BV-SHRM NEWSLETTER

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MONTHLY PROGRAM & LUNCHEON

TOPIC: **WHAT WILL THE EEOC BE FOCUSED ON IN 2016 … AND WHY SHOULD THE HR COMMUNITY CARE?**

WHEN: **February 4, 2016**

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

WHERE: **Phillips Event Center**
1929 County Club Dr., Bryan, TX

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

SPEAKER: TBD

RSVP: Please ***RSVP by noon, Friday, January 29*** to rsvpprograms@gmail.com.

MENU: Braised Beet Tips with Chef's choice of starch & vegetables, water, coffee and tea.

PROGRAM DETAILS

Topic: ***WHAT WILL THE EEOC BE FOCUSED ON IN 2016 … AND WHY SHOULD THE HR COMMUNITY CARE?***

The EEOC's Strategic Enforcement Plan identifies six national enforcement/litigation priorities through 2016. Employers need to know where the radar detector is aimed and how to minimize or eliminate the risks in those areas. This session also provides the real story behind those sensational headlines about EEOC enforcement and litigation.

Learning Objectives:

· Participants can self audit to make sure that your employee handbook, anti-harassment, non-retaliation social media policies and employee compliance procedures are up to date plus how employers should be training their supervisors and employees on anti-discrimination policies.

· Understand why handling a request for reasonable accommodation by an employee with a disability and accommodation for an employee who has a sincerely held religious belief who needs a day off because of his or her religious belief. These are things that supervisors need to be keyed in on.

· It's a perfect time to look at your hiring procedures to make sure that they are consistent with the position you are trying to fill. If you have an employee questionnaire that you are asking candidates to fill out, then make sure the questions are actually tailored toward the requirements of the position

· Attendees will leave with an understanding that hiring veterans goes beyond patriotism. It's a solid business strategy built on leveraging proven results by some of the brightest talent possessing the top skills today's employers crave.

Please notify lgalvan1984@gmail.com to request copies of speaker presentation.

SPEAKERS BIO

Joe Bontke is the Ombudsman & Outreach Manager for the Houston District office of U.S. Equal Employment Opportunity Commission. Mr. Bontke has been in the field of Human Resources & Civil Rights for the past 25+ years and has experience in employment law and adult education. With a Bachelor's in Philosophy and a Masters in Education, he has been a Human Resources Director, a Training Coordinator for the American Disabilities Act (ADA) Technical Assistance Center for Federal Region VI and was appointed as Assistant Professor at Baylor College of Medicine. Using his entertaining style, Joe has educated groups throughout the country and most recently, his work with the outreach effort at the EEOC has enabled him to empower employers and employees with the understanding they need to work effectively at their jobs. Joe's philosophy of education is - that 90% is knowing where to find the information ... when you need it.

Upcoming Events

MARK YOUR CALENDARS

DIVERSITY MATTERS

Diversity Dates for February

- **February 1-29** - Black History Month. ***Did you know?*** In 1926, Black History Month was started by historian Carter G. Woodson as Negro History Week and in 1976, Congress expanded the observance to the entire month of February.
- **February 8** – Lunar New Year
- **February 9** – Mardi Gras
- **February 10** – Ash Wednesday
- **February 14**- Valentine's Day
- **February 14-20** – Random Acts of Kindness Week
- **February 15** – Presidents' Day
- **February 15**- Nirvana Day

CHAMBER OF COMMERCE
BRYAN/COLLEGE STATION

Visit us and become a Fan of BV-SHRM on facebook

Dues info!

***Regular**: $40*

***National SHRM Member**: $20*

Pay at a meeting or send check made out to BV-SHRM to:

PO Box 3442
Bryan, TX 77805

Are you in ? BV-SHRM is.

LinkedIn

2016 BV-SHRM Certification
Participants meet every Thursday
January 21st - April 21st
6:00-9:00pm at
702 E. University Dr., Building E, College Station, TX

Contact Alyssa Wisnoski for more info

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 via reply email 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."

Happy New Year! My resolution is to share useful HR information in a way that makes you laugh (when you may want to cry):

1. **Spring Into Action?** – On December 16, Department of Labor Secretary Thomas Perez said he expects the final rule revising the FLSA "white collar" exemptions would be out by the spring of 2016. Other DOL reps are less confident, estimating the release to be July 2016 or even "late 2016." So, what is your definition of "spring" Mr. Secretary?

2. **ABCs of an I-9 Audit** – U.S. Immigration and Customs Enforcement (ICE) Office of Special Counsel for Immigration-Related Unfair Employment Practices just released a Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits. The six-page document can be found at https://www.ice.gov/sites/default/files/documents/Document/2015/i9-guidance.pdf. Tips include a caution against asking all employees to do a fresh form where your internal audit reveals that many forms on file appear to be deficient. In other words, spring cleaning is not always a good idea. If the new year has you thinking it's time to audit those files, read this first.

3. **Consequences of an I-9 Uh Oh** – An event planning company was tagged by an administrative judge for 818 Form I-9 violations and a fine of $818,000 which was later reduced to $605,250. What did they do wrong? Let me count the ways:

    1. No I-9s for some employees
    2. Delay in providing requested I-9s to ICE during audit
    3. Use of a self-made form that purported to combo the Form I-9, the IRS Form W-4 and union dues authorization into a single document . . . the feds really don't like it when you toy with their forms
    4. Employee omissions in section 1 (e.g., no signature, no check of box indicating type of employment authorization, no alien number on ones that required it)
    5. Employer omissions in section 2 (e.g., no signature, no entry of document presented under List A or List B&C, no expiration dates of document(s) presented)
    6. Lack of timely reverifications in section 3

    The Company argued the errors were not serious. The judge was not amused and said "the company does appear to need additional motivation to conform its employment verification process to what the law requires." That "motivation" meant 799 x $700 for failures to prepare, produce and sign the forms, plus nine x $550 for wrong box checked in section 1 and failures to re-verify, plus 205 x $200 for individuals without legal immigration status. Motivated yet?
    U.S. v. Hartmann Studios (OCAHO Case No. 14A00008 July 2015).

4. **For the Record** – The NLRB opined on December 24 that Whole Foods Market's policy prohibiting video and audio recording in the workplace violates section 8 of the NLRA. The employer's policy made it a violation to "record conversations, phone calls, images or company meetings with any recording device" without prior OK or consent from all affected parties. The rule also made it a violation to "record conversations with a tape recorder … unless prior approval is received from your store or facility leadership." The policy went on to explain that the purpose of the ban was to "eliminate a chilling effect on the expression of views" since "being secretly recorded . . . can inhibit spontaneous and honest dialogue . . . ." The Board has OK'd similar bans in certain settings, such as hospitals, where the purpose was protection of patients' privacy. The Board has yet to clearly define what purpose(s) would be sufficient to avoid their ire but "because I said so" won't cut it.

5. **Contractor Corner** – As promised last year, there is so much action affecting federal contractors I have set up a reading nook for them:
    1. Pay Up – Under E.O. 13658, nonexempt workers on certain federal contracts and subcontracts must be paid at least $10.15/hour, effective January 1, 2016. This is a .05/hour increase over the initial requirement which took effect January 1, 2015. The monetary thresholds of contract value triggering this duty vary by statute (e.g., $2000 for prime contract under Davis Bacon, $2500 for prime contract under Service Contract Act).
    2. Post It – No, not the useful yellow stickies. The amended EEO Is the Law poster that should be gracing your walls if you are subject to E.O. 13665. You can find a copy at http://www.dol.gov/ofccp/regs/compliance/posters/pdf/OFCCP_EEO_Supplement_Final_JRF_QA_508c.pdf.
    3. Pay Talk - OFCCP will host a January 11 webinar to explain the final rule implementing E.O. 13665, which prohibits federal contractors from firing or otherwise disciplining applicants and employees who discuss their own pay or the pay of their co-workers.
    4. Protected Category - Sexual orientation and gender identity discrimination is a no-no since April 8, 2015.
    5. Annual Reporting - Your VETS-100 and VETS-100A reporting forms were replaced by VETS-4212 and employers now report only the total number of "protected veterans" with no distinction between the various types of protected veterans needed

6. Hiring Vets - For VEVRAA AAP purposes, the veterans hiring benchmark was lowered from 7.2% to 7.0% on April 29, 2015 based on 2014 EOY data. With 2015 behind us, look for another adjustment in the benchmark, this spring.
7. Next Year – Get ready for mandatory paid sick leave of one hour for every 30 hours worked, up to a max of 56 hours per year.

6. **"Gulp" in the C-Suite** - The CEO of a Pennsylvania company was found to be personally liable for FLSA wage and hour violations committed by his company. A federal district court granted the Department of Labor's motion for summary judgement (arising from unpaid breaks that lasted less than 20 minutes) and held the CEO to be a joint employer because he owned 98% of the company and had the last word over pay and break policies. *Perez v. American Future Systems, Inc.* (E.D. Pa. 12-16-15). The FLSA differs from other federal employment statutes in its definition of "employer." An employer under the FLSA is "any person acting directly or indirectly in the interest of an employer in relation to an employee . . . . ." Mr. hands-on CEO, this means you.

7. **IRS In a Giving Mood** – Earlier this year, the IRS stated it would not treat the value of credit monitoring or other ID protection services as taxable income to employees, when provided to them by the employer in response to a data breach. IRS Announcement 2015-22. In response to comments, the gift has been expanded to apply even before a breach has occurred. IRS Announcement 2016-02. Adding this type of benefit to your employee offerings just became a bit sweeter.

8. **Get it On (Line)!** - To report a fatality or serious injury to OSHA, employers can now submit the form on-line via www.osha.gov/report.html.

9. **Website Water Cooler** – Employers may want to periodically check out www.coworker.org. What is it? They say it's a way for individuals to create their own campaign for changes in the workplace. The first step is to create a petition (the website provides a means to gather signatures) and then hope you garner enough attention for your employer to want to talk it over. Think social media taking the place of union organizers. The site explains NLRA section 7 protected activity, to address fears of employer retaliation, and points out missteps to avoid which could result in losing that protection. Not surprising, since the founders have ties to the SEIU. Just type your company name in the Search box and see if there are any live petitions you should know about.

10. **EEOC Flames Out** – The EEOC filed a trilogy of lawsuits in the fall of 2014, claiming that employers' medical exams tied to their wellness programs violated the Americans With Disabilities Act (ADA). One of the lawsuits, filed against Flambeau, Inc., was just decided on December 30, in favor of the employer. While the employer did have both a health risk assessment and a biometric exam, and refusal to participate in these two exams meant disqualification from participation in the generous company subsidy of health insurance premiums, the way the program was structured fell into the ADA's "safe harbor" for administration of a bona fide health benefit plan. Central to the judge's decision was the fact that personal health information was aggregated before being reported back to the employer and the data was used to estimate health plan costs, set individual premiums, adjust co-pays and evaluate the need for additional insurance coverage in the event of large claims. The court also hinted that a wellness program which was stand-alone and not tied into underwriting, classifying or administering risks of a health insurance plan may not have met the same fate as Flambeau's program. *EEOC v. Flambeau Inc.* (W.D. Wisc. Dec. 2015). (Low fat) food for thought.

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

    1. **Colorado** – Stay tuned for a proposed bill which would require employers to offer reasonable accommodation of pregnant job applicants and employees. If passed, it will require an interactive process, similar to the ADA, where possible accommodations are discussed. Unlike the ADA, this bill allows the pregnant individual to decline the employer's offered accommodation. It will be interesting to see if that portion is changed during committee mark-up.

    2. **District of Columbia** – The Hours and Scheduling Stability Act of 2015, if passed, would apply to retail employers with at least five U.S. locations and to restaurants with 20+ locations and would require those employers to offer available hours to existing, qualified staff before hiring additional staff, in D.C. Also, work schedules would have to be posted 21 days in advance, added work hours can be refused by the employee and must be acknowledged by the employee, in writing, if accepted.

    3. **New Jersey** – Employer's motion to compel arbitration denied because the arbitration policy was contained within the employee handbook, which was rife with "at will" employment disclaimers, confirming the handbook was not a contract. This is not unique to NJ . . . courts often remind employers they cannot have it both ways, in wanting the employee to be bound by the arbitration policy but try to claim "no contract." *Morgan v. Raymours Furniture Company* (N.J. App. Div. Jan. 2016).

    4. **Oregon** – OR is the seventh state to enact a "ban the box" law that affects private sector employers. Their version means inquiries into criminal history cannot be made via the employment application form, but OR does allow the query as soon as the first interview. If there is no interview, the employer must wait until after a conditional offer of employment is made. The limitation does not apply if the employer is subject to other federal, state or local law which requires consideration of the applicant's criminal history.

    5. **Pennsylvania (Pittsburgh)** – The Pittsburgh Paid Sick Days Act, which was slated to take effect on January 11 (but pushed to March 11 due to a pending lawsuit), was declared "invalid and enforceable" by the Allegheny County Court of Common Pleas on December 21. The successful lawsuit was filed by the Pennsylvania Restaurant and Lodging Association and several local businesses. No word yet

on whether the City will appeal. In his decision, the judge explained that Pittsburgh is a home rule charter municipality and the Charter states a municipality "shall not determine duties, responsibilities or requirements placed upon business . . . except as expressly provided" by State law. No state law granting authority to Pittsburgh, so no enforceable ordinance.

6. **Texas** – The Open Carry law took effect January 1, allowing individuals with a concealed handgun license to display their holstered handgun in plain view, unless the individual is in a place where a statutory prohibition applies (e.g., hospitals, government buildings) or where the property owner has provided notice that guns are not welcome on the premises. The notice can be oral, or via a posted notice (which must meet the specific language, font size and color requirements noted in the new law). Employers retain the right to prohibit both concealed and open carry guns from the building or part(s) of building they occupy, but must allow licensed gun carriers to store the gun and ammo in their parked, locked vehicle on the employer's premises. Of note, the concealed carry law provided employers with civil immunity from claims involving an employee's concealed gun & ammo, but mirroring language is not found in the open carry law. Go to http://www.txdps.state.tx.us/rsd/chl/legal/newlegislation.htm for more info.

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.

Until next time,

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