BV-SHRM NEWSLETTER

CHAPTER NO. 0330 ◆ OCTOBER 2017

MONTHLY PROGRAM & LUNCHEON

TOPIC: The Difference Maker! Managing Change in the Transforming Multi-Generational Workplace

WHEN: October 5, 2017

TIME: 11:30 AM-1:00 PM

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

.

COST: $15/ BV-SHRM member
$20/ non-members or late RSVP

Speaker: Lillian Davenport, SHRM – SCP, SPHR

RSVP: Please ***RSVP by 5:00PM, Friday September 29, 2017***

MENU: Potato soup with applewood smoked bacon and Roasted Chicken Noodle soup.
Baked potato with butter and assorted toppings.
Herb pasta salad with fresh vegetables.
Salad bar including fresh spinach, fresh greens, chopped bacon, eggs, cucumbers, black olives, cheddar cheese, diced tomatoes, red onion, jalapeño cheddar croutons and assorted dressing.

Pound cake with berry topping and shipped cream.

PROGRAM DETAILS

*Identify and manage multi-generational workplace behaviors

*Tailor and apply a framework, strategies and techniques to navigate people through an ever-changing work environment

SPEAKERS BIO

Lillian M, Davenport has 20+ years' experience as a human resources leader in large, complex organizations in the financial services and insurance industries. She is currently Director, Employee Relations and Advocacy, for the Americas Human Resources Shared Services at the American International Group, Inc. (AIG). Lillian's past experience includes leading enterprise-wide Organizational Development, Training and Process Improvement initiatives at JPMorgan Chase. Davenport is passionate about working with leaders to transform organizations through effective change management, employee engagement, proactive employee relations and leadership development for emerging professionals. Davenport's practice areas include change management; leadership/management coaching and development; positive work environment strategies and training; enterprise-wide human resources program development and implementation; business and human resources process improvements; and employment-related risk management. Davenport holds a Master of Science degree in Occupational Education from the University of Houston, is a graduate of Leadership Houston Class and is a Birkman Certified Consultant.

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

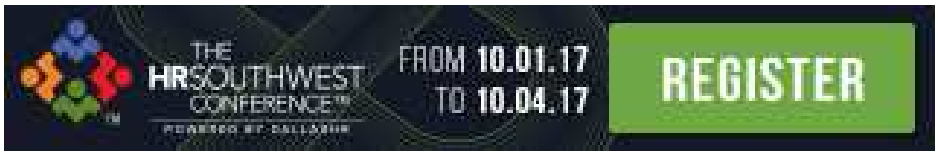
HRSW Ambassador Chairs
Kelley Ervin
Darla Guerra, PHR

Newsletter Chair
Angela Alston

Business Seminar Chair
Jessica Lennerton

Upcoming Events

MARK YOUR CALENDARS



BV-SHRM will be reviewing resumes every 1st Tuesday of the month at Ringer Library, 1818 Harvey Mitchell Pkwy S. College Station, TX 77845. If interested in volunteering, please contact Kristi Soria at genman696@gmail.com.

PRESIDENT'S PIECE

Howdy,

Autumn is finally here, now just waiting on cooler weather to appear. September has been a busy month and we kicked off with the BV-SHRM Business Seminar. Jessica Lennerton did a wonderful job organizing this event, and we want to say a huge thank you to everyone that donated items for the raffle. The funds raised were donated to the SHRM Foundation, and BV-SHRM provided a matching donation to Texas SHRM Hurricane Harvey Relief as well.

We are working hard to migrate back to using bv-shrm.shrm.org, and currently updating all members login information. In the next few days, you should receive an email to confirm your login information and update your password. Thank you for being patient with us during this time.

If you are interested in serving on the board, please make sure to inform me at genman696@gmail.com. This is a great way to serve our HR professionals and community, and the opportunity to earn credits for certifications.

Sincerely,

Kristi Soria

Announcements:

Brazos Valley Food Bank has a new program "Together We Grow", and is looking for employment partners to consider and hire candidates who have successfully completed 150 hours of personal and professional development. If you are interested in finding out more about this program, please contact Alaina Jalufka at 979-779-3663 or by email alainaj@bvfb.org.

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

DIVERSITY MATTERS

October is Breast Cancer Awareness Month and Down Syndrome Awareness Month

2 - National Custodial Workers Recognition Day
4 - National Taco Day
6 - National Manufacturing Day
9 - Native American Day & Columbus Day
10 - World Mental Health Day
11 - National Emergency Nurse's Day
16 - Boss's Day
17 - National Pharmacy Technician Day
18 - Medical Assistants Recognition Day & "Women Painting Women: In Earnest" at J Wayne Stark Galleries at the Memorial Student Center at Texas A&M University
27 - Navy Day
31 - Halloween

Are you in ? BV-SHRM is.

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

LinkedIn

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: _____

BV-SHRM Brazos Valley Society for Human Resource Management

AFFILIATE OF SHRM 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 under Media Center/Legal Briefs and you can also join the group by clicking on "Subscribe."

Grab a lemonade, comfy lawn chair, your shades and mosquito repellant before your marinate your mind with the latest from LB4HR
-

1. **Speak Now or Forever Hold Your Peace –** As mentioned in the last LB4HR, the U.S. Department of Labor (DOL) wants to know what you think about raising the minimum salary necessary to maintain certain white collar exemptions under the FLSA. The existing number is $23,600/year. The proposed number, which was nixed via injunction late last year, was $47,476. DOL's Secretary Acosta mused that a good number was "somewhere around $33,000." You have until September 25 to share your informed opinion on this matter. See the RFI posted at https://www.federalregister.gov/documents/2017/07/26/2017-15666/request-for-information-defining-and-delimiting-the-exemptions-for-executive-administrative

2. **New Form I-9 (Yes, Again)** – Effective September 18, there is yet another new Form I-9 for you to add to your on-boarding process. No huge changes here, but continued use of the old firm is not an option. USCIS has also updated the very useful employer guidance on Form I-9, so be sure and check out the new M-274 at https://www.uscis.gov/i-9-central/handbook-employers-m-274.

3. **EEO-1 Update** – The good news is that your Standard Form 100 (aka EEO-1 Report) is not due next month. The EEOC revised the form to include pay data and shifted the due date to March 31, 2018, to give us all time to gather our wits and our W-2 data. See https://www.eeoc.gov/employers/eeo1survey/2017survey-qanda.cfm. There is more good news in that both Congress and business interests have pushed to rescind the pay-gathering exercise. It also doesn't hurt that the Acting Chair of the EEOC, Victoria Lipnic, is on the record as being opposed to the wage analysis piece. She asked the recently confirmed chair of OMB's Office of Information and Regulatory Affairs, Neomi Rao, to decide if the wage data portion will go forward or be scrapped, by the end of August, so that employers can prepare their HRIS for the task, if necessary. How about that . . . no bad news!

4. **NLRB Movement** – Chairman Philip Miscimarra announced he will step down at the end of his five-year term, in December, and not seek reappointment. The four-year term for the current General Counsel, Richard Griffin, ends in November. The reported favorite for his replacement is Peter Robb, a management-side attorney who was an NLRB field attorney and worked as chief counsel to board member Robert Hunter, a Republican.

5. **Fluctuating Workweek . . . Not!** – Some employers rely on the FLSA's "fluctuating workweek" method to pay nonexempt workers a salary while limiting costs tied to overtime wages. A 1998 4th Circuit decision upheld use of that approach for EMTs who alternated between 24 and 72-hour workweeks. More recently, a district court agreed with that approach for nuclear power plant shift supervisors who alternated between 36 and 48-hour workweeks. However, on appeal the 5th Circuit said "not so fast" and opined that a bi-weekly alternating, but fixed, schedule is not necessarily a fluctuating schedule as is necessary to use the FLSA's fluctuating workweek method. *Hills v. Entergy Operations, Inc.* (5th Cir. 8-17). This method has limited appeal, due to the onerous requirements tied to its use, and it just got trickier.

6. **Millennial Benefit** – Pain-producing amounts of student debt among our young folks have some employers offering a new employee benefit of student loan repayment. Congress took notice and several bills are in the works, to offer those kindly employers a tax break. One example is the Student Loan Repayment Act (H.R. 615) which, if passed, would allow employers to claim a work opportunity tax credit for "eligible students" and would provide a three-year tax credit equal to 50% of the start-up costs to create a student loan repayment program.

7. **Fiduciary Rule Being Braked (Again)** – On July 6, the DOL filed a Request for Information asking if affected parties needed more time to prepare for three fiduciary rule prohibited transaction exemptions slated to take effect on Jan. 1, 2018. The DOL then notified the District Court of MN (regarding the *Thrivent v. Acosta* litigation) that it submitted proposed amendments to the rule which would push that effective date out to July 1, 2019 and extend the transition relief to that date, too. The transition relief is explained in Field Assistance Bulletin No. 2017-2. It says that during the transition period between June 9, 2017 and January 1, 2018, the agency would not pursue claims against fiduciaries who are making good faith efforts to comply with the law. Depending on the response to the RFI, additional changes to the rule, beyond the extended effective date, are entirely possible. Stay tuned!

8. **Giving Pot Use a Pass** – Per the National Conference of State Legislatures, 29 states plus D.C., Guam and Puerto Rico, allow use of medical marijuana. http://www.ncsl.org/research/health/state-medical-marijuana-

laws.aspx. These laws, coupled with passage of state laws decriminalizing recreational pot use, have employers wondering how far they can go in banning such use or the effects of recent use in their workplaces. The earliest court cases tilted in favor of employers being allowed to continue their "no drugs" rules, finding no recourse for job applicants and employees who tested positive. The tide is shifting, however, with a handful of states telling employers they cannot discriminate against lawful users, even when they test positive. Those states include AZ, CT, DE, IL, ME, NV, NY, MN and RI. On August 8, a CT U.S. District Court judge found in favor of a job candidate whose offer of employment was rescinded based on a positive test for marijuana. The prospective employee used medical marijuana at night to treat her PTSD and produced evidence that she would not be "under the influence" during work hours. Her prospective employer, a nursing home, defended its actions by citing to a host of federal laws, including the Controlled Substances Act (which makes it a crime to use, possess, or distribute marijuana), the Americans With Disabilities Act (which excludes illegal drug use from its protections) and the Food, Drug and Cosmetic Act. The court pointed out that none of these laws make it illegal to employ a marijuana user. It's "federal contractor" defense also fell flat. *Noffsinger v. SSC Niantic Operating Company, LLC* (D. Conn. 8-17). In July, the Supreme Judicial Court of Massachusetts ruled that employers may be required to accommodate medical marijuana use by modifying their drug testing policies. This case was filed when a marketing rep was fired after one day on the job, due to a positive drug test. She had warned her prospective employer that she would test positive since she used medical marijuana two or three evenings per week for her gastrointestinal disorder. *Barbuto v. Advantage Sales & Marketing, LLC* (Mass. 7-17). In some states, employers' ability to eliminate their employees' off duty, state-sanctioned use of pot may be going up in smoke. This is a trend worth watching.

9. **Waive On** – A panel of the 5th Circuit found that a mandatory class or collective action waiver did not affect a "substantive right" of employees under section 7 of the NLRA. *LogistiCare Solutions v. NLRB* (5th Cir. 8-17). With that, the court refused to enforce the NLRB's order that the employer cease and desist use of the waiver with its new hires.

10. **Automatic Termination Policy is Automatic Headache** – For years, the EEOC has been warning employers that their automatic termination policies may run afoul of the ADA, if the reason for the absence is a qualifying disability. Even policies that apply to all types of absence (not just those arising for medical reasons) and which have very long runways (e.g., one year) have drawn their ire. The message has been that employers may be required to offer additional time off, beyond what it is required by law (e.g., FMLA) or offered via the employer's leave policies, as a form of reasonable accommodation. UPS settled an eight-year lawsuit over its policy which automatically discharged workers who were absent for 12 months. *EEOC v. United Parcel Service* (N.D. Ill. 8-17). As part of the settlement, it must modify that policy to offer additional time off for absences related to disability, unless it can show undue hardship. To better understand the EEOC's view, check out their guidance at https://www.eeoc.gov/eeoc/publications/ada-leave.cfm.

11. **IMHO** – In my humble opinion, it's great that the DOL's Wage and Hour Division will reinstate issuance of opinion letters! The practice ended in 2010 and was replaced with less-satisfying Administrative Opinions. Secretary Acosta announced the pending return of opinion letters, on June 27. The nice thing about the opinion letters is that they were the agency's reply to specific questions posed by real employers (with presumably very real problems). The identity of the curious employer remains secret, but the answers are posted on the agency website for all of us to see and learn from.

12. **Expensive Patch** – Nationwide Mutual Insurance Co. settled with 32 states' Attorneys General to the tune of $5.5 million over a massive data breach caused by the lack of a patch. The personal information of 1.2 million customers was exposed when hackers found access to the sensitive info via a third-party web application hosting software used by Nationwide and its affiliate, Allied Property & Casualty Insurance. A software patch issued to those companies in 2009, but they failed to install it. Your business owns or licenses the personal information of your employees, customers and others on your computer systems . . . talk to your IT folks and make sure that they are on top of their game. AL and SD are the only two states who do not have data breach notification laws, as summarized at http://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx. Further, these laws are trending toward being more restrictive, not less so . . . see the link below for amendments to the MD law which take effect in January.

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

1. **California** – The CA Division of Labor Standards Enforcement has a new form for employers of 25+ employees, which must be provided to new employees upon hire and to other employees, upon request. The form is at http://www.dir.ca.gov/dlse/Victims_of_Domestic_Violence_Leave_Notice.pdf. The law was enacted some time ago but employers were not required to comply until the Labor Commissioner developed the form. Time's up!

2. **California (San Francisco)** – Effective July 18, 2018, private sector employers in San Francisco may not ask about or rely on a job applicant's pay history during the hiring process or as part or negotiating or offering salaries to new hires. A copy of the ordinance is at https://sfgov.legistar.com/View.ashx?M=F&ID=5328258&GUID=A694B95B-B9A4-4B58-8572-E015F3120929.

3. **Maryland –** The existing data breach law has been amended with changes that take effect on January 1, 2018. In addition to an expansion of the definition of "personal information" and tightening of the notice of breach obligation, MD CODE COM LAW sec. 14-3502 is amended to require destruction of employee records containing personal information, when they are disposed of. http://mgaleg.maryland.gov/2017RS/bills/hb/hb0974e.pdf.

4. **New York (New York City)** – NYC's "ban the box" law was enacted nearly two years ago, but the regulations (which expand upon the original enactment) just arrived, at https://www1.nyc.gov/assets/cchr/downloads/pdf/FC%20rules%206.1.17%20FINAL.pdf. Notice that use of a template job application in multiple jurisdictions, which includes any reference to criminal history, is a *per se* violation even if the form includes a NYC disclaimer.

5. **Washington** – The WA Supreme Court offered clarification of employers' liability for failing to provide state-mandated meal breaks. The law requires a meal period of at least 30 minutes for an employee who works five or more hours, unless the employee waives this right. The district court favored a standard under which employers' only obligation is to provide a meaningful, reasonable opportunity to take a break. The Supreme Court decided there is a greater burden on employers. A complaining employee establishes a prima facie case by showing she or he did not get a break. The burden then shifts to the employer to show either [1] the employee did take a break; or [2] a valid waiver of the break existed. *Brady v. Autozone Stores, Inc.* (Wash. 6-17). Lesson learned? Get that waiver in writing!

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. For all of you alums and fans of the universities in the Big 12 Conference, there is a big pre-season kick-off at Trinity Groves between 2 and 5 p.m. on Saturday, August 26. Put on your colors and come on down!

Until next time,

Audrey E. Mross

Labor & Employment Attorney

Munck Wilson Mandala LLP

600 Banner Place

12770 Coit Road Dallas, TX 75251

972.628.3661 (direct)

972.628.3616 (fax)

214.868.3033 (iPhone)

amross@munckwilson.com

www.munckwilson.com