



BV-SHRM NEWSLETTER

CHAPTER NO. 0330 ♦ NOVEMBER 2015

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Program and
Luncheon proudly
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MONTHLY PROGRAM & LUNCHEON

- TOPIC:** Check-up From the Neck Up: How Your Attitude Will Get You Sued
- WHEN:** November 5, 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:** Rob Ghio, Law Office of R.S. Ghio, P.C.
- RSVP:** Please **RSVP by noon, Friday, October 30** to
rsvpprograms@gmail.com.
- MENU:** Chicken enchiladas with rice and beans, fiesta salad, chips, salsa, tea & water

PROGRAM DETAILS

Topic: Check-up From the Neck Up: How Your Attitude Will Get You Sued

Explore the myths and realities as employees evolve from your qualified applicant to the next employment law plaintiff. Can a bad attitude get you sued? Learn some valuable strategies to help keep your attitude in check while walking away with tips and attitude adjustments to minimize your chances of getting sued.

SPEAKERS BIO

Rob Ghio has over 20 years of law experience and currently heads a solo practice specializing in Labor/Employment Law and Immigration. He represents both employers and individuals, assists employers with compliance issues, government investigations, EEOC charges and lawsuits.



A graduate of CSU, Stanislaus and Stanford Law School, Rob has several publications ranging from immigration issues to harassment as well as numerous presentations on immigration, drafting employment agreements, and avoiding harassment claims.

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Upcoming Events

MARK YOUR CALENDARS

Chamber After Hours

November 19, 2015, 5:30-7:00 p.m.
St. Joseph Health System



BV-SHRM Holiday Event

December 3, 2015

Features:

- *HR Award*
- *Induction of 2016 Board*
- *Silent Auction (items still being accepted!)*
- *Sponsored by Salvation Army*

DIVERSITY MATTERS

Diversity Dates for November

11	Veterans Day
11	Diwali (Hindu)
12	Birth of Bahá'u'lláh (Bahá'í)
20	Transgender Day of Remembrance
26	Thanksgiving (USA)
26	Day of the Covenant (Bahá'í)
29-December 24	Advent (Christian)

Visit us and
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BV-SHRM on

facebook

Are you  ? BV-SHRM is.

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

LinkedIn 

BOARD MESSAGE BOARD

New Meeting Location for 2016

We are proud to announce that we will be moving our regular monthly meetings, beginning in January, 2016, to:

**Phillips Events Center
1929 Country Club Dr.
Bryan, TX 77802
<http://phillipsevents.com/>**

After reviewing a few bids and having enjoyed their hospitality a few times this year, we have decided to try them out for 2016.

The luncheon cost will not change.

Holiday Luncheon

- We are still looking for auction items. Your donation goes a long way to helping our chapter as well as supporting our peers who are continuing education. Contact Lisa, Retha or another board member to donate.
- *Features:*
 - a. *HR Award*
 - b. *Induction of 2016 Board*
 - c. *Silent Auction*
 - d. *Sponsored by Salvation Army*
 - e. *And more...*

HRSW was a great success!

There were several BV-SHRM members there and we had fun visiting, going to the Flying Saucer, and dancing at the Tuesday reception. One member won an Apple Watch!

Save the date for next year – October 16-19

2016 BV-SHRM Board

We are still looking for people to help with the 2016 year. Options include small jobs to big ones (some can be shared!). Consider volunteering!

2016 Program Suggestions

We have had lots of great programs over the years. If you have any topics you are interested in, please give us suggestions, especially if you know a speaker who can share their expertise. Send a note to rsvpprograms@gmail.com.

Call for Sponsors

As you know, we have been using Sponsors for a couple of years. It really helps us keep costs low as well as gives us an opportunity to learn about a local service.

Please help us look for sponsors. If you have a suggestion, please e-mail rsvpprograms@gmail.com and we'll contact them!



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."

Here is your monthly bag of employer tricks and treats:

- 1. White Collar Wars** - A U.S. Congress subcommittee got an earful from association reps for restaurant, construction and retail employers, who spoke out forcefully against the proposed increase in the amount of salary necessary to satisfy the "white collar" exemptions under the Fair Labor Standards Act (FLSA). During the October 8 hearing, the subcommittee chair commented that the U.S. Department of Labor (DOL) had done a poor job of analyzing the impact on small businesses, in light of the proposed 102% increase (from \$23,660/year to roughly \$50,440/year) in the minimum salary. The association reps testified that:
 1. The blanket rule fails to take into account regional economies when setting salary amounts;
 2. The 60-day comment period was too short to allow in-depth economic analysis of the proposed change;
 3. The salary minimum fails to take into consideration an employee's total compensation package; and
 4. Many individuals will satisfy the duties test but be reclassified as nonexempt due to a salary that falls short of the new standard - this is contra to the original intent of the salary minimum and will not be well-received by workers who will perceive their new nonexempt treatment as a demotion.
- 2. What's in Store?** - Most employment statutes have record-keeping requirements, which aid government agencies' investigations when they receive complaints about violations of the statute(s) they enforce. Even though those records are rarely asked for, when the EEOC or a similar agency asks to see 'em, you really want to be able to produce. One employer received an unpleasant reminder of this fact in the form a lawsuit filed against them by the EEOC, when they were unable to produce employment applications for both potential and actual hires during the prior six-month period. If you haven't done so lately, you may want to dust off your retain/destroy schedule for employee records and audit internal practices to ensure both federal and state statutory minimums are being met. Don't forget that even those minimums may be insufficient and relevant documents should be preserved through final disposition of a pending charge or lawsuit, no matter how long that takes. If you don't have such a policy/practice . . . well, that's just scary!
- 3. No Homework** - One more Circuit Court has weighed in on an Rehab Act case (basically akin to Americans With Disabilities rights, but for public sector employees and certain federal contractors), finding that telecommuting and a later start time are not reasonable accommodations for a Coast Guard employee with various medical conditions and a demonstrated inability to come to work consistently and on time. The court found that regular attendance was an essential function because the job involved daily meetings (some of them spontaneous). Not all files could be accessed remotely and some needed to be viewed simultaneously by the entire group. The employer had already provided the plaintiff with a later start time, but this did not translate to on-time arrivals on a consistent basis. *Doak v. Johnson, Secretary of Homeland Security* (D.C. Cir. Aug. 2015). More and more courts are finding that regular attendance, in the workplace, is an essential function and a common sense requirement.
- 4. Safety Dance** - Effective October 1, 2015, Occupational Safety & Health Administration (OSHA) implemented major updates to its Field Operations Manual. This is the playbook for OSHA inspectors when they come a knockin' on your door, so you'll want quick access to the newest version. Here is a summary of the changes plus the revised FOM: https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-00-159.pdf.

5. **Monkey Business** - With Halloween costumes waiting to be donned in a few weeks, you may want to read this cautionary tale of a court's finding of hostile work environment and retaliation where African American limo service drivers were made to attend a safety meeting that featured a not-so-funny woman in a gorilla suit. On the day before Juneteenth, just to add injury to insult. The court's additional finding of reckless indifference by the employer means the plaintiffs will get punitive damages, on top of the compensatory award plus attorney's fees. Who's laughing now? *Henry v. CorpCar Services Houston* (5th Cir. Jan. 2015)
https://scholar.google.com/scholar_case?case=12415602073066225477&hl=en&as_sdt=6&as_vis=1&oi=scholar.
6. **Contractors' Corner** - DOL's Office of Federal Contract Compliance Programs (OFCCP) published its final rule relating to pay secrecy policies on Sept. 11, 2015. Federal contractors and subcontractors are prohibited from discharging or otherwise discriminating against employees and applicants who discuss, disclose or inquire about their own and others' compensation. The prohibition applies to contractors/subcontractors who enter into new federal contracts or modify existing ones valued at \$10,000+ on or after January 16, 2016. If an employee asks to see another employee's compensation, the contractor does not have to provide it but also cannot punish the employee for asking the question. Contractors cannot have policies that prohibit or discourage employees from talking about pay, including salary/wage, overtime, shift differentials, bonuses, commissions, stock options, benefits, vacation and profit sharing. [Note; Don't feel smug about this if you are not a contractor/subcontractor . . . the same requirement is in place for most other employers under the NLRA and some states' laws] This prohibition must be disseminated to employees via policy and posting. Mandatory language for the policy and a supplement to the EEO Is The Law poster is available at <http://www.dol.gov/ofccp/PayTransparency.html>. Breathe easy, HR and Payroll managers . . . contractors can take disciplinary action against employees who have access to others' comp as part of their duties and who disclose that info to unauthorized persons. They have not completely lost their minds.
7. **Heads' Up, Home Health Care** - The DOL's Home Care Rule is alive and well, after the U.S. Supreme Court denied an emergency stay request on October 6. As explained in LB4HR #8, the rule extends the FLSA's pay requirements to companionship workers and live-in domestic workers in the home health care business. The rule took effect on October 13 and the DOL announced that it will begin enforcing the new rule effective November 12, 2015, with some flexibility between now and the end of the calendar year when it encounters violations coupled with the employer's good faith efforts to comply. With an increasing number of disabled and elderly folks choosing to receive care in their homes via these service providers, the rule is bound to have far-reaching impact on the business as well as family members of those who need this care.
8. **Not So Fast, NLRB** - In the wake of the NLRB's 3-2 decision in *Browning Ferris* (see item 1 in LB4HR #8 for summary of the decision) which purports to find joint-employer status between entities where it did not exist under the former standard, Congress proposed legislation which would undo much of what was said. The Protecting Local Business Opportunity Act (H.R. 3459; S. 2015), if passed, will require that "two or more employers may be considered joint employers for purposes of the Act only if each of shares and exercises control over essential terms and conditions of employment and such control over these matters is actual, direct and immediate." To read full text of the bill and follow the action while in committee, take a look at <https://www.congress.gov/bill/114th-congress/senate-bill/2015>.
9. **Stated Differently** - Here are some hot topics for you multi-state employers:
 1. **California** - The California Fair Pay Act will take effect on January 1, 2016. This law requires equal pay for equal work performed by women and men and creates a civil action for employees who have been discharged or retaliated against for exercising this right. It also creates a private right of action if an employer prohibits employees from disclosing their own wages, discussing others' wages and inquiring about others' wages. There are still exceptions to the requirement, where the employer can show a difference in pay based on a seniority system, merit system, a quality/quantity productivity measure or other bona fide factor other than sex . . . but the proof burden on the employer is much higher than it used to be. Document retention period is extended from two to three years.
 2. **District of Columbia** - If passed, the proposed Universal Paid Leave Act will provide D.C. area employees with up to 16 weeks of paid family and medical leave in any 12-month period. Employers will be required to make quarterly contributions ranging from .5% to 1% of each employee's pay into a fund managed by D.C. Employees earning up to \$1000 per week would receive 100% of the employee's average weekly wage during qualifying absences and higher earners would receive 50% of that amount, up to a max of \$3000/week.

3. **District of Columbia** - Effective January 1, 2016, D.C. will require employers of 20+ employees to provide at least one of three qualified transportation benefits.
4. **New Jersey** - Since there was no increase in the consumer price index for the Aug. 2014 to Aug. 2015 year, the state minimum wage will remain at \$8.38/hour during 2016.
5. **New Mexico** - Health care employer did not violate state law anti-discrimination/reasonable accommodate statute relating to disabilities by discharging a physician assistant who tested positive for medical marijuana. Summary judgment for the employer was upheld based on argument that it is a federal contractor who accepts Medicare/Medicaid reimbursements and must therefore comply with the federal Drug-Free Workplace Act. *Smith v. Presbyterian Healthcare Services*
6. **New York City** - The NYC Commission on Human Rights released guidance to help employers comply with the ordinance limiting use of credit checks on existing and prospective employees. A copy can be found at <http://www.nyc.gov/html/cchr/downloads/pdf/CreditHistory-InterpretiveGuide-LegalGuidance.pdf>.
7. **Ohio** - The U.S. Supreme Court has refused to issue cert in *Yeager v. FirstEnergy Generation Corp.*, leaving intact the lower court decision and 6th Circuit affirmation that an employee who refuses to provide his or her SSN to the employer, based on a belief that the number is the "Mark of the Beast," cannot state a claim for religious discrimination.
10. **For the Birds** - If you like being tweeted and want breaking news on employment law changes (and the occasional random cheer for K-State & Cats in the NFL . . . go Tyler Lockett!), follow me on Twitter. I'm at @amross.

Until next time,

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