



BV-SHRM NEWSLETTER

CHAPTER NO. 0330 ♦ MARCH 2015

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MONTHLY PROGRAM & LUNCHEON

TOPIC: A Trio of Info: Hiring & Firing; Faith @ Work; Retaliation

WHEN: March 5, 2015

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

WHERE: Phillips Event Center (formerly Briarcrest Country Club)
1929 Country Club Dr., Bryan

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

SPEAKER: Joe Bontke, EEOC

RSVP: Please **RSVP by noon, Friday, February 27** to
rsvpprograms@gmail.com.

MENU: Soup and Salad buffet, dessert, tea, coffee, and water

Note the
location
change!

PROGRAM DETAILS

Hiring and Firing in 2015 -'Cuz Management 101 is Not Enough!! hiring and recruiting practices geared to business success and avoidance of an EEOC charge/litigation. Plus tips on how to successfully effectuate a termination, including info on delivering the decision, documentation, and the aftermath. Plus a look at the issues of **Faith @ Work & can it be a cause for the HR department to meditate about a solution.** When accommodating employee's religious beliefs, whether they are strict and full of rituals or atheistic, is a basic precept of the respectful workplace. An in-house policy adopted for all your employees offers guidelines that you may want to consider. This information session looks at the as many of the issues we can fit on the head of a pin. and lastly **EEOC #1 Charges are Retaliation Claims** Retaliation has become the most frequently asserted claim with EEOC charges. With 36% of all charges filed with EEOC included a claim of retaliation. This number represents approximately a 70% increase in retaliation claims over the last decade. Let's address what you can do to prevent your HR department for joining our list.

SPEAKERS BIO

Joe Bontke is the outreach manager and ombudsman for the Houston District office of U.S. Equal Employment Opportunity Commission. Joe has been in the field of Human Resources & Civil Rights for the past 27 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, was appointed as Assistant Professor at Baylor College of Medicine and has been named Chair of the Governors' Committee for People with Disabilities by Governor Rick Perry and recently commissioned an honorary Admiral in the Texas Navy. Using his entertaining style, Joe has educated groups throughout the country and most recently, his work 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.





Please notify
Krystal Broussard
 of any changes to
 your contact
 information.

krystal@boydreadymix.com



CHAMBER OF COMMERCE
 BRYAN/COLLEGE STATION

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

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Upcoming Events

MARK YOUR CALENDARS

Chamber After Hours

March 26, 2015, 5:30-7:00 p.m.
 Allen Honda

Gulf Coast Symposium

May 13-15, 2015
 Reliant Center
 Houston, TX
<http://www.hrhouston.org/page/235>

HR Southwest

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

DIVERSITY MATTERS

Diversity Dates for March

National Multiple Sclerosis Education and Awareness Month

National Women's History Month

March 1-20	Nineteen Day Fast (Baha'i)
March 4-5	Purium (Jewish)
March 6	Holi (Festival of Colors) (Hindu)
March 6	Hola Mohalla (Sikh)
March 8	International Women's Day
March 13-April 15	Deaf History Month
March 17	St. Patrick's Day
March 21	Naw-Ruz (Persian & Baha'i New Year)
March 25	Greek Independence Day
March 28	Rama Navami (Hindu)
March 29	Palm Sunday
March 31	César Chávez Day

Are you  ? BV-SHRM is.

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



SHRM Certifications

The window is now open for those with HRCI certifications to obtain a SHRM certification through a tutorial.

To find out more, go to the SHRM Certification website at

<http://www.shrm.org/certification/pathway/pages/default.aspx>

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!

The most important news for this newsletter is a CHANGE OF VENUE FOR THE MARCH MEETING! We will move our meeting with our exceptional speaker, Joe Bontke of the Houston EEOC, to the Phillips Event Center (formerly Briarcrest Country Club) in Bryan. Please tell everyone you know about the change of venue.

A big thanks to everyone who attended our February luncheon. The training was great and the turnout was excellent considering the weather. Hopefully by the March meeting, we will start to see signs of Spring. The great thing about living in the Brazos Valley is we get all four seasons in one week.

Welcome to our new members, and congratulations to members who have attained their SHRM certification since the last meeting. We will be recognizing you at the March meeting. If you have gone through the tutorial, please share your great news with someone on the board so we can keep track of how many SHRM-certified members we have.

Speaking of SHRM, if you haven't become a national SHRM member, you are missing out on some great benefits. The BVSHRM chapter gets credit for every local member who joins SHRM, and members get a reduced rate on BVSHRM membership. Why not take a look at the SHRM website and consider becoming a national SHRM member? You will be glad you did.

Our membership is growing each month, and Chapter finances are healthy. The board is working on a partnership with the TAMU Student SHRM Chapter and we'll have more news about that in the coming weeks. TAMU students need mentors, so if you haven't volunteered to mentor, talk with Tami Overby soon.

Thanks,
Retha

STUDENT CHAPTER

BE A MENTOR!

One of the unique opportunities we have as a chapter is to partner with the Texas A&M University student SHRM Chapter and serve as a mentor to our future HR professionals. Many of these students are wanting to see what HR looks like outside of the classroom, receive insight on what a typical day looks like, and options that might be available to them after graduation.

As noted by one of the mentees, "I've really enjoyed my hands on experience that I've gotten with my mentor. I really love having a professional I can talk to not just during my job search, but for all different kinds of opportunities. I think those experiences will help develop me into a successful young professional!"

If you would like to be part of this exciting opportunity, please consider signing up to be a mentor. The commitment is for one semester and typically mentors and mentees meet one to two times. For more information, please contact Tami Overby toverby@tamu.edu.

Applications are due by Thursday, March 5, 2015.



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."

If the end of the football season has you feeling a bit deflated (I could not resist), let me pump you up with some fresh news:

- 1. Growing Pains** - The Affordable Care Act (aka Obamacare) is back under the microscope, on several fronts:
 - 1.** Both the Senate and the House introduced bills aimed at changing the definition of a full-time worker, for purposes of the ACA, from one who works 30 or more hours per week to 40 hours per week. See Save American Workers Act (H.R. 30) and Forty Hours is Full Time Act (S. 30). You can always check out full text of bills, plus lists of sponsors and progress at www.congress.gov.
 - 2.** In *King v. Burwell*, the U.S. Supreme Court will determine whether individuals who purchase health insurance from exchanges created by the federal government (rather than by the states) under the ACA can receive tax credits. To date, only 16 states have established exchanges so the feds stepped in and created exchanges in the other 34. The IRS and the 4th Circuit see no difference if the insurance was purchased via a federally vs state-established exchange, but the plaintiffs argue for a strict reading of the ACA which says the tax credit only goes to those who purchase via a state-established exchange.
- 2. ICE Cube** - Here is a recipe for a potent concoction. Step 1 - The U.S. President announces he will use his executive authority to prioritize which immigrants get picked for deportation (by ICE), focusing on those who are national security threats, convicted criminals and ones who illegally crossed the border recently. This move is designed to protect the children of illegal immigrants now (by blocking their deportation and providing work permits) and later expands its reach to parents of U.S.-born citizens. Step 2 - The Texas AG files a lawsuit against the President, claiming that he has overstepped his authority under the U.S. Constitution, and 25 more states' reps join the chorus (AL, AZ, AR, FL, GA, ID, IN, KS, LA, ME, MI, MS, MT, NE, NV, NC, ND, OH, OK, SC, SD, TN, UT, WV and WI). Step 3 - Twelve states (CA, CT, HI, IL, IA, MD, MA, NM, NY, OR, VT and WA) and D.C. demonstrate their support for the President's actions by filing an *amicus* brief with the court. Step 4 - Initial arguments are heard on January 15, 2015. Step 5 - The new Attorney General nominee, while being questioned by the Senate Judiciary Committee during her confirmation hearing, says that any person who is here has a right to get a job . . . and the next day quickly recants (presumably after someone who understands IRCA and the Form I-9 clues her in). Woozy yet? There is much more to come.
- 3. That's Sick** - New OSHA reporting standards relating to serious employee injuries took effect January 1 and both the agency and employers are getting used to the new rule. Under the old rule, employers were to report, within eight hours, any workplace injury that led to death (if/when the death occurred within 30 days of the injury) and any incident that resulted in the hospitalization of three or more workers. Under the new rule, any injury resulting in an employee's in-patient treatment, amputation or loss of an eye must be reported to OSHA within 24 hours. Employers can phone it in or file the report on-line. OSHA will respond by sending an inspector, placing a phone call or sending a letter to the employer. A December 16, 2014 interpretation letter explained that avulsions such as degloving, scalping, fingernail and toenail remove, eyelid removal, loss of a tooth and severed ears are not amputations and do not need to be reported. Also, "loss of an eye" means physical removal of the eye and not loss of sight. For all the gory details, go to https://www.osha.gov/pls/oshaweb/awadisp.show_document?p_table=INTERPRETATIONS&p_id=29291.
- 4. Questionable** - With the release of a pair of Q&A's, the OFFCP has clarified that federal contractors asking new hires to self-identify their protected veteran status do not have to ask which type of protected veteran the individual is. And they do not have to report that info on the VETS-4212 (fka VETS-100) report either. The same invitation to self-identify occurs at the pre-offer stage, which also does not require that the applicant identify a particular category of protected veteran that he or she belongs to. See http://www.dol.gov/ofccp/regs/compliance/faqs/VEVRAA_faq.htm#Q38.
- 5. Handbook Hiccup** - Here's an example of why careful drafting of employee handbooks matters. If your organization is an employer subject to FMLA, you know that a covered employee is one who [1] has worked for you for 12 months (need not be continuous employment . . . prior time worked by rehires can count in some instances); [2] has worked 1250 hours or more during the 12 months immediately preceding when the leave will begin; and [3] works at a location where there are 50 or more employees working within 75 miles of the employee's location (measured by "surface miles" not radius). An employee sued his employer for FMLA interference and retaliation after his employment ended, even though his work location did not satisfy item [3], and the court sided with him. Why? Because their handbook said "Employees covered under the Family and Medical Leave Act are full-time employees who have worked for the Road

Commission and accumulated 1,250 work hours in the previous 12 months." *Tilley v. Kalamazoo County Road Commission* (6th Cir. Jan. 2015). Many employers who have smaller shops deliberately waive [3] by omitting it from their policy, for both administrative ease and fairness to all employees. Just make sure that if you left it out, you MEANT to leave it out.

6. **Handbook Hiccup, Part Two** - Handbooks normally address time-keeping procedures for non-exempt employees, including the importance of submitting accurate and timely entries. The really good ones go a step further, advising non-exempt workers to never work "off the clock" and to report any supervisor or manager who so much as hints that they should do so. These policy statements can be pure gold, as part of the employer's defense, when an unhappy former employee claims unpaid wages for "off the clock" work. But there will be no happy ending for the employer, if the supervisor knew the employee was working off the clock, had urged him to do so and had edited the time cards to show less hours than were actually worked. The supervisor's knowledge is imputed to the employer, making it liable for the FLSA violation. *Bailey v. TitleMax of Georgia* (11th Cir. Jan. 2015). So, have a great handbook. But also have great supervisors . . . train them on the basics of employment law, especially the FLSA. Their mistakes become your headache.
7. **Neat Hat Trick** - Company has a dress code that says "Baseball caps are prohibited except for [name of employer] baseball caps worn with the bill facing forward." Union files an unfair labor practice charge, claiming this rule violates employees' rights to wear union insignia. The ALJ agrees with the union and OK's an order barring the employer from enforcing its "discriminatory hat policy." NLRB, upon review, doesn't think it's discriminatory but says it's overbroad because it prohibits employees from engaging in the protected activity of wearing caps bearing union insignia. Next stop for review is the 11th Circuit, who sees it a different way. They opine that the policy limits the type of hat that can be worn, but it does not prevent an employee from slapping a union insignia on that same hat, and denies the NLRB's petition for enforcement of the order. *World Color (USA) Corp. v. NLRB* (D.C. Cir. Jan. 2015). Lesson learned? Don't overreach on your dress codes . . . most employees have a federally protected right to wear union insignia.
8. **Break it Up!** - A doctoral student in psychological studies at Kansas State University (yay!) concludes that employees' smartphone microbreaks during the workday make them happier and more productive. Sooyeol Kim tracked the phones of 72 workers, to measure both gaming (e.g., Angry Birds, Candy Crush) and use of social media (e.g., Facebook, Twitter) during working hours. He found they averaged 22 minutes out of an eight-hour workday on their phones, engaged in these activities, and the ones who took these fun breaks reported being happier and more refreshed at the end of the day. See the press release at <http://www.k-state.edu/media/newsreleases/jul14/smartphone7714.html>.
9. **E-Mail Edict** - With its December 11 *Purple Communications* decision, the NLRB put employers on notice that if they provide employees with access to the company's email system, they must allow for "statutorily protected communications on non-working time." This decision overturns the *Register Guard* decision (2007) which held employees had no right to use their employers email system to engage in union organizing activities and other activities protected by the NLRA. This decision does not force employers to provide email access where it was not provided before, and there is the possibility of enforcing a ban on all nonwork-related email if the employer can prove special circumstances that are necessary to maintain production or discipline.
10. **Handy Book** - It's here! Yours truly and a team of attorneys have completed revisions to the Texas Employment Law Handbook, 2014-15 edition. The book is available on-line and as a soft-bound book by calling 1.800.856.6721 or going to www.txbiz.org. The book published jointly by the Texas Association of Business and by Texas SHRM. SHRM (either the national membership or a local chapter membership qualifies) and TAB members enjoy a discounted rate of \$199 while nonmembers pay \$299. Thank you to LB4HR reader **Cathy Phelps**, who suggested that it would be helpful if TAB would post the Handbook's Table of Contents on its website so that prospective purchasers could see what topics are included. Great idea, Cathy, and TAB has followed your suggestion.
11. **Calendar This** - Break out your fresh 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. I will provide the link to the full agenda and registration info here, as soon as that info is released. Would love to see you there!
12. **Stated Differently** - Here are some hot topics for you multi-state employers:
 1. **Florida** - On January 13, the State of Florida signed a MOU with DOL, making it the 18th state to join the employee misclassification initiative. See the press release at <http://www.dol.gov/opa/media/press/whd/WHd20150034.htm>.
 2. **Illinois** - Effective June 1, the Illinois Secure Choice Savings Program Act will require employers of 25+ employees who have been in business for at least two years and who do not offer employees a tax-qualified retirement benefit (e.g., 401(k) plan, 403(b) plan) to automatically enroll their employees in individual retirement accounts. Actual enrollment of individuals will begin two years later. For more details see <http://ilga.gov/legislation/98/SB/PbF/098005827B8enr.pdf>. Also, there is a new mandatory workplace poster relating to pregnancy at http://www2.illinois.gov/dhr/Publications/Pages/Pregnancy_Rights_Notice_Requirement.aspx.
 3. **Massachusetts** - Effective April 7, 2015, MA has a new parental leave law which replaces the existing maternity leave act. As the name implies, it offers eight weeks of job protected leave to both parents and not just to mom. If both parents work for the same employer, they can split the eight weeks between them. For all the details, see the new parental leave law at <https://malegislature.gov/Bills/188/Senate/5865>.

4. **Missouri** - A trial court refused to compel arbitration of a former employee's discrimination and harassment claim because the arbitration agreement lacked mutuality of obligation. The problem? The agreement provided that all legal disputes would go to arbitration except if/when the employer wanted to enforce a noncompete clause (so that it could seek injunctive relief in court, which happens a lot faster than what the arbitration process would provide). *Jimenez v. Cintas Corporation* (Mo. Ct. App. Jan. 2015).
5. **New Jersey** - Insurance carriers must encrypt computerized records of personal information (e.g., SSN, street address, driver's license number, identifiable health information) or use another method or technology that renders the info unreadable, undecipherable or otherwise unusable by an unauthorized person who gains access to the info. The current standard of password protection is not good enough since it does not render the info unreadable, undecipherable or otherwise unusable when someone manages to work around the password. The new law does not address penalties but NJ lawmakers have said the State's consumer fraud statute will apply. That law imposes a penalty of up to \$10K for the first offense and no more than \$20K for each subsequent offense.
6. **New Jersey** - When determining if a worker is an employee or a contractor under the state's wage and hour laws, the "ABC test" used for determining unemployment compensation eligibility will be used. The test presumes a worker to be an employee unless the employing entity can prove [A] the individual is free from the entity's control or direction over performance of the service, both by contract and in fact; [B] that the service provided is outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the entity; and [C] that the individual is customarily engaged in an independently established trade, occupation, profession or business. *Hargrove v. Sleepy's LLC* (N.J. Jan. 2015) The plaintiffs were delivery drivers for a mattress store, who sued under ERISA, FMLA, New Jersey Wage Payment Law, other state laws and for breach of contract.
7. **Oregon** - Employers in Eugene, Portland and Seattle already face mandatory sick time ordinances. The rest of the state may do the same, as Oregon legislators are considering a statewide paid sick time law which would offer employees up to 56 hours off per year, to be used in increments as small as one hour.
8. **Wisconsin** - See what Florida did, above? Yeah, we did that too, on January 20. See <http://www.dol.gov/whd/media/press/whdpressV83.asp?pressdocnational/20150120.xml>.
13. **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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