



BV-SHRM NEWSLETTER

CHAPTER NO. 0330 ♦ JULY 2015

MONTHLY PROGRAM & LUNCHEON

- TOPIC:** Enterprise Risk Management, Understanding and Ranking Your Risks
- WHEN:** July 2, 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:** Peggy Zapalac and Larry Keller, TAMU Risk Management
- RSVP:** Please **RSVP by noon, Friday, June 29** to rsvpprograms@gmail.com.
- MENU:** Pasta buffet with marinara and Alfredo sauce, meatballs, Caesar salad, bread, tea and water

PROGRAM DETAILS

Enterprise Risk Management, Understanding and Ranking Your Risks

Understanding and managing the multiple risks of an organization is more complex and more important than you might imagine. Join us as we identify different types of risk and go through a methodology of ranking those risks so that you can best reduce your potential liability.

SPEAKERS BIO

Peggy Zapalac serves as the Director for University Risk Management overseeing the University's enterprise risk management and management advisory services functions within University Risk and Compliance. She holds a BS degree in Accounting and Business Administration – Finance from Minnesota State University, Mankato. She has over 20 years of experience in risk & compliance, management advising, and internal audit.



Larry Keller is management advisor at Texas A&M University, with primary duties in the university's enterprise risk management function. He also provides management advisory services and performs compliance and consultation duties for units across the campus. He is a graduate of Texas A&M University with a degree in accounting with over 16 years of experience in accounting, audit, and management advisory services.



Would your organization like to be featured here?

Contact Diana Dean about sponsorship opportunities at jdeanacres@aol.com

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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



Prison Job Fair

June 30, 2015, 12:00-2:00 p.m.

CC Creations

Contact Stacy Overby (soverby@plygemwindows.com)

Chamber After Hours

July 9, 2015, 5:30-7:00 p.m.

CC Creations

BV-SHRM Program

August 6, 2015, 11:30-1:00 p.m.

Topic: Benefits/Wellness

BV-SHRM Business Seminar

September 22, 2015, 8:00 a.m.-5:00 p.m.

Phillips Event Center

HR Southwest

October 25-28, 2015

Ft. Worth, TX

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



DIVERSITY MATTERS

Diversity Dates for July

Cell Phone Courtesy Month Social Wellness Month

1	Canada Day
4	Independence Day
11	World Population Day
1-16	Ramadan

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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 Champion!

It's hard to believe we have already passed the mid-point of this Chapter year. We have had great programs and excellent training at the luncheons, and our July event will keep that trend going. Being a risk manager, the July luncheon is especially exciting to me as we partner with the Association for Talent Development – Brazos Valley (BV-ATD) to welcome Peggy Zapalac and Larry Keller from Texas A&M University's Risk Management Division. Their topic is, appropriately, "Enterprise Risk Management: Understanding and Ranking Your Risks." This topic was recommended by members on the interest survey, so we are expecting a large turnout. Remember to RSVP for this event before the deadline to reserve your spot.

Plans are moving forward for the annual BVSHRM Business Seminar at the Phillips Event Center in Bryan, September 22. This is your golden opportunity to invite C-Suite executives for a full day of diverse topics including wellness, talent acquisition and retention, and the implications of recent legislative changes. It is also a great place to network and the schedule will include plenty of network breaks so you can meet and mingle with other BVSHRM members and their guests. Decide today which CEO, CFO or COO you want at your table! In addition to HRCI certification, the seminar may offer other continuing education credits, so stay tuned.

Thank you all for bringing guests to our meetings. It is how our Chapter grows, and I am meeting so many talented HR professionals who will be the future leaders of the Chapter. I look forward to seeing you all July 2 at the Hilton Garden Inn.

Respectfully,
Retha

Certification Class

We are working on a certification class for this fall.

Look for more information or contact Alyssa Wisnoski for more information.

BV-SHRM Business Seminar
 September 22, 2015
 8:00 a.m. - 5:00 p.m.
 Phillips Event Center, Bryan

Confirmed topics/speakers:
 Employment Law, Carolyn Russell
 Corporate Memory, Michael Rager
 Social Media & Conduct, Kelly Edwards

Stay tuned for more info...



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."

Leave horsin' around to yesterday's Triple Crown winner and learn from others' missteps:

- 1. She's Got the Look, Final Act** - In LB4HR #9 - 2013, I wrote about a 10th Circuit decision which dismissed the EEOC's claim of religious discrimination against retailer Abercrombie & Fitch. The dust-up began with a Muslim teenager who wore a headscarf/hajib to her job interview. The teen did not volunteer that she wore the scarf for religious reasons and the employer did not ask. The interviewer assumed, but did not know, that the garment was religious in nature so she asked higher-ups for input. Since the scarf violated their "no caps" policy, no offer of employment was extended. The EEOC took up her cause and won at the district court level, lost in the court of appeals and went all in by filing cert with the U.S. Supreme Court. The Supremes accepted cert, noting that Title VII contains no knowledge requirement and can be violated when a protected characteristic is merely a motivating factor in an employment decision. Specifically they said "A request for accommodation . . . may make it easier to infer motive, but it is not a necessary condition to liability." The bottom line here is that those who are tasked with input on hiring and decision-making must be trained on employment law basics, like reasonable accommodation of religion. Employers should either centralize that decision-making with those who have the training (e.g., HR) or, if that is not practical, ensure that those folks in the field who are involved in interviewing and hiring know what to do.
- 2. Heads Up Federal Contractors** - If you would like to weigh in on the proposed regs implementing E.O. 13673 aka the "blacklisting rule" you are in luck. Comments are welcome through July 27 on the DOL's proposed guidance, which is posted at <https://www.federalregister.gov/articles/2015/05/28/2015-12562/guidance-for-executive-order-13673-fair-pay-and-safe-workplaces>. The Federal Acquisition Regulatory (FAR) Council has posted its proposed rule and also set a July 27 deadline for comments at <https://www.federalregister.gov/articles/2015/05/28/2015-12560/federal-acquisition-regulation-fair-pay-and-safe-workplaces>. Both postings provide a direct link to submit comments. So, tell them how you really feel!
 - 1. Post It** - A challenge to E.O. 13496's poster requirement has failed. If you are a covered federal contractor, you must display the poster promoting unionization, but per the court remain free to express your views that may be contrary to the content of the poster. *National Association of Manufacturers v. Perez* (D.D.C. May 2015). Links to copies of the poster in several languages can be found at <http://www.dol.gov/olms/regs/compliance/EO13496.htm>.
 - 2. Dep't of Veterans Affairs Contractors** - The Boosting Rates of American Veteran Employment (BRAVE) Act, if passed, will give the VA the authority to give a preference to vendors who provide goods and services, if the vendor employs U.S. military veterans on a full-time basis. The current preference is limited to vet-owned businesses.
- 3. Quickie Update** - The NLRB's "quickie" or "ambush" election rules took effect April 14, so there is a bit more than a month of data available to see just how quick union elections are being held after a petition is filed. A rep from PTI Labor Research reports that the average timeframe prior to the rule was 38 days. The new average is somewhere around 23 days, depending on who you ask. More importantly, she reported one case where the employer was not informed of exact election arrangements until one week before the vote. This disfavors employers since PTI's stats show that employers fare better when the percentage of those who are eligible to vote actually do. Increased activity under the new rule is also apparent in the 266 RC petitions filed with the NLRB from April 14 to April 15 . . . that is a 24% increase over the average for the same time period over the prior five years. Some employers were looking for relief from this rule based on two lawsuits filed against the NLRB. *Associated Builders and Contractors of Texas Inc., et al v. NLRB* (W.D. Texas May 2015) did not go the employer groups' way and will be appealed to the Fifth Circuit. The NLRB lost on the issue of ripeness but won on the merits. The other case is pending in D.C.
- 4. What Do Vanity Fair and OSHA Have in Common?** - They both "went there" in early June by discussing transgender individuals. Vanity Fair displayed glamor shots of the former Bruce Jenner as a transgendered woman, Caitlyn. And OSHA published "A Guide to Restroom Access for Transgender Workers" at <https://www.osha.gov/newsrelease/trade-20150601.html>. The latter, in brief, explains that [1] the employee and not the employer should determine which facility will be used by the employee; [2] facilities that are segregated or too

far away may run afoul of Title VII; [3] single or multi-occupant facilities that are designated as gender neutral are OK but should be an option and not a mandate; and [4] employers asking for medical "proof" in order to access gender-specific facilities is also a no-no.

5. **Mining for Nuggets** - If you would rather not read the DOL's Semiannual Regulatory Agenda, no worries . . . I did it for you. We already know that the revised white collar exemptions are on their way. They are done and arrived at OMB around May 12, which means they should be published between 30 and 60 days after that date. A new item is a pre-rule request for information about "use of technology, including portable devices, by employees away from the workplace and outside of scheduled work hours." The actual RFI should show up later in the summer and is clearly meant to inform possible rule-making for turning some of those activities into "hours worked" for FLSA nonexempt workers.
6. **Oh Pooh** - HR folks and their counsel deal with sticky situations all the time and this one was no different. A trucking/storage company had a problem with someone repeatedly leaving biological gifts more suited to the restroom right in the middle of a warehouse floor. A DNA testing lab was hired and cheek swabs were taken from two employees who seemed likely culprits. Both tests were negative, compared to the squatter's calling card. The two employees filed lawsuits under the Genetic Information Nondiscrimination Act (GINA) and won. *Lowe v. Atlas Logistics Group Retail Services, LLC* (N.D. Ga. May 2015). Since Pooh Bear was using a common space where there was no expectation of privacy, cameras may have been the better trap for this rat.
7. **Don't Monkey Around With Harassment Claims** - Alert employers know that they need to do several things to prevent harassment and defend claims if and when they occur. They need to have a written policy that clearly defines and prohibits certain behaviors. They need to have an easy-to-access and use complaint procedure. And they need to do training, especially of supervisors, to help folks understand where the lines are drawn and what to do when they are crossed. "Hostile environment" is hardest to define because it can encompass so many types of conduct, but there was some comfort in knowing that an isolated incident or remark was probably not enough to state a claim. Until now, at least in the 4th Circuit. A grant of summary judgment in favor of the employer was reversed and the plaintiff allowed to proceed on her racial harassment claim which arose from being called a "porch monkey" twice in a 24-hour period, by a restaurant co-worker who had some influence but was not a supervisor or manager. *Boyer-Liberto v. Fountainbleau Corp.* (4th Cir. May 2015). She also prevailed on her retaliation claim, based on being discharged from employment within four days of complaining about the conduct of her co-worker. The right policy, procedure and training is both offense and good defense against harassment claims arising out of any protected category. Put it on your menu.
8. **Fun With FMLA** - Your current FMLA forms have an expiration date (see top right corner of form) of May 31, 2015 and the new ones are available at <http://www.dol.gov/whd/forms/index.htm>. Not a lot has changed except for added references to the Genetic Information Nondiscrimination Act (GINA). Oddly, DOL did not opt to add the GINA safe harbor language crafted by the EEOC, which is intended to warn individuals and health care providers against providing genetic information. Many of you added that language to your 5-31-15 forms via a sticker or similar attachment. You reasonably hoped that the DOL would add the GINA clause to the fine print of the FMLA forms on the next updated version. Instead, the DOL added brief "don't do it" language in lieu of the clause written by the EEOC, below. It's an agency cat-fight!
 1. The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information" as defined by GINA includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving reproductive services.
9. **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!
10. **Stated Differently** - Here are some hot topics for you multi-state employers:
 1. **California (City of Los Angeles)** - The City Council voted to OK a minimum wage hike culminating in a rate of \$15/hour in 2020. The first bump would be to \$10.50 in July 2016, with annual increases to \$12 (2017), \$13.25 (2018), \$14.25 (2019) and then \$15 (2020). A second vote will take place on June 10 because the first one was not unanimous (13-1). Businesses and nonprofits with less than 25 employees will get an extra year to comply with each increased, starting with their jump to \$10.50/hour beginning in July 2017.
 2. **Connecticut** - CT is the 21st state to enact legislation prohibiting employers from requesting or requiring that job applicants or employees provide user names and passwords to their personal social media accounts. The governor signed the law on May 19 and it takes effect October 1, 2015.

3. **Florida** - Effective July 1, 2015, the state's civil rights law will be amended to prohibit pregnancy-based discrimination in employment and places of public accommodation.
4. **Illinois (Cook County)** - The Human Rights Ordinance has been amended to add credit history as a factor that cannot be considered when making employment decisions. This law applies to employers with a principal place of business in Cook County or who do business with Cook County, with narrow exceptions (such as for banks). Credit history may be used when it is a bona fide job requirement, as defined within the law. Examples include when a state or federal law requires bonding or other security for the position or when the duties involve unsupervised access to cash or equivalents valued at \$2500 or more.
5. **Montana** - See what CT did? We did it before them with a similar law that took effect on April 23, 2015.
6. **Virginia** - See what CT did? We did it before them with a similar law that will take effect on July 1, 2015.
11. **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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