



BV-SHRM NEWSLETTER

CHAPTER NO. 0330 ♦ AUGUST 2015

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and Luncheon
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MONTHLY PROGRAM & LUNCHEON

TOPIC: Benefits Compliance: Key Updates for Plan Sponsors

WHEN: August 6, 2015

TIME: 11:30: Lunch, Networking, & Announcements
12:00 Program

WHERE: Hilton Garden Inn
3081 University Dr. (east side of Highway 6, across from Veteran's Park)

COST: \$15/ BV-SHRM member
\$20/ non-members or late RSVP
Note: The guest price is now \$20

SPEAKER: Janet Downs, JD, Gallagher Compliance Counsel

RSVP: Please **RSVP by noon, Friday, July 31** to rsvpprograms@gmail.com.

MENU: Grilled pork chop with sauce, potato, vegetable, bread, tea and water

PROGRAM DETAILS

Benefits Compliance: Key Updates for Plan Sponsors

Our speaker will provide timely information on Section 6055 & 6056 reporting so that employers can walk away with a thorough understanding of the necessary steps needed for IRS tax reporting required by the Affordable Care Act. Find out the most recent compliance updates you should be aware of for 2015 including how the most recent Supreme Court ruling on same sex marriage will affect your group health plan.

SPEAKERS BIO

Janet Downs, JD has 14 years of experience in administering and providing compliance guidance to plan sponsors. Prior to coming to Gallagher, Janet worked at Fortune 100 companies in the oil and gas and manufacturing sectors to provide guidance on health and welfare, retirement, and executive compensation plans. In addition, she has worked with brokerage firms to develop programs and toolkits to ensure compliance among the staff and clients. Janet has also been a guest lecturer at the ERISA Industry Group in Houston and has provided targeted training on fiduciary responsibilities, PPACA and HIPAA compliance.



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Upcoming Events

MARK YOUR CALENDARS



The State of
Texas SHRM
Conference

10.05.14
to
10.08.14

Fort Worth
Convention
Center



Chamber After Hours

August 20, 2015, 5:30-7:00 p.m.
Atkinson Toyota

BV-SHRM Program

September 3, 2015

Topic: Policies and Procedures Development
Speaker: Rachel Hale, Hagan Law Group

BV-SHRM Business Seminar

September 15, 2015

8:15 am – 4:45 pm
Phillips Event Center

HR Southwest

October 25-28, 2015

Ft. Worth, TX

<http://www.hrsouthwest.com/>

BV-SHRM Certification Class

Fall, 2015

College Station, TX



DIVERSITY MATTERS

Diversity Dates for August

9	International Day of the World's Indigenous Peoples
12	International Youth Day
15	Assumption of Mary (Christian)
15	India's Independence Day
13-15	Obon (Buddhist/Japan)
19	World Humanitarian Day
23	International Day for the Remembrance of the Slave Trade and its Abolition
29	Raksha Bandhan (Hindu)

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Are you  ? BV-SHRM is.

BV-SHRM has created a LinkedIn account and we encourage members to connect with us through this social media.

Linked 



Share Your Ideas

The Board always welcomes your comments and suggestions. See an interesting article online or have a process that could benefit other members? Share it with your BV-SHRM Chapter.



PRESIDENT'S PIECE

Howdy SHRM Platinum Chapter Champions!

If you are still “in the dark” about Affordable Care Act changes and IRS reporting requirements, you don’t want to miss our August meeting. Gallagher Compliance Counsel Janet Downs will walk us through Section 6055 and 6056 reporting and help us understand how recent Supreme Court rulings will be affecting group health plans. This is important information for HR professionals, even if you aren’t a “Benefits” person. That’s the great thing about SHRM...you can broaden your knowledge base beyond your area of specialization and become an industry expert. That’s why I LOVE HR.

Be sure to register for the BV-SHRM Business Seminar at the Phillips Event Center in Bryan, September 15, 2015 and invite your CEO, CHRO, CFO and BFF! The speaker line-up looks great, with plenty of networking opportunities. Meet and mingle with other Brazos Valley business leaders, enjoy a great meal, and grab some recertification credits. There are two special discounts this year...BV-SHRM members can save on registration costs and early registration will save even more. There is also a special discounted rate for TAMU SHRM chapter members, so be sure your favorite Aggie HR person gets registered. We expect registration to reach capacity before the August 24 early bird deadline, so don’t delay!

If you weren’t at the last meeting, we announced some Board changes, including Lisa Villalobos moving into the President-Elect office. She has been such an asset as our newsletter chair and I appreciate her willingness to continue that activity even as she prepares to become President in January. Also, our Membership Chair has moved into the office of Vice President of Membership, filling the position vacated by Lee Felder. Please congratulate and thank these new officers when you see them.

Looking forward to seeing everyone at the Hilton Garden Inn on August 6. Bring a guest and introduce them to the greatest SHRM Chapter in the country!

Retha



BV-SHRM Business Seminar

September 15, 2015

8:15 am – 4:45 pm

Phillips Event Center

Sponsored by:



<http://bv-shrm.shrm.org/>

\$110 – Early Bird and BV-SHRM Member discounts available. See attached registration form or go to the BV-SHRM website for more information.



Social Media and Beyond – Addressing Employee Conduct In 2015

Kelly Edwards, Shareholder & Nehai Anand, Associate
Littler

This session will focus on the dramatic rebirth of union law in the non-union workplace as a result of the National Labor Relations Board's recent activity regarding employee social media activity, workplace insubordination, and attacks on employer policies. We will take a look at how discipline, policy enforcement, and employers' seemingly innocent expectations are now under NLRB scrutiny, regardless of the employer's union status.



Diversity of Thought – Getting the Most Out Of Your Teams Through Diversity And Inclusion

Katrina Villarreal, SPHR, MBA, SVP, Director of Operations
Lee Hecht Harrison

This program takes the Diversity message beyond race, gender, and age, and highlights how to leverage diversity of ideas to create innovation and break through organizational barriers. Breakout group discussion will allow for practical application and brainstorming ways to implement what you learn in your workplace.



What's Hot in Employment Law

Carolyn Russell, Esq.
Ogletree Deakins, Nash, Smoak & Stewart, P.C.

This program will provide a fast-paced update on recent employment law developments and trends affecting employers. The Speaker will discuss recent U. S. Supreme Court decisions, Texas rulings, and legislative changes in the labor and employment arena.



Our Team Is Getting Older, How Do We Retain Their Knowledge When They Leave?

Michael Rager, President
Corporate Memory Solutions

Within the next 5-19 years, 50% of the current workforce will reach retirement age. How will your company retain corporate memory? Once you have it, how will you transfer that knowledge to your team?



Spring Cleaning Your HR Processes – Practical Process Improvement

Alix Alvarado, MBA, SPHR, Senior HR Generalist
Houston Community College System

Do your HR processes need a spring cleaning? Would you like to develop a strategy to increase satisfaction with your HR business unit's processes? Houston Community College shares insights from recent efforts to increase HR relevancy and improve processes.



Dealing With Different People Styles

Dr. Tom Marrs, Psychologist
Texas A&M University

People have very different styles of interacting with the world; styles that affect the way they think, react, develop relationships, communicate, make decisions, and handle problems. Understanding your style, as well as those that might be foreign to you, is crucial in learning how to lead people, build work relationships, get things done, and generally find some happiness and satisfaction when dealing other people. This workshop will focus on identifying different people styles, what happens to each style as a person reacts under stress, and how each style interacts with other styles to improve leadership and make workplace communication more effective.



MEMBER NEWSLETTER

LEGAL BRIEFS

Welcome to Legal Briefs for HR, an update on employment issues sent to over 6000 individual HR professionals, in-house counsel and business owners plus HR and legal professional organizations (who have been given permission to republish content via their newsletters and websites), to help them stay in the know about employment issues. Anyone is welcome to join the email group . . . just let me know you'd like to be added to the list and you're in! Back issues are posted at www.munckwilson.com under Media Center/Legal Briefs and you can also join the group by clicking on "Subscribe."

A special welcome to new subscribers in the G6 Hospitality Human Resources and Legal departments, and thanks for having me speak at your annual HR Summit . . . great questions!

Here are a few items causing fireworks in the workplace on this beautiful Independence Day:

- 1. Constitutional Law 101: SCOTUS on Same Sex Marriage** - On June 26, the Supremes declared in a 5-4 decision that the U.S. Constitution supports the fundamental right to marry, regardless of gender, and that states have no lawful basis for refusing to license same-sex marriages in their own state or to refuse to recognize marriages performed in other states. *Obergefell v. Hodges* (U.S. 2015). Employers in states that previously recognized same-sex marriages or who already provided employee benefits to domestic partners won't have much work to do. The rest may, so take a look at your benefit plans and policies that implicate married status (e.g., bereavement, tuition assistance) and do some updating. Qualified pension and 401(k) plans changed their definition of "spouse" to comply with the Internal Revenue Code after SCOTUS' *U.S. v. Windsor* decision in 2013, but health and welfare plans probably need attention. Side note . . . this decision means the injunction imposed by a Texas court against the DOL's enforcement of a revised definition of "spouse" for FMLA purposes is toast.
- 2. DOL Makes Some Employers Red (Angry), White (Scared) and Blue (Sad)** - After months of delay, we finally see how the Department of Labor plans to satisfy President Obama's mandate to increase the number of folks who are eligible for overtime pay. On June 30, proposed changes to the "white collar" regulations were made public and can be found at <https://www.federalregister.gov/articles/2015/07/06/2015-15464/defining-and-delimiting-the-exemptions-for-executive-administrative-professional-outside-sales-and>. This is a Notice of Proposed Rulemaking, which means you now have an opportunity to comment before these changes are made final. Here are the highlights:
 1. Increase the minimum salary for most white collar exemptions from \$23,600 to \$50,440 per year (40th percentile of full-time, salaried annual earnings).
 2. Increase the minimum salary for the highly compensated exemption from \$100,000 to \$122,148 per year (90th percentile of full-time, salaried annual earnings).
 3. Both of these salary numbers are estimates tied to the current 40th and 90th percentile earnings; the actual number when the law takes effect may be different.
 4. Provide for automatic increases of these minimums to avoid lengthy gaps (the last increase was 10 years ago) and the need for new rule-making with each increase.
 5. There are no proposed changes to the current duties tests . . . but DOL is soliciting comment on those tests.

6. In August, DOL may publish a Request for Information on the issue of compensability of time spent by nonexempt workers using electronic communications devices while off the clock.

3. **Ban the Ban?** - The EEOC is questioning employers' need to obtain and use criminal history info in hiring decisions and a handful of states and local jurisdictions have enacted "ban the box" legislation to defer that query until later than usual in the hiring process. Contrary to this trend, certain industries or types of jobs are subject to mandatory background checks or at least can make a very good business argument why they should do so. Into the breach steps proposed legislation called the Certainty in Enforcement Act of 2015 which, if passed, would amend Title VII to state that consideration of credit and criminal records, as mandated by law or certain professional organizations, is deemed to be both job related and a business necessity and shall not be the basis for liability under a theory of disparate impact. If you'd like to track H.R. 548, you can see full text and all the action on the bill at www.congress.gov.

4. **Fun With FMLA** - Machinist experiences chest pain and leaves work early. He arrives at hospital just before midnight, is admitted after midnight and is discharged a few hours later, in the p.m. Upon returning to work, machinist is informed he is discharged for walking off the job. Machinist sues under FMLA and loses. Why? The regs say one of the definitions of a "serious health condition" is inpatient care involving an overnight stay, but the court said there was no overnight stay because he was admitted and discharged on the same day. *Jeffrey Bonkowski v. Oberg Industries Inc.* (3rd Cir. May 2015). As always, the devil is in the details.

5. **Noncompete Nixed** - Noncompete covenants are a creature of state law and the law governing them in Oregon just became a bit of a bear. OR had already enacted a law to limit their use to exempt workers earning more than the median income for a family of four (roughly \$74K, for now) and conditioning enforceability on either an employee receiving a "bona fide advancement" or providing it in writing to a new hire at least two weeks before employment begins. The law also provided a two-year limit on duration of the restriction, which has now been reduced to 18 months via amendment of the existing law. The reduced temporal limit takes effect January 1, 2016 and will apply to agreements entered into on or after that date. These limitations do not apply to other restrictive covenants, such as non-solicitation of one's former co-workers or customers.

6. **Hot Stuff** - The Fourth of July signals onset of the hottest part of the year, so here are your summer tips:

1. California Cool - At least one state, California, mandates that outdoor workers be provided with water, rest and shade. For more info on the CA law, go to <http://www.dir.ca.gov/dosh/heatillnessqa.html>.

2. General Duty - OSHA likes CA's "water, rest, shade" ditty and incorporated it into its Heat Illness Prevention Program at <https://www.osha.gov/SLTC/heatillness/index.html>. Employers have a general duty to provide a workplace free of known harms and this can include the effects of summertime heat.

3. There's an App For That - Check out OSHA's heat risk app at https://www.osha.gov/SLTC/heatillness/heat_index/heat_app.html. It enables supervisors to quickly determine the heat index of their location on their iPhone or Android devices.

4. The Other Kind of Hot Employee - Rising temps seem like a good reason, to some, for wearing less clothing or the wrong kind of clothing to work. Revisit your dress/personal appearance policy and have a talk with those who display too much skin or appear more suited to a day at the beach rather than a day at work. Scantily clad folks may be (purposely or inadvertently) inviting the kind of attention that may lead to harassment claims and co-workers may be uncomfortable being forced to work alongside a half-naked person.

5. Hot Topic - College and high school students on break are looking for work and some are willing to do it for free, just to get work experience on their resume and maybe, just maybe, impress you enough to earn a job offer for future employment. As tempting as the siren song of free labor sounds, in most cases . . . don't! Refresh yourself on the requisites of unpaid internships by reading Fact Sheet #71 on the DOL's website at <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>. Plenty of employers, especially in the sports, journalism and entertainment fields, have learned this expensive lesson the hard way.

6. Hot Savings - Heads up, Texans . . . your sales tax holiday for the year will be on August 7 to 9. For more info on what items are included, go to <http://comptroller.texas.gov/taxinfo/taxpubs/taxholiday/d/>.

7. **Mama Mia** - Just before the Supreme Court ruled on *Young v. UPS*, the EEOC issued revised Enforcement Guidance on Pregnancy Discrimination and Related Issues, in what appeared to be an attempt to influence the outcome. In the end, SCOTUS did not completely side with either the EEOC or the employer but it did make clear that the employer's reliance on a facially neutral policy (which limited light duty opportunities to those who had workplace injuries or an ADA disability) could violate the Pregnancy Discrimination Act if it posed a significant burden on pregnant workers and the employer did not have a very good reason for excluding them from those opportunities. As a next step, EEOC has revised its guidance to parrot what the Supremes said in the *Young* decision.

8. **Oh Pooh, Part Two** - Last month, I wrote about two warehouse employees who prevailed in their GINA lawsuits, arising from being asked to provide DNA samples via cheek swab (to help the employer identify a mystery person who defecated repeatedly on the warehouse floor). Although the deliveryman and fork lift driver were not a match with the, uh, deposit and neither suffered an adverse employment action, they sued under GINA for the humiliation of being tested. Now comes their reward . . . the jurors awarded \$2.23 million in damages, comprised of \$475,000 for emotional distress and \$1.75 million in punitive damages, based on the employer's "reckless indifference" to their rights.

9. **FTC and Impermissible Influence** - Back in December 2009, the Federal Trade Commission (FTC) revised its Guides Concerning the Use of Endorsements and Testimonials in Advertising. Part of the guide was aimed at employee bloggers and explained that they must disclose the fact that they are employed by the entity whose products or services were the subject of their social media commentary. The guides were recently updated and the "What People Are Asking" section now says that liking, pinning or sharing a link with others can be an endorsement which prompts the disclosure requirement. If the platform does not provide a way to make such a disclosure, then mum's the word.

1. **Social Stop** - 21 states and Guam have enacted law prohibiting employers from requiring job applicants and employees to disclose passwords or provide access to their personal social media accounts. Oregon went there, too, but now adds to it by banning employers from requiring or requesting an applicant or employee to establish or maintain a personal social media account and requiring an employee to advertise on the account. This amendment takes effect January 1, 2016.

10. **Calendar This** - Yours truly and a host of employment experts will be speaking at the Texas Employment Relations Symposium which is co-hosted by the Texas Association of Business and SHRM - Texas State Council on July 9 and 10 at the Hyatt Regency on the Riverwalk in San Antonio. For a copy of the agenda and info to register, go to <http://www.txbiz.org/events/Employment-Relations-Symposium-360/details>. Hope to see you there!

11. **Stated Differently** - Here are some hot topics for you multi-state employers:

1. **Illinois (Chicago)** - Effective July 1, 2015, the minimum wage for employees who work at least two hours in the city in any two-week period will be \$10/hour for non-tipped workers and \$5.45/hour (plus max tip credit of \$3.30/hour) for tipped employees. The non-tipped rate will increase annually until it reaches \$13/hour by 2019. After that, the rate will be tied to the Consumer Price Index.

2. **Indiana** - Effective July 1, 2015, liquidated damages are no longer mandatory when an employer violates the state's wage payment law. Under the prior version, employers were charged a penalty of 10% per day for each day the disputed wages remained unpaid. Under the new version, a court must first find the employer was not acting in good faith before the damages apply. Also effective July 1, 2015, the list of reasons for which an employer may withhold from an employee's pay has been expanded to include [a] sale of goods or food to the employee; [b] purchase price of uniforms and equipment; [c] education or employee skills training; or [d] advances in pay, including early payment of vacation pay. These deductions remain contingent on a writing signed by both the employee and the employer, agreeing to the deduction, and the ability of the employee to revoke the authorization at any time.

3. **Maryland (Montgomery County)** - Employers must provide paid sick leave to all employees performing work in Montgomery County effective October 1, 2016. The definitions of permissible uses of paid sick leave and the covered individuals with some relationship to the employee (whose need is a reason for the employee to take leave) are quite broad, so read closely if you are subject to this law.

4. **Massachusetts** - Effective July 1, 2015, employers of 11+ employees must provide employees with at least one hour of paid sick time for every 30 hours worked, up to a maximum of 40 hours of paid sick time each year. Employers

with less than 11 employees must provide the same amount of time off, but without pay. There is also a mandatory poster for the workplace. For more info and a copy of the poster, go to <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/employmentleave.html#Sick Leave>.

5. **New York (New York City)** - Ban the box ordinance takes effect October 27, 2015.

6. **Oregon** - Effective July 1, 2015, OR law permits both medical and recreational marijuana use. The change in state law does not impact employers' ability to impose policies which prohibit having any marijuana in one's system while they are at work, or to refuse to hire an applicant or to discharge an employee who violates that policy. OR becomes the seventh state to "ban the box" for private employers, effective January 1, 2016. The law prevents employers from requiring applicants to disclose a criminal conviction prior to an initial interview. If there is no initial interview, the ban remains in place until after there is a conditional offer of employment. Also effective January 1, 2016, OR becomes the 4th state to add paid sick leave (following CA, CT and MA). Employers with 10+ employees (6+ if you are in Portland) must provide up to 40 hours of paid sick leave per year. Smaller employers must provide a comparable amount of unpaid time off to their employees.

12. **For the Birds** - If you like being tweeted and want breaking news on employment law changes (and the occasional random cheer for K-State), follow me on Twitter. I'm at @amross.

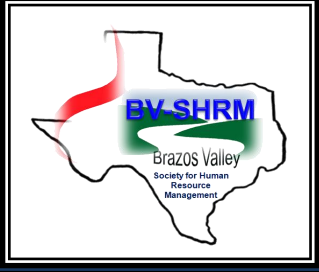
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