

HOW TO COUNT TO 50 FOR HEALTH INSURANCE REFORM

Preparations for Vermont's health insurance reform are well underway in the halls of state government. Among employers, those with 50 or fewer employees will be putting their toes in the water first, offering insurance through Vermont's state exchange, called Vermont Health Connect (VHC), starting this fall. They will make important decisions and sign up online in October so their employees can sign up online in November for coverage beginning on January 1, 2014. (Employers with between 50 and 100 employees have two more years before they are eligible to use VHC.)

It turns out that defining "50 or fewer employees" is not particularly easy because of three crucial questions: What constitutes one full-time employee? How are part-time employees to be counted? How are seasonal workers to be counted? Some answers are certain and consistent; others are developing.

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How To Count Employees for Health Insurance Reform			
Category	For Federal Purposes	For Vermont Health Connect (VHC)	
		Coverage in 2014 and 2015	Coverage in 2016 and thereafter
Overall	Count the average number of employees on working days during the preceding calendar year.		
Full-time	Every employee who works 30 or more hours per week counts as one.		
Part-time	Included via federal FTE formula, where FT=30 hrs	Not counted at all	Included via federal FTE formula, where FT=30 hrs
Seasonal	Works up to 130 days/year	Works  to 120 days/year but not counted at all	Same as federal (TBD)

CURRENT HEALTH TRUST BOARD MEMBERS

At its February meeting, the VLCT Health Trust Board of Directors voted to elevate Charles Jacien, Town Manager of Castleton, from Alternate to Regular status, meaning he now has full voting privileges. After considering all who responded to the request for applicants (which was emailed to all Health Trust members), the board, at its March meeting, appointed Joe Colangelo, Hinesburg Town Administrator, to be the new Alternate board member.

The other four members of the Health Trust board are Bill Shepeluk, Board

President and Municipal Manager of Waterbury Town and Village; Sandra Gallup, Board Vice President and Finance Director of Montpelier; Joel Cope, Board Treasurer/Secretary and Administrative Assistant of Brighton; and Bill Bryant, Town Administrator of Bristol. Board membership is the core mechanism through which municipalities direct the activities of VLCT and its three municipal risk sharing pools. All current members of all four boards are listed on the website at www.vlct.org/aboutvlct/boards/newsletters.

DEBATED BREATH

I was fortunate to be invited to judge the Vermont high school debate finals in early March. I think the invitation came because I spend a lot of time working as a lobbyist at the State House and often find myself arguing about issues large and small. To tell the truth, I didn't know what I was getting in to. Who even knew Vermont had a high school debate tournament?

We do, and it is an inspiring and eye-opening event to watch.

(continued on next page)

Town Fair 2013 Save the Date

Town Fair 2013 takes place Thursday, October 3, at the Killington Grand Hotel in Killington, Vermont.

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VLCT NEWS

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DEBATED BREATH

(continued from previous page)

High school debaters from around the state gathered at the State House for the tournament. Think basketball playoffs at the Barre Auditorium without the screams, but certainly with a few figurative elbows thrown. Competitors prepare for this event all year. The debate comprises myriad rules, nine high schools, teamwork, palpable excitement, and impressive technique and talent.

This year's subject of debate was this statement: "Resolved: The U.S. government should not require its citizens to have health insurance." No strong feelings around here about that issue! Nonetheless, both judges and students observed the rules and put aside any personal bias about the issue.

In teams of two, students came prepared to debate for or against either position. They discovered which side they would defend and who would be the first speaker only upon arriving in the debate room and tossing a coin. They pulled out their stop-watches – well, iPhones – and began.

The debaters took the podium with their

research complete and playbook in hand. They staked out positions, shooting facts, analyses, and sources at opponents with alacrity and laser focus. They stuck to their topic like polemical glue. They presented ironclad arguments for why their position on health insurance mandates was irrefutable.

Or maybe not. Rebuttals came equally fast. Crossfire questions and answers flew both ways. The same sources were cited to bolster contrary arguments. There were surprises. There were reversals and unforeseeable elements of agreement. There were stumbles and clear moments of distress.

Pairs of judges evaluated the 33-minute presentation – crossfire, response, focus – on defined criteria: analysis and reasoning, evidence, delivery, teamwork and civility. It was no easy task for a first timer, yet the time flew. And all ended with handshakes between the combatants, just like in the basketball games.

It really doesn't matter who the tournament winners were at the State House that cold March day. We are *all* winners when students like these hold our collective destiny in their hands. And I'm good with that.

*Karen Horn, Director
Public Policy and Advocacy*

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ASK THE LEAGUE

DOES SHOWING FREE MOVIES RISK COPYRIGHT INFRINGEMENT?

Our town would like to have a "pop-up" movie theater in our public park. Can a municipality show free movies without risking copyright infringement?

A summer movie series is a great way to offer evening family entertainment for your community. It can be a boon to downtown businesses and provide after-dark entertainment in a community that may have none. A municipality can combine the activity with community outreach on a particular issue of municipal importance, such as development of a town plan.

Generally, all "original works of authorship, fixed in any tangible medium of expression ... [U.S.C. 17 § 102]" are copyright protected material. This includes movies. When a municipality wants to offer a summer movie series, even if free of charge, it must first obtain permission in the form of a license to use this protected material. There are limited exceptions to the requirement to obtain a license for a public showing. One is for limited educational use in "the course of face-to-face teaching activities of a non-profit educational institution, in a classroom or similar place devoted to instruction." 17

U.S.C. § 110(1). Otherwise a municipality can obtain an annual "umbrella" license from the Motion Picture Licensing Corporation (www.mplc.org), or get an individual license on a title by title basis from either Swank Motion Pictures (www.swank.com) or Criterion Pictures USA (www.criterion-picusa.com).

For more information on licensing of copyrighted material for municipal events, please see the VLCT News article titled "Copyrighted Music and Licensing Fees," archived in the Resources section of VLCT's website, <http://www.vlct.org/league-resources/search-vlct-resources/>.

*Stephanie Smith AICP, Senior Associate
Municipal Assistance Center*

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TRIVIA

Amy Kleppner, Carol Hammond, Cheryl Barker, Heidi Racht, and Marianne Blake from Wardsboro, Vernon, Weston, Huntington, and Windsor, respectively, knew that the first bridge across the Connecticut River – correctly assuming that I meant from Vermont to New Hampshire and not vice versa – was built by Enoch Hale in 1785, and that it connected Bellows Falls and North Walpole, N.H. Well done!

This month's query jumps forward in time a bit: **In the early twentieth century, it was called the "World's Only Double Post Office" because it had two doors and two postal counters, each serving customers from a different country. Where was it?** (Hint: New Hampshire was not then considered another country. And New York? Well, that's another story.)

If you know the answer, email it to dgunn@vlct.org. The answer will appear in June's journalistically jim-dandy issue.

Note to whomever last month sent his or her answer by smoke signal: *Trivia Central* appreciates your inventive attempt at alternative communications, but next time, please submit your response on a less windy day.



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UPCOMING MUNICIPAL ASSISTANCE CENTER WORKSHOPS

MUNICIPAL LABOR AND EMPLOYMENT LAW TRAINING

Wednesday, May 1, Capitol Plaza Hotel and Conference Center, Montpelier
(Co-sponsored by the VLCT Municipal Assistance Center and PACIF)

This workshop will cover the fundamentals of employment law and personnel administration in a municipal setting. It will focus on the major state and federal employment laws and cases affecting municipalities as employers, including emerging employment issues and human resources best practices. Selectboard members, municipal managers and administrators, police and fire chiefs, and department heads and front line managers are encouraged to attend.

SUCCESSFULLY NAVIGATING THE PROPERTY TAX ASSESSMENT APPEALS PROCESS

Tuesday, May 7, Lake Morey Resort, Fairlee
Thursday, May 9, Middlebury Inn, Middlebury

This popular workshop features an introduction to fair market value, equalization, and the property tax assessment appeal process and how to prepare and present appeals before the state appraiser. Come learn what your town needs to do to conduct effective property tax grievances and appeals. The workshop is designed for selectboard members, listers, justices of the peace, town treasurers, and town clerks, however all local officials are welcome to attend.

SPRING PLANNING AND ZONING FORUM

Wednesday, May 22, Lake Morey Resort, Fairlee
(Co-sponsored by the VLCT Municipal Assistance Center and the Northern New England Chapter of the American Planning Association)

The *Spring Planning and Zoning Forum* offers participants a chance to discuss pressing issues in municipal planning and zoning with officials from across the state. The workshop will provide a dynamic mix of legal information, practical solutions, policy discussions, as well as many opportunities to ask questions and share experiences. This workshop is designed for all local officials involved in the local planning and development review process. Zoning administrators, planning commissioners, DRB/ZBA members, town administrators and managers, municipal planners, municipal attorneys, selectboard members, and regional planning commission staff are all encouraged to attend. **AICP Certification Maintenance and Continuing Legal Education credits are being sought for this workshop. (AICP members must attend the entire event in order to receive CM credit.)**

MUNICIPAL ATTORNEYS FORUM

Wednesday, May 29, Capital Plaza Hotel and Conference Center, Montpelier
(Sponsored by the VLCT Municipal Assistance Center)

ANIMAL CONTROL WORKSHOP

Thursday, June 13, Capitol Plaza Hotel and Conference Center, Montpelier
(Sponsored by the VLCT Municipal Assistance Center)

GOVERNMENTAL ACCOUNTING AND AUDITING SYMPOSIUM

Wednesday, June 19, Capitol Plaza Hotel and Conference Center, Montpelier
(Sponsored by the VLCT Municipal Assistance Center, the Office of the Vermont State Auditor, the Vermont Government Finance Officers' Association, and the Vermont Municipal Clerks' and Treasurers' Association)

For registration, agendas, and other information, please visit www.vlct.org/eventscalendar/upcomingevents/, call 800-649-7915, or email info@vlct.org.



LEGAL AND REGULATORY NOTES

SECOND CIRCUIT COURT RULES THAT FREE SPEECH RIGHTS ARE NOT "ABSOLUT"

What started out as a bit of political office humor ended up with less than humorous results for three prison officers. The facts of the case are reminiscent of children getting caught passing around an unflattering picture of their teacher in class.

Plaintiffs Corporal Kent Singer and Correction Officers Thomas Nollner and Jonathan Decker were all employed at the Ulster County Jail (the UCJ) in Ulster County, New

York. While at work, Singer commented on what he perceived to be preferential employment practices, favoritism, and selective enforcement actions in disciplinary matters by playing on the ubiquitous Absolut Vodka advertisements: he added pictures of four other UCJ officials above the caption "Absolut Corruption." He showed it to five of his co-workers, including Nollner and Decker, and then threw it in the trash. Another employee

retrieved it and eventually the picture made the rounds to two UCJ supervisors, Christopher Ferro and Jon Becker, two of the defendants whose pictures appeared in the parody. What followed, allege the plaintiffs, was a series of retaliatory actions meant to punish the exercise of their civil rights. Shortly following the parody's circulation, Singer's supervisor Becker assigned him to prisoner transport after he had been excused from this type of duty so that he could remain at the UCJ in case he needed to tend to his sick mother. Becker took Singer off transport after he complained, but not before telling him that he knew he created the parody. Decker and Nollner faced similar treatment. Shortly after the parody, Decker's request to go home sick one day was denied by Ferro, his supervisor, who added that he heard Decker had something to do with the parody and that they settle it "the old fashioned way" by taking it outside. Both Decker and Nollner also lost out on promotions to two leadership positions on the Sheriff's Emergency Response Team (SERT) to less senior officers.

The plaintiffs brought a civil rights suit for violation of their rights under the federal constitution in the U.S District Court for the Northern District of New York pursuant to 42 U.S.C. § 1983. This federal statute authorizes the imposition of liability when an individual is deprived of his or her civil rights. Specifically, the plaintiffs contend that the actions taken against them violated their First Amendment rights to freedom of speech and political association. The District Court disagreed and granted summary judgment for the defendants on all claims. The U.S. Court of Appeals for the Second Circuit, which has

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Bill Hall

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LEGAL AND REG.

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appellate jurisdiction over the federal district courts in Connecticut, New York, and Vermont, affirmed the District Court's ruling.

The Court's analysis of this case derives from a litany of U.S. Supreme Court cases culminating in *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) which we originally wrote about here in the July 2006 VLCT News.

The Free Speech Clause of the First Amendment to the U.S. Constitution protects one's right to communicate ideas and opinions. This freedom, however, is not absolute as "public employment does substantially curtail the right to speak freely in a government workplace." See *Mandell v. County of Suffolk*, 316 F.3d 368, 382 (2nd Cir. 2003). The U.S. Supreme Court has acknowledged an interesting dichotomy that occurs when the citizens enter government employment. On the one hand, the government as "employer" has far more power than it does when acting as the "sovereign" because, like other employers, it needs to control its employees' words and actions in order to provide efficient services. On the other hand, a citizen employed by the government is still a citizen and subject to the protections of the First Amendment. The only way to make this distinction work therefore and protect the interests of the government as "employer" and the rights of its employees as "citizens" is to distinguish between expressions made pursuant to employees' work duties and those made by employees in their capacity as private citizens. What follows then is the general rule that government employers cannot take

adverse action against employees for exercising their constitutionally protected right to speak as citizens on matters of public concern. See *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006) ("We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline").

The first step for the Court in evaluating whether the plaintiff's speech warranted protection from retaliation therefore involved deciphering whether the speech was a matter of "public concern." A matter of public concern is one that "relat[es] to any matter of political, social, or other concern to the community." By negative implication, this rules out any speech "calculated to redress personal

grievances..." To determine which category the speech falls into requires looking at the content, form, and context of the statements. If the employee wasn't speaking as a citizen to a matter of public concern then the analysis stops there and the employee has no First Amendment cause of action based on his or her public employer's restriction of the speech. If the speech *does touch upon a matter of public concern, the next step would be to conduct a delicate balancing of "the interests of the employer in providing effective and efficient public services against the employee's First Amendment right to free expression" (i.e. the "Pickering balancing test")*.

Singer argued that the subject of his parody was a public concern because it involved alleged corruption in a government

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HEALTH REFORM HELP! MEETINGS

If you have any clue how complex and potentially confusing the new federal and state health reform policies are turning out to be, you may be ready to ask for **help!** Fortunately, Health Trust staffers have been monitoring these developments and have an excellent grasp of the situation. We've already been helping League members learn how to plan for health insurance participation, coverage, and requirements next year and beyond. As part of our ongoing information campaign, we have scheduled meetings (see box to right, and RMS Calendar on page 9) around the state.

Knowledgeable speakers will break down the complex factors and explain the latest reliable information about how municipal employers and employees will be affected by health insurance reform. The speakers will include staff from Vermont Health Connect and VLCT who closely monitor the state-level activities relating to health reform.



DENTAL INSURANCE OPEN ENROLLMENT MAY 15 TO JUNE 15

The annual Open Enrollment period for the Health Trust's dental coverage is May 15 to June 15 for coverage starting on July 1. This is the time when:

- new groups may join and start offering dental coverage from Northeast Delta Dental,
- current groups may change plans or add an orthodontic rider,
- new subscribers may enroll for coverage, and
- current subscribers may add dependents without a qualifying event.



May is VMHA Expo Time!

**Wednesday, May 15
7:30am to 3:00pm
Barre Civic Center**

VLCT PACIF will give away two pairs of Red Sox tickets to lucky PACIF member employees! Bring the special ticket from your registration pack to the VLCT Risk Management Services exhibit.

Stay tuned for additional details about the 2013-2014 dental renewal. The rates will be both mailed and emailed to members by the end of May. We anticipate good news! Please direct any questions to Kelley Avery at kavery@vlct.org or 800-649-7915, ext. 1965.

SEEKING UI TRUST WAGE REPORTS

This is a reminder to all Unemployment Insurance (UI) Trust members that your completed 2012 Wage Report was due back to Kelley Avery at VLCT by May 1st. Now in the user-friendly Microsoft Excel format, the blank report form is posted on the VLCT website's UI Trust page (www.vlct.org/rms/unemployment-insurance-trust/). If you have not already done so, **as soon as possible, please** download the blank file, follow its instructions to enter your municipality's 2012 wage data, and email the saved Excel file to Kelley Avery at kavery@vlct.org. Feel free to call Kelley at 800-649-7915, ext. 1965 if you have any questions regarding this report.

OUR NEW CONTACT PERSON AT UNUM

Unum is the Health Trust's partner for group insurance, offering life, short-term disability, and long-term disability plans. If you serve as Benefits Administrator for a Health Trust member, please note that **Beth Pizzo** is our new account consultant at Unum. Please contact Beth directly if you have detailed questions about the life or disability plans that are available through the Health Trust. Her contact information:

Beth Pizzo

Account Consultant

800-262-0018, ext. 87420 (office)

epizzo@unum.com

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Health Reform HELP! Meetings

Barre Town Offices

Friday, April 26, 9-11 a.m.
149 Websterville Road, Websterville

Lyndonville Fire House

Friday, April 26, 2-4 p.m.
316 Main St., Lyndonville

Milton Town Offices

Wednesday, May 15, 3-5 p.m.
43 Bombardier Road, Milton

Rockingham Town Hall

Tuesday, May 14, 9-11 a.m.
7 The Square, Bellows Falls

West Rutland Town Offices

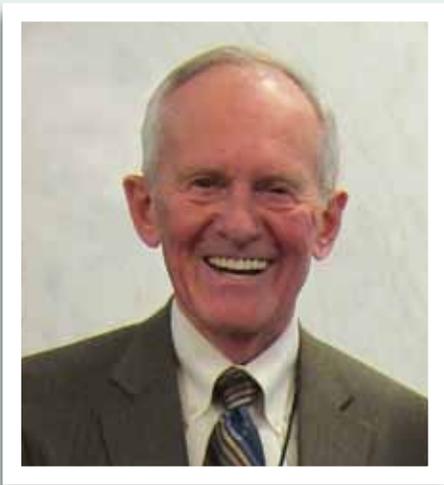
Tuesday, May 14, 2-4 p.m.
35 Marble St., West Rutland

Bristol Town Offices

a June date and time TBD
1 South St., Bristol

GOLFERS SUPPORT DISASTER RELIEF

The 2012 Local Officials Golf Outing, held in St. Johnsbury last August, raised \$1,500 for the Vermont Disaster Relief Fund (VDRF, a beneficiary of the I Am Vermont Strong License Plate Program). On March 18, 2013, Doug Bishop, Vice Chair of the Board of Directors of the Vermont Long-Term Disaster Recovery Group (which oversees the VDRF), officially accepted the donation from Larry Smith, VLCT's Manager of Member Relations, while other Directors looked on.



David Coates, Chair of the Vermont Long-Term Disaster Recovery Group.

Arriving to chair the monthly Board meeting, David Coates said, "We are very grateful for this generous donation and for the other fine work of the Vermont League of Cities and Towns." (We didn't even prompt him for that last bit!)

To learn more about the VDRF and its directors' extensive qualifications, visit www.vermontdisasterrecovery.com.

Right: Attending the presentation of the \$1,500 check to the Vermont Disaster Relief Fund were, l-r: Chris Graff, JoEllen Calderara, Larry Smith, Ann Manwaring, Laurie Hurdle, Doug Bishop, and Bill Elwell.

2013 RMS CALENDAR

Health Reform HELP! Meetings. Times, dates and locations listed below. Presented by the VLCT Health Trust. See description on page 9. Free and open to all VLCT member organizations, but please register in advance at www.vlct.org/events-news-blogs/event-calendar/.

- Barre Town Offices**..... Friday, April 26, 9 a.m. to 11 a.m.
- Lyndon Fire Station** Friday, April 26, 2 p.m. to 4 p.m.
- Milton Town Offices** Wednesday, May 15, 3 p.m. to 5 p.m.
- Rockingham Town Offices**..... Tuesday, May 14, 9 a.m. to 11 a.m.
- West Rutland Town Offices** Tuesday, May 14, 2 p.m. to 4 p.m.
- Bristol Town Offices** a June date and time TBD

31st Annual Vermont Municipal Highway Association Expo. Wednesday, May 15, 7:30 a.m. to 3:00 p.m., Barre Civic Center. This is the big day for road and highway crews from around the state to gather, see what new equipment and free goodies the exhibitors have on hand, swap stories, and compete in the morning snow plow rodeo and afternoon backhoe competition. For more information, email Debbie@agcvt.org. Employees of PACIF member organizations who preregister will receive a ticket to enter the raffle at the VLCT Risk Management Services exhibit. The two big prizes are pairs of tickets for Red Sox home games: 6/29/13 vs. Toronto and 8/3/13 vs. Arizona.

Playground Safety Inspection Certification Training and Exam. Specific time and date (in June or July) TBD, 52 Pike Drive, Berlin. Vt. Presented by Vermont School Boards Insurance Trust (VSBIT). Municipal employees welcome. \$400 cost includes the exam fee. To express interest and be notified of the schedule when it is available, contact Lyall Smith at lyall@vsbit.org or 802-223-5040, ext. 206.





MUNICIPALITIES RECEIVED *BOTH* KINDS OF GOVERNOR'S AWARDS IN 2013!

Worksite Wellness

Long-time *News* readers certainly know about the annual Governor's Worksite Wellness Awards, sponsored by the Governor's Council on Physical Fitness, because applying for one was a way for Health Trust members to improve their Wellness Leader scores in years past. Clearly, municipalities now understand the inherent value of these awards and are applying for them – and winning! – without the financial incentive that the Leader provided.

This year's wellness awards were presented on March 27th in Burlington at

a particularly entertaining and insightful conference. Keynote speaker Bill Hettler, founder of the National Wellness Institute, spoke about the Six Dimensions of Wellness (physical, occupational, emotional, spiritual, social, and intellectual) in both the keynote address and one of eight small-group sessions. A wide variety of topics was covered in the other sessions, including the neuroscience of stress and productivity, aligning employees' values and strengths with the organization's goals, how the lack of sleep affects health and performance, low-cost ways to support workplace fitness,

and growing an employee garden. The day-long conference also featured free chair massages, a "fitness intermission" with stretching and two forms of yoga, and an opportunity for attendees to share their ingenious ways of promoting health and wellness in their workplaces.

Workplace Safety

The Governor's Workplace Safety Awards are relatively new to municipalities. Sponsored by the Vermont Department of Labor, the Vermont Safety and Health Council, and the Vermont Small Business Development Center, these awards are in their ninth year, but the requirements for applying are so stringent that this is the first year any VLCT PACIF members have submitted complete applications. Of the two that applied, one received an award: Chittenden Solid Waste District (CSWD). We at PACIF think this milestone deserves a closer look. Because the awards ceremony takes place after the copy deadline for this story, we don't yet know what most impressed the award committee. To learn what factors were involved, we went to CSWD's administrative offices in Williston.

Jennifer Holliday, Hazardous Waste Compliance Manager and Product Stewardship Manager, and Jeff Sprout, Maintenance Supervisor, are two of the linchpins in CSWD's safety program, but they are quick to say that the program has succeeded because of participation at all levels. Several years ago, when Jennifer's title was simply Household Hazardous Waste Manager, it became clear that someone had to assume responsibility for organization-wide safety efforts, and the additional role of Safety Officer logically fell to her. She got herself trained, established guidelines, started visiting the district's worksites to note potential hazards, disseminated safety information and rules through the organizational hierarchy, and brought a consultant on site every year to provide baseline all-staff safety trainings. "Despite everything I was doing, compliance in the different parts of our operation was inconsistent," Jen explained. "Just preaching safety wasn't getting all of our employees and even some of our managers on board."

"The big step forward was starting the Safety Committee," Jeff added. "We did that five years ago, and it has made all the

(continued on next page)

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MUNICIPALITIES RECEIVED

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difference.” By then, Jen knew who the safety-minded people in different departments were, and she invited them to be on the committee. The committee meets about eight times a year and has 11 members: four from the Facilities Department (including the seven drop-off centers), two department managers, two from administrative departments, and one each from Maintenance, Compost, and Hazardous Waste. Having committee members who are in the midst of the various operations helps ideas flow up from where the issues exist. The safety program has been getting much more employee buy-in than it had before.

The Safety Committee was instrumental in overhauling the annual all-staff safety trainings. Although the consultant-led trainings weren't bad, committee members thought the time had come for trainings that were more specific to CSWD's own facilities and activities. So individual members agreed to write and present trainings on the topics they know most about. Jeff, for example, took on Lockout/Tagout, a crucial



Jeff Sprout and Jennifer Holliday outside the Williston office of the Chittenden Solid Waste District.

equipment maintenance precaution. People who had never needed to use PowerPoint before learned it, broadening their own skills while helping their co-workers to understand particular safety issues and procedures. “We want the safety training to focus on the issues that are most important to us each year,” said Jen. “Last year, it was e-waste

[electronic equipment] and back safety. In the future, we'll probably have a mixture of hiring a consultant and making our own presentations, to make sure we're covering all the topics we need.”

“It really helps that we have support from the top, too,” said Jeff. “My part is to go out

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MINICIPALITIES RECEIVED

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and identify needs, such as for safety equipment or specialized training, but that's no good without financial backing. Our General Manager, Tom Moreau, understands that spending money in the right ways saves more in the long run."

In addition to the trainings, the Safety Committee works on written aspects of the program such as the Job Hazard Assessments (JHAs). As the result of an idea that grew out of the committee and easily received the approval of top management, every job in the organization now has an explicit, detailed record of that position's particular hazards and risks. Writing and assembling all of the JHAs was a huge undertaking, and although it technically fell to Jen to collect all the information, committee members wrote the information for their respective areas of expertise. Jen evaluates these JHAs and other safety related issues with safety inspections twice a year at all CSWD facilities. She does this by turning around the traditional way of

VLCT Members that Won a 2013 Governor's Worksite Wellness Award

Municipal Entity	Award Level	No. of Employees
Addison County Solid Waste Management District	Silver	1-10
City of Burlington	Gold	501-999
Town of Castleton	Gold	11-50
Town of Charleston	Recognition	1-10
Town of Colchester	Bronze	51-150
Village of Derby Center	Silver	1-10
Village of Derby Line	Bronze	1-10
Town of Fair Haven	Recognition	11-50
Town of Killington	Silver	11-50
Town of Morristown	Recognition	11-50
Town of Orange	Recognition	1-10
Town of Rockingham/Village of Bellows Falls	Recognition	51-150

conducting safety inspections. "Inspections are not about me telling the employees what they're doing wrong. It's each employee taking the opportunity to tell me how to make this a safer and better place to work." That's a perfect example of an employee-based safety solution.

"If people want to get a safety program started, there are plenty of resources to draw on," said Jeff. "We got a lot of help

from Project Worksafe and VLCT PACIF. The Vermont Safety and Health Council is great, and there are others, too." Wherever the initial advice comes from, how an organization develops it is what really matters. And the Governor's Workplace Safety Awards Committee apparently found a well developed safety program at the Chittenden Solid Waste District.

Ione L. Minot, Contributing Writer

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Classifieds

Please visit the VLCT website www.vlct.org/marketplace/classifiedads/ to view more classified ads. You may also submit your ad via an email link on this page of the site.

VLCT NEWS ADVERTISING POLICY

The *VLCT News* welcomes classified advertisements from municipal entities, public agencies, businesses and individuals. This service is free for VLCT members (regular, contributing and associate); the non-member rate is \$41 per ad.

Classified ads are generally limited to 200 words and run for one issue. These ads are also placed on the VLCT website for up to one month.

The *VLCT News* is published eleven times per year (the August and September issues are combined) and reaches readers during the first week of the month.

The deadline for submitting advertisements is the first Friday of the month prior to the issue date. Space is sometimes available for late additions; please feel free to check with the editor for availability.

For more information on placing classified ads in the *VLCT News*, contact classifieds@vlct.org. For details on display advertising, email vlctnews@vlct.org. Information on ad requirements may also be downloaded at www.vlct.org/events-news-blogs/news-letter-archive/advertising-information/.

HELP WANTED

Wastewater Treatment Facility Chlorine Feed Building. The Town of Fair Haven, Vt., seeks a qualified contractor to construct a new chlorine feed building to house the chemical, electrical, and heating/ventilating systems related to the chlorinating and de-chlorinating effluent prior to discharge into the Castleton River.

Submit one original and six copies of your proposal by Friday, May 3, 2013, to Herb Durfee, Town Manager, Attn: Chlorine Feed Building Proposal, Town of Fair Haven, 3 North Park Place Fair Haven, VT 05743. The full Request for Proposals is available on the Town's website, www.fairhavenvt.org, or from the Town Manager (802-265-3010 ext. 5). Proposals technically flawed or received after the deadline may not be considered at the discretion of the Town Manager. (3-27)

Chief of Police. The Town of Killington seeks to hire a Chief of Police who is an experienced leader, a strategic thinker, and a creative problem solver. The successful candidate must be able to enforce the law, direct the department, and effectively coordinate with regional law enforcement and emergency services including the State Police, the Rutland County Sheriff's Office, Killington Fire and Rescue, the Killington community, and others. The Chief, who works under the direct supervision of the Town Manager, is responsible for managing a department consisting of two part-time special officers and overseeing contractual services for animal control and special events as needed. The annual budget for the department is approximately \$80,000. A full job description and application instructions

are at www.killingtontown.com under Employment Opportunities. Applications accepted until position is filled. E.O.E. (3-28)

Bridge Maintenance. Morristown seeks bids from qualified bidders to complete bridge maintenance on three bridges in Morristown, Vermont: the Bridge Street Bridge; the Lower Bridge Street Bridge, (first bridge as you head west leaving the Village); and the Cady's Falls Bridge. Contact the Town Administrator to be sure you have the correct bridges. The services requested are as follows: Provide labor, material, and equipment to clean the three bridges in the spring. Clean each bridge by removing dirt and salt from the abutments and piers, power wash the bearings and curbs and grease the bearings, remove any material from the truss channels or outside fascia beams, and waterproof curbs and sidewalks. This work is based on a three-year contract starting this spring through 2015. Work is to be completed prior to June 30th of each year. Bids are due to the Morristown Town Office **by Thursday, May 9.** The offices are located at 43 Portland Street in Morrisville, and the mailing address is PO Box 748, Morrisville, VT 05661. For further information, contact Dan Lindley, Town Administrator, at 802-888-5147.

(continued on next page)

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LEGAL AND REG.

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institution. Though acknowledging that corruption could constitute a matter of public concern, the Court interpreted the types of practices Singer parodied (minor payroll discrepancies, isolated promotions, discipline) as lacking in both scope and degree of the kind demanding public attention. The Court then turned to examining the form and context of the parody, which it found was more private than public in nature, considering its meaning “was comprehensible only to others who worked at the prison, and only in the most vague manner.” Furthermore, regardless of the potential breadth of its message, the only people who ever saw it were five fellow employees. Singer himself admitted he had no intention of conveying his parody to the public, which was supported by the fact that he threw it away in the trash. The Court’s conclusion that Singer’s parody wasn’t the sort of speech deserving Constitutional protection from retaliation ended up being poisonous to co-plaintiffs’ Decker’s and Nollner’s expressive association claims as well. Amongst the rights that the First Amendment confers upon its citizenry is the freedom to associate with those of their own choosing. The problem for Decker and Nollner was the same for Singer in that a “public employee bringing a First Amendment freedom of association claim must persuade a court that the associational conduct at issue touches on a *matter of public concern*.” (Emphasis added.) The Court already ruled that the parody wasn’t a matter of public concern. In essence, because Singer’s claim failed, so too must those of Decker and Nollner.

As was the case for the U.S. Supreme Court in *Garcetti*, the irony that more serious allegations geared and distributed to a broader public audience would possibly have furthered Singer’s claim was not lost on the Second Circuit Court. The take-away message from this case is the same as in *Garcetti* “[a] public employer that wishes to encourage its employees to voice concerns privately retains the option of instituting internal policies and procedures that are receptive to employee criticism. Giving employees an internal forum for their speech will discourage them from concluding that the safest avenue of expression is to state their views in public.” Hopefully, it’ll also keep them from making parodies of you on the town computer.

*Garrett Baxter, Staff Attorney II
VLCT Municipal Assistance Center*

CLASSIFIEDS

(continued from previous page)

Chief of Police. The mid-coast town of Damariscotta, Maine (pop. 2,218, www.townofdamariscotta.com/), is seeking an experienced law enforcement professional with a collaborative management style, strong technical and leadership abilities, high integrity, and excellent communications skills. The new chief will work approximately one half of his or her scheduled time as a patrol officer on a day shift. The Damariscotta Police Department comprises five full-time patrol officers – including the Chief, Assistant Chief and three police officers – plus approximately ten part-time reserve

officers and an administrative assistant. The Lincoln County Sheriff’s Department provides back-up to the Town’s officers on an as-needed basis. Annual salary will depend on the successful candidate’s qualifications and experience. (Salary of previous chief: \$54,000.) Candidates must have ten years of progressively responsible law enforcement experience including a minimum of five years at the rank of sergeant or above, as well as a minimum of an Associate’s degree from an accredited college. To apply, submit a cover letter and resume to Damariscotta Police Chief Recruitment, Maine Chiefs of Police Association, PO Box 2431, South Portland, ME 04116-2431. **Applications must be postmarked by May 17, 2013.** (4-11)



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How to Count

(continued from page 1)

First, be aware that federal and state governments will use employee counts for different purposes:

- The federal government will use employee counts in its calculations for determining how much an employer with more than 50 employees must pay if it chooses not to provide health insurance to its employees. (The principle is known as “pay or play.”)
- In Vermont, employee counts determine how soon an employer must participate in VHC. Because employers that have 50 or fewer employees and are offering health insurance coverage need to enroll in VHC during October 2013, Vermont is establishing requirements to be in effect for the 2014 and 2015 coverage years. After that, newer federal requirements will take over.

Second, note three important details:

- Federal and state regulations **redefine a full-time employee** as one who **works at least 30 hours per week**.
- As a condition to participate in VHC, employers that offer health insurance to **any** of their full-time employee must offer it to **all** of their full-time employees.
- The count must indicate the **average number** of employees on **working days** during the **preceding calendar year**.

Concerning seasonal and part-time employees:

- **Federal** regulations define seasonal

employees as those who work **up to 130 days per year**. Anyone who works more than 130 days cumulatively in a calendar year counts as a full-time or part-time employee for federal purposes.

- **State** regulations define seasonal employees as those who work **up to 120 days per year**. Anyone who works more than 120 days cumulatively in a calendar year counts as a full-time or part-time employee for state purposes.
- Seasonal and part-time employees will **not be counted for coverage by VHC in the 2014 and 2015 coverage years**. They will be counted for coverage in 2016, when the federal requirement to be covered begins.
- For federal VHC coverage starting January 1, 2016, employee counts will include:
 - part-time employees as calculated with a specific Full Time Equivalent (FTE) method, and
 - seasonal employees according to federal guidelines (which are still to be determined).

If you are a municipal manager, **start considering these questions right away:**

- How many more full-time employees would I have today if the 30-hour per week definition of full-time and the requirement to provide health insurance for all full-time employees (if any) were to take effect immediately? (Should I plan to redefine any 32-hour per week positions in anticipation of the new definition of full-time?)
- How many employees would be shifted from seasonal to long-term status if the 120-day maximum were in effect now? Roughly how many FTEs would that make, with full-time being 30 hours per week?

This is just a beginner’s set of information – a simple approach to one portion of the complex process of health insurance reform. We are presenting this much now because the **employment patterns you establish in 2013 will become the basis for many of the calculations involved as you move into 2014**. Check our website, www.vlct.org, where we will post new developments, and watch out for emails, letters, and publications from us as regulations are devised and we can present you with more detailed information.

*David Sichel, Deputy Director
Risk Management Services*

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Calendar

For more information about the following workshops or events, please call Lisa Goodell, Conference Coordinator, at 800-649-7915, or email lgoodell@vlct.org. You may also visit www.vlct.org/events-news-blogs/event-calendar/ and select a workshop for more information or to register online. Please check back frequently for program updates. Final agendas and online registration are available six weeks prior to the event date. For non-VLCT events listed below, please contact the individuals directly. (The online registration option is available for VLCT workshops and events only.)

**MUNICIPAL LABOR AND
EMPLOYMENT LAW TRAINING**
Wednesday, May 1, Capitol Plaza Hotel
and Conference Center, Montpelier
(Co-sponsored by the VLCT Municipal Assistance
Center and PACIF)

This workshop will cover the fundamentals of employment law and personnel

administration in a municipal setting. It will focus on the major state and federal employment laws and cases affecting municipalities as employers, including emerging employment issues and human resources best practices. Selectboard members, municipal managers and administrators, police and fire chiefs, and department heads and front line managers are encouraged to attend.

**SUCCESSFULLY NAVIGATING THE PROPERTY
TAX ASSESSMENT APPEALS PROCESS**
Tuesday, May 7, Lake Morey Resort, Fairlee
Thursday, May 9, Middlebury Inn,
Middlebury

This popular workshop is designed for selectboard members, listers, justices of the peace, town treasurers, and town clerks, however all local officials are welcome and are encouraged to attend. Come learn what your town needs to do to conduct effective property tax grievances and appeals.

SPRING PLANNING AND ZONING FORUM
Wednesday, May 22, Lake Morey
Resort, Fairlee

(Co-sponsored by the VLCT Municipal Assistance Center and the Northern New England Chapter of the American Planning Association)

The *Spring Planning and Zoning Forum* offers participants a chance to discuss pressing issues in municipal planning and zoning with officials from across the state. The workshop will provide a dynamic mix of legal information, practical solutions, policy discussions, as well as many opportunities to ask questions and share experiences. This workshop is designed for all local officials involved in the local planning and development review process. Zoning administrators, planning commissioners, DRB/ZBA members, town administrators and managers, municipal planners, municipal attorneys, selectboard members, and regional planning commission staff are all encouraged to attend. **AICP Certification Maintenance and Continuing Legal Education credits are being sought for this workshop. (AICP members must attend the entire event in order to receive CM credit.)**

Visit www.vlct.org/events-news-blogs/event-calendar/ for the most up to date list of events.