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Wellness Programs: Proper Planning Ensures Legal Compliance by Michael S. Lattier



With the ever increasing cost of healthcare, many employees consider healthcare benefits offered by their employers to be of even higher value than their wages. For most employees, healthcare benefits are of primary importance in their wage and benefit package. In order to continue offering this benefit, employers are forced to explore ways to reduce these costs. It is estimated that 75 cents out of every dollar spent on healthcare in this country is spent on preventable diseases. Therefore, employers are turning more and more to wellness programs as a means of reducing their healthcare premiums. Wellness programs, if done properly, have the potential to save a significant portion of the healthcare costs paid by employers.

For those of you who are considering implementing a wellness program, it is important that you first identify the factors that are driving your health care costs within your employee pool. Without knowing that information, it will be impossible to develop an effective wellness program that will be successful at reducing costs. Although you can undertake such a study on your own, you should consider utilizing the services of a reputable healthcare cost management consultant. Of course, a consultant will cost you more initially; however, their services can prove invaluable in developing a wellness program that will be successful in reducing costs.

It is also important in developing your wellness program to ensure that the program complies with applicable law. There are a number of federal and state laws affecting wellness programs, including HIPAA, the ADA, ERISA, COBRA, and Tennessee's "smokers' rights" law. You will need to consider the impact of each of these laws when designing your program.

HIPAA (the Health Insurance Portability and Accountability Act) has specific regulations relating to wellness programs. HIPAA will apply to any wellness program which meets the following criteria:

1. The reward or incentive you offer to your employees is related to a health care plan; and
2. That reward or incentive is conditioned on the employee meeting a particular standard related to a health factor.

If both of these criteria are met, then HIPAA will apply to your program. However, it is important to remember that even where HIPAA does not apply, the ADA will. Therefore, with any wellness program you implement, be sure that the program does not discriminate against those with disabilities.

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## Wellness Programs *cont'd.*

For those wellness programs to which HIPAA applies, five requirements must be met in order for the program to be in compliance:

1. The size of the reward you offer may not exceed 20% of the total cost of coverage for any employee;
2. The program must be reasonably designed to promote good health;
3. Eligible individuals must have the opportunity to qualify for the reward at least once each year;
4. The reward must be available to all similarly situated individuals; and
5. The program materials must disclose the availability of an alternative standard for those who need it.

There are other legal considerations that should be analyzed in developing any wellness program; however, space limitations do not permit a full discussion of all those issues. In general, it is important to know when HIPAA applies to your wellness program, to follow the requirements set out above when HIPAA does apply, and to always ensure that your program meets the requirements of the ADA. The attorneys at Hunter, Smith, and Davis would be happy to help you ensure that your wellness program is legally compliant.

*For more information on any of these topics, please contact Michael S. Lattier, a member of the Labor/Employment and Corporate Practice Groups, at [mlattier@bsdllaw.com](mailto:mlattier@bsdllaw.com) or (423) 378-8838.*

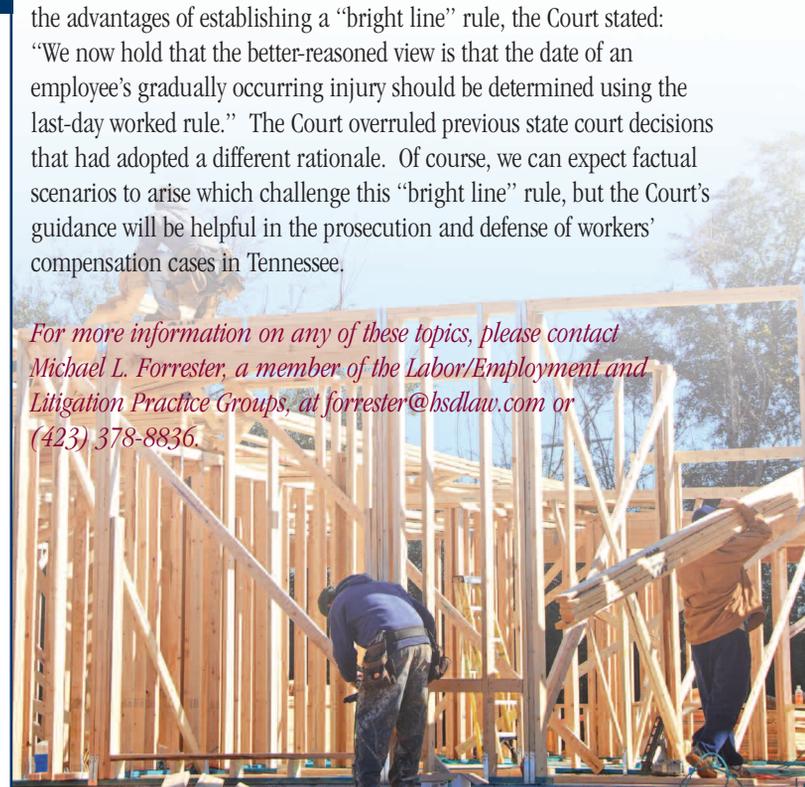


## Have You Heard? Tennessee Supreme Court establishes “bright line” rule in gradual injury workers’ compensation claims. *by Michael L. Forrester*

Tennessee employers have struggled for decades with the issue of employees’ claims for workers’ compensation benefits in “gradual injury” cases. The issue would typically arise when the courts were asked to determine when the employee actually suffered or sustained an injury. The determination of the date of the alleged gradual injury can be crucial on several fronts, such as when the employee must give notice to the employer, when the statute of limitations starts to run on the claim, and which of successive employers could be deemed liable for the workers’ compensation benefits. The courts have used different criteria to determine the “when” in a gradual injury claim, based in large part on the facts of each case. In some cases, the date that the employee knew that his/her gradual injury was caused by the employment was deemed to be the actual injury date. In other cases, the date the employee became unable to work due to his/her gradual injury was identified as the dispositive date. These theories could result in inconsistent decisions from the courts as to whether a claim was timely or which employer/insurer was at risk for the workers’ compensation benefits.

In January 2007, the Tennessee Supreme Court issued a decision which will hopefully lend stability to issues arising in gradual injury cases. The Court held in *Building Materials Corp. v Britt* that the date that the employee last worked is to be the date of injury. In referencing the advantages of establishing a “bright line” rule, the Court stated: “We now hold that the better-reasoned view is that the date of an employee’s gradually occurring injury should be determined using the last-day worked rule.” The Court overruled previous state court decisions that had adopted a different rationale. Of course, we can expect factual scenarios to arise which challenge this “bright line” rule, but the Court’s guidance will be helpful in the prosecution and defense of workers’ compensation cases in Tennessee.

*For more information on any of these topics, please contact Michael L. Forrester, a member of the Labor/Employment and Litigation Practice Groups, at [forrester@bsdllaw.com](mailto:forrester@bsdllaw.com) or (423) 378-8836.*



## Save the Date... Upcoming Employment Law Seminar

### The Aging Workforce: Issues and Strategies for Addressing the Coming Crisis

April 24th 11:30 a.m. - 1:15 p.m.  
Centre at Millennium Park • Johnson City

As the Baby Boomers near retirement age, businesses are starting to recognize the many and varied implications of the loss of this component of their workforces. In this seminar, attendees will explore the legal aspects of handling the loss of experienced workers through retirement, disability or death. Specifically, we will discuss strategies for retaining seasoned employees, recruiting new employees to replace those who are retiring, managing health care costs for an older workforce, and minimizing discrimination and harassment concerns.

*For more information or to register, contact Melissa Sizemore at (423)378-8800 or [msizemore@bsdllaw.com](mailto:msizemore@bsdllaw.com), or visit [www.bsdllaw.com](http://www.bsdllaw.com).*





## Buying A Business? Be Diligent!*by Matthew H. Wimberley*

When purchasing an existing business, either in a stock purchase or an asset purchase, most would agree that it is always a good idea to know exactly what is being purchased. Rushing into a major transaction can leave a lot of loose ends up in the air, but these loose ends

can typically be resolved before closing in a thorough due diligence review. When conducting due diligence, a purchaser will want to know some of the following about its target company. Keep in mind that these are some of the big items to review, but by no means is this an exhaustive list.

- What contracts does the target have with its customers? Are they favorable? Do they lock in a low price point for a considerable period of time? Are there termination provisions? If an asset purchase, can the contracts be transferred without consent of the customer?
- If a stock purchase, how many shareholders are involved? Are there any outstanding options to purchase additional stock in the target company? Are there any shareholder agreements that would restrict the sale of the shares? Can all existing share certificates be located? Will any shareholders object to the sale price being offered?
- Are there any liens or other encumbrances on any of the target's assets, such as UCC filings, deeds of trust, or assignments of leases and rents? Will lienholders consent to the transaction or demand the payoff of their liens?
- What sort of operating financing is in place for the target company? Will the target company's lender object to the structure of the transaction? If the lender consents, will it demand personal guarantees from the principals of the acquiring company?

- Will the purchaser retain the target's employees? Are there employment contracts already in place? How do the target's employee benefit plans compare to those of the purchaser, and will changes need to be made to each to bring about consistent benefits for all employees after the transaction is completed? Will any employees not be retained? Are any of these employees in a protected class that could trigger a discrimination suit?
- Are there any pending lawsuits against the target company, or are there any facts or circumstances that might cause a lawsuit to be filed after the closing of the transaction? Is the target current on all of its tax liabilities to the federal, state, and local governments?

Why is it important to go through this review? In short, to prevent the purchaser from getting a bad deal. At best, failure in the due diligence phase of a transaction can lead to unwanted headaches. At worst, it can lead to unplanned financial burdens. All of this may be avoided with a little extra work and caution. So the next time your company is in the acquiring mindset, remember to "Be Diligent."

*For more information on any of these topics, please contact Matthew H. Wimberley, a member of the Corporate Practice Group, at [mwimberley@bsdllaw.com](mailto:mwimberley@bsdllaw.com) or (423) 378-8824.*

## Attorneys In The News

# Hunter, Smith and Davis Names Three New Partners



**Leslie Tentler Ridings**, a Kingsport native, has been named a Partner with Hunter, Smith and Davis. Ms. Ridings is a member of the Litigation Practice Group and the Employment / Labor Practice Group. She practices in the area of commercial and civil litigation and workers' compensation law. Ms. Ridings graduated magna cum

laude with a Bachelors degree in Business Administration from East Tennessee State University. She received her JD from the University of Tennessee College of Law. She is a sustaining member of the Junior League of Kingsport and a Board Member for the Greater Kingsport YMCA. She is married to Rick Ridings and has two children.



**Laura A. Steel**, also a native of Kingsport, has been named a Partner in the Firm. Ms. Steel is a member of the Labor/Employment Practice Group, representing clients in many facets of employment law and labor issues. She also represents higher education institutions in compliance matters and agency

investigations. Ms. Steel received her JD from the University of Tennessee. She is active in the Kingsport community, including co-hosting the local television show, "Kingsport ChamberZone." She is married to Chris Woods.



**Christopher D. Owens** has been named a Partner with Hunter, Smith and Davis. He is a member of the Firm's Labor/Employment Practice Group and Litigation Practice Group. He received his law degree from the University of North Dakota and his undergraduate degree from the University of Virginia. Mr. Owens

serves on the Board of Directors of Goodwill Industries of Tenna Area, Inc. and is current President of the Bristol Concert Ballet Company. He maintains an active practice in both Tennessee and Virginia. He and his wife Suzie reside in Bristol, Tennessee.

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## HSD Funds Educational Scholarships



In its ongoing effort to support the educational goals of area students, Hunter, Smith & Davis, LLP, the largest law firm headquartered in Northeast Tennessee, has awarded scholarships to three deserving students.

Emily Arnold, a graduate of Unaka High School in Elizabethton, Tenn., was awarded \$2,000. Arnold is currently enrolled at Milligan College in Milligan College, Tenn. She is majoring in English.

Benjamin Hurst also received a \$2,000 scholarship from Hunter, Smith & Davis. Hurst, a graduate of Sullivan Central High School in Blountville, Tenn., is currently enrolled at East Tennessee State University in Johnson City, Tenn. His major is English.

Hunter, Smith & Davis awarded Amanda Megan Shelton \$2,000 to help advance her studies. A graduate of David Crockett High School in Jonesborough, Tenn., Shelton is currently enrolled at East Tennessee State University where she is majoring in Business Administration.

The awards to Arnold, Hurst and Shelton are part of a 10-year commitment by Hunter, Smith & Davis to provide \$50,000 in educational scholarships to students graduating from Tri-Cities area high schools as well as students attending area colleges and universities. The scholarship initiative started in 2006 in recognition of the firm's 90th anniversary. Scholarships will be awarded on a year-by-year basis.

"During our 90 year history, we have been fortunate to work with businesses and industries in this region," says Bill Argabrite, managing partner of Hunter, Smith & Davis. "These scholarships are a way for our firm to give back to the community. Not only do these students benefit, but by helping them further their education, the region will eventually benefit."