

June 2010

# Arkansas Chapter

## The LEGAL Link

# ALA

### PRESIDENT'S

*Message*

*by*

*Nancy Collins*



Keepers

I believe if there is something good to come out of the recent economic troubles, it is that we learn to appreciate and keep what we have; fix and reuse rather than throw away.

For our parents and grandparents, keeping used to be a way of life – fixing, re-using, and fixing again. Later generations didn't understand. Somewhere along the line we decided that waste meant affluence. Buy cheap, use it up, throw it away, repeat the cycle. Not many things are "keepers" anymore.

But as we get older, we experience the loss of a loved one; we experience the pain of learning that sometimes there isn't any more. Sometimes, what we care about most gets all used up and goes away. . . never to return. So, while we have it, we learn to love it, care for it, fix it when it's broken, and heal it when it's sick.

This is true for marriage, children who get in trouble at school, dogs and cats with bad hips, aging parents and grandparents . . . and friends. We keep them and love them because they are special, and they enrich our lives. Even when they are gone, we keep them close in our heart and mind.

## Arkansas Chapter June Meeting

- Where: The Little Rock Club  
Regions Bank Building, 30th Floor  
Little Rock, AR 72201
- When: June 9, 2010
- Lunch: 11:30 a.m.
- Meeting: 12:00 Noon
- Topic: Annual Conference Reports
- Speakers: Nancy Collins  
and  
Paula Anderson
- Note: Validated Parking  
Regions Parking Deck

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April 2010 - March 2011

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- \*And a whole host of resources and opportunities for professional development*

*For more information, read more [about ALA](#) or contact Angelia Hadden at [ahadden@fec.net](mailto:ahadden@fec.net).*



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*Celebrations*



***Happy Birthday***

***Donna Blacklaw  
June 7***

***Paula Anderson  
June 8***

*Happy Fourth of July*



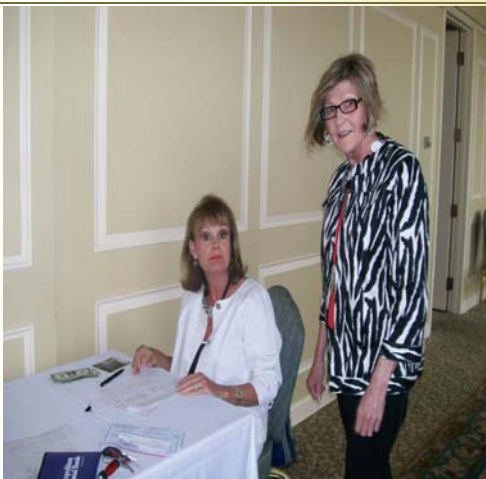


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## Memories - April Meeting and HITECH Seminar in May



Left:  
Nancy Collins, ALA President,  
and Donna Pettus, President of  
Arkansas Bar Association



Right:  
Carolyn Owen and  
Carol Minor



Left:  
Angela Falco,  
Angelia Hadden, and  
Sherry Lee of Datamax



Right:  
Terri Dickinson and  
Pat Campbell



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## EMPLOYEE VS. INDEPENDENT CONTRACTOR; EXEMPT EMPLOYEE VS. NON-EXEMPT EMPLOYEE

Workers are either employees or independent contractors. Employers may be tempted to classify employees as independent contractors to avoid taxes, benefits, and other liability and may be inclined to classify employees as exempt employees to avoid overtime. However, the employer should carefully review and analyze current laws and legal decisions and may want to consult legal counsel prior to making a final determination if it is not a clear-cut decision.

According to the IRS, an employee is anyone who performs services for an employer if the employer can control what will be done and how it will be done.

Employees can be classified as exempt and non-exempt. Some employees are exempt from overtime, some from both minimum wage and overtime pay provisions, and some from the child labor provisions of the Fair Labor Standards Act (FLSA).

Some of the more common exemptions that may be considered in the legal field are: executive exemption, administrative exemption, professional exemption, and computer employee exemption. Exemptions are narrowly construed against the employer asserting them. Consequently, employers should always closely check the exact terms and conditions of an exemption in light of the employee's actual duties before assuming that the exemption might apply to the employee. The ultimate burden of supporting the actual application of an exemption rests on the employer.

Independent contractors are, by definition, self-employed. If the employer has the right to control or direct only the result of the work done, and not the means and methods of accomplishing the result, a worker may be considered an independent contractor. The IRS uses a “20-factor test” to determine the amount of control the company exercises over the way the work is performed by the independent contractor, whether the employee has financial control over his profits and losses, and permanency of the relationship. If the company exercises too much control, the worker is deemed to be an employee. Because the IRS believes it loses billions of dollars annually due to misclassification of employees as independent contractors, it has cracked down on the problem in recent years. Misclassification of an individual as an independent contractor or as an exempt employee may have a number of costly legal consequences. If you have misclassified an employee, you may be required to:

- Reimburse them for wages you should have paid them under the [Fair Labor Standards Act](#), including overtime and minimum wage.
- Pay back taxes and penalties for federal and state income taxes, Social Security, Medicare, and unemployment.
- Pay any misclassified injured employees' workers' compensation benefits.
- Provide employee benefits, including health insurance, retirement, etc.



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## Question of the Month

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**Question:** I find my firm using more and more temporary employees during this down economy. Many of these support workers are here as a kind of stopgap measure. The firm owners decided to put a hold on hiring permanent employees to replace workers who quit - at least until more business is again coming through the door. Here's my question as an administrator: Are these temporary employees eligible for firm benefits?

**Answer:** Sound business practices often require firms to offer benefits for most classifications of staff to attract and retain key employees, although employers are not required by law to provide most types of benefits. When a firm chooses to offer benefits, many of these benefits are governed by the federal Employee Retirement Income Security Act (ERISA). ERISA controls benefits that fall under its definition of an "employee welfare benefit" and most retirement and pension plans.

### ***How Employee Classification Affects Benefit Eligibility***

Some classes of employees may be eligible for benefits; other classifications may not. It all depends on how you classify your employees. Temporary employees may work full-time or part-time and still not be eligible for an employer's benefit program. These employees are classified as temporary employees because they are hired for a temporary period or for a particular project. Temporary employees generally do not receive benefits.

### ***Avoiding Discrimination Claims for Benefit***

You are not required to give any employee benefits not prescribed by law. However, if you have or have had a temporary employee working in a similar situation, you should treat another employee in the same classification in the same manner.

### ***How Temporary Employees Differ from Part-Time Employees***

Labor / Employment law is always complicated, and ALA staff are not attorneys, so we cannot advise you on specific compliance issues. You will need to consult a labor attorney regarding individual questions. Further, also consider:

- Temporary workers are a different classification than part-time workers. Again, temporary employees, depending on how the firm's employee policy and procedures manual is written, may not be eligible for any benefits, no matter how many hours they work. In contrast, part-time employees may be eligible for benefits according to a schedule with your insurance provider or your firm's policies.
- The Personnel Department is responsible for classifying employees. Employees generally may be categorized as follows:
  - a. A full-time employee is an individual who works a normal work week and is hired for an indefinite period. A full-time employee may be classified as either exempt or nonexempt.
  - b. A part-time employee is an individual who works less than a normal work week and is hired for an indefinite period. A part-time employee may be classified as either exempt or nonexempt.
  - c. A temporary employee generally is an individual who is hired either part-time or full-time for a specified, limited period. A temporary employee may be classified as either exempt or nonexempt.

*Question of the Month - Cont. on p. 9*



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## Education

### TEST YOUR KNOWLEDGE IN PREPARATION FOR CLM “CERTIFIED LEGAL MANAGER” EXAM

1. What are non-exempt employees?
2. What is a record?
3. What is negligent retention?

See answers to Test Your Knowledge quiz below.

#### *Question of the Month - Cont. From p. 8*

- d. A nonexempt employee generally is subject to the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) and is typically paid either on an hourly or salary basis.
- e. An exempt employee is exempt from the provisions of the FLSA and is not entitled to overtime payments. Exempt employees typically are paid on a salary basis and include administrative, executive and professional employees, outside sales representatives and certain highly skilled computer professionals.

Source: *HR Policy Answers on CD*. KY: Personnel Policy Service, Inc. 2002.

#### **Conclusion**

Properly classifying employees and administering the benefit programs accordingly are important considerations for law firm administrators. Regarding the question of a temporary worker being eligible for benefits, the answer is based on: Are they hired for a specified, limited period or an indefinite period?

#### **ANSWERS TO TEST YOUR KNOWLEDGE:**

1. Non-exempt employees are employees who must be paid overtime under the Fair Labor Standards Act.
2. A record is recorded information of any kind and in any form, either originated or received by an organization which includes papers, correspondence, forms, books, photographs, films, sound recordings, maps, drawings, and other documents.
3. Negligent retention occurs when an employer becomes aware that an employee may be unfit for employment, but continues to employ the person, and the person injures someone.

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Mark Your Calendar

## Important Dates

**REGIONAL CONFERENCE**  
**October 1 - 2, 2010**  
**Four Seasons Resort & Club**  
**Dallas at Las Colinas**

**ANNUAL CONFERENCE**  
**May 18 - 21, 2011**  
**Orlando, Florida**



## ALA - 2010 WEBINAR SCHEDULE

June 16, 2010	<b><u>The Keys to Develop and Implement the Firm's Dreaded Strategic Plan</u></b> Speaker: John Remsen
July 21, 2010	<b><u>Legal Risks to Assessing Candidates by Social Network Sites</u></b> Speaker: Shelly Freeman, J.D., HROI
August 18, 2010	<b><u>Law Firm Profitability Enhancement</u></b> Speaker: Richard Turnbow
September 15, 2010	<b><u>Electronic Records Management: How to Manage Your ESI in the 21st Century</u></b> Speaker: Dana Moore

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## Upcoming Events



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