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CCAP County Commissioners Association of Pennsylvania Serving Counties Since 1886

An affiliate of the County Commissioners Association of Pennsylvania

Is it Legal to Regulate Your Employees' Off-Duty Behavior?

By Susan K. Lessack, Pepper Hamilton LLP, Philadelphia

To help control significant health care cost increases, many employers are trying to regulate employees' off-duty behavior when they believe it creates health risks. Although motivated by legitimate economic concerns, are these employers overstepping the boundaries of individual privacy?

For example, employers often argue that smokers and overweight workers have higher health insurance claims than nonsmokers and employees who are not overweight. In response to those higher costs, more employers are instituting bans on hiring smokers, even if they smoke only during off-duty hours. Or they may charge more for health insurance to smokers and obese workers.

But it's not just smokers and overweight people being targeted. Other groups that may be subjected to such "lifestyle" regulation include people with hypertension or high serum cholesterol levels, social drinkers and sports enthusiasts.

Arguably, all daily activities carry some health risks – from smoking to participating in extreme sports to simply walking down the street. That raises the question: Which category of employees will be the next to pay higher health premiums or have their lifestyle choices affect their employment relationship?

Do employers have free rein to monitor and make decisions based on the off-duty conduct of their employees? Some states have "lifestyle" statutes that prohibit them from doing so. Pennsylvania doesn't have such a law, so Pennsylvania employers have more freedom to take action based on off-duty conduct.

That is particularly true when there is a connection between employees' personal habits and their workplace effectiveness. In addition, employers may be justified in investigating employees' off-premises behavior if they have reason to suspect workplace misconduct or violations of workplace rules.

Disability Discrimination?

These employer practices raise privacy concerns, and also could increase the odds that a smoker or obese employee who is treated adversely might have a viable claim for disability or perceived disability discrimination.

At the federal level, the ADA prohibits employment discrimination against people with "any physical or mental impairment that substantially limits one or more of an individual's major life activities." Also protected are people who are "regarded as having such an impairment." A smoker who is fired for smoking could claim that he is addicted to nicotine and that his addiction constitutes a disability. A morbidly obese employee could claim he is disabled because he is substantially impaired in walking. And an employer that fires an employee because of smoking or obesity could be vulnerable to a claim of disability discrimination.

Wellness Programs

Instead of refusing to hire or deciding to discharge employees whose lifestyles result in increased healthy care costs, some employers are adopting the option of establishing "wellness programs." Wellness programs provide a means to cut health care costs without interfering with the employment relationship. Although the Health Insurance Portability and Accountability Act of 1996, or HIPAA, generally prohibits employers from discriminating on the basis of an employee's health condition in determining insurance premiums and contributions, it

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Ideas for You

BRIDGE THE GENERATION GAP

A young boss supervising older workers may be tempted to establish a dictatorship or to become best friends. Neither approach will work. Instead, build a solid working relationship by following these tips:

For the young boss:
Establish credibility. Young bosses usually bring impressive credentials and over-the-top ambition, but they lack experience. Admit what you don't know, and ask questions about the team's mission and how everyone fits in. Explain how you intend to conduct yourself as a leader.

Communicate face to face. With seasoned staffers particularly, emails may convey the wrong tone or come across as too forceful. First meet with those workers, and then document the conversation with an email.

For the older worker:
Maintain honest dialogues.
Acknowledge your boss's authority. Remain helpful when your boss asks questions. Find out how your boss intends to monitor and measure your performance. Take an active role in learning the ground rules.

Adapted from Communication Briefings September 2011

What's Inside

President's Message, AAP Education Dates, Legislative Update, AAP People

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President's Message

Hello everyone,

I hope the Holiday Season has been enjoyable for all of you. Things here in Butler County are going well. I'm still trying to remember all the programs, reports, and information that was crammed into my head since Ed announced his retirement. He will be in Florida all of January and I am sure he is not wanting to hear from me.

The Annual Conference will be held at Seven Springs on April 24-26, 2013. I realize that this is at the end of the cycle period for our certification, but I am hoping for a great member turnout. Remember there are always new things to learn and a sharing of ideas when we all get together at our Conferences. I believe most of the building construction we faced at last years Annual Conference at Seven Springs has been completed.

The officers and Board of Governors are still looking into other options for our Annual Conference. When we plan for future conferences at one location, it does help cuts costs for the AAP Members. We do take your evaluations of every conference very seriously and, with your help, we can improve all aspects of the Conference planning.

The Conference Planning Committee will be meeting January 17, 2013, for class planning, speakers and classes requested for the upcoming Conference. Please let our co chairs, Tony Alu and Jr Harderster know about your ideas. We are here to make the Conference interesting and a learning experience for all of us.

So to close, please everyone have a safe and happy holiday season.

Chris

Chris Savage
AAP President



Legislative Update

By Jonathan B. Schuck, Chair
Government Information Committee and
Assistant Director of Assessment/Tax Claim, Chester County

Greetings fellow assessment professionals throughout the Commonwealth of Pennsylvania. BBy the time you receive this issue of the AAP Journal, we may have embarked upon a new year – a year likely to be filled with many new challenges and many new learning opportunities. In addition, a new legislative session will commence in January 2013. Therefore, it seems appropriate to review some highlights from the 2011-2012 Session.

During the 2011-2012 Session, the following assessment-related legislation was introduced: 47 House bills, 5 House resolutions and 37 Senate bills. Of the 89 bills and resolutions introduced, 10 have been enacted/adopted as of December 4, 2012:

Act 16 (Senate Bill 1237) — Refer to Legislative Update as of June 1, 2012.

Act 34 (House Bill 143) — Refer to Legislative Update as of August 30, 2011.

Act 35 (House Bill 144) — This Act corrects language in Act 88 and Act 109 (2010) in relation to oil and gas exploration and what triggers a roll-back tax and the timing to issue the roll-back tax. The Act also eliminates the language dealing with a "well site restoration report" and uses a "production report" as the trigger. Approved by the Governor July 7, 2011.

Act 71 (House Bill 1913) & Act 131 (Senate Bill 1301) — Refer to Legislative Update as of August 28, 2012.

Act 160 (House Bill 1857) — this Act pertains mostly to the tax rates that may be set for the assessment year and two years following in cities and counties of the first class. Approved by the Governor October 24, 2012.

Act 190 (Senate Bill 1298) — This Act adds "any land devoted to composting or used for nutrient management" to the list of things which can be enrolled under "agricultural use" in Act 319. It also provides definitions for these two new types. Also approved by the Governor October 24, 2012.

House Resolutions 343/344 — Refer to Legislative Update as of August 30, 2011

House Resolution 774 — This Resolution established a select committee to investigate, review and make recommendations about the relative level of all current sources of school and local government income, with a focus on property taxes. It also authorized a study of the relationship between the level of tax revenue and Federal and State funding of schools and local governments. Adopted June 29, 2012.

Wishing each of you a productive and prosperous new year!

Legislative Calendar Notes

January 14 - House back in session
January 22 - Senate back in session
January 23 - CCAP Priorities release
February 5 - Governor's budget address

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Article submissions are welcome.
Please send to:
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End of Year Report from CCAP

Each year the County Commissioners Association of Pennsylvania's (CCAP) members identify a total of ten priority legislative and regulatory issues. For 2012, one of those issues was Assessment Reform.

The Association working with the Assessors' Association of Pennsylvania (AAP) were active participants in late 2011 and early 2012 on the HR 343 and HR 344 task forces, which reviewed assessment standards, assessment contracting, and reform of the State Tax Equalization Board (STEB). These task forces released their reports and recommendations in April.

While the HR 343 Task Force discussed in detail the recommendations contained in the Legislative Budget and Finance Committee's (LBFC) 2010 report on assessment issues, along with recommendations by CCAP, AAP and others, it concluded its six-month time frame was not sufficient to make final recommendations, and recommended these be continuing tasks for the House Local Government and Finance committees.

The HR 344 task force focused on STEB, which has responsibility for statistical measures of property sales that underpin local assessment appeals, state realty transfer taxes, and school funding formulas. Separately, CCAP and AAP convened a work group to meet with STEB on enhancements to their operations and to develop more detailed best practices for assessment office operations. While STEB has now been transferred to the Department of Community and Economic Development under a memorandum of understanding, the transfer must still be finalized legislatively.

CCAP was also successful in securing passage of several technical corrections to the County Consolidated Assessment Law in Act 160 of 2012, and worked with Sen. David Argall (R-Schuylkill) on SB 1309, which sought to limit the circumstances under which a taxing jurisdiction could appeal property assessments. The legislation did not obtain final passage prior to the end of the 2011-2012 session.

21st Annual PA GIS Conference
June 3 - 5, 2013
Penn Stater
State College, PA

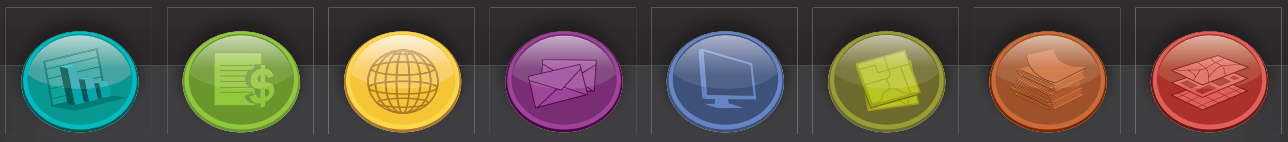
The 2013 PA GIS (Geospatial Information Systems) Conference is a great opportunity to receive key GIS updates at the local, state and national levels! Come share your latest GIS efforts and network with your colleagues. Join us at the Penn Stater Conference Center Hotel.

The theme of this year's Conference in "Optimizing Operations with GIS." Embracing geospatial technology can transform the way you approach both your personal and professional lives. Come share and discover how GIS can help you and your organization work smarter, maximize efficiencies, and uncover new ways to look at old information.

Visit *www.pagisconference.org* for more details information.

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AAP People & Chapter News

Laurel Mountain Chapter

Laurel Mountain Chapter has new officers for 2013 --

President – **Danielle Maust**
Somerset County
Vice – President **Denyel O'Brien**
WestmorelandCounty
Treasurer – **Barbara Rayman**
Somerset County
Secretary – **Kim Deubner**
Cambria County

South Central Chapter

The South Central Chapter holds meetings quarterly - March, June, September and December. Each meeting begins with a business meeting at 9 a.m. and seminars start immediately after the meeting (approximately 9:30 a.m.) and are held at the Adams County Agricultural and Natural Resources Center, 670 Old Harrisburg Road, Gettysburg, PA 17325. Please contact Barb Walter at (717) 337-9837, for more information. The next meeting will be March 22, 2013.

2013 South Central Officers

President – **Tanya Kipp**
Lebanon County
Pres. Elect – **Paul Kreiser**
Dauphin County
Vice Pres.– **Susan Miller**
Adams County
Treasurer – **Jodi Martin**
Franklin County
Secretary – **David Appleby**
Adams County

South East Chapter

The South East Chapter will be meeting on the following dates: March 13, 2013, June 12, 2013, September 18, 2013 and December 11, 2013. For more information concerning the meeting, please contact Mark Jackowski, Bucks County at (215) 348-6219 or *keyjazz@hotmail.com*.

Butler County

Congratulations to **Edward Rupert** who retired at the end of 2012. His immediate plans include riding his motorcycle and spending January in Florida.

Congratulations are also in order for **Chris Savage**, our current AAP President, who is the new Butler County Chief Assessor. Good luck, Chris!

Dauphin County

Congratulations to **Doug Boswell** and his wife on the birth of their first grandchild. Kaydence Nicole Neal was born July 27, 2012 and lives in Goshen, Ohio. Doug is the Data Analyst/Appraisal Services Coordinator in Dauphin County. Congratulations to Mimi and Papi!

Good luck to **Linda Poff** who retired January 4, 2013 after 16 years of service with Dauphin County. We'll miss seeing Linda's smiling face at conferences!

Monroe County

Monroe County is happy to report that **Susan Felker** has joined their team of assessors. She previously worked as an assessor in Monroe County and is now working feverishly to get her 28 hours by June 30, 2013. Welcome Sue!

York County

Congratulations and good luck to **Bob Stetler**, appraiser, who retired December 28, 2012 after 25 years of service with the county. Bob and his wife plan to do some traveling. He is also very active in his church doing volunteer work. He hopes to dedicate more time to that work and may also get a part-time job for a few years. Bob, we hope you enjoy your retirement!

Congratulations to **Jonathan (Jay) King** who married his wife on September 12, 2012. Jay is an appraiser with York County Assessment.

Contact Us With Your Chapter and County News!

Don't forget to send your important news for the next *AAP Journal*. Our next deadline is March 8. Please send your news to Terry Cochran at *tcochran@pacounties.org*.

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Daryl Crum
Director of Tax Services
Adams County

Year in assessment field: 17

Marital status and family: Married 18 years to Carol; daughter Kelsey, 17 and son, Kalani, 9

What irritates me most in the assessment business: The negative perception of assessors by the public.

Most people would be surprised to know: That I have run over 700 miles this year.

Biggest challenge as an assessor: Trying to convince people with preconceived notions about the assessment process and how the process actually works.

First Job: Picking strawberries and raspberries for an Upper Adams farmer

If I couldn't be an assessor, I'd: Probably still be working in banking.

If I won millions in the lottery, I would: Help family, pay off bills and donate to the American Cancer Society as cancer has struck my family multiple times.

Favorite food and drink: BBQ pork ribs and a Natty Boh

Favorite vacation: Myrtle Beach, SC

Favorite movie: Major League

Three people living or dead that I would invite to dinner: Jesus Christ, Barack Obama and Eddie Murray

The hardest lesson I ever learned as an assessor was the time: I underestimated the degree of public outcry after our reassessment.

If I could live in the past for one day, I would change: I would find a cure for cancer to take away the pain that family members have had to endure due to this disease.

My best friend: My wife, Carol

AAP
ASSESSORS' ASSOCIATION OF PENNSYLVANIA

MEMBERABILIA

AAP Education Opportunities

The AAP's main mission is to provide education for our members. Listed below are the Association's education offerings for the next year.

The current recertification period ends on June 30, 2013. Attending AAP Conferences is a great way to earn your recertifcation credits.

Information on each Conference or set of CPE classes will be available on the AAP website, *www.paassessors.org*, about two months before each event.

Upcoming Conferences

2013 Annual Conference
April 24 - 26
Seven Springs
Mountain Resort

2013 Fall Conference
November 7 - 8
Nittany Lion Inn
State College

2013 CPE Classes

Spring
CCAP North Office
Harrisburg

Introduction — March 11 - 15
Site/Market — March 19 - 22
Cost — March 25 - 29
Income — April 2 - 5

Fall
Ramada Inn
State College

Introduction — September 9 - 13
Site/Market — September 17 - 20
Cost — September 23 - 27
Income — October 1 - 4

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Employee Behavior - continued from page 1

makes an exception for wellness programs.

Some employers offer discounts to employees who participate in smoking cessation or nutrition programs. To qualify under the wellness program exception, the employer's program must meet certain specified requirements.

Among those is the requirement to offer an alternative to those employees who, for medical reasons, cannot meet the program goals. For instance, if a smoker's physician certifies that she had been unable to stop smoking because of her addiction, the employer must offer a reasonable alternative, such as a smoking cessation program or nicotine patch.

Unintended Consequences

Whether legal or not, employers' efforts to force changes in employees' personal lifestyles can, at a minimum, lead to an unsatisfied or underperform ing work force. It can drive away talented employees who object to such a scrutiny of their personal lives.

The issues surrounding the impact of off-duty conduct on employment-related decisions will continue to be debated as employers struggle to balance the need to run their businesses

Follow CCAP on Twitter

CCAP has joined Twitter in 2013! CCAP's government relations team will be tweeting real-time legislative updates.

Twitter is a social networking website where members can send out "tweets" that are 140 characters or less to their followers. Tweets are posted to a feed in real time. To create a free account visit *www.twitter.com*, enter your name, email address and create a password. Once you are registered, search @PACountiesGR in the search box at the top of the screen and then click "follow."

Numerous state legislators, media outlets, and others are also active on twitter and are available to follow. To learn more about following CCAP on Twitter, visit the CCAP website, *www.pacounties.org*.

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