



# NCPA

February 2001

**NORTH COUNTY PERSONNEL ASSOCIATION**  
*San Diego*

## President's Pen

### Kicking the Tires

by John Vermeren



We had a Strategic Planning meeting by time you read this. Here's what I'll be talking about.

#### MEMBER INVOLVEMENT

##### Volunteerism

#### Where can YOU help?

1. We need newsletter articles.
2. We need to identify more Internet Links of general HR interest.
3. Anyone want to head a Website Evaluation Committee?
4. How about volunteering an Anonymous "Question of the Month"?
5. How do we facilitate / encourage a Member's Forum on the website?
6. Membership Committee needs help.
7. So does the Events Committee
8. And the Legislative Committee
9. And Programs
10. Plus Job Bank
11. And Scholarship too

#### Did You Know?

1. We have an extensive Job Bank on-line at [ncpasd.org](http://ncpasd.org).
2. Past issues of the Newsletter are online at [ncpasd.org](http://ncpasd.org).
3. Dave Kulchin is hosting another NCPA Birthday Party in July.
4. Through the efforts of Jeannie Ramos we gave out 6 scholarships last year and reimbursed \$1500 for members taking PHR courses. Chapman College gave an additional \$600 in tuition discounts to our members.
5. We raised over \$1,100 in cash and 526 toys for the Toys for Tots program this year. Nice work Wendy!
6. We have over 400 members and still growing.
7. Bill Peartree tracked over 600 bills related to HR issues last year.

## FEBRUARY MEETING

Wednesday February 14, 2001

Holiday Inn , Palomar Airport Rd

\$20 Member / \$25 Non - Member

11:30 a.m. - 1:00 p.m.

RSVP: (760) 435-7175 (No later than Friday 2/9/01)

### HOW TO GET SUPPORT FROM YOUR CEO/PRESIDENT

#### Bringing HR into the Boardroom and Workplace!

Celebrate Presidents month with us as we honor three North County company Presidents who **strongly** support their Human Resource departments by making them part of the strategic planning process! Learn what they expect from their HR team and how they bring HR commitment into the workplace every day.

#### We are proud to honor the following Presidents of North County companies:

**Kevin Stotmeister, President of Federal Sign**, Oceanside. Kevin oversees a large national company with operations in multiple states. Running a company with nearly 500 employees takes time and energy to meet the demands of clients who use Federal's spectacular signs. According to Amy Benoit, HR Representative at Federal Sign, "leadership, business ethics, and vision make him a tremendously respected individual. He makes me feel important, like I matter at Federal Sign and never acts like he is above anyone else!" Kevin includes and embraces HR's role in the strategic planning process at Federal Sign!

**Lindsay Brehm is President and CEO of Ortho Organizers Inc**, which he founded in 1975. Ortho is a resource to the orthodontic industry worldwide with HQ and manufacturing located in San Marcos with sales of almost \$20 million. According to Carol Costello, Ortho's Director of Human Resources, "Lindsay believes in empowerment of his employees, giving them the tools and authority to manage their divisions effectively. He has a high regard for each person's contribution, and is happy for each person's success." Ortho recently won the Best Overall Company Work-Life Award from the Work Life Coalition of San Diego.

**Stanley Kinsey CEO of NTN Communications**. Stanley runs a fast pace, high growth, high tech, entertainment company in Carlsbad with 180 employees. To attract and reward high performance employees at NTN, Stanley supports VP of HR Sandra McCart's NTN Star Awards program that rewards employees who exemplify the passion and commitment demanded by the company's clients. Stars are given based on nominations from within the company and come with a \$1000 after tax award! Teamwork is encouraged with monthly BBQ's, quarterly Chili Cook-offs, and designed to educate all employees on the company's entertainment products.

Listen and share their vision of HR and learn how they bring HR into the workplace every day at their company!

## Legislative Update

by Lou Storrow



**Jensen v. Wells Fargo Bank** (Cal. Ct. App. December 5) The court affirms the obligation of the employer to engage in a two-way process with a disabled employee, in order to try to find a reasonable accommodation. Jensen suffered post traumatic stress after a bank robbery, and could no longer work as a branch manager. She claimed Wells Fargo failed to offer her a non-manager job elsewhere in the organization. The case was dismissed on summary judgment, but the appeals court sent it back, ruling that there was a dispute in the evidence over whether or not WFB had done a thorough job looking for another position for Jensen.

### Board Members

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The court set out these rules for determining that an employer has not violated the FEHA by failing to accommodate an employee: "(1) reasonable accommodation was offered and refused; (2) there simply was no vacant position within the employer's organization for which the disabled employee was qualified and which the disabled employee was capable of performing with or without accommodation; or (3) the employer did everything in its power to find a reasonable accommodation, but the informal, interactive process broke down because the employee failed to engage in discussions in good faith."

**D'Sa v. Playhut, Inc.** (Cal. Ct. App. December 22)

Employer demanded that the employee sign a confidentiality agreement as a condition of employment. The employee refused to sign, because the agreement contained an anticompetition provision that he contended was illegal under California law. The company insisted he sign, pointing out that the agreement included a "severability" clause, so that if the anti-compete clause was unenforceable, it would drop out of the agreement. Employee still refused to sign, and was fired. The Court of Appeal in Los Angeles held that forcing the employee to sign an unenforceable anti-competition agreement violates public policy, and therefore the termination was unlawful. It makes no difference that the illegal clause would not be enforced, said the court. Forcing the employee to sign it was in itself unlawful.

**Hestand v. Saunders** (Cal. Ct. App. December 11)

A construction employee made an overtime claim with the Labor Commissioner under Wage Order 4-89. The Labor Commissioner refused to process the claim, under a long-standing view that none of the pre-1999 Wage Orders covers the on-site construction industry. The employee sued to force the issue. The Labor Commissioner claimed that its interpretation of its own regulation – the Wage Order – could not be challenged in court. The Court of Appeal disagreed. Courts may review an agency's interpretation of its own rules. Here, the Court agreed that Wage Order 4-89 was never intended to cover on-site construction, so while Labor Commissioner Marcy Saunders got her hand

## Membership Update

by Mardi Montague

### February is Free Lunch Month!

When a member brings a friend to our February meeting and they join ... the member receives a certificate for a free lunch!

### 2001 Membership Directory

We still have several prime spaces available for your company to advertise in our expanded 2001 Membership Directory. The directory had a great new face lift in 2001 and this year, it will be bigger and better than ever. Don't miss out on this cost effective advertising opportunity.

For additional information please call Mardi Montague, 760-438-1809 ext. 119 or email me at: mmontague@eastridge.com. Our RSVP telephone number is 760-438-1809 ext. 104.

## NCPA Job Bank

### Posting & Accessing

by Sandra Smith



#### EMPLOYERS POSTING HR

**POSITIONS:**E-mail job descriptions to sandra.smith@right.com or fax to (858) 587-0805. Descriptions should include job titles, duties, qualifications, salary range (optional) and contact fax number or email address so NCPA members can forward their resumes directly. Your company name will be included unless you request a blind ad. *NCPA membership is not a requirement for companies to post jobs.*

#### MEMBERS ACCESSING LISTINGS:

Obtain a copy of the listings at the monthly meeting or logon at www.ncpasd.org.

**The User name is: members**  
**The Password is: 3y2kj4ba**

Fax or mail your resume directly to employers. Your cover letter should indicate that you are responding to an NCPA Job Bank listing. *NCPA membership is required to access the Job Bank.*

*\*\*For additional information on the NCPA Job Bank please contact:  
sandara.smith@right.com  
(858) 320-7794*

## Benefit Tip of the Month

### IRS Opens Season for Updating Retirement Plans

by William Peartree



The IRS recently announced the good news that it is both opening the process for issuing determination letters on retirement plans and extending the deadline for amending plans until the end of the 2001 plan year. However, it's not too early for retirement plan sponsors to begin the process of updating their retirement plan documents.

Since 1993, there have been several tax acts affecting retirement plans. These acts include the General Agreement on Tariffs and Trade, the Uniformed Services Employment and Re-Employment Rights Act, the Small Business Jobs Protection Act, and the Tax Reform Act, collectively known as "GUST." The winds of GUST will require restatement of virtually all retirement plans.

Under the Internal Revenue Code, plan sponsors have a "remedial amendment period" in which to adopt GUST plan amendments retroactively. The GUST remedial amendment period applies not only to all changes required by the new tax laws, but also to any provision that is "integral to" a qualification requirement.

For example, plans are now permitted, but not required, to increase the involuntary cash-out threshold from \$3,500 to \$5,000. Although this change is not required by GUST, a retroactive plan amendment is permitted because it is "integral to" a qualification requirement. In Revenue Procedure 2000-27, the IRS extended the remedial amendment period to the last day of the first plan year beginning on or after January 1, 2001 (i.e., December 31, 2001 for calendar year plans).

The IRS is now also accepting applications for determination letters for individually designed retirement plans to take into account all the changes in the qualification requirements made by GUST. Previously, plan sponsors could not request determination letters from the IRS that would take into account the changes in qualification requirements made by GUST, unless the determination related to a terminating plan. The appropriate application form to file is usually Form 5300, Application for Determination.

issued proposed regulations under Section 411(d)(6) that might allow elimination or reduction in certain alternative forms of benefit.

Until such regulations are finalized (probably early next year), the IRS will not issue a favorable determination letter for a plan that is amended to eliminate or reduce benefits in a manner that is not permitted under regulations now in effect. Therefore, plans submitting determination letter applications before the Section 411(d)(6) regulations are finalized should be aware they may have to submit another application and pay another user fee if they wish to adopt plan amendments as a result of the final regulations.

Employers that have previously adopted an approved prototype or volume submitter plan and who wish to maintain the same plan may wait until the sponsoring organization updates the prototype or volume submitter plan and receives approval from the IRS. (The sponsoring organization must, however, submit its updated prototype or volume submitter plan by the end of this year, December 31, 2000.)

If the sponsoring organization does not receive approval of its updated document by the end of 2001, the adopting employer will need, by that date, to sign a certification agreeing to adopt the updated prototype or volume submitter when IRS approval is subsequently received.

#### Don't assume compliance

Administrators of retirement plans need to be well-informed in order to manage the process of updating plan documents. What should administrators do at this time?

First, don't assume that someone else will automatically update your plan documents. Check how your plan was last drafted or last updated, and confirm in writing who will be doing the current restatement. If you are part of a prototype or volume submitter, contact the organization sponsoring the arrangement to make sure the organization intends to update the master plan.

Next, familiarize yourself with the design choices that you will have to make. These include whether to run 401(k) non-discrimination testing on a current year or

prior year basis, whether to continue minimum in-service distributions to active employees who have attained age 70 1/2 and whether to change a defined benefit plan account formula in light of the repeal of Section 415(e).

You should also identify any provisions in your plan that may fall out of an IRS safe harbor. Typical nonstandard provisions include a definition of compensation that is less than total compensation (e.g., excludes bonuses and/or overtime); a benefit formula that is not simply a uniform percentage of compensation (such as an age-weighted formula) or eligibility provisions that exclude special categories of employees (other than employees under age 21 or with less than one year of service). You will need to collect and provide special data on these non-safe harbor provisions to the person who will be preparing your IRS determination letter filing.

Finally, the updating process may reveal errors in plan administration that have occurred over the last few years. **Do not panic!** There are several alternative IRS correction procedures, as well as a new Department of Labor correction procedure, available to address many types of administrative errors. Indeed, the IRS Administrative Policy Regarding Self-Correction allows certain problems that are either recent or minor in nature to be corrected without any special government filing at all. Administrators who discover errors should consult with their attorneys or other advisors as to which of the correction programs might be best suited for the particular circumstance.

Sponsors of individually designed retirement plans have until the end of the 2001 plan year to complete updating their plans for GUST and file for new IRS determination letters. Now, however, is the time to contact your advisors and start the process. — E.B.N.

*Thomas J. McCord is a partner in the Employee Benefits Group of Nixon Peabody LLP, a law firm with offices in cities including Boston, Mass., Washington, D.C., Rochester, Buffalo, Albany and New York, N.Y. and Providence, R.I. He can be reached at 617/345-1000 or at [tmccord@nixonpeabody.com](mailto:tmccord@nixonpeabody.com).*

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**South County Personnel Association**

**Date:** Thursday, February 8, 2001  
**Time:** 11:30 am – 1:00 pm  
**Place:** San Diego Country Club  
88 L Street – Chula Vista, CA  
**Cost:** \$15 Members/\$20 Non-members  
**RSVP:** 619-687-7412

**ASTD – San Diego Chapter**

**Date:** Wednesday, February 28, 2001  
**Time:** 11:30 am – 1:00 pm  
**Place:** Handlery Hotel  
950 Hotel Circle North  
**Cost:** \$25/\$35 Pre-Registered  
\$30/\$40 After Deadline  
**RSVP:** 858-541-2783

**East County Personnel Association**

**Date:** Thursday, February 22, 2001  
**Time:** 11:30 am – 1:00 pm  
**Place:** The Brigantine Restaurant  
9350 Fuerte Drive, La Mesa, CA  
**RSVP:** 858-587-7568

**Society for Human Resource Management**

**Date:** Wednesday, February 21, 2001  
**Time:** 11:30 am – Registration / 12:00 pm Lunch  
**Cost:** \$25/\$40 – Pre-registered  
**RSVP:** 619-589-0111

**Resources by Lou Storrow**

**LINKS, LINKS, LINKS!**

Is there a website you visit frequently that might be helpful to other members? Do you have questions about where to find particular information that will help you be a better HR professional? Please email any significant web links that you use regularly or that maybe helpful to others along with any questions you have about finding information on the web to: Lstorrow@hrlawyer.com or if you prefer, call me at: 760-929-9141. Thanks

**Newsletter by Rebecca Wilson**

If you would like to volunteer for the newsletter committee or submit an article\* for publication please contact me at:

**beckatopia@hotmail.com or 619-699-6745**

*\*Articles must be approved by the board and cannot serve as advertisement for your company services or vendor.*

*Visit us on the web at: [www.ncpsad.org](http://www.ncpsad.org)*

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