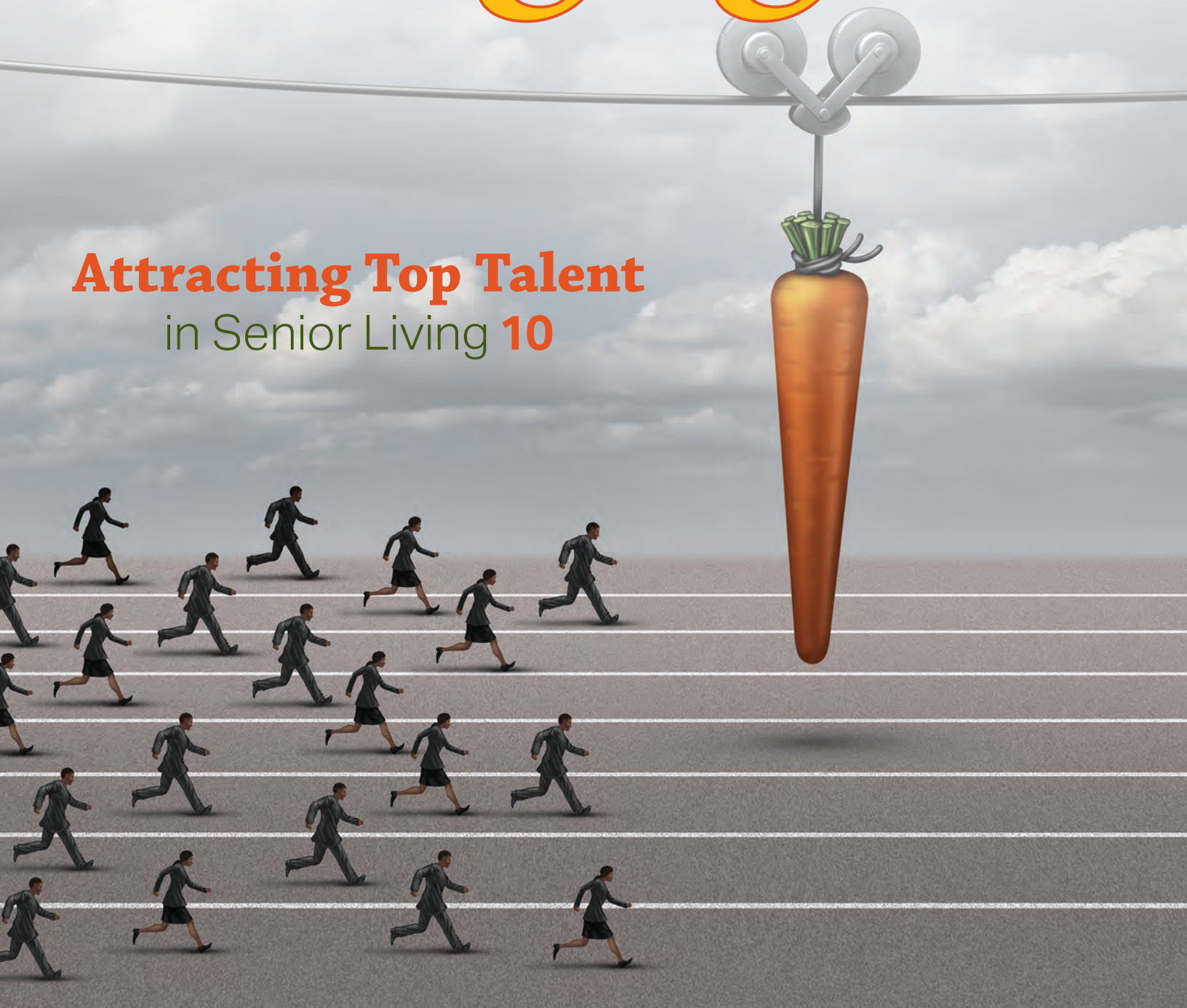


LeadingAge California  
**engage**<sup>TM</sup>

**Attracting Top Talent**  
in Senior Living **10**





inspire...serve...advocate

Founded in 1961, LeadingAge California is the state's leading advocate for quality, not-for-profit senior living and care. The association's advocacy, educational programs and public relations help its members best serve the needs of more than 100,000 of the state's older adults. LeadingAge California represents more than 600 nonprofit providers of senior living and care – including affordable housing, continuing care retirement communities, assisted living, skilled-nursing, and home and community- based care.

**Mission**

It is the mission of LeadingAge California to advance housing and services for older adults and to support and inspire its members through advocacy, education, research and services enabling them to meet changing needs of their clients and communities.

**Vision**

LeadingAge California is a catalyst for members to advocate, enrich and advance aging services.

**Shared Values**

The values shared by LeadingAge California members include:

- Long term commitment to the security of older adults
- Mission driven
- Mutual support and assistance among members
- Respect of all peoples
- Commitment to socioeconomic and multicultural diversity
- Advocate for not-for-profit status
- Consumer focused
- Dignity and quality of life for older adults
- Community-based



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The *engage magazine* Editorial Board encourages submission of original articles for consideration.

Subscription to *engage magazine* is paid through LeadingAge California membership dues.

ISSN 2159-3515 (online)

**Editor-in-Chief:** Eric Dowdy

**Editor:** Robin Douglas

**Art Director:** Darren Lindsey

**Advertising**

*Engage Magazine* reaches more than 4,000 readers in the senior living field. For information on how to advertise email [dlindsey@aging.org](mailto:dlindsey@aging.org).

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# A Note From The Editor

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## Addressing the Human Capital Challenge

At the Policy Congress gathering at this year's LeadingAge Annual Meeting in Boston, MA, we focused our attention on the workforce issues that continue to challenge members across the country. Most states reported problems similar to what we hear in California: attracting new talent to the field, retaining employees who are wooed away by higher wages, compliance with complex wage and hour laws and the costly litigation for missteps. These problems will require a multilayered solution that includes changes to public policy, members adopting smart low and no-cost solutions, and working to change the public's perception of our field and its work environment.

In this issue of *Engage Magazine*, we focus on human capital. Our feature from Kevin Thon, CEO of Agape Healthcare Staffing, Inc. provides tips for attracting top talent in the senior living field. Brenda Klütz answers members' questions on how staff retention will impact the Quality Accountability Supplemental Payment (QASP) and Terry Wills from Cook Brown, LLP rounds out our Legal Corner with important and timely information on how to avoid costly wage and hour class action lawsuits.

At next year's Policy and Leadership Summit (February 9-10, 2016) in Sacramento, we have developed two sessions to answer members' questions about the most problematic employer issues as well as what is

being considered by the Legislature. Also, since we are on the topic of attracting talent, LeadingAge California has enhanced its Career Center that links members to hundreds of job seekers specifically in our field. (Use code **ENGAGEREADER** for a special 40% discount for our readers.)

Let us know what you think of this issue. We always look forward to your feedback and thoughts on future story ideas. Our Winter 2016 issue will focus on "strategic partnerships" and how the senior living field can partner with non-traditional organizations to provide new and enriching services to older adults. Contact me at [edowdy@aging.org](mailto:edowdy@aging.org).



**Eric Dowdy**

Editor-in-Chief

[edowdy@aging.org](mailto:edowdy@aging.org)



## Feature



### Attracting Top Talent in Senior Living

“Times have changed...it’s not all about the money sometimes.” This is something we all hear often at Agape Recruiting. In this article, we will look at what the different generations in today’s workforce are interested in regarding compensation packages, and the popular wellness programs they seek.



**From the CEO** Letter to members on Joanne Handy’s retirement



**Have you Heard?** Members in their Community; Members in the News; Anniversaries & Milestones



**Dear Brenda** Advice column with questions on compliance or care issues from the expert

## Sections



**People in Focus** Steve Birdlebough & Mira Wonderwheel: Video interview about his recent nomination for LeadingAge’s Older Adult of Distinction Award and the reasons why Mira chose to nominate him.



**Resources** The Legacy Film Festival on Aging was held September 18-20 in San Francisco. The international film festival opened with three selections that celebrated friendship and the healing power of the arts.



**Legal Corner** with Cook Brown: Wage and Pay Practice Compliance: Five tips to avoid devastating wage hour lawsuits and class actions

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# From The CEO

## Reflecting on the Past...and Moving Forward

### Dear Members:

A few weeks ago, I informed the Executive Committee that I plan to leave my position during the second quarter of 2016. I had considered 2016 as a retirement year for some time and my husband's recent health challenges led me to this timeframe.

My seven years with LeadingAge California have been a source of joy, inspiration, and career fulfillment. From the day I started, I could recognize in the first two minutes of

conversation with a member the passion and commitment that characterize our sector. Similarly, I rarely needed to go beyond the lobby in any of our communities to witness examples of the fullness, zest, and human kindness our members engender.

You taught me perseverance in the face of constant challenges, collaborations that overcome competitiveness, and humor despite grueling regulations and often frustrating legislation. You gave me the honor of representing you and the values that the nonprofit field holds dear. Thank you for this extraordinary opportunity.

I have been blessed with an entire staff team that loves working with you and supporting your activities any way they can. Please know that they possess deep expertise and commitment to assist you to execute your collective missions successfully. They will continue to do so regardless of my transition.

The Executive Committee has already appointed a Search Committee and begun planning the transition process. I know they will guide a thoughtful search process that incorporates key stakeholder input and results in an outstanding CEO successor.

I look forward to the many opportunities ahead of me to personally say farewell to you, our members, at upcoming LeadingAge California events.

Sincerely,

**Joanne Handy**  
President and CEO

*"You gave me the honor of representing you...Thank you for this extraordinary opportunity."*





# Have you Heard?

**Allen Temple Arms'** Donna Murphy won the [2015 Advocacy Award](#) from the American Association of Service Coordinators.

**Westminster Towers** named Elaine Walker as their new [Dining Room Coordinator](#). Ms. Walker has been employed at Westminster Towers for 10 years.

**Marilyn Kennedy**, CEO of [Episcopal Senior Communities](#), retired on November 1.

**The Samarkand** welcomed Janice Connelly as its new [healthcare administrator](#).

**The first "virtual dental home"** came to residents of [Kingsley Manor](#) in Hollywood.

**Los Angeles Jewish Home** welcomed Jerry Wahagheghe, R.N. as the director of nursing for the Joyce Eisenberg-Keefer Medical Center (JEKMC).

**Rosewood Senior Living** earned the Gold Award in the [Innovator](#) category of McKnight's Excellence in Technology Awards.

**Elder Care Alliance** promoted Interim Chief Adriene Iverson to [president and CEO](#).



## Keeping Up

### Communities Celebrating 50<sup>th</sup> Anniversaries in 2015

- Casa de Modesto
- Episcopal Senior Communities
- Mayflower Gardens (RHF)
- Mount Miguel Covenant Village
- Rowntree Gardens
- Santa Clara Methodist Retirement Foundation

# SCENE

1

Jerry Brown, executive director for Bethany Center Senior Housing, leads the EMERGE fellows through San Francisco during [EMERGE Session 2](#) in September.

2

Eskaton Monroe Lodge enjoyed a packed house when 115 people came to listen to 68 year old Ben Vereen talk about his life and his passion for a program he created called Wellness Through the Arts (WTA). He is pictured with receptionist Trudy Taliaferro.

3

At LeadingAge California's ICD-10 event in Northern California in October. Pictured: Shirley Cobarrubia (L) with Elizabeth Balmes (right) from University Retirement Community at Davis.

4

Mary Stompe from PEP Housing, delivering donations for those affected by the Valley Fire.

5

Oakland Mayor Libby Schaaf (center) was the keynote speaker at CCH's Annual Fundraiser in September. Pictured with CCH president and CEO Don Stump (L) and Fred Blackwell (right), CEO of The San Francisco Foundation.

6

A group from Oakland's Allen Temple Arms at the Terraces of Los Gatos's Multicultural Day in September.

7

Therese Brown from St. John's Retirement Village with Eric Sholty from O'Connor Woods, at the Delta Region Meeting in August

8

Eskaton's Therese Henning helps voters at Aging2.0's [#30in30in30](#) event, held in Sacramento in October.

9

Residents at University Retirement Community at Davis enjoy an end-of-the-summer luau.

10

Dr. Robin Bonifas from the Arizona State University speaking at the Senior Housing Conference in Half Moon Bay in October.



1



5



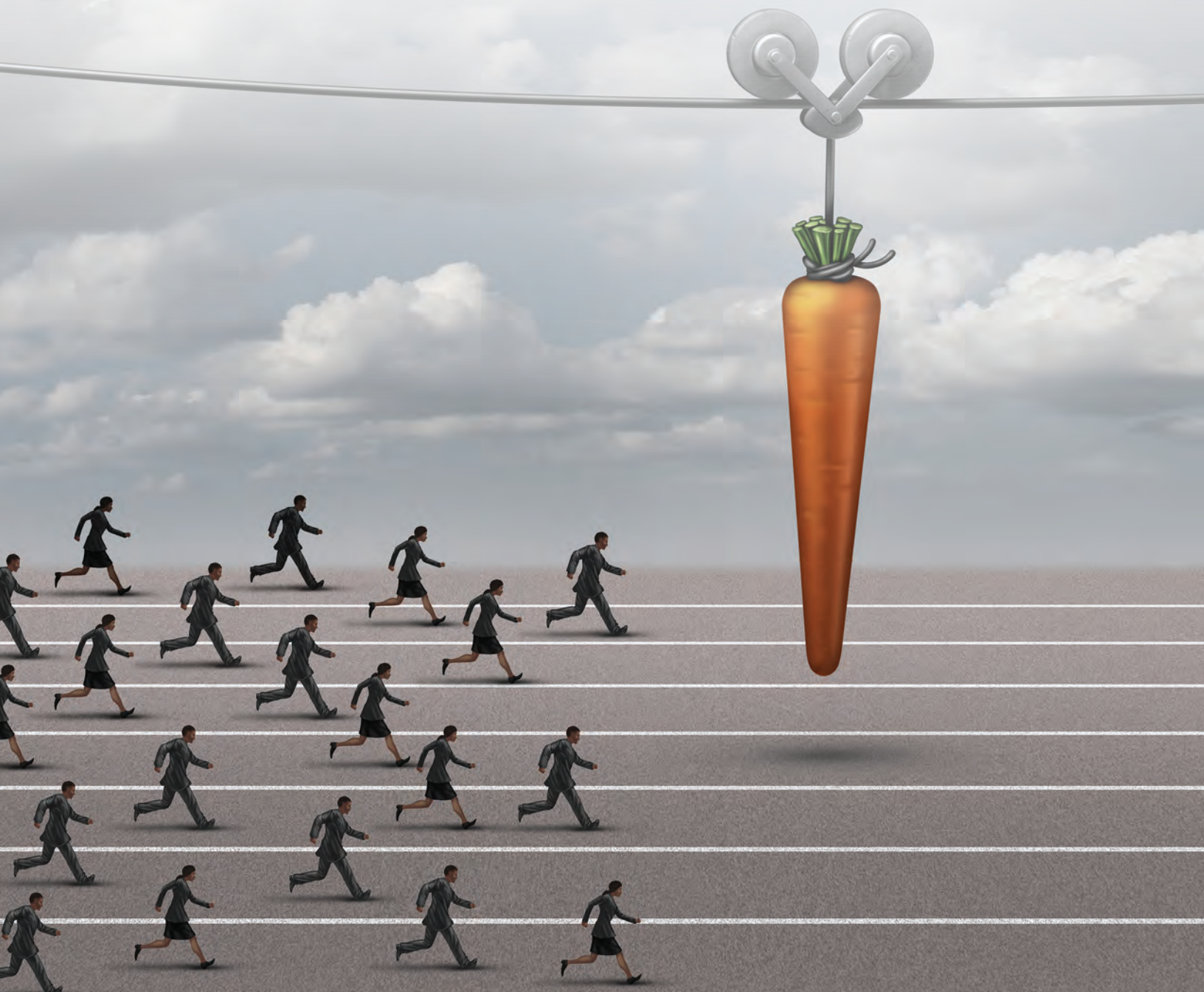
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# Attracting Top Talent in Senior Living

By Kevin Thon, CEO  
Agape Healthcare Staffing, Inc.



**“Times have changed...it’s not all about the money sometimes.”  
This is something we all hear often in healthcare recruiting.  
In this article, we will look at what the different generations  
in today’s workforce are interested in regarding compensation  
packages, and the popular wellness programs they seek.**

Over the many years of recruiting top talent for senior living organizations across the nation, it has become quite clear that compensation today means much more than just salary. Of course, salary is important to us all, so we need to stay competitive in order to attract top talent.

If you are recruiting for a position, how are you going to compare the salary range to your competition? How do you really know your salary range is competitive?

Here are some suggestions:

- Explore job boards to see what range the same position in a 50-mile radius of your community is hiring at – the LeadingAge California Career Center is a good start.
- Contact a Senior Living recruiter and ask if they will provide you with some salary ranges of recent placements made in and around your area.
- If you have a relationship with your neighboring communities, consider asking them if they would share what their ranges are.

Of course it would be awkward asking people what they pay their employees, so you may just want to ask what their ranges are, not what

their incumbent is making now.

Now, back to what was said about often hearing that it’s not all about the money. In today’s workplace, we have several different generations working together, and they generally want different things. Here is what most are experiencing with two of these generations:

### **MILLENNIALS**

More than one-in-three American workers today are Millennials (adults ages 18 to 34 in 2015), and this year they surpassed Generation X to become the largest share of the American workforce, according to a new Pew Research Center analysis of U.S. Census Bureau data. This milestone occurred in the first quarter of 2015, as the 53.5 million-strong Millennial workforce has risen rapidly. The Millennial labor force had last year surpassed that of the Baby Boom, which has declined as Boomers retire.

Recruiting experiences show Millennials are interested in the following:

- Salary with bonuses tied to performance.
- Health benefits are more important to the top of this range (those in their late 20s and early-to-mid 30s)

especially when starting families. Organizations that offer health plans that cover the vast majority of the cost (from pre-natal to post birth) of a woman’s pregnancy is highly desired.

- Perks such as a “Fridays Off” program, wellness program (fitness center memberships included) and toll road/FastTrak passes (great for stellar candidates who are afraid of the commute in traffic).
- Mentorship program.

### **GENERATION X**

For Generation X (ages 35 to 50 in 2015), their place as the dominant generation within the labor force was very short-lived – just three years – and, on a chart, might even get missed, as they are sandwiched in between Boomers and Millennials. In 2012, the Generation X labor force (52.9 million) overtook the Baby Boom labor force to become the largest generation in the workforce, but that ended this year.

## Job Satisfaction Aspects Rated as “Very Important” by Employees

72%	Respectful treatment of all employees at all levels
64%	Trust between employees and senior management
63%	Benefits, overall
61%	Compensation/pay, overall
59%	Job security
58%	Relationship with immediate supervisor
58%	Opportunities to use your skills and abilities in your work
56%	Immediate supervisor’s respect for my ideas
55%	Organization’s financial stability
55%	Management’s recognition of employee job performance

Recruiting experiences show Generation X’ers are interested in the following:

- 403(b) with match
- Health benefits with flexible options
- Continuing education reimbursement
- PTO program that may be used for any type of day off, or cashed-in at the end of the term
- A HSA (Health Savings Plan) is very attractive to this generation as well.

### WELLNESS PROGRAMS

We are in the profession of taking care of those that took care of us. Are we taking care of ourselves and each other the same way?

Most people can get behind the idea that health, happiness, and productivity at work are related concepts, and that companies have an opportunity to foster all three – to everybody’s benefit – with a corporate wellness program.

But while most companies do something to promote employee health and well-being, very few offer a “comprehensive program.”

The health outcomes of comprehensive wellness programs are many, including smoking cessation, weight loss and obesity prevention,

diabetes, blood pressure, cholesterol management, etc.

Business outcomes include lower absenteeism, higher job satisfaction and work productivity, higher employee retention, and lower health care costs.

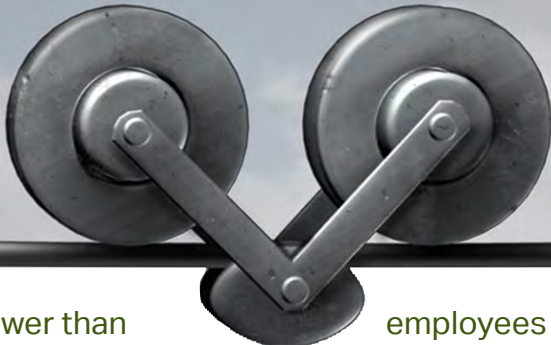
### IDEAS FOR WELLNESS PROGRAMS:

#### 1. Programs that are Practical and Accessible

Comprehensive wellness initiatives offer a variety of scheduled programs. These might include yoga classes; lunchtime stress management seminars that address everything from sleep to work-life balance to financial health; programs to help employees quit smoking; cooking classes; healthy recipe exchanges; fitness challenges; or weight loss initiatives and competitions.

#### 2. The Work Environment Is Health-Conscious

“A supportive company culture is exemplified by company cafeterias, where healthy food is abundant, affordable, clearly labeled, tastefully prepared, and situated at eye level at the checkout counter. When possible, these foods are



also priced lower than less healthy items," writes Ron Z. Goetzel of Emory University in a 2014 review of workplace wellness studies published in the *Journal of Occupational and Environmental Medicine*.

"In addition, healthy and appealing food is served at meetings, included in company-provided overtime meals, and available in vending machines.

In San Diego, there is a large corporate office with several different buildings on the property. Near the entrance of each of these buildings is a bike rack with around five beach cruisers. Every day, small groups of employees ride these bikes for around the property for about 10 minutes with a fellow co-worker. Do you know what people notice the most about these employees? They have a smile on their face. The neighboring gym partners with this company to offer low-cost memberships that include yoga, spin, dance, group exercise, boxing, etc. In this gym, the

employees are always talking about how much they participate in their company's wellness program and really value the company for having it.

### **3. Wellness is Integrated into the Company's Structure**

Company leadership needs to see it as a cohesive entity, seamless with workplace safety, benefits, human resources, and other infrastructure elements.

Successful programs have dedicated budgets and administrative staff that not only develop wellness programs employees are interested in, but also enable employees to participate without feeling like they're having to choose between doing their jobs and living a healthy lifestyle.

"Your wellness program should be embedded in everything your organization does," said Jason Lang, team lead for workplace health programs

at the Centers for Disease Control and Prevention. "It's just as important as sales and marketing. It's just as important as research and development. It's just as important as customer service."

### **4. Wellness Is Linked to Existing Support Programs**

Linkages between a company's wellness program and other benefits like employee assistance programs (EAPs) are key to making it easier for employees to get support when they are in a difficult emotional or physical situation that affects both their health and their work. The effect of this can resonate throughout an organization for years as people see their colleagues receive the help they need at the time they need it most.

**Kevin Thon is CEO of Agape Healthcare Staffing, Inc.**

Visit [www.agapestaffing.com](http://www.agapestaffing.com) to learn more.

# AGING<sup>2.0</sup>

## AGING2.0 ANNOUNCES PITCH-FOR-PILOTS, GLOBAL STARTUP SPOTLIGHT COMPANIES FOR NOV. 19-20 EXPO

One of the highlights of the Aging2.0 AgeTech Expo, Nov. 19-20 in San Francisco is the Pitch-for-Pilots (P4P) session. The third annual P4P event is a platform for innovative companies focusing on senior care to pitch in front of an audience of hundreds of senior care providers. Conference attendees then have the chance to vote in real time on what they think of the pitch and if they are interested in piloting with the company. [Find out who's participating!](#)

This fall, 30 pitch events were held in 30 cities around the world – all within 30 days! This program was designed to give startups a global platform, bring the community together for

a friendly competition and provide data that helps to identify trends and themes of innovation within the senior care and senior housing industry. Out of the hundreds of startup companies that participated in the global #30in30in30 competition, [18 were selected](#) to present at the AgeTech Expo during the Global Startup Spotlight. Hear highlights and meet the winners!

Visit the [Aging2.0 website](#) to learn more about this exciting 2-day conference and technology expo featuring tours and workshops, education sessions, technology exhibits, SF Bay Dinner Cruise and more. Save 20% with discount code "[LeadingAgeCA](#)" to reserve your seat today!

## Member SPOTLIGHT

### Introducing the New Five-Star Analysis Tool

LeadingAge California is offering a new reporting tool – exclusively for members – that uses the most recent Nursing Home Compare dataset to provide a comprehensive analysis of a nursing home's CMS Five-Star Quality Rating.

"The Five-Star Tool is a great motivator to help communities prepare to meet quality goals," said Sandy Haskins of Gold Country Retirement Center.

Created by LeadingAge New York in response to the recent changes in the rating system, this vital tool – at no additional cost to members – includes reports that identify specific areas where nursing homes should focus improvement efforts to enhance resident care and increase their overall star rating. The report works by including information about the three main components of a five-star rating: three previous health inspections; staffing hours per resident day; and the 11 quality measures.

"These reports will provide members with a deeper understanding of what criteria CMS is using when assigning a star rating to nursing homes and the tools necessary to focus on quality improvement efforts," said Jedd Hampton, director of policy – health services for LeadingAge California.

An interactive staffing template is also included. The template allows nursing homes to input current Resource Utilization Groups (RUG) data and reported staffing hours to calculate hypothetical scenarios. The data is used to assess the impact of changes to resident case mix and/or staffing hours as part of the staff rating. The report can also help to: track trends; identify areas of success; analyze areas for improvement; and demonstrate value to potential health care partners. The Five-Star Tool can be accessed via [LeadingAge Insights](#).

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# Dear BRENDA

**Dear Brenda:** *LeadingAge California recently notified skilled nursing member communities of a new quality indicator that will factor into the calculations for the Quality Accountability Supplemental Payment (QASP): Staff Retention. Do we know any more about the plans for how this data will be applied?*

**Answer:** *We do know a bit more, but there are still unanswered questions. First, a quick overview of the QASP program:*

Communities are not eligible for payment if: a community has no fee-for-service Medi-Cal bed days; has one or more days below the 3.2 NHPPD minimum staffing level; has received an “A” or “AA” citation (measured from the year of the incident, not issuance of the citation); or has “N/A” for the measurement areas or quality measures.

Communities are measured using various quality indicators, which include: the percentage of residents with pressure ulcers or physical restraints; residents who were assessed and appropriately given the influenza and pneumococcal vaccines; low-risk residents who lose control of bowel or bladder; urinary tract infections; and residents who reported moderate to severe pain. [See more detailed information here](#)

### ***New Staffing Retention Measure for 2015-16 QASP payment:***

The state Legislature mandated that the Department of Health Care Services (DHCS) add “Staff Retention” as a quality measure for the 2015-16 QASP program. DHCS [released a report](#) that described the data proposed to be collected. The two staffing retention factors recommended by the report are:

- Retained Staff (how many staff stayed employed by the facility from July 1, 2015 through June 30, 2016)
- Average Tenure of Current Staff (sum of all months worked by current staff divided by the number of current staff).

LeadingAge California provided comments on the report and advocated simplicity in terms of how the data is to be collected. In addition, through questions submitted to DHCS, we learned that the Staffing Retention quality measure would be a factor in a community’s total score, but would not disqualify a community from receiving a payment if the staffing measure fell below a certain level. In addition, we urged DHCS to factor in geographic differences in labor market staff availability.

DHCS posts the [scores and calculations for each skilled nursing community](#) on their website. Look for the “2014-15 Quality and Accountability Supplemental Payment” section with information in both EXCEL and PDF formats.

We will continue to keep you updated as we learn more about this new quality indicator.



*If you have any questions about this, or any other regulatory issue, please contact Brenda Klütz at: [bklutz@aging.org](mailto:bklutz@aging.org) or (916) 469-3377.*



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Justin Weber, St. Paul's Senior Services  
Jay Zimmer, The Reutlinger Community  
for Jewish Living

\*Organization names shown for  
identification purposes only.

# People In Focus



## Steve Birdlebough & Mira Wonderwheel

We visited Friends House in Santa Rosa to talk with Development Director Mira Wonderwheel and resident Steve Birdlebough, about his recent nomination for LeadingAge's Older Adult of Distinction Award and the many reasons why Mira chose to nominate him. [Click here to watch the full interview.](#)

### Steve, tell us about some of the projects you've been involved with.

My wife Sally and I moved to Friends House in 2003. I've been involved with the project to get the SMART train operating on the historic Northwestern Pacific tracks through Santa Rosa and down to Marin County. I've also been active with Friends of the Homeless here at Friends House and I'm now a member of the Board of Directors.

### Mira, what inspired you to nominate Steve for the Older Adult of Distinction Award?

I met Steve when I first started working at Friends House. I was immediately drawn to him

because of his vibrant personality. He was also a member of the Sierra Club and worked on climate protection issues. He is passionate about making a difference in the lives of others and has contributed countless hours towards making Friends House a better and stronger community. He embodies what this award is trying to recognize.

### Steve, how did you feel when you found out you were nominated?

It was quite a surprise because I was just being busy doing what I liked. But it's been enjoyable to watch that process and see that it actually came to something. Thank you Mira!

### Steve, are there any memorable experiences you can share from your activities?

My greatest memory of my involvement with the train is the night that we actually succeeded in getting the tax measure to support it passed. There we were, about three dozen people who really put their heart and soul into this for four years. Actually seeing that it had succeeded was a moment that I'll never forget.

### Steve, what advice would you give to older adults about the importance of getting involved in your community?

I think it's important for older adults to realize that they have gifts that are important for their community. They have a sense of perspective. They almost have an obligation to give back. It really is fulfilling to have a small part in the ongoing life of a community – both a wider community and a more intimate community. We're neighbors with the neighborhood; with the city; and with the state. People do make a difference. It's been said that democracy is not a spectator sport – it only works if people who care and who have knowledge and experience get involved.

# RESOURCES

## Opening Day:

### Three Perspectives on Growing Old(er)

The Legacy Film Festival on Aging was held September 18-20 in San Francisco. The international film festival opened with three selections that celebrated friendship, the healing power of the arts, and the search for love.

*Click the on the image below to watch the trailers*



UNATTRACTIVE OLD FEEBLE UNSURE  
CRITCHY CONFUSED  
AILING THE Wall FORGETFUL  
NURSING HOME CRANKY INVISIBLE  
STIFF GRUMPY WEAK WORTHLESS  
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SENILE LAGING ELDERLY

### The Wall – USA (2015)

Russ Haan's animated short film, "The Wall" explores how creative expression can enrich our lives and help us continue to grow and connect with others as we age. The "wall" in question is a tower of black-and-white words representing negative stereotypes about aging – words like "senile," "decrepit," "alone," even "worthless" loom over downtrodden adult figures who regard the wall with fear and apprehension. We are then asked to see aging from a new point of view as the screen explodes with color and words like "vitality," "appreciated" and "understood" rise up. By embracing the arts, we can open ourselves up to new opportunities for learning, joy and fulfillment as we age.



### Chum – Iceland (2014)

Directed by Joründer Ragnarsson, "Chum" is a poignantly comedic film about a long-time friendship that is unexpectedly put to the test. Bachelors Uggi and Kiddi, both in their 60s, live a life together similar to that of an old married couple. Their daily routine of toe touches by the pool, working side-by-side and sharing meals together is turned upside down with the arrival of the free-spirited writer Rosa. As Uggi finds himself alone for the first time, one impulsive action on his part calls into question whether his friendship with Kiddi will survive, or be destroyed completely.



### The Age of Love

Dating after the age of 70 may come with its own special challenges, but many of the joys and pitfalls of looking for love never change. Steven Loring's documentary, "The Age of Love" follows a group of older adults participating in a special speed dating event exclusively for 70 to 90-year olds in Rochester, New York. We meet the film's subjects beforehand, follow them through the speed-dating event itself and see their reactions when they find out how many matches they received afterwards. Growing older doesn't mean we stop searching for passion in our lives, and "The Age of Love" approaches the subject with the dignity and respect it deserves.



## Wage & Pay Practice Compliance: Five tips to avoid devastating wage hour lawsuits and class actions

By Terry A. Wills, Esq.

Healthcare and other aging services employers in California have been hit with a barrage of employee wage suits in the last few years. Many good companies (large and small), caught off-guard by technical labor law violations, have paid out seven figure settlements and, in some cases, closed their doors because of devastating class action litigation. The popularity of these lawsuits is explained by the recovery – even a small wage and pay practice violation can result in large damages when brought on behalf of all similarly situated employees. What's more enticing are the attorney's fees which are awarded no matter how large or small the individual or class recovery. Compliance errors such as missed meal periods or breaks, late breaks, failure to provide a second meal period on longer shifts, auto deduction practices, failure to properly calculate or pay for sleep time, inaccurate wage statements, expense or mileage reimbursement mistakes, off-the-clock work and exempt status misclassifications are ammunition for clever attorneys seeking to secure a lucrative representative action against large and small companies, non-profits, not-for profits and public service organizations. No employer is immune from this epidemic!

California labor laws and courts have been traditionally focused on protecting the rights of employees on wage and pay issues so there is often a presumption that the employer is in the wrong unless it can prove otherwise. There are, however, ways to avoid these unnecessary legal challenges. Here are the top five tips for protecting your company or organization from wage and pay practice disasters:

**I. Implement and Revise Policies & Acknowledgments:** Handbook policies that notify employees of the employer's expectations regarding off-the-clock work and meal and rest periods provide a useful tool in defending wage claim litigation. For instance, time spent by non-exempt employees using their smart

phones remotely for work related email and text messages may be viewed as compensable time that must be recorded and paid for. Thus, notifying employees through a written policy about what is and is not permitted off hours is crucial. Many employers limit remote access to exempt employees. If access is allowed it is advisable to issue a clear policy that states smart phone use during off hours is only permitted with supervisory approval and must be recorded and reported immediately (i.e. within 72 hours). A statement that "off-the-clock work is prohibited" is also recommended. Employers should additionally make sure that time cards and electronic recording programs contain language that allow employees to confirm that they have "recorded all time worked." Finally, meal and rest period policies are now a necessity in employee handbooks. Courts have held post *Brinker Restaurant Corporation v. Superior Court* that class certification may be suitable in cases involving the lack of a policy or the existence of a non-compliant policy on "meal and rest periods."

**II. Audit Meal/Rest Period Compliance and Pay Practices:** California companies must provide nonexempt employees with a 30-minute meal period after no more than five hours of work, and a second meal break after no more than 10 hours of work (unless there is a waiver in place). Also, businesses must permit a 10-minute rest break for non-exempt employees who work at least 3.5 hours based on a specific schedule (i.e. one rest period for shifts of 3.5 hours to 6 hours; two rest breaks for shifts of more than 6 hours and up to 10 hours). Employers are often caught off-guard when they discover in litigation that certain employees were not provided lunches until the sixth hour and/or did not receive a second meal period or that rest breaks were not consistently offered. Auditing time cards regarding meal period recording and correcting the way meal/rest periods are provided can help avoid

“surprise” compliance issues. Periodic audits to determine if proper overtime is being paid and to assess appropriate exempt/non-exempt status is also highly recommended. In addition, California’s new Fair Pay Act was signed into law by the Governor on October 6, 2015 and becomes effective January 1, 2016. The Act amends California Labor Code section 1197.5 which prohibits discrimination in pay based on gender. The prior law required equal pay for equal work but the new law permits employees to show “substantially similar work when viewed as a composite of skill, effort and responsibility.” Preventive measures include auditing employee pay practices to ensure pay is based on objective factors that can be justified – not just the job title of the individual, but for all employees doing similar work at all locations. Stay tuned for more on this as 2016 approaches.

### **III. Train Supervisors & Employees (and document!):**

Provide periodic education to supervisors (and employees) on the organization’s wage policies and procedures (and enforcement expectations) and keep track of the company’s efforts. For instance, if training on meal and rest periods is provided at a monthly staff meeting, keep copies of any agendas referencing the topic and retain sign-in sheets of employee attendance. This may help prove valuable defenses or avoid issues down the road.

### **IV. Identify a Wage & Hour “Compliance Person”:**

Busy supervisors can become complacent with enforcing company rules on wage and hour requirements. Too many HR professionals confess they simply cannot get supervisors and managers to “buy-in” to the myriad of wage compliance obligations that must be implemented with employees. One way to avoid this continual conflict and still try to protect the organization from wage violations

is to either hire or identify a specific individual whose job title or duties include wage and hour compliance. This employee’s job would include developing and implementing the necessary controls to make wage and pay practice compliance a priority for the organization.

### **V. Review and Correct Wage Statements Pursuant to Labor Code 226:**

The easiest thing employers can do right now, today, to help avoid wage violations is review their pay stubs for compliance with the Labor Code. Section 226(a) sets forth specific categories of information that each wage statement must contain or which the employee must be able to promptly and easily determine from the wage statement alone. HR or payroll personnel should review wage statements to be certain this information is properly set forth on the stub:

- (a) the amount of gross wages and net wages earned during the pay period;
- (b) the total number of hours worked (if the employee is not exempt);
- (c) the number of piece-rate units earned and the applicable piece rate (for an employee paid on a piece rate);
- (d) any and all deductions made;
- (e) inclusive dates of the period for which the employee is paid (not just the pay period ending date!);
- (f) all applicable hourly rates in effect and the number of hours worked at each rate;
- (g) the name and address of the “legal entity” that is the employer;
- (h) the name of the employee and either the last four digits of the employee’s social security number or an employee ID number.

Until 2013, employers often defended against section 226 penalty claims by arguing that the employee had suffered no

injury as a result of a technically incomplete or inaccurate wage statement. In January 2013, section 226 was amended to state that an employee is “deemed to suffer injury” if a wage statement fails to include each of the items specified by the code section. As a result, penalties for inaccurate or incomplete wage statements have become essentially automatic – driving litigation in this area through the roof! Do not assume that because your organization uses a large payroll service that the company’s wage statements are accurate. Too many employers have been shocked to discover, after being sued in a representative capacity, that a category was technically deficient (i.e. listing a company dba instead of the legal entity, failing to include the pay period ending date, omitting an employee ID) subjecting them to compounding penalties. Review and correct these minor errors now to avoid large liability later. [Note: On October 2, 2015, in response to increasing frivolous litigation regarding technical violations that do not harm or injure the employee, Governor Brown signed urgency legislation (AB 1506) that gives employers the right to “cure” certain alleged wage statement violations brought under Labor Code 226(a). However, the law has limited application to only the inclusive dates of the pay period and the name and address of the employer. It also requires, among other things, issuing “fully compliant, itemized wage statement(s) to each aggrieved employee for each pay period for the three years prior to the date of written notice” sent to the Labor Workforce Development Agency. Thus, the law does not alleviate an employer’s obligation to provide all the information required on an employee’s wage statement.]

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