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INSIDE THIS ISSUE

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FRANK SHEAHAN ANNOUNCES RETIREMENT AND TRANSITIONS CLIENT SERVICES TO M&G

After 48 years of providing superior service to his clients, Frank Sheahan has announced his retirement from the insurance industry. As of January, 2019, Sheahan will transition the service of his accounts to Morris & Garritano Insurance. Sheahan notes, "It is important that my clients be protected and taken care of. When thinking of who would provide the best possible service, with the best possible people, only one name came to mind – Morris & Garritano."

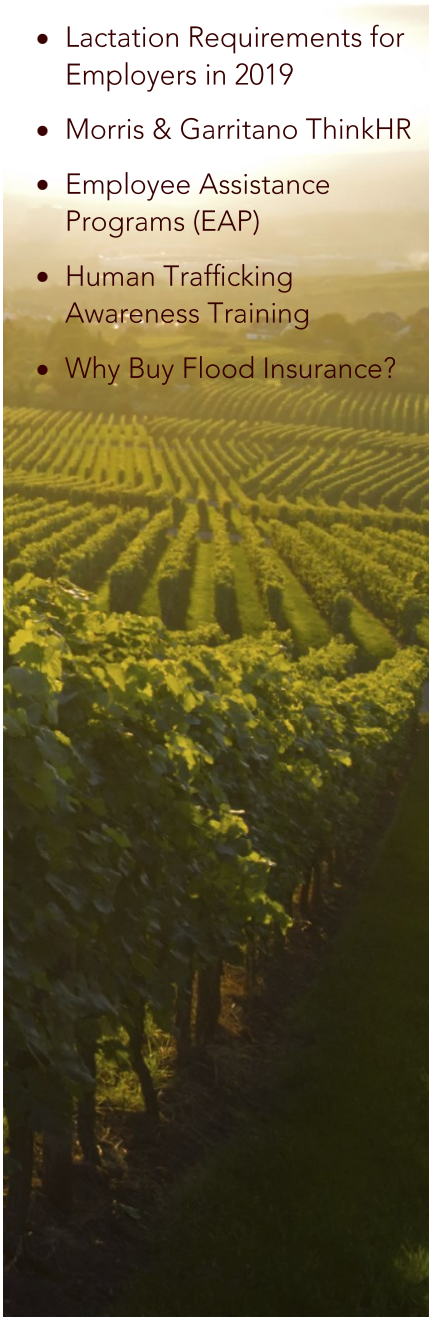
Prior to his time in the insurance industry, as Sheahan puts it, he was "just a punk kid from New Jersey whose dad gave him three options – the Army, the Navy, or the Air Force." In 1963, after a semester at Rutgers, he joined the Army as a buck private performing Morse code for his battalion commander. He gradually made his way up the ranks to become a Captain in the Special Forces, also known as the Green Berets. He was deployed to Vietnam in January 1968 and served overseas until his departure from the army in 1969. Sheahan then ran a military unit in Sausalito as a reservist while attending college in San Francisco.

Sheahan's insurance career started on February 11, 1971 when he joined Aetna Life and Casualty after graduating first in his class from San Francisco State University. He gained experience selling life insurance and mortgage policies by walking door-to-door, enjoying every opportunity to meet new people. In 1973 he came to the Central Coast to work for a prominent Property and Casualty insurance company, Neal Truesdale. After 7 years with the agency, Sheahan started his own firm, offering services for group medical, individual medical, and pension plans. He ran that operation from 1980 until his retirement this year. "I love what I do and am grateful to have had the opportunity to work with so many wonderful people. My clients are my family – some have been with me for 35 years."

Sheahan not only served his clients but served our community as well. He was President of the Mustang Booster Club in 1981, President of the SLO Chamber of Commerce in 1983 and 1984, was named the SLO Chamber's Citizen of the Year in 1989, and has participated in numerous organizations over the years. He has been a long-time friend and colleague of the Morris family. Our CEO, Brendan Morris, notes "I've admired Frank for many years, and our approach to insurance is very similar – ensuring that our clients are provided peace of mind and service they can trust. We are honored and excited to be able to assist Frank's clients and embrace the opportunity to build new relationships along the way."

SPECIAL POINTS OF INTEREST

- Lactation Requirements for Employers in 2019
- Morris & Garritano ThinkHR
- Employee Assistance Programs (EAP)
- Human Trafficking Awareness Training
- Why Buy Flood Insurance?



WELLNESS PROGRAM REQUIREMENTS

Contributed by: Louise Matheny, Human Resources Consultant

Employers often make wellness programs available to employees as part of their company's overall health care benefits package. These programs encourage living a healthy lifestyle and/or preventing disease and many target health issues such as smoking or obesity. Generally, healthier employees leads to lower health care costs for employers – making it an attractive opportunity for all parties involved.

If you choose to offer a wellness program, there are certain requirements that must be met to remain in compliance with certain labor laws, such as the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), HIPAA, and the Affordable Care Act (ACA). The requirements within the ADA and GINA apply to employers with 15 or more employees and address what constitutes a health program, the need for a program to be voluntary, and what sort of incentives can be offered to participating employees.

Programs Must Promote Health or Prevent Disease

A program will satisfy this standard if the program:

- Has a reasonable chance of improving the health of, or preventing disease in, participating employees;
- Is not overly burdensome;
- Is not highly suspect in the method chosen to promote health or prevent disease; and
- Is not a subterfuge for violating the ADA, GINA, or any other laws preventing discrimination in employment.

Programs Must Be Voluntary

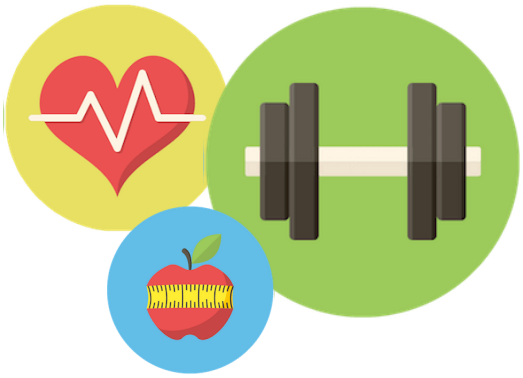
For a wellness program to be voluntary, an employer cannot:

- Require employees to participate;
- Deny employees health coverage or benefits, or limit the extent of benefits provided, if employees do not participate; or
- Take any adverse action or retaliate, interfere with, coerce, intimidate, or threaten employees.

Notice Must Be Given to Employees

Employees must be provided written notice that is understandable and must include:

- What information will be collected;
- The purpose for which the information will be used;
- Restrictions on the disclosure of the information provided;
- Who the information will be shared with; and
- How the information will be kept confidential.



Limits on Incentives

This regulation applies to both in-kind and monetary incentives.

Confidentiality

The employer is responsible for ensuring that any employee information that is collected is kept confidential in accordance with ADA and GINA requirements.

Discrimination

Safeguards must be in place to ensure there is no discrimination based on disability. Disabled individuals seeking to participate in the wellness program must be provided reasonable accommodations and the opportunity to earn incentives, should they be offered.

****Click here to download a sample Wellness Program Notice template****

W-2S DUE TO IRS BY JANUARY 31

Contributed by: Louise Matheny, Human Resources Consultant

The IRS is reminding employers of the upcoming filing deadline for W-2 wage statements and independent contractor forms. Copies of Form W-2, Wage and Tax Statement, and Form W-3, Transmittal of Wage and Tax Statements, must be filed with the Social Security Administration by January 31.

The purpose for the deadline, as established by the Protecting Americans from Tax Hikes (PATH) Act of 2015, is to allow the IRS to more efficiently verify income as reported by individuals on their tax returns. Thus helping to prevent tax fraud. Using the IRS's e-file, is the quickest and most convenient way to file the forms and avoid penalties.

Being prepared before filing season is also helpful.

- Keep company account information current and active with the Social Security Administration
- Update and maintain accurate employee information
- If using paper forms, make sure to have enough copies to distribute to the proper parties.

Do not rely on automatic extensions, as they are not available. The IRS will only grant extensions for very specific reasons. More details can be found on the instructions for Form 8809, Application for Time to File Information Returns.

You can also find more information about form filing by reading the instructions for Forms W-2 & W-3 and the Information Return Penalties page at IRS.gov.

2019 STANDARD MILEAGE RATES ANNOUNCED

Contributed by: Louise Matheny, Human Resources Consultant

The 2019 optional standard mileage rates have been issued by the IRS. These rates are used to calculate the deductible costs of operating an automobile for business, charitable, medical, or moving purposes.

As of January 1, 2019 the standard mileage rates for using a car, van, pickup, or panel truck is:

- 58 cents per mile for business miles driven (up 3.5 cents from the rate in 2018).
- 20 cents per mile driven for medical or moving purposes (up 2 cents from the rate in 2018).
- 14 cents per mile driven in service of charitable organizations (same as 2018).

The above rates for business are based on an annual study of the fixed and variable costs of operating a vehicle. This includes insurance, repairs and maintenance, tires, gas and oil, and depreciation. For medical and moving purposes, the rates are based solely on the variable costs, such as gas and oil. The rate for charitable purposes is set by law.

Employees do have the option to calculate the actual cost of using their vehicle, as opposed to using the standard mileage rates, and submit to their employer for reimbursement. The IRS mileage rate will generally satisfy an employer's requirement to reimburse business-related expenses. However, if an employee shows that the reimbursement rate does not cover all the actual expenses incurred, the employer is obligated to pay the difference.

ARE YOU REQUIRED TO PAY EMPLOYEES FOR COMMUTE TIME?

Contributed by: Louise Matheny, Human Resources Consultant

There is often confusion on the difference between travel time and commute time and if an employee should be paid for that time. The general rule is this,

- If an employee is required to travel for work, those hours must be paid as "hours worked."
- The time it takes for an employee to commute to and from work is unpaid, except under certain circumstances, such as an employer requiring the use of a company vehicle to commute.

In a case from November of 2018, a California court of appeal ruled that the time spent commuting in a company vehicle is not hours worked if the employee is voluntarily using the company vehicle, so therefore does not need to be paid. (*Hernandez v. Pacific Bell Telephone Co.*, CO84350 (11/15/2018)).

Case Background

In 2009, Pacific Bell started a voluntary program called the Home Dispatch Program (HDP) in which employees could take a company vehicle home with them at the end of the work day. Rather than reporting to the company garage, employees could simply drive straight to their first appointment to start their shift. A workday would begin at 8am when they arrived at the first customer's home and end when they finished at the last customer's home. They were not paid for the commute time between their home and the first and last customers.

Employees argued that their commute time should be considered "hours worked" due to the fact that they were driving a company vehicle. Both the trial court and the appeals court disagreed and found in favor of Pacific Bell, declaring that the commute time was not compensable.

How to Define "Hours Worked"

The issue in this case was determining whether an employee's commute time could be classified as "hours worked" under California law, and therefore need to be paid. The court used the control test and the suffer or permit test to determine if the time spent by employees under the HDP constituted hours worked.

The Control Test

Employees' Argument: Commute time should be considered hours worked because the employer placed restrictions on how the company vehicle could be used: no passengers, must drive straight home after last job, not allowed to run personal errands, etc.

Employer's Counter: The program was completely voluntary. If employees didn't want to participate, they could continue reporting to the garage to pick up a company vehicle and start their shift there.

Because the program was voluntary, the court determined that employees were not subject to Pacific Bell's control while commuting and therefore their time was not hours worked.

The Suffer or Permit Test

Employees' Argument: By transporting tools and equipment during their commute, Pacific Bell was suffering or permitting them to work during their commute time.

Courts' Decision: "Mere transportation of tools, which does not add time or exertion to a commute, does not meet" the suffer or permit to work standard. Rather, the suffer or permit to work standard "is met when an employee is engaged in certain tasks or exertion that a manager would recognize as work." An example of this would be if employees were actually delivering equipment or tools, not simply commuting with them in the vehicle.

Continued on Page 5

ARE YOU REQUIRED TO PAY EMPLOYEES FOR COMMUTE TIME? (CONT'D)

Best Practices

- Understand the difference between travel time and commute time and properly pay employees accordingly.
- If nonexempt employees are traveling for work purposes, that is considered hours worked and must be paid for all the time, including overtime, while traveling.
- Exempt employees are not owed any additional pay for travel time as they are paid the same weekly salary regardless of hours worked.
- If employees use their personal vehicles for work travel, you must reimburse them for mileage. This applies to both exempt and nonexempt employees.
- An employee's commute time is generally not paid, though there are some exceptions.
    - If an employee is actually performing work during their commute (such as making deliveries) or you exert control over how they are commuting (such as **requiring** them to use a company vehicle), that time may be compensable.
    - If you have questions regarding hours worked and compensation, consult your legal counsel for guidance.

NEW LACTATION REQUIREMENTS FOR EMPLOYERS IN 2019

Contributed by: Louise Matheny, Human Resources Consultant

AB 1976 went into effect on January 1, 2019, making a small, but significant change to the lactation requirements that employers must follow. While the law still upholds that the employers allow a reasonable amount of break time to accommodate nursing employees who wish to express breast milk, the specifics of the location that is provided for privacy has been updated.

Prior to January 1, employers had to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area – this could include the open area of a bathroom. The change with AB 1976 is that an employer must make reasonable efforts to provide an employee with use of a room or other location, *other than a bathroom*, for lactation purposes.

If an employer is unable to provide a permanent lactation location due to operational, financial, or space limitations, a temporary location is acceptable as long as it is:

- Private and free from intrusion,
- Is used only for lactation purposes while an employee expresses milk, and
- Meets all other requirements of state law concerning lactation accommodation.

Businesses are able to apply for an exemption with the Department of Industrial Relations if they can exhibit that providing a space other than a bathroom would cause undue hardship.

HEALTHCARE COMPLIANCE 2019—THE YEAR AHEAD

Contributed by: Keith Dunlop, Director of Compliance and HR

2018 brought in a storm of Affordable Care Act (ACA) confusion for employers and the American public. Several new rules and numerous legislative activities impacted provisions of the health law, both for individuals and employers, and the midterm elections put the ACA back in the spotlight. In this article, we will examine some of what the 2019 healthcare landscape will look like.

1. The 2018 mid-term elections saw the Democrats take control of the House, while the Republicans increased their majority in the Senate. The 116th Congress, which convened on January 3, 2019, is predicted to be more polarized than ever with the likelihood that nothing beyond essential legislation will get done. Meaningful bipartisan compromise on issues such as healthcare is not expected.
2. The Affordable Care Act's individual mandate penalty was reduced to "zero" for months beginning in 2019 and beyond with the passage of the Tax Cuts and Jobs Act (TCJA) in 2018. The individual mandate itself remains a part of the tax code, but there is no longer a fine associated with individuals failing to purchase healthcare.
3. On the heels of item #2, a federal judge in Texas ruled the Affordable Care Act unconstitutional, but has allowed the law to remain in effect while the decision is under appeal. The plaintiffs argued that because the Supreme Court upheld the ACA as a constitutional use of its taxing power, the elimination of the individual mandate tax made the rest of the law unconstitutional. Democrats plan to challenge the 55-page decision and the matter will soon land in the Fifth Circuit Court of Appeals in New Orleans.
4. Several states have taken preemptive action on the elimination of the ACA individual mandate. Beginning in 2019, New Jersey, Massachusetts, and the District of Columbia will enforce state-based individual healthcare mandates – Vermont's starts in 2020. There is a proposal in California to do the same.
5. The Affordable Care Act's employer mandate, known as the Employer Shared Responsibility Provision, is alive and well in 2019. Despite the changes to the individual mandate, the employer mandate remains in place. Applicable Large Employers who average at least 50 full-time, and full-time equivalent, employees during the prior calendar year must meet all of the provisions of the employer mandate, or face stiff penalties.
6. Employers will continue to receive Letter 226J (Proposed Employer Shared Responsibility Payment) from the IRS in 2019. This is the notice provided to Applicable Large Employers that is the first step in enforcing Section 4980H employer mandate penalties. If at least one full-time employee, for at least one of more months of the year, was allowed a premium tax credit for purchasing healthcare coverage at an Exchange, the IRS will seek penalties from the employer. The IRS is currently issuing Letter 226J for tax year 2016.
7. In addition to Letter 226J, the IRS will also continue to issue Letter 5699 in the coming year. This notice is sent to employers who the IRS believes are Applicable Large Employers, but failed to file Forms 1094-C/1095-C as required by law. An employer receiving one of these letters will either have to declare they are not an ALE, or file their required ACA informational reporting within 30 days. Noncompliant employers face penalties under IRC Section 6721 for failure to file informational returns.
8. And finally, it is anticipated that the IRS guidance updates on several topics including proposed regulations under Section 4980I (the Cadillac Tax), and issues concerning the employer mandate under Section 4980H. The updated guidance regarding the employer mandate is being followed closely because of the recent changes to the individual mandate penalty. There are those who argue that without enforcement of an individual mandate in the ACA, there is no need for employers to file informational reporting (e.g. Forms 1094-C and 1095-C).

Morris & Garritano will continue to follow these and other legislative developments throughout the year, and will provide updates as they develop.

WHEN LIFE GETS TOUGH, GET THE SUPPORT YOU NEED - QUICKLY AND CONFIDENTIALLY.

Contributed by: Luzette Graves, Medical Case Manager

Employee Assistance Programs (EAPs) can be a life saver in a crisis and many employers offer this free, easy access, and confidential service as an integral part of their benefits package.

The programs can provide immediate access to supportive and confidential counseling for you and your loved-ones, covering a variety of issues such as:

- Legal advice
- Financial organization
- Recovery from identity theft
- Beneficiary support services
- Urgent mental health issues

How does it work?

Call the 24/7 toll-free number provided by your employer and a friendly, supportive, and knowledgeable counselor will help you through the immediate crisis and then assist you in identifying and accessing the additional services you may need.

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HUMAN TRAFFICKING AWARENESS TRAINING REQUIRED FOR HOSPITALITY EMPLOYEES

Contributed by: Michael Schedler, Loss Control Analyst

January 1, 2019 was the effective date for several new employment-related laws. SB 970 pertains directly to the hospitality industry.

The new law amends the Fair Employment and Housing Act (FEHA) to require motel and hotel employers to provide a minimum of 20 minutes of training on human trafficking awareness to those employees that are most likely to come into contact with a victim of human trafficking. This would include front desk clerks, housekeepers, bell desk employees, or any other employees that regularly interact with hotel guests. Training for employees must take place by January 1, 2020, be provided to new employees within their first 6 months of work, and once every two years from thereafter.

Please refer here for the full text of the law.

Training material can be found online with the US Department of Homeland Security as a part of their Blue Campaign, or you can click on the Hospitality Toolkit icons below.

We will be monitoring this throughout the year and update those affected of any potential training opportunities.

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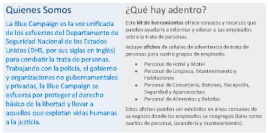

SPANISH

TEMPORARY WORK RESTRICTIONS: WHAT IS AN EMPLOYER'S RESPONSIBILITY?

Contributed by: Mary Jean Collins, Workers' Compensation Claims Analyst

Question:
As an employer, what is my responsibility if my employee is not released to his or her regular position?

Answer:
If an employee is released to return to work with temporary work restrictions, you are not required to accommodate. However, trying to accommodate through a return to work program does mitigate costs, increases the employee's morale, and is a general boost of employer and employee dedication to one another.

If your business is not able to support any type of modified duty, several Workers' Compensation carriers have implemented a Keep at Work Program that can be utilized. This would be a coordination of work through a local non-profit such as a Goodwill or a Red Cross. The employee would be managed by the non-profit and complete a weekly time card to submit to you for payroll. This program is a temporary program and not usually authorized for more than 90 days.

There are several ways to implement an effective return to work program.

- Have outlined job descriptions for every position available within your company.
- Send a copy of the injured employee's job description to the treating physician so they have a clear picture of what the employee's job requirement entails on a daily basis.
- If you have a modified position available, send a copy of that position's job description to the treating physician so they can determine if the injured employee is able to perform the required tasks.

Ultimately, having open communication with the injured employee, their medical team, and your management team will help your return to work program effectively assist in getting the injured worker the proper recovery they need in order to return to their regular job duties.

TIPS FOR COMMUNICATING WITH ADJUSTERS

Contributed by: Heather Ross, Claims Advocate

As M&G's dedicated Claims Advocate, I'm often asked to intervene when a claim isn't progressing the way it should. Often, the issue comes down to communication: either the adjuster handling the claim isn't as responsive as the client would like, or the client isn't providing the information that the adjuster needs to resolve the claim.

Below are some tips that may help facilitate communication with your adjuster and improve your claims experience:

1. **Email is usually preferable to calling.** It's easier for an adjuster to quickly answer an email on the fly, and email doesn't require both parties to be available at the same time for the transmission of information to happen. Also, email is a great way to create a virtual "paper" record of the claim.
2. **If you do decide to call, leave a detailed voicemail.** Be concise, but also take the time to give the adjuster some idea of what information you're seeking (i.e., rental car reservation, instructions regarding next steps); that way, the adjuster can review your file and be ready with answers when returning your call. Even if you end up missing one another a second time, the adjuster can leave you a detailed return voicemail with the answers to your questions, making it possible to achieve some progress even while trading messages.
3. **ALWAYS include your claim number.** Your adjuster is most likely working on 100 or more active claim files at any given time, so they may not have time to figure out to which claim your message is referring. A voicemail or email with a claim number will get a faster response, every time.
4. **Give your adjuster at least 24 hours to respond.** If you have an urgent matter, it's okay to follow up a voicemail with an email, or *vice versa*, but multiple messages likely won't get you an answer any faster. As mentioned above, adjusters may be working on numerous claims at a time, including a high volume of claims from last season's wildfires – as well as this season's winter storms – which could impact their response time.
5. **Document all contacts.** Keep a notebook with detailed notes about all contacts you have with the insurance company regarding the claim, including messages left and emails sent and received. That way, if you do need to escalate the claim to a supervisor, or want to reach out to us for assistance, you're able to show what progress has been made on the claim thus far.
6. **Assume the best.** Most adjusters are doing their best to resolve claims efficiently and fairly. When it comes to determining coverage under the policy, the burden of proof usually rests on the adjuster, and in almost every situation, it is easier for the adjuster to pay a claim than it is to deny it. Rather than taking an adversarial stance, you might try approaching your adjuster with the mindset that he or she is trying to find coverage, and your role is to provide the claim information that allows their best chance for success.

Hopefully these tips will help you more successfully navigate the claims process, but if multiple days pass without a response, or your request is urgent, please call or email me (hross@morrisgarritano.com) for assistance – that's what I'm here for, and I'm happy to help!

WHY BUY FLOOD INSURANCE?

Contributed by: Personal Lines Department

No home is completely safe from potential flooding. Flood insurance can be the difference between recovering and being financially devastated. Just one inch of water in a home can cost more than $25,000 in damage—why risk it?

The Cost of Flooding

Flooding can be an emotionally and financially devastating event. Without flood insurance, most residents have to pay out of pocket or take out loans to repair and replace damaged items. With flood insurance, you're able to recover faster and more fully. Use this tool from NFIP to see how much flood damage—even from just a few inches of water—could cost you.

Do You Need Flood Insurance?

Here are some important facts to keep in mind:

- ***FACT:*** Homeowners and renters insurance does not typically cover flood damage.
- ***FACT:*** More than 20 percent of flood claims come from properties outside high-risk flood zones.
- ***FACT:*** Flood insurance can pay regardless of whether or not there is a Presidential Disaster Declaration.
- ***FACT:*** Disaster assistance comes in two forms: a U.S. Small Business Administration loan, which must be paid back with interest, or a FEMA disaster grant, which is about $5,000 on average per household. By comparison, the average flood insurance claim is nearly $30,000 and does not have to be repaid.

It's easy to see that having flood insurance provides important recovery help.

Source: https://www.floodsmart.gov/why/why-buy-flood-insurance

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With a tradition of excellence in insurance services since 1885, we offer all lines of business and personal coverage with a staff of over 120 professionals.

Our monthly newsletter is where you can find informative articles relating to the Commercial Lines and Employee Benefits industries.

For day-to-day updates and more information about our community and our company, follow us on Facebook, Twitter, Instagram, or LinkedIn. Visit our website, or check us out on Yelp!

Please contact us for more information or questions on anything mentioned in this newsletter.

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