

# HUMAN RESOURCE CONNECTION MONTHLY NEWSLETTER

VOLUME I ISSUE I1 JULY 2008

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Steven E. Gall  
President  
Bio

**Gall & Gall Company, Inc.** was founded in 1987, with corporate offices in Dayton, Ohio. We presently partner with customers in 19 foreign countries and all 50 states in the United States.

**Gall & Gall** was founded by **Beverly Gall**, Ohio's first female Police Chief and the third female Police Chief in the nation and **Steven Gall** a former Police Officer with over 27 years in Human Resources.

Together, their background is varied and extensive in information gathering and Human Resources.

Gall & Gall has always been looked to as a leader in Employment Background Screening Services.

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## GREETINGS

Welcome to the all New...

### Human Resource Connection Monthly Newsletter

Our aim is to reduce your HR headaches by providing the information and tools you need to make life easier! We will provide you with up to date Human Resource Information that will help you in your day to day operations.

If there is information that you are interested in seeing in this newsletter, please let us know by email at [sgall@gallgall.com](mailto:sgall@gallgall.com).

If you have a HR question email us and we can do a blind post (you will not be identified) in the newsletter and others can answer by email and we will do a blind post to you answer in the next months Newsletter.

Thank You, Steven E. Gall

## QUICK LINKS

(CLICK ON ANY LINK BELOW TO VISIT THE SITE)

Below is a list of websites you may find useful:

**SHRM** ([WWW.SHRM.ORG](http://WWW.SHRM.ORG))

**OHIOSHRM** ([WWW.OHIOSHRM.ORG](http://WWW.OHIOSHRM.ORG))

**MVHRA** ([WWW.MVHRA.ORG](http://WWW.MVHRA.ORG))

## Opposition Mounting Against the Ohio Healthy Families Act

By Evelyn P. Schonberg

In the last newsletter we informed you about the Ohio Healthy Families Act that will mandate seven paid sick days annually for all full time employees and a pro-rated amount for part-time employees employed by employers with 25 or more employees. Over the past few months many clients have inquired as to what, if any efforts are underway to oppose the HFA and what can they do to help defeat it.

The concerns of our clients are shared by all business owners and managers across the state. For instance, the HFA mandates that leave already in existence at the time of the Act's enactment can neither be reduced nor eliminated. Clients are seeking ways in which to handle the economic burden of this Act now before it's too late. The fact that sick leave can be taken in increments as small as one hour has many employers concerned that employees can leave work an hour early every Friday without any threat of discipline or termination. These concerns only grow when it's learned that sick leave can be used for almost any undocumented medical reason for not only the employee but also for her spouse, parent or child.

No one should be surprised that a Quinnipiac University poll recently released found strong support for the HFA. The poll found that 71 percent back the sick-leave requirement while many of the same respondents -- 58 percent -- believe that Ohio is in economic trouble because state regulations put too much of a financial burden on business. It therefore becomes obvious that Ohioans are in need of education about the severe economic consequences that will result if this Act is voted into law.

What can we do to help defeat this Act? One idea is to log-on to [www.OhioBusinessVotes.org](http://www.OhioBusinessVotes.org). This website is a collaborative project created by the Ohio Chamber of Commerce in partnership with the U.S. Chamber of Commerce. You will find a host of materials you can use to educate your employees and friends about the disastrous effect this Act will have on Ohio's economy and their jobs.

Another idea is to copy editorials such as the one that appeared on June 8, 2008 in the Columbus Dispatch and entitled "Do The Math: Mandates on business will result in subtraction of jobs for Ohioans." This can be obtained at [www.dispatch.com](http://www.dispatch.com) or through the OhioBusinessVotes website.

Yet another idea is to distribute a list of the host of agencies, partnerships and organizations that have publicly renounced the HFA. These include the Ohio and numerous local Chambers of Commerce, COSE, Greater Cleveland Partnership, Northern Ohio Chapter of Associated Builders & Contractors and Ohio State Council of the Society of Human Resource Managers

We will continue to monitor the progress of the Service Employees International Union's (SEIU) efforts at collecting the 120,689 signatures needed to place the HFA on November's ballot. Please make sure you are signed up to receive our Client Alerts via email by accessing our website at [www.rbslaw.com](http://www.rbslaw.com) and clicking on the icon "Client Alerts." If you need any information or have any questions, give Lynn Schonberg a call at any time.

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### A Chance for a Clean Slate Automatic expungement law has helped thousands clear arrest records

By James Drew  
*Baltimore Sun reporter*

Thousands of Marylanders have had their arrest records removed from public view because of a new state law that requires automatic expungement for those who are

detained and released without charge.

Proponents say the nine-month-old law is working as intended, removing potential barriers to obtaining employment, housing and loans. Another major change in state expungement law takes effect Oct. 1, when some criminal convictions in Maryland can be wiped out without a pardon from the governor.

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The changes are seen as especially important in Baltimore City. Tens of thousands of residents, many of them young men, have minor criminal records - sometimes as a consequence of "zero-tolerance" policies that result in large numbers of arrests without charges or convictions.

But even the new laws don't go far enough, some advocates say. They want the legislature to help people with minor drug convictions - whom the new law would not directly benefit.

The law that took effect in October covers all crimes and has resulted in 7,092 automatic expungements through May 31. More than 6,000 originated in Baltimore, where most of the expungements have been triggered by police arresting people on suspicion of drug possession, failure to obey a police officer, loitering and alcohol violations - and then releasing them without charge after a review by prosecutors.

Previously, when prosecutors declined to bring charges, a person had to apply in writing, pay a \$30 fee and waive his or her right to sue if the person didn't want to wait three years to expunge a criminal record. Many people did not take those steps.

"Before the law took effect, individuals would be arrested and released without charge and they would have no concept that it would show up on their criminal record," said Natalie Finegar, an assistant public defender. "And it would show up in a way that was very confusing ... with 'no disposition found.' So it would make it seem like there was an open, pending charge."

Expungement is growing in importance as the economy tightens, said Robert Guiney, president of Just Temps Personnel, a Baltimore-based industrial labor staffing company.

"Jobs are scarcer, and we see people taking a harder look at things like criminal records simply because there are more people trying to get a job. The nuisance charge has become more of an issue. With the economy booming, employers may overlook that," he said.

Maryland law bars employers from requiring disclosure of expunged criminal charges in an application or interview.

A person's refusal to disclose information about criminal charges that have been expunged also may not be the sole reason for an employer to fire or refuse to hire that person, state law says.

Neil E. Duke, a Baltimore attorney who specializes in employment law, said job-seekers often have to make a judgment call, especially because many employers use companies that conduct background checks and that have computerized criminal records covering years before charges are expunged.

"A prospective employee can take two tacks," Duke said. One is to "explain the [charge] and the basis of expungement. A different mind-set is that expungement is a cleansing of the record and as such, there is no record anymore. There is no quote-unquote need to confess."

Some advocates say additional changes to state law are needed to help more people who demonstrate they want to change their lives.

Mark P. Matthews was among those who urged the legislature this year, without success, to allow those with minor drug convictions to get the records removed from public inspection after finishing treatment and job-preparedness training.

"Otherwise, we will tie the hands of hundreds, if not thousands, of individuals who have paid their debt, re-evaluated their priorities and are willing to become productive members of society," said Matthews, a Baltimore resident with a criminal record who conducts expungement seminars.

*"The law that took effect in October covers all crimes and has resulted in 7,092 automatic expungements through May 31."*

"Without a clean or 'cleaner' record, they are doomed to repeat past behaviors in order to survive economically," Matthews said.

Matthews has been trying to help Cris Keeling. At 29, Keeling has a long rap sheet and is trying to wipe out charges of attempted murder, arson and auto theft that prosecutors didn't pursue or that were dismissed.

"I'm trying to change my life. I need a job. I have four kids. It's about time for me to put some bacon on the table," said Keeling, who said he has spent about 15 years in jail. "Something has got to change."

The law that takes effect Oct. 1 allows for expungement

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of “nuisance crimes,” including public urination, panhandling, drinking alcohol in a public place and riding mass transit without paying the fare. It also covers nuisance crime convictions before Oct. 1 this year, according to the state Department of Legislative Services, but it does not cover drug convictions.

Del. Samuel I. Rosenberg, a Baltimore Democrat, said he sponsored the measure at the request of the nonprofit Jobs Opportunities Task Force.

“These offenses are the most minor, ones rooted in homelessness, poverty and sometimes being in the wrong place at the wrong time,” said Michael Pinard, a law professor at the University of Maryland. “Drink a beer in the Ravens stadium, it is fine. Drink a beer two blocks away, it is not fine.”

But the state police and Baltimore City State’s Attorney Patricia C. Jessamy told legislators that they opposed the bill, with the state police saying it would “allow those criminals who graduate to more harmful offenses, such as robbery, theft or assault, to avoid progressive penalties as their past disruptive behaviors may have been purged from the record.”

Jessamy and then-Police Commissioner Leonard D. Hamm supported the automatic expungement bill sponsored in 2007 by Del. Keith E. Haynes, a Baltimore Democrat. Law enforcement agencies noted that they are allowed to keep expunged records for investigative purposes but are barred from releasing them to the public.

Unlike last year’s law that covers those who are released without charge, those who are convicted of “nuisance crimes” are required to apply for expungement. They must wait for three years after the conviction or the sentence is completed.

Also, they aren’t eligible if they have been convicted of a crime other than a minor traffic violation within three years of the conviction they’re trying to expunge.

The state has estimated that about 96,000 people in Maryland have “nuisance crimes” on their records. Those crimes frequently are among several charges from the same incident, according to the Department of Legislative Services. The nuisance charge can’t be wiped out unless all the other charges are eligible for expungement.

Despite the changes in expungement law, many who are trying to rebound from brushes with the law say they find it difficult to navigate the complex process.

At a recent seminar on expungement conducted by Matthews at the Prisoners Aid Association of Maryland, Kimberly M. Randall asked several questions.

Randall, 46, is trying to remove a drug possession charge from her record. According to the police report, officers arrested her July 21, 2006, after she bought a “white rocklike substance, suspected cocaine.”

Her case ended with Baltimore prosecutors deciding not to pursue the charge. But Randall - who worked for the state Department of Public Safety and Correctional Services for 15 years - said that after her arrest, she tested positive for drugs and lost her job.

Randall said she received treatment and has not used drugs for almost two years. She is doing janitorial work but wants to get the charge expunged so she can get a job in a parole or probation office.

“When people see ‘possession’ on your record, they prejudge you,” she said.

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## **E-discovery Rules Have Arrived in Ohio**

By Ryan T. Neumeyer

As predicted in my prior article entitled “An Employer’s New Obligation for Document Retention and Preservation,” Ohio has essentially adopted the Federal Rules of Civil Procedure regarding e-discovery. The changes to the Ohio Rules took effect on July 1, 2008.

The new Ohio Rules will explicitly allow for the discovery of Electronically Stored Information (ESI) and require

that an employer that anticipates litigation to preserve and retrieve computer files relevant to the anticipated litigation. As with the Federal Rules, the new Ohio Rules require, among other things, that your attorney become

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familiar with your company's computer systems, records retention policy and the location of ESI prior to the initial discovery conference.

This means that, in the unfortunate event of litigation, someone with knowledge of your company's computer systems will have to spend time explaining those systems to your attorney at the outset of litigation. This will allow your attorney to determine where relevant ESI is stored, in addition to enabling him to help your company preserve these documents while minimizing the interruption to your regular business operations. Most importantly, your attorney will be able to explain your systems to the court, if need be.

Also, as with the Federal Rules, the Ohio Rules provide a "safe harbor" for those companies that have a document retention policy and inadvertently destroy relevant ESI prior to anticipation of litigation.

Accordingly, it is now absolutely vital that Ohio companies invest the time and money to develop such a plan. Further, a good document retention policy will not only provide some safety in the event of litigation, but will also save your company money in the long run by increasing efficiency through organization and the ability to retrieve information.

If your company has not already done so, now is a great time to establish a record retention and litigation preservation plan. If you need help in developing these plans, please do not hesitate to contact Ryan Neumeyer or Lynn Schonberg. Ryan and Lynn can also answer all of your questions regarding the new rules pertaining to e-discovery in Ohio.

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## **New EEOC Guidelines on Religion in the Workplace**

Earlier this week, the Equal Employment Opportunity Commission published new guidelines on religious accommodation and discrimination in the workplace. The guidelines clarify EEOC's position about employers' duty to accommodate particular beliefs and practices, as well as the standards for employers to show that a requested accommodation would cause "undue hardship."

### **"Religion" Is Broadly Defined**

Under federal law, "religion" of course includes mainstream faiths and practices. But it also includes beliefs that are not dictated or even recognized by any church or organization, and neither EEOC nor courts are likely to scrutinize practices that appear to be sincerely held. The distinction between religious beliefs and personal choices, however, can be confusing. An

example in the new guidelines is a Seventh-day Adventist who believes the scriptures require her to be a vegetarian – even though not all Adventists share that belief. On the other hand, people who become vegetarians based on health reasons or personal preference are not expressing a religious belief.

Other examples contrast two employees who have tattoos that the employer would like them to conceal. One has ceremonial symbols expressing devotion to an ancient Egyptian god, making display of the tattoos a religious observance for which accommodation must be considered. The other employee uses body art as a form of self-expression, so requiring that those tattoos be concealed would not affect a religious practice.

*"Although the new EEOC guidelines are 94 pages long, they leave many questions unanswered."*

### **Accommodations Are Required, But Only To A Point**

The guidelines emphasize that accommodations are not

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required if the employer would suffer undue hardship – that is, “more than de minimis cost.” EEOC will make this determination on a case-by-case basis, and it will consider the potential burden on the conduct of the employers’ business in addition to monetary costs. Thus, shift swaps that would violate a labor agreement or require the employer to pay premium wages for an extended period would likely qualify as an undue hardship. Morale problems or jealousy among co workers, however, normally would not qualify as an undue burden.

Workplace prayer and proselytizing can cause conflicts with customers or other employees, and resolution of these issues will likewise depend on the particular facts. In one example, EEOC contrasts two employees who hang “Jesus Saves” posters at their work stations. One employee has a private office, and no other employees complain about the poster. Under these circumstances, EEOC states that allowing the poster would probably be a required accommodation. However, the other employee in the example works at a desk in the lobby. Because visitors might think the poster represents the

company’s views, the employer can likely prohibit it.

Although the new EEOC guidelines are 94 pages long, they leave many questions unanswered. Overall, they reaffirm that religious accommodation is extremely fact-sensitive and must be handled cautiously. As for harassment and discrimination based on religion, employers’ policies on other types of protected characteristics and prohibited conduct should apply with equal force to religious matters. The number of religion-based claims is increasing, and Taft’s Labor and Employment attorneys are available to discuss any issues you may face.

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## New York Employers Face Penalties if They Fail to Secure Employee Social Security Numbers

Earlier this year, New York joined the growing list of states to adopt legislation that instructs employers and businesses alike to limit their collection and use of employee or customer social security numbers in order to keep this information from being carelessly or intentionally accessed for unlawful purposes.

The new law, like others passed in recent years, is largely in response to the burgeoning problem of identity theft. Although only recognized as a crime since 1998, its incident rate has soared. The Federal Trade Commission (FTC), which began tracking the incidence of identity theft in 1999, reported in its most recent survey that 3.7% of those surveyed were victims of identity theft in 2005, which was equal to 8.3 million U.S. victims.

What some employers may not realize is that the incidence of identity theft in the workplace is a real and growing problem. In a 2006 survey conducted by the Identity Theft Resource Center (ITRC), a not-for-profit organization which provides information and support to identity theft victims, 12% of those surveyed reported that their personal information had been stolen at the workplace. According to the survey, the workplace was the second most common source of stolen information. When the ITRC conducted the survey in 2004, only 1.5% reported that their personal information had been stolen at the workplace. The most frequently reported source of stolen information (41%) was from a person’s friend or family member.

The New York law, called the Social Security Number Protection Law, NY Gen. Bus. § 399-dd, specifies what an employer or business can and cannot do vis-a-vis an employee’s or customer’s social security number and includes monetary penalties for those who violate the section. The law prohibits employers from doing the following:

- Intentionally communicating an employee’s social security number to “the general public or otherwise make [it] available to the general public”;
- Printing an employee’s social security number on any card

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- or tag required to access services or benefits provided by the employer;
- Requiring an employee to transmit his or her social security number over the internet unless “the connection is secure or the social security account number is encrypted”;
- Requiring an employee to use his or her social security number to access an internet web site unless “a password or unique personal identification number or other authentication device is also required to access the internet website”;
- Printing an employee’s social security number on any materials to be mailed unless state or federal law requires that this information be on the document.

In addition to the exceptions noted above, the law expressly provides that social security numbers may be included in mailed applications and forms sent as part of “an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy” of the social security number. Additionally, the provision does not prevent the “collection, use, or release” of a social security number where required by state or federal law or “internal verification, fraud investigation or administrative purposes or for any business function specifically authorized by 15 U.S.C. 6802 [disclosures made by a financial institution].” Any mailing which contains an employee’s social security number must be enclosed in an envelope. No portion of an employee’s social security number may be printed on a postcard or other mailing not enclosed in an envelope. The law also provides for notification requirements where information is improperly released.

Although the law provides that employers must take “reasonable measures” to ensure that access to employee social security number information only occurs for “legitimate or necessary purpose[s],” it does not describe what those “reasonable measures” consist of. The following is a list of safeguards employers should take under the guise of “reasonable measures”:

- Have a written privacy policy (that includes disposal procedures that are consistent with accepted industry practice and satisfy legal requirements);
- Lock up and limit access to employee personal information;
- Conduct background checks on employees who will have access to personal information;

- Limit retention of personal information to only that which is essential;
- Train employees on privacy and document disposal policies;
- Encourage employees to report any possible security breaches;
- Avoid using or disclosing an employee’s social security number for any purpose other than that required by law or legitimate and necessary business purpose; and
- Take proper security precautions when terminating employees who have access to personal information (e.g., changing computer access codes).

How employers dispose of employee personal data is just as important as how employers maintain and secure such information. Since the end of 2006, New York employers have had to comply with the state’s Disposal of Personal Records Law, NY Gen. Bus. § 399-h, which mandates

*“In a 2006 survey conducted by the Identity Theft Resource Center (ITRC), a not-for-profit organization which provides information and support to identity theft victims, 12% of those surveyed reported that their personal information had been stolen at the workplace.”*

how employee personal records should be disposed of. This law piggybacked a 2005 FTC rule, which addressed the proper disposal of sensitive personal consumer information contained in a consumer report.

The New York law provides that documents containing personal identifying information (e.g. social security numbers) may not be disposed of unless: 1) the document is shredded prior to disposal; 2) the personal identifying information is destroyed; 3) the personal identifying information is modified in order to make it unreadable; or 4) some action is taken that is “consistent with commonly accepted industry practices . . . [that] will ensure that no unauthorized person will have access to the personal identifying information contained in the record.”

Employers are subject to civil monetary penalties under both §§ 399-dd and 399-h. First time violators of § 399-dd are subject to up to \$1,000 for a single violation and up to \$100,000 for multiple violations resulting from a single act or incident. For any subsequent violations of this provision, violators are subject to up to \$5,000 for a single violation and up to \$250,000 for multiple violations resulting from a single act or incident. Violators of the state’s records disposal provision are subject to up to \$5,000 per violation and may face additional liability in the event the employer’s negligent disposal of records

results in a case of identity theft.

If you have any questions regarding this One Minute Memo, please contact the Seyfarth Shaw attorney with whom you work, or any Labor & Employment attorney on our website, [www.seyfarth.com/LaborEmployment](http://www.seyfarth.com/LaborEmployment).



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## Pennsylvania Clean Indoor Air Act

July 18, 2008

The State of Pennsylvania has enacted a new law banning smoking in the workplace and most enclosed public places. Governor Ed Rendell has signed the Clean Indoor Air Act (the “Act”), and employers in the state have until September 11, 2008, to come into compliance. Once the law takes effect, smoking—or allowing others to smoke—in a public place that is subject to the ban will be punishable by civil and criminal penalties ranging from \$250 to \$1,000.

### What is a Public Place?

Under the Act, a public place is “[a]n enclosed area which serves as a workplace, commercial establishment or an area where the public is invited or permitted.” Restaurants, schools, hospitals, train stations and vehicles used for mass transportation (including, taxicabs, chartered buses and limousines), among other things, are public places. A “workplace” is defined in the legislation as “an indoor area serving as a place of employment, occupation, business, trade, craft, professional or volunteer activity.” Thus, outdoor worksites are not covered by the new law.

### Posting Requirements

Employers will be required to post appropriate signs— “Smoking,” “No Smoking,” or the universal “No Smoking” symbol—in an obvious manner. Employers also must post “Smoking Permitted” signs at every entrance to a public facility where smoking is allowed. Failing to post the appropriate signs properly will constitute a violation of the Act. Nothing in the legislation prevents employers from designating their entire premises as smoke-free.

### Anti-Retaliation Provision

Under the new law, employers are prohibited from refusing to hire, terminating, or otherwise discriminating against a worker for exercising his or her “right to a smoke-free environment.”

### Exceptions

Certain locations are exempted from the smoking ban, including:

- Up to 25% of the guest rooms in a hotel or other lodging establishment;
- Designated areas at full service truck stops;
- Cigar bars and tobacco shops (under specific conditions);
- Workplaces of tobacco manufacturers, dealers and storage facilities;
- Designated rooms in residential adult-care facilities and drug, alcohol and mental health treatment centers;
- Private clubs (under specific conditions);
- Bars with at least 80% of revenue owing to alcohol, and bars in restaurants which have a separate entrance and ventilation;
- Between 25% and 50% of a casino floor; and
- Designated outdoor areas at recreational and other facilities.

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More than half of all states have enacted some type of smoking ban over the last ten years. Many local governments

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also have enacted smoking bans. The city of Philadelphia passed legislation banning smoking in the workplace approximately two years ago. The new Pennsylvania legislation supersedes any local regulation. Accordingly, employers in Philadelphia should determine how the Act affects their existing obligations.

The law specifically provides that a good faith effort to prohibit smoking constitutes an affirmative defense to liability, so employers should review their policies and document all efforts made to comply with the smoking ban. Jackson Lewis attorneys are available to answer questions about the new law and to help develop policies and strategies for ensuring compliance.

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## Preventing Workplace Violence

*Unhappy employees can result in more than decreased productivity – in extreme cases, their perceptions and actions can lead to violence in the workplace. OccupationalHazards.com spoke to an expert who shed light on how and why employees become capable of workplace violence, and what management can do to prevent potentially dangerous situations from escalating.*

By Laura Walter

Dave Logan, Ph.D., a professor at the University of Southern California's Marshall School of Business and the co-founder and senior partner of the workplace culture consulting firm CultureSync, is a co-author of *Tribal Leadership: Leveraging Natural Groups to Build Thriving Organizations*, a book examining organizational culture within companies.

Logan told OccupationalHazards.com that he and his co-authors studied intact social networks, or "tribes," in the workplace. Tribes are not necessarily departments or teams, but are natural groups of people who talk to each other at work. Each tribe, he said, falls into one of five

categories.

**Stage 1.** This is the "danger zone," the stage where workplace violence occurs. Just under 2 percent of American employees may fall into this category and maintain a prevailing negative attitude on life, Logan explained. People in this category may behave in a hostile manner, alienate themselves from others and commit theft or acts of violence.

**Stage 2.** Logan said about 25 percent of tribes fall into this stage, only one step away from Stage 1. People in this stage are apathetic and feel they are victims, their voices don't count and that there's no point in trying. While Stage 1 employees may have the mindset that "life sucks," Logan explained Stage 2 individuals instead think, "my life sucks."

**Stage 3.** Employees in this stage tend to have an "I'm great and you're not" attitude, which can result in workplace bullying and drive other employees down into

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Stage 2. A bully may boss everyone around, shut employees down and think only his or her own ideas are worthwhile. Think of Steve Carell's character on *The Office*, Logan said, to get an idea of the typical person in this stage. "Ironically, it's managers who try to solve everybody's problem and take control who actually tend to foster that kind of environment," he pointed out.

**Stage 4.** In this stage, everyone comes together with a sense of shared values, and ego problems tend to fall away. The prevailing mindset is "We're great and they're not," with "they" being either an outsider or the competition. While there is an "us against them" mentality, it is generally a friendly, not hostile, rivalry.

**Stage 5.** Only about 2 percent of workplaces fall into this category, where people feel that life is great. These workers are in competition not with a rival, but with what's possible. "Those are the companies that make unprecedented leaps of innovation," Logan said.

### **Preventing a Downward Slide**

When writing *Tribal Leadership*, Logan said he and his co-authors set out to determine how managers could move their employees to a higher stage. In the process, however, they discovered how important it is to be on the lookout for employees sinking into lower stages.

Tribes only move up or down one stage at a time, but this progression can be rapid. Logan cites the decline of the once-thriving dot-com era, when employees quickly dropped from Stages 4 or 5 all the way to Stage 1.

"It can happen very quickly," Logan said. "The good news is that this also means that ascent can happen quickly." Logan pointed out that government offices, banks, the judicial system and companies going through rapid layoffs or restructuring may face a higher risk for workplace violence. Considering that 25 percent of employees fall into Stage 2, he said it's imperative to ensure that these workers don't descend into Stage 1.

### **Warning Signs**

"Across the country, we're seeing a collapse of community, and that's a problem," Logan said.

He pointed out that today's struggling economy makes workers especially vulnerable to moving down a stage. Currently, he said, many workers seem to feel that banks, financial institutions and other groups are causing their problems. Logan compares this situation to the Great Depression, when a similar mentality prevailed. Managers, therefore, need to watch for warning signs to ensure their workers don't reach the point where they think nothing matters and that anything – including violence – is justified.

Petty theft or any kind of criminal behavior, no matter how minor, indicates that an employee is in Stage 1, Logan said. These workers don't feel a situation is fair, so they rationalize that anything they do is permissible.

A less obvious sign that a worker is in danger of Stage 1 is alienation.

"When you see people at work systematically cutting every single tie they have so that they're very much alienated and alone, that's the warning sign the individual is dipping into Stage 1," Logan explained. "It's amazing how manager don't see the alienation until it's too late."

### **Solutions**

Paying attention to how coworkers interact is a simple but important way to recognize and prevent potentially dangerous situations.

"The first thing a manager needs to do is to notice these naturally occurring groups, these tribes," Logan said. "Just notice who talks to whom."

The second step is to notice the general theme employees use when they interact to determine what stage they may be in. For workers in Stage 1 who have alienated themselves from others, managers must work to draw them out. Having even one person to talk to or confide in can make all the difference for an employee in Stage 1.

“It doesn’t take a lot of people,” Logan said. “It just takes one.”

For Stage 2 employees, managers should seek out the employees who crave change and mentor them – individually, and away from the rest of the tribe – to help them transition into Stage 3. For Stage 3 tribes,

build initiatives around the values and principles workers hold dear. To encourage a shift into Stage 4, introduce employees who share the same values. Finally, to make a push for Stage 5, start asking questions about what would make history.

“If leaders focus on upgrading tribes, then they really don’t need to worry about workplace violence,” Logan said. “But we can demonstrate that workplace injuries go down, sick days go down and worker engagement goes up” when tribes ascend through the stages.

“Everybody wins when you build these higher performing stages,” he added.

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## Proposed Rule Clarifies Federal Contractors’ E-Verify Obligation

Executive Order 12989 requires federal contractors to use E-Verify to confirm the identity and work authorization of all employees working on federal contracts. The Executive Order, signed by President George W. Bush on June 6, 2008, left open a number of questions, including, for example, whether subcontractors are covered, will the Office of Federal Contract Compliance Programs (OFCCP) have a role and are there monetary thresholds for coverage. Typically, such unanswered questions are addressed in implementing regulations. On June 9, 2008, agencies responsible for administering the Federal Acquisition Regulations sent a Notice of Proposed Rulemaking to the Federal Register, setting forth proposed implementing regulations (the “Proposed Rule”).

On June 11, 2008, the Proposed Rule was published in the Federal Register. The Proposed Rule clarifies the employment eligibility verification obligations that will affect approximately 168,324 federal contractors and 3.8 million employees, including, among other things, clarification that subcontractors are covered, there appears to be no role for the OFCCP and there is a very low monetary threshold for covered contracts.

The Proposed Rule applies to federal contracts and subcontracts that include work in the United States and meet the monetary threshold of \$3,000, other than those for commercially available off-the-shelf (COTS) items or items that would be COTS items but for minor modifications. The Proposed Rule also requires contractors and subcontractors to:

- a. enroll in the E-Verify program within 30 days of a contract award,
- b. begin verifying the employment eligibility of all new employees of the contractor or subcontractor that are hired after enrollment in E-Verify,
- c. continue using E-Verify for the duration of the contract, and
- d. confirm the employment eligibility of all existing employees who are directly engaged in the performance of federal contract work.

Employees assigned to the contract must be verified within 30 days of the contract date. Thereafter, newly hired and newly assigned employees must be verified within 3 days. The Proposed Rule does not apply to any employee hired prior to November 6, 1986, since those employees are not subject to employment verification under the Immigration and Naturalization Act.

The Proposed Rule applies to:

1. solicitations issued and contracts awarded after the effective date of the Final Rule, and
2. existing indefinite-delivery/indefinite-quantity contracts for future orders if the remaining period of performance extends at least six months after the effective date of the Final Rule and the

amount of work or number of orders expected under the remaining performance period is substantial.

However, the Proposed Rule does not specify the amount of work or number of orders that will be considered “substantial” enough to trigger the contractor’s obligation to use E-Verify. In exceptional circumstances, the Proposed Rule allows the head of the contracting agency to waive the requirement to include the clause in the federal contract. The Proposed Rule does not provide examples of “exceptional circumstances” that will relieve a contractor of the obligation to verify its employees through E-Verify.

Before an employer enrolls in the E-Verify program, the employer must enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security (DHS) and Social Security Administration (SSA), agreeing to continue hiring employees lawfully and to ensure that no employee will be unfairly discriminated against as a result of the employer’s participation in the E-Verify program. Violation of the MOU by the employer can lead to termination of its participation in the E-Verify program.

Employers participating in the E-Verify program must continue to complete and retain I-9 Forms for each newly hired employee. However, employers must now require new employees to provide identity documents with photos for verification purposes.

Employers are invited to submit comments on or before August 11, 2008, by visiting the Federal eRulemaking portal at <http://www.regulations.gov>, inputting “FAR Case 2007-013” under the heading “Comment or Submission,” and selecting the link “Send a Comment or Submission.”

#### Recommended Actions

While any obligations do not become effective until a final rule is published, employers should:

- Inventory current federal contracts and subcontracts to establish which locations and employees may be impacted by this rule.
- Review current I-9 forms for any errors or missing information. Correct any forms that have not been completed correctly.
- Ensure that all personnel are trained on the proper completion and retention of I-9 forms.

Jackson Lewis is available to assist employers with any of these items.

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### **Human Resource Management & Employment Law**

Prior to entering the private sector, Steven worked in law enforcement and personnel administration for over twenty-seven years. He has dealt with employers and assisted them in resolving a wide variety of personnel problems and issues. Steven provides instruction and consulting to many Associations and Companies annually. His programs focus on all areas of HR Management.

Steven has conducted training sessions for Miami Valley Human Resource Association, Kentucky State Chapter of the Society of Human Resource Association, The National Apartment Association, The Florida State Apartment Association, The United States Department on Senior Care & Aging, The Cooperative State Research, Education, and Extension Service (CSREES) an agency within the U.S. Department of Agriculture as well as many other Associations and Companies Nationally. One of his areas of expertise is Employment Law, The Fair Credit Reporting Act, and Due Diligence in Employment Background Screening, Workplace Violence and other areas of Human Resources. Steven also speaks on Technology in today's workplace, "The Good, The Bad & The Ugly."

### **Professional Associations and Community Leadership Activities:**

- SHRM Society of Human Resource Management – Professional Membership
- SHRM Ohio State Council – State District Director – West Central Ohio
- SHRM Chapter Miami Valley Human Resource Association, – Past President, Technology Director
- Miami Valley Military Affairs Association – Past President, Technology Director, Membership Chair
- Dayton Area Chamber of Commerce
- Huber Heights Chamber of Commerce
- Main Street Piqua - Technology Director
- Piqua Area Chamber of Commerce
- Tipp City Area Chamber of Commerce - Technology Director
- Trotwood Chamber of Commerce - Technology Director
- Troy Area Chamber of Commerce – Chair of The HR Council
- Vandalia-Butler Chamber of Commerce - Technology Director



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