



# CHILD CARE

Fall 2008

# News

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## President's Message *by Jerry Cook, SCCCA President*



A special recognition to the new members of the SCCCA Board and a sincere thank you

insurance possible for all SCCCA members throughout the state. Thank you, Marie, for your dedication to making things better for the special folks in our industry who care so much about the children.

for accepting the challenges and responsibilities the office requires. And, a special thank you to the incumbents for your loyal support. Your active participation in the molding of the future of our children is exemplary. Your travel alone to and from board meetings, especially those of you in distant parts of the State is expensive and time consuming. We recognize that and thank you for your sacrifices.

Much work has been exerted since the publication of our Summer newsletter. For example, Hope Lanier and Jeff Thordahl of MG&C Consulting have been regularly monitoring and interceding on behalf of the SCCCA. Hope's report to the Board last week was indicative of their determination to level the playing field, and they will fight for us until that is accomplished.

Marie Darstein has informed us that the NCCA is entertaining an employee health insurance program similar to the one we enjoy in Lexington, Richland and Fairfield Counties that would make health

Our Executive Director, Karen Boyce, has done a superb job creating a new website for the SCCCA. She has saved the Association hundreds of dollars by creating and maintaining the website herself by not having to pay high tech support fees every time a change is needed. Visit with us at: [www.southcarolinachildcareassociation.com](http://www.southcarolinachildcareassociation.com). E-mail Karen your comments and suggestions. For those of you who don't know Karen, she is on the go all the time conducting the business of the SCCCA and is beyond a doubt a true and convicted advocate for who we are and what we stand for and is dedicated to making our goals possible. She is a wonderful asset to our program, and we value her expertise so much.

Becky Croft along with Cindy Walton-McCawley have volunteered to chair the annual conference this year in February. In the past, Marie Darstein has done a tremendous job with this (Con't to page 5)

# Legislative Update

## Fall 2008

Jeffrey N. Thordahl and Hope Lanier

As 2008 comes to a close, there are several legislative issues that remain pressing for the private child care industry. As one of the most highly regulated small businesses, and rightfully so, we remain at a disadvantage with other child care providers who are lightly regulated or heavily subsidized. Hopefully, we can continue to draw attention to this unfairness and create a better environment for you to operate in and for all children to learn in.

### ISSUES

**ABC Funding** – As of this printing, it appears the ABC funding through the current budget cycle (June 2009) will remain intact. The state budget cuts did not impact the ABC program. The bigger challenge will be maintaining the program at least at its current level going forward in these more challenging economic times. Most of the money is federal money with a required state match.

**Provisional hiring protocol** – A protocol is being written by DSS and is coming soon. It will be available on their website. We want to make sure the provisional employment is working as smoothly as it was intended to work so we need to communicate with each how well it is going and if it is not going well. Incorporated in this protocol should be the ability to use fingerprint cards instead of the IBT LIVESCAN (at your choosing) IF you are located more than 30 minutes from a LIVESCAN permanent site or from a site that is set/scheduled at least once a month. It may end up being 30 miles, but that is up for discussion right now.

**LIVESCAN of fingerprints** – As referenced above there is an exception to the new requirement to use the IBT LIVESCAN if your center is located a certain distance from either one of the permanent

sites or one of the sites that has a set / scheduled date at least once a month. Given the high

success of the LIVESCAN system in reading the prints and the more rapid turnaround, it is hoped that this will be the better option in any event. However, if getting a potential employee to a LIVESCAN site is too time-consuming, then that is where the exception will come into play. Watch for further guidance from the SCCCA and DSS. In the meantime, let us know how LIVESCAN is working for you.

**Level Playing Field** – This needs to be our recurring theme in conversations you have with parents, friends and especially public officials. We continue to look for ways to point out the unfairness with the current system. You have been competing for years with the at-home less than 6 children businesses who continue to be largely unregulated. Now, it is clear that more and more public schools are finding the money, local tax dollars typically, to run 3 and 4 year old programs. It is not hard to imagine that they have 2 year old programs on the drawing board as well. At the very time K-12 is hungering for a larger state allocation of money to improve test scores and reduce the dropout rate, it is amazing they can find the money to start up additional programs. Of course these 3 and 4 year old public programs are heavily subsidized by existing infrastructure costs.

Many of these programs charge a very low weekly rate for the program. As you know, the low rates do not cover the actual costs so there must be a subsidy coming from somewhere. In some parts of the state it may be that the public schools are well suited to providing these programs. However, if the state reviews the role of K-12 and the policies



of the state are changed to enhance the ability of the private sector, we can be the predominant providers of quality learning in a healthy environment in every part of the state. Our voice that we provide a quality, safe learning environment and provide tremendous revenue and jobs to the state must be heard.

## REGULATIONS

**Proposed DHEC Regulation Number 4016** - There is a newly proposed DHEC regulation related to the inspection fee charged for the environmental health inspection in regulated or licensed child care facilities. Currently, this fee is set at \$60. The proposed regulation would remove the set fee and allow it to be set and adjusted by DHEC "at a level that will offset the cost of providing the service and conducting the inspections." There is a hearing before the DHEC Board in December concerning this matter. In addition, it may be an issue that the Small Business Regulatory Review committee decides they want to look at closely. We are communicating with them now.

**Three-Year Review of the Licensing Regulation** - The child care licensing regulation is required to be reviewed by the Governor's Child Care Advisory Board every three years. 2008 is the third year. Those in attendance at the Governor's Board meeting have considered several changes and may well suggest that they be made. While the regulation has been reviewed in part by the Board, the Small Business Regulatory Review Committee is currently reviewing the regulation as well. DSS was asked by the Review Committee to take a look at the regulation in light of the fact that there are other facets of the child care industry that are unregulated or subsidized while the licensed facilities (us) are heavily regulated and pay property taxes.

## ELECTIONS

By the time you receive this newsletter this election season will be history! With a minimum of 22 new Representatives and six new Senators, the Statehouse may well be a much different place. While House and Senate leadership will be largely

the same, there will be new Chairmen of the House Education, Labor Commerce & Industry and Agriculture Committees as well as significant shifts in membership on all House standing Committees. Further, the Senate Judiciary Subcommittee through which many of our issues went last year has lost three of the five members, leaving the door open for significant change that could be positive or not.

With all those changes coming, the next two months offer a terrific opportunity for you all to reach out to your legislators – especially those who are newly elected. Take a moment to write, congratulate and introduce (or re-introduce) yourself. Be sure they are aware of your business, offer them an opportunity to visit and learn more about the Child Care industry and let them know about issues like 4K and about the families you serve and the economic impact our industry has on the state. There is no better time to forge friendships and to educate your elected leaders than now. This is your one opportunity to make sure they hit the ground running on day one, at least as it relates to issues of importance to the Child Care industry!

## Welcome New Members!!

Four Winds CDC & Academy  
Greer

Pawleys Island Montessori Day School  
Pawleys Island

All God's Children Youth Academy  
Johns Island

Berean Christian Academy  
Fountain Inn

Smiling Faces Day Care  
Spartanburg

Carolina Bus Sales  
Chesnee

E Z-Care2 Center Management Software  
Horsham, PA

# “How to Avoid Employee Lawsuits”

By Kris Cato, Esquire  
and  
Edward Rawl, Esquire  
McAngus Goudelock & Courie

*This is the second of a two-part article.*

**6. Interview Wisely.** The individuals responsible for conducting interviews for your company must know what they can and cannot ask. Interviewers must steer clear of questions relating to age, national origin, gender disability and marital status. Employers may want to provide interviewers with a list of standard, objective, job-related questions. In addition, interviewers should be clear as to what is expected of employees from the very beginning and what happens when those expectations are not met. Many employees quit and then sue their employers because of a lack of clarity of what is expected from the employee. Specifically, employees will likely seek legal advice when the hours, pay, tasks or other terms are unclear. Employees feel exploited when the scope of their duties exceed the expectations that were established during their interview and orientation.

**7. Accurate Job Descriptions.** Employers should provide potential employees with an up-to-date and accurate job description outlining the parameters of the available position. In addition, the statement should confirm that the employer has the right to make any changes to the employee's job duties.

**8. Offer Letters and Wage Payment Forms.** Employers should put the candidate's job offer in writing. The offer letter and wage payment form should include the following information: (a) the position being offered to the candidate; (b) the start date; (c) the normal hours of work; (d) how wages will be computed; (e) the time and place of payment; and (f) the deductions which will be made from the wages, including payments to insurance programs.

**9. Psychological Screening.** While psychological screening may not be practical or advantageous to many employers, it should be considered for positions particularly prone to stress. However, employers should be aware that as a potential

“medical test,” psychological screening may violate the Americans with Disabilities Act (ADA). Therefore, psychological screening should only be done post-offer as a condition of employment. Moreover, such screening must be job-related and consistent with business necessity.

**10. Probationary Period.** All new employees should be required to work on a probationary basis for the first 90 days after their date of hire. The probationary period is intended to give new employees the opportunity to demonstrate their ability to achieve a satisfactory level of performance and determine whether the new position meets their expectations. Employers should remind employees that their employment is “at-will.” That is, either the employee or the employer may end the employment relationship at any time during or after the probationary period with or without cause or notice.

**11. Proper Record and Timekeeping.** Unpaid overtime and wages happen when an employer fails to pay a non-exempt employee time and a half for any hours worked over 40 per week, or when an employer does not pay an employee at least the minimum wage required by law. Failure to pay wages and commissions happens whenever an employer does not pay an employee for any work performed for the employer. Therefore, employers should require all employees to maintain and sign detailed time sheets to ensure every hour worked is recorded.

**12. Performance Reviews.** Although there are no legal requirements that require employers perform formal performance reviews, such reviews can be valuable evidence in defending against claims of discrimination, retaliation or wrongful termination. Employers may be able to use performance reviews to show that an employee was fired for poor performance. Con't to page 8



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Con’t from page 1

program but has not become the Executive Director of the NCCA and will not have sufficient time to devote to the conference. Pulling together a successful conference is not easy, and we urge you to pledge your support to Becky and Cindy in every aspect of their endeavors.

I will close for now, but again remind you that your dollars are at work for you in Columbia. Your annual dues are the resources to get things done, and as you can see from my comments, the job is not easy. We expect change; we will have change, but only with your support.

**“Cultures evolve through technology ... mankind develops through education.” ~Jerry Cook**

Please visit  
us on the web at:

[www.southcarolinachildcareassociation.com](http://www.southcarolinachildcareassociation.com)

If you have any suggestions or  
comments, please do not  
hesitate to fill out the “Contact  
Us” link on the site.

Karen C. Boyce  
Executive Director

# *The origin of Thanksgiving*

## *By Susan Crowley*

Remembering the purpose of Thanksgiving makes  
the day even more special!

Every year many Americans set aside the fourth Thursday of November to celebrate a meal of thanks. Today Thanksgiving is a national holiday; however, it did not start out as such. The origin of Thanksgiving in the United States dates back hundreds of years, beginning with the first Thanksgiving dinner in 1621.

### **The Mayflower**

On September 6, 1621 a ship called the Mayflower set sail from Plymouth, England. One Hundred Two people were on board; of these, forty-four were Pilgrims and called themselves "Saints." They referred to the other sixty-six as "Strangers." Their destination was the New World.

The trip across the sea lasted 65 days. Due to the cold and damp conditions, many on board became sick and at least one person died. Land was finally sighted off Cape Cod on November 10, 1621.

The group arrived at Plymouth (which had been named by Captain John Smith in 1614) and decided to settle there. A meeting was held and the "Saints" and "Strangers" decided to settle together. They signed the Mayflower Compact, which was America's first document of civil government and the first to mention self-government. This agreement guaranteed equality between the two groups.

### **The first year**

Plymouth offered a fine harbor and nearby stream for fish. However, the first winter was very hard on the Pilgrims. The cold and snow prevented the Pilgrims from building their settlement. Many died during the harsh months. Less than 50 people survived the first winter in the New World.

In March 1621, the weather began to warm up. One day that month, an Indian brave walked into the

Plymouth settlement. His name was Samoset and he was an Abnaki Indian. Samoset called out "Welcome!" in English to the group. A few days later, he returned with his friend Squanto.

Squanto spoke more English than Samoset. He taught the Pilgrims many survival techniques. He showed them how to tap the maple trees for sap. He pointed out which plants were poisonous and which ones could be used as medicines. He taught the Pilgrims to plant corn by heaping the earth into small mounds and using fish as fertilizer. He showed them how to plant other vegetables as well.

### **A Plentiful Harvest**

Due in large part to Squanto's guidance, the harvest in October was plentiful. The Pilgrims had enough corn, beans, barley, pumpkins and other food to put away for the winter. There was much to celebrate that year: the Pilgrims had built homes, raised enough food for the winter months, and made peace with the neighboring Indians.

William Bradford, the governor of the Pilgrims, declared a day of thanksgiving to celebrate the bountiful harvest. The Pilgrims invited Squanto and others to join them. Chief Massasoit and 90 other Indian braves came to the festival. The feasting and games lasted for three days.

The Pilgrims provided fowl for the feast. The Indians brought deer. Corn and cranberries were also served. The Indians showed the Pilgrims their bow and arrow skills; the Pilgrims in turn demonstrated their use of the musket. It was a three-day celebration. During the origin of Thanksgiving, feasting and games abounded as the two groups enjoyed each other's company.

### **Thanksgiving Becomes a National Holiday**

Thanksgiving celebrations continued during the years of colonial America. In 1817 New York State adopted Thanksgiving Day as an annual tradition. Then in 1863 President Abraham Lincoln proclaimed a national day of thanksgiving. Today, Thanksgiving is celebrated on the fourth Thursday of November each year.

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For more information, please contact

Karen C. Boyce  
Executive Director  
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Similarly, employers may demonstrate that the decision to promote another employee was based on his or her performance reviews, which were consistently better than the complaining employee. However, employers should be aware that written performance reviews can be a double-edged sword. If an employee is terminated for reasons relating to his or her performance, previous performance reviews that failed to mention these issues may provide support for the employee's argument that the stated reasons for termination were pretext for discrimination.

**13. Know the Law.** Employers should train and educate supervisors to ensure they have a working knowledge of employment law and good personnel practices. Specifically, supervisors should know that state and federal laws protect against discrimination based on age, race, national origin, sex, marital status, color, religion, creed, disability, sexual orientation and status with regard to public assistance. Adverse actions against employees or job applicants in these protected classes raise the potential of a discrimination suit.

**14. Communicate.** One of the most effective ways to prevent problems in the workplace is to have open, two-way communication. Management should be clear about what is expected of employees. Employees who are unaware of where they stand are more likely to be surprised, and surprised employees are more likely to sue.

**15. Investigate Internal Complaints.** Employees who believe their work-related complaints have been ignored usually take their complaints elsewhere – to lawyers or governmental agencies. Even baseless complaints allow the employer to satisfy the employee's desire to be heard. Most employees will accept decisions they do not agree with, as long as some rationale is explained to them.

**16. Documentation.** Documentation is one of the most effective tools for dealing with personnel issues and discouraging employee lawsuits. Documentation can help prevent employee lawsuits by educating employees about performance issues and providing them an opportunity to improve. Employees who have been given written notice of a

problem and an opportunity to correct it are less likely to sue. Employees who believe they have been treated fairly by having been warned before termination also are less likely to sue. Moreover, if an employee sues, documentation provides important evidence to support the employer's case.

**17. Supervisor Responsibility.** Supervisors must realize that their acts or omissions may expose the company to tremendous liability; therefore, it is imperative that they understand the role they play in reducing the company's exposure to lawsuits.

**18. Discrimination and Harassment Policies.** Discrimination and harassment are pervasive workplace problems that can be damaging to any business. There are a number of measures employers can take to prevent discrimination and harassment in the workplace. For example, employers should have a written policy educating employees about what is and is not discrimination and harassment. Educated employees are less likely to engage in unlawful harassment. In addition, employers should enforce the policy consistently; monitor the workplace for prohibited conduct; and conduct thorough investigations immediately after receiving a complaint. The policy should also outline procedures enabling employees to bring harassment complaints immediately to management's attention.

**19. Effective Disciplinary Action.** Company supervisors must immediately respond to inappropriate and unacceptable employee behavior. Supervisors should plainly state employee expectations and point out the employees' deviations from those expectations. In addition, supervisors should investigate each particular situation before taking disciplinary action. Specifically, they should review the evidence, assess options, and consult with upper

management and/or legal counsel. Most importantly, disciplinary actions should be properly documented and carried out in an objective manner.

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**20. Terminate Carefully.** No matter how carefully an employer handles a termination; there is always a chance that a former employee will initiate legal proceedings. To reduce this risk, employers should carefully and objectively review a number of issues, including the employee's personnel file and work history, the company's employment policies, any employment contracts or handbooks, and the specific facts surrounding the potential termination. In addition, the employer should consider whether they are required to follow a progressive disciplinary policy and how the employer has treated similar problems in the past. Employers should have

termination decisions reviewed by a designated company officer, human resources professional or legal counsel. The employer should be aware of past legal issues with the employee, including whether the employee is a member of a protected class; whether there is a pending or recent workers' compensation claim; whether the employee has been involved in union organization; or whether the employee has recently returned from an extended leave of absence.



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