

Women in Business

A supplement to
The Daily Reporter

Janis Mitchell has to know 'twice as much' to thrive in male-dominated computer field

Creativity is creativity, whether in art or the IT world

Jane Roach: wife, mother, pediatrician — and cancer survivor

With business growth comes increased liabilities

Roundtable: New legislation's impact on Ohio businesses



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Women in Business

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Vice President & Publisher
Dan L. Shillingburg

Editor
Cindy Ludlow

Associate Editor
Chris Bailey

Advertising Sales Manager
Jeffrey S. Zeigler

The Daily Reporter Inc.
580 South High Street, Suite 316,
Columbus, Ohio 43215-5644
Phone: (614) 228-NEWS (6397)
Fax: (614) 224-8649
e-mail: cdr@sourcenews.com

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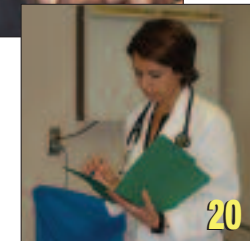
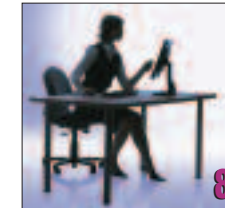
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Jane Roach: wife, mother, pediatrician — and cancer survivor



By NICHOLAS BORGIA
Daily Reporter Staff Writer

In the average life, a person can be rewarded with monumental success — and take devastating falls. Yet regardless of their situations, some individuals remain positive and upbeat.

A long-standing and renowned pediatrician in the Columbus and Chillicothe area, Dr. Jane Roach has broken gender barriers in the medical profession for three decades, taken on the duties of mother and wife, and fought a fierce battle with breast cancer at the height of her professional career.

Although she has struggled for equality and her own mortal survival, nothing has kept Roach from doing what she loves most: taking care of children.

Even at the beginning of her life, Roach proved her resilience.

"My twin sister Judy and I were born prematurely at 28 weeks," she said. "We both had respiratory distress and slow growth, and required oxygen and incubator assistance. The prevailing theory in 1949 was to leave the infant undisturbed and give oxygen ... and if they made it, then feed them. I was in nearly a month, Judy for eight weeks.

As the sisters grew older, their mother told them about their plight. She also told them about their pediatrician.

"My mom would tell the story about us being in the nursery at the hospital," said Roach. "Back then, she couldn't come back to hold us, and all she was able to find out about us was reports from the doctor. He was terrific to her and us."

Dr. Jack Ripenoff helped her mother hold strong through the ordeal, Roach said, and he was the person

who showed a young would-be doctor exactly what she wanted to do with her life.

Years later, in 1966, Roach enrolled in Ohio Wesleyan University in Delaware, Ohio. She was there a brief three years and graduated cum laude with a bachelor's of arts degree in chemistry and education. She also met Ralph Roach, whom she married one week after their graduation.

Wasting no time, the Roach couple moved from undergraduate studies directly to the Medical College of Ohio, now known as the University of Toledo: School of Medicine.

The newlywed quickly discovered she would be facing her second major challenge in life: sexism.

"There were several roadblocks," Roach said. "It began in the application process and they were asking me how I was going to prevent myself from getting pregnant. They wanted me to be a 'good girl' and graduate."

It didn't stop there. She learned during her studies that even some patients had a bad attitude about female physicians.

"Many male patients simply assumed I was a nurse," said Roach. "They (the male patients) did not want a woman taking care of them. I had to face that all the time."

She dealt with the situations and received numerous awards and scholarships from the medical college. Ultimately, she was one of only a handful of women to graduate from her medical school in 1976.

She returned to Central Ohio that year and spent four years completing her residency, then her Fellowship in Pediatric Hematology and Oncology at the Ohio State University's Department of Pediatrics, at Columbus Children's Hospital.

(Continued on Page 6)

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"People wanted women pediatricians, even when they were just starting to increase in numbers," said Roach. "It was felt that women were more nurturing. The fact that many women residents had children was also a welcome note to parents because it helped them feel more comfortable that these doctors would take care of their kids like they were their own."

After her fellowship, Roach continued on with the study of hematology and red cell research at The Ohio State University. Soon after, she became the director of the Hemophilia Center at Children's.

During this time, though, a chain of events occurred that changed her medical mindset forever.

In 1980, Roach came face-to-face with a unique anomaly in the Hemophilia Center: Sixty-four young boys from the Central Ohio region were suffering from some sort of bleeding disorder. The boys became very ill, and a terrible truth was quickly revealed.

"I began to see serious infections in several boys with inherited bleeding disorders," she said. "I sent my lab evaluations to a medical school classmate who was doing bench research. It turned out to be the HIV infection."

All of those boys had received transfusions, either concentrate factor VIII, a protein substance essential for blood-clotting, or single-donor cryo-parcipitate. The children were receiving factor replacement transfusions at one time or another, but the blood they had received was contaminated because donors were not upfront when they provided medical and personal information. Almost all the children died because of the tainted transfusions.

The devastation of what occurred hit her hard, and having children of her own — daughter Sarah was born during her fellowship in 1979 and son Alan was born in 1982 — convinced her to leave her hematology behind and become a general pediatrician.

Roach joined the Grant Hospital staff as a general pediatrician in 1982. As a solo practitioner, she taught pediatrics to the hospital's family practice residents.

Less than a year later, Roach

"It was hard. The hardest part was that I was a doctor who had become the patient. But I soon began asking for help, just like any other patient. ... Some doctors do not want to talk about the "nitty gritty" with other doctors. But we simply forego the "doctor" aspect, and I was referred to only as Jane."

— Roach

was approached by an all-female pediatric practice, Roger, Rothermel and Rohyans. The doctors told her they were impressed with her work and dedication to her young patients. She joined their practice in 1982.

In 1989, she and Rohyans parted ways with the group and formed their own practice, Olentangy Pediatrics, which is still operating in the Dublin area.

Roach was at the peak of her career: a wonderful family and a booming practice where she could participate in new in-office research such as giving young patients access to clinical trials and resident office training programs.

"When I started my own practice, there were very few women who had their own practices," she said. "However, it did become more common as more women went through medical school."

But another challenge awaited. In 2001, Roach was diagnosed with breast cancer. The lump in her left breast was found during a routine mammogram. It was a painful reminder that no one is immune to cancer.

"It was hard," she said. "The hardest part was that I was a doctor who had become the patient. But I soon began asking for help, just like any other patient. ... Some doctors do not want to talk about the "nitty gritty" with other doctors. But we simply forego the "doctor" aspect, and I was referred to only as Jane."

Roach spent 10 months dealing with surgeries, chemotherapy and radiation treatments. It was a brutal ordeal, but she has been in remission since.

However, the emotional strain on her, her career and her husband would make her realize life was not as perfect as she thought it may have been.

In an effort to make more time for herself and Ralph, who was driving from Columbus to Chillicothe every day to fulfill his position as the Director of Medical Oncology at the Adena Health System in Chillicothe, Roach sold her shares in her practice to her office partner Dr. Randy Brown in 2004. She also put her house in Upper Arlington on the market so she could move south.

Today, she works part time at Adena Urgent Care for Children, where she sees 40-50 children every evening — with ailments ranging from broken bones to fever.

"This is a challenging job, but I have always enjoyed children," Roach said. "My past training and years of following children with chronic problems has prepared me for this fast-paced work environment, and I love it."

Since she has been in remission, she has made time to relax and enjoy life. She enjoys gardening, traveling, bike riding on the Rails to Trails around

the area, and being a leader in the Stephen Ministry for her church.

She volunteers her time to various medical organizations and holds a chair position for breast cancer for the Ross County Division of the American Cancer Society.

Roach also participates in the Susan Komen Race for the Cure marathons and travels every year as a missionary for the West Ohio Conference United Methodist Church to the Church of Nuevo Progresso in Mexico where she and Ralph tend to upward of 300 patients in only a few days.

"I am blessed and helping those less fortunate helps me realize how good I have things right now," she said.



Back row (standing) left to right: Elizabeth Watters, Lark Mallory, Sarah Morrison, April Bott, Bea Wolper, Janica Pierce, Jennifer Otis. Front row (seated) left to right: Elizabeth Stanton, Jessica Mager, Deborah Scott, Denny Larr (CWS Governmental Relations, Ltd.).

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Janis Mitchell has to know 'TWICE AS MUCH' to thrive in male-dominated computer field



By RICK ADAMCZAK
Daily Reporter Staff Writer

Janis Mitchell has had an entrepreneurial spirit — and a deft sales touch — ever since she was a kid peddling cookies and lemonade to neighbors.

The owner of information technology company Precise Resource in Westerville, Mitchell has used her sales skills and business sense to build a successful career, and to sell one of her businesses for several millions of dollars.

Five years ago she was named small business person of the year by the Columbus Chamber of Commerce.

Not bad for a one-time single mom who battled dyslexia and admits that in the late 1980s she was essentially “broke.”

“I’ve thought about entrepreneurship my entire life,” said Mitchell. “Ask my mom and dad — I was always peddling something, always selling something. I’d make cookies and go around the neighborhood selling them.”

Now she owns a company with 14 employees and has plans to open offices in Atlanta and New York City next year.

But being a successful business owner — in particular, in an industry dominated by men — was not a priority when Mitchell started college.

Upon enrolling in The Ohio State University, she studied political science and pre-law with the goal of having a career in law. Because of her dyslexia, it took Mitchell several years, however, just to earn her undergrad degree, but it didn’t take long — after working for several law firms — to decide that law wasn’t for her.

“It wasn’t what I thought it would be,” she said.

She realized that what she really liked was her job selling cameras, including learning about the technical aspects of the cameras.

“I wanted a job in outside sales,” Mitchell said.

She didn’t continue the camera route, however. Her next sales job was selling computer systems to cardiologists.

“From there is where I got into the computer field. I really enjoying being in that field. I was very energized about it,” Mitchell said.

By 1986, she had become a single mom and was faced with trying to scrape together enough money each month for daycare and rent.

Just a few years later, in 1991, she was making six figures as vice president of sales for ExeuTrain offices in Columbus, Toledo, Pittsburgh and Charleston, W. Va.

It wasn’t until 2000 that her life as an entrepreneur started in earnest. That is the year she founded Info Fortress Solutions, a computer security company, with no loans or venture capital investments.

“The company did one thing and one thing only,” said Mitchell. “The gift we had was, ‘Look, this is all we do.’”

She said that while she has knowledge of the technology, for more technical questions she has no qualms about referring clients to her colleagues.

“Too many people in my field try to bluff their way through,” Mitchell said. “I’m not afraid to say, ‘I have no clue.’”

Three years later, she turned around and sold the company to Betrusted Inc., the world’s largest security company, for several million dollars.

Then she started her current business, Precise Resource, an executive search and technical staffing firm that specializes in providing talent resource management.

She said she’s able to recruit top IT specialists to her company from other parts of the country better-known for technology than Columbus by selling them on the company and the area.

“You have to be engaging and have them buy into your vision,” she said.

Being a woman in the male-dominated information technology industry can present its challenges, but it only motivates her more, she said.

“It can be a double-edged sword. It can help ... (but) being a female they want to know if you know what you’re talking about. You have to work twice as hard to know half as much,” Mitchell said.



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SBA studies ways to *help women-owned* small businesses

By STEVE PRESTON
Administrator, Small Business Administration

In 1994, Congress set a government-wide target that 5 percent of all federal contracts should go to women-owned small businesses (WOSBs). More recently, legislation was signed creating a set-aside for such businesses but requiring that the Small Business Administration study the issue to determine in which — if any — of the government's 313 contracting categories, many of which are defense-related, WOSBs were underrepresented.

Since then there has been an SBA study, a National Academy of Sciences review, a court case, and an external, independent study by

the respected RAND Corporation on the issue. The RAND study concluded that WOSBs were underrepresented in four contracting categories, based on a review of dollars going to such firms.

Based upon the RAND study, statutory law and constitutional precedent, SBA issued a proposed set-aside rule for women-owned small businesses. Our responsibility was to implement the statute in a constitutional manner, and that is what we've done.

Some critics have not been satisfied, pointing out that women are 52 percent of the population and own 28 percent of American businesses, yet in 2006 — the last year for which we have data — they received only 3.4 percent of federal contract dollars.

However, it is important to recognize this is an apples-to-oranges comparison. Women-owned businesses may be more than one-fourth of all businesses, but their gross receipts were only 4.2 percent of the economy, according to census data, because of the inclusion of large companies, many of which are led by women.

The census also indicates that women-owned businesses with fewer than 500 employees make up 3.4 percent

of the economy. For the SBA rule, the pool was confined to the nearly 56,000 women-owned small businesses that were registered federal contractors at the time.

The data in fact reveal positive news for women: When WOSBs compete for contracts, they do well. In 136 of the 140 categories where RAND had sufficient survey samples to analyze, the data indicated that when women compete for federal contracts they succeed.

Actual contracting dollars to women-owned small businesses have increased dramatically under President Bush: Prime contract dollars to such companies increased from \$4.6 billion in 2000 to \$11.6 billion in 2006. The year-over-year increase from 2005 to 2006 was the largest ever, \$1.5 billion. Subcontracting dollars also increased, from \$3.6 billion in 2000 to more than \$10 billion in 2006.

Moreover, the share of federal contracting dollars that goes to WOSBs is growing as a percentage of the federal contracting universe. In 2000, these businesses received 2.3 percent of the federal government's contracts. That share has increased steadily each year of the administration and, as mentioned, reached 3.4 percent in 2006.

Federal agencies are working hard to reach the 5 percent WOSB target, but how do we get there the right way? We need to understand that the data do not show significant under-representation in the contracting arena, but rather, that too few qualified women-owned small businesses are choosing to enter that arena. A broad set-aside would be advantageous to women-owned small businesses already pursuing contracts, but again, the data indicate that as a group they're already doing comparatively well.

The better way to increase women-owned small businesses' share of federal contracts is to get more such firms "ready, willing and able" to perform federal contracts, and ensure they are registered in the Central Contractor Registration system.

Currently, there are some 63,000 women-owned small businesses in the registration system, receiving 3.4 percent of

contracting dollars. It stands to reason that if we can get more ready, willing and able WOSBs into the system, we can increase their share of federal contracting dollars. Simple arithmetic suggests that to reach the target of 5 percent, there will need to be thousands more qualified women-owned small businesses in the system competing.

Therefore, a bipartisan agenda that should unite all parties and avoid constitutional hurdles is to increase the number of capable WOSBs competing for federal contracts.

On this, SBA has taken the lead:

Agency field staff is focused on contracting to businesses owned by targeted groups, including women.

We recently instituted a government-wide scorecard of federal agencies to rate their small business contracting efforts, including for women, bringing greatly enhanced transparency and accountability to the process.

And, on a smaller but still significant level, in 2007 SBA women-owned business procurements exceeded the government-wide statutory goal of 5 percent, reaching 24.7 percent.

In this age of partisanship, people want positive solutions. Helping more women-owned small businesses compete for government contracts, and doing it the right way, is a winner for all sides.

Preston is administrator of
the U.S. Small Business
Administration.



With business growth comes **INCREASED** liabilities

DAILY REPORTER STAFF

Many women business owners aren't terribly concerned about making or accessing money next year — they know they can do it, according to the results of a recently released survey.

Nearly 58 percent of women business owners anticipate their organizations' revenues will increase in 2009, and 44 percent say they do not expect difficulty in obtaining credit, according to the 2008 Business Risk Survey conducted by the Chubb Group of Insurance Cos. and the Women Presidents' Organization.

"It's not surprising to see that so many women presidents are optimistic about their companies' future growth, despite current economic conditions," said Marsha Firestone, WPO president and founder.

"As women have successfully built their businesses, they have been faced with many challenges. Their optimistic outlook, in conjunction with their business savvy, has been essential to their success," she said.

"Faced with yet another challenge as a result of the current economic environment, WPO members — owners of multimillion-dollar businesses — recognize that future revenue growth requires that they change the way they do business by broadening their product or service offerings, opening new offices, expanding their global reach and developing innovations."

The business owners need to be aware, however, that as their businesses grow, so can their liabilities.

"The very same activities that will help these women grow their businesses may also increase their companies' exposure to a liability lawsuit," said Lisa Jones, vice president, Chubb & Son, and private commercial product manager for Chubb

Specialty Insurance.

"Small to medium-size firms with more limited resources may be particularly vulnerable to the costs associated with a liability lawsuit," she said.

Fifty-four percent of the survey respondents noted that their companies are likely to broaden their product offerings in 2009.

"New products bring new opportunities for growth," said Jones, "and opportunities for product liability and errors and omissions claims."

Thirteen percent said they would add international offices.

"Although this enhanced multinational footprint can help further grow revenues, it may also create property exposures and open the door to liability lawsuits in countries with laws and regulations that differ from those in the United States," said Jones.

Jones also noted that links in a company's global supply chain will be under pressure to cut costs. As a result, many suppliers may be forced to lay off workers and products may not be thoroughly inspected, increasing the risk that defective materials could travel through the supply chain to the finished product.

In 2007, the U.S. Consumer Product Safety Commission reported the largest number of voluntary recalls (472) in the past decade, and about two-thirds of all U.S. consumer product recalls involved imported products.

"Supply chain management has become a very complex issue," said Jones. "To help prevent a product liability lawsuit, know your supply chain and their supply chain. Make sure their corporate values and safety standards align with yours."

Survey respondents indicated that in 2009 their companies are likely to outsource functions or operations (24 percent), reduce their workforce (19 percent) and reduce or eliminate some employee benefits (13 percent).

"Anticipating continued economic turmoil, survey respondents foresee making changes to make their businesses more competitive. However, economic conditions can have a negative impact on employment-related claims and lawsuits," said Jones.

"Although a majority of the survey respondents (89 percent) indicated that they are not concerned about employment practices liability risk increasing in 2009, our experience has shown that when companies lay off employees or reduce employee benefits, there is generally a corresponding spike in employment practices liability lawsuits, as well as incidents of workplace violence."



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Darla King

Business owner recognizes importance of differentiating company from competition

By NICHOLAS BORGIA
Daily Reporter Staff Writer

When Darla King first thought about opening a furniture store for businesses, she realized she would need to differentiate herself from her competitors if she were to become a success. So she did.

"We started (the company) by building the service structure and warehousing elements first. We then built the fancy showroom and larger sales team," she said, explaining that most companies similar to hers put their initial focus on creating an attractive showfloor.

Her plan, though, and that of her co-owner husband, Dave, was to offer services and not just products. While customers can purchase a wide range of office furniture from King Business Interiors in Worthington, the company also can provide them with inventory management, facility management, interior decorating services and use of warehouse storage facilities.

King explained that these services allow clients the option of using her company not only to transport their furniture from one office to another, but also to recreate an old layout in a new office.

"If a client has ordered new furniture for his office space, we can help him move the old furniture to another one of his buildings," she said. "We take pictures of every piece of furniture and use it to help move the older furniture to the new location."

And if there is no other office, King can offer the client use of one of three warehouses specifically constructed to store office furniture.

King said her goal is to become "a strong business partner" to her clients.

"We know their pain and understand how to best solve their facilities needs," said King. "Our team is matched up to best support the particular client's needs and this streamlines the work and saves him money."

"We get to know the companies very well and know exactly what they want. We sit down and listen to solve problems," she said.

King's business philosophy must work because she said she has not lost a customer since opening her doors a decade ago.

Women business directory about reaching out

By KEITH ARNOLD
Daily Reporter Staff Writer

Are you a woman business owner eager to support other women business owners? You can find more than 500 of them through a special product produced by the Ohio Department of Development.

The Ohio Directory of Women Business Owners is an online product launched earlier this year, and thus far, it has been well-received.

"Women are a fast-growing group of entrepreneurs vital to Ohio's economy and the directory highlights that fact by showcasing the depth and breadth of women-owned businesses in Ohio," said Lt. Gov. Lee Fisher, who also serves as director of the state's Department of Development.

The variety of listed businesses runs the gamut — from health care to retail to service to technology.

"We've got them all," said Iris Cooper, executive director of ODOD's Entrepreneurship and Small Business Division. Women are doing it all. We're not amazed at some of the creative things women can do."

Among the women included is one who developed a computer chip that can be inserted into a stuffed animal to play comforting music to sick children, Cooper said. Another woman, after noticing a number of prisoner escapes during transfer, created a hand-locking device — other than handcuffs — to limit their ability to successfully escape.

"We see these types of items being developed every day," she added.

Using the directory, women can find vendors for their goods and services, and learn about the services available from the state's entrepreneurship and small business division, which manages a variety of programs and initiatives that assist small businesses in growing and finding success in Ohio.

Cooper noted that just by their nature women generally communicate well and how that trait goes hand-in-hand with an easily accessible directory.

"Women network and women talk and pass on information," she said. "So that's how (any particular expertise) is spread."

The directory can be found at the Development Department's Web site at development.ohio.gov, under "Businesses/Industry" and then "Entrepreneurship and Small Business."

"The directory will serve as an excellent resource for women entrepreneurs as they build their businesses, and for anyone interested in conducting business with Ohio's women entrepreneurs," Fisher said upon its launch.

On the flip side, Cooper said, the directory makes it easier for the department to communicate with business owners.

As small businesses come and go, the DOD is expected to conduct an annual review to pare the list of defunct businesses.

"But women business owners have the ability to update if they need to," Cooper added.

The directory dovetails with recent reforms to the state's procurement plan. "Think Ohio First," as the plan is called, is an effort for state government to purchase supplies and services from companies and entities that create jobs for Ohioans.

Cooper said all Ohio consumers should consult the directory "because these women are so active in their communities and we need what we can do to ensure every woman-owned business is successful."



The Women Attorneys of Carlile Patchen & Murphy LLP

Back Row Left to Right: Betsy Kuhn, Jane Higgins Marx, Jackie Hager and Joëlle Khouzam.
Sitting Left to Right: Necol Russell-Washington, Brigid Heid and Carol Sheehan

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By RICK ADAMCZAK
Daily Reporter Staff Writer

Two decades of working in the corporate world, mostly in information technology, typically does not lead to another career as an art gallery operator, but that is the career path taken by Kathryn Flynn, owner of Kathryn Gallery in Columbus' Short North.

"At some point, I stopped and said, 'Hey, maybe there's something else out there,'" said Flynn. "At one time (a corporate job) worked well for me and now this works well for me."

The Delaware native enjoyed a long, successful career in software, working for companies such as Ashland Chemical, Ross Laboratories and Borden.

But even though she worked with computers for 20 years, the Kenyon College graduate said she always had an abstract streak to her, having studied philosophy at Kenyon.

She readily admits it didn't take her long to realize there are not a lot of career options available for philosophy majors, and that's why, she said, she chose the more practical route of information systems.

"I was always trying to prove to myself that I could do the next step up — and I needed to prove it. When I felt like there wasn't something next, I started to look around," said Flynn.

So, after nearly 20 years, she knew she wanted to try something different — though she did not immediately stumble into the art business.

Instead, she worked as a "life coach" and traveled overseas in her leisure time.

An art fan, she enjoyed choosing art for her home and it was during a conversation with an art gallery operator she often patronized that the dealer suggested Flynn consider a career herself as a gallery owner.

"It was her suggestion and I looked into it. I played around with the idea, and when the sign was in the window I went in to check it out," she said, referring to the closing sign for the Riley Hawk Gallery that long-occupied the space of her High Street store.

Creativity is creativity, whether in art or the IT world

She, along with her husband and co-owner, Gary, opened the shop in November 2005.

"The first anxiety was where to find the art. Now that's the last thing I worry about," said Flynn. "There's so much art out there and there's so much information. It's much different than had I decided to do this 20 years ago. I would have had to have worked at a gallery first."

But as it turned out, prior gallery experience wasn't as important as the business knowledge she had attained in her software career.

"What I brought to the table was a business background. A big piece of getting a small business like this to work is the ability to know the business side," she

said. "I hired people who know more about art and sales ... the ability to be around this and pick out art is something I tremendously enjoy."

She realizes, of course, that her enjoyment might not be so great were she struggling to make ends meet.

Flynn said taking an entrepreneurial plunge at the time she did was easier than it would have been 20 years earlier, noting the importance of the financial security she and her husband had reached due to their previous careers.

"It's easier to be an entrepreneur when you know there's food on the table when you get home," she said.



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Dr. Kimberly Resnick

Doctor helps her fellow woman through *compassion, research*

By KEITH ARNOLD
Daily Reporter Staff Writer

What began as one of the aspirations of a six-year-old girl has flourished into a genuine love for her patients.

Dr. Kimberly Resnick is a second-year fellow and researcher at The Ohio State University Comprehensive Cancer – James Cancer Hospital and Solove Research Institute.

Though she could hardly wait to turn off her pager during a recent fall weekend getaway to Las Vegas with her physician husband, the welfare of her cancer patients and her research work was never far from her mind.

"I love taking care of women," she said, explaining the draw the work has on her. "I love my female patients. There's something very special about our patients."

The 31-year-old Cleveland native recognizes a certain characteristic in each of them that is unique to the population.

"They have a certain fight to them, a drive to keep living that I definitely don't see anywhere else in the hospital," she observed.

It's this doctor's love for those who put their lives in her hands that has transformed into one of the most significant advancements in the treatment of ovarian cancer.

Resnick is first author of a study centering on a novel blood test that reliably detects ovarian cancer better than a more standard blood test targeting patients who already have been diagnosed or are being treated. She recently presented the results of her study at an international meeting on molecular markers in cancer in Hollywood, Fla.

The test screens MicroRNAs, or miRNAs. These are a small portion of the single-stranded Ribonucleic acid molecules that help regulate the proteins made by cells.

"We hypothesized that there would be a different miRNA expression between the blood of patients with ovarian cancer and those without, and our study supported the hypothesis," said Resnick.

The study of 28 ovarian cancer patients and 15 cancer-free women found that patients who have ovarian cancer have a certain pattern of miRNAs in their blood that is similar to the pattern of miRNAs found in the tumors from patients with ovarian cancer, the study indicated. The control group without ovarian cancer lacked this specific pattern of miRNAs in their blood.

"The early detection of ovarian cancer is the Holy Grail," according to Dr. David Cohn, lead investigator and mentor to Resnick. "Too many women die from ovarian cancer because it often is detected too late, when the prognosis is poor. We are trying to use a blood test to detect ovarian cancer earlier, when the prognosis is better."

By the end of 2008, an estimated 20,000 women are expected to have been diagnosed with ovarian cancer, and more than 15,000 will succumb to the disease, according to a statement issued by the research hospital and institute.

According to statistics collected by Centers for Disease Control and Prevention in Atlanta, ovarian cancer is the second most common gynecologic cancer after uterine. However, ovarian cancer causes more deaths than any other gynecologic cancer in the United States.

Cohn, a gynecologic oncologist and researcher at the James, suggested the findings have implications for other types of cancers.

"Further study is needed, but we are hoping that one day this could become a standard screening test for ovarian cancer, similar to the PSA screening now routinely offered for men to detect prostate cancer," said Cohn.

"But just like any test, we must validate it in larger studies, so such a test is years away from being commercially available on the market," he added.

Cohn, Resnick and fellow collaborator Dr. Carlo Croce, who is the director of human cancer genetics at Ohio State, have applied for a patent on developing this technology as a screening blood test for ovarian cancer.

"It's exciting. You spend weeks and months at a time working on a project. ... And there's a phenomenal feeling, like a big endorphin rush, when you make a breakthrough."
— Resnick

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Ovarian cancer is difficult to diagnose because there is no reliable screening test available, Resnick said. Symptoms of ovarian cancer may include bloating; pelvic or abdominal pain; difficulty eating or feeling full quickly; or urinary symptoms of frequency or urgency.

"On any given day, what woman doesn't have any of these symptoms?" she asked rhetorically. "Unfortunately, right now we have poor screening tools for this disease, and 80 percent of the time the disease is diagnosed at an advanced stage."

"We need a screening test that can identify this disease at an earlier stage and identify patients who are at risk for developing this disease."

Presently, the CA-125 blood test is used in the monitoring a patient's response to treatment, but the test alone cannot diagnose ovarian cancer, nor is it effective in screening healthy women for ovarian cancer, research has found. CA-125 is most commonly used to detect recurrent ovarian cancer in women who previously have been treated.

The test measures the level of a protein, known as a tumor marker, released by ovarian cancer cells. However, researchers say the CA-125 level can be elevated in men and women who do not have cancer and only half of patients with early stage, curable ovarian cancer will have an elevated CA-125 level.

Additionally, 25 percent of patients who have ovarian

cancer will register a normal CA-125 blood test level, Cohn said. A high level of CA-125 also can be due to causes other than cancer, including inflammatory conditions of the abdomen; recent surgery; gynecologic conditions such as fibroids, endometriosis or ectopic pregnancy; or a ruptured cyst, he added.

Resnick characterized the research and the new development as catch-up work.

"For a very long time we treated every patient in the same way," she said. "Then we realized this is probably not what we should be doing. It's a really exciting time to be doing this kind of research."

Resnick's success as a doctor and researcher can be tied to her enthusiasm for science.

"I just really love it," she said. "It's exciting. You spend weeks and months at a time working on a project. ... And there's a phenomenal feeling, like a big endorphin rush, when you make a breakthrough."

Resnick and Cohn have been discussing the next steps for his protégé, who said she expects the next project to be somewhat of an expansion of her most recent work, using a larger patient population.

The implications of this work, she said, are extremely exciting and encouraging to anyone who has ever known a woman in the late stages of ovarian cancer.

This is sensitive work, she added, "and unfortunately ovarian cancer doesn't get the press that breast cancer does. But it really is the silent killer."

The findings are published in the journal Gynecologic Oncology. The study was supported by the Jacquelyn L. Wells Endowment in Ovarian Cancer Research to Cohn and The Ohio State University Targets and Investments In Excellence to Croce, according to a statement from the research institute.

Were it not for her impassioned interest in research, Resnick said she expects she would have opted to teach science.

"I probably would be one of the cool biology teachers and I would sit on my desk and we'd talk about biology," she joked.

Instead, there are long, arduous days and opportunities where work springs into her mind while at home with her two-year-old daughter Haley and her husband. But Resnick tries to prevent work from interfering with her family life.

"Until I had a baby, I just didn't get it," she said. "But I think that I can honestly sit across from my female patients and empathize with them. I don't have cancer, but now I certainly know what it feels like to worry about seeing your children or grandchildren grow up."

She said a male physician's perspective surely is different — though no less effective.

"I work with wonderful men whose patients adore them," Resnick added.



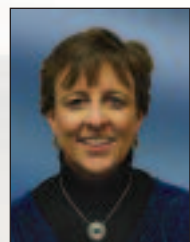
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New legislation's impact on Ohio businesses

Most entrepreneurs will admit that running a business can be difficult, but it becomes even more so when in addition to the day-to-day operations, and the monthly and yearly routines, the business owner also is faced with a barrage of new or changed employment laws. A group of attorneys met recently to discuss the many new regulations that will go into effect in 2009, as well as potential changes that may occur as the result of a new administration.



Betsy Swift,
Bricker &
Eckler



Michele Noble,
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TOP OF MIND FOR MANY EMPLOYERS IS THE EMPLOYEE FREE CHOICE — A UNION ORGANIZING BILL.

LUDLOW: Our main focus today will be looking at the impact on business of new laws that are in place, but also ones that potentially could be upon us. What’s the biggest thing that’s happening in terms of new laws for businesses — minimum wage, the ADA, the FMLA?

SWIFT: Well, we know the new ADA amendments go into effect Jan. 1 and the new FMLA regulations on Jan. 16. And then I think you can expect a whole host of other new laws, potentially, under the Obama administration — probably starting with the Employee Free Choice Act, which is really the union organizing bill. It would be a card-check bill where employees would sign an employee authorization card, and if the union is able to obtain 50 percent plus one of the proposed employees in a bargaining unit, they would have a union without a free-choice ballot election. That would be a big change for private sector employers in this country.

LUDLOW: How was it done before?

SWIFT: The current process now is that if a union obtains 30 percent or more of the cards of the employees who are proposed to be in a collective bargaining unit, generally, there will be an election. An employer can waive that right right now, but they typically do not do so. So this would do away with the opportunity for an election: Once the employee signs the card, that could be their last opportunity to say “yes” for a union.

LUDLOW: Was there some issue about privacy rights on that, about the employer knowing how the employee voted or something along those lines?

KUHN: Well, that’s the biggest reason why the employer side is so upset about it, because they say there can be a lot of coercion. Someone comes up to you and says, “Will you sign

this?” and you may not know you’re joining a union. So it’s not really the privacy as much as that you have to make your choice public. Even if you don’t want to be in a union, you may sign the card just because of peer pressure or worries.

SWIFT: Sure, and a pro-union individual may say, “Sign this card and you can vote later on. You can vote in an election as you do now for any public official, in the privacy of an election booth, so to speak.”

They certainly have that ability to sign a card now and vote either yes or no — or not vote — in an election, but that election part would be taken away under the proposed law. So once they sign a card ... the card is a legal document.

LUDLOW: So what does that mean to the employers? They’re more likely to have unions in their shops now because of misunderstandings?

KUHN: I went to a conference in Denver, a labor and employment conference, and there were some attorneys from Canada there. They said that when this type of law went into effect there, their union numbers shot up dramatically. Now, we’re about 8 to 10 percent unionized in the private sector, and we could go as high as 30 is what the Canadians were saying.

SWIFT: There are other countries that have these types of laws, and studies have shown that typically after such a law is enacted, unionizing efforts go up about three to four times.

NOBLE: There is an impact, though, I think, on the economy that will play into this. It looks like the unions are at least trying to respond to the pressures of the economy and trying to keep wages in check. So I think to the extent that unions are successful in doing that, that may make, the efforts of actually unionizing successful — which hopefully is a win for both sides, the employers and the employees.

LUDLOW: How big does a company have to be to have a union? Can a 20-person company have a union?

SWIFT: Yes, unlike a lot of the other laws which have minimum employee thresholds, that’s not true for federal labor law. So you could have a union with five members in it.

KUHN: And what we’ve read a lot is that those are the targets because the big employers are already unionized or have already decided against it, but the middle-size employers who haven’t been targets now will be.

THE FAMILY AND MEDICAL LEAVE ACT AND HEALTHY FAMILIES ACT MAY PRESENT CHALLENGES FOR SMALLER BUSINESSES.

LUDLOW: I didn’t realize that. I know some of the other topics we first mentioned, like FMLA, only applies to companies with 50 or more employees.

SWIFT: But there’s talk that Obama has supported taking that down to 25. So I think you can expect to see that sometime in the next four years.

LUDLOW: What will that do to businesses?

SWIFT: Well, businesses will have to understand how it impacts their interactions with their employees on a day-to-day basis. It provides unpaid job protected leave, and so they’ll have to understand how those regulations work. They will have to plan for it accordingly, meaning absences from work as well as the administrative costs of overseeing it. Under the new regulations there are substantial penalties for failure to comply.

If it went down to cover businesses with 25 employees, it could be difficult because generally an employer of 25 has fewer administrative staff. So you’re talking about a smaller organization, which could easily be run by one or two people, who now will have to understand how this fairly complicated law impacts the way they do their business on a day-to-day basis.

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KUHN: I'm really interested to see what happens with paid sick leave mandates, what happens when that bill gets reintroduced on a federal level — especially with what we were saying about the FMLA. Since that's unpaid, you hear a lot of talk about paid sick leave and how much time will it be. Will it look like the Ohio Healthy Families Act? Will it be for bigger-size employers, medium-size employers? It will be really interesting.

LUDLOW: What would you see the impact being of FMLA for a company that has 25 people and they just can't afford to hold a position open 12 weeks? What do they do?

KUHN: People will wear multiple hats, overwork other employees, hire temp employees.

SWIFT: Absolutely. They'll have people work overtime. But I think you'll see employers that will stay under 25, just as some now deliberately stay under 50, to avoid being subject to the law.

KUHN: They'll go with independent contractors.

LUDLOW: That would make sense — no benefits.

SWIFT: Again, you have to remember, it is unpaid time. Most people work because they need their jobs and they need their full job, and so they're going to get back to work as soon as they can.

But you're also going to have situations where people aren't able to. And you're right, you have to hold their job open for 12 weeks. An employer's got to be flexible. I think Betsy's absolutely right, too, people are going to have to wear multiple hats, which sometimes happens in smaller employers anyway.

LUDLOW: The 12 weeks is for anyone, is that correct? It's up to 26 weeks leave for the military under certain circumstances?

SWIFT: Correct. What it provides right now is 12 regular work weeks of leave in a 12-month period for employees

who have serious health conditions — and there's a specific definition for that — to care for their kids under the age of 18, their parents, their spouse, or themselves. They also have 12 weeks if they're adopting a child, or having a foster care placement, and a father can take it because of the birth of a child.

Or you can take it on an intermittent basis if your condition — like epilepsy or migraine headaches or asthma — might flare up occasionally.

KUHN: The intermittent leave is the thing I think will be so interesting if it goes down to 25 employees because that would really throw things off: trying to shuffle people around in different roles. The intermittent leave could really be disruptive.

LUDLOW: Do you all see this as being potentially harmful, then, to businesses, especially in the current economy? Do you think it's going to keep businesses smaller?

SWIFT: I think it will for some. I am confident that you will have employers who know that they can use overtime instead of adding one or two more employees because they want to avoid that federal regulation.

NOBLE: I think the concern, too, is really more the administrative side of following the law and just applying it correctly. That really is more of the burden, I think, than having an employee who does take the leave.

KUHN: I agree.

NOBLE: When you have an employee who really should be home, that is disruptive to the company. So there is a side effect that's helpful when someone does say, "Look, I can't do it anymore. I need a couple weeks off." Occasionally you may have an employee who is taking advantage of the allowable leave, and that becomes difficult to administer.

LUDLOW: But, again, the time off has to be for a certified reason.

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KUHN: Right.

LUDLOW: Anything else we should discuss with FMLA?

SWIFT: We have the new regulations going into effect in January. Under the current regulations, there are really only two FMLA forms that were issued by the government as model forms. I think under the new regs, there are six or seven, so it's more complicated.

NOBLE: And the new regs now are going to address HIPAA and some of the requirements for privacy we have for someone who is seeking medical attention: Who can call from the employer's side and check on the forms, what information you can actually ask. I think the new regulations are trying to spell out some of those requirements for employers.

SWIFT: It's a complicated law to understand and that's going to make it more difficult from an administrative side for the smaller employer.

LUDLOW: So because it's more complicated, there's more chance of the employer doing something wrong and being sued, right?

SWIFT: Yes.

KUHN: Although, the new law allows you to retroactively designate times of FMLA leave. Before, there was some confusion about that, so this kind of gives the employers a break. There is a regulation saying when the employer has to notify an employee that he's under FMLA leave. But if they miss it — and with smaller employers especially, I can see how that could happen — there's a little bit of a safety net for them.

LUDLOW: Anything else?

NOBLE: The protection for people in the military is really interesting. Given our activities overseas over the past three, four years, we're seeing these changes in almost every single body of law where the government is really trying to give protection to people who are serving in the Armed Forces. We see it both in the FMLA and other employment and labor laws, too.

KUHN: One thing I think is interesting about the FMLA regs concerning military is that the next of kin definition is really expansive. I wonder if maybe we're headed there with other parts of the FMLA, as well.

LUDLOW: What is the new definition? Next of kin can also be brothers and sisters, whoever is responsible for taking care of a person?

KUHN: Right. So, for example, under the military provisions if your brother or sister or your cousin is your next of kin, that person could get FMLA leave to take care of the service member

NOBLE: To me, I think of nieces and nephews caring for siblings, children, if they are overseas.

KUHN: Exactly, and it makes sense.

SWIFT: I think you're going to see a lot of federal laws move in that direction as you've got aging baby boomers who are now living longer, and you have to have family members to take care of them. It's not like 30 or 40 years ago when everyone lived in the same town. Now they're spread out. I think you're going to see broader definitions of people having rights under various laws to be caregivers.

KUHN: For example, the Ohio Healthy Families Act included in-laws.

SWIFT: Right. In fact, the proposed Federal Healthy Families Act includes in-laws. In-laws are not included under the FMLA, so there's a little bit of a difference there.

CHANGES TO THE AMERICANS WITH DISABILITIES ACT REDEFINE "DISABILITY" AND ADDRESS "PERCEIVED" DISABILITIES.

LUDLOW: Let's talk about the ADA? What are the changes? The definitions of disability, I understand, have changed.

NOBLE: Broadly so. The basic concept is to make a more expansive definition of disability. The U.S. Supreme Court made a couple of decisions that sort of narrowly interpreted what a disability is. It's clear from the new amendments to the ADA that it's going to be more expansive and more things are going to be covered under a disability for protection under the Act.

LUDLOW: What are some examples?

NOBLE: Concrete examples, there was one U.S. Supreme Court case that held you could look at a medication that someone was taking to see if they were disabled. If there were some sort of mitigating device that the person was using, you would consider that in trying to figure out whether the person was actually disabled under the Act. It's clear now that you are not permitted to use that type of an analysis when you're talking about whether someone's disabled.

LUDLOW: You could before?

NOBLE: You could before the Supreme Court decisions. The language of the statute was sort of unclear before. The U.S. Supreme Court said no, we're going to look at it. So, if you were under medication for a certain disability or a certain medical condition, the employer should look at you as you are when you are medicated, not so much as if you were disabled.

KUHN: It makes it a little easier, I think. Is a person disabled under the law? It's more likely than not that you will be considered disabled, as compared to before. So that determination may be a little easier. It's just going to be the reasonable accommodation that might be a little tougher.

SWIFT: I think it's clear from the negotiations that went on in Washington that they do not want the focus to be on



is a person with a disability. They don't want to go through an extensive medical analysis.

Let's say that I'm epileptic and I take my medicine and I haven't had any type of seizure incident in 20 years. Under the current state of the law, there certainly would be an argument that I'm not a person with a disability because I am completely functioning, I'm able to drive, I'm not having any issues in my medicated state. Under the new law, you would do the analysis without regard to my medication, and I think the presumption would be that without my medication, I'm probably going to have some type of seizure or incident, even though we're not going to know because I'm going to continue to take my medication, as are most employees, hopefully.

So the focus is really not so much on my condition and do I have a disability; whereas a lot of the case law has been on that end. It's going to be on what's the request for reasonable accommodation and is there a request. There's specific language in the amendments that talks about shifting the focus to the accommodation side rather than to the medical condition side.

LUDLOW: So who does that benefit? Is it benefiting the employee?

NOBLE: You know, it's kind of hard to tell right now because what happened before, under court interpretation of the Act, is that most people were not considered disabled. So the court's not really determined what is a reasonable accommodation for a disabled person under their job. Almost all cases were disposed of on summary judgment because there's no disability.

And we really don't have a lot of court decisions about what a reasonable accommodation is for the employer to give to a disabled person. As long as reasonable

accommodation is interpreted in a fair way and a way that makes sense, I don't think the impact on the employer is going to be as great as what it seems like in the new amendments.

KUHN: I agree. I think it's more streamlined. You know what you're getting into. Whereas before, so much was done on the first step determining "is this person disabled under the law."

SWIFT: And one of the other things lots of employers forget, and employees as well, is reasonable accommodations are supposed to be implemented so that the employee can do his job. The goal is not to remake the job for the employee. The employer is still, generally speaking, allowed to keep all the same duties, all the responsibilities on the employee. They're called essential functions. The accommodations are so that the employee can perform the essential functions, not take away reasons that the job exists.

I think a lot of employers fear they're going to have to completely redo a job description or a complete job for a particular person because they are a person with a disability. And I don't think under the state of the law that's going to be the case.

KUHN: And there's broad support of the amendments. All different types of groups supported the amendments.

NOBLE: There's another broad change, too, under the definitions of disabled persons concerning the perceived part of disability.

LUDLOW: What is a perceived disability, a perceived impairment?

NOBLE: It is when you are being discriminated against because someone perceives you as being disabled. The Act is



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not protecting just people who actually have a handicap; it's also protecting against possible unfounded allegations that someone is handicapped.

LUDLOW: Such as?

SWIFT: Well, the law is there to protect against stereotypes, unfounded stereotypes or stereotypes in general.

NOBLE: Under the old set of laws, if someone perceived someone as having AIDS, for example, and they didn't actually have the AIDS virus, they wouldn't get any protection under the ADA. Now they don't actually have to be disabled in order to be discriminated against if someone thinks they're disabled.

KUHN: Right. I've read a lot about this with dementia and Alzheimer's, those sorts of things.

SWIFT: Or I think if you just go to a really basic example: I come in with a limp, and so you are regarding me as someone who has a disability, some sort of a mobility impairment. You're considering not hiring me because you don't think I'm up to the task of being a traveling salesperson when, in fact, I was a high school athlete and maybe a college athlete and I have been able to lead a completely regular life despite

the fact that I have a serious limp. That might be an example where you're perceiving me to be disabled when, in fact, I'm not. And if you take an adverse action against me because of that perception — even though it's wrong — it would be unlawful.

LEGALITIES OF INTERVIEWING ARE AN ISSUE FOR NEARLY ALL BUSINESSES.

LUDLOW: Now, is the employer allowed to ask, "Does your impairment

prohibit you from doing the job as I have described it?"

SWIFT: What you can do is describe the job and ask the applicant or the employee, "Can you perform these job duties?" Generally speaking, that's what you're limited to. You're not allowed to ask about health-related conditions.

LUDLOW: Even when they bring it up?

SWIFT: I always tell employers to focus on the job because what you're really concerned about as an employer

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is whether a particular applicant can perform the job duties. That's really your focus. If they can't, the employer doesn't care why because the employer just wants the applicant to be able to do their job.

KUHN: With those medical questions, you can as long as you're asking everybody the same thing. Don't just ask the person you think might have the impairment.

LUDLOW: Right. I always find those situations a little difficult when people bring up things I know they shouldn't be bringing up, though.

KUHN: Yes. People are a lot more free in interviews than I would have ever expected.

SWIFT: Right.

NOBLE: We all work for law firms, and even in our own law firm, we have hour-long classes about interviewing questions and what's proper to ask and what's not proper. We all have legal backgrounds and there's still a need in our environment to go over those things, to look at them again, to refresh people.

SWIFT: I think one of the best things to do is before you interview someone, is to think about what the job is and what characteristics you want in the person to have the job, and what talents are needed, and write those questions down. Ask the same group of questions to everyone you interview. That keeps you on task, and it keeps you from straying into a conversational interview, which is oftentimes where you can get into areas that you don't really need to know about.

KUHN: It's so easy. Before I started interviewing, I

thought, "oh, how could people ever ask some of these questions?" And then when they start volunteering ... so I completely agree with having a list.

LUDLOW: Now, are there any new laws along the hiring issues line that we ought to tell people about?

KUHN: Genetic information? I don't know much about that, but discriminating against people based upon different health conditions or genetic issues.

LUDLOW: How does that work?

KUHN: I don't know too much about it. I just know there is a big concern about bringing up questions about having cancer, serious genetic diseases when you're interviewing people. You couldn't discriminate against someone who, maybe had cancer, thinking, "Oh, I don't want to hire you because you had cancer and it could come back."

NOBLE: That's addressed in the new ADA. Definitely under the new ADA it is clear that if you are cured of some disability that can still recur, you can still be termed disabled even if you're in remission.

SWIFT: And I think that will be an interesting issue because you end up needing a medical definition of remission? If I had cancer five or six or 10 years ago, am I still in remission? Usually I think for cancer it's, what I've heard is five years; if you can go five years without a reoccurrence, you're cured or definitely in remission. And so under the new ADA, it's going to be interesting to see how the courts deal with that issue.

LUDLOW: So, how is the information obtained? Just by the potential employee volunteering it?

SWIFT: It could be that. We're going to electronic medical records. I think there's a lot of concern with the advances in

medicine about genetic testing and what we think that tells us about someone's predisposition to having cancer or some other unfortunate condition. And we all read about it in the papers, for example, the breaches of confidentiality or security; tapes get out, CDs get out with that kind of information on it. So I think that bill is designed to protect specifically against genetic information being used.

It's not come up really much at all in my practice because most applicants made mention that they have a health condition, but lots of them have not had genetic testing. And certainly that's not an easy thing for an employer to get access to.

LUDLOW: An employer cannot require it for any reason?

SWIFT: No.

LUDLOW: On other hiring issues, in doing research I found that it's OK to refuse to hire an applicant because he or she has a tattoo or too many piercings or a Mohawk, whatever, because you need to protect the image of your business. That really surprised me, that you legitimately can turn someone away because of too many piercings, too many tattoos.

NOBLE: I think it's tricky. I think you're better off as an employer, as Betsy just said a few minutes ago, to write down what is really important for your job function and stick to those items. And, you know, although I may not like tattoos or I may not like multiple piercings, and maybe you perceive your customers that way too, you really probably should stick to what is essential for the job.

SWIFT: You can adopt a dress code and adopt other grooming requirements, if you will. I do a lot of work with hospitals and health care clients, and so there is an infection issue with respect to multiple piercings or long or artificial fingernails, depending upon the job that you have. So you can look at what's important for your organization.

As long as you don't treat one sex differently than another sex, which would give rise to sex discrimination claims, you can say no noticeable tattoos, only pierced ears, a certain length of hair. You see that in the restaurant industry now for food servers. So employers have, at least in most states that I'm aware of, and in Ohio certainly, a broad ability to ban tattoos, ban piercings, tell you that you need to be neatly dressed with pressed clothes and that you can't wear jeans. Some of the things that we all take for granted.

LUDLOW: Well, I also thought it curious that I found where a Federal Court ruled in a Cincinnati Police Department case that it is illegal to discriminate against a transgender job applicant. The comments I was reading on the Internet, some from attorneys, were that you still have that issue of appearance: You don't want a masculine man wearing a dress because it might offend your clients. This case involve the Cincinnati Police Department.

SWIFT: There is a firefighter case out of Salem, Ohio, too. Both won based on the idea that they were discriminated

against because they were not conforming to what were perceived to be the regular or normal sex roles. The court said that was sex discrimination. So you had a firefighter in the Salem case, and a police sergeant, I think, in the case in Cincinnati who were successful. They both wanted to be transgendered, they were transgendered; they wanted to have a sex-change operation. Before you can do that, you have to act and live like the sex you want to become for about a year, as well as take hormone shots or treatment. And I think in both cases the employee was successful. There are contrary cases around the country, but in this Circuit ...

LUDLOW: I don't understand why that doesn't fly in the face of the tattoos and piercings, though. If the employer doesn't want that image ...

KUHN: Well, I think you have the sex discrimination element there that you don't have with the other. You're looking at a gender stereotype, whereas with the tattoos and the piercings there's really not any protected area there.

SWIFT: There's no protected class with respect to tattoos or piercings, per se, but there is with respect to sex. If you can make the argument fit under one of the protective classifications — sex, or age, or race, et cetera, then you potentially have a claim.

CORRECT CLASSIFICATION OF EMPLOYEES IS ESSENTIAL TO THE FAIR LABOR STANDARDS ACT.

LUDLOW: OK. Next, what can you tell me about the Fair Labor Standards Act? Who does it pertain to? Exactly what is it?

SWIFT: The Fair Labor Standards Act is a federal law that governs wages paid to employees for employers of certain revenue sizes, but it applies to a large number of employers in this country. Most states have similar state wage and hour laws. It provides that if you permit employees to work, you must pay them at least a minimum wage for every hour worked. If they are a nonexempt employee, they are entitled to time-and-a-half for overtime; whereas if they are considered an exempt employee, you're exempt from the overtime. But there is certain criteria you have to meet to be able to be an exempt employee.

KUHN: I think that's one of the biggest misconceptions we see: "Well, this person is salaried so forget about all that keeping track of time." No, no, no. You can be salaried and still be a nonexempt employee; you have to still keep track of time. If they go over time, then you pay them time-and-a-half for overtime.

LUDLOW: And what about audits? Should employers be scared to death if they hear they're going to be audited?

KUHN: Well, if have job descriptions and accurate time and pay records, that's a big part of it.

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SWIFT: If you incorrectly classified somebody as exempt when they're really nonexempt, then you need to be able to figure out how many hours they actually worked in a workweek. And if it's typically more than 40, then you owe them time-and-a-half. So you might owe back pay if you have them incorrectly classified, and there may be other damages that would go along with that.

LUDLOW: Is it common for employers to misclassify, or are they getting the hang of it by now?

SWIFT: It's very common.

KUHN: It's a complicated area. It's like we were talking about with the FMLA, for some employers who don't have an in-house attorney or don't call their outside counsel, it's a complicated analysis. People sometimes just overlook it and think, "OK, well, they're salaried." And then later it may come back to bite them. But it's not something you just look at and right away you know "that person should be nonexempt or that person should be exempt."

MINIMUM WAGE CHANGES
MAY CAUSE SOME EMPLOYERS
TO RETHINK THE WAY THEY
DO BUSINESS.

LUDLOW: What other new laws should we discuss?

NOBLE: Minimum wage increase, we haven't touched on that. Right now Ohio minimum wage is equal to the federal minimum wage.

SWIFT: The Ohio minimum wage is \$7 an hour right now; it goes to \$7.30 on Jan. 1 for most employers. It's based on your gross receipts. The federal minimum wage goes up in July to \$7.25 an hour.

KUHN: Right now it's \$6.55.

NOBLE: And that's the top. Next June is the last increase of the federal minimum wage under the current enacted legislation.

SWIFT: Yes. Obama has talked about indexing the federal minimum wage to inflation, so that may be another change that we see at some point after he takes office.

LUDLOW: Do clients ever come to you and say, "I just can't do this. What do I do? Do I lay off people? Do I make people independent contractors?" because of minimum wage issues?

SWIFT: Clients, thankfully, come to us with lots of problems. That sometimes can be one. But the issue is, you can't just make anyone an independent contractor. There's a fairly specific and somewhat strict IRS test for who really is an employee and who's an independent contractor. And if you fail to have someone classified correctly, of course, there are penalties built into the laws.

NOBLE: The biggest thing for independent contractors, I think, is workers' compensation. If you're an independent contractor, you're not covered under the statutory workers' compensation guidelines; and, for public policy reason, the government wants people covered in case of accidents. So the test is really strict.

It's kind of hard to actually be an independent contractor for that reason — because they're not protected if someone would get injured.

SWIFT: And certainly as an employer, you want them covered under workers' comp because you're paying a premium to the state or you're self-funded, and you want those workers under that system vs. having them sue you independently for a claim.

KUHN: Something we've been doing research on is how to implement pay decreases if you have to go down that path and how that works. In some states you have to give notice if you're going to cut people's pay; other states, you don't. An unfortunate topic to get into, but one that we'll be getting into more, probably.

SWIFT: I've had a number of clients have to do layoffs either on a temporary or a permanent basis where they're completely eliminating the position for an indefinite period of time, so they're terminating people and letting them go. That's just a function

of how much business they have and whether their orders are down or their production is down. They've got to figure out a way to balance their checkbooks like we all do.

LUDLOW: So minimum wage issues just stand to increase that, I would guess, in a lot of businesses.

NOBLE: There are exceptions to the minimum wage.

LUDLOW: You did say that. What kind of exceptions? Is this, again, based on sizes of businesses?

NOBLE: It's the employee classification, as well. A student in high school, you can only work them eight hours a day and 20 hours a week when school is in session. They can get a lower wage if you do a certain certification form and get preapproval in advance. There's a couple other examples too.

KUHN: Family businesses.

SWIFT: Developmentally handicapped — I think that you can apply to the state for a lower wage.

NOBLE: If it's an intern associated with a college or university, there can also be an exception.

THE FUTURE OF LEGISLATION AFFECTING
BUSINESSES REMAINS TO BE SEEN, BUT A NEW
ADMINISTRATION IS EXPECTED TO BRING ABOUT
PRO-EMPLOYEE CHANGE.

LUDLOW: OK. What should we discuss in terms of potential bills? What about changes to health care?

SWIFT: I think it's going to depend on who's paying for it, whether the government's providing it, whether the employers are required to provide it. I have read some things about the proposal, but that's a really big ticket item at the federal level. I don't know that we have any idea what that's really going to be like.

KUHN: I think it's really interesting. With people moving around now from job to job, will you get your health care through your employer or will that be something you always have and you move from job to job, so it doesn't matter.

LUDLOW: Would it benefit employers to have the portability?

SWIFT: Well, it certainly benefits the employee. Again, I think it's going to depend on how it's paid for. Certainly, I have seen a lot of my employers who offer both single- and family-type coverage. And so let's say they have a male working for them, a male employee, and the male could have family coverage; but if his spouse works somewhere else, the employer of the male is going to say, "Your wife can't be on my policy if she can get coverage on her policy from her employer." And is it doesn't matter which sex.

I have seen a lot of employers institute policies that say if the spouse is covered, or able to be covered under their own employment situation, that's where they have to go to first. Health care is expensive and so they're trying to find ways to spread the costs around. You've got some employers who

have very good coverage, and as the costs go up, they have to figure out ways they can continue to provide coverage for their own employees, which is their primary focus.

LUDLOW: Sure. What are some of the other issues that may come up in the new administration?

NOBLE: There are some changes to handbooks, I believe, in the FMLA. The notice requirements are slightly changed. Employers need to implement those by Jan. 8, 2009. So there are changes like that that are accompanied with some of those laws, just notice requirements to the employees.

KUHN: But with the economy being down, do a lot of employers have the funds right now to say, "Let's update our handbooks"? And then what happens if they're not updated? It could be a tough time to get all those changes made if you don't have help.

SWIFT: Here are some other things I think you might see on the federal level. I think you might see sexual orientation be a new protected classification. I think you're going to see a push for additional gay rights protections at the federal level.

I think you'll see other changes. The Healthy Families Act is proposed at the federal level, where you'll see some form of paid sick leave proposed to cover large numbers of employers. Right now, I think the proposal is for employers of 15 or more.

There is also a Working Families Flexibility Act which has been proposed where an employee, in a sense, could negotiate with their employer over what days of the week they work, what hours of the day they work, how many hours they work. I think you're going to see a lot of pro-employee-rights legislation over the next several years.

LUDLOW: So how does the employer handle all that? Does he just call his attorney every couple of days to see what's new? What do you advise your clients?

SWIFT: Well, business is always about balancing the risks and the rewards and the responsibilities that you have. So every employer right now makes a decision about how often and how frequently they want to involve legal counsel or how often they want to go it on their own. So I think they'll continue to make those decisions based on their own experience, how sophisticated or unsophisticated they are, how easily they have access, whether they can obtain information off the Web or from federal Web sites.

Oftentimes, they go along with no problems until an employee or governmental agency comes in, and then they may have to then seek more sophisticated help to straighten something out. There's always a balance in terms of what their priorities are in their business.

NOBLE: We are starting to see, too, a change just in seeking legal advice. Companies are looking at alternative ways of making payment for their legal services — maybe

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like a flat rate for one employment counsel to assist you on a flat rate per a given year or a given quarter. We're seeing more requests like that from companies and from institutions to keep down costs and make sure they're complying with all new regulations and laws.

LUDLOW: Is that something a lot of law firms are going to, the flat rates, to try to help out the smaller businesses?

NOBLE: It is definitely something the law firms are looking into doing. I think maybe in a slow, progressive manner. But I think we are seeing more of that, because of the requests from our clients.

KUHN: One of the newer partners at my firm has a program that's a hotline, and you pay a monthly flat fee and you can call in and ask any sort of employment-related question. At the point we actually have to write or research that kind of work, then it's charged; otherwise, it's in the flat rate. So if it's just, "I want to terminate this person. Let me tell you the facts and tell me what you think," that would be something that would be covered under the flat rate. There are just lots of different creative methods out there right now.

LUDLOW: What else should we cover before we wrap up?

SWIFT: I think on the employment side we're going to,

potentially, see a lot of new proposed laws that will work their way through the system. And we'll be in a position to have to help employers try to come into compliance in a way that's cost effective for them because of the business climate and allows them to protect themselves.

NOBLE: I don't know if we really touched on some of the real harm to companies when things get to litigation. It does make sense for companies to look at these issues early on and to have a plan in step for their company, because if they don't and litigation does ensue, the costs involved can really be harmful to companies.

SWIFT: Right, and it's not just the legal costs, it's the time of the folks on the inside: supervisors, managers, the president of the company who has to take time away from what he or she hopes to be doing, which is running the business, creating more product, selling more product. But now the time has to be diverted to defending the company against allegations. And that's costly as well.

KUHN: It's much cheaper to make that phone call to say, "Hey, what do you think about this request for FMLA leave?" than to just wait until the end and, "Oh, we just got served. Sounds simple, but -

LUDLOW: It does, doesn't it?

KUHN: - it's not.



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