

- 2... The Modern Partnership: In-house and Outside Counsel
- 3... The Most Significant Legislation for In-House Legal Departments Since...
- 5... The Laws They Are A-Changin'
- 7... Recent Developments in LGBT Employment Discrimination Cases
- 9... Pumpkin spice latte? Check. Favorite Browns sweatshirt? Check. Annual flu shot? Ummm...
- 10... NEO CHAPTER NEWS
- 12... Board Members and Contacts

FOCUS

President's Message

Jeffrey Lauderdale



Dear Northeast Ohio Chapter Members:

It has been an honor to serve as Chapter President for the 2018 – 2019 year. On October 1, I handed over the Presidential baton to my successor, Bruce Martino. He is looking forward to working with you, the Board of Directors and our sponsors.

While we may be starting a new year internally, ACC NEO still has a lot planned for the balance of 2019, including several CLE and pro bono programs, two RoundTables, ACC's Annual Meeting in Phoenix, a winter social, and much more.

We're able to have such a full calendar of activities because of our wonderful sponsors. We also have a great issue this quarter thanks to articles by three of this year's sponsors: Frantz Ward, Jordan Lawrence/Exterro, and Littler Mendelson. And this issue also features ads from Bloomberg Law, Donnelley Financial Solutions, Epiq, and Littler.

I have one last request to you as outgoing President: Please help us maintain a strong relationship with ACC NEO sponsors. Tell them when you've especially enjoyed a program they presented or article they authored. Consider engaging them when you are searching for outside counsel or law department service providers. And when you are working with Chapter sponsors, please let them know you appreciate their support. And if you should you engage firms that are not Chapter sponsors, do let them know about our activities and ask them to consider supporting us.

On behalf of the ACC NEO Board of Directors, thank you for your continued membership in the Northeast Ohio Chapter of the Association of Corporate Counsel (ACC). We look forward to seeing you again soon.

Regards,
Jeff

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The Modern Partnership: In-house and Outside Counsel

By Cathy Landman and Margo Wolf O'Donnell

As lawyers take on increasingly sophisticated business advisor roles in today's marketplace, the partnership between in-house and outside counsel has become more important than ever. And while every lawyer wants to provide the best possible service to the client, the practical steps for achieving outstanding service in this context are not always clear. Drawing on our shared experience, we have identified four key steps lawyers on both sides of this relationship can take to help them build their credibility and deliver solutions that advance their business.

1. Develop a commercial point of view, and base the legal strategy on business goals

So many skilled lawyers bring a nuanced understanding of the law to their work, but when it is time to apply that knowledge and counsel to the company's business strategy, they have difficulty bridging the divide between the worlds of law and business. The key to becoming a valued business advisor and in-house lawyer is understanding not just the legal risks for the company on a given matter, but also the interplay between those risks and the company's larger business goals.

In a legal practice, that means having a conversation early on to ensure an understanding of the desired result. And that conversation needs to continue as a matter unfolds and new information comes to light.

An understanding of what the company is trying to achieve — where they are now and where they want to be — should drive the legal strategy and lead you to the legal remedy that furthers those goals. That may mean litigating or not, finding a resolution outside of litigation, or coming at the problem from another angle, such as a new approach to a deal or contractual language.



2. Educate each other and constantly reflect on what you are learning

It is crucial for both sides of this partnership to make time to educate each other — for the outside counsel to educate the client on the most pressing legal issues they may face, and for the in-house team to educate the outside counsel on how their business works. To facilitate communication that extends beyond just the discovery phase, develop a work process that includes shared folders, files, timelines, and project plans, and encourage both teams to check in regularly.

Designate time for reflection at important milestones throughout the project so that the in-house and outside teams may ask of themselves and each other what they have learned and how it might alter the goals or process going forward. Finally, make sure both teams are speaking the same language by using the right tools and a shared vocabulary.

While written word is the order within law firms, the business community tends to rely on tools like PowerPoint for communication. Sometimes translating a lengthy document into a more visual mode can facilitate understanding and even yield creative, new solutions to the problem.

Always be thinking not just about communication between the inside and outside teams, but also how to enable the in-house team to present ideas to their internal clients, the business leaders.

3. Build a shared roadmap that can evolve, and demonstrate good judgment

The in-house counsel is continuously juggling big priorities with the day to day responsibilities of the job. The best outside counselors help their clients anticipate what is on the horizon and determine whether the current approach and practices will put the company on the right trajectory.

Timeliness is an important factor in building a workable roadmap. Good business advisors understand how to foreshadow what is to come so business leaders have time to digest information and then decide. The partnership also depends on crystal clear communication and a willingness to use technological tools to improve efficiency.

Because skillful navigation involves looking both at your feet and the path ahead, teams must constantly be asking what's coming next, what's the precedent if we do X, and what are the potential costs and benefits? This is where creative problem solvers can demonstrate significant value. Nothing beats good

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continued from page 2

judgment, a great strategy, and a thoughtful plan to execute it.

4. Move beyond a transactional mindset and nurture the relationship

Good client service cannot be merely transactional, so outside counsel can truly demonstrate their worth by providing value outside the billable hours. That means making time to learn their client's business, conduct on-site visits, and make themselves available as a resource. It's also important for other members of the outside team beyond the billing partner — including associates and paralegals — to take ownership of the work.

The in-house counsel can create these connections by inviting everyone on the team to an on-site visit to learn the business and understand the goals of the project. This is an investment in the outside team, which is just an extension of the in-house team, and the work will be more efficient and effective if everyone works together as one entity. The complex legal matters businesses face today require that everyone is on board and invested in achieving the optimal outcome.

In-house and outside counsel see legal and business challenges through distinct lenses that are shaped by their respective training and approach to problems.

We need both perspectives to create innovative legal strategies. By embracing the key steps we have outlined above, lawyers can build a thriving, long-lasting inside-outside partnership that yields creative solutions for the company and its outside partners.

Authors:

Cathy Landman is the chief legal and human resources officer at Corelle Brands.

Margo Wolf O'Donnell is the partner and co-chair of the labor and employment practice group at Benesch.

The Most Significant Legislation for In-House Legal Departments Since...

By Bobby Balachandran

Are you ready for the most significant piece of legislation since the enactment of the FRCP? Because the California Consumer Privacy Act (CCPA) is coming, whether you're ready or not, on January 1, 2020. (And ten more states will soon follow suit with similar, but different, regulations.)

That brings me to my next question: Do you know how long it will take to fulfill a single data subject access request (DSAR) as required by this regulation when the CCPA goes into effect? They require more resources than you might think, and you must complete everything within 45 days. According to a recent Gartner survey, 83% of respondents "needed a full working week or more time to respond to each single request."

What will you do if you get 10 requests? 100? 1000? You would need to process 22 complete requests per day to meet the demand from 1,000 requests. How many employees can you afford to devote to this task?

People and process are important but to handle the CCPA you'll need technology to manage these DSAR requests. Here are the five primary requirements that a technology solution must have to effectively solve this challenge:

Requirement #1: DSAR Portal

A portal for requestors to file DSARs is the starting point. But it should be more than just a user-friendly online interface. It needs to route as many requests as possible directly into the fulfillment workflow and facilitate ID verification.

Requirement #2: Automate the DSAR Workflow

Automate (as much as possible) which will empower you to effectively manage this workflow. This automation isn't really optional; it's a necessity given the volume of requests you can expect.

Requirement #3: Data Inventory/ Data Map

The backbone of an effective DSAR process is having an accurate, comprehensive data inventory. It gives you the ability to find all relevant information in your control and the ability to easily update this inventory as your company evolves.

Requirement #4: Find, Collect, Process and Produce Requested Data

This is a big one that most DSAR products don't have - acting on the data. That starts with examining requested data

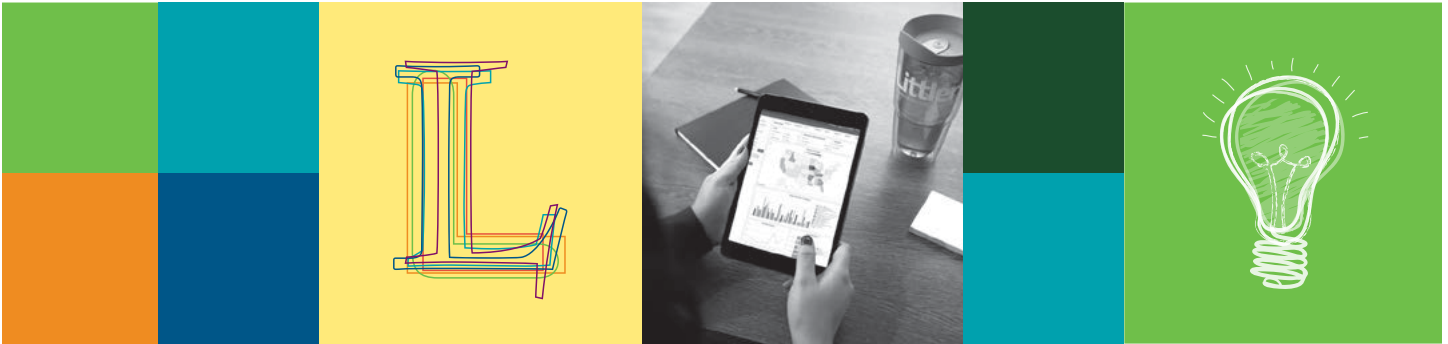
before collecting it, but it also includes knowing retention schedules, data volumes across disparate locations, third parties accessing the data, and where duplicate data is stored. You'll need to be able to remediate data, whether that means to move it to where it belongs, to delete it, or to lock it down for preservation due to an internal investigation or legal hold.

Requirement #5: Minimize Data Storage to Reduce Risk

A sensible program of data minimization, supported by ongoing data retention policies combined with the ability to cross reference all the litigation holds, can further reduce the risk posed by GDPR, CCPA, and other privacy regulations.

The challenges of this new age of data privacy are many. But for organizations with the right technology and processes in place, they can easily be addressed

Author: Bobby Balachandran is the President and CEO of Exterro, the leading provider of e-discovery and information governance software specifically designed for in-house legal, privacy and IT teams at Global 2000 and Am Law 200 organizations. He may be reached at bobby.balachandran@exterro.com.



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The Laws They are A-Changin’

By Pat Haggerty

For people old enough to remember the Summer of Love (1967), Woodstock (1969) and President Nixon’s “War on Drugs” (1971), the current events surrounding the cannabis industry present a fascinating social phenomenon, with numerous and far reaching legal issues. And we are only getting started.

A recent Gallup Poll showed that young men and women (18-29) are more likely to smoke marijuana than cigarettes or e-cigarettes. A Pew Poll showed that 62% of all Americans (74% Millennials, 63% of Gen X, and 54% Baby Boomers) favor legalizing marijuana.

These numbers help to explain why 11 states and the DC have legalized the “adult” (f/k/a “recreational”) use of marijuana in the last 7 years. Medical marijuana is legal in 33 states. Ohio’s 2016 Medical Marijuana Law regulating cultivators, processors, testing labs and dispensaries is still being rolled out. The first cultivator facility opened in October 2018. A year later, Ohio has 64,000 registered patients who have purchased \$32 million of medical marijuana for treatment of 21 qualifying conditions ranging from chronic pain to cancer.

All of this must be seen in the context of federal law, which prohibits the use of marijuana because it is a “Schedule 1” drug under The Controlled Substances Act of 1970. To be a Schedule 1 drug, the drug must have “no currently acceptable medical use in treatment in the United States” and present a “high potential for abuse.”

Yet, despite the federal law, the cannabis industry is booming. Analysts predict the market will be in excess of 31 billion by 2022. (By comparison, beer sales were 35 billion in 2018.)

This meteoric rise is not likely to stop. Perhaps due to the demographics, or the dollars, there are numerous bills making their way through Congress. The bill that has advanced the farthest is the Secure and Fair Enforcement Banking Act of 2019 (The SAFE Act), which passed

the House in September and has 32 sponsors in the Senate. This law would allow financial institutions to provide services to individuals and businesses that operate within the laws of their respective states without the threat of federal enforcement actions. At the present time, the cannabis industry relies on a tremendous amount of cash transactions. Recently, certain credit unions have entered the area. With the passage of The SAFE Act, the industry will become even more mainstream.

Two other bills, introduced by Democratic presidential candidates, have less chance of making an immediate impact. For example, Senator Kamala Harris and Congressman Jerry Nadler have offered the Marijuana Opportunity Reinvestment and Expungement Act (The MORE Act) to completely decriminalize and tax marijuana. The proposed law would also expunge marijuana related convictions and offer various grants to minority owned businesses. The bill’s declared purpose is to eliminate the “structural racism” involved in the “War on Drugs” initiated by President Nixon. Senator Cory Booker has advanced the Marijuana Justice Act, with similar aims. This proposal is co-sponsored by Bernie Sanders, Kirsten Gillibrand and Michael Bennet.

Senators Elizabeth Warren and Cory Gardner have introduced The STATES Act (Strengthening The Tenth Amendment Through Entrusting States) which is intended to codify and strengthen the various spending riders that have prevented the Department of Justice (DOJ) from using certain funds to



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enforce federal marijuana laws in states with regulated programs. These riders, often referred to the Rohrabacher Amendments, have restricted the DOJ since 2014. Presently, Ohio Congressman David Joyce sponsors these riders.

The Agricultural Improvement Act, sometimes referred to as the 2018 Farm Bill (The Farm Bill) or “Hemp Act,” passed Congress, was signed by the President and is now law. The law removed hemp (defined as cannabis with less than 0.3% of the psychoactive agent THC) and its derivatives from the definition of marijuana in The Controlled Substances Act. One day this will serve as the impetus for the widespread use of industrial hemp in products ranging from clothes to concrete. Immediately, it catapults CBD (the non-psychoactive element in cannabis) into the national spotlight. According to the Food & Drug Administration (FDA), CBD is a drug that needs to be regulated. It is not yet legal under federal law, but likely that 3/5 readers of this article use or know someone who uses CBD oil, or creams, or other products. The former Commissioner of the FDA said it would be 3-5 years before regulations could be put in place after passage of The Farm Bill. The Acting Commissioner recently suggested the FDA is working hard to make this happen much sooner.

continued on page 6

continued from page 5

Ohio passed its own Hemp Act, which was signed by the Governor in July. Passage of the law is immediately likely to result in more CBD products in your local drugstore. This law allows for the regulation of CBD by the Ohio Department of Agriculture, which is likely to adopt regulations that are consistent with the FDA.

The industry presents more than just a cultural phenomenon, legal practices are booming and the work is being done by firms of all size. At present, the legal work involves employment issues, corporate formation, administrative law, commercial contracts and compliance with state regulations.

The influx of lawsuits contesting various claims in commercial contracts originally gave rise to defendants asserting the complete defense of “illegality” that has given way to a more measured approach of allowing courts “to enforce a contract in a way that does not require illegal conduct.” *Mann v. Gullickson* (N.D. Cal. 2016).

There was some initial confusion over whether patent infringement cases could be pursued. The first such case was filed in 2018 and is proceeding along traditional lines. A number of product liability lawsuits, including class actions, have been filed advancing claims of improper testing, inadequate warnings and mislabeling. Predictably, these claims and

suits have resulted in insurance coverage issues.

The first state to allow medical marijuana was California in 1996. In 2012, Colorado and Washington passed laws allowing for recreational use. What at first seemed like a novelty or an outlier is now approaching a tipping point which will certainly affect us all, either personally or professionally. Or both.

Author: Pat Haggerty is the Chair of the Litigation Practice at Frantz Ward and created the firm’s Cannabis Law and Policy Group in 2014. His parents would not allow him to go to Woodstock. Pat can be reached at phaggerty@frantzward.com or (216) 515-1605.



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Recent Developments in LGBT Employment Discrimination Cases

By Jennifer Orr

One of the emerging trends in employment litigation is the increase in claims of employment discrimination on the basis of an employee's lesbian, gay, bisexual, or transgender status.

Increasingly, state and local governments are enacting legislation designed to protect LGBT individuals from discrimination. This, along with the Equal Employment Opportunity Commission's willingness to accept claims of LGBT discrimination has naturally spurred an increase in litigation.

Title VII of the Civil Rights Act of 1964 does not explicitly outlaw discrimination on the basis of sexual orientation or gender identity. However, the issue of whether Title VII's prohibition of discrimination on the basis of sex provides federal protections to LGBT individuals has been widely debated. The Equal Employment Opportunity Commission has taken the position that Title VII's prohibitions against discrimination on the basis of sex does protect LGBT workers, while the Department of Justice under the Trump administration holds an opposing view. Advocates on both sides of the issue have increasingly asked courts to define the bounds of Title VII with regard to LGBT individuals in the workplace, and courts recently have split on whether or

not such employees are entitled to protection under Title VII, and to what extent.

In order to address this division, the United States Supreme Court recently accepted three companion cases on the issue. The High Court's decision on these cases should provide employers with some clarification on what federal protections apply to their LGBT employees and job applicants.

The first two cases, one from New York and one from Georgia, address whether discrimination against gay and lesbian employees constitutes sex discrimination under Title VII. Each court reached a different result. In *Altitude Express v. Zarda*, No. 15-3775 (Feb. 28, 2018), the United States Court of Appeals for the Second Circuit, sitting en banc, agreed with the EEOC and found that Title VII's prohibition against discrimination on the basis of sex also includes discrimination based on sexual orientation.

In *Altitude Express*, Donald Zarda, a gay male skydiving instructor, would often reference his sexual orientation with female clients in order to alleviate any concerns they might have about being strapped hip to hip with a man for their skydive. After a female client complained that Zarda had touched her inappropriately and used his sexual orientation to excuse his behavior, Zarda was fired. Zarda denied the client's allegations and claims his employer fired him only because of his sexual orientation. The Second Circuit found that sexual orientation discrimination was necessarily motivated at least in part by an individual's sex, because such discrimination is based upon assumptions of how members of a certain sex should or should

not act with regard to their romantic relationships. Therefore, the court found that this type of discrimination was a subset of sex discrimination under Title VII.

In contrast to *Altitude Express*, the Eleventh Circuit reached the opposite result in *Bostock v. Clayton County*, No. 17-13801 (May 10, 2018), finding that discrimination on the basis of sexual orientation was not protected by Title VII's prohibition against sex discrimination. Gerald Bostock, a gay man who worked for the Clayton County, Georgia juvenile court system, alleged that after his employer learned of his participation in a gay recreational softball league, it falsely accused him of mismanaging public funds as a pretext to terminating his employment because of his sexual orientation. The Eleventh Circuit declined to overturn prior Circuit precedent finding that such claims were not actionable under Title VII and affirmed the district court's dismissal of Bostock's discrimination claim.

The Supreme Court also agreed to address the issue of transgender discrimination in a case coming out of the Sixth Circuit Court of Appeals, *R.G. & G.R. Harris Funeral Homes, Inc. v. Equal Employment Opportunity Commission*, No. 16-2424 (Mar. 7, 2018). In this case, Aimee Stephens worked for R.G. & G.R. Harris Funeral Homes, Inc. as a funeral director. After Stephens informed her employer that she intended to transition from male to female, and to present herself as a woman at work, the funeral home terminated her employment. The Sixth Circuit found not only that Stephens' employer had violated Title VII because it terminated her for failing to conform to sex stereotypes, but also held that firing an employee because of their transgender or transitioning status constituted sex discrimination in violation of Title VII.

Given the current conservative composition of the Supreme Court, some may believe the results are a foregone con-



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continued on page 8

continued from page 7

clusion and that the Court will side with the Department of Justice and find Title VII does not prohibit discrimination against LGBT employees. However, others believe that the Court may side with the EEOC and a number of lower courts, which have found discrimination based on LGBT status is discrimination based on sex and violates Title VII. Regardless, these are cases to watch for any employer, particularly employers that are located in areas that do not currently have local or statewide laws that address the issue.

LGBT individuals employed by the State of Ohio are protected from discrimi-

nation. However, for Northeast Ohio employers in particular, it is important to remember that while Ohio state law does not explicitly prohibit discrimination on the basis of sexual orientation or gender identity for non-state workers, more and more local governments (including Cuyahoga County, Cleveland and others) are passing ordinances that protect LGBT employees from discrimination. Moreover, until the Supreme Court weighs in on R.G. & G.R. Harris, discrimination based on gender identity is presently illegal in the Sixth Circuit, which covers the State of Ohio.

These cases are set for argument on October 8, 2019, and the Supreme Court will likely issue its decision sometime in the first half of 2020. In the meantime, employers should continue to monitor the development of state and local laws and review any policies and practices for compliance.

Author: Jennifer Orr is an Associate with Littler Mendelson, a labor and employment law firm in downtown Cleveland. Jennifer provides employers with advice and counsel on a variety of labor and employment issues arising under state and federal law. She may be reached at jorr@littler.com.

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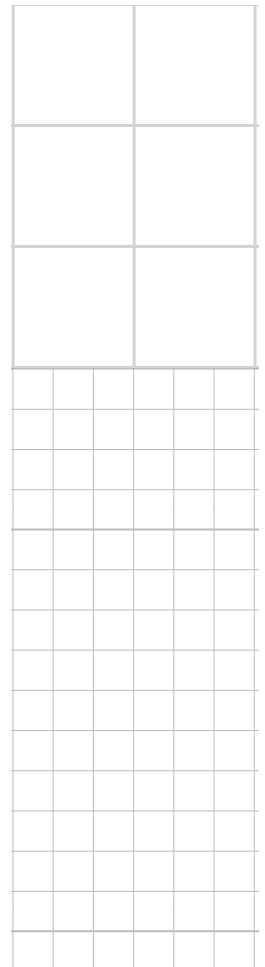
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Pumpkin spice latte? Check. Favorite team's sweatshirt? Check. Annual flu shot? Ummmm...

By Joe Muha

Fall brings lots of great things to Northeast Ohio, like football and bonfires, but it is also the time for the flu season. While not a pleasant thing to think about, there are steps that you and your team at work can do to prevent spreading this disease. You are not alone in this fight against influenza.

The Centers for Disease Control and Prevention (CDC) estimate that the flu vaccines in the 2016-2017 season prevented an estimated 5.3 MILLION illnesses, 2.6 MILLION flu-associated medical visits, and 85 THOUSAND flu-related hospitalizations. Additionally, the simple act of getting a flu vaccine can help protect folks around us who have some form of compromised immunity or chronic disease. So one of the most important things that you and your co-workers can do is to get immunized.

We know that you're going to get push-back from friends, family and colleagues when you remind them it's flu shot season, so we've put together responses for you to use when the excuses start flowing:

I got one last year, so I'm covered!

Great, but the CDC tells us that the immune response to the flu vaccine declines over time, so the key is getting an annual immunization. Additionally, every year, the CDC reassesses (and often changes) what the formulation of the current year's flu vaccination is so that we are better protected against the most likely strains of influenza.

I'm too busy to schedule a doctor's appointment and waste half a vacation day just for a flu shot

Not anymore! For years, many states, including Ohio, have allowed pharmacists to administer many vaccinations, including the flu vaccine without the patient seeing a doctor first. The fact is, most insurances cover this immunization and it only requires a quick visit to your local

drugstore. And as a further incentive, the needles are much thinner, so the flu shot is relatively painless.

Flu vaccinations are for babies and old people!

The CDC recommends this immunization for almost everyone from six months of age and older; however, most pharmacies have age restrictions and will not administer the vaccine to children under seven years old. Folks who are severely allergic to the vaccine, or one of its components, should not get the shot. Additionally, people with Guillain-Barre Syndrome should check with their health care professional before proceeding as should people who are presently not feeling well. If you are unsure if this is right for you, check with your community pharmacist. They know this stuff inside and out.

I'm an in-house attorney... what can I do to help keep my workplace flu-free this season?

A lot. Many community pharmacies can provide flu clinics. These are immunization events at your place of work. You could help schedule one! Additionally, you can help to show your HR department that they can cut down on illness related expenses and missed days of work by ensuring that you and your co-workers have the opportunity to participate in an event or go to their community pharmacy for a flu shot. Help to ensure your company's insurance covers this important vaccination.

It may sound callous, but you can also encourage sick coworkers to stay home. We know that sick coworkers should stay home, but they do not. In fact, 42 percent of employees said coming to work sick is the most annoying behavior their coworkers could engage in during



Image courtesy of Pixabay.com

cold and flu season as per a survey of 500 employees by California-based staffing firm, OfficeTeam. The survey found that 85 percent of employees admitted to coming to work sick, not only during cold and flu season, but throughout the year.

Influenza can spread in the workplace and take down a department or a company. Immunizations help to prevent that spread and lessen the severity of infection. Additionally, you can also encourage good health practices such as handwashing, covering one's mouth when sneezing or coughing, not sharing utensils or glasses, and disinfecting surfaces that are often used. Again, your community pharmacy has supplies that you can use to help keep the flu at bay at work and at home.

I did not listen and got the flu

Hope is not lost! Your community pharmacist has medications like Tamiflu or Relenza to help shorten the duration of your misery and can help to prevent serious complications. Additionally, rest is important, so stay home from work for 24 hours after the fever has been gone, according to the Mayo Clinic. Don't spread that flu virus. Drink plenty of fluids. And for symptomatic relief, acetaminophen or ibuprofen might be appropriate.

Author: Joseph Muha is a Corporate Counsel for Discount Drug Mart in Medina, Ohio and an ACC NEO board member. Additionally, he is a Pharmacist with an MBA and an LLM in intellectual property law.

Welcome New (and Recently Renewed) Members!

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NEO CHAPTER NEWS

We ♥ CLEs + ROUNDTABLES

Smart Internal Investigations in 2019: #MeToo, C-Suite, Microaggressions, and More

On Thursday, June 20, Littler attorneys Meredith Shoop and Amy Ryder Lentz presented to ACC NEO members a half-day CLE on *Smart Internal Investigations in 2019: #MeToo, C-Suite, Microaggressions, and More*.

The program addressed strategies that are responsive to recent workplace dynamics, such as the #MeToo movement, while providing a foundation for effective internal workplace investigations.



From Camp to Champs: A Business Lifecycle Seminar

On Tuesday, August 27, Frantz Ward presented a 4.0 CLE, *From Camp to Champs: A Business Lifecycle Seminar*.

This half-day seminar comprised four “quarters,” which covered topics throughout all stages of a business lifecycle.

- Quarter 1 focused on the formation of a business with corporate organization, obtaining financing and an overview of crowdfunding.
- Quarter 2 discussed topics that occur while a business is in operation including data privacy and cybersecurity, health care issues in the workplace and hot topics in labor and employment.
- Quarter 3 focused on topics that occur when a business is prospering including acquisitions and business growth and big-picture issues in real estate transactions.
- Quarter 4 included a panel that addressed additional areas that can sideline a business, such as bankruptcy, ethical issues and estate planning.



Annual summer social: Toasting away at Margaritaville

Hosted by Jackson Lewis, ACC NEO's Annual Summer Social was held at Margaritaville, located on the east bank of the Flats.

In addition to the pleasant conversation and delightful summer breezes that came through the open-air bar area, attendees enjoyed delicious island-worthy appetizers and of course, plenty of margaritas.

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Thank you again to our wonderful hosts, Jackson Lewis.



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