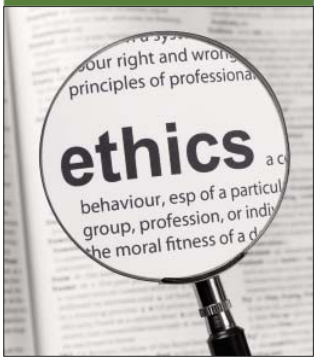
CEU SEMINARS

11/10/14: "Live Surgery" by D. Edward Williamson, Jr., with Eraclides, Gelman, Hall, Indek, Goodman & Waters. 11:00 AM - 1:00 PM, Holiday Inn Lakewood Ranch, 6231 Lake Osprey Drive, Lakewood Ranch, FL.

1/29/15: "5 Hour Law and Ethics Update Course" by Hurley, Rogner, Miller, Cox, Waranch & Westcott, PA. 9:00 AM - 2:00 PM, Holiday Inn Lakewood Ranch, 6231 Lake Osprey Drive, Lakewood Ranch, FL.

For more details: E-mail Rose Rome at rrome@johnseastern.com



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DIAGNOSTIC TESTING EQUALS DISABILITY

An analysis of *City of Jacksonville Fire and Rescue v. Battle*

For the Florida presumption statute (commonly referred to as "The Heart/Lung Bill") to apply, the claimant seeking its application must establish that he or she is among a class of employees "covered" by the presumption; was diagnosed with a covered condition; suffered disability as a result of that condition; and passed a pre-employment physical that failed to reveal evidence of that condition.[1]

The disability element has been the subject of a significant number of appellate decisions. This article addresses the latest: *City of Jacksonville Fire and Rescue Department and City of Jacksonville Risk Management v. Johnny Battle*.[2]

The claimant, a firefighter, underwent a stress test suggestive of a heart attack, after which he underwent cardiac catheterization. This procedure revealed only non-obstructive coronary artery disease (CAD), such that the First District Court of Appeals (DCA) recognized that the catheterization was "solely diagnostic."[3]

Evidence was introduced indicating that the claimant was taken off work for three days following the procedure.

The appellate court agreed with the Judge of the Circuit Court (JCC) in finding the catheterization "directly related to [claimant's] CAD"[4] and that claimant "could not work during the procedure or for several days afterward in order to heal from the catheterization."[5]

In so finding, the Court concluded that the heart disease had resulted in disability and, ultimately, was compensable by virtue of the statutory presumption.

In so concluding, the Court rejected the employer's argument that the facts resembled those in *Bivens v. City of Lakeland*,[6] wherein disability was not established. The Court considered *Rocha v. City of Tampa*[7] more relevant. *Rocha* similarly included evidence of "doctor-imposed work restrictions…'legitimately imposed as medically necessary because of the injury…[creating] actual incapacity…'."[8] The *Bivens* claimant, however, did not demonstrate that his heart disease "affected his ability to perform his job duties."[9]

One might consider this analysis relatively straightforward. In *Battle*, similar to *Rocha*, the claimant introduced medical evidence as to work restrictions related to his covered condition which interfered with his ability to work.

Continued on page 5

OSHA "FINAL RULE" EFFECTIVE JANUARY 1, 2015

► The Occupational Safety and Health Administration (OSHA) recently announced new regulations taking effect January 1, 2015 regarding reporting injuries for private employers. Currently, OSHA requires employers to report all work-related fatalities and hospitalizations of three or more employees within eight hours of the event. The new changes are as follows:

Employers must report to OSHA all work-related fatalities within eight hours and all work-related inpatient hospitalization, amputations and losses of an eye, within 24 hours of the event. Only fatalities occurring within 30 days of the work-related incident must be reported to OSHA. Also, for inpatient hospitalization, amputation or loss of an eye, these incidents must be reported to OSHA only if they occur within 24 hours of the work-related incident.

These events can be reported by calling OSHA at 1-800-321-6742, going to a local-area OSHA office or through an electronic form that will be available on OSHA's website: www.osha.gov.

Who is required to keep records and who is exempt from record keeping?

There are two classes of employers that are partially exempt from routinely keeping records: employers with 10 or fewer employees and establishments in certain low-hazard industries. The revised record keeping regulation provides an updated list of low-hazard industries that are exempt from routinely keeping OSHA injury and illness records. The new list is now classified by North American Industry Classification System (NAICS).

The change in what must be reported was due to a couple of determining factors:

1.) In 2013, there were 4,405 deaths reported in the workplace.

2.) One specific incident occurred when a worker was killed when he entered a large manufacturing machine to retrieve a fallen metal bar. Two other workers at the same location had previously been severely injured. Had those injuries been reported to OSHA, an inspection could have been completed and the death may never have occurred.

With the new reporting requirements, OSHA will be able to expand its safety research and take steps to prevent future injuries and fatalities. In addition, all of the reports will be made public on the OSHA website. OSHA believes making this information public will encourage employers to take control and prevent injuries to ensure a safe workplace.

More information is available at www.osha.gov/recordkeeping2014.

Occupational Safety & Health Administration

EMPLOYEES BRIGHTEN HOLIDAYS FOR OUR LITTLE ANGELS

Here at Johns Eastern we've finished our 3rd quarter fundraising effort for Habitat for Humanity. Our goal was to raise $1,500 from staff with Johns Eastern matching another $1,500 with a corporate donation. With everyone's efforts and dedication, we exceeded our goal and raised an impressive total of $3,400. All of these funds were given to our Habitat for Humanity Veterans Build project in Manatee County.

As we approach the end of the year and the holidays, our 4th quarter is focused on a charity we named Our Little Angels.

Our Little Angels is dedicated to making sure children receive items they typically would not due to family hardships during the holiday season. We take great joy in bringing a smile to each of these children's faces. It is a great time to team up with our co-workers and come together for others' needs and happiness.

Stephanie Horne, Account Manager
Johns Eastern Charity Committee

MEDICARE REPORTING CHANGES COMING IN 2015

Obtaining the required information to report Medicare recipients' Social Security Numbers is going to get easier soon for Non-Group Health Plan (NGHP) Responsible Reporting Entities (RREs)

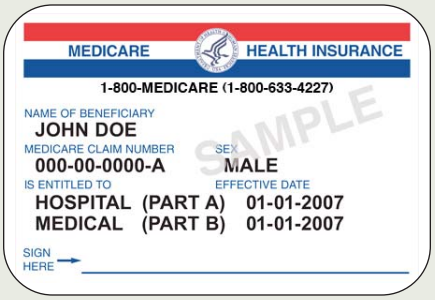
Thanks to the *Strengthening Medicare and Repaying Taxpayers (SMART) Act of 2011*, the most recent alert concerning obtaining Social Security Numbers (SSNs) for Medicare Secondary Payer (MSP) reporting was released on September 10, 2014. We have to wait until the benefit of the alert will be realized, but that is only until January 5, 2015. Consider it the Department of Health and Human Services' New Year's resolution to make things just a bit easier on the adjuster. The Centers for Medicare and Medicaid Services (CMS) has now determined that if a patient's Health Insurance Claim Number (HICN) or full SSN cannot be obtained, Medicare reporting can still occur as long an individual's last five digits of their SSN, first initial and last name, date of birth and gender are produced.

So let's take a look at what numbers the claimant will be disclosing.

1.) Individuals will need to provide the last of the middle two numbers of the SSN. The middle two numbers represent a **Group Number** ranging from 01 to 99.

2.) Individuals will also need to disclose the last four numbers of their SSN. These numbers are referred to as the serial numbers and they run consecutively from 0001 through 9999.

Over 453 million SSNs have been issued since 1936 and as such, one out of every 10 SSNs will have the same last number of the **Group Number** the claimant is providing. Furthermore, one out of every 9,999 SSNs will have the same serial number.



One last note...to help protect the integrity of the Social Security system, in 2011 the Social Security Administration implemented a new assignment methodology for creating SSNs called randomization. Instead of basing the assignment of SSNs on the birth location of an individual, SSNs are now assigned randomly. The Alert reads as follows:

Medicare Secondary Payer Mandatory Reporting Provisions in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (See 42 U.S.C. §1395y(b)(7) & (b)(8))

ALERT: Change in Reporting of Medicare HICNs and SSNs for NGHP RREs

In accordance with Section 204 of the *Strengthening Medicare and Repaying Taxpayers Act of 2012* (SMART Act), the CMS is modifying the existing requirements related to the submission of HICNs and SSNs when NGHP RREs report settlements, judgments, awards, or other payments.

CMS highly recommends, but does not require, that NGHP RREs submit the HICN or full SSN as part of their reports, as it significantly increases CMS's ability to accurately identify an individual as a Medicare beneficiary. However, effective January 5, 2015, RREs may report only the following data elements to CMS to enable them to properly identify a Medicare beneficiary:

- Last five digits of SSN
- First Initial
- Surname
- Date of Birth
- Gender

If NGHP RREs are unable to obtain or do not provide the HICN, full SSN, or any of the above listed data elements, they must document their attempts to obtain this information. (RRE's may use the model language provided by CMS at http://go.cms.gov/mirnghp.)

A subsequent alert will be published prior to the January 5, 2015 implementation, which will include instructions for entry of the partial SSN into the Claim or Query Input File. Please visit the Mandatory Insurer Reporting NGHP website at http://go.cms.gov/mirnghp for more information.

The information included in this alert supersedes the applicable language in the MMSEA Section 111 Medicare Secondary Payer Mandatory Reporting Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Workers' Compensation User Guide (Version 4.2) and the MMSEA Section 111 Coordination of Benefits Secure Website (COBSW) User Guide (Version 7.6) and will be incorporated into subsequent versions of these User Guides.

James L. Boelter, AIC, AIM
TPA Liability QA Manager

STEPPING UP: THE TOP K-12 EDUCATION FOUNDATIONS

The nation's only study and ranking of K-12 education foundations, *Stepping Up: The Top K-12 Education Foundations in the Nation*, has recently ranked The Foundation for Osceola Education eighth in the nation.

Stepping Up looked at eight key performance categories to determine the ranking: annual revenues, revenues per student, total assets, assets per student, investment income, total program expenses, expenses per student, and human capital (volunteers).

"Most parents have never heard of their local K-12 education foundation, yet nearly all children are impacted by the foundation's work," said Dewey Caruthers, president of dewey & associates and author of the study. "Education foundations enhance public education in many vital ways; for instance, with scholarships that send low-income students to college, arts and music programs that open children's minds to more than a high-stakes test and dropout prevention efforts that keep students from quitting, just to name a few."

The purpose of the *Stepping Up* study is to advocate the importance of K-12 education foundations while recognizing those that do it best.

In addition to The Foundation for Osceola Education, the Pinellas Education Foundation, the Hillsborough Education Foundation, the Seminole County Public Schools, Brevard Schools Foundation and Polk Education Foundation were named to the Top 25 Foundations and six others were named to the Top 50 Foundations.

dewey & associates

SCHOOLS PREPARED FOR INFLUX OF IMMIGRANT STUDENTS

Education Law Update

► With the school year under way, many school districts across the country have begun to prepare for a phenomenon that has continued to grow over the years. Children from outside of the United States will flock here to receive a free public education. Federal law entitles all children, regardless of immigration status, to a free public education. Although educating immigrant students is nothing new, the large number of minors unaccompanied by adult guardians has added a complicated twist.

Miami-Dade County Superintendent Alberto Carvalho says the financial effect the new students will have on a school district is still unknown. Miami-Dade County is one of the school districts that requested additional funding. It expects a large increase in its immigrant student population, with many of those students coming from Central America. The additional funds will help provide for items such as health screenings and social and psychological counseling for students struggling with adapting to a new environment. Public schools in Georgia have gone so far as to create academies where the immigrant students learn English and basic technology skills.

► School districts across the United States are putting a halt to traditional bake sales due to federal regulations addressing nutrition in schools. The *Healthy Hunger-Free Kids Act* ("Act") was enacted in 2010 and took effect in July 2014. The Act addresses, among other areas, policy for the United States Department of Agriculture's core child nutrition programs.

The Act further requires that school districts develop and adopt school wellness policies that promote student health and address childhood obesity. The curb in bake sales is in response to the Act's specific nutrition requirements applicable to all food and beverages sold on school grounds.

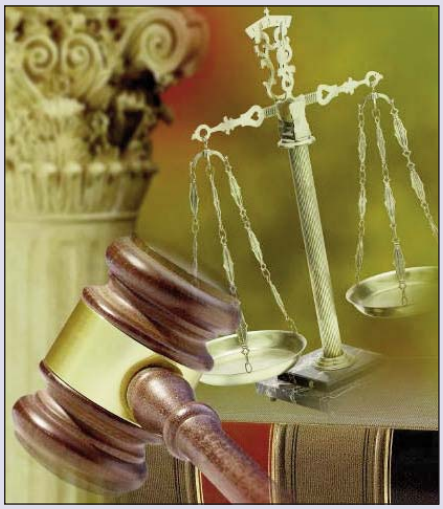
Sniffen & Spellman, P.A.

SAME-SEX MARRIAGE EFFECTS ON EMPLOYEE BENEFITS

► Several state courts, as well as the United States District Court for the Northern District of Florida (N.D. Fla.), have recently ruled that Florida's ban on same-sex marriage is unconstitutional. On August 21, 2014, Judge Robert Hinkle of the U.S. District Court for N.D. Fla held that the state's same-sex marriage ban violated the due process and equal protection clauses of the U.S. Constitution. The Court did not allow same-sex marriages immediately, but rather stayed the implementation of same-sex marriages in Florida pending appeals. The ruling overturns Florida's constitutional Marriage Protection Amendment banning same-sex marriage, which passed by 62% of Florida voters in 2008.

While the decisions are still pending appeal, Florida employers would be well served to evaluate benefit policies in light of the recent rulings.

Case Law Update



Subsequent to the U.S. Supreme Court's decision in *United States v. Windsor*, in which the Supreme Court struck down provisions of the Defense of Marriage Act (DOMA) which denied federal benefits to same-sex couples legally married in their home states, the Department of Labor issued guidance on how the Employment Retirement Income Security Act (ERISA) should be interpreted in light of the DOMA ruling. ERISA is a federal statute that governs the administration of employee benefit plans. That guidance provides that terms including "spouse" and "marriage" should be read to encompass the provision of employment benefits to same-sex couples legally married in any state that recognizes the marriage.

Obviously, overhauls of employee benefits plans will have to be undertaken should the recent rulings striking down Florida's ban on same-sex marriage be upheld on appeal.

Sniffen & Spellman, P.A.

Continued from page 1

This seems to ignore the most significant part of *Bivens*, however, wherein the same Court acknowledged that missing work "only so [a claimant's] condition could be diagnosed, not because it was a debilitating physical ailment," did not constitute disability. The fact that, according to *Battle*, restrictions related to recuperation from a "solely diagnostic" procedure does constitute disability is quite troubling. It is difficult to imagine a scenario where an injured worker will not be able to demonstrate work restrictions related to any diagnostic procedure. This appears to be a drastic departure from *Bivens*.

It should be noted that this decision is not yet final and a Motion for Rehearing was recently filed. We would certainly recommend that the appellate court's disposition be monitored as it could significantly alter the analysis surrounding the disability prong of the statutory presumption.

[1] Section 112.18, Florida Statutes (2012).
[2] Court of Appeal of Florida, First District, Sept. 19, 2014, CASE NO. 1D14-1040.
[3] CASE NO. 1D14-1040, p. 3
[4] *Id.* (quoting Judge R. Humphries' Final Compensation Order).
[5] *Id.* (emphasis added).
[6] 993 So. 2d 1100 (Fla. 1st DCA 2008).
[7] 100 So. 3d 138 (Fla. 1st DCA 2012).
[8] CASE NO. 1D14-1040, p. 3-4 (quoting *Rocha*, 100 So 3d at 141-142).
[9] CASE NO. 1D14-1040, p. 4.

Kristen Magana, Esq.
Broussard & Cullen, P.A.

Three Financial Fixes to Save You Money

With New Year's around the corner, here are three tips to start you on the right track to saving money in 2015...

1. **Switch your bank.** Check to see if your institution offers free checking and savings. If not, make a change.
2. **Money unseen is money not missed.** Set up an automatic transfer of funds from checking to savings each pay period.
3. **Be frugal.** Pack your lunch every day for a week and see how much money you save!

Jessica Jenkins, Team Assistant
Johns Eastern Company

JOHNS EASTERN COMPANY, INC.

www.johnseastern.com

PO Box 110259
Lakewood Ranch, FL 34211-0004

Phone: 941-907-3100
Toll Free: 877-326-JECO
Fax: 813-402-7913

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Publisher: Beverly Adkins
Graphic Designer: Deirdre Harris

Contributors:
- James L. Boelter, Johns Eastern
- dewey & assoc.
- Stephanie Horne, Johns Eastern
- Jessica Jenkins, Johns Eastern
- Kristen L. Magana, Esq. Broussard & Cullen, P.A.
- Occupational Safety and Health Administration
- Rose Rome, Johns Eastern
- Sniffen & Spellman, P.A.

Meet the Lakewood Ranch TPA Liability Team (L to R) Shawn Easter, Brian Van Asten, Christine Hamilton, Mark Ringenberg, Robert Sicora-Fordney, Tom Burrows, Mike Cicak (front), Cory Johns, Warren Wilson, Jessica Jenkins, Audra Petrosky, Javier Melendez, Hannah Stark, Bernadette Anthon & John Powers.

Not pictured: Christine Olivier and Barbara Brunet

DIGITAL CLASSROOM GUIDANCE RELEASED

The Florida Department of Education (DOE) has recently released guidance on technology issues in the classroom and the implementation of digital classroom plans. The Florida DOE's Bureau of Educational Technology released the guidance for school districts implementing such plans to comply with section 1011.62(12)(b) of the Florida Statutes. This statutory provision requires school districts to submit to the Florida DOE digital classroom plans adopted by the school boards of the districts. The statute requires that the approved plan meet the needs of students, schools, and personnel in the district. The guidance issued by the Florida DOE seeks to provide assistance to school districts to draft the digital classroom plan and provides templates for school districts to follow.

More information regarding the Digital Classroom Plan can be found at http://www.fldoe.org/bii/instruct_tech.

Sniffen & Spellman, P.A.

IN THE SPOTLIGHT

WELCOME!

- **Aaron Basinger**, the new Risk Administrator at the South Florida Water Management District.
- **Bill Kelley**, the new Director of Risk Management for the School District of Manatee County.
- **Cheryl Brown-Paschen**, the new Risk Management Specialist I at Marion County Public Schools.
- **Stephanie Simonds**, the new Risk Management Claims Representative at North East Florida Educational Consortium (NEFEC).

CONGRATULATIONS!

- **Lori Hutcheson** has been promoted to Risk Management Specialist II for Marion County Public Schools.
- **Sharon Walton** has retired as Risk Manager for the Citrus County BOCC.