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## Preventing Sales of Tobacco to Minors – A Collaborative Approach

By John Albrecht, Chief Tobacco Counsel, Nevada Attorney General's Office & Scott Neal, Youth Access Manager, Public Health – Seattle & King County

A young man approaches the cash register in a retail store. He seems sure of himself and asks for a pack of brand name cigarettes. The clerk begins to ring up the sale. The cash register reminds the clerk that cigarettes are an "age restricted" product, so the clerk asks for an ID. The young man presents his ID, and the clerk enters the birth date in the cash register. The cash register says the young man is not old enough and the clerk refuses the sale. The young man looks somewhat disappointed, but leaves the store without an argument.

A few minutes later, an adult approaches the clerk, thanks him for refusing to sell tobacco to a minor, and hands the clerk a card congratulating him for not selling tobacco to a minor. The adult is a law enforcement officer who is supervising the young man.

This scene is repeated over and over across the state every day. Since 1994, states, including Nevada, have been required to enforce their own state laws that prohibit the sale of tobacco to minors under the age of 18 (in some states, the age is 19). Under a law commonly known as the "Synar" Amendment, states risk losing millions of dollars in federal grants that fund alcohol and drug treatment programs unless the youth buy rate for tobacco remains at 20% or less.

These substance abuse treatment programs are very important to communities and especially law enforcement agencies. Often, these subsidized programs are the only ones that will treat low income people.

It is also well known that tobacco use often leads to significant health problems; however, a lesser-known fact is that more than 80% of adult smokers started smoking before they were 18 years old. This is a staggering fact considering that research also shows that the earlier people begin smoking, the higher the risk of contracting lung cancer and other tobacco related health problems in adulthood. If underage youth can be discouraged or prevented from starting to smoke until they are of legal age, it is likely that they will never start.

Although these are good reasons to support the laws that prohibit the sale of tobacco to minors, many retailers are frustrated and resent the fact that compliance checks are conducted. Some of this frustration may be due to a common misunderstanding that state officials want to trap retailers into selling tobacco to

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# Seen and Noted

## Do-Not-Call List Just Grows

Americans rushed to sign up for the FTC's do-not-call list before the August 31 deadline. Six million consumers added their telephone numbers to the list in the first 72 hours it was available. As of the Labor Day weekend, 48.4 million had signed up.

Consumers who signed up by August 31 will be on the telemarketing block list by October 1. Those who sign up after that date must wait three months before the nuisance calls stop. Telemarketers who continue to call after the deadline are subject to an \$11,000 fine for each call. The registry will be opened to telemarketers on October 1. They can go to [www.telemarketing.donotcall.gov](http://www.telemarketing.donotcall.gov) to access the numbers on the registry.

Consumers can sign up for the program by going to [donotcall.gov](http://donotcall.gov) or by calling 888-382-1222 (TTY 866-290-4236).

## NCPA Creates Handy Web Site for Pharmacists

The National Community Pharmacists Association (NCPA) has launched a Web site to get needed information to all pharmacists, including the 60,000 independent pharmacies. All pharmacists, including independents, chain pharmacies, supermarkets and mass merchants, can access the site at [www.pharmacist-elink.com](http://www.pharmacist-elink.com).

Although NCPA is a membership group, pharmacies don't have to be members to take advantage of most of the information posted (only about 5 percent of the Web site is for members only). It's free but does require that users register.

What's on the site? There is information about products, backorders, shortages, recalls, new indications on a current medicine and new studies about product efficacy. It also offers daily postings from suppliers and manufacturers. Users

can also sign up for email notification of some information.

If a pharmacist needs continuing education (CE) credits to maintain his or her state license, 100 CE programs are offered, free of charge, through a partnership with Pittsburgh-based CE City. The subject matter, tests and grading is all done online.

Another advantage of logging onto NCPA's site is the ability to conduct price comparisons. A pharmacist simply searches by ZIP code to find the area's average retail prices on prescription drugs.

NCPA is a political organization lobbying on pharmacist issues, so pharmacists have the ability to contact lawmakers by email through the site, facilitating a grassroots lobbying effort on issues such as Medicare, prescription drug coverage and insurance issues.

## Zippo Says Game Over

"Game Over" says Zippo to [Zippotricks.com](http://Zippotricks.com) Web site. Site owner Zippo lighters shut down the site after receiving letters from fire safety professionals concerned about the tricks-with-lighters that the Web site showed.

Zippo didn't create the original site, but they found it after a search for trademark infringement. The site, which had been online for about five years and was targeted to the 18- to 24-year-old age group, demonstrated 555 tricks you could do with Zippo lighters. Zippo kept the site running after taking possession from the counterfeiter.

Greg Booth, Zippo president, said the company didn't see the harm in the Web site but would shut it down rather than risk the reputation of the 70-year-old company. On Monday, August 25, visitors to the site found a black screen emblazoned with "Game Over."

## Preventing Tobacco Sales to Minors

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minors. In reality, the exact opposite is true. There are a number of ways to reduce this frustration.

First, ask John Albrecht at the Nevada Attorney General's office any questions you have about the tobacco enforcement program. Phone him at his direct line, 775-688-1872, or email him at [jpalbrec@ag.state.nv.us](mailto:jpalbrec@ag.state.nv.us). He is always looking for ways to increase compliance and will be happy to work with tobacco merchants. Retailers and retailer organizations have found it beneficial to work with the Attorney General's office on merchant education to increase compliance with the law.

Second, invite the Attorney General's staff to attend your meetings to explain the state law and answer questions regarding the tobacco compliance check program. Often, just talking with enforcement officials clears up misunderstandings about the program.

In addition to working with state officials, merchant education materials for your managers and sales staff are already available. You should contact your corporate office or the WE CARD program at [www.wecard.org](http://www.wecard.org) or 800-934-3968.

Tobacco compliance checks are an important part of the work of state officials and store management. Working together, the tobacco buy rate may be reduced further and decrease the frustration of store owners, managers and sales associates.

***(Please see accompanying suggestions "Tips for Reducing Tobacco Sales to Minors at Your Store" on this page.)***

### ***Tips for Reducing Tobacco Sales to Minors at Your Store***

- Develop a policy about which customers should be asked for photo IDs—e.g. all customers appearing to be under 30.
- Repeatedly communicate that policy to all staff, managers and sales associates.
- Require all sales staff and managers to be trained in identifying younger looking customers and managing difficult customers who try to purchase age-restricted products.
- Use point-of-sale tools such as electronic age verification devices and paper calendars.
- Review the videotapes of your cash registers to see if sales associates and managers are checking IDs of younger looking customers.
- If you see your sales associates checking IDs for an age-restricted product, thank them.
- Give financial incentives, such as in-store credit or cash, to sales associates who pass compliance checks. A recent survey of Nevada retailers showed that 35 percent of stores give some financial reward to the clerk who refuses to sell tobacco during a compliance check.
- If you offer an incentive, communicate to every store employee repeatedly that a financial incentive is available if they pass a compliance check.

## Amazon.com Tags Spoofers

There's yet another Internet scam to be aware of—spoofing—and Amazon is tired of "spoofers" bugging its email recipients.

After consumers in several states complained to Amazon that they were receiving unwanted emails, the company went after the perpetrators of the emails. Now Amazon has filed lawsuits against 11 of these email marketers, called spoofers.

Amazon alleges that the email marketers faked their email addresses to look like they were sent by Amazon.com. Amazon has asked the Ontario Superior Court of Justice in Canada and several U.S. district courts to place injunc-

tions on the spoofers to stop the forged emails. The company is also asking for millions of dollars in punitive damages. Amazon.com has also created an email address for consumers to report spam.

Amazon has named Rockin Time Holdings Inc. of Miami Beach; Royal Responder of Fort Collins, CO; Jay Unzicker of Arizona; Cyberpower Pty. 1505820 Ontario Inc. of Ontario; Edward Davidson of Florida; Matrix Consulting Group LLC of Wisconsin; Daniel Byron Black of California; and several unidentified defendants for spoofing. Another company named by Amazon.com, E.B.A. Wholesale Corp., has settled with Amazon.

# Navigating the Interaction of the FMLA, the ADA & Workers' Compensation

Editors: Joseph W. Ambash & Lisa J. Damon

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Every day managers and human resource personnel are responsible for interpreting and applying a myriad of state and federal laws that impact the ways companies do business. Because of the way some of these laws interact, the process is even more complex. Two federal laws, the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA), while designed for different purposes, may provide leave entitlements and job protections that, depending upon the situation, must be examined in a coordinated fashion to ensure full compliance

with both laws. In addition, state workers' compensation laws come into play whenever the disability or leave requirement results from a work-related accident or injury.

To minimize liability under these statutes, it is imperative that employers understand the similarities and differences between the FMLA, the ADA and state workers' compensation laws. Surveys repeatedly show that human resource professionals report uncertainty about compliance with these often-confusing laws. Following is information to help employers navigate these laws more successfully.

FMI focuses on the 10 most common ADA, FMLA and workers' compensation problems with an eye toward understanding how to resolve competing legal demands that can frustrate compliance with the law.



## **Problem 1: Failing to pay attention to and coordinate with the workers' compensation claim.**

**Example:** Under most workers' compensation statutes, an employer is only obligated to pay temporary total disability benefits while an employee is temporarily and totally disabled (TTD). Many states allow for termination of TTD benefits when an employee has reached maximum medical improvement. What happens when an employer obtains an independent medical exam that finds that the employee has reached maximum improvement? Under this scenario, it could terminate the employee's TTD even though that employee still has permanent restrictions. However, the ADA reasonable accommodation obligations have been triggered because of the medical opinion that the employee's condition is no longer temporary but is now permanent. Now the burden has shifted from the workers' compensation insurance company to the employer who must consider reasonable accommodations.

**Solution:** Create a structure in which the same individual or department is responsible for both the workers' comp case and the ADA claim, and monitor the activity of the workers' comp insurance carrier to make sure its actions do not affect a potential ADA case.

## **Problem 2: Failing to coordinate leave policies and forms.**

**Example:** If an employer fails to coordinate workers' compensation, ADA and FMLA policies and forms, then

an employee could potentially be off work for much more than 12 weeks and still be entitled to 12 weeks of FMLA protected absences.

**Solution:** Even though the Supreme Court recently struck down FMLA regulations penalizing an employer who fails to notify the employee that time off is counted against FMLA leave, as a practical matter employers should still provide written designation of leave as FMLA-qualifying in order to avoid challenges by employees who claim that they were prejudiced in some fashion by the failure to designate. Employers should also audit all leave policies and record-keeping practices to specifically integrate the requirements of the FMLA and ADA.

## **Problem 3: Failing to develop and implement a standard analysis of leave issues under all three statutes to guide your managers.**

**Example:** Line managers are often confused about their obligations under ADA, FMLA and workers' compensation. Thus, they may not be sufficiently alerted to the red flags that should prompt them to seek advice from human resources.

**Solution:** It can be helpful to develop a simple chart for your line managers or a simple question and answer form that simplifies the mystery of these statutes. This, coupled with periodic training, should sensitize managers to understand the fundamentals of the interaction and to direct appropriate questions to human

## FMLA, ADA & Workers' Comp

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resources.

### **Problem 4: Failing to deal with excessive absenteeism.**

**Example:** Chronic medical absenteeism often triggers obligations under both the FMLA and the ADA. But managing the interaction of the two statutes can be confusing, so many employers fail to address excessive absenteeism out of fear of violating one of the statutes.

**Solution:** Know your legal options. An employer cannot terminate an employee under an absenteeism policy for time missed due to FMLA leave. An employer may not be able to terminate an employee under an absenteeism policy for time missed due to an ADA disability since the EEOC says "modifying workplace policies, including leave policies, is a [required] form of reasonable accommodation." Yet a number of court decisions emphasize that showing up for work is an essential function of the job and therefore, a chronically absent employee is not a "qualified" disabled worker. By consulting human resources and your legal department, you can develop a strategy to address specific instances of chronic absenteeism while minimizing the fear of violating a statutory requirement.

### **Problem 5: Failing to document the interactive process.**

**Example:** The EEOC states in its Reasonable Accommodation Guidance that when an employer receives a request for reasonable accommodation, it should engage in an informal process to clarify the individual's needs and appropriate reasonable accommodations. But because the accommodation process is typically informal, employers often fail to document critical conversations and events, often leading to a lack of evidence if a discrimination charge is later filed.

**Solution:** Train your managers in the importance of documenting the interactive process, including phone calls, informal conversations, employer efforts and research, and employee responses to accommodation options.

### **Problem 6: Failing to manage light duty, part-time employment and reassignment issues.**

**Example:** Traditionally, under workers' compensation schemes, an employer could rely on an independent medical examination to release the employee to work and accordingly, terminate his/her temporary total disability benefits. This was often done through light duty

programs. However, with the advent of the FMLA and ADA, light duty programs may run afoul of the FMLA (an employee cannot be required to take a light duty job), or they may create new reasonable accommodation standards under the ADA, i.e. does creating a light duty job once mean this is a required ADA accommodation or does creating a light duty position establish a "vacant position" to which a disabled employee could be reassigned on a permanent basis as a reasonable accommodation?

**Solution:** When creating light duty positions, the employer should place offers in writing and impose definite time restraints on the availability of the job, making clear that it is temporary. Employers should comply with workers' compensation rules regarding light duty, recognizing that an employee on FMLA leave may lawfully decline a light duty assignment, although the employee may risk termination of workers' compensation benefits. And managers should be taught to consult human resources about unusual light duty requests such as working at home.

### **Problem 7: Failing to manage returns to work and medical exams.**

**Example:** An employer's legal rights and duties with regard to return to work and medical examination vary dramatically depending on the statute involved. What might be allowable under the ADA might be prohibited under the FMLA, and the key is understanding how to manage situations where the statutes overlap.

**Solution:** Train managers to understand the law regarding an employer's reinstatement obligations: under the FMLA, job protection is guaranteed if the employee returns within the 12 weeks, but the employee has no continuing FMLA job protection once his/her job is restored; under the ADA, job protection is not guaranteed, but to the extent an employer must satisfy reasonable accommodation requirements, an employee's job may receive some protection. Under workers' compensation, job protection is not guaranteed, but it is generally unlawful for an employer to impose an adverse action on an employee for exercising rights under the workers' compensation statute. Managers should also be trained about the law relating to fitness for duty certifications. Under the FMLA, a fitness for duty certification can be required, but the employer cannot require an actual medical exam. Under the ADA, fitness for duty examinations may be required

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## *The Pantry Brings Back the Mom & Pop Store*

Do you ever long for those days of the mom and pop neighborhood store? Well, you can stop wishing and wander on in to The Pantry in downtown Reno at 151 N. Sierra St.

The Pantry is the brainchild of Bruce and Lynne Rosinski. About five years ago, the Rosinskis wanted a change, which included moving from southern California to Reno and buying a business. After studying the market for some time, they found a little store for sale on the corner of West and 2nd Streets. They bought it, moved to Reno and set up shop.

The store was named the Food and Liquor Shop, which didn't really focus on the kind of store that the Rosinskis wanted to own. So, Lynne says, when they bought the store "we changed the name to The Pantry because we were going to have more of a grocery store." About 14 months ago, they moved the store to its current location, the old Parker's Western Wear store. It was a good move because the mom and pop store gained the charm of the old building with its squeaky hardwood floors and spacious area. Though their sales dropped initially, the store is finding its niche with its line of products and some added features.

If you've ever had the privilege of having a little neighborhood store around the corner, you'll like this place. They carry foodstuffs like milk, eggs, bacon, frozen meats, produce, seasonal fruit, canned goods and other products that give you all the makings of a good breakfast, lunch or dinner. They also carry the necessities—tissues, toilet paper, toothpaste, and

the like. They have a little bonus, though. For a small charge, they'll deliver your groceries everyday but Sunday and Monday.

Lynne says they have regular customers who call in their grocery list. The same-day delivery fee is \$2.99. If you need it right now, the charge increases slightly to \$4.99. Lynne says delivery service helps because, "We have a lot of senior citizens and handicapped customers." Seniors get free delivery on Thursdays.

The store spells convenience for some customers. People who work downtown have discovered the delivery service. They can simply call in their order and have it delivered to their workplace, cutting out the hassle of that after-work chore.

The Pantry also carries Country Cupboard products, the 100 percent made in Nevada line from the Virginia City based company. Lynne says the Country Cupboard specializes in jams, jellies, soup mixes, desserts, flavored garlicks, pickled jalapeno peppers and other fare all suitable for gifts. Lynne says if you don't know what to buy for someone, have The Pantry make up a gift basket of yummy, original food from the Country Cupboard. The Pantry can even ship the gift for you.

Want to add a little something that isn't food to that basket? Then shop Lynne's gift shop that sells porcelain dolls, figurines, wind chimes, old metal musical cars, T-shirts and other products and also souvenir items.

The Pantry occupies the first floor of the building, which leaves an entire basement

open. The Rosinskis decided to turn that area into a rental space for birthday parties, anniversary parties, wedding receptions and other big gatherings. Although there is no kitchen yet, they do provide a certain number of tables and chairs and sell sodas, liquor and other drinks at a reasonable price. Parties can bring in their own food or have the event catered.

Lynne says they're also looking for someone who would like to rent space to set up shop in the basement. She says it would be a good space for a furniture or clothing store, perhaps a "bargain basement" store. Presently, the Rosinskis have lent a small part of the basement to a shoe shine man who offers pick up and delivery service.

The Pantry is located in the section of downtown Reno that's been revitalized by the Riverside Theater, the Truckee River Project and retail including VSA Arts of Nevada, Esoteric Coffee House & Gallery, craft shops in the old JC Penney's building and an antique store in the reopened Showboat.

If you're craving a little nostalgia or just want to visit a nice shop that has everything from food to fine gifts, visit the Rosinskis at The Pantry in downtown Reno.



## Las Vegas Chamber Offers Business Classes

The Las Vegas Chamber of Commerce is offering educational classes covering sales, marketing and motivation.

The Business Education Series (BES) provides in-depth explorations of subjects that small business members have requested.

Workshops are 90 minutes and include a networking breakfast.

### Classes Offered:

**October 15, 2003 - Marketing: Building High Profiles from Low Dollars** covers spending advertising/marketing dollars wisely; developing and retaining customers through relationship building; creating positive visibility and positive perceptions and build-

ing the team you need.

**November 12, 2003 - Motivation: Overcoming Adversity...Rudy Did it; So Can You!** This workshop discusses being the person you want to be; eliminating confusion; the realities of greater struggles = greater victories and using anger to get positive results.

All classes are held at the Golden Nugget Convention Area from 7:00 a.m. to 9:00 a.m.

**Cost:** \$18 members prepaid; \$33 non-members or members without a guaranteed reservation.

Call 702-641-5822, option 2, or register online at [www.lvchamber.com](http://www.lvchamber.com).

## Help for Tobacco Retailers

If your company is a retail outlet for tobacco, you may be interested in a program that the Nevada Attorney General's office offers to help you comply with tobacco laws affecting underage minors. John Albrecht, chief tobacco counsel with the Attorney General's office, says the WE CARD program provides on-site training classes for your managers and/or sales staff.

The Attorney General's office can send an attorney to your store who has been on compliance checks and is acquainted with the program to answer your questions. If interested in this opportunity, contact David Glenn at [dglenn@wkac.com](mailto:dglenn@wkac.com).

Want a close look at a compliance check in action? Then take advantage of Albrecht's offer that allows someone from your firm to ride along during the operation. There are two requirements:

- 1) The AG's office will not conduct compliance checks affiliated with the firm of the person riding along (e.g. no 7-Eleven stores while a 7-Eleven representative, including franchisee, is riding along; and
- 2) The person may not re-enter the store if a citation is issued.

Contact Albrecht at [jpalbrec@ag.state.nv.us](mailto:jpalbrec@ag.state.nv.us), or call him at 775-688-1872.

Nevada tobacco outlets continue to score well on compliance checks. Albrecht says there are about 2,000 tobacco outlets in the state, and the buy rate is well within the federal requirement that says the youth buy rate may not exceed 20 percent. There were 460 purchase attempts conducted this July, which resulted in 58 illegal citations issued for purchases and six warnings issued. The youth buy rate was 13.9 percent.

## • Seminars •

### October - 2003

#### Pack Expo Las Vegas

October 13 - 15, 2003

Las Vegas, NV

Contact: [http://](http://www.packexpo.com/newsinfo/calendar.cfm?month=10&year=2003&cell=12)

[www.packexpo.com/newsinfo/calendar.cfm?month=10&year=2003&cell=12](http://www.packexpo.com/newsinfo/calendar.cfm?month=10&year=2003&cell=12)

#### PMA Fresh Summit

October 19 - 20, 2003

Orlando, FL

Contact: <http://pma.com/events/freshsummit/freshsummit.cfm>

#### FMI Productivity Convention & Expo

October 26 - 29, 2003

Nashville, TN

Contact: Laurel Kelly [lkelly@fmi.org](mailto:lkelly@fmi.org) or phone at 703-532-9400

### November - 2003

#### National Wireless Engineering Conference

November 10 - 13, 2003

San Diego, CA

Contact: <http://www.iec.org/events/2003/natlwireless/>

#### Comdex Fall 2003

November 15 - 21, 2003

Las Vegas, NV

Contact: <http://www.comdex.com>

### January - 2004

#### NRF 93rd Annual Convention & Expo

January 11 - 14, 2004

New York City

Contact: [www.nrf.com/annual04](http://www.nrf.com/annual04)

#### IMRA Logistics 2004

January 11 - 14, 2004

Orlando, FL

Contact: Rhett Asher at [rasher@imra.org](mailto:rasher@imra.org)

#### Abbreviations

FMI • Food Marketing Institute

IMRA • International Mass Retail Assn.

NRF • National Retail Federation

PMA • Produce Marketing Association

## Retailers/Wholesalers Battle Shoplifting, Check Fraud & Employee Theft

Shoplifting, check fraud and employee theft remain the greatest sources of annual losses for food retailers and wholesalers according to the 2003 Security and Loss Prevention Issues Survey in the Supermarket Industry, the Food Marketing Institute's (FMI) annual report. Nearly 14,000 stores responded to the FMI survey.

### Highlights of the report:

#### **Shoplifting:**

Shoplifting continues to be one of the most common and costly types of loss for food retailers. Respondents to the survey reported that shoplifting thefts occurred throughout the store. The five top items stolen were health and beauty care, meat, analgesics, razor blades and baby formula. Cigarette theft declined for the eleventh year in a row due largely to recent laws restricting the display and sale of tobacco products and limiting shopper access to them.

Respondents reported apprehending 227,860 shoplifters in 2002, an average of 22.2 per store. They recovered merchandise averaging \$45.27 per incident for a total of approximately \$9.2 million from all responding companies.

#### **Check Fraud:**

Worthless checks continue to be a costly problem for supermarkets. The total net loss from bad checks was approximately \$316 million for responding companies. They accepted an average of 153,229 bad checks for an average net loss in 2002 of more than \$7.1 million per company. The value of each bad check averaged \$73.60.

#### **Employee Theft:**

There was an average increase in employee theft of 17 percent in 2002, up from 2001. An average of 634 thefts were detected. The average value of cash or merchandise recovered in each instance discovered was \$450.69.

The cashier station accounted for 42 percent of all employee thefts. Approximately 25 percent of the detected incidents occurred in sales and service areas. Other departments targeted by employee thieves were customer service/courtesy booth—11 percent; back room—9 percent; cash office—7 percent and fuel stations—1 percent.

Approximately 47.3 percent of employee theft involved merchandise and/or cash. A combination of discounting, or "sweet hearting," and sliding, intentional failure to scan, accounted for 23.5 percent of thefts. Additional theft included snacking, void/refunds, fraudulent coupon redemption and the back door.

You can purchase the survey at FMI's Web site, [www.fmi.org/pub](http://www.fmi.org/pub) or by calling the FMI Store at 202-220-0723. This year's survey includes information on background screening, access control procedures and crisis management plans and response. The cost of the Survey is \$25, FMI members; \$43, associate members; and \$50, nonmembers.

## FMLA, ADA & Workers' Comp

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where they are job related and consistent with business necessity. Under workers' compensation laws, fitness for duty certifications and examinations are governed by state law.

### **Problem 8: Failing to grant leave as a reasonable accommodation.**

**Example:** This is a frequent problem under the ADA. According to the EEOC Reasonable Accommodation Guidance, an indefinite leave of absence may be a required form of accommodation, unless the employer can show undue hardship.

**Solution:** Be aware that the EEOC's position is not supported by all federal courts. However, leave beyond the FMLA's 12 weeks may often be considered a reasonable accommodation. In considering such additional leaves and their duration, employers are free to, and should actively consider, the manner in which extended ADA leaves can cause undue hardship on the employer's business operations. Each situation should be analyzed on its own merits.

### **Problem 9: Failing to recognize notice of the need for leave or accommodation.**

**Example:** If an employee calls in and says she/he is "feeling ill" and will be unable to come to work for an estimated 10 days, what information may and must the employer obtain from the employee?

**Solution:** Train managers to understand words that may trigger legal obligations. Under the FMLA, notice is sufficient if the employee

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## FMLA, ADA & Workers' Comp

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states that a potentially qualifying leave is needed. It's then up to the employer to further determine if the leave is for a FMLA-qualifying reason. Under the ADA, employees don't need to mention the phrase "reasonable accommodation" or the ADA. Statements that suggest a disability and need for reasonable accommodation, particularly if the manager knows or has reason to know that the employee has a disability, may trigger the obligation to engage in an interactive dialogue with the employee.

### **Problem 10: Turning an injured or sick employee into a disabled employee.**

**Example:** Under the ADA, a disabled individual may include someone who is regarded or perceived as having an impairment. Therefore, an employee can obtain protection under the ADA if the employer treats him as though he has an impairment.

**Solution:** Don't go overboard in placing limits on what an employee can do, such as placing excessive restrictions on employees returning from workers' compensation leave. This can lead to the conclusion that the employer regarded the employee as disabled, triggering ADA rights. Do not overact by evaluating, testing or placing on leave an employee who may be showing signs of a problem since this may also trigger an ADA claim. However, if it's possible that an employee may pose a threat to themselves and/or others, employers must walk a fine line when considering their options in dealing with the problem.

*This article is for general information and not intended to substitute for advice of counsel. FMLA, ADA and workers' comp rules and regulations are subject to change.*

## ID Theft Continues Upward Trend

Despite efforts by the Federal Trade Commission (FTC) and private industry, identity theft is on the rise. A survey just released by the FTC reports that 27.3 million Americans have been victims of the crime since 1998, the year the FTC created its ID theft program.

Losses to businesses and financial institutions totaled nearly \$48 billion last year alone, with consumer victims reporting out-of-pocket expenses for the crime in the same period at \$5 billion. Online retailing is also feeling the pain. According to an article in the National Retail Federation's (NRF) Stores magazine, consumers' fear of having their personal information stolen often results in not completing a shopping transaction on the Internet.

Until the FTC conducted its survey, the numbers of identity theft it reported related to the number of complaints received at its ID theft Web site. This report changes that. In March and April, the agency conducted a random telephone survey of 4,057 adults. Howard Beales, director of the FTC's Bureau of Consumer Protection says, "These numbers are the real thing. For several years we have been seeing anecdotal evidence that identity theft is a significant problem that is on the rise. Now we know."

Identity theft is big business, and big business is fighting back. The Information Technology Association of America (ITAA) has pulled together companies including Visa, Microsoft and Amazon.com to form the Coalition on Online Identity Theft.

According to Harris Miller, president of ITAA, the coalition has a number of goals:

- 1) Educate people and businesses about the problem;
- 2) Promote development of new

technology to fight the problem;

- 3) Make resources available for consumers to protect themselves;
- 4) Lobby for better resources for law enforcement to combat electronic crime along with stiffer penalties for identity thieves; and
- 5) Attempt to organize the jumbled information that's available for consumers to protect themselves.

There are companies that offer credit-monitoring services including Credit Manager offered by Experian, [www.experiam.com](http://www.experiam.com); Credit Watch Silver offered by Equifax; Credit Monitoring by TransUnion, [www.transunion.com](http://www.transunion.com); Credit Protect offered by Identity Guard, [www.identityguard.com](http://www.identityguard.com); and PrivacyGuard at [www.privacyguard.com](http://www.privacyguard.com). All of these companies offer online notification, but some also serve those who don't have access to the Internet.

There is also new technology that can help e-retailers protect their customers. ScanAlert sells "Hacker Safe" certification, a third party Web site protection that conducts daily audits of a client's site, including the software, hardware and operating systems, to offer a hard line of protection against hackers. An online company, Binoculars.com, bought the protection and ran its own survey to check the value. They placed the Hacker Safe logo on their home page, then tested 25,000 individual site visitors and saw Online sales increase by 30 percent.

Last year it took the 10 million people in the United States who were victims of ID theft a total of 300 million hours to correct the problem. Now the fight is on, with the federal government, private businesses and Internet organizations working to combat the thieves.

Sources: FTC; NRF Stores magazine

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### Important Information for SIG Members

The NRS governing self insured groups requires notifying members of all new members to the Group. New members for NRNSIG as of September 8, 2003, are listed below. For a complete member list, please call RAN at 775-882-1700. Please Note: Due to the many new members added each month to NRNSIG, we are able to list only new members on this page. For information on NRNSIG, please see information below.

#### **NRNSIG**

Advanced Home Health Care & Nursing  
Big Mama's Rib Shack  
DB's Automotive Service  
Farali AM/PM  
Jaramillo Landscape & Maintenance Co.  
Sheet Metal Local #88 JATF  
Sierra Nevada Radiology  
The Muffler Shop, Inc.

**NRNSIG** members who wish to register a negative vote on a new group member, write NRNSIG at 810 E. Fifth St., Suite A, Carson City, NV 89701, indicating which member and the reason(s) for the negative vote.

#### MEMBERSHIP INFORMATION

Find out more about RAN's self insured groups. Call Willie Kerschner at 775-720-8125 or the RAN office at 775-882-1700 (toll-free in Nevada – 800-690-5959). Don't forget our website, [www.RANNV.org](http://www.RANNV.org).

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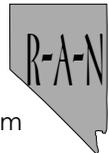
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# Unconscious Mindsets

Research reveals new understandings of how we make decisions

Ordinarily, we think of a “mindset” as a deliberate act. A man sets his mind on climbing a mountain; a woman sets her mind on completing a college education, and so on. In recent years, researchers have discovered that we often adopt mindsets without realizing it, and they guide our decision-making. Donnel Briley, from Hong Kong University, has been studying what she calls a “group mindset.”

A group mindset is stimulated when people are made aware of themselves as members of a group, any group, and one common feature of this mindset is a prevention focus.

With a group mindset and a prevention focus, people tend to be aware of the possible negative consequences of their actions and decisions, and they try to eliminate them to prevent problems from arising. As an unconscious process, this leads to a reluctance to recognize benefits that could result from a decision, so people are reluctant to try new products. People may also choose to remain in difficult situations when a decision to move would clearly be best for them.

Professor Briley conducted a series of experiments exploring the limits of group mindsets, and her findings led her to some useful conclusions.

When Briley assigned subjects to groups to accomplish a task, they clearly adopted a group mindset, so in following experiments,

she tested other means of triggering a group mindset. She was surprised to find how easy it was to do so.

Using plural pronouns in conversations with people did it. Plural pronouns such as “we” and “our” triggered a group mindset, while singular pronouns such as “I” and “my” did not. Specific references to family triggered it. References to cultural images, like an American flag, did it. Even references to shared knowledge and experiences, such as Abraham Lincoln or 9-11, did it.

Once a group mindset is triggered, people are sensitive to the risk of negative consequences that could come with their actions, especially negative consequences that could come to others in the group(s) to which they belong. For example, spending money for a product that does not work takes money away from one’s family without providing any benefit. It hurts one’s family.

Briley also found that when a group mindset is triggered, people presented with decisions search for compromise choices, and their reasons for selecting these choices are negative. It isn’t beneficial features that they seek; it is the absence of risky or extreme features that attracts them.

She also found that these compromises often have nothing to do with the group(s) to which they belonged. People even seek a compromise when only they would be affected by the decision.

Briley found that when a group mindset was active, people expressed a clear preference for equality in interpersonal situations. They wanted fair treatment that would bring no special reward or

hardship on others.

The most important conclusion Professor Briley draws from her work

involves marketing. We often place people in social situations using our products, but doing so triggers a group mindset with its accompanying protective focus. If we also deliver a message that is consistent with this mindset, one that emphasizes preventing problems, such as the safety, reliability, and durability of our products, then our message will be heard. People with this mindset are searching for such a message. But if our message emphasizes superior performance, then it will be inconsistent with their group mindset, and it won’t be heard. It may even convince them to keep searching for another, compromise choice, one that poses less risk of disappointment. As a rule, providing a compromise choice appears to be smart retail business.

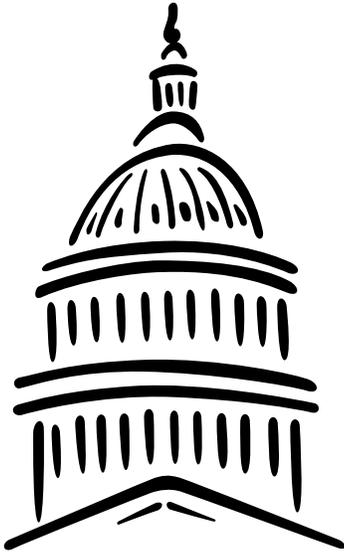
Finally, Briley’s work gives us a way to recognize when people are in a group mindset. We can listen to the pronouns they use. If they are plural, such as “we” and “our,” and if people appear to be thinking about others, then we could conclude that they are in a group mindset, and we could tailor our communications appropriately.

*Reference: Briley, Donnel, and Robert Wyer, Jr. (2002) “The Effect of Group Membership Salience on the Avoidance of Negative Outcomes: Implications for Social and Consumer Decisions.” Journal of Consumer Research, 29 (December), 400-415.  
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*Washington  
Watch*



**IRS makes changes for service contract insurance**—The IRS is focusing on service contract insurance to see if they have become mechanisms to avoid federal income tax. The agency is reviewing service contracts sold by retailers so that they might uncover the use of unreported producer-owned reinsurance companies (PORCs).

A PORC exists when a retailer sells a service contract to a customer on a product to insure the product against theft or damage, and/or when insurance is also extended to cover a customer's payment obligations should the customer die or become disabled or unemployed.

The retailer may sell the policy through an unrelated insurance company while it also forms a

wholly-owned corporation to reinsure the policies sold.

If the reinsurance company is formed offshore, it typically elects to be treated as a domestic insurance company under the Tax Code. The IRS then takes the position that it is entitled to tax benefits available to insurance companies. In some cases, these PORCs enjoy considerable investment income, which is not subject to U.S. income tax.

The IRS says that anyone operating a PORC or engaging in a similar transaction claiming certain insurance benefits under the Internal Revenue Code must report these transactions and/or be subject to penalties.

*Source: International Mass Retail Association*

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