BV-SHRM NEWSLETTER

CHAPTER NO. 0330 ◆ JUNE 2015

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MONTHLY PROGRAM & LUNCHEON

TOPIC: **Translating Business Strategy & Performance Management Into Highly Effective Compensation & Total Reward Programs**

WHEN: **June 4, 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: Bob Cartwright, Intelligent Compensation

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

MENU: Chicken Fried Steak w/gravy, vegetables, salad, bread, tea and water

PROGRAM DETAILS

Translating Business Strategy & Performance Management Into Highly Effective Compensation & Total Reward Programs

Leading our organizations to excellence requires that HR professionals be skilled and informed business partners. This session is designed to provide our members with key information on how to develop effective business leadership, strategy planning, and operational and business performance measurement. Learn how to execute smart strategic business initiatives and an effective compensation program that goes beyond total rewards. Understand the keys of what makes an effective Strategist and Business Leader. Learn how to translate strategic planning, goal setting, and the identification of key business initiatives into effective performance management and incentive compensation programs.

SPEAKERS BIO

Bob Cartwright, (SPHR/SHRM-SCP), is founder, president and chief executive officer of Intelligent Compensation, LLC. Mr. Cartwright has 30+ years of diversified experience in compensation and human resource management which includes the development of total compensation strategies, wage and salary plans, executive compensation strategies and studies, customized surveys, performance-based sales, balanced score-cards, incentive and team-based compensation plans, and performance management systems. In addition, he has provided human resource management, strategic planning and employment relations advisory services for an array of companies in Texas. Previously, he served in management at Tracore, Inc. in Austin, Texas for 14 years, where he had corporate-wide responsibility for the company's global compensation programs, and performance management systems.

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

Upcoming Events

MARK YOUR CALENDARS

THE HR SOUTHWEST CONFERENCE™

The State of Texas SHRM Conference

10.05.14 to 10.08.14

Fort Worth Convention Center

CREATE VALUE DRIVE CHANGE

Chamber After Hours
May 21, 2015, 5:30-7:00 p.m.
Physician's Center

CHAMBER OF COMMERCE
BRYAN/COLLEGE STATION

BV-SHRM Program
July 2, 2015
Topic: Enterprise Risk Management

HR Southwest
October 25-28, 2015
Ft. Worth, TX
http://www.hrsouthwest.com/

DIVERSITY MATTERS

Diversity Dates for June

National Caribbean American Heritage Month
Lesbian, Gay, Bisexual, and Transgender Pride Month
African-American Music Appreciation Month

1	Wesak (Buddhist)
6	D-Day
14	Flag Day
18-July 16	Ramadan
19	Juneteenth
21	Father's Day

Are you in? BV-SHRM is.

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

LinkedIn

CHAPTER CHATTER

We just wanted to take a moment to feature a couple of great things that are happening in our chapter.

- We have received the SHRM **Platinum Chapter Award**. No, not silver or gold… PLATINUM. What that means is that our chapter not only meets our requirements as an affiliated SHRM chapter, but we exceed in many areas, all of which are reported on an Annual SHAPE report.

- We have also received a 2014 **Foundation Chapter Champion** award. This recognizes our commitment to the education of our peers by donating funds to the SHRM Foundation. So, when you're buying all of those tickets at the holiday luncheon or for the donations we make in honor of speakers, this is where the money goes.

- One of the reasons why we do so well is because we offer unique services to our membership and the community. For example, we have one of the most successful **Certification Preparation** classes in the area. So much so that people in Houston are willing to drive up here to participate. That's what you get with 100% pass rate (normal is about 50%). Consider signing up!

Certification Class

We are working on a certification class for this fall.

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

- And lastly, we have **excellent programs** (thank you Sarah!) with speakers from around the state. The rumor is that this next one is supposed to have Strategic credits! This doesn't happen by accident. It happens because of the hard work of the board.

So, the next time you're visiting with HR professionals who are not involved with our chapter (yet!), let them know that you are proud of what your chapter is doing to help you achieve success for your organization as well as furthering your career.

BV-SHRM Board

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.

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."

School's nearly out but your education never ends . . . read on:

1. **Supremes Tell EEOC to Do (a Little) More** – The EEOC is tasked with enforcing several employment discrimination laws, including Title VII of the Civil Rights Act of 1964. The regulations provide that they notify the employer of the charge, listen to the employer's perspective and attempt to conciliate the dispute before resorting to litigation. In the *Mach Mining* case, the EEOC sent the employer and charging party letters inviting them to conciliate. One year later, they sent the employer a second letter saying any further effort to conciliate would be futile and filed a lawsuit. The employer pushed back, suing the EEOC and saying it had not made a good faith attempt to resolve the matter before suing. The EEOC pushed back and said their actions are not subject to judicial review (and if that doesn't fly, the two letters were sufficient). The District Court sided with the employer but the 7th Circuit sided with the EEOC by agreeing the court had no ability to review the EEOC's conduct. The U.S. Supreme Court had the final say in this one, and unanimously agreed with the employer that the courts do have judicial review authority. But they also limited that review by coming up with a standard that falls between two letters being insufficient and "good faith" efforts being too much to ask. The Supreme Court opined that the EEOC should provide sworn affidavits saying they informed the employer of the charge info and engaged in conciliation discussion. The review ends there unless the employer can show the affidavits are false. In short, the Court brushed back the EEOC a bit, but imposed what amounts to a speed bump on the way to pursuing litigation against the employer. *Mach Mining v. EEOC* (U.S. April 2015).

2. **Follow Up to "Your Presence is Not Required"** – In the April 2014 LB4HR, I wrote about a 6th Circuit case that explained "attendance" as an essential function of the job does not necessarily mean the employee must be physically in the workplace, opening the door to more widespread use of telecommuting as a reasonable accommodation of various disabilities. The employee/plaintiff, a buyer for Ford Motor Co., had irritable bowel syndrome and asked to work from home up to four days a week. Her employer said in-office interactions with co-workers were essential to the job and a series of attempts to engage in telecommuting had failed. The EEOC took up her cause, suing Ford, and lost at the District Court level. The 6th Circuit reversed and remanded on the issue of whether working from home was reasonable. The 6th Circuit then granted *en banc* review, vacating the April 2014 decision of the panel, and again reversing the outcome to favor Ford's position. Its discussion of the case points to the general rule that regular and predictable on-site attendance can be required and noted the EEOC's own guidance which parrots that concept. It added the "sometimes-forgotten guide [that] likewise supports the general rule: common sense" in ultimately holding that the plaintiff was not a qualified individual, as a matter of law, for her repeated failures to regularly be at work. *EEOC v. Ford Motor Company* (6th Cir. April 2015).

3. **Oh Well** – Employers who have been keen on employee wellness programs, as a means to incentivize a healthier life-style and perhaps reap the benefits of more productive workers with less absenteeism and lower health costs, have been waiting for the EEOC to make its intentions on the subject clear. While the regulations tied to other statutes (e.g., HIPAA, GINA) provided guidance on how to safely fashion these programs, the EEOC has been wagging its finger and stating that employee incentives that are too generous or penalties that are too harsh can negate the "voluntariness" of a wellness program, leaving it in the cross-hairs for litigation under both the ADA and GINA. This "make my day" posture seemed fulfilled by a flurry of lawsuits filed by the EEOC against employers in the fall of 2014. Perhaps in response to heavy criticism and the proposed Preserving Employee Wellness Programs Act, on March 20, 2015 the EEOC submitted a Notice of Proposed Rulemaking for publication and comment through June 19, with an eye toward laying out their version of an acceptable program. The EEOC's approach diverges from the rules promulgated jointly by the Departments of Labor, Treasury and Health & Human Services on several fronts, including expansion of the 30% cap on rewards to participatory programs; a ban on mandated health risk assessments; limitation of the 30% cap on rewards to cost of employee-only coverage (i.e., does not allow for larger reward, where the cap applies to cost of family coverage); no option to expand the cap to 50% by tacking on a separate reward for tobacco cessation; and imposition of a new written notice about the medical info obtained, in addition to the notice already required under HIPAA. For a copy of the proposed reg and to add your comments, go to https://www.federalregister.gov/articles/2015/04/20/2015-08827/amendments-to-regulations-under-the-americans-with-disabilities-act.

4. **Costly Trash** – The U.S. Dep't of Health and Human Services, Office for Civil Rights, is settling a HIPAA violation with a tiny, single-location pharmacy in Denver, CO for $125,000 plus a "to do" list that includes new policies, procedures and training for everyone on HIPAA privacy. The violation? A local news station found intact medical records of 1610 patients in an unlocked dumpster, out back.

Beyond HIPAA, which requires covered businesses to safeguard protected health information (PHI), other federal laws and many states also require businesses to incinerate, shred or otherwise make unreadable paper and electronic records that include any individual's personal information, including addresses, phone numbers, SSNs, credit card numbers, passwords/PINs and more. Your spring cleaning list should include a review of precisely how you store and dispose of employee, customer, supplier, vendor and other records that contain this info. If your current method does not measure up, trash it!

5. **Does Social Media Suit You?** – In moving past cats who play piano and dancing flash mobs, two federal cats, er, courts have approved use of social media as a means to notify potential class members of a lawsuit they might "like." The most recent, in NY, involves a collective action under the Fair Labor Standards Act to seek wages for former unpaid interns. *Mark v. Gawker Media LLC* (SDNY June 2013). The interns' initial proposal, which was a mash-up of postings on Twitter, LinkedIn, Reddit, Tumblr and Facebook, was rejected as overbroad and an attempt to publicize the lawsuit and humiliate the employer that lacked specific targeting of individuals who might have opt-in rights. The second attempt fared better by narrowing the focus. For example, on Twitter they could post as @Gawkerintern, follow prospective litigants, and if the prospect followed them back, they could send a private message on how to join the lawsuit.

6. **Check, Please** – The Fair Labor Standards Act (FLSA) provides that its protections cannot be waived. Most employers know that waivers that are entered into where the process is not being monitored by the U.S. Department of Labor (DOL) or a court of competent jurisdiction are likely useless. This FLSA case shows that even when the DOL is involved, the devil is in the details. The employer was found by the DOL to have misclassified workers as exempt and agreed to pay owed overtime. The employer issued backpay checks with language on them saying the checks represented full payment for wages earned, including minimum wage and overtime, up to the date of the check. Upon review by the 8th Circuit, the court held that the waiver of claims was inadequate because the language on the checks did not adequately notify the employees of their rights. *Beauford v. ActionLink LLC* (8th Cir. March 2015). Lesson learned? Obtain and use expanded release language which can be obtained from the DOL or your counsel.

7. **Take Notice** – Heads' up to employers in the EEOC's Charlotte, NC and San Francisco, CA regions . . . your next Notice of Charge of Discrimination will not come via snail mail. As part of a pilot program intended to improve efficiency in the charge process, employers will receive a letter containing a website address, the charge number and a password. In order to access the charge, opt in/out of mediation and file position statements, the employer will have to go on-line. If all goes well, the plan is to roll this approach out nationwide by October 2015. You will no longer receive a copy of the Charge of Discrimination via U.S. mail and you might want to check your Junk Mail to see if the EEOC's email was diverted.

8. **Heads' Up, Federal Contractors** – OFCCP recently changed the VEVRAA hiring benchmark from 7.2% to a flat 7%. Covered contractors and subcontractors have the option to apply the OFFCP's five-part method to develop and apply their own benchmark in lieu of the national standard.

9. **Handbook Helper** – While most employers accept that a well-written employee handbook is valuable tool to communicate expectations and to provide a defense to certain claims, those who have shied away may want to consider what happened to this employer in Ohio. Employee was injured on the job, did not return to work and did not contact his employer. After a few days, the employer sent a letter documenting the employee had said he was sore and would return to work on Monday, but had not come to work or called. The letter also said the employer had tried to call employee, to no avail, and was now terminating employment. Employee filed for temporary total disability from the Industrial Commission (which administers workers' comp in OH) and was denied. He appealed and the court sided with the employee, because the employer did not have a "no call, no show" policy, <u>in writing</u>. Without a written policy, there was no voluntary abandonment or termination of employment, which could've served as a bar to the IC claim.

10. **Calendar This** – Break out your 2015 calendar and pencil in the 22nd Annual University of Texas School of Law Labor and Employment Law Conference for May 12 and 13. We will once again be at the AT&T Conference Center in Austin and yours truly will present the Federal Regulatory Update on May 12. The full agenda and registration info can be found at <u>https://utcle.org/conferences/EL15</u>. Would love to see you there!

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

    1. **California** – The 9th Circuit held that a no-hire clause in a settlement agreement with a discharged employee may violate CA's Business and Professions Code section 16600, which provides that a contract is void if it restrains anyone from engaging in a lawful profession. An emergency room doc sued a group of E.R. docs after losing his staff privileges at a hospital. The parties settled their dispute and no-rehire language was included in the settlement agreement. The doc refused to sign and sought relief. The district court decided it was not a prohibited non-compete clause, but the 9th Circuit reversed and remanded, to ask the trial court if the restraint on the doctor's practice was substantial. *Golden v. California Emergency Physicians Medical Group* (9th Cir. April 2015).

    2. **Maryland** – The state's employment anti-discrimination laws have been expanded to protect unpaid interns. Similar expansions are already on the books in CA, NY and OR.

3. **Massachusetts** – Here is a link to proposed regs for the new earned sick time law. http://www.mass.gov/ago/doing-business-in-massachusetts/labor-laws-and-public-construction/earned-sick-time/. Effective July 1, 2015, employers with eleven or more employees (anywhere in the U.S.) must provide paid sick leave and smaller employers must provide unpaid sick leave for their employees in MA.

4. **New York (NY City)** – The NYC Human Rights Commission is beefing up its efforts, including addition of the paired testing method. This method involves sending out "matched pairs of testers" who will have similar resumes and will apply for the same job, but will differ in their race, gender or other protected category. A new ordinance requires at least five investigations be done (the first on or before October 1) and findings must be reported to the City Council by March 2017. A similar operation will be performed to ferret out housing discrimination.

5. **Pennsylvania (Philly)** – The Promoting Healthy Families and Workplaces ordinance will take effect May 13. Info on the paid sick leave ordinance and a link to the recently released poster can be found at http://www.phila.gov/mdo/Pages/default.aspx.

6. **Wisconsin** – The WI Supreme Court resolved a conflict between two lower courts by deciding that continued at-will employment can be sufficient consideration to enforce a noncompete imposed on a current employee. *Runzheimer Inernational Ltd. v. Frieden et al* (Wisc. 4-15).

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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