

# CONGRATULATIONS!

THE FIRM IS PLEASED TO ANNOUNCE THAT EIGHT OF ITS ATTORNEYS HAVE BEEN HONORED IN TWO CATEGORIES:

## 2019 Mountain States Super Lawyers:

Mark A. Hutchison  
John T. Steffen  
Joseph R. Ganley  
Michael K. Wall



Todd L. Moody  
Daniel H. Stewart  
Joseph "Sid" Kistler

## 2019 Mountain States Rising Star:

Jacob A. Reynolds

IN ADDITION, THREE OF THE FIRM'S ATTORNEYS ARE HONORED IN THE 2020 EDITION OF THE BEST LAWYERS IN AMERICA:

**A. Kent Greene**  
Employee Benefits  
(ERISA) Law

**Mark A. Hutchison**  
Appellate Practice,  
Commercial Litigation,  
and Litigation - Trusts  
and Estates

**John T. Steffen**  
Litigation - Insurance



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# Legal Matters

FALL 2019

## WORKPLACE CONFLICT: TRICK OR TREAT?

Conflict is ubiquitous – it permeates all aspects of our lives. We all have needs, desires, and aspirations that are not always consistent with those of our colleagues, yet we live in a finite world with finite resources. Moreover, we are each unique, and have perceptions of the world that are filtered through our personal life experiences, including our family history, education, and belief systems. It is thus not surprising that conflicts occur on a daily basis at work – at and between all levels and areas of an organization, both internally and externally.



in many ways, including a hostile work environment, the lack of employee buy-in to organizational goals, lost productivity, employee absenteeism and turnover, increased workers' compensation claims, and increased theft and vandalism. Organizational leaders are often surprised by studies showing that the average employee spends over two hours per week, and 10% of employees spend six hours per week, dealing with unproductive work-related conflict. It is a decisive factor in 50% of employee turnover, and it costs 70%-150% of annual salary to replace a departing employee, and even more for highly trained staff. These "hidden" conflict costs can be staggering.

Despite its pervasive nature, however, conflict itself is neither "good" nor "bad" – it depends on how it is managed. If managed well, it can be a creative force for organizational change and growth. If managed poorly, it can be very harmful and costly. Most organizational leaders know that improperly managed conflict can potentially explode into catastrophic legal disputes that consume organizational resources and strain public relations.

The key to managing conflict in your organization begins with an open acknowledgment by leadership that a problem exists, hopefully before there is a "fire" to put out. Proactive conflict management is ALWAYS more efficient than reacting after a full-blown dispute has arisen or an organization's culture has become toxic.

Nonetheless, the ongoing cost of poorly managed internal organizational conflict is often not readily apparent: It can manifest

The "gold standard" approach to the remediation of destructive organizational conflict parallels that found in medicine – diagnosis followed by prescription. A "conflict audit" should be performed

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by a specially trained conflict management systems designer working with organizational personnel to pinpoint the genesis of any ongoing problems. The conflict audit can include, among other methods, specially designed surveys, individual interviews, and facilitated group discussions.

Once problems are identified, and leadership buy-in is confirmed, the systems designer will help organizational personnel develop metrics to define and measure a success outcome. The systems designer will concurrently help the organization develop appropriate processes, or simply enhance, modify, or supplement existing processes, to heal or improve the organization's culture, and restore stability and productivity in the workforce. Good systems designers work with organizational personnel, and serve as a bench-marking researcher, information resource, idea generator, project coordinator, cheerleader, and facilitative communicator: They help an organization design and implement a conflict management system by and for itself.

The hallmark of any good conflict management system design is the deployment of interventions at the earliest possible time, at the lowest possible levels, and for the least possible cost.



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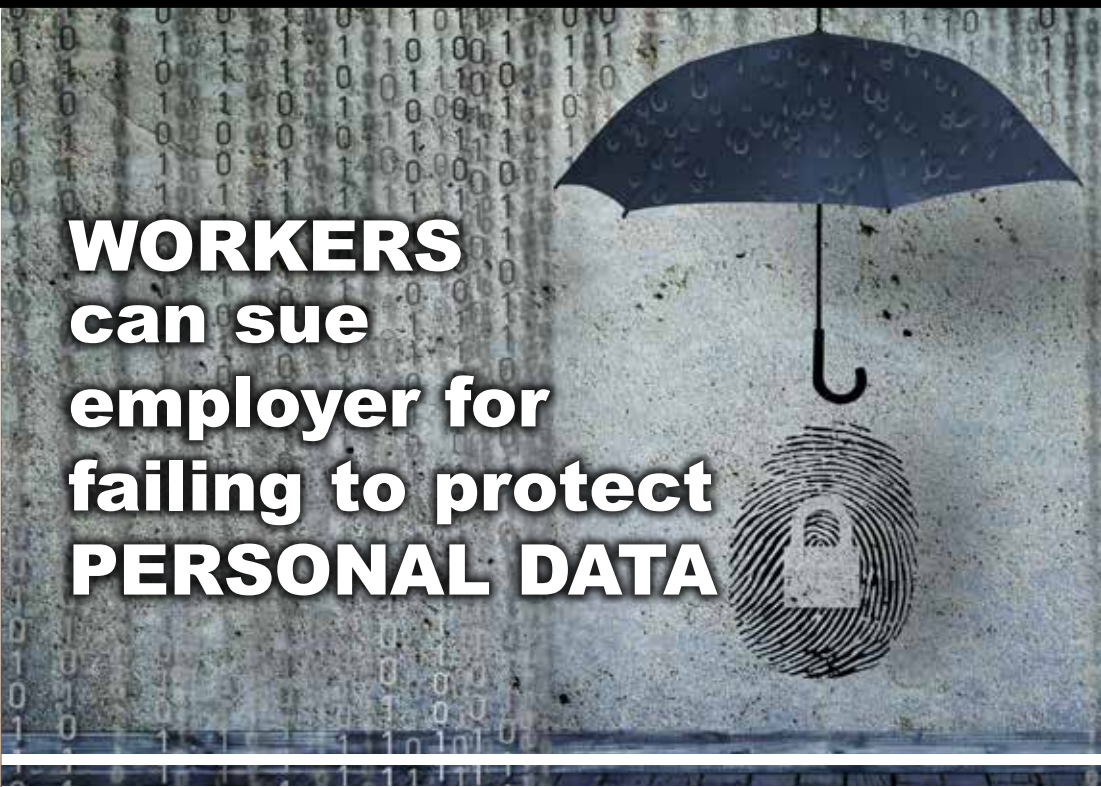


It is critically important that personnel experiencing an issue have the freedom to choose among multiple system entry options without fear of reprisal. System entry points can include, for example, an effective open door policy, human resources designee, peer coordinator, and/or ombudsmen.

Successful conflict management systems focus on prevention. The cornerstones of prevention include a comprehensive on-boarding program that explains how the system works, together with conflict management and de-escalation training properly tailored and implemented for all levels of the organization. By improving or developing the ability of all members of an organization to listen, hear, process, and communicate effectively in a high conflict environment will improve a toxic organizational culture, as well as de-escalate conflict so that it can lead to transformative individual and organizational growth.

The question for most organizations isn't whether they should examine the need for an integrated conflict management system, but whether they can afford not to do so. ■

## WORKERS can sue employer for failing to protect PERSONAL DATA



In a ruling that should make employers everywhere sit up and take notice, the Pennsylvania Supreme Court recently decided that workers could bring a negligence claim (in other words, a lawsuit alleging that they were hurt by their employer's unreasonable carelessness) against their employer over a data breach that compromised their personal information.

The case involved more than 60,000 current and former employees of the University of Pittsburgh Medical Center (UPMC). Hackers broke into the UPMC's computer systems and stole employees' names, birthdates, Social Security numbers, salary records, bank information and tax information. The hackers then used this information to file false tax returns in employees' names in order to receive tax refunds.

The employees brought a lawsuit against UPMC in state court seeking to be compensated for damages stemming from the fraudulent returns and the increased exposure to identity theft that the breach caused them. According to the employees, proper firewalls, data encryption and stronger authentication protocols could

have prevented the harm. They also argued that they were required to provide information to the employer as a condition of employment, giving the employer a duty to safeguard the information.

UPMC moved to have the case thrown out, arguing that state law doesn't recognize negligence claims by employees in situations that don't involve any physical injury or property damage. Because this case only involved economic losses, it had to be dismissed, UPMC argued.

The trial judge agreed and dismissed the lawsuit, and a midlevel appeals court affirmed the decision.

But the Pennsylvania Supreme Court reversed the ruling and ordered that the suit be reinstated. According to the high court, the duty to act with reasonable care toward those who could foreseeably be hurt by your failure to do so applied to this situation.

This is one decision by a court in one state. However, this reasoning could potentially apply elsewhere, too. Call an employment lawyer to discuss your own data-security issues and what kinds of legal exposure they could potentially create for you. ■

## U.S. SUPREME COURT SAYS YES TO IMMEDIATE TAKINGS CLAIM



In a big change affecting property owners, the U.S. Supreme Court has ruled that people whose land is taken for public use without payment may, as soon as the property is taken, file federal lawsuits for constitutional violations of property rights.

The high court revisited the question of whether property owners have standing to bring §1983 claims under the Fifth Amendment in federal court when a taking occurs, or if they must exhaust all state court remedies first.

The court in June overturned a long-standing requirement that property owners must pursue all options for compensation in state court before bringing federal claims, saying owners may bring claims right away even if state courts have not considered the issue of just compensation.

The old requirement had been in place for nearly 35 years. The new decision found that the rule made it too difficult for property owners to exercise their rights under the federal takings clause.

The court also said the rule presented unfair obstacles that did not exist for people looking to bring §1983 claims based on other constitutional protections.

The decision makes it much easier for property owners to sue for federal relief. ■

**“THE NEW DECISION FOUND THAT THE RULE MADE IT TOO DIFFICULT FOR PROPERTY OWNERS TO EXERCISE THEIR RIGHTS UNDER THE FEDERAL TAKINGS CLAUSE.”**

