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Sorting Through the Weeds
Understanding the Conflicts Between State and Federal Medical Marijuana Laws

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As a California initiative legalizing non-medical marijuana is poised to appear on the upcoming ballot, the state's long term care facilities will still have to grapple with the ongoing conflicts and conundrums presented by medical marijuana no matter what the voters decide in November.

This November, Californians may decide on "The Adult Use of Marijuana Act," which will permit adults 21 years and older to use, posses, purchase, and grow non-medical marijuana, except within 1,000 feet of K-12 schools and other areas where children are present. The Act also prohibits the sale of non-medical marijuana by businesses that also sell alcohol or tobacco, and using marijuana while driving a motor vehicle. Despite this and other restrictions, the Act will mark a significant expansion of marijuana access if passed, as it repeals *Health & Safety Code §1157*, which makes simple possession of any amount of marijuana a crime.

While the impact on California's long term care facilities by the potential passage of the marijuana initiative remains to be seen, it is difficult to imagine how caregivers can avoid the issue of recreational marijuana among their patients and residents, especially as the Baby Boomer generation gets closer to needing long term care. A March 2015 report in *The Wall Street Journal* cites to a survey by the Substance Abuse and Mental Health Services Administration that revealed marijuana as the most popular way for aging baby boomers to get high. *The Wall Street Journal* also reported that government researchers estimated more than 5.7 million people over the age of 50 will need substance-abuse treatment by the year 2020.[1] Meanwhile, a March 2015 poll conducted by the Public Policy Institute of California showed 52% of Californians aged 55 and older think that marijuana should be made legal.[2]

But even if voters disapprove non-medical marijuana legalization in November, medical marijuana use remains an issue for long term care providers because of the passage of

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COVER STORY

Sorting Through the Weeds

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Proposition 215 ten year ago, which enacted the Compassionate Use Act of 1996 and added Section 11632.5 to the *Health & Safety Code*.

Section 11362.5 ensures that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. Section 11632.5 applies to patients with cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or "any other illness for which marijuana provides relief." The definition of a "primary caregiver" includes skilled nursing facilities, intermediate care facilities, residential care facilities for the elderly, hospice, and home health agencies.[3]

Meanwhile, individuals that have legal access under California law could interpret the Patients Bill of Rights under 22 CCR §72527(a)(11) to continue using medical marijuana in a skilled nursing facility, as it affords them the right "[t]o be treated with consideration, respect and full recognition of dignity and individuality, including privacy in treatment and in care of personal needs." For individuals in a residential care facility, the right under *Health & Safety Code* §1569.269(a)(4) "[t]o be encouraged and assisted in exercising their rights as citizens and as residents of the facility," can be similarly interpreted to allow the continued use of medical marijuana. Efforts to limit an RCFE resident's use of medical marijuana could be met with a reminder that such residents "shall be free from interference, coercion, discrimination, and retaliation in exercising their rights." Essentially, a medical marijuana user may argue that they cannot be marginalized in the facility for their choice of alternative treatment.

However, despite the Compassionate Use Act, the collection of rights under California law, and the potential passage of the November initiative that could bolster marijuana rights, patients and residents remain limited by federal law. Caught in the middle of the tug-of-war between state and federal law are administrators and directors that are dragged in either direction.

Under federal law, marijuana is a Schedule I drug, making the possession, dispensation, or distribution of it a criminal offense.[4] Consequently, a consumer of medical marijuana under California law and their caregivers assisting in the administration of the substance are technically committing a crime. Indeed, in *Gonzales v. Raich* (2005) 545 U.S. 1, 33, the U.S. Supreme Court specifically addressed California's Compassionate Use Act and upheld the federal government's power to regulate and sanction marijuana as part of Congress' constitutional authority to control interstate commerce, despite conflicting state laws allowing for medicinal use.

For skilled nursing facilities, permitting patients to use marijuana may lead to a loss of Medicare funds, since facilities must operate and provide services in compliance with all applicable federal laws in order to receive federal funding.[5] Though it may be a risk that facilities are able to take. In 2009, the U.S. Department of Justice issued a memo stating that a core priority for federal prosecution would be "significant traffickers of illegal drugs" and not "individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana."[6] In a follow-up memo in 2013, the Department of Justice reiterated this priority, but clarified that state and local laws do not provide a legal defense to a violation of federal law, and that the Department still had the authority to enforce federal law regardless of state law.[7]

Under this patchwork of laws, long term care providers in California can approach patient marijuana use in a variety of ways. Colorado provides some examples, which were reported in a 2012 article in the *Denver Post*.[8] Given the supremacy of federal law, facilities can take a zero-tolerance approach and completely ban the use of marijuana on the premises by patients. On the other hand, facilities can permit its use and facilitate its administration like any other medication, carefully controlling its storage and administration. One major senior living community in Colorado reported a policy of following state laws governing medical marijuana and requiring residents to self-administer the drug in the privacy of their rooms. But again, these options would still be pursued under the shadow of existing federal prohibitions on marijuana. Further considerations should still be made for the rights of other patients and residents that are bothered by marijuana use.

Ultimately, long term care providers must continue the precarious balancing act with medical marijuana until state and federal laws are reconciled. That reconciliation could depend once more on the long term care providers themselves, along with their patients and residents, through the power of their civic engagement. As the Supreme Court reminded, "But perhaps even more important than these legal avenues is the democratic process, in which the voices of voters…may one day be heard in the halls of Congress." [9]

*** This article is not intended to be an endorsement of or opposition to any initiatives, ballot measures, or candidates, or any particular form of medical treatment. The views and opinions expressed in this article do not reflect those of the firm's clients or affiliates.

1. Elinson, Zusha, "Aging Baby Boomers Bring Drug Habits Into Middle Age," The Wall Street Journal, 16 March 2015, available at: http://www.wsj.com/articles/aging-baby-boomers-bring-drug-habits-into-middle-age-1426469057

2. Baldassare, Mark, Dean Bonner, and Lunna Lopes, "Just the Facts: California's Attitudes Toward Marijuana Legalization," Public Policy Institute of California, April 2015, available at: http://www.ppic.org/main/publication_show.asp?i=1150

3, Health & Safety Code §11362.7

4. 21 USC §§841(a)(1); 844(a)

5. 42 U.S. Code § 1395i–3(d)(4)(a)

6. Ogden, David, U.S. Department of Justice Memorandum re: Investigations and Prosecutions in States, 19 October 2009, available at: https://www.justice.gov/sites/default/files/opa/legacy/2009/10/19/medical-marijuana.pdf

7. Cole, James, U.S. Department of Justice Memorandum re: Guidance Regarding Marijuana Enforcement, 29 August 2013, available at: https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf

8. Parker, Ryan, "Medical-marijuana policies in Colorado nursing homes are cloudy," The Denver Post, 5 February 2012, available at: http://www.denverpost.com/ci_20526488/medical-marijuana-policies-colorado-nursing-homes-are-cloudy

9. Raich, supra, at 33.

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LEGAL UPDATE

At Last: Guidance on When the Statute of Limitations Embodied in MICRA is Applicable

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The courts in California regulate lawsuits brought against health care providers, such as acute care hospitals, skilled nursing facilities, and general psychiatric hospitals in the provision of health care services under the Medical Injury Compensation Reform Act of 1975, commonly known as MICRA. Lawsuits brought under the umbrella of MICRA are subject to a number of restrictions including the amount of non-economic damages that can be recovered ($250,000) and the amount of time a potential plaintiff has to file his or her lawsuit.

Previously, the California Supreme Court has addressed the satellite of claims that can accompany a lawsuit for professional negligence, such as elder abuse or intentional torts, to work to resolve the question of whether the restrictions of MICRA extend to these related, but separate claims. [1]

More recently, the Supreme Court has taken a particular interest in the question raised in cases such as *Pouzbaris v. Prime Health Care Services-Anaheim LLP* [2] and *Flores v. Presbyterian Intercommunity Hospital* [3] . In the latter case, which just came down from the California Supreme Court, the issue was whether MICRA applied to claims based on accidents or incidents (e.g., in *Pouzbaris*, the plaintiff slipped and fell on a freshly mopped floor and in *Flores*, the plaintiff's bed rail malfunctioned and she fell out) that happen to take place in a hospital but do not appear to have any direct relation to the provision of medical services. The Court held that the limitations period for professional[4] not ordinary[5] negligence applied to an injury resulting from equipment used to implement physician orders.

Plaintiff, Catherine Flores, sued Presbyterian Intercommunity Hospital for premises liability and negligence, seeking damages for injuries she sustained (more than one year before filing suit) when a side rail on her hospital bed collapsed and she fell to the floor. The hospital demurred, arguing that MICRA's one year statute of limitations for professional negligence barred the action. The trial court sustained the hospital's demurrer without leave to amend. Plaintiff appealed, arguing that the accident amounted to general (not professional) negligence, which is subject to the two-year statute of limitations. The Court of Appeal reversed, holding that the action sounded in general negligence because the bed rail did not collapse while the hospital was rendering professional services.

The Supreme Court reversed the Court of Appeal and reinstated the trial court's order sustaining the demurrer. Each party had proposed a test for distinguishing ordinary from professional negligence based on prior case law, but the Supreme Court rejected the proposals. Instead, the Court focused on distinguishing the professional obligations of hospitals in rendering medical care to patients from their obligations (by virtue of operating public facilities) to maintaining a safe premises for all users. The Court held that, "if the act or omission that led to the plaintiff's injuries was negligence in the maintenance of equipment that, under the prevailing standard of care, was reasonably required to treat or accommodate a physical or mental condition of the patient, the plaintiff's claim is one of professional negligence under section 340.5." Under this test, the Supreme Court indicated that the professional negligence statute of limitations would not apply if a person was injured when a chair collapsed in a hospital waiting room. But the Court held that the bed rail that collapsed in this case was different because a doctor had assessed plaintiff's condition and made a medical decision ordering the rails on her bed raised. Accordingly, the Court applied the professional negligence statute of limitations, which barred plaintiff's claim. The broad new test adopted by the Supreme Court can be seen as likely to expand MICRA's applicability.

Justice Leondra R. Kruger, writing for the Supreme Court in *Flores*, rejected the hospital's argument that any allegation of violation of the medical licensing requirement, such as the requirement that a medical facility maintain its premises "in good repair," would render the special statute of limitations applicable. The hospital cited *Murillo v. Good Samaritan Hospital*[6] , in which the court held the one year statute applicable to a fall from bed by a patient who was unable to lie on her back because of the pain of shingles and alleged that the injury was caused by a failure to raise the bed rails.

But while saying the hospital's proposed

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EMPLOYMENT LAW

Retaliation Claims and the Labor Commissioner

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Most employers are familiar with the California Labor Commissioner's ability to investigate and adjudicate wage claims; however, you may not know the Labor Commissioner also has jurisdiction to resolve retaliation and discrimination claims arising from almost four dozen California statutes and regulations. (www.dir.ca.gov/dlse/HowToFileLinkCodeSections.htm) These laws prohibit employers from retaliating, discriminating, or taking adverse action against an employee or a prospective employee for activities such as whistle blowing, filing or participating in a complaint with the California Division of Labor Standards Enforcement (DLSE), participating in political activity or civil suit against an employer and numerous similar activities. *Labor Code* section 98.7 provides that any employee or prospective employee who believes he or she has been discriminated against or discharged in violation of any law under the jurisdiction of the Labor Commissioner may file a claim with the DSLE. If a violation is found, the Labor Commissioner has the power to order reinstatement, compensation for lost wages and under *Labor Code* sections 98.6 and 1102.5, civil penalties of up to $10,000 per violation. In 2014, the most recent reporting period, the Retaliation Investigation Complaint Unit of the DSLE received 3,853 complaints of which they investigated 1,876. The largest group of accepted cases originated from alleged retaliation for disclosing violations or noncompliance with local, state, or federal law (*Labor Code* section 1102.5). And as we have seen with civil complaints, the number of retaliation claims filed with the DLSE is growing each year.

What To Do If You Receive Notification of A Retaliation Claim Filed With The DSLE?

Notification:

Because of the increasing volume of claims and limited resources within the Retaliation Complaint Investigation Unit, employers are generally first notified simply that a complaint has been filed and that more information will be forthcoming once an investigator has been assigned. The employer is left to guess at the allegations made. It can take six months or more for an investigator to be assigned; however, it is important not to wait to begin preparing a defense. Immediately secure all pertinent information including the employee's personnel file and other documents including witness statements related to the adverse employment action which appears to form the basis of the employee's retaliation claim. This is also a good time to decide whether to consult an attorney for assistance.

Investigation:

Once an investigator has been assigned the employer will receive a copy of the employee's complaint and a request for additional information and a response to the allegations in the complaint. The response should be thorough and address all allegations with supporting documentation and identification of witnesses. Hearings are rarely held so the employer's response is critical. (Only eighteen hearings were held in 2014.) The investigator will review the documents provided and may contact witnesses. To the extent possible, potential witnesses should be aware they may be contacted by an investigator; however, it's

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Hidden Bias in the Workplace: Creating a Culture that Promotes Gender Equality

This presentation will focus on some of the subtle and often hidden ways in which gender bias continues to be experienced in the workplace. We will examine social mind-sets that support unconscious habits of thought that perpetuate disparate treatment of the sexes, both as employees and supervisors. Learn about the different types of bias, review cases that highlight the cost of failing to be gender neutral, learn about cultural roadblocks and learn about different leadership styles often engaged by men versus women.

Presented by: Kippy L. Wroten and Laura K. Sitar
June 9, 2016
2:00 P.M. – 3:00 P.M. (PST)
https://attendee.gotowebinar.com/register/8117262613200818177

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Leadership Insight

Leadership Missteps/Mistakes

Marilynn Allemann, L.C.S.W., CPC
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Being a leader isn't easy, and not every decision you make is going to be a good one. But you can be a more effective leader if you avoid the most common missteps that bosses make. Taking the time to learn how to recognize and avoid missteps will help you to become a successful and highly respected leader.

Here are some examples of the kind of thinking that can become a problem for you and your organization:

Failure to provide feedback: One of the most common mistakes leaders make is failing to provide constructive feedback to their staff depriving them the opportunity to improve their performance or depriving them of the enjoyment or boost of confidence in being told they are doing a good job. Providing feedback in an effective manner will avoid this mistake.

Leadership is not a popularity contest: It is easy to think that you must please everyone all the time, this will create issues. Of course, there is nothing wrong with being popular but it is more important to be respected. You gain respect by being predictable, clear in your communication, setting clear boundaries and by your ability to make the necessary decision, even if those decisions are not popular for everyone. Most people actually accept unpopular decisions if the reason for the decision was clearly communicated. Asking your team for their input before the decision is made is another important factor in their acceptance.

Not knowing what motivates your team: Many leaders are mistaken when they assume that their team is only motivated for monetary reasons. People are motivated by many things such as a sense of achievement, extra responsibility, praise or a sense of belonging. In today's world, many people are seeking a greater work and life balance and are motivated by things like telecommuting days or flexible work hours. As a leader it is important for you to identify what motivates your team.

Model what you expect: Be a role model. Successful leaders tend to be positive role models for their teams. This means lead by example. If your employees must follow your organization's policies or rules, as a leader you should set the example by also following them. The same goes for your attitude!!! If you are positive your team will be positive. If you are negative the same negativity will come through to your team. Model the traits that you would like to see in your team members.

Assuming you are right: Often leaders believe that because they have the title and position their decision-making power means that their way is automatically the right way. Listening to input from other members of the team will not only add perspective but also engage your team's ownership and involvement in the decision process. The more time spent involving your team at the beginning of the process, the easier it will be to execute and move the team forward toward the goal. Involvement is the key to speeding up professional growth and development.

Failure to delegate: Most leaders have a busy, full schedule, so it makes sense to delegate a variety of tasks. However, if you are a leader who likes things done in a specific way you may think you are the only one who knows how to do certain tasks. It can be difficult asking others for help, but delegation to team members you trust will help build the motivation and morale of your team. Unless you delegate tasks, you will not have time to focus on other key elements you are responsible for and you will also fail to develop your people.

Blaming Others: As a leader, you have a lot of responsibility. Despite your best intentions, mistakes happen, and when they do it's important to deal with them professionally and openly. Admitting and owning up to an error is the first step and most important. Be humble enough to admit mistakes. Learn from them and improve. People appreciate honesty and humility when a leader makes a mistake and this openness may go a long way in bringing the team back together.

"A good leader is a person who takes a little more than his share of the blame and a little less than his share of the credit."

- John Maxwell

As leaders one thing is for sure — we all make mistakes. Leaders should not be afraid to acknowledge their own missteps. What differentiates the winners from the losers is what we do next. Increasing your awareness of leadership missteps and how to avoid them is crucial in becoming a better and effective leader.

Additional information can be found on Marilynn W. Allemann's website and blog:

www.MWAExecCoach.wordpress.com

Please contact Marilynn W. Allemann directly at mwallemann@hotmail.com with any questions.

LEGAL UPDATE

Statute of Limitations

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rule was too broad, Justice Kruger also rejected the plaintiff's argument that Section 340.5 only applies to decisions requiring "a high level of skill."

Justice Kruger cited the history of MICRA with the intent of bringing down malpractice insurance costs by limiting damages in suits over medical negligence. "The text and purposes underlying [MICRA] . . . require us to draw a distinction between the professional obligations of hospitals in the rendering of medical care to their patients and the obligations hospitals have, simply by virtue of operating facilities which are open to the public, to maintain their premises in a manner that preserves the well-being and safety of all users." The distinction, Justice Kruger went on to say, renders Flores' complaint untimely.

The plaintiff's briefs, Justice Kruger noted, acknowledged that raising the rails was "a medical decision" made by a treating physician. Flores' "injuries therefore resulted from [the hospital's] alleged negligence in the use or maintenance of equipment integrally related to her medical diagnosis and treatment," Kruger wrote. "When a doctor or other health care professional makes a judgment to order that a hospital bed's rails be raised in order to accommodate a patient's physical condition and the patient is injured as a result of the negligent use or maintenance of the rails, the negligence occurs "in the rendering of professional services" and therefore is professional negligence for purposes of [MICRA]"

In all probability the Supreme Court's new test would support the thesis that janitorial neglect, as ostensibly is at issue in *Pouzbaris*, is not professional negligence. To date the Supreme Court has not issued any orders in *Pouzbaris* in light of its holding in *Flores*. Notwithstanding, for all future cases, in determining whether to apply the one year MICRA statute of limitations for professional negligence or the two-year limitations period for ordinary negligence, the courts will undertake a fact-based view of the alleged negligent acts to distinguish ordinary negligence, such as falling chandeliers or mopping floors, from negligence committed in the rendering of professional services. This additional guidance should provide needed predictably for not only the plaintiff's bar but also the defense bar as well.

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1. See, e.g., *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291; see also *Covenant Care v. Superior Court* (2004) 32 Cal.4th 771; *Delaney v. Baker* (1999) 20 Cal.4th 23

2. 351 P.3d 325 (July 8, 2015, No. S226846), review granted, pending further orders

3. ____ Cal.4th ____ (May 5, 2016, No. S20983) 2016 WL 2586110

4. Cal. Civ. Proc. Code, § 340.5

5. Cal. Civ. Proc. Code § 335.1

6. 99 Cal.App.3d 50 (1979)

EMPLOYMENT LAW

Retaliation Claims

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critical that they be allowed to respond without the fear of retaliation. The investigator may try to assist the parties to reach a settlement as well. If no settlement is reached, the investigator will prepare a written summary of findings which is forwarded to the Labor Commissioner.

Determination:

The Labor Commissioner will review the investigator's summary of findings and make a determination. If the employer is determined to have violated the law, the employer has the right to appeal within 10 days or comply with the determination. The appeal is heard by the Director of the Department of Industrial Relations. If the employer fails to comply with the Labor Commissioner's determination, the Labor Commissioner will file a civil action to enforce the determination.

Retaliation continues to be a hot topic in both civil and administrative forums. When any adverse employee action is taken it should become second nature to question whether the action is influenced by any retaliatory motive. And when reinstatement, lost wages and civil penalties of up to $10,000 are at stake, it is important to take investigations by the Retaliation Complaint Investigation Unit of the DLSE very seriously. Employers are likely to see increasing numbers of them in the future.

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Wroten & Associates team will be attending the DRI Nursing Home/ ALF Litigation Seminar, September 8-9, 2016 in Scottsdale, AZ.

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OPINION

Hidden Bias in the Workplace

Laura K. Sitar • SHAREHOLDER
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Sexist," "misogynist" and "bigot" are ugly, emotionally charged words. When uttered by a woman, does the audience automatically jump to the conclusion the words are targeted at men? Will an article discussing "chauvinism" unintentionally offend our male clients and colleagues? Does a webinar on "Hidden Bias in the Workplace" presented by two women look like a biased crusade rather than a service to our community? And what is our role talking about these issues in a professional setting? Those are the thoughts that ran through my mind as I read Kippy's article (see below) for our June newsletter and contemplated my role in the upcoming webinar. Even Kippy's identification of the brilliant women who helped start our firm causes me concern. Does highlighting one group of individuals based on their sex (or any other protected classification) automatically diminish another group and imply bias?

The reality is discrimination and hostile work environment claims continue to be filed based on sex, race, age, disability and a number of other protected classifications. If we ignore our own biases how can we begin to identify bias and discrimination in our work environments that may have serious legal and financial ramifications?

While, like many of you, I might be uncomfortable with participating in an honest conversation about my own biases (or shortcomings) in a professional setting, I know the topic is much broader than the treatment of men and women at work. It extends to the fair treatment of all employees. Examining biases that may hinder the fair treatment of all our employees is simply a good business decision. Please join us:

JUNE 9, 2016 / Hidden Bias in the Workplace: Creating a Culture that Promotes Gender Equality

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Are You A Sexist, Misogynist, Bigot? Not you...are you sure?

Kippy L. Wroten • SHAREHOLDER
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In this presidential primary season the media has bombarded Americans with highly charged rhetoric challenging our nation's commitment to gender equality and eradication of racial bigotry. Such verbal discourse will inevitably seep into our workplaces and the savvy business manager must be prepared to respond as issues may erupt in our communities. Fact is that each of us is a byproduct of personal experience and these experiences naturally cast a shadow over our behavior. The conduct of business owners and managers however, is subject to civil and criminal laws that punish proscribed misconduct. The first step to avoid potential legal liability is to honestly examine one's personal life experiences to identify potentially unrecognized preconceptions that may negatively impact our actions. It is only with such honest personal introspection that a legally compliant business environment can be assured.

ASK YOURSELF HARD QUESTIONS

Do you have an ingrained bias? Do you support business decisions with personal beliefs that aren't based on reason or actual experience? Fact is that any stereotyping used to prejudge another person is inappropriate in the workplace. Regardless of whether a specific expectation is positive or negative, the result can be an HR nightmare. This means each of us must be proactively aware that characteristics such as age, race, culture, gender and sexual orientation may influence our personal expectations. Preconceived beliefs, such as a belief that a man can naturally handle certain tasks better than a woman, or vice versa, derail even well intentioned efforts to treat people equally.

CHAUVINISM-A BELLIGERENT BELIEF IN SUPERIORITY

I'm guessing that my fellow baby boomers may be asking, what is wrong with a man opening a door for a pretty woman or automatically paying for lunch when he's

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OPINION

Bias?

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with an attractive female co-worker? Isn't this just good manners? Actually, no, particularly not the way I've tied the conduct to a woman's appearance. In the workplace, any act of dominance or superiority may be deemed inappropriate when measured by the standards of gender equality. This doesn't mean a man can't open a door or buy a co-worker lunch. What gender neutral means is that the same man must open the door and buy lunch for everyone, man or woman, under similar circumstances. Putting a woman on a pedestal (benevolent bias) is as damaging to a woman in the workplace as is intentionally leaving her out of a business conversation because you don't value her opinion (hostile bias).

Potential gender based favoritism is not exclusive to men tending to care for women. Women must be aware of their own biased acts as well. Here's an example. Recently I went to a vendor meeting with my male business partner. During the meeting the vendor introduced us to a female department manager who proceeded to promote our use of her services. Her problem? She directed her entire discussion solely to my male business partner. Sexism in this instance was in the conduct of a woman who assumed that the man was the decision-maker. We are all exposed to common social situations that reflect implicit sexism. When sitting in a mixed group of co-workers at a restaurant, who does the server assume will be paying? Who sits at the head of the table? These are all opportunities for chauvinism to raise it's head, whether in the attitude of a man or the attitude of a woman.

IDENTIFYING HIDDEN, IMPLICIT BIAS

As my grandmother once told me, first impressions aren't always right but they are always tough to get rid of. This is a real problem when we base any business decision on instinctual reactions rather than actual experience. Stop and question yourself about those knee jerk reactions that may hide your own implicit bias. Are you a sexist? I can hear your resounding "no" but just saying no doesn't necessarily mean you aren't. We all carry the baggage of bias that when acted on inappropriately can topple even the most progressive advocate for equality.

ARE YOU BRAVE? TAKE THE TEST

I hereby challenge you to take a short, on line test that has already been anonymously taken by millions of people. It isn't hard or time consuming nor will it label you with an ugly name. It will however, give you the opportunity to personally evaluate your own hidden thinking in a well respected and confidential on-line lab where no information that could personally identify you is requested. In fact, you can even decline to answer the general questions about your age, sex, and zip code if it concerns you. The test is the Implicit Bias Test published by Project Implicit, a non-profit organization and international research collaboration targeting the feelings we all have that are outside of our conscious awareness and control. The foundation for the tests is research conducted at the University of Washington, University of Virginia, Harvard University, and Yale University. You can quit the test at any time, decline to answer the gender bias questions about Hillary Clinton's presidential candidacy in a separate questionnaire at the end (apparently a new educational research project), and elect to take only one of the many tests offered that cover the spectrum of potential prejudices including gender-career, race, age, disability, religion, and sexual orientation. When you're done you will receive your test results and information about what your results mean.

MY "GENDER-CAREER" TEST RESULTS, OH NO!

If you're certain of your pristine lack of any bias perhaps you'll find my personal test result pause for additional reflection. I took the Gender-Career IAT (Implicit Association Test). To begin with, let me describe myself for those of you who haven't met me. I'm a 61 year old business woman who opened my own law practice 10 years ago with the support of 7 other brilliant women. Today my law firm employs 22 women and 6 men. 9 of our 15 attorneys are women and 4 of our 6 shareholders are women. I'm also the proud mother of a phenomenal 24 year old daughter who has engaged her own career in the male dominated field of engineering. I routinely advise my daughter on how to recognize and respond to workplace bias. I consider myself to be moderately liberal and am a progressive advocate for gender equality. Despite this history my personal Gender-Career IAT results suggest that I hold a "moderate automatic association for males with careers and females with family." That means that I've been preconditioned to see men in the workplace and women taking care of the children at home. I'd like to say that the test is wrong but when I consciously observed my initial reactions to routine business events I had to admit that I do have an "automatic" response that left unchecked could severely prejudice the fine women at my law firm. The Implicit Bias test therefore successfully alerted me to an unrecognized personal bias that I now know to watch out for.

Now I turn the magnifying glass over to you. I hope you'll take any one or all of the Project Implicit tests to evaluate your own vulnerability to acting on a hidden bias. I also invite you to join Laura Sitar and myself on June 9 at 2:00 for an hour webinar where we will continue to explore "Hidden Bias in the Workplace" in an ongoing, non-threatening conversation between friends. (Yes, I have more personal and sometimes embarrassing stories to share and, it's my birthday.) Be part of the equality revolution while getting Continuing Education Credits! See you on June 9!

Take the test! Project Implicit link:

https://implicit.harvard.edu/implicit/takeatest.html

DEFINITIONS:

Prejudice: Preconceived opinion that is not based on reason or actual experience.

Bias: Prejudice unfairly in favor or against a person, group, or thing.

Implicit Bias: Implied though not plainly expressed.

Sexism: The belief that one sex is naturally superior to the other.

Misogyny: The dislike of, contempt for, or ingrained prejudice against women.

CONGRATULATIONS! W&A SHAREHOLDER NEWS

Wroten & Associates proudly announces the promotion of Senior Attorney Kimberli M. Poppe-Smart to Shareholder. Kim's unique work experience as an attorney, nurse, and government and business administrator has made her a invaluable resource for our clients. Congratulations Kim!

Kimberli M. Poppe-Smart • SHAREHOLDER
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Kimberli M. Poppe-Smart has united her 30-year nursing career with over a decade of legal experience into a healthcare risk management and compliance specialist.

Kimberli is a Wroten & Associates litigation team member as well as an expert in identifying and managing risks and implementing enterprise risk management plans and strategies. She has spoken nationally on healthcare topics including quality assurance, risk management and compliance. She has also published multiple articles designed to aid today's healthcare executive team.

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