



MAY 2007

<http://www.ohioshrm.org/butler>

May 15th – MONTHLY MEETING JOINT WITH B/W OEC

SPEAKER: Chen Ferguson, Assistant Professor of Business, Miami University Hamilton
COST: \$12.00 Members, \$15.00 Non-Members
DATE: Tuesday, May 15, 2007
TIME: 7:15 AM – Registration/Networking
 7:30 AM – Breakfast
 8:00 AM – Presentation
LOCATION: Harry T. Wilks Conference Center - Miami University - Hamilton
Directions: State Rt. 129 West into Hamilton, turn left on Rt. 127 (Martin Luther King Blvd.), turn right on Knightsbridge Dr., left on Peck Blvd. (University Blvd), Miami Hamilton is on the right.

Topic: Business Without Boundaries

Chen Ferguson, an Assistant Professor of Business at the Miami University Hamilton Campus, will be sharing some of her thoughts, experiences, and research regarding China and the U.S. and their respective roles in the international marketplace.

About Chen: Chen has extensive international business experience from both China and the U.S. and has worked in the former China State Bureau of Technical Supervision as well as facilitated multinational companies' expansion in China. She is also leading the China Initiative of Miami University regional campuses, which includes a series of "Doing Business in China" workshops that start in the fall of 2007.

Please reserve your seat by Thursday, May 10th by emailing Kristi Cain at kcain@amtex-lh.com or by calling (513) 933-6205.

President's Message

Linda Gravett and Robin Throckmorton had a phenomenal presentation on the topic of "Managing Conflict Across Generations". We learned about the different generations:

Radio Babies; (62 - 77 years old) 1930-1945
 Baby Boomers; (43 - 61 years old) 1946-1964
 Generation X; (31 - 42 years old) 1965-1976
 Generation Y; (17 - 30 years old) 1977-1990
 Millenials; (16 or younger) 1991-later

We discussed the conflicts between the generations and impacts. We also took a self assessment on how we handle conflict. This was quite interesting, I tied in several categories. Finally, we talked about methods to respond appropriately in handling generational conflicts.

Congratulations to Rich Lencyk, our Foundation Chair, and our board for accomplishing the tasks required to be a "Foundation Chapter Champion". B/WSHRM received the Chapter Champion award for 2006.

I hope to see everyone in May!

Kristi Cain, SPHR - President B/WSHRM

Take Pride in how far you have come and have faith in how far you can go

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SHRM's Sons & Daughters Scholarship Program

Twenty-four (24) scholarships of \$1,500 each are awarded annually to help finance higher education for the children of SHRM members. Each award is for either the first or second year of study at a four-year college or university.

The application deadline is **May 15, 2007**. More information, including the scholarship application form, is available on the SHRM website at <http://www.shrm.org/sons&daughters/>



Are you preparing for the generational shift in the workplace?

Gen-X-ers Born 1965-1977

Attributes/Expectations

- 29.5% of Workforce
- Entered workplace during economic recession with poor employment outlook
- Responded to workplace changes with free agency
- Constantly evaluate the workplace situation
- Work/life balance via results management and working "smarter", not harder
- Want to build own career paths
- Respect knowledge and mentoring ability, not titles or authority

X-er Strengths

- Techno savvy, info savvy, knowledge-workers
- Risk-taking, rule-breaking, results-focused speed-workers
- Goal oriented, entrepreneurial, independent
- Open minded, adaptable and flexible

Look forward to next month's generation:

Gen-Y-ers!

What is the SHRM Foundation?

The SHRM Foundation is a 501 (c) (3) Non-Profit organizational affiliate of the national Society for Human Resource Management. It was founded all the way back in 1966.

The foundation activities include providing funds for Research, Publications and a variety of educational initiatives that help advance the effectiveness of Human Resource Professionals throughout the USA.

The SHRM Foundation has assets of over \$7Million and it promotes innovation, education, Research and the use of research-based knowledge. It has a Volunteer Board of HR Members including Academics and SHRM Representatives that govern the Foundation.

All Contributions are Tax Deductible.

It has developed a new DVD Product called "Ethics – The Fabric of Business DVD." This new DVD profiles Lockheed Martin, Inc. and their work in promoting business ethics.

FREE DVD IS AVAILABLE

Second Assessment Exam Expands Options

HRCI will soon be offering two online assessment exams to help PHR/SPHR certification candidates determine their exam readiness. With two exams available, candidates will be able to assess their needs at various points in their preparation. Candidates might use different exams as—

- Benchmarks to determine which level of exam to take;
- Baselines or pretests to determine their needs in a study program;
- Post-tests to demonstrate improved knowledge after a study program;
- A "final" exam prior to taking the actual exam.

Both exams have 75 questions (actual retired test items) and are timed, so candidates have a realistic preview of what they will encounter on the test. HRCI plans to launch the second assessment exam in late April.

Encourage your non-certified colleagues to use the assessments, which can be found through the "[Assessment Exam](#)" tab on the HRCI.org homepage.

Next Meeting: June 7, 2007—FMLA/New Rulings

The NLRB Is Considering Giving Employees The Right To Use Their Company's E-Mail System To Communicate With Each Other Regarding Union Matters And Other Protected Concerted Activities

I. Introduction

One of the myths about federal labor law is that the National Labor Relations Act (NLRA) does not apply to nonunion employees. Section 7 of the NLRA provides that all employees-regardless of whether or not they are represented by a union-have the right "to engage in other concerted activities for the purpose of ...mutual aid or protection...."

"Protected" activities are defined as employee actions seeking to improve their wages, hours, or conditions of employment. An activity is "concerted" if it involves two or more employees, or an individual who acts on behalf of other employees. For example, employee conversations about wages, hours, or conditions of employment are protected and, consequently, employers cannot discipline their employees for having such conversations.

On March 27, 2007, the National Labor Relations Board (Board) heard oral argument in a case that will have a major impact on both union and nonunion employers: the Register-Guard case. The issue in this case is whether employees have the right to use their company's e-mail system to communicate with each other about union business or other protected concerted activities. Stated differently, are employer restrictions on employee e-mail use for any non-business purpose unlawful interference with the employees' Section 7 rights.

II. Guard Publ'g Co., d/b/a The Register- Guard, N.L.R.B., No. 36-CA-8743-1

A. The Facts Of The Case

In 1996, the newspaper issued a communications policy stating that all of its communications, including its e-mail system, "are not to be used to solicit or proselytize for commercial ventures, religious or political causes, outside organizations, or other non-job-related solicitations."

The newspaper's managing editor sent 50 employees an e-mail warning that the police had a report that anarchists might attend a May 1, 2000, union rally outside the building. A reporter and member of the union's executive board replied to all the recipients and quoted a police statement that he believed showed that the newspaper had tipped off the police about the rally. A few days after the rally, Suzi Prozanski, a copy editor and the newly elected union president, replied to all the recipients and explained that the newspaper had not called the police. Prozanski received a written warning for violating the communications policy by sending "a Union-related e-mail."

Because Prozanski thought she had violated the policy by using company equipment to write and send her first e-mail message, in August 2000, she used union equipment to write and send two subsequent union-related e-mails to 150 newspaper employees represented by the union. The first message urged employees to wear green to support the union's efforts to obtain a wage increase in the upcoming collective bargaining negotiations. The second message asked employees to support the union's entry in a local parade. The HR Director issued a second warning to Prozanski stating that these two e-mails also violated the communications policy.

During the October 2000 collective bargaining negotiations, the newspaper made a proposal for contract language prohibiting the use of the company's electronic communications systems for union business, including all employee discussions about the union.

B. The Administrative Law Judge's (ALJ) Decision

In February 2002, the ALJ found that the newspaper's communications policy violated the NLRA for two reasons:

1. There was evidence that the newspaper had permitted employees to use its e-mail system for personal business, and
2. The newspaper discriminatorily enforced the policy against only Prozanski for sending union-related e-mails. However, the ALJ found that the policy itself was not overboard.

Regarding the newspaper's contract proposal, the ALJ found that it was an unlawful attempt to codify a discriminatory policy.

(Continued on next page)

(The NLRB E-Mail Case - Continued)

C. The Oral Argument Before The Board

Three parties presented oral argument to the Board: the NLRB General Counsel, the Union, and the newspaper. In addition, the Board allowed attorneys representing five amici – including, the U.S. Chamber of Commerce, to participate in the oral argument.

The following is a brief summary of the arguments presented by the three parties:

- The attorney for the NLRB General Counsel urged the Board to balance employees' interests under Section 7 in communicating with each other in the workplace via e-mail with the employer's business interests in regulating the use of its e-mail system and to accommodate both interests.
- The Union's attorney argued that the Board should hold that when employers permit their employees to use their e-mail systems to communicate about non-business matters, the employees also have the right to communicate about union business or other protected concerted activities.
- The newspaper's attorney argued that its e-mail system is the company's private property, that it has the right to restrict its use, and that employees do not have a Section 7 right to use the e-mail system for non-business purposes.

D. How Will The Board Rule?

Because during the oral argument several Board Members asked questions comparing the newspaper's communications policy to a no-solicitation or no-distribution policy, I predict that the Board will apply its rules for no-solicitation, no-distribution policies to employer policies restricting employee e-mail use. Therefore, if the employer's policy restricts employee e-mail use only during working time, the policy will be considered to be presumptively lawful. However, if the employer discriminatorily enforces the policy-as the newspaper did in this case-then the policy will be found to be unlawful.

Given the significant interest in this case, do not expect the Board to issue its decision any time soon. Consequently, you will have to watch for the Board's decision. Once the Board issues its decision, I will draft a follow-up article.

III. Practical Advice

In the interim, employers should consider taking the following steps to proactively manage employee e-mail use.

1. Decide which employees should have access to your e-mail system and limit access to only those employees.
2. Assign these employees secret codes and passwords to confirm that access is limited and users can be identified.
3. Adopt a Computer, E-Mail, and Internet Use Policy that states: electronic communications are company property, electronic communication systems should be used for business purposes only, e-mail messages are automatically stored on a computerized backup system, and electronic communications are subject to review by the company at management's discretion. (If you would like a sample policy, send me an e-mail request).
4. During the oral argument in the Register-Guard case, the attorney for the NLRB General Counsel stated that employer monitoring of employee e-mails would not be considered illegal surveillance of employee union activity because employers have the right to engage in such monitoring and employees have no expectation of privacy in the e-mails they send on the employer's e-mail system. Nevertheless, to avoid disparate treatment claims, you should not single out any employee for monitoring unless you have a legitimate business reason for doing so.
5. Train all of your employees on your Computer, E-Mail, and Internet Use Policy and discipline those employees who violate the Policy.
6. Finally, consider creating an electronic bulletin board where employees can post their personal messages and notices.

If you have any questions about this article or would like to suggest a topic for a future article, please contact me.

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State Legislative Alert!

YOUR ACTION IS NEEDED! Please urge your state representative to oppose the “Healthy Families Act,” which would mandate Ohio employers to provide a specific amount of paid sick leave to their employees.

Legislation

On April 6, 2007 a petition was filed with the Ohio Attorney General to start the process of advancing a new statute entitled the “Healthy Families Act” before the Ohio General Assembly and, if successful before Ohio voters. The proposed statute is almost identical to pending federal legislation ([S. 910](#) and [H.R. 1542](#)) under the same name. The proposed Ohio statute would require that employers provide seven days of paid sick leave annually for employees working 30 hours or more a week; or a pro-rated amount of paid sick leave annually for employees working less than 30 hours per week or less than 1,560 hours per year. The proposal would not apply to employers with fewer than 25 employees.

Talking Points

Paid leave is one of the many benefits that employers voluntarily provide to recruit and retain individuals, as well as promote employee health and morale. HR professionals strive to offer the right mix of benefits to meet employees’ needs while contributing to organizational success. Unfortunately, the newly proposed Ohio legislation embodies a “one-size-fits-all” approach that would limit an HR professional’s ability to design compensation and benefit packages tailored for employees. Employers, not state government, are best situated to know the benefit and compensation needs of their employees. This new petition would:

- **Mandate Paid Leave:** Mandated paid leave would come at a significant cost to employers, and these costs would have to be made up elsewhere – perhaps through reduced wages, or reductions in other paid benefits. Any state initiative that removes or restricts an employer’s flexibility in designing and implementing employee benefit plans tends to work against employees.
- **Effect Existing Leave Benefits:** Provisions in current paid leave proposals would “lock-in” existing employer leave programs and would limit or eliminate an employer’s flexibility in making even minor adjustments to their leave benefits. In addition, many employers now combine their traditional sick- and vacation-leave benefits into a comprehensive paid-time-off plan. These types of benefit programs could be in jeopardy if employers are required to provide paid “sick” leave. The overarching concern with mandating paid leave is how these additional requirements would interact with voluntary paid leave programs.
- **Add Confusion To Family Leave Law:** Such a proposal ignores, duplicates, or conflicts with varying notice, eligibility, and entitlement provisions of existing state and federal family leave laws, creating more confusion and risk of liability for employers trying to comply with already confusing laws.
- **Result in Administrative Challenges:** New certifying, record-keeping, notice, and reporting requirements are imposed on employers in addition to keeping and remitting premiums through this proposal.

SHRM believes that paid leave programs offered *voluntarily* by employers more readily assist employees in accommodating work/life demands than “one-size-fits-all” mandates.

Action Needed

Call Your State Representative – Follow this link: <http://www.legislature.state.oh.us/>, which will direct you to your state’s legislative website. Once on the site, insert your zip code and you will be provided with your legislator-specific information.

Write Your State Representative – To write your state official, follow these steps:

1. Log onto SHRM Online by [clicking here](#).
2. Sign in using your member number and last name.
3. Click on “Governmental Affairs,” then go to “HRVoice” on the left side of your screen.
4. Choose “Write your elected officials.”
5. Click on “**Oppose Ohio’s Petition for Mandated Paid Sick Leave**” under the heading “Take Immediate Action on these Hot Issues.”