

OHPELRA Update

THE OHIO PUBLIC EMPLOYER LABOR RELATIONS ASSOCIATION NEWSLETTER, FALL 2010

OHPELRA President's Letter

FOR MANY PEOPLE, FALL IS THEIR FAVORITE TIME OF YEAR. The weather cools down, the leaves turn to beautiful colors, and for those moms and dads out there, the kids are back in school. I'm personally more of Spring and Summer kind of guy. I wear shorts year-round, and, yes, it is more comfortable in the Spring and Summer. I also take pleasure in the Spring blossom colors and the full green leaves of Summer.

But, Fall has its perks also. For one, I'm a huge Ohio State football fan, and for those who join with me in that group, the last ten Fall seasons have been rather enjoyable. Secondly, I absolutely enjoy Halloween. I loved it when I was a kid. I loved it as a college student. Now, as a dad myself, it's a very fun time that I share with my kids. And, the weather in the Fall isn't so cold that wearing shorts is uncomfortable, even if I do have to put a sweatshirt on occasionally.

Another perk of Fall is that it also brings OHPELRA members back together for the Fall Program. This year, the OHPELRA Board of Directors has put together a fantastic Fall Program entitled, *No Good Deed Goes Unpunished: Implementing Discipline Appropriately*. It will feature speakers Jim Sennish, providing policies and best practices for implementing discipline; Doug Duckett, discussing the emotional tools to effect discipline and strategies to avoid arbitration; and Kevin Locke and Lori Torriero, providing case reviews and other stories of disciplinary

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OHPELRA President, Kevin G. Williams (right) presenting Michael Duco (left), Deputy Director of State of Ohio Office of Collective Bargaining, the 2010 NPELRA Pacesetter Award at the Summer Program.

REGISTER NOW for the Fall Program: *No Good Deed Goes Unpunished*

THE OHPELRA FALL PROGRAM: *No Good Deed Goes Unpunished*, which will take place on October 22, 2010, will be a practicum on how to effect disciplinary action properly. Jim Sennish, Doug Duckett, Lori Torriero, and Kevin Locke will guide us through everything we need to know including proper policies and documentation, the emotional fortitude to carry through with discipline, how to avoid arbitrations in disciplinary cases, and the always appreciated war stories.

The Fall Program will be held at the City of Columbus Police Training Academy, 1000 N. Hague Ave., Columbus, Ohio 43204 from 8:00a.m. to 3:00 p.m. Please visit www.ohpelra.org for more details and to register today. An application has been submitted to the Ohio Supreme Court Commission on Continuing Legal Education for CLE credit hours for this program.

Want a Preview of the Fall Program?

CLEMANS, NELSON & ASSOCIATES AND THOMPSON HINE have submitted two excellent white papers on issues relating to discipline. CNA's *Pitfalls in Public Sector Terminations* and Thompson Hine's *Effective Disciplinary Policies and Practices*, both give sound practical advice when it comes to successfully executing your disciplinary processes.

Members — Click on [this link](#) to download your copies today. You'll want to read these articles in anticipation of the fall program or maybe you'd like to save a copy for future reference. Either way, you will enjoy!

Please have your user name and password handy when visiting www.ohpelra.org. The OHPELRA Board extends our sincere appreciation to Clemans, Nelson & Associates and Thompson Hine for their sponsorship of OHPELRA and their willingness to provide timely content to our members.



NPELRA President's message to OHPELRA members:

ONE OF MY GOALS as NPELRA President is to get members more involved at the national level, and you may have read that in some earlier communications; but I am inviting you to do the same at the local level.

One of my former directors encouraged his staff to get involved in professional organizations, on one condition — we had to be active because that was the only way to get anything out of the organization. Everyone has something to offer — you can make a difference without even knowing it. There are opportunities I am encouraging you to consider: write a newsletter article, share fact-finding/conciliation reports and/or arbitration decisions, or volunteer an event topic or to be a speaker, just to name a few.

Make a difference, get involved, and find rewards, both personally and professionally.

Janet (Campbell) Lanza

NPELRA President 2010-2011



**NPELRA President and
OHPELRA Past President
Jan J. (Campbell) Lanza**

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issues gone good and gone bad. **The Fall Program will be held October 22, 2010, at the City of Columbus Police Academy.** The welcoming table will open at 8:00 a.m. and the program starts at 9:00 a.m. So register today online at www.ohpelra.org.

The last thing I want to bring to your attention is that the OHPELRA Board of Directors met in August and planned out what I think will be a phenomenal Annual Training Conference. We should have some more detailed information to provide to you about the ATC at the Fall Program. So, make sure to set aside budget dollars and mark your calendars for the OHPELRA Annual Training Conference, February 6, 7, and 8, 2011.

So I'll see you October 22, but until then, have a wonderful Fall season, and for those of you who join with me, Go Bucks!

Sincerely,

Kevin G. Williams

OHPELRA President

OHPELRA Board Plans 2011 Annual Training Conference

THE OHPELRA BOARD OF DIRECTORS met in Erie County on August 18, 19, and 20 to plan out the 2011 Annual Training Conference. Utilizing suggested topics from past program evaluations as well as topics submitted by members and Board members, the program is shaping up to be one the best.

More information will be forthcoming once speakers are finalized, so keep watching. In-the-mean-time, mark you calendars for February 6, 7, and 8, 2011, and make sure to earmark some training budget dollars for the 2011 OHPELRA Annual Training Conference.



Summer Program Recap – Excellent Program!

THE OHPELRA SUMMER PROGRAM, *Bargaining in Unparalleled Economic Times*, was everything it was advertised to be — excellent!!! At least that is what most of the evaluations stated.

The management, union, and neutrals pulled no punches and really told us where they stand today. Get ready folks because the unions and neutrals were pretty clear that they felt times are look-

ing better. We took the opportunity to remind them, even if that is the case, the public sector revenue streams always lag behind and they needed to keep that in mind.

Another surprise the neutrals gave us was that they had not even heard of the concessions bargained by the State of Ohio in 2009 with the OCSEA union. Wow!!! We can't believe it! In any event, the union representatives and neutrals, took away as much as they presented, and that is a positive for all of us.



Pictured above, from left to right, are Arbitrators Harry Graham and Sarah Cole.



Pictured above, left to right, are Joe Hegadus, OPBA, Ron Linville, Baker Hostetler, and Marianne Steger, AFSCME. The panel discussed the current climate of bargaining from both the points of view of management and labor. June 2010



Walking into the woods in fall time. © Franky Sze



New ADA Accessibility Regulations Bring Complicated New Obligations

CAN YOUR BUSINESS ACCOMMODATE a miniature horse as a service animal or a golf cart as a mobility device used by disabled customers? Get ready, because you may have to figure out how in the next six months.

After two years of suspense, on the evening of Monday, July 26, the Justice Department published on its website the final regulations implementing the new accessibility requirements of Title III of the Americans with Disabilities Act ("ADA"). Some of the highlights of the new regulations include:

Service Animals

- The definition of service animal has been limited to only dogs trained to do work or perform tasks for a disabled individual. Emotional support or comfort animals are not service animals (however, comfort animals may still be protected under the Fair Housing Act.)
- Although snakes, ferrets, monkeys and all other wild and domestic animals are excluded, a strange exception requires accommodation of miniature horses, which are housebroken and under the owner's control, after consideration of its size, type and weight and whether the miniature horse's presence otherwise compromises legitimate safety requirements, poses a direct threat or fundamentally alters the entity's programs, services or activities.
- Businesses are allowed to make two inquiries regarding the use of a dog or miniature horse: (1) to confirm that the animal is required because of a disability (but not the type or nature of the disability) and (2) to confirm what work or task the animal has been trained to perform (documentation of training cannot be required).

Hotels and Places of Lodging

- Places of lodging must implement reservation procedures to (1) ensure that disabled individuals can make reservations for accessible guest rooms during the same hours and in the same manner as nondisabled individuals, (2) ensure accessible guest rooms are held back from general rental until all other guest rooms of that type have been rented, (3) remove reserved accessible rooms from all reservation systems, and (4) guarantee that the specific accessible guest room reserved through its service is held for the reserving customer regardless of whether a specific room is held for nondisabled guests. Excepted from the holdback requirement are individual guest rooms or other units which are not owned by or substantially controlled by the entity that owns, leases or operates the overall facility (timeshares and condo-hotels).
- Places of lodging must identify and describe accessible features in the common areas and guest rooms offered through its reservation service in enough detail to reasonably permit individuals with disabilities to determine independently whether it meets his or her accessibility needs. Newer places

of lodging built in compliance with the 1991 standards may only need to state that the facility is accessible and describe generally the types of accessible rooms available by size, number of beds, type of bathroom (such as roll-in showers) and communication features. For older facilities that are not technically or completely in compliance, such disclosures may have to include information about accessible entrances and paths of travel to guest check-in and other essential services, such as restaurants, as well as disclosure of information about accessible features in units which do not meet the 1991 standards, such as width of doors.

- The real-time ability to monitor and control the reservation of a scarce resource such as different types of accessible rooms through multiple outlet sources will create substantial industry challenges. Luckily, these requirements are not effective until 18 months after publication in the federal register.

Wheelchairs and Other Mobility Devices

- In addition to permitting use of wheelchairs and walkers, crutches, canes, braces or similar devices, public accommodations must make reasonable modifications in policies, practices or procedures for the use of other power driven mobility devices including segways, golf carts or other power, battery or fuel driven mobility device unless the public accommodation can demonstrate that the class of mobility device cannot be operated in accordance with legitimate safety requirements or is a direct threat or would fundamentally alter its programs, services or activities. Factors to be considered include: (1) the type, size, weight, dimensions and speed of the device; (2) the facility's volume of pedestrian traffic (which may vary at different times of the day, week, month or year); (3) the facility's design and operation characteristics; (4) availability of storage for the device, if requested by the user; (5) legitimate safety requirements which might permit the safe operation of the device, such as speed limits; and (6) whether such use creates a substantial risk of serious harm to the immediate environment or natural or cultural resources or poses a conflict with federal land management laws and regulations.
- A public accommodation may require a person using "another power driven mobility device" (but not a wheelchair or manually powered mobility device) to provide assurances that the mobility device is required because of the person's disability based on the presentation of a state issued proof of disability (which must be accepted) or a verbal representation not contradicted by observable fact that the mobility device is used for a mobility disability.
- Legitimate safety requirements, such as speed limits, may be imposed or even be a basis to deny such use, but such safety requirements must be based on actual risks and not on mere speculation, stereotypes or generalizations about individuals with disabilities.

Ticket Sales

- A public entity that sells tickets for events must implement procedures to ensure that individuals with disabilities have an equal opportunity to purchase tickets for accessible seating during the same periods of ticket sales and through the

Continues on next page.

same methods of distribution with the same types and numbers of ticketing sales outlets and upon the same terms and conditions (including all price categories) as tickets sold for non-accessible seating.

- Ticket sellers must be able to inform purchasers of the locations of all unsold available accessible seating for such event, identify and describe the features of available accessible seating in enough detail to reasonably permit a disabled individual to assess independently whether a given accessible seating location meets his or her needs and provide informational materials such as seating maps, brochures, pricing charts or other information that identify accessible seating and information with the same text or visual representations as information provided on other seats.
- For each accessible seating space purchased by a disabled individual, up to three (3) additional tickets in the same row that are contiguous with the wheelchair space or as close to the accessible seating as possible, must be sold upon request if available and if other purchasers can buy four (4) tickets.
- Groups including individuals with disabilities must be placed in an area with accessible seating so that the group can sit together to the extent possible. If the group must be divided, individuals who use wheelchairs cannot be isolated from their entire group.
- Tickets for accessible seating may not be released for sale to the general public until all non-accessible tickets, including luxury boxes, club boxes or suites in the same area or at the same price have been sold.
- If accessible seating season tickets are sold to non-disabled individuals, the seller must institute procedures to prevent the automatic reassignment of the accessible seating to such non-disabled person for future seasons.
- Disabled individuals must be permitted to transfer accessible seating tickets to third parties on the same terms and conditions as other non-disabled ticket holders holding the same type of ticket, whether for a single event or a series of events, and disabled individuals acquiring tickets in the secondary market must be allowed to use those tickets on the same terms and conditions as other individuals who hold a ticket acquired in a secondary market and must be allowed to exchange those tickets for accessible seating in a comparable location, if available.
- Proof of disability, such as a doctor's note, cannot be required before selling accessible seating tickets. However, the person purchasing the tickets can be asked if the purchase is on behalf of a disabled individual or if the individual purchasing has a mobility disability or a disability that requires accessible features. For series of events or season tickets, individuals purchasing accessible seating can be required to attest in writing that the accessible seating is for a person who has a disability that requires the use of accessible seating or features.
- As with accessible room reservations in the lodging industry, monitoring and managing accessible ticket sales through multiple outlets and methods of distribution in real time will be challenging and, unlike the lodging industry requirements, these policies must be implemented six months after publication in the federal register.

Miscellaneous

- There are new accessibility standards for many facilities and elements not previously covered by the 1991 standards, including amusement parks, children's play areas wherever located, marinas, gyms and exercise equipment, dressing and fitting rooms, locker rooms, golf courses, swimming pools, spas, team or player seating areas, fishing piers, playgrounds, shooting facilities, tennis courts, bowling lanes and saunas.
- New standards cover a variety of elements, such as transient lodging room dispersal, accessible seating dispersal in assembly areas and movie theaters, sales and service counter and reach ranges.
- There is no safe harbor for small businesses.
- The regulations do not create any new requirements regarding captioning at sports venues.

Safe Harbors

- Elements of an existing facility that comply with the technical and scoping requirements in the 1991 standards are not required to be modified to comply with the 2010 standards except at the time of an alteration. New construction, barrier removal and alterations between now and the 18-month compliance date can be based on either the 1991 or 2010 standards.
- There is no safe harbor for readily achievable barrier removal which does not meet the standards but which was performed in settlement of a dispute even if approved by a court.
- The safe harbor does not apply to elements of existing facilities that were not previously covered by the standards (elements for which there were neither technical or scoping specifications in the 1991 standards) and these elements, such as recreational amenities, must be modified to the extent readily achievable to comply with the 2010 standards. Thus, barrier removal obligations may require modifications now to all these elements.
- The effective date for the new regulations is six months after publication in the federal register but compliance with the 2010 standards for new construction, alterations and barrier removal and the new room reservation system requirements for places of lodging do not become effective until 18 months after publication.

Conclusion

Since many of the new requirements are effective in about six months, businesses should begin now to evaluate necessary changes in current policies for compliance. Some of the most complex requirements are delayed for 18 months, but consideration of long-range action steps for barrier removal and other compliance obligations should start now.

If you have any questions about these regulations or how they may impact your organization, please contact any member of the Baker Hostetler's Employment and Labor Team. This Article was contributed by Dan Guttman, Partner, Baker Hostetler, Sponsor, with permission of the firm and its authors Rosemary O'Shea, Joyce Ackerbaum Cox and Brian C. Blair.

Please Welcome All New OHPELRA Members

SINCE THE LAST ISSUE OF *OHPELRA UPDATE*, the following new members have joined OHPELRA and NPELRA. Welcome to our organization, and we hope to see you at our next event!

Martin Bramlett, Director of Labor Relations & Employee Development, Youngstown State University

Drusilla Collins, Human Resources Analyst, City of Columbus

Valerie Dilley, HR Assistant, City of Circleville

Eric Dodrill, Highway Superintendent
Perkins Township

Bill Greenwalt, Assistant Fire Chief, Jefferson Township

Lynn Hargrave, Office Manager, Perkins Township

Jack Hunter, President and Sponsor, Hunter Consulting

Geneva Mason, Human Resources Director, TARTA

Ursula McDonnell, Labor Relations Manager, City of Cincinnati (Renewal)

Pam Meihls, Director of Management Services, Allen County Children Services (Renewal)

Jason Mielke, Account Executive and Sponsor, United Healthcare

Latricia Milhouse, Employee and Labor Relations Specialist Wright State University

Valerie Nash, Deputy Director of Human Resources, Stark County Job and Family Services

Wendy Sergent, Account Manager and Sponsor, Corvel

Tonya Turner, Human Resource Officer, Montgomery County DJFS-Children Service Division

Tod Wammes, Benefits Manager, Akron Public Schools

Alisha Wilson, Human Resources Assistant, City of Fairfield



OHPELRA Board of Directors

Kevin G. Williams – President

Human Resources Officer, Columbus Public Health Department

Brooke K. Carnevale – Vice President

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Douglas E. Duckett, Esq. - Secretary

Consultant and Trainer, NPELRA Past President

Laura Joy Campbell – Treasurer and NPELRA Board Member

Assistant Director of Human Resources, Butler County

Marsha Jordan-Smart - Immediate Past President

Retired Human Resources Director, Greene County Office of Personnel

Janet J. Campbell – NPELRA Board Member

Labor Relations Manager, City of Columbus

Kristen M. Treadway – Conference Coordinator

Director of Human Resources, City of Gahanna

Maurice J. Evans – Board Member

Human Resources Analyst, City of Dayton

Todd Hunter – Board Member

Human Resources Manager, Dept. Public Safety, The Ohio State University

James W. Keating – Board Member

Director of Human Resources, Trumbull County Board of Commissioners

Andrew R. Votava, Esq. – Board Member

Director of Organizational Development, Fulton County Board of Commissioners

Help Us Serve You –

Update Your Information Today

OHPELRA AND NPELRA ARE COMMITTED TO PROVIDING YOU the most up-to-date training and information as possible. In order to continue to provide these services, we ask that you visit the OHPELRA website at www.ohpelra.org and check your membership information. If your information is current – great!!! We can continue to provide you timely information. If your information is not up-to-date, please update it on-line at the website. **And, please, if your e-mail address is not included, please enter it.**

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