



BV-SHRM NEWSLETTER

CHAPTER NO. 0330 ♦ OCTOBER 2014

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MONTHLY PROGRAM & LUNCHEON

TOPIC: 21st Century HR – Moving HR into the Future

WHEN: October 2, 2014

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

WHERE: **Holiday Inn (NOTE LOCATION CHANGE)**
2500 Earl Rudder Fwy, CS (west side of Highway 6, at the corner of Southwest Parkway)

COST: \$12/ BV-SHRM member
\$15/ non-members
Note: The guest price is now \$15

SPEAKER: John Greer

RSVP: Please **RSVP by noon, Friday, September 26** to
rsvpprograms@gmail.com.

MENU: Homemade lasagna, salad, bread, tea, and water

PROGRAM DETAILS

21st Century HR – Moving HR into the Future

The Human Resource Profession is a product of the 20th century economy: labor intensive, heavy industrial manufacturing, and plenty of available talent and jobs. As a result, HR's focus was on compliance and administration. In 2014, we find ourselves in a knowledge and service-based economy, where both jobs and talent are scarce. HR needs to adapt to this brave new world quickly in order to survive. This session will look at the major differences between 20th and 21st century HR practices as seen from the eyes of CEO's and discuss how to go about retooling HR to be successful in the 21st century

SPEAKERS BIO

John Greer

John is known for his integrity and forthright style as well as being the go-to person to get things done. His areas of expertise include Talent Management, Strategic Planning, Metrics and Analytics and Project Management. John has over 30 years of senior Human Resource management and consulting experience and over 25 years of HR Systems experience. John's Human Resources management experience includes over twenty years as the Chief HR Officer, reporting to the CEO, of three separate organizations. He holds an MBA and a BS in Psychology and has been certified as a Senior Human Resources Professional (SPHR) with the Human Resources Certification Institute and a certified Human Resource Information Professional (HRIP) with the International Association of Human Resource Information management (IHRIM).

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Please notify Krystal Broussard of any changes to your contact information.
krystal@bovrdreadymix.com

Upcoming Events

MARK YOUR CALENDARS

Chamber After Hours

October 16, 2014, 5:30-7:00 p.m.

Chrome

HR Southwest

October 5-8, 2014

Ft. Worth, TX

2014 Workplace Diversity Conference & Exposition

October 13-15, 2014

New Orleans, LA

Sheraton New Orleans

2014 Red, White & You, Veteran's Hiring Event

November 13, 2014

Center for Regional Services

3991 E 29th Street, Bryan

[see attached flyers for more information]



**WORKFORCE
READINESS
EVENT!**

DIVERSITY MATTERS

Diversity Dates for October:

National Diversity Day: 3

World Smile Day: 3

Yom Kippur: 3-4

Eid-Al-Adha: 4

World Mental Health Day: 10

Columbus Day 13

Boss's Day (or National Boss's Day) : 16

Diwali: 23

Islamic New Year: 25

Halloween or All Hallows Eve: 31

Are you  ? BV-SHRM is.

Linked in

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

Visit us and become a Fan of BV-SHRM on

facebook



Be on the lookout for the above logo!

It will be a featured symbol this year as we expand the marketing of our chapter!

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!

We have an obligatory happy dance to do...

"Clap along if you know what happiness is to you,
Because I'm happy,
Clap along if you feel like that's what you wanna do!"

Now that I have that song stuck in your head, please join me in thanking Diana Dean for her tremendous efforts with our BV-SHRM Business Seminar! Over 80 attendees were treated to a great day of learning, networking and a little fun and six continuing education credits! Thank you to those members who were there. A special thanks to our sponsor St. Joseph's as well as to Boyd Ready Mix for printing the manuals. We hope that everyone will be on the lookout for information about our 2015 Seminar and make plans to attend, as we continue to grow this great event.

As we round out this year, it is time, again, for us to nominate our Building Value with HR Excellence Award nominees. We look forward to awarding one valued member of the HR community with this distinction every year at our December holiday luncheon and award banquet. We are currently collecting email addresses of your supervisors. If you would like to ensure that your supervisor gets the invitation to nominate YOU, please send his/her email address to Retha Youell at ryouell@cstx.gov.

Additionally, a reminder that we want you for leadership roles in BV-SHRM! If you are interested in becoming a part of the BV-SHRM Board, please reach out to Retha again at ryouell@cstx.gov.

Please do not forget to RSVP for the October meeting by this Friday, September 26 so that we can accommodate the Holiday Inn's catering timeline. And on that note a very important reminder that our meeting on October 2 will be at the Holiday Inn on Southwest Parkway in College Station. This is a temporary change and we will be back at the Hilton Garden Inn for our November meeting.

Again, I look forward to seeing you October 2 at the Holiday Inn in College Station and hopefully we will see many of you at HR Southwest the following week!

Sincerely,

Katherine

TAMU STUDENT CHAPTER

Volunteer as a Mentor

BV-SHRM has a unique relationship with the Texas A&M SHRM Chapter <http://shrm.tamu.edu/>. We are asking that you consider volunteering as a mentor for one semester; typically, meeting about two times. These students are eager to learn about HR firsthand from those who are currently practicing in the field. This information helps them not only have a better understanding, but also make career choices.

Please consider this unique learning experience and volunteer your time as a mentor. We are looking for mentors with experience at all levels.

For more questions about this opportunity, please send them to Tami Overby toverby@tamu.edu. The deadline for applications is **Friday, October 3, 2014**.





MEMBER NEWSLETTER

LEGAL BRIEFS

Welcome to Legal Briefs for HR, an update on employment issues sent to over 5000 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."

Welcome to new subscribers who attended my speeches for the North Texas Compensation Association and the North Texas SHRM chapter!

The kids are back in school and you may have a few things to learn, too:

1. **The Hobby Lobby Effect** - Check out <http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/womens-preven-02012013.html> for more info on religious-based exemptions to the Affordable Care Act's mandate to provide covered contraceptive devices and services to female employees and their dependents. This is the latest development in the conundrum that began with the ACA mandate for employers to provide employees with certain preventive care and screenings, as determined by the Department of Health and Human Services, to include all FDA-approved contraceptives. Some religious employers protested, so an exception was created for them. The exception was insufficiently broad for some employers, as seen in the *Hobby Lobby* case, which involved a for-profit, closely-held corporation rather than a religious organization. See LB4HR#6-2014 for a more complete discussion of *Hobby Lobby* and the ensuing dust-up caused by the Supreme Court's grant of an injunction to Wheaton College over this same issue. On August 22, HHS and DOL issued an interim final rule, providing protesting employers with an alternate method to avoid paying for contraceptive methods which they object to for religious reasons. Now, the employer can fill out the self-certifying form that religious organizations use or they can notify HHS in writing of their religious objection.
2. **Money Matters** - The OFCCP is proposing to resurrect the idea of an annual compensation survey of covered federal contractors and subcontractors with more than 100 employees. If that describes your business, the Notice of Proposed Rulemaking issued on August 6 which means you've got 90 days from that date to study the proposal and comment. For more info, including how to comment, go to http://www.dol.gov/ofccp/EqualPay/EPR_FAQs.html.
3. **EEO-1 Report** - This report is due by September 30 and can be done on-line, at <http://www.eeoc.gov/employers/eeo1survey/index.cfm>. If you are not sure whether you are required to file, here is the Joint Reporting Committee's description of who must file -- <http://www.eeoc.gov/employers/eeo1survey/whomustfile.cfm>. Don't forget that the Joint Reporting Committee has switched from the 2000 to the 2010 SOC job codes (six digit) and census codes (four digit) when assigning job titles to the ten EEO-1 job categories. You can go to <http://www.eeoc.gov/employers/eeo1survey/jobclassguide.cfm> for a chart showing the changes.
4. **Raiderettes Rule!** - Apparently they rule on the Oakland Raiders' sidelines and in the courtroom. Earlier this year (L4HR #2-2014), I wrote about a lawsuit filed by one Raiderette, claiming the team's practice of treating the cheerleaders like independent contractors and paying each one a lump sum at the end of the season violated wage and hours laws. The lawsuit morphed into a putative class action and the parties settled for \$1.25 million.
5. **Your Presence is Not Required, Part Two** - In LB4HR#4 - 2014, I wrote about the 6th Circuit's holding that "attendance" as an essential function of the job does not always mean the employee has to come to the workplace, opening the door to far wider use of telecommuting as an ADA reasonable accommodation. The panel decision in *EEOC v. Ford Motor Company* was vacated on September 2 and a rehearing *en banc* has been granted.

6. **Email Etiquette** - A European-based employer with global operations has an interesting take on the vacation auto-reply to incoming email. Employees have the option to have all incoming email automatically deleted, but not before the sender is gently advised that the recipient is "on holiday," told the email will be deleted, and provided the contact info of another person who can help. The idea is that employees should truly relax and not be checking emails while on vacation with the bonus of returning to a clean in-box on the first day back. Hmm. Would that work at your place?
7. **Mum is Not the Word** - An employer was found to have violated section 8(a)(1) of the NLRA by having an unwritten rule that employees are not to discuss disciplinary action taken against them. The story unfolds with employee Lee Craft being placed on a final written warning due to performance problems and his offensive behavior toward a female co-worker. Craft was told to stay away from the female and her work area, so what does he do? He hops a forklift, drives to her work area, and yells that he has been punished due to the female's complaint, while showing her co-workers his final warning. The employer fired Craft for "disrupting the operation, and sharing confidential documentation and information during working hours and continu[ing] to use intimidating language towards management." Oops. Apparently they forgot (or didn't know) that employees have a protected right to discuss their terms and conditions of employment with co-workers, including final warnings. Craft filed an unfair labor practice (ULP) and the NLRB Director sided with the employee. Then the Administrative Law Judge dismissed the complaint but the Board reversed in part, upholding the discharge. The Board opined that Lee Craft would've been fired anyway, even without display of his final warning to others, but the Company still violated section 8 by having an unwritten rule prohibiting employees from discussing their write-ups. Lesson learned? The ULP process could've been avoided entirely had they simply fired him for the disruption and left out the part about "confidential information" when documenting their reasons for the discharge. *Phillips Electronics North America Corp.* (Aug. 2014).
8. **Simmering Debate on Poaching** - The latest in the Silicon Valley employee poaching suit has defendants Google Inc., Apple Inc., Intel Corp. and Adobe Systems still haggling with the plaintiffs after the judge rejected a proposed \$324.5 million settlement to be paid by the companies. The judge is turning up the heat, suggesting an early 2015 trial date. Years ago, the Department of Justice found that the agreements between the companies to not poach each other's highly skilled software engineers had restrained competition, drove down wages for the workers and violated anti-trust laws. Not long after the DOJ settled with the parties, the class action lawsuits were filed. Lucasfilm, Pixar and Intuit settled with the plaintiffs for \$20 million. The remaining four defendants decided to settle in April of this year, shortly after the class was certified. The parties originally agreed to a \$300 million settlement, but one plaintiff and the judge said "no."
9. **Good News, Bad News for Franchisors** - Franchisors walk a tightrope, trying to develop and protect their trademark, brand, and service/product via procedures applied by franchisees in their stores without exercising so much control over day-to-day operations in those stores that the franchisor is deemed liable for the franchisee's mistakes. Domino's surely had celebratory pizza upon learning that the CA Supreme Court had sided with it in finding the franchisor not liable for sexual harassment of a franchisee employee by her boss. *Patterson v. Domino's Pizza LLC* (Cal. Aug. 2014). The plaintiff claimed she was sexually and harassed by her assistant manager. She sued the assistant manager, the franchise and the franchisor, but the franchise filed for bankruptcy protection leaving the franchisor as the main target. The franchise agreement and how the two entities interact were put under the microscope, with the positive outcome being tied to a finding that the franchisee was the one who managed daily employment decisions in the store, such as hiring, firing, supervising and disciplinary actions. On the other hand, the NLRB has not been so generous. The Office of the General Counsel of the NLRB OK'd unfair labor practice complaints against McDonalds USA LLC (franchisor) arising from franchisee employee complaints. Further, the Board is revisiting its view of who is the employer where work is being done via a prime contractor/subcontractor or franchisor/franchisee arrangement in *Browning-Ferris Industries of California, Inc. d/b/a Newby Island Recyclery & FRP-!!, LLC d/b/a Leadpoint Business Services*. The Board's GC submitted an *amicus* brief, in which he argued that indirect control is sufficient to make the prime contractor (or franchisor) a joint employer.
10. **Headhunter Becomes the Hunted** - "Honesty is the best policy" is now being applied to the existence of restrictive covenants, at least in NY. A hospitality company may move forward in its claims for fraudulent misrepresentation and negligent misrepresentation against the executive search firm it hired, based on the firm's statement that a potential placement they presented to the company was not subject to a non-solicitation agreement with his former employer. Oh, but he was. And it became expensive after they hired the dude and his former employer came after him and his new employer. *Amsterdam Hospitality Group v. Marshall-Alan Associates* (N.Y. Sup. Ct. -1st App. Div. Aug. 2014).

11. **That's Sick** - The other shoe has finally dropped with the EEOC suing an employer over its employee wellness program. For several years, other federal and state entities have outlined the requisites for a nondiscriminatory wellness plan (e.g., the HIPAA nondiscrimination regulations), but each of these guidelines contained a warning that compliance may cause the employer to run afoul of other statutes, such as the ADA (which the EEOC enforces). The EEOC remained on the sidelines for years, occasionally cautioning that wellness plans that used financial sticks and carrots to encourage employee participation "might make the plan involuntary" meaning that the ADA's wellness program exception would not apply and any medical exams or inquiries under the wellness program would violate the ADA unless it was shown the exam/inquiry was both job related and consistent with business necessity. In the lawsuit, filed on August 20, the EEOC paints this picture -- [1] under the 2009 wellness program, employees were required to complete a health risk assessment which included use of a Range of Motion Machine, self-disclosure of medical history and blood work; [2] Ms. Schobert objected and asked about voluntariness of the program and confidentiality of the results; [3] Ms. Schobert was called into HR and told to keep quiet about her objections and to adjust her attitude; [4] Ms. Schobert declined to participate in the wellness program which meant she would be 100% responsible for her health insurance premium (while participants' premiums were paid 100% by the employer) and was assessed an additional \$50/month penalty; [5] Ms. Schobert was fired . . . the EEOC says the reason was her objections to and refusal to participate in the wellness program and that other reasons given by the employer were pretextual. *EEOC v. Orion Energy Systems, Inc.* (E.D. Wisc. Aug. 2014). My sense has been that the EEOC was waiting for the right case to make its point. Apparently this is the one. Stay tuned!
12. **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 and TAB members enjoy a discounted rate of \$199 while nonmembers pay \$299.
13. **Stated Differently** - Here are some hot topics for you multi-state employers:
 1. **California** - CA Labor Code 2802 requires employers to indemnify employees for all business-related expenses. A CA court has held that when employees use their personal cell phones for work-related calls, section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills. *Cochran v. Schwan's Home Service, Inc.* (CA Ct. App -2nd Dist. Aug. 2014).
 2. **California** - Effective July 1, 2015, the Healthy Workplaces, Healthy Families Act of 2014 will require paid sick leave for certain employees in the state. Paid sick leave will be available to anyone who works in CA for 30+ days per year and will accrue at the rate of one hour of paid time off for every 30 hours worked. Use of paid time off commences on the 90th day of employment and employers are not required to pay out unused balances when employment ends (but unused days will be reinstated if the employee is rehired within one year of the termination of employment). The Act contains both individual notice and posting requirements.
 3. **Illinois** - Effective January 1, 2015, pregnancy is a protected category under the state's anti-discrimination law and employers are to provide reasonable accommodation in the form of modifications to the job and work environment unless such change amounts to an undue hardship. Suggested changes include more frequent or longer restroom breaks, breaks for periodic water intake, breaks for periodic rest, private non-bathroom space for expressing breast milk and breast-feeding, seating accommodation, assistance with manual labor, temporary transfer to a less strenuous job, part-time or modified work schedule, job restructuring, assignment to a vacant position and providing leave. Employers may require medical certification of the need for a modification before it is granted. There will be a required notice (for your employee handbook) and a mandatory poster available at <http://www2.illinois.gov/dhr/Pages/default.aspx> soon.
 4. **Kentucky** - An 18-year employee who was asked to sign a noncompete for the first time (but did not do so) was not bound by noncompete and his employer's argument that continued employment served as the needed consideration failed. *Charles T. Creech v. Brown* (Ky. Aug. 2014).
 5. **Maine** - Salesman in Maine signs a letter agreement with employer in California, including a CA choice of law provision for any disputes under the agreement. Salesman leaves years later and sues for unpaid commissions using both contract and quasi-contract theories. Federal court jurors decide he has no right to commissions in 2009 and 2010 under the 2005 agreement, but he was entitled to quasi-contract damages for services rendered to the employer. The district court applied CA law, which provided liquidated damages, when calculating damages. The 1st Circuit

reversed, saying the 2005 agreement's choice of law provision was n/a to quasi-contract recovery and that ME law should be used since that's where most of the work was done. ME wage and hour law offers treble damages, so salesman was very happy. *Dinan v. Alpha Networks, Inc.* (1st Cir. Aug. 2014). Lesson? Your choice of law provision may not be bullet-proof.

6. **Massachusetts** – Effective August 8, employers of 50+ employees must provide up to 15 days of unpaid leave in any 12-month period if an employee or covered family member of the employee is a victim of domestic violence. Employees may be required to exhaust all available forms of paid time off before taking unpaid leave. Advance notice of the need for leave is required unless there is a threat of imminent danger. Employers are required to notify employees of this new right but the State has not provided suggested language or a poster at this time.

14. **For the Birds** - If you like being tweeted and want breaking news on employment law changes (and the occasional random cheer for K-State . . . Auburn, we're coming after you!), follow me on Twitter. I'm at @amross.

Until next time,

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Please send information about this organization to:

Name: _____

Address: _____

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Email: _____

Your Name: _____