

November 2009 Newsletter



Helping Employers Protect Employees and Clients Through
Employment Screening and Drug & Skills Testing Since 1995

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Quotes That Inspire

"Money is either a good or bad influence, according to the character of the person who possesses it."

It's true. Money has no character, no personality, no values. Its actions only reflect the desires of its owner. Money can build great hospitals and schools, or it can be squandered on meaningless possessions. Money may construct beautiful houses of worship-or it may be used to create instruments of war and destruction.

-Napoleon Hill

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This month we present the following articles for your consideration:

- 1 - Is your firm using social networking sites to monitor employees' behavior and screen applicants? While it may seem these sites can be useful to employers there are some actions that should never be executed by management.
2. Are you under the control of "After"? This article will answer that question.
3. What can a young child who loses their balloons teach us about how to react to challenges in our life? .

Information in this newsletter is not intended as legal advice. Please consult legal counsel before taking any actions.

I hope you find this month's newsletter beneficial.

Jim Randisi
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101 Ways to have a Great Day at Work by Stephanie Goddad Davidson

"The important thing about a problem is not its solution, but the strength we gain in finding the solution. "

Anonymous

Take a look at areas of your job where there are problems or there is something missing. Then, come up with realistic fixes. If you cannot come up with a solution move on. Focusing on impossible goals wastes your energy and creates unnecessary stress.

Common Employer Mistake in Employment Screening:

Assuming that social networking sites can be used without limitation: Many employers have discovered that the internet can provide what appears to be a treasure trove of information when it comes to recruiting and hiring. By using search engines and social networking sites, recruiters are often able to source

Verdict Demonstrates Risks of Accessing an Employee's Restricted Social Networking Site

An article by Maria GrecoDanaher

In an unpublished opinion, a federal district court in New Jersey has upheld a jury verdict against a company liable for violating the federal Stored Communications Act (SCA). The violation occurred when the company's managers intentionally accessed a "chat group" on an employee's MySpace account without having received authorization from the MySpace member to join the group. The court also upheld the jury's finding of malicious conduct, which supported an award of **punitive damages**.

Brian Pietrylo and Doreen Marino filed suit against their employer, Hillstone Restaurant Group doing business as Houston's Restaurant, after two of the restaurant's managers accessed a MySpace chat group maintained by Pietrylo during his non-work hours. The chat group, called the "Spec-Tator," was accessed via an electronic invitation from Pietrylo. If the user accepted that invitation, he or she could access the site only by using a personal password. The site included language that indicated that the group was private and that it was a place where Hillstone employees could talk about the "crap/drama/and gossip" related to their workplace. No Hillstone upper manager was invited to join the group, and members accessed the site only during non-work hours and on non-company computers.

One employee/chat group member, Karen St. Jean, made a Houston's manager aware of the site. St. Jean later provided her password to another manager, Robert Anton, who shared the information with a regional manager, Robert Marano. In spite of the privacy warning on the page, Anton and Marano accessed the site on multiple separate occasions. After determining that the content of the postings in the chat group were "offensive," Anton and Marano fired Pietrylo and Marino.

Pietrylo and Marino then sued Houston's, alleging, in part, that the company violated the SCA and a parallel New Jersey statute, the New Jersey Wiretapping and Electronic Surveillance Control Act. A jury found in favor of the employees, awarding modest compensatory damages but adding punitive damages after finding that the company acted maliciously. Houston's challenged the verdict in a motion for judgment and requested a new trial. Both motions were denied by the district court, which found that the verdict and the damages were supported by the evidence.

Under the SCA, the plaintiffs had to prove that Houston's managers accessed the chat group "knowingly, intentionally or purposefully," and without authorization. Although Houston's argued that St. Jean willingly volunteered her password to Anton, St. Jean's trial testimony included the fact that she would not have provided that information to Anton if he had not been a manager. Interestingly, the court's decision turned partly on the fact that there was no documentary evidence concerning the authorization, and so the jury had to rely on the testimony and demeanor of the witnesses.

The court held that the jury could infer from St. Jean's testimony—specifically her statement that she felt that she "would have gotten in trouble" if she hadn't provided her password—that the purported authorization was coerced. In addition, the court cited that particular testimony, in conjunction with the fact that the restaurant's managers viewed the

candidates for positions. In addition, there are many stories about employers using the internet to pre-screen applicants. However, there are risks and exposure to liability and allegations of discrimination that need to be considered.

site on several different occasions, even though the site specifically contained warnings that it was “private” and accessible to “members only,” to support its decision to deny Houston’s motions.

Pietrylo v. Hillstone Restaurant Group d/b/a Houston’s, D.N.J., No. 06-5754, unpublished (Sept. 25, 2009).

Professional Pointer: While this decision is a district court case and therefore open to appeal, employers should be aware of the decision. The lack of documentation regarding how the company obtained the password, the use of a self-designated “private” chat room by individuals without an actual invitation and the continued use of the site with specific knowledge of its invitation-only status all provided a basis for the court to support the jury’s findings against the company. While employers have certain rights and obligations with respect to company-related computer equipment and electronic sites, this case points out the pitfalls of an attempt to extend that authority to non-work-related equipment and sites. This area of the law is developing quickly, and employers should be attuned to the ways in which courts are addressing the issues that arise.

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After is a self-defeating word.

Words of wisdom from a weekly column by Jeffrey Gitomer. Go to <http://www.gitomer.com/> to sign up for his weekly column.

After robs you of the present, and resigns you to wait without taking any action.

You convince yourself that life will be better after something: After you get a new job, after you get a better job, after you get more money, after you get out of debt, after the economy rebounds, after your stocks go back up, after you get that big order.

You convince yourself that life will be better after an event: After you get married, after you have a baby, after you get a new house, after you take a vacation, after you come back from vacation, after summer is over, or some other action-procrastinating "after."

Are you frustrated that the kids aren't old enough, and believe you'll be more content after they're in high school or out of high school? Are you frustrated that you have teenagers to deal with? You will certainly be happy after they're out of that stage. Certainly you'll be happier after they're in college, or is it out of college?

You tell yourself that your life will be more complete when your spouse gets his or her act together, when you get a nicer car, a new house, a raise in pay, a new boss, or worse, after you retire.

The truth is, the fact is, the reality is, there's no better time to be happy than right now.

If not now, when? After the economy gets better?
You may not be able to wait that long.

Your life will always be filled with challenges, barriers, and disappointments. It's best to admit this to yourself and decide to be happy anyway. Alfred Souza said, "For a long, long

time it had seemed to me that I was about to begin real life. But there was always some obstacle in the way, something to be gotten through first, some unfinished business, time still to be served, a debt to be paid. Then life would begin. At last it dawned on me that these obstacles were my life."

There is no way to happiness.
Happiness is the way.
There is no after to happiness
Happiness is now.

Here's the answer: It's inside your head FIRST and everyplace else second. Happiness is a treasure. Your (missed) opportunity is to treasure every moment that you have.

Stop waiting until you finish school, until you go back to school, until you lose ten pounds, until you gain ten pounds, until you have kids, until after you quit smoking, until your kids leave the house, until you start work, until you retire, until you get married, until you get divorced, until Friday night, until Sunday morning, until you get your new car or home, until your car or home is paid off, until spring, until summer, until fall, until winter, until the first or the fifteenth, until your song comes on, until you've had a drink, until you've sobered up, until you win the lottery, or until the cows come home to decide that there is no better time than right now to be happy.

And treasure the happiness of now more because you share it with someone special enough to invest your time in...

Happiness is:
Not a sale or a commission.
Not an economy or a budget.
Not a yes or a no.
Not a game winning hit or a last second touchdown.
Happiness is a way of life that is inside you at all times. It helps you get over the tough times, and helps you celebrate the special times.

Seems pretty simple to define on paper, but real difficult to manifest when the chips are down. My experience has taught me the difference between resign and resolve. You can resign yourself to what is, and hope or wait for a better day. Or you can resolve that you are a positive person who finds the good, the positive, the happiness, the smile, and especially the opportunity in everything.

Happiness is now, not a goal or a destination.
It's not an after, it's a before.
And it's up to you. All you have to do is: decide.

If you want a few more ideas about internal, personal happiness, go to www.gitomer.com, register if you a first-time visitor, and enter the word HAPPY in the GitBit box.

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Wow

An article by Rob Gilbert Editor of "Bits & Pieces"

Last spring I was walking in a park. A short distance ahead of me was a mom and her three-year-old daughter. The little girl was holding on to a string that was attached to a helium balloon. All of a sudden, a sharp gust of wind took the balloon from the little girl. I braced myself for some screaming and crying.

But, no! As the little girl turned to watch her balloon go skyward, she gleefully shouted out, "Wow!"

I didn't realize it at that moment, but that little girl taught me something.

Later that day, I received a phone call from a person with news of an unexpected problem. I felt like responding with "Oh no, what should we do?" But remembering that little girl, I found myself saying, "Wow, that's interesting! How can I help you?"

One thing's for sure -- life's always going to keep you off balance with its unexpected problems. That's a given. What's not preordained is your response. You can choose to be frustrated or fascinated.

No matter what the situation, a fascinated "Wow!" will always beat a frustrated "Oh, no."

So the next time you experience one of life's unexpected gusts, remember that little girl and make it a "Wow!" experience. The "Wow!" response always works.