on the size of your program. Retainer Program available to PA and NJ programs. We have a consulting program for all other states.

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(215) 785-3400

Continued from page 1...

and should the investigation take longer, the remainder of the suspension is without pay.

The agency and all employees of the agency must cooperate fully with any investigations into the accusations of child abuse or neglect. The agency must also maintain strict confidentiality regarding information involving the accused employee and child/children related to the case.

As mentioned earlier, any employee indicated and or convicted of any crime against a child must be immediately terminated. An employee who has been cleared of

the accusations by Child Protective Services and found innocent of criminal charges (if any) should be returned to his or her previous position upon receipt of documentation proving the charges/investigations are closed.

It is extremely important that every child care agency construct a policy regarding employees accused of child abuse/neglect. The policy needs to be clearly written, contain the information as outlined above, and be included in the agency's personnel policy manual. NAEYC has recognized the importance a policy on employees accused of child/abuse and neglect

and now requires that it be included in the agency's employee handbook. Simply knowing the steps to take if an employee is accused of child abuse can alleviate some of the anxiety that undoubtedly accompanies this unfortunate situation.

A model Mandated Reporting of Suspected Child Abuse and Neglect Policy for your personnel policy manual is available as part of the "Model Personnel Policies for Child Care Agencies, 4<sup>th</sup> Edition." An order form can be found in the publications section of our website: [www.childproviderlaw.com](http://www.childproviderlaw.com).

## CHILDREN'S BOOK CORNER

By Janice Nieliwocki

Several days ago my now grown son asked me, out of the blue, if we still had the book Me First. After he added a very puzzling comment that went something like, "That is what my whole life has been." (I have NO idea what that meant) it reminded me of his childhood days and how Me First written by Helen Lester and illustrated by Lynn Munsinger was indeed one of his favorite books.

Me First is the story of Pinkerton, a very pushy pig, who, as the title implies, wants to be first at everything. Whether it be first in line at the "troughateria", first to go down the playground slide, or first to board the school bus, Pinkerton certainly has a penchant for being first.

One day while on an outing with his Pig Scout troop, a voice in the distance calls out "who would care for a sandwich?" Pinkerton, conjuring up thoughts of a delectable lunchtime treat, quickly volunteers to be first. He can hardly contain himself and spills over with enthusiasm as he continues to offer to be first. Much to Pinkerton's surprise and dismay, he discovers that it is not a tasty treat that he has signed up for, but rather to actually care for a "sand witch". Pinkerton has no choice but to care for the sand witch, "powdering her nose", "combing her toes" and performing a variety of her household tasks. Needless to say, Pinkerton ultimately learns a very important lesson, that being first is not always best.

Helen Lester does a wonderful job telling a story that is not only entertaining but teaches a valuable lesson as well. The reader/listener is quickly drawn in by Lester's humorous story line and clever use of words. The moral of the story, that being first is not always best, is conveyed in a manner that is not overbearing or abrasive.

Lynne Munsinger's illustrations are delightful and truly compliment the storyline. Her drawings convey Pinkerton's excitement and movement through out the book and the expressions on Pinkerton and the other pigs are priceless. Not to mention the cute sand witch!

Perhaps more appealing to older preschoolers and young elementary students, Me First is a must in your classroom. Whether you are trying to teach a valuable lesson regarding taking turns and respect for others or just in the mood for a fun story, Me First will fit the bill! And don't be surprised if it becomes a classroom favorite (as it did with my son!).

# The I-9: Avoiding Common Mistakes

By: Janice Nieliwocki

It has been a little more than a year since employers in the United States have been required to use the *revised* Employment Eligibility Verification Form, more commonly known as the I-9 Form, when hiring employees or to re-verify employees with expiring documents. However, usage of the new I-9 Form, isn't the only issue employers are currently facing regarding employment eligibility and the workplace. The federal agency that enforces workplace immigration laws, U.S. Immigration and Customs Enforcement, has recently taken a more active role regarding enforcement, targeting employers alleged to employ undocumented workers. With this in mind, it is a good time to revisit some of the requirements outlined in the new I-9 Form, addressing areas where common mistakes are often made.

Perhaps the most common mistake employers make is using an outdated version of the I-9 rather than the updated version which was released last year. It is recommended that employers check the U.S. Citizenship and Immigration Services website, [www.uscis.gov/I-9](http://www.uscis.gov/I-9), to make certain they are using the most current form. (Paper copies of the I-9 Form can be ordered by calling the USCIS at 800-870-3676.) Failure to use the updated form can result in civil penalties for the employer.

Many employers, perhaps as a result of using the outdated I-9, are accepting documents to establish identity and employment authorization that are no longer listed as acceptable on the new I-9 form. The list of acceptable documents has changed and employers need to be sure they are accepting only those documents as listed. In addition, many employers are requesting "over-documentation", asking employees to present acceptable List A, B, and C documents.

The I-9 allows individuals to *present either an acceptable List A document OR List B and List C documents*. And it is up to the employee as to which acceptable documents he or she wants to present. Another common mistake regarding documentation is accepting an expired document, which may not portray a valid status and may be prone to tampering or fraudulent use. Employers need to review each employee's documents carefully, checking expiration dates and making sure

they appear genuine. In most states it is up to the employer as to whether or not to photocopy the presented documents, although it is generally recommended the employer do so. (Be sure to check your state's requirements.) If the employer copies the documents (either by choice or state requirement), both sides of the document need to be copied.

Failure to **fully** complete the form or to do so in the required time frame is another area where employers often fall short of compliance. Employers need to ensure that **ALL** sections of the form are completed, signed and dated accordingly. All newly hired employees must complete and sign Section 1 on their first day of work. Employers need to complete the form within three (3) business days of the date employment begins.

Many employers are failing to use Section 3 properly, resulting in unnecessary, additional paperwork and time for the employer. Section 3, which addresses updating and reverification, can be used to update an employee's name if he or she changes it (due to marriage or other reasons). It can also be used if an employee leaves the workplace and is then rehired within three years of when the form was originally completed. Section 3 can be used if a current employee's work authorization is expiring and the employer must reverify the employee's work authorization.

Maintaining proper files regarding the I-9 is another area where employers often fall short. It is recommended that you keep the completed I-9 forms and supporting documentation in a separate file rather than the employee's personnel file, in order to protect your organization from potential discrimination claims. Employers should also keep a tickler file to follow up on employee's expiring documents. I-9s and accompanying documents should be kept for three years after the date of the employee's hire or one year after the employee's termination, whichever comes later.

Remember it is to the employer's benefit to be vigilant about completing and maintaining the I-9. Failure to comply with I-9 requirements and related infractions can result in penalties, civil and/or criminal, depending on the infraction and other variables. Avoiding common mistakes on the I-9 can limit your potential for possible penalties.



## DIRECTOR'S BOOT CAMP

### DAY ONE

- 9:00 am Welcome and Introductions
- 9:15 am The Hiring Process: Recruiting, Interviewing, Hiring, Employee Onboarding
- 11:00 am Break
- 11:15 am Understanding Corporate Culture
- 12:30 pm Lunch
- 1:15 pm Using Personnel Policies as an Effective Management Tool
- 2:15 pm Break
- 2:30 pm Developing Job Descriptions
- 3:30 pm Break
- 3:45 pm Evaluating and Documenting Employee Performance
- 5:00 pm Wrap-up of the Day's Events

### DAY TWO

- 9:00 am Disciplinary Actions and Terminations
- 10:15 am Encouraging Professionalism
- 12:00 pm Break
- 12:15 pm Management Skills: Effective Communication / Conflict Resolution / Team Building
- 2:00 pm Conference Wrap-up, Certificates

## DATES AND LOCATIONS

Sleeping Rooms are reserved at a Special Rate for two nights, beginning the night before the event. To take advantage of the Special Room Rate, contact the hotel and identify yourself as a participant of the Ronald V. McGuckin/Director's Boot Camp.

- NOVEMBER 3 & 4, 2010**—DALLAS, TX  
**Comfort Inn Near the Galleria**  
14975 Landmark Blvd, Dallas, TX 75240  
(972) 701-0881 • *Participant Special Rate: \$69.99/night*
- NOVEMBER 18 & 19, 2010**—ORLANDO, FL  
**Homewood Suites-International Drive/Convention Ctr**  
8745 International Drive, Orlando, FL 32819  
(407) 248-2232 • *Participant Special Rate: \$129.00/night*
- DECEMBER 8 & 9, 2010**—PRINCETON, NJ  
**Homewood Suites-Princeton**  
3819 US 1 South, Princeton, NJ 08540  
(609) 720-0550 • *Participant Special Rate: \$129.00/night*
- DECEMBER 15 & 16, 2010**—POCONOS, PA  
**Hampton Inn-Montage**  
22 Montage Mountain Road, Scranton, PA 18507  
(570) 342-7002 • *Participant Special Rate: \$99.00/night*
- JANUARY 26 & 27, 2011**—AUSTIN, TX  
**Homewood Suites-Arboretum NW**  
10925 Stonelake Blvd, Austin, TX 78759  
(512) 349-9966 • *Participant Special Rate: \$149.00/night*
- FEBRUARY 16 & 17, 2011**—PHILADELPHIA, PA  
**Valley Forge Homewood Suites**  
681 Shannondell Blvd, Audobon, PA 19403  
(610) 539-7300 • *Participant Special Rate: \$149.00/night*
- MARCH 2 & 3, 2011**—NEWPORT, OR  
**Best Western Agate Beach Inn**  
3019 North Coast Highway, Newport, OR 97365  
(541) 265-9411 • *Participant Special Rate: \$105.00 Ocean view, \$85.00 Hillside/night*
- MARCH 23 & 24, 2011**—CHICAGO, IL  
**Homewood Suites Orland Park**  
16235 South La Grange Road, Orland Park, IL 60467  
(708) 364-0415 • *Participant Special Rate: \$109.00/night*
- APRIL 6 & 7, 2011**—PITTSBURGH, PA  
**Hampton Inn-Pittsburgh Airport**  
8514 University Blvd, Moon Township, PA 15108  
(412) 264-0020 • *Participant Special Rate: \$129.00/night*
- APRIL 27 & 28, 2011**—BOSTON, MA  
**Homewood Suites-Boston-Billerica/Bedford**  
35 Middlesex Turnpike, Billerica, MA 01821  
(978) 670-7111 • *Participant Special Rate: \$139.00/night*

## REGISTRATION INFORMATION

Name \_\_\_\_\_

Agency Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email Address \_\_\_\_\_

Location Attending \_\_\_\_\_

### Fees

**Fee:** \$215.00 per person—submit additional registrants on separate forms.

**Discount:** \$185.00 per person if registering three or more people or if you are a previous attendee of our Cape May, NJ Seminars or Director's Boot Camp.

**Registration Fee includes Tuition ONLY.** Meals and Accommodations are not included. For hotel reservations, please contact the hotel directly.

**Payment:** Check made payable to **Ronald V. McGuckin and Associates or VISA/MC.**

Card Number \_\_\_\_\_

Expiration Date \_\_\_\_\_ 3-Digit CVV Number \_\_\_\_\_

### Mail or Fax Registrations to

**Ronald V. McGuckin and Associates**  
Post Office Box 2126  
Bristol, PA 19007

**Attention:** Dawn Martini

We reserve the right to cancel any session due to an insufficient number of registrants. We are not responsible for any expenses incurred by the participants in the event the session must be cancelled. Registrants will receive notification of cancellation at least two weeks prior to the first day of the seminar; more notice will be given when possible. **Please do not make any non-refundable travel arrangements until you have received a confirmation of your registration and a confirmation that the session will be held.**

### Registrant Cancellation Policy

Cancellations received fewer than 15 business days prior to the first day of the seminar will not be refunded. Cancellations received between 15 and 25 business days prior to the seminar are subject to a 25% cancellation fee. Cancellations received more than 25 business days before the seminar will be refunded 100%.



## 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 1 and 2:** Florida AEYC (formerly ECA of FL) Annual Conference, Orlando, FL.  
[www.flaeyc.org](http://www.flaeyc.org)

**Oct 1 and 2:** Texas AEYC Annual Conference, Austin, TX.  
[www.taeyc.org](http://www.taeyc.org)

**Oct 2:** Bucks County AEYC Annual Conference, Newtown, PA.  
[www.bcaeyc.org](http://www.bcaeyc.org)

**Oct 13:** PA Summit Conference, State College, PA  
[www.pacca.org](http://www.pacca.org)

**Oct 15:** Broward Early Childhood Educators Conference, Sunrise, FL Call (954) 724-4628 for information.

**Oct 18 - 23:** NACCP Annual Seminar at Sea, Professional Development Cruise.  
[www.naccp.org](http://www.naccp.org)

**Oct 22 and 23:** New Jersey AEYC Annual Conference, Atlantic City Convention Center, NJ. [www.njaeyc.org](http://www.njaeyc.org)

**Nov 3 - 6:** NAEYC Annual Conference, Anaheim, CA.  
[www.naeyc.org](http://www.naeyc.org)

**Nov 12 and 13:** Texas Licensed Child Care Association Annual Conference, University of Houston at Clear Lake.  
[www.tlcca.org](http://www.tlcca.org)

**Nov 13:** Super Saturday Staff Professional Development Day, Doylestown, PA  
[www.childproviderlaw.com](http://www.childproviderlaw.com)

**Dec 10 - 14:** NHSA Annual Parent Conference, Virginia Beach, VA. [www.nhsa.org](http://www.nhsa.org)

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**E** *The Childcare Professional*  
**EXPERIENCE**

# E The Childcare Profes- E EXPERIENCE

July 2012  
Volume 4 Issue 4

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

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Where in the

## 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"

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

By: Janice Nielowocki

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**

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(215) 785-3400  
Childproviderlaw.com

### **Editor**

Dawn K. Martini, BS Ed

### **Contributing Writers**

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

### **Guest Writer**

Tymothy Smith

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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...

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 com-

mented 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

## 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](http://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

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
<b>Total Due:</b>	_____

## 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 Nieliwocki

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!



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## 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.laaeyc.org](http://www.laaeyc.org) for information

**Oct 6:** Bucks County AEYC Annual Conference, Newtown, PA. [www.bcaeyc.org](http://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.flayc.org](http://www.flayc.org)

**Oct 19 and 20:** New Jersey AEYC Annual Conference, Atlantic City Convention Center, NJ. [www.njaeyc.org](http://www.njaeyc.org)

**Oct 22, 23, and 24:** PA Summit Conference, State College, PA [www.pacca.org](http://www.pacca.org)

**Oct 22-26:** NACCP Annual Seminar at Sea, Professional Development Cruise. [www.naccp.org](http://www.naccp.org)

**Oct 25-27:** Texas AEYC Annual Conference: Galveston, TX [www.texasaeyc.org](http://www.texasaeyc.org)

**Nov 7-10:** NAEYC Annual Conference, Atlanta, GA [www.naeyc.org](http://www.naeyc.org)

**Nov 12 and 13:** Texas Licensed Child Care Association Annual Conference, University of Houston at Clear Lake. [www.tlcca.org](http://www.tlcca.org)

**Nov 13 and 14:** Director's Boot Camp: Administrators Profes-

sional Development Retreat Orlando, Florida Contact Dawn Martini for registration information: [dkgt0409@aol.com](mailto: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](mailto: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](mailto: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](mailto:dkgt0409@aol.com)

**Dec 1 - 5:** NHSA Annual Parent Conference, Dallas, Texas [www.nhsa.org](http://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](mailto:dkgt0409@aol.com)

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