



# BV-SHRM NEWSLETTER

CHAPTER NO. 0330 ♦ NOVEMBER 2017



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## MONTHLY PROGRAM & LUNCHEON

- TOPIC:** December Luncheon
- WHEN:** December 7, 2017
- TIME:** 11:30 AM-1:00 PM
- WHERE:** Phillips Events Center  
1929 Country Club Dr.  
Bryan, TX 77802  
<http://phillipsevents.com/>
- COST:** \$20/ BV-SHRM member  
\$25/ non-members or late RSVP
- Speaker:** **Kristi Soria, President and Kris Lorch, President Elect**
- RSVP:** Please *RSVP by 5:00PM, Friday December 1, 2017*
- MENU:** Holiday Luncheon with Dessert, water tea and coffee served

## PROGRAM DETAILS

Chance Drawings to Support the Foundation and Salvation Army

Buy tickets (1 free at check-in) to put in for your favorite items! All funds raised during the fundraiser will be matched and donated to the Salvation Army.

BV-SHRM Board Induction.

Krystal Broussard HR Award of Excellence

Please give us suggestions on how to reach out to your employer/supervisor for nomination of the Krystal Broussard HR Award of Excellence.

Contact Gari Jones about  
sponsorship opportunities at  
[GNJones@ag.tamu.edu](mailto:GNJones@ag.tamu.edu)

## Board Officers

President  
Kristi Soria

President Elect  
Kris Lorch

VP of Programs  
Elizabeth Galvan, SHRM-CP, PHR

VP of Membership  
Candi Nelson

Treasurer  
Krystal Broussard, SHRM-CP, PHR

Secretary  
Kimberly Williamson, SPHR

Past President  
Lisa Villalobos, SHRM-CP, PHR

## Directors & Chairs

Certification Director  
Alyssa Kieschnick, PHR

College Relations Director  
Sarah Tobola, SHRM-SCP, SPHR

Diversity Director  
Amanda Abu-Ajameh

Government Affairs Director  
Kathy Schroeder

SHRM Foundation Director  
Thom Holt, SPHR

Workforce Readiness Director  
Brittany Williamson

Historian  
Retha Youell, SHRM-SCP, SPHR

Hospitality Chair  
Diana Dean, SHRM-SCP, SPHR

HRSW Ambassador Chairs  
Kelley Ervin  
Darla Guerra, PHR

Newsletter Chair  
Angela Alston

Business Seminar Chair  
Jessica Lennerton

# Upcoming Events

## MARK YOUR CALENDARS

Meet your 2018 Board as they take charge of leading our chapter into 2019

President- Kris Lorch  
President-Elect- Jessica Lennerton  
Secretary- Kimberly Williamson  
Treasurer- Krystal Broussard  
VP-Programs- Deborah Couch  
Past-President- Kristi Soria  
Workforce Readiness- Brittany Williamson  
Government Affairs- Kathy Schroeder  
HRSW Ambassador- Kelley Ervin/Darla Guerra  
Newsletter/Diversity- Angela Alston  
Hospitality- Nancy Mera  
Social Engagement - Candi Nelson  
Web- Lauren Pearce  
SHRM Foundation- Thom Holt  
Certification- Alyssa Kieschnick  
Recertification- Michelle Merritt  
Sponsors- Gari Jones

## PRESIDENT'S PIECE

This year is almost to an end and this will be my last President's letter. It has been a wonderful year and I thank you for all the opportunity to serve you. We as a chapter have been able to contribute to our community with our Professional Clothing Drive benefiting Project Unity, donated to our Texas SHRM chapters affected by Harvey, started a resume review class with the Ringer Library, and hosted a Business Seminar.

I am especially grateful of the members who have served on the board this year. The effort each board member contributed to their position helped continue to grow, educate, and give back to our members and community in various ways.

I look forward to celebrating all of our accomplishments at the Philips Event Center on Thursday, December 7. As a reminder we will hold a special raffle auction to raise money for both the SHRM Foundation and the Salvation Army. If you would like to donate an item to our auction, please contact me at [genman696@gmail.com](mailto:genman696@gmail.com).

Please remember to RSVP for the Holiday Luncheon by Friday, December 1, to see the Philips Event Center's catering deadline. Also, please note that our cost of the Holiday Luncheon will be \$20 for members who RSVP on time and \$25 for guests, non-members.

Again, it has been a pleasure to serve you all and you are in great hands with Kris Lorch at the helm!

Happy Holidays,

Kristi Soria

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



December is AIDS Awareness Month and Universal Human Rights Month

1-3 - The City of College Station's Christmas in the Park at Stephen C. Beachy Central Park from 6-10 p.m. Free activities include old-fashioned hayrides, cookies and hot cocoa, entertainment, inflatables, children activities, real snow slides and photos with Santa.

1 - World AIDs Day

3 - Annual Bryan College Station Christmas Parade at 2 p.m. beginning on University Dr. at Parking 50 on the A&M Campus

7 - Pearl Harbor Remembrance Day

8 - Lighted Christmas Parade at 6:30 p.m. beginning in Downtown Bryan at the intersection of 24th St. and Bryan St.

10 - BCS Marathon and half marathon beginning at 7 a.m.

13 - First day of Hanukkah

13 - National Guard Birthday

20 - Last day of Hanukkah

21 - December Solstice

24 - Christmas Eve

25 - Christmas Day

26 - Kwanza & Boxing Day

31 - New Year's Eve

Are you  ? BV-SHRM is.

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



## Refer A Friend

I would like to refer a friend to BV-SHRM.

Please send information about this organization to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Your Name: \_\_\_\_\_



AFFILIATE OF  
**SHRM**<sup>TM</sup>  
SOCIETY FOR HUMAN  
RESOURCE MANAGEMENT

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). My mission is to help you stay in the know about employment issues. Anyone is welcome to join the email group . . . just reply via email that you'd like to be added to the list and you're in! Back issues are posted at [www.munckwilson.com](http://www.munckwilson.com) under Media Center/Legal Briefs and you can also join the group by clicking on "Subscribe."

Grab the fall beverage of your choice (make mine a hot PSL) and enjoy this gridiron-themed peek at what's up in the workplace

- 1. Prevent Defense** – In an apparent rebuff to eight state and 30+ local mandatory paid leave laws and ordinances, the Workflex in the 21<sup>st</sup> Century Act (HR 4219) was introduced in Congress, with full support of SHRM. Assuming the bill passes and if an employer opts into the plan, it would be required to offer a preset amount of paid time off to eligible employees plus workflex options and, in return, it would be relieved of compliance with those irksome (and often conflicting) state/local paid sick time requirements. Also, the federal contractor obligation to provide paid sick time (which took effect in January 2017) would be deemed satisfied. The workflex options include telecommuting, job sharing, compressed workweeks, biweekly workweek arrangement, flex hours and predictable scheduling. For complete text of the bill, check out <https://www.congress.gov/115/bills/hr4219/BILLS-115hr4219ih.pdf>
- 2. Huddle Up** – With the swearing-in of William Emanuel on September 27, the NLRB is complete with five members and a 3-2 Republican majority (until Chairman Miscimarra leaves in December). The Senate confirmed Peter Robb yesterday (Nov. 8) and he is expected to be sworn in shortly as the new General Counsel, replacing Richard Griffin. In the meantime, Jennifer Abruzzo is serving as Acting General Counsel. Mr. Emanuel received a not-so-welcome gift on November 7, when a group of U.S. senators asked him to identify all possible conflicts of interest arising from his prior gig as a shareholder with employment law firm Littler Mendelson PC. They want to know the clients he served as outside counsel during the two years prior to his NLRB appointment and any cases in which his firm has represented or is representing a party to a Board proceeding.
- 3. Injured Reserve** – Employers and the EEOC have been in a tug-of-war over the scope of the ADA's reasonable accommodation requirement, especially where the requested accommodation is time off beyond what is required by law (e.g., FMLA) or offered under the employer's policies. Firing an employee who fails to return to work the day after FMLA ends, or requiring that the employee be "fully healed" (see #4 below) or have no medical restrictions before being allowed to return to work will be a busted play, just about every time. But what about the guy who has surgery on the last day of FMLA leave and then asks for several more months of time off? That's what happened in *Severson v. Heartland Woodcraft Inc.* (7<sup>th</sup> Cir.). The employer opted to end his employment but politely suggested he could return and apply for rehire if/when he was medically released. The release came three months later and so did the ADA lawsuit. The district court found for the employer and the 7<sup>th</sup> Circuit affirmed, pointedly stating "[t]he ADA is an antidiscrimination statute, not a medical-leave entitlement." The Court further mused that accommodations are limited to measures that enable the employee to return to work and an employee who cannot work is not a "qualified individual" and therefore loses the protection of the ADA. The Court nixed the EEOC's argument that a long-term medical leave is a type of reasonable accommodation but conceded that a brief period of leave might be required under the ADA if it is in the vein of a part-time or modified work schedule, or reassignment to a vacant position. The key is that the employee must be able to do some work during that extra leave period. The EEOC takes a different view so employers should continue to evaluate these requests for extra leave time and be prepared to defend your position.
- 4. Punt Formation** – The EEOC entered into a \$9.8 million consent decree with American Airlines and Envoy Air Inc., settling claims that the airlines violated the ADA by not allowing disabled employees to return to work until all medical restrictions were removed. In addition to the settlement amount, the companies must modify their disability and return to work policies, post notices, conduct training sessions and select an ADA coordinator who

will assist the HR Department in responding to accommodation requests, including possible transfer of the individual.

5. **Overtime** – JPMorgan Chase & Co. agreed to pay \$16.7 million to assistant branch managers who argued they were misclassified as exempt from the FLSA’s overtime requirements. The employer tried to reduce the back pay amount by arguing that the ABMs worked little or no OT due to [1] nine bank holidays per year; [2] so-called “bankers hours”; and [3] time off for vacation, illness/injury, personal matters and daily breaks/lunches, but decided to settle in the face of the uncertainty of class-type litigation. The lesson here is that lots of folks consider themselves to be “professionals” but many do not qualify for that exemption under the DOL’s duties test, or any of the other exemptions. Job title, generous pay and a cushy office don’t matter either. The DOL’s tests are notoriously hard to apply because the dictionary meaning of certain words and the DOL’s interpretation of those words are worlds apart . . . if this kind of analysis is not part of your regular duties, find someone who can guide you.

6. **Time Out** – In his 2016 permanent injunction, which halted the DOL’s proposed increase in the FLSA minimum salary necessary to maintain most white collar exemptions, Judge Amos Mazzant nixed the increase and also concluded that the DOL had exceeded its statutory authority by attempting to impose an automatic hike in the salary amount every three years. The Trump-era DOL initially did not appeal the preliminary injunction when it was made final back in August but on October 30, they filed an appeal specific to the pronouncement that the DOL lacks the authority to tinker with the salary rate. It appears the DOL is moving along with its plan to issue a new rule which will feature a minimum salary somewhere between the current level (\$23,660/year) and the level proposed by the Obama DOL (\$47,476/year) and then ask the 5<sup>th</sup> Circuit to vacate the permanent injunction.

7. **Fake Hand-Off** – HR staff have been repeatedly warned about a pernicious scam where a bad person spoofs an email to make it appear it is coming from the company’s c-suite, asking that copies of all employee W-2s be submitted via return email immediately. Keep your eyes peeled for a similar scam which asks for copies of employees’ Form I-9, purportedly by an officer with the U.S. Citizenship and Immigration Services (USCIS). Repeat after me . . . the USCIS never requests copies of I-9s via email. See <https://www.uscis.gov/i-9-central/whats-new>.

8. **Signing Day** – The EEOC announced it is now offering potential charging parties an on-line option to commence the process of filing a charge of discrimination, harassment and/or retaliation against their prospective, current or former employer. EEOC offices in Charlotte, Chicago, New Orleans, Phoenix and Seattle ran a six-month pilot, culminating in the nationwide EEOC Public Portal going live on November 1. The Portal can be used by aggrieved individuals to ask questions about a potential claim and to request and schedule intake interviews. Once the charge has been accepted and prepared by the EEOC, the individual can sign the document on-line via electronic signature. You can view the portal at <https://publicportal.eeoc.gov/portal/Login.aspx?ReturnUrl=%2fportal%2f>.

9. **Trash Talk** – The NLRB’s decision in *Browning-Ferris* (a waste management company), which imposed a new standard making it easier to find that an employer and an entity providing temps were joint employers, may be on the verge of being swept away. The Save Local Business Act (HR 3441), if passed, will amend both the NLRA and the FLSA so that a company becomes jointly liable only when it has “direct control” over its business partners workers. For full text of the bill and to watch the action as it unfolds, go to <https://www.congress.gov/bill/115th-congress/house-bill/3441>. The bill advanced in Congress on November 7 on a 242-181 vote.

10. **Safety** – A lawyer and the former VP for Safety at FedEx, Scott Mugno, has been nominated to be the next head of OSHA.

11. **Show Me the Money** – IRS announced increased caps on both employee and the combo employee/employer contributions to 401(k) plans in 2018. The employee max is \$18,500 (a \$500 increase) and the max for ee and er combined is \$55,000 (a \$1000 increase). Those of us aged 50 and over may still tack on a “catch up” contribution of up to \$6000.

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

1. **Arizona** – AZ state agencies are now subject to a “ban the box” executive order signed by the Governor on Nov. 6.

2. **California** – Effective January 1, 2018 the existing mandate for sexual harassment training of supervisory employees is amended to include discussion of gender identity, gender expression and sexual orientation. The interactive training must be done by qualified trainers with expertise in the subject material. There is also a new requirement to post notices about transgender rights.

3. **Illinois (Chicago)** – The Hotel Workers Sexual Harassment Ordinance (aka the cheekier “Hands Off Pants On Ordinance”), passed on October 11, requires hoteliers in Chicago to provide employees who work alone in hotel rooms with panic buttons and to both distribute and post sexual harassment policies. The panic buttons must be distributed to affected workers by July 1, 2018. The policy has a list of required elements which are not yet posted at <https://www.cityofchicago.org/city/en/depts/cchr/provdrs/discrim/alerts/2017/october/hotel-workers-sexual-harassment-ordinance.html>. Stay tuned.

4. **Louisiana** – On November 1, the Louisiana Court of Appeal affirmed a district court ruling that the Governor’s April 2016 executive order, prohibiting employment discrimination based upon sexual orientation and gender identity by employers who work on State contracts, is an “unconstitutional interference with the authority vested solely in the legislative branch of our state government . . . .” The court’s rationale is that there is no current state or federal law that squarely addresses this issue.

5. **New York City** – The existing paid sick time law has been renamed (Earned Sick and Safe Time) and amended to apply to an employee’s need for time off due to being a victim of human trafficking, domestic violence and sexual assault, in addition to the current use for illness or injury. Go to <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2867849&GUID=DCC83D1C-0D6A-4E38-9FEB-6974CA947D6F&FullText=1> and click on the Final Version in the Attachments section.

6. **New York City** – Retail and fast food employers should take note of the Fair Workweek Law, which takes effect on November 26, 2017. The purpose of the law is to provide workers with more predictable schedules and to provide more money when subjected to last-minute scheduling changes. Study up on the proposed rules for this new law at <http://rules.cityofnewyork.us/content/implementation-fair-workweek-law>.

7. **Pennsylvania** – Medical marijuana will be available to “certified users” in PA by May 1, 2018. The PA Department of Health just opened its medical marijuana patient and caregiver registry, facilitating patients who have qualifying medical conditions to sign up and receive an ID card from the state. The underlying law prohibits employment discrimination against a person based solely on being a certified user, but we’ll have to wait and see the implementing regulations to understand what employers may and may not do in applying their drug policies to certified users.

8. **Washington** – The state DOL has completed regulations supporting a new paid sick leave law which takes effect on January 1, 2018. These regs will help you draft a compliant policy but be sure to coordinate with municipal regs in Seattle and Tacoma which also mandate paid sick days for certain employees. There is a link to the new rules in the press release at <http://lni.wa.gov/News/2017/pr171020a.asp>.

13. **Thankfulness** – In the spirit of the season, thank you for the work you do each day for your respective organizations. As HR and labor/employment folks, we are faced with a dizzying array of situations to address from the ridiculous to the sublime, often with the potential to substantially impact a person, a department or the entire organization. In case you've not been told this lately, your work makes a difference to many people around you, in ways large and small. Thanks for being willing to step into the gap, deal with the turkeys, and keep things moving along (in most cases) smoothly!

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), follow me on Twitter. I'm at @amross.

Until next time,

Audrey E. Mross

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