



**DECEMBER 2008**

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

**Joint meeting with OEC - DECEMBER 4<sup>TH</sup> - MONTHLY MEETING**

**SPEAKER:** Jeffrey Shoskin, Frost Brown Todd, LLC  
**COST:** \$13.00 Members, \$15.00 Non-Members  
**DATE:** Thursday, December 4, 2008  
**TIME:** 7:15 AM – Registration/Networking  
7:30 AM – Breakfast  
8:00 AM – Presentation

Approval of 1 hour of HRCI  
credit pending

**LOCATION:** Wetherington Country Club

**Directions:** Take 75 to Tylersville & turn west. Go to the entrance of Wetherington Homes, which is just past Shell & Encore Café, turn right and follow to the stop at corner of Country Club Lane. Turn right at stop and follow road to left. It takes you into Country Club parking lot.

**TOPIC: New Amendments to ADA – Get the Facts**

Jeffrey Shoskin, an attorney with Frost Brown Todd LLC, will be presenting on The ADA Amendments Act of 2008 (ADAAA) which goes into effect January 1, 2009. The law, which amends the Americans with Disabilities Act of 1990 (ADA), broadens the ADA's definition of disability and overturns certain Supreme Court decisions and EEOC regulations that narrowly interpret the ADA. More employees are likely to qualify for reasonable accommodations and protection from discrimination under the new law. Employers will want to make sure that they are familiar with the ADAAA's legal changes, and amend any applicable employment policies appropriately before that date. Jeff will summarize the most significant changes to the law and to provide tips to help employers ensure compliance with the new law.

Jeff will also cover the EEOC Guidance on Applying Performance and Conduct Standards to Employees with Disabilities. This review will assist employers in complying with the ADA when applying performance and conduct standards in the workplace.

Jeff has represented employers in all phases of private and public sector employment and labor relations matters for over 25 years. He has received the highest rating available through the only national attorney rating service. He is co-author of the chapter "Defenses to Wrongful Discharge Claims" in the book entitled, "Litigating Wrongful Termination Claims".

**Please reserve your seat by Monday, December 1<sup>st</sup> by emailing Kristi Cain at [kristi.cain@craneamerica.com](mailto:kristi.cain@craneamerica.com) or by calling (937) 293-6526 x. 246.**

## President's Message

As I write my last "President's Message", I am reminded of the support from the board members. My two and a half years in this position has been a joyful journey and filled with lots of laughter. I am thrilled to report that our chapter has almost doubled in size in the past few years from 45 members to 85 members. I want to thank all of the board members: Dave Beckett, Angie Sherrick, Marc Fleischauer, Sandy Stude, Joyce Deeter, Jeff Harvey, Linda Stryker, Katie Frey, Lisa Wray, and Brittany McIntyre. I will remain involved with this chapter for a long time. If anyone has ever thought about getting involved, do not hesitate because it is a great opportunity. The B/WSHRM chapter is #0003, the third oldest chapter in the country. I am proud to be a part of this chapter.

I thank all the members for making our chapter what it is today.

**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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## *About the Foundation*

The SHRM Foundation was founded in 1966 as a 501 (c) (3) not-for-profit affiliate of the Society for Human Resource Management (SHRM). It is governed by a volunteer Board of Directors from the HR profession, including academics, practitioners and representatives from SHRM. The Foundation funds research, publications and education to advance the HR profession and enhance the effectiveness of HR professionals. To support its important work, the SHRM Foundation conducts an annual fundraising campaign. All contributions to the Foundation are tax-deductible.

The Foundation promotes research, innovation and the use of research-based knowledge. With an annual budget of approximately \$1 million, it funds [major research projects](#) that have a direct and practical impact in advancing the HR profession.

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### Changes in Fiscal Year – Membership Dues

Butler/Warren SHRM has changed our fiscal year-end from June 30th to December 31st, effective in 2008.

As a result of this change, our Board has also decided to change the timing of our dues for new members and renewals.

Effective July 1, 2008, Chapter dues were billed in the following manner for New Members: Members joining between July 1st and September 30th were billed a prorated amount, annual dues of \$22.50 for National SHRM Members, and \$45.00 for Non-National SHRM Members, and will receive a renewal in November for the next calendar years' dues of either \$45.00 (National SHRM Member) or \$90.00 (Non-National SHRM Member).

Members who join between October 1st and December 31st will pay full annual dues, and will be credited for the next calendar year. Members who join between January 1st and June 30th will pay full annual dues, and will be sent a renewal invoice in November/December for the following calendar year.

### USERRA

In November we observed Veteran's Day and this brings the focus on both on our former vets and on our co-workers who are currently involved in the armed forces - frequently deployed to dangerous posts during this turbulent time. Also, with employment options being more limited in the tightening economy, many people are opting for military assignments. The National Guard has historically been a patriotic choice for a second income; in previous years it entailed short weekend and annual exercises, but now frequently results in much longer deployments, that impact your employee's availability for work on their primary job.

Employers have many questions as to how to remain in compliance with Federal laws. SHRM has a volume of information to assist HR professionals with their questions. Here is just one - others may be found at [www.SHRM.org](http://www.SHRM.org).

Q: If an employee voluntarily resigns to join the uniformed service, does USERRA still apply?

A: Yes, an employee who resigns employment to serve in the uniformed service may be entitled to re-employment rights and certain benefits under the Uniformed Services Employment and Re-employment Rights Act (USERRA).

Section 1002.88 of the U.S. Department of Labor's USERRA regulations states that even if the employee tells the employer before entering or completing uniformed service that he or she does not intend to seek re-

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## **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.

## The DOL Just Issued New FMLA Regulations That Revise the Existing Regulations and Implement the New Military Leave Requirements

### I. Introduction

On Monday, November 17, 2008, the Department of Labor (DOL) issued new FMLA regulations that will go into effect on January 16, 2009. These new regulations do two things: (1) revise the existing FMLA regulations to improve employee-employer communications about the FMLA; and (2) implement the active duty and military caregiver leave requirements that were included in the National Defense Authorization Act that became law in January, 2008.

### II. Changes to the Existing FMLA Regulations

#### A. Definition of Serious Health Condition

Although the DOL retains the 6 definitions of "serious health condition," it modified the tests of "incapacity and treatment" in three ways. First, while the number of consecutive calendar days for incapacity remains at 3, they must now be consecutive. Second, for continuing treatment involving 2 or more doctor visits, those visits now must occur within 30 days of the start of the incapacity. Finally, the first visit with a health care provider (whether then followed by a successive visit within 30 days or a regimen of treatment) must occur within 7 days of the start of the incapacity.

#### B. Medical Certification

The DOL adopted a change that allows employers to contact the employee's healthcare provider directly. An employer may make this contact for two purposes only: clarification and authentication of the medical certification. The employer may request no additional information beyond that included in the certification form.

#### C. Fitness-for-Duty Certification

Employers may require a fitness-for-duty certification to address an employee's ability to perform essential job functions. However, if the employer does have such a requirement, the employer must provide the employee with a list of those essential functions no later than the "designation notice" and specify in the designation notice that the fitness-for-duty certification must address the employee's ability to perform those essential functions.

#### D. Notice Requirements

The DOL consolidated into one section the notices an employer may be required to provide and into another section the notice that an employee must provide.

An employer may be required to provide the following notices: General Notice; Eligibility Notice, which an employer now has 5, instead of 2, business days to provide once an employee may qualify for FMLA leave; Rights and Responsibilities Notice; and Designation Notice. DOL has provided prototypes of these notices.

When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for leave either the same day or the next day. When the need for leave is not foreseeable, an employee must comply with the employer's usual and customary notice requirements for requesting leave, absent unusual circumstances.

#### E. Intermittent Leave

The new regulations clarify that employees who take intermittent FMLA leave have a statutory obligation to make a "reasonable effort" to schedule such leave so as not to unduly disrupt the employer's operations.

#### F. Gaps in Service

The new regulations state that, although the 12 months of employment need not be consecutive, employment prior to a continuous break in service of 7 years or more need not be counted.

#### G. Light Duty

Time spent in "light duty" does not count against an employee's FMLA leave entitlement, and the employee's right to job restoration is held in abeyance during the light duty period. If an employee is voluntarily doing light duty work, he or she is not on FMLA leave.

#### H. Perfect Attendance Awards

The new regulations allow employers to deny a "perfect attendance" award to an employee who does not have a perfect attendance because he or she took FMLA leave, but only if the employer treats employees taking non-FMLA leave the same.

#### I. Settlement Agreements

The new regulations reiterate the DOL's longstanding position that an employee can enter into a settlement agreement that waives or releases FMLA claims based on past employer practices without DOL supervision or participation. However, the regulations clarify that an employee cannot waive or settle their prospective rights under the FMLA.

### III. Military Family Leave Entitlements

#### A. Military Caregiver Leave

The new regulations implement the requirement to expand FMLA protections for family members caring for a covered service member with a serious injury or illness incurred in the line of duty on active duty. These family members are able to take up to 26 workweeks of leave in a 12-month period.

#### B. Leave for Qualifying Exigencies for Families of National Guard and Reserves

The law allows families of National Guard and Reserve personnel on active duty to take FMLA job-protected leave to manage their affairs under "qualifying exigencies." These are defined as: (1) short-term deployment; (2) military events and related activities; (3) childcare and school activities; (4) financial and legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; and (8) additional activities where the employer and the employee agree to the leave.

### IV. Practical Advice

Although the new FMLA regulations contain some welcome changes for employers, employers must nonetheless be careful to follow the rules. Also, if in doubt about how to answer a FMLA question, always err on the side of giving the employee the requested leave.

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

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