



**WSHRMA**

West Sound  
Human  
Resource  
Management  
Association

West Sound Human Resource Management Association

# West Sound Happenings

August 2006

*Save The  
Date*

## Monthly Luncheons

There will be no  
August luncheon  
meeting.

Half Day Conference  
11/08/06

Holiday Luncheon  
12/13/06

Look for details soon!



Please continue to check  
our website at  
[www.wshrma.org](http://www.wshrma.org)  
for updated information  
on the above events.



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CHAPTER  
2005**

## **WSHRMA MONTHLY LUNCHEON**

*An Executive Overview -  
Workplace Ethics & Compliance*

**SILVERDALE BEACH HOTEL**

**SEPTEMBER 13, 2006**

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**TACOMA MALL**

### **Keep Your Company in Compliance and Out of Jail for Ethics Violations**



The myriad of new laws related to workplace ethics is complex and challenging. Moreover, the new federal sentencing guidelines make clear that organizations can be found criminally and civilly liable for the ethical misdeeds of their employees -- even despite the organization's best efforts to prevent wrongdoing in its ranks! Indeed, individual criminal liability may be imposed on an executive even if he or she did not know that corporate transgressions violated the law.

But there is good news! The sentencing guidelines and related statutes such as SOX establish detailed ethics and compliance guidelines by which the risk of

**Sept 13 Program—Cont. Page 3**

**RSVP by September 8, 2006**

Date: September 13, 2006  
Time: 11:45 a.m. to 2:00 p.m.

**NOTE EXTENDED TIME**

Price: \$20.00 Member\*  
\$30.00 Non-Member\*

RSVP: [wshrma@artanderson.com](mailto:wshrma@artanderson.com)  
360-479-5600 x2265

\*Add \$10 with no reservation. Cancellations must be received at least 2 days prior to receive refund.

**SILVERDALE BEACH HOTEL**

3073 NW Bucklin Hill Road  
Silverdale, WA 98383

**360-337-8800**

**HR**

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LEADING ORGANIZATIONS**

## IN THE NEWS - SHRM.ORG



### Become A Member

Are you interested in a SHRM Membership or transferring your membership to our chapter? Please give Linda Corpe, VP of Membership a call with any questions: 360-373-2686 or e-mail to [lcorpe@amiinter.com](mailto:lcorpe@amiinter.com)

### AFFILIATE OF



### Job Bank

Please check out our website at [www.wshrma.org](http://www.wshrma.org) for current job openings. If you would like to advertise an open HR position in the WSHRMA job bank, please contact Debbie Laudenslager at 360-415-6533 or e-mail to [dlaudenslager@kpshealthplan.com](mailto:dlaudenslager@kpshealthplan.com)

### SHRM launches online career guide

The Society for Human Resource Management (SHRM) has created an interactive, online tool to help its members plan and develop their careers.

Called the SHRM HR Career Guide, the tool was announced at the opening general session of the SHRM Annual Conference by SHRM CEO and President Susan R. Meisinger, SPHR. It can be found at [www.shrm.org/hrcareerguide](http://www.shrm.org/hrcareerguide).

Available free, but only to SHRM members, the tool was developed because members have expressed interest in gaining a better understanding of their career progression within the HR field.

“I’m excited about a new member benefit we’re launching,” Meisinger said. “The new career guide will allow you to assess where you are in your career and look at where you want to be tomorrow and how SHRM can help you get there.”

The guide provides a customized path for members based on a number of factors, such as the participant’s education level and organization size. It identifies positions in an organizational chart that would be the next logical career step, as well as positions that would be stretch goals.

Beyond identifying the next step on the career ladder, the career guide spells out what the job entails. For example, if becoming a recruiter is identified as a logical next step in a professional’s career, the tool describes the job’s responsibilities, such as interviewing, testing and referring applicants for positions. The career guide notes key skills such as interviewing techniques and essential knowledge such as a basic understanding of the organization’s structure.

The guide outlines preparation for the role, such as necessary education levels and required and preferred experience. It lists key accountabilities, such as conducting employment verifications. It notes challenges, including handling sudden turnover and keeping up-to-date on market conditions. Key competencies, like personal credibility, are outlined. And the guide lists developmental opportunities, such as SHRM Academy courses and the SHRM seminar series.

Ultimately, the career guide generates an action plan based on the SHRM member’s unique circumstances.

The system was created with the help of a consulting firm that did research, was refined after presentations to focus groups, “and we took it from there,” said Tom Melanson, SHRM’s manager of e-learning.

SHRM members can seek help with the career guide through SHRM’s e-Learning Hotline at (703) 535-6420 or by sending an e-mail to [elearning@shrm.org](mailto:elearning@shrm.org).

### West Sound Workforce Readiness Survey

**If you haven’t had a chance to complete the West Sound Workforce Readiness Survey there is still time. Go to [WSHRMA.org](http://WSHRMA.org) and click on the survey link found on the home page.**

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corporate liability for ethical misdeeds can be substantially reduced. These standards apply to all organizations, not just publicly-traded companies, and require periodic training on workplace ethics and compliance. Now, by being proactive, taking preventive steps and complying with the guidelines established by these new laws, HR professionals, executives and managers can dramatically decrease the likelihood of being penalized for a corporate ethics violation.

This session will address some of the more serious challenges facing a modern organization, such as: which corporate practices pose the greatest ethical risks; who is responsible for maintaining an ethical workplace; and, what are the best methods to ensure comprehensive ethical compliance?

In an engaging and informative presentation, our attorney-speaker will review the key laws driving an organization's ethics compliance efforts and will set forth practical steps for achieving compliance accountability at the highest organizational levels.

Please join us and guest speaker, Katherine Cooper Franklin, as we examine practical ways to understand the new web of ethics laws and to learn innovative ways to avoid the hazards of civil and criminal liability that lurk within this developing legal tapestry.

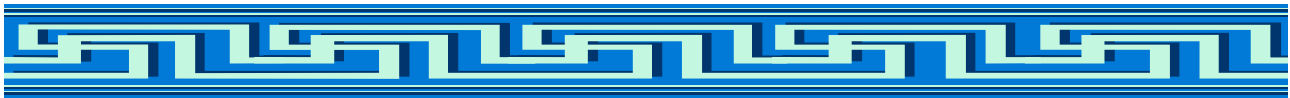
**Guest Speaker: Katherine Cooper Franklin**  
**Little Mendelson**  
**701 Fifth Avenue, Suite 6500**  
**Seattle, Washington 98104-7097**  
**(206) 623-3300 [kfranklin@littler.com](mailto:kfranklin@littler.com)**

Ms. Franklin represents employers in all types of employment litigation and provides counsel on a variety of employment law matters. She is an experienced litigator and trial attorney, representing employers in wrongful discharge and discrimination litigation for more than 20 years. Ms. Franklin has successfully advised clients in the implementation and maintenance of proactive employment practices. She has extensive experience investigating harassment, workplace discrimination for both public and private employers.

<sup>1</sup> U.S. Sentencing Guidelines, § 8B2.1(b)(4)(A)

<sup>2</sup> Organizational Guidelines Overview, Paula Desio, Deputy General Counsel, United States Sentencing Commission

<sup>3</sup> See, e.g., June 1, 2005 DOJ Opinion Letter; United States v. Dotterweich, 320 U.S. 277 (1943).



### HRCI STUDY GROUP

The WSHRMA study group for the Human Resource Certification Exam will begin meeting again mid-September at Olympic College. If you are interested in joining the group contact Annie Davis at 360-479-0781 or e-mail [Adavis@oc.ctc.edu](mailto:Adavis@oc.ctc.edu)

You may access detailed information on the HRCI exams, including cost, application process, registration deadlines, and other valuable information by visiting the website [www.shrm.org/hrci](http://www.shrm.org/hrci). You must be a SHRM member to be eligible to participate in the WSHRMA study group.

Fees: WSHRMA members— free.

All other SHRM Members (at large and other chapter members)— \$125 for the Winter/Spring Session



## LEGISLATIVE UPDATE AUGUST 2006

### **Reduce Your Risk of Costly Fines and Penalties of Non-Compliance!**

Learn all you need to know about OSHA at the OSHA 10-hour certification course, Sept. 13-14, Woodland Park Zoo, Seattle, 9 a.m.-3 p.m. Registration begins at 8:30 a.m. Standard fee is \$149. Register online at [www.awb.org/events/seminars/osha10hrcert.asp](http://www.awb.org/events/seminars/osha10hrcert.asp).

### Your support is needed on pension reform legislation

Last month the differences between H.R. 2830 and S. 1783 pension reform bills were reviewed. SHRM has asked for our support to ensure that these key tenets are included in the conference report:

EGTRRA permanency to assist employees with saving more through employer-sponsored plans and IRA's, and to ease portability between plans. Without action, these provisions would expire in 2010.

SHRM feels that fiduciary protections against liability should be worded broadly to allow plans to provide investment advice.

Automatic enrollment- both bills contain provisions allowing for automatic enrollment in defined contribution plans requiring a minimum 3% employee contribution.

Flexible spending accounts- the house bill may allow revision of Section 125 to permit some limited carry forward of \$500 of unused FSA funds or a rollover into a Health Savings Account.

The Health Information and Technology Promotion Act was passed on July 27, 2006 and is designed to expedite the use of health information technology leading to potential cost savings and improved coordination of care. The bill establishes a National Coordinator of Health Information Technology under the Department of Health and Human Services. It also provides "safe harbor" from certain prohibited payment restrictions. The bill also includes provisions to amend the Social Security Act to provide for uniform confidentiality and security standards regarding patient health information.

On June 21, 2006, Senator Edward Kennedy (D-MA) offered an amendment to S. 2766 to amend FLSA to incrementally raise the hourly minimum wage by \$2.10. This and other federal minimum wage amendments ultimately failed as neither received the 60 votes required for passage. Watch for additional developments this year.

On June 28, 135 SHRM members from over 40 states convened on Capitol Hill to meet with officials advocating SHRM positions on immigration and pension reform legislation.

To write your elected official, follow these steps:

Log onto SHRM online at [www.shrm.org](http://www.shrm.org)

Sign in using your member number and last name

Click on "governmental affairs" and go to "HRVoice"

Choose "write your elected officials."

Click on "urge members to pass comprehensive pension legislation" (or other topic) under "take immediate action on these hot issues."





## HR NEWS - COURT REPORT

### 6th Circuit: Merger is not a necessary precondition to FMLA successor liability

By Lawrence Peikes

A merger or transfer of assets is not a precondition to successor liability under the Family and Medical Leave Act (FMLA), the [6th U.S. Circuit Court of Appeals](#) held.

Ronald Cobb began working in 2000 for Byrd Trucking, a contractor with the U.S. Postal Service (USPS). Byrd's mail delivery route spanned from his home in Mount Sterling, Ky., to a post office depot in Philadelphia and then to Illinois. In June 2003, Contract Transport Inc. outbid Byrd for the USPS two-year contract. The contract explicitly specified the truck type to be used for mail transport; hiring criteria for drivers; and employee wages, hours and benefits. Contract Transport hired a majority of Byrd's former drivers, including Cobb. The only substantive change in Cobb's day-to-day employment was that he received work assignments from a Contract Transport dispatcher located in Des Moines, Iowa. In every other respect his routes, pickup locations and relay points were unaltered.

In the fall of 2003, Cobb began to experience stomach pain, and on Dec. 22, 2003, he had surgery to remove his gallbladder. After learning of his diagnosis on Dec. 19, Cobb contacted his dispatchers, who instructed him to notify human resources. On Dec. 29, Cobb informed HR that he was unable to work and had been afflicted for the preceding 10 days. HR sent him short-term disability paperwork, along with a memorandum of termination indicating that Contract Transport considered Cobb to have voluntarily resigned on Dec. 19 when he "[m]ade himself unavailable for work." Cobb filed an FMLA claim against Contract Transport in state court; the case was subsequently removed to district court. Contract Transport moved for summary judgment on the basis that the plaintiff was not an eligible employee under the FMLA because he had been employed by it for less than 12 months and the population of the Mount Sterling worksite was below the 50-employee threshold for FMLA coverage.

The district court granted the motion, rejecting Cobb's contention that Contract Transport was a successor to Byrd and that he was therefore eligible for FMLA benefits by virtue of having been employed for a total time well in excess of a year. The court determined there was a lack of continuity of ownership or control without a merger or transfer of assets. In a case of first impression, Cobb successfully argued on appeal to the 6th Circuit that a merger or transfer of assets is not a precondition to successor liability under the FMLA. For purposes of analysis, the court adopted the equitable labor law notion of successorship applicable to Title VII cases, as opposed to the more formal, antifraud-driven concept under corporate law.

This approach comports with the FMLA regulations, which incorporate the successor-in-interest test from Title VII case law. The regulations provide a list of factors for courts to consider in deciding whether a successor in interest exists. Notably absent from that list is any reference to a merger or transfer of assets. The 6th Circuit reasoned that the duty to provide FMLA leave is rooted in statutory language and an employee's tenure, and bears no relation to the company's physical assets. As such, a transfer of assets or merger is not always a precondition to imposing FMLA obligations, although it may be a factor for consideration.

Examining the facts of the case, the court found successor liability was appropriate based on other relevant factors. Only Cobb's management, and not his job functions, changed—it was as if he worked for USPS and not one particular trucking company. Moreover, under FMLA regulations, Cobb's worksite was Des Moines, the source of his daily assignments, where more than 50 employees worked. [Cobb v. Contract Transport Inc., 6th Cir., No. 05-6196 \(June 28, 2006\)](#).

**Professional Pointer:** Companies finding themselves in the position of hiring employees from a prior source to perform virtually identical job functions need to be wary of the past acts, practices and recordkeeping of the prior employer. Some protection can be had by including an express provision relating to the nonassumption of liability for pending charges as well as an indemnification provision whereby the predecessor indemnifies the successor for damages resulting from such claims. However, under *Cobb*, for FMLA qualification purposes, companies must examine continuity of service for workers in its employ.

*Lawrence Peikes is an attorney with the firm of [Wiggin and Dana LLP](#) in Stamford, Conn.*

**Editor's Note:** *This article should not be construed as legal advice.*

West Sound Human Resource  
Management Association  
PO Box 1285  
Bremerton, WA 98337



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