

# The Butler/Warren County Buzz

## March 25 Monthly Meeting

Hosted by Miami University Student SHRM Chapter



2007 SHRM **SUPERIOR MERIT AWARD**  
CHAPTER

**Speaker:** Dr. Thomas Murphy

**Location:** [Miami University, Shriver Multi-Purpose Room](#)

*\*Further meeting info (time, cost, and credit) coming soon!*

### **Topic: Managing Human Resources During Challenging Times – the Impacts of Legislative, Regulatory, and Market Changes**

On Tuesday, February 17, President Obama signed into law an economic legislation. **HR 1, the American Recovery and Reinvestment Act of 2009 (ARRA)**, which is intended to aid the faltering economy and **includes several important provisions affecting the workplace**. HR professionals need to be knowledgeable about the new law's workplace initiatives such as COBRA, health information technology, work opportunity tax credits, unemployment modifications, trade adjustment assistance, executive compensation limits and H-1B visas limitations.

Please join us as Dr. Murphy shares both his practical experience and knowledge in developing your strategy in meeting these new challenges.

Initially a law professor and associate dean of a law school, Thomas Murphy interrupted his teaching experience with what was intended to be a brief "practical venture" in the private sector. That detour turned out to be 23 years in the supermarket and food manufacturing industry. In 1998 he returned to teaching—his first passion and one he was committed to revisit. Mr. Murphy has blended his practical experience as a senior corporate executive with the traditional and rigorous elements of academe and molded an effective set of leading-edge learning experiences for students. He has taught both undergraduate and graduate students in the U.S., Europe, and the Middle East.

### A MESSAGE FROM THE PRESIDENT

March is the month that we normally showcase the talents of our Student SHRM partners at Miami University, and this month will be no exception. The meeting will be held in Oxford near or on the Miami University campus and it is completely organized by the student team. Although it will not be held at our normal meeting time, and the drive may be more out of the way, I encourage as many folks as possible to attend and show our support for the future of our HR Profession. The program has always proved to be interesting, informative and worth the extra effort.

The Student Co-President coordinating their chapter efforts this year is Christine (CJ) Steinle. She has a lot of activities planned in addition to our chapter meeting, including sending a team to the SHRM Student Games this spring, participating in plant tours and human metrics projects (for class credit) at various business.

Joshua Schwarz is the student advisor for this program at Miami and he has lots of ideas to get the students out to learn from the actual world of work, something I surely would have appreciated when I was in school. These young people will be graduating into a very different economy than those that left even 2 years ago. Anything we can contribute to their growth and understanding will be greatly appreciated.

Please contact Chad Johnson, [chadjohnson@fuse.net](mailto:chadjohnson@fuse.net), our College Relations Advocate, for more information or ideas on the great resource for both the professionals and students. I hope to see you all at our March meeting.

-Linda P. Stryker

**President**  
Linda Stryker, PHR – HR Manager  
Square D/Schneider Electric  
5735 College Corner Road  
Oxford, OH 45056  
513-523-4176  
[Linda.stryker@us.schneider-electric.com](mailto:Linda.stryker@us.schneider-electric.com)

**Secretary**  
Lisa Wray – HR Administrator  
Miami Conservancy District  
38 East Monument Avenue  
Dayton, OH 45402  
937-223-1278  
[lwray@miamiconservancy.org](mailto:lwray@miamiconservancy.org)

**Membership Advocate**  
Marc Fleischauer, SPHR – Partner  
Porter Wright Morris & Arthur, LLP  
1 S. Main St., Suite 1600  
Dayton, OH 45402  
937-449-6720  
[mfleischauer@porterwright.com](mailto:mfleischauer@porterwright.com)

**School-To-Work Advocate**  
Jeff Harvey, PHR - HR Specialist  
Great Miami Valley YMCA  
105 N. Second St.  
Hamilton, Oh 45011  
513-887-0001  
[jharvey@gmvyymca.org](mailto:jharvey@gmvyymca.org)

**College Relations Advocate**  
Chad Johnson – HR/Public  
Relations Manager  
Neturen America Corporation  
2995 Moser Court  
Hamilton, OH 45011  
513-863-1900 x.11  
[chadjohnson@fuse.net](mailto:chadjohnson@fuse.net)

**Vice President**  
Angela Sherrick, SPHR – Sr. HR Generalist  
General Revenue Corporation  
11501 Northlake Drive  
Cincinnati, OH 45249  
513-605-7402  
[asherrick@generalrevenue.com](mailto:asherrick@generalrevenue.com)

**Treasurer**  
David Beckett, CEBS  
Principal  
Mercer Health & Benefits, LLC  
525 Vine Street, Suite 1600  
Cincinnati, OH 45202  
513-632-2624  
[dave.beckett@mercerc.com](mailto:dave.beckett@mercerc.com)

**Certification Advocate**  
Sandy Stude, SPHR – Corporate Director,  
HR  
Amtex, Inc.  
1500 Kingsview Drive  
Lebanon, OH 45036  
513-933-6215  
[sstude@amtexna.com](mailto:ssstude@amtexna.com)

**Legislative Advocate**  
Jackie Cordell, PHR  
Human Resources Consultant  
40 W. Manor Drive  
Springboro, OH 45066  
937-305-9528  
[JTCPHRHRM@aol.com](mailto:JTCPHRHRM@aol.com)

**Foundation Advocate**  
Katie Frey, PHR - HR Consultant  
Mercy Health Partners  
4600 McAuley Place  
Cincinnati, OH 45242  
513-981-6201  
[kafrey@health-partners.org](mailto:kafrey@health-partners.org)

**Diversity Advocate**  
Alicia King – Sr. HR Representative  
Square D/Schneider Electric  
5735 College Corner Road  
Oxford, OH 45056  
513-523-4176 x.291  
[alicia.king@us.schneider-electric.com](mailto:alicia.king@us.schneider-electric.com)

**Public Relations Advocate**  
Brittany McIntyre - HR Assistant  
Amtex, Inc.  
1500 Kingsview Drive  
Lebanon, OH 45036  
513-933-6267  
[bmcityre@amtexna.com](mailto:bmcityre@amtexna.com)

**Past President**  
Kristi Cain, SPHR – Director of HR &  
Safety  
Crane America, Inc.  
3440 Office Park Drive  
Dayton, OH 45439  
937-293-6526 x. 246  
[kristi.cain@craneamerica.com](mailto:kristi.cain@craneamerica.com)

**BWSHRM LOCAL MEMBERSHIP DRIVE**



Once again, we want to challenge our members to participate in another year of growth by inviting a new member to join our chapter. In return for a new member application, you are invited to join us at the next breakfast meeting at no cost to you. Together, we can make it happen!

To request a membership application, please contact our Membership Advocate:  
Marc Fleischauer, SPHR – Partner, Porter Wright Morris & Arthur, LLP  
1 S. Main St., Suite 1600, Dayton, OH 45402  
937-449-6720 or [mfleischauer@porterwright.com](mailto:mfleischauer@porterwright.com)

Or visit our website at [www.ohioshrm.org/butler](http://www.ohioshrm.org/butler) and click on the membership link for more information. If you are a SHRM National Member, your local dues are only \$45 per year. If you want to join our local organization only, your local dues are only \$90 per year.

**We hope to see you soon!**

HR PROFESSIONAL VOLUNTEER OPPORTUNITY

We have an opportunity for you to utilize your leadership abilities in working with Hamilton and Badin High School students!

Tuesday, April 21, 2009  
8:30 a.m. to 1:30 p.m.  
Great Miami Valley YMCA  
Camp Campbell Guard  
4803 Augspurger Road

The Hamilton Business Education Collaborative invites you to interact with students and facilitate groups in “**Character Building and Leadership Experience**”(Low ropes and group team building activities). We are looking for 6-8 leaders to join us on the 21<sup>st</sup> as we work with these students – our leaders of tomorrow.



Contact Jeff Harvey, PHR at GMVYMCA to express your interest.

[jharvey@gmvymca.org](mailto:jharvey@gmvymca.org) or (513)887-0001 ext. 24

REMINDER: APPROACHING EFFECTIVE DATES

COBRA Provisions/  
Changes in the  
Economic Stimulus  
Plan

For group health plans using calendar months as the period of coverage, the subsidy applies beginning 3/1/09.

GINA  
Title I of the Genetic Information Nondiscrimination Act (GINA), which applies to group health plans, effective 5/21/09, except for calendar-year plans.

Revised Form I-9  
Employers must begin using on 4/3/09

Express Request key term: Economic Stimulus Plan of 2009 (ARRA)

Express Request key term: Genetic Information Nondiscrimination Act (GINA)

Express Request key term: Revised Form I-9

**YAHOO! hotjobs®**  
**Journal News**

IT TAKES TWO  
to Find  
the Right One  
[Journal-News.com](http://Journal-News.com)

YAHOO! hotjobs®

Place your ad online or  
call 1-866-901-HIRE.

For more information, click here:  
<http://jobsearch.coxohio.com/>  
or call 1-866-901-HIRE.

SCHOLARSHIP OPPORTUNITY

Beginning now and continuing through April 1, 2009, SHRM is accepting applications for the new Susan R. Meisinger Fellowship for graduate study in HR. The award was established by SHRM, the HR Certification Institute and the SHRM Foundation in recognition and honor of the historic contributions of former president and CEO, Susan R. Meisinger, SPHR, in advancing the human resource profession and developing its next generation of leaders.

At least one Susan R. Meisinger Fellow will receive as much as \$10,000 annually for up to two years of graduate study in HR. This award will be given to the best and the brightest-the individuals who will be the next generation of leaders for our profession. To be eligible to apply, an HR professional must meet at least one of the following criteria: 1) be a member of SHRM or 2) hold a professional certification (e.g., PHR, SPHR or GPHR certification from the HR Certification Institute).

FAQs and an application form can be downloaded from the fellowship web site at <http://www.shrm.org/meisinger>, where you can also find a list of the other necessary application materials required to be considered for the fellowship.




Many may not know this, but the SHRM Foundation is a 501(c)(3) non-profit affiliate of SHRM. A leading funder of HR research grants, the Foundation produces publications and educational resources to advance the HR profession.

It also provides scholarships, and in December of 2008, 25 SHRM student members received education and certification scholarships from the SHRM Foundation.

The research topics and results funded by the SHRM Foundation can be found online. These include and extensive articles, presentations, DVDs and other tools to help HR Professionals. Many topics require SHRM membership, but there are resources that can be accessed for free. As an example:

DIVERSITY NEWS

Over the past several months, HR professionals have experienced increased levels of stress and anxiety due to recent economic conditions. From layoffs to reduced work weeks from year end reviews to changing compensation and benefit structures, we have a lot on our plates. In celebration of last month Oscar nominations for best picture, let's lighten the mood because diversity hit the big screen in three of the five films 

First up, and my personal favorite, is *Slumdog Millionaire*. It is the story of Jamal Malik, an 18 year-old orphan from the slums of Mumbai, who is about to experience the biggest day of his life. With the whole nation watching, he is just one question away from winning a staggering 20 million rupees on India's "Who Wants To Be A Millionaire?" But when the show breaks for the night, police arrest him on suspicion of cheating. This movie is a great example of diversity's secondary trait socioeconomic status. What steps have you taken in your recruitment strategy to find a gem like Jamal. If not, visit your local One-Stop Career Center to begin.

In the *Curious Case of Benjamin Button*, Benjamin's diary recounts his entire extraordinary life, the primary unusual aspect of which was his aging backwards, being born an old man who was diagnosed with several aged diseases at birth and thus given little chance of survival, but who does survive and gets younger with time. Haven't you heard the

If you are like most HR professionals, you probably lack the time to keep up with the latest research findings in human resource management. Yet knowing which HR practices have been shown by research to be effective can help you in your role as an HR professional. The SHRM Foundation's *Effective Practice Guidelines* are a series of reports that distill the latest research findings and expert opinion into specific advice on how to conduct effective HR practice. They are written in a concise, easy-to-read style to provide practical information to help you do your job better. The SHRM Foundation publishes new reports each year. Past reports include *Retaining Talent*; *Developing Leadership Talent*; *Implementing Total Rewards Strategy*; *Employee Engagement and Commitment*; and more. All of the titles are available free under "[SHRM Foundation Products](#)" on the Foundation website ([www.shrm.org/foundation](http://www.shrm.org/foundation)). The *Effective Practice Guidelines* series is made possible by your tax-deductible contributions to the SHRM Foundation.

new saying, 30's are the new 20's, 40's the new 30's, 50's the new 40's, etc. We are experiencing our own Benjamin Button in a way. Now is the time to retain not only our key talent, but our experienced talent as well. Sustaining a multi-generational workforce is key to leveraging your biggest asset, human capital, in this competitive environment.

*Milk* traces Harvey Milk's career from his 40th birthday to his death. He leaves the closet and New York, opens a camera shop that becomes the salon for San Francisco's growing gay community, and organizes gays' purchasing power to build political alliances. He runs for office with lover Scott Smith as his campaign manager. Victory finally comes on the same day Dan White wins in the city's conservative district. What policies does your company have in place to support the Gay, Lesbian, Bi-Sexual, & Transgender community? Be progressive in your approach even San Francisco's conservative district eventually saw White's merits as opposed to his personal beliefs.

Television and film were challenged to showcase more diverse talent, roles, and subject matter. With three of the five best picture nominations showcasing diversity, now is time for the business community to meet this challenge in all levels of the organization.

Happy Spring!!  
Alicia King, Diversity Advocate

## **A Warning About Warnings**

The rapid rise of retaliation claims has led some employers to question whether terminations really ought to be preceded by progressive discipline and pre-termination notice about performance problems, such as written warnings.

Arguably, yes. There still are many sound reasons for apprising employees about performance problems before termination, including simple fairness and the savings from turning a problem employee around instead of the costly alternative of hiring and training a replacement. Progressive discipline lays a paper trail that can minimize an employer's exposure to discrimination claims.

But it would be wrong to assume that progressive discipline has no legal risks. Progressive discipline may, in fact, be challenged as unlawful retaliation, a charge that rose to the second most common claim filed with the U.S. Equal Employment Opportunity Commission (EEOC) in fiscal 2007, surpassing claims of gender discrimination.

The rising tide of retaliation claims has its own legal risks, including the growing risk of being sued over warnings about performance problems.

Consider the following hypothetical: Randy has been employed by your organization for approximately one year. Her performance started out fine but has declined to marginal. Her manager, Greg, indicates that he wants to fire her.

You look at Randy's employment record and note that she has received no disciplinary warnings and that her only evaluation just a few months ago indicates that she is meeting all expectations. You tell Greg to give Randy clear notice in writing that her performance is marginal so that she has an opportunity to improve. Reluctantly, Greg issues Randy a written warning.

Two weeks later, you get a letter from an attorney representing Randy. He alleges that the warning Randy received is a product of sex discrimination. More specifically, he alleges that male employees performing the same job have similar deficiencies in their performance but they have not received disciplinary warnings.

You conduct an investigation and conclude that the disciplinary warning was justified and that the alleged male comparators do not have similar deficiencies in performance. You caution Greg about non-retaliation and make clear to him that he must give Randy every opportunity to succeed.

Three weeks later, you receive another letter from Randy's attorney. This time, he alleges that because Randy complained about discrimination and harassment, she has been retaliated against. He alleges that Randy is being excluded from meetings and training opportunities and that these exclusions began to take place after she raised legal concerns.

Greg adamantly denies the allegations. He states that Randy's performance continues to decline and that he wants to terminate her. Perhaps with the help of outside counsel, you then explain to Greg the retaliation risks.

### **Protected Activity**

In this case, it is clear that Randy has engaged in protected activity by complaining about unlawful discrimination through her attorney.

It is important to note that she would have been engaging in protected activity even if she had raised the unlawful discrimination concerns on her own.

The question then becomes whether there has been any adverse action. In 2006, the U.S. Supreme Court issued a sweeping decision broadening substantially the actions that could serve as the predicate for a retaliation claim. Specifically, in *Burlington N. & Santa Fe Ry. v. White* (548 U.S. 53 (2006)), the Supreme Court held that it is not necessary to have a tangible adverse action for there to be unlawful retaliation. Rather, a viable claim may exist with adverse changes to "material" terms and condition of employment. These could "dissuade a reasonable worker from making or supporting a complaint."

The Supreme Court went further, holding that even adverse actions independent of the employment relationship could be retaliatory.

### **A Wide Sweep**

Following the Supreme Court's decision, the lower courts have defined adverse actions very broadly for retaliation purposes. By way of example only, retaliation has been held to include:

Placing an employee on paid leave (*McCoy v. City of Shreveport*, 492 F.3d 551, 555 (5th Cir. 2007)).

Excluding an employee from the weekly training lunch that contributes significantly to an employee's professional advancement (*James v. Metro Government of Nashville*, 243 Fed. Appx. 74 (6th Cir. 2007)).

### Section 1981 Retaliation

The Supreme Court extended the reach of retaliation claims further in *CBOCS West Inc. v. Humphries* (128 S. Ct. 1951 (2008)), a case involving Section 1981 of the Civil Rights Act of 1866. Section 1981 prohibits racial discrimination with regard to making and enforcing contracts, including the terms, conditions and termination of an employment relationship.

In *CBOCS West Inc.*, the Supreme Court held that Section 1981 also covers retaliation claims in the employment context.

### Risk Selection

What does this mean for HR professionals?

When it comes to disciplinary warnings, there is a downside to giving a warning or additional warning. The warning or additional warning may decrease the discrimination risk, but it also may create a retaliation risk.

There are, nevertheless, critical business considerations independent of the legal risks that must be considered as part of the analyses. Even if providing a warning increases the retaliation risk, it is usually a necessary tool to develop talent. Most of us would not be where we are today if someone had not taken the risk to tell us where our performance was deficient.

We are dealing with risk selection—not risk avoidance. Accordingly, when it comes to termination decisions, HR professionals need to help managers understand and balance competing legal and business risks and not simply assume that some or more documentation is the answer.

### Preventive Steps

The number of retaliation claims between 2006 and 2007 increased by 18 percent. That was the largest percentage increase of any category of claims filed with the EEOC.

An employer cannot avoid a retaliation claim simply by retaining the employee. If the employee is retained but marginalized, he or she may have a viable retaliation claim, even if he or she has no "economic loss." As one prominent plaintiffs' lawyer likes to say, "every day is a new opportunity for retaliation."

While employers cannot avoid retaliation claims, there are specific steps that you can take to minimize exposure to them. By way of example:

- EEO policies should include a separate retaliation provision. This is important in creating your

corporate culture and conveying to the EEOC, a judge or jury that you understand retaliation.

- Non-retaliation should be a critical part of EEO training. The training should emphasize that avoiding an employee does not avoid a retaliation claim but may create one. The training should caution managers angry about being falsely accused from sending angry e-mails that will only make the plaintiff and plaintiff's lawyer happy.
- In deciding whether to discipline or terminate, an employer should be thoughtful but should not delay unnecessarily. When employers delay taking action against an employee, they often avoid the worker. That signals to the employee what is coming, providing him or her with the opportunity to strike first.
- If you need to delay disciplining or terminating, document the timing of the decision and the reason for the delay. If a protected complaint is made in the intervening period, you can show that the subsequent termination was not because of the complaint. In *Clark County Sch. Dist. v. Breeden* (532 U.S. 268 (2001)), judges found that employers are not required to suspend previously planned or contemplated employment actions upon receiving a discrimination complaint.
- In disciplinary documentation given to an employee, include a time frame for necessary improvement. That way, if the employee makes a complaint in the intervening period, the employer's risk in moving to the next step is reduced if, in fact, the employee has not made the necessary improvement.
- If an employee raises a complaint, his or her manager should be required to consult with an HR professional before changing the employee's terms and conditions of employment. Establishing HR oversight as a standard operating procedure will help to avoid retaliation claims and provide helpful evidence of the employer's commitment to non-retaliation.
- If an employee has not alleged discrimination or harassment and the employer wants to discipline him or her, the employer should consider as one risk in taking action short of termination whether it is creating a window of time for the employee to build a retaliation claim.

This is, however, not the only risk that employers must consider. **HR professionals should attempt to balance legal and business risks as opposed to simply avoiding legal risks.** The latter is not possible or even necessarily desirable.

In terms of developing talent, the greatest risk of all may be to take no risk at all.

(Jonathan A. Segal, <http://shrm.org/Publications/hrmagazine/EditorialContent/Pages/0209legal.aspx>)