



BV-SHRM NEWSLETTER

CHAPTER NO. 0330 ♦ SEPTEMBER 2015

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MONTHLY PROGRAM & LUNCHEON

TOPIC: HR Policies and Procedure Development

WHEN: September 3, 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: Rachel Hale, Hagan Law Group

RSVP: Please **RSVP by noon, Friday, August 30** to
rsvpprograms@gmail.com.

MENU: Chicken Fajitas with tortillas and fixings, rice, beans, chips, tea and water

PROGRAM DETAILS

Employee Handbooks serve a variety of purposes, from communicating standards of expected behavior to providing important documentation in legal proceedings. In this presentation, participants will have the opportunity to learn what key policies will protect them in legal proceedings, how such policies should be implemented and communicated to employees and the latest laws that should be considered when updating employee handbooks.

SPEAKERS BIO

Rachel Hale focuses on labor and employment law. For more than twelve years, she has worked as a Human Resources Professional with Texas Health Resources and American Airlines.

She is a graduate of Texas Wesleyan School of Law where she was a member of the school's Arbitration Team and a Graduate Research Assistant, performing research in all areas of labor and employment law.

Rachel is a certified mediator and received a graduate certificate in Dispute Resolution from Southern Methodist University. This experience gives Rachel a practical perspective in the application of laws in the workplace – from hiring to firing and the relationship management that take place in between.



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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



Chamber After Hours

September 17, 2015, 5:30-7:00 p.m.
Sterling Auto Group

BV-SHRM Business Seminar

September 15, 2015
8:15 a.m. – 4:15 p.m.
Phillips Event Center

BV-SHRM Program

October 1, 2015
Topic: Legislative Update
Speaker: Lon Willimans, Polsinelli

HR Southwest

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



Make sure you check out the attached Business Seminar Flyer and Registration for the event on September 15! We hope to see you there!

DIVERSITY MATTERS

Diversity Dates for September

National Preparedness Month	http://www.ready.gov/september
September 5	Krishna Janmashtami (Hindu)
September 7	Labor Day
September 11	Patriot Day
September 13	Grandparents' Day
September 13-15	Rosh Hashanah (Jewish)
September 15–October 15	National Hispanic Heritage Month
September 16	Mexican Independence Day
September 17	Constitution Day/Citizenship Day
September 20-27	International Deaf Awareness Week
September 21	World Peace Day/International Day of Peace
September 22-23	Yom Kippur (Jewish)
September 27- October 4	Sukkot (Jewish)

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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."

A hearty welcome to new subscribers who attended my presentation at the TAB/Texas SHRM Employment Relations Symposium in San Antonio on July 9!

It's summertime and the living is not so easy, for some of the following folks:

- Contractors Corner** - There is so much activity in D.C. relating to federal contractors, I may set up a separate section in LB4HR just for them. It seems that the Obama administration is implementing measures it cannot compel Congress to pass via executive order. The vast majority of employers are unaffected, but federal contractors and subcontractors are squarely in the bulls-eye for the following and more:
 - That's Sick** - A draft executive order is being fast-tracked to require federal contractors to provide their workers a minimum of 56 hours of paid leave per year, to tend to their own illness/injury or to tend to an ill/injured family member.
 - Federal Contractor Décor** - If your mandatory poster display is not already bursting at the seams, here is a voluntary poster from the OFCCP for you to consider. Check it out at http://www.dol.gov/ofccp/regs/compliance/AgencyPoster_JRF_QA_508c.pdf.
 - Federal Contractor Reporting** - The old VETS-100 and VETS-100A forms have morphed into the VETS 4212, which can be filed on-line at <https://vets4212.dol.gov/vets4212>. If you've got a federal contract or subcontract for \$100K or more, this means you! The portal opened on August 3 and your deadline to file this annual report is September 30, 2015.
 - Fair Pay & Safe Workplace Executive Order (aka Blacklisting Rule)** - The comment period on proposed guidance and regulations implementing this E.O. has been extended for the second time. The new deadline is August 26, 2015. This may be a sign that you should say something, if you have not already?
- Another I-9 Uh Oh** - One of the documents on List A of the Form I-9 (which goes to prove authorization to work in the U.S.) is an Employment Authorization Document (EAD). The Department of Homeland Security issued three-year EADs to many individuals under the president's executive order expanding Deferred Action for Childhood Arrivals (DACA) eligibility and work authorization . . . until a court enjoined that expansion (see item 2 on LB4HR #2). In May of this year, USCIS began notifying holders of the three-year EADs that they should return them to USCIS and get a two-year EAD, in exchange. In the meantime, many employers have accepted the invalidated three-year EADs as part of their new hires' I-9 verification process. There is no firm guidance from DHS/USCIS on how to document the swap for I-9 purposes, so if you have some of these you may want to check with your employment counsel for next steps.
- Unpaid Intern Drama** - Many employers have found themselves in the crosshairs of a DOL proceeding or FLSA lawsuit for offering unpaid jobs to interns, especially in "glamor" industries like entertainment and sports, where the number of applicants clamoring to get a toe in the door far outnumbers the jobs available. For the most part, courts have methodically applied the DOL's six-factor test, which they co-opted from 1947 Supreme Court case involving railroad industry trainees. Fast forward to today and a Second Circuit decision which found for the employer by ignoring the DOL's test and applying a "primary beneficiary" test. The employer won, in part, because the work experience tended to benefit the intern more than the employer and the tasks were closely tied to the intern's formal education program by integrated coursework (instead of serving as free labor for tasks bearing little relation to the education program). This decision is limited to the 2nd Circuit but is certainly food for thought when developing or modifying intern programs. *Glatt et al v. Fox Searchlight Pictures, Inc.* (2nd Cir. July 2015).
- Two Strikes, Yer Out** - The second of two lawsuits filed to stop the NLRB's "ambush" election rule has failed. *Chamber of Commerce of the United States of America et al v. NLRB* (July 29, 2015). See LB4HR #5 for discussion of the rule and the earlier suit, filed in Texas, which also failed.

5. **Tasty Topics For Your Next HR Cocktail Party . . . Discuss:**

1. Per the NLRB, an individual who files a collective action FLSA claim is engaged in protected concerted activity, even when the employee was not asked by other employees to file. *200 E. 81st Restaurant Corp.* (July 29, 2015).
2. The world's most hated dentist (the one who shot Cecil the lion) apparently was sued nine years ago by one of his female employees for sexual harassment. The matter was reportedly settled for \$127,500.00. Is there anyone left who likes this guy? No, I didn't think so.
3. The SEC OK'd a rule this past Wednesday that will require most public companies to regularly reveal the ratio of the CEO's pay to that of the average employee with the company.
4. There is no reasonable expectation of privacy in pocket-dialed (or insert the body part of your choice) conversations recorded by the presumably unintended recipient. *Huff v. Spaw* (6th Cir. July 2015). In this case, the taped and subsequently shared conversation related to a pending termination of employment. Oy!

6. **Are You Secure?** - The FTC thinks businesses could use some help in this area and issued a guide this past June called "Start With Security: A Guide for Business" which can be found at <https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf>. There are ten plain-language tips ranging from not collecting personal information that you do not need to carefully disposing of sensitive data when you no longer need it. A pretty good read and only 15 pages long.

7. **RIDE 'Em, Cowboy** - The USCIS' Records and Information from DMV's for E-Verify (RIDE) program was created to link E-Verify with states' drivers' license databases and hopefully catch bogus ID documentation as it is offered to employers by prospective employees. MS, FL, ID, IA and NE are already in the program and ND just hopped on.

8. **It's Baaaack!** - Apparently inspired by the DOL's July 15 pronouncement that "most workers are employees" (and not independent contractors) or perhaps presidential candidate Hillary Clinton's July 13 comment that the on-demand economy is creating exciting opportunities and innovations but also raising tough questions about compensation for this type of work, the Payroll Fraud Prevention Act of 2015 was introduced by two U.S. senators on July 29. This bill, if passed, would create stiff monetary penalties for employers who misclassify workers as contractors and require that workers receive written notice of their classification upon hire (including contact info for the DOL, in case the worker does not agree) and existing staff would get their notice within six months of enactment of the law. This is the latest iteration of bill that first appeared back in 2010 as the Employee Misclassification Protection Act. That did not sound scary enough so the name was changed to Payroll Fraud Prevention Act in 2013 and in each subsequent filing of this bill. There are a lot more bells and whistles on this one . . . you can read full text and track its progress at www.congress.gov. No bill number issued yet, so just use the bill name when searching, for now.

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

1. **California** - AB 304 was signed into law on July 13, providing "fixes" to open issues in CA's Healthy Workplace Healthy Family Act of 2014 (aka the paid leave law). To see the clarifications, go to <http://www.dir.ca.gov/dlse/ab1522.html>.
2. **California (Los Angeles county)** - A new ordinance was approved which will raise the minimum wage for county workers and employees working in unincorporated areas within the county (including nonprofits and businesses) to \$15/hour by 2021. Employers with 26 or more employees must pay at least \$10.50/hour as of July 1, 2016 with annual bumps each July 1 to \$12/hour (2017), \$13.25 (2018), \$14.25 (2019) and \$15 (2020). Employers with 25 or fewer employees would have a little more time . . . they bump to \$10.50/hour as of July 1, 2017 with annual bumps ending at \$15 on 7-1-21.
3. **Connecticut** - Effective July 2, 2015, employers may not prohibit employees from disclosing, inquiring about, or discussing his or her wages or the wages of another employee; require employees to sign a waiver pertaining to this protection; or discharge, discipline or otherwise discriminate against an employee who discloses, inquires about or discusses his or her wages or the wages of another employee. This law is broader than a similar ban under the NLRA (which excludes managers and supervisors from protection) and defines "employee" as "any individual . . . permitted to work by an employer" so that's going to protect contractors, too.
4. **Illinois** - Proposed rules for pregnancy accommodation and discrimination have been published and the final rules are expected to issue in October of this year. Unless the accommodation amounts to undue hardship, employers are expected to offer changes to expectant moms such as part-time status, modified work schedule, modified duties, temporary transfer to other position, more frequent or longer breaks, light duty and more. Employers are also expected to maintain fringe benefits even though a reduction in hours worked would normally cause ineligibility.
5. **New York** - A board assembled by Gov. Cuomo issued a July 22 formal proposal to increase the minimum wage for fast-food workers to \$15/hour, to be phased in over a three-year period.

6. **Pennsylvania** – Paying employees via mandatory payroll cards violates PA law, which requires that wages be paid in either “lawful money of the United States” or a “check.” *Siciliano v. Mueller* (June 2015). “Check” includes direct deposit to the employee’s designated bank account, so long as the employee requests that arrangement, in writing.
 7. **Rhode Island** – Effective July 15, 2015, employers are authorized to pay employee wages via electronic pay cards. Prior to this enactment, the state’s Department of Labor and Training took the position that this payment method was not legal since there was no express statutory authorization. Employees must be able to make an unlimited number of inquiries about their account balances, by phone or on-line, for no charge. They must also be allowed to make at least one withdrawal of funds per pay period (or per week, if normal pay periods are more often than weekly), for no charge.
 8. **West Virginia** – Effective July 1, 2015, employers in WV are required to verify the employment status of new hires before they begin to work. The new law can be found at <http://www.legis.state.wv.us/WVCODe/Code.cfm?chap=21&art=1B> and conflicts with the federal Form I-9 process in several respects including when the verification is done, what documents are to be used and how long records must be retained. Strict adherence to the WV version means you will run afoul of the federal law, so be sure to understand and comply with both.
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 . . . it’s almost time for football!!!!), follow me on Twitter. I’m at @amross.

Until next time,

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