

FEBRUARY 2008

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

February 7th – MONTHLY MEETING

SPEAKER: Peter K. Newman, The Newman Law Group
COST: \$13.00 Members, \$15.00 Non-Members
DATE: Thursday, February 7, 2008

TIME: 7:15 AM – Registration/Networking
7:30 AM – Breakfast
8:00 AM – Presentation

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: THE 2007 EMPLOYMENT YEAR: A LOOK BACK AND A LOOK AHEAD

2007 was another year of significant employment law developments. Some of these developments also set the stage for additional anticipated developments in 2008. This presentation will (1) provide an overview of the most significant 2007 developments; (2) identify the key developments to watch out for in 2008; and (3) propose a workplace claim avoidance program that every employer should consider adopting.

Peter Newman has over 25 years of experience practicing labor and employment law in the greater Cincinnati and Dayton areas. Peter represents management exclusively in workplace law and related litigation. Peter is a graduate of Miami University and The Georgetown University Law Center and was one of the first lawyers certified by the Ohio State Bar Association as a specialist in labor and employment law. Peter's peers selected him as an Ohio Super Lawyer in 2004, 2005, 2006, and 2007. Peter is also an active member of SHRM, BWSHRM, GCHRA, and NKHRA.

Please reserve your seat by **Friday, February 1st** by emailing **Kristi Cain** at kristi.cain@craneamerica.com or by calling (937) 293-6526.

President's Message

We hope everyone's new year is starting off well. We would like to thank our exiting board members, Richard Lencyk and Michael Kristian, for their contributions to our chapter. We want to welcome new board members, Lisa Wray, Katie Frey and Brittany McIntyre.

Our February meeting is sure to be lively with attorney, Peter Newman, presenting on "The 2007 Employment Year: A Look Back and a Look Ahead". We hope to see all of you there for a great presentation and lots of networking.

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 Raffle

To benefit the SHRM foundation we will be raffling off a new book at our February 7th meeting.

While much has been written about how to attract, retain, and engage the up-and-coming Gen X and Gen Y crowd, Igniting Gen B and Gen V follows the lessons of success from leading Employers of Choice--Google to Wal-Mart--that show how to release full engagement, capture knowledge, train skills, and create a new culture that leverages the talents and experiences of Boomer and Veteran employees. **Tickets will be \$1.00/each or \$5.00/6 tickets.**

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Your Foundation at Work: Effective HR Measurement Techniques

How do you demonstrate the value of your human resource department to the CEO, in language he or she can understand? The answer is HR metrics. Created with a grant from the SHRM Foundation, the book *Effective HR Measurement Techniques* shows you how to demonstrate, in bottom-line terms, the value of minimizing turnover, investing in training, evaluating team performance and much more. Learn how to measure the impact of your HR programs and watch your effectiveness soar. Visit www.shrm.org/shrmstore to order a copy of *Effective HR Measurement Techniques*.

The SHRM Foundation: 40 Years of Advancing the HR Profession

Ohio Supreme Court Rules that Employers May Enforce Neutral Leaves of Absence Policies Even for Employees Receiving Workers' Compensation Benefits - Prior *Coolidge* Decision is Limited

In a decision that is considered to be extremely favorable to Ohio employers, the Ohio Supreme Court recently ruled in *Bickers vs. Western & Southern Life Ins. Co.* that a workers' compensation claimant who is terminated while receiving temporary total disability workers' compensation benefits ("TTD") may not sue for wrongful discharge unless the termination amounts to workers' compensation retaliation under R.C. §4123.90. In *Bickers*, the Court substantially limited its prior decision in *Coolidge v. Riverdale Local School Dist.*, which had created a common law cause of action against employers who terminated their employees while receiving TTD compensation as being a wrongful discharge in violation of public policy.

By way of background information, in 1994, Shelly Bickers was injured in the course of her employment with Western & Southern Life Insurance Company. Bickers filed a claim for workers' compensation benefits and received TTD compensation. Bickers was an at-will employee and, as such, she had no contract governing her employment. In 2002, Southern terminated Bickers while she was still receiving TTD compensation related to her workers' compensation claim.

Bickers sued for wrongful discharge alleging that Western & Southern had violated the state's public policy for terminating her while receiving TTD compensation. She relied upon the Supreme Court's prior decision in *Coolidge vs. Riverdale Local School Dist.*

In *Coolidge*, the Court had held that an employer may not discharge an employee solely on the basis of absenteeism or inability to work while receiving TTD compensation directly related to an allowed workers' compensation condition. In *Bickers*, the Court revisited its *Coolidge* decision and determined that its prior decision did not create a cause of action for an at-will employee who was terminated for non-retaliatory reasons while receiving TTD compensation. Rather, the Court concluded that the *Coolidge* decision was applicable only to teachers receiving workers' compensation benefits who are terminated without good and just cause in breach of their employment contract. Since *Bickers* was not a teacher governed by an employment contract that would protect her from termination without good and just cause, the Court concluded that she had no remedy other than what was provided by the workers' compensation statute with regard to a retaliatory discharge. Because she had not complied with the procedural requirements of §4123.90, which prohibits employer retaliation, the Court decided that Bickers had no cause of action under the workers' compensation statute.

In light of the *Bickers* decision, employers may now reinstate and enforce neutral leave of absence policies, even for employees that are currently receiving TTD compensation. Such policies may call for the termination of an employee who is off work for an extended period as a result of a work-related or non-work-related injury or illness. However, the policy must apply to both work-related and non-work-related injuries or illnesses. Employers still may not single out and retaliate against employees who file a workers' compensation claim. Employers should also consider other state and federal laws, such as the Americans with Disabilities Act, before terminating an employee receiving TTD compensation.

Summary provided by:

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Don't Miss our February 7th meeting!

Employment Cases and Legislation to Watch in 2008

This article is based in part on Peter's February 7, 2008

BWSHRM Legal Briefing entitled

"The 2007 Employment Year In Review: A Look Back and a Look Forward."

HR Professionals will have many employment law developments to watch in 2008. Cases that could significantly change labor and employment law are currently pending in the U.S. Supreme Court, the Sixth Circuit Court of Appeals, the district courts, and in the National Labor Relations Board. In addition, the Democratic Party will once again try to push its pro-union and pro-employee legislative agenda through Congress. Here's a list the cases and proposed legislation to watch.

Ten Employment Cases to Watch:

1. Federal Express Corp. v. Paul Holowecki et al.
2. Kentucky Retirement Systems v. EEOC.
3. Sprint/United Management v. Mendelson
4. CBOCS West Inc. v. Humphries
5. LaRue v. Dewolf Boberg & Associates
6. Huber v. Wal-Mart.
7. Vicky S. Crawford v. Metropolitan Government of Nashville et al.
8. Clifford B. Meacham et al. v. Knolls Atomic Power Laboratory et al
9. Betty Dukes et al. v. Wal-Mart, Inc.
10. Guard Publishing Co. d/b/a/ The Register Guard and Eugene Newspaper Guild, CWA Local 37194.

Six Proposed Employment Acts to Watch:

1. The Employee Free Choice Act (EFCA).
2. The Re-Empowerment of Skilled and Professional Employees and Construction Trade Workers Act (the RESPECT Act).
3. The Arbitration Fairness Act (AFA).
4. Expansion of Employee Rights Under the FMLA.
5. The Employment Non-Discrimination Act (ENDA).
6. The Lily Ledbetter Fair Pay Act.

Keeping an eye on the above employment cases and proposed legislation will keep you and your employer on top of all of the anticipated labor and employment law developments for 2008.

Submitted by:

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Immigration Enforcement: No-Match Letters

The Department of Homeland Security (DHS) has implemented new rules on safe harbor procedures for employers who receive a no-match letter from the Social Security Administration or written notice from DHS. The webcast addresses what to do upon receiving a no-match letter and how the new rules will affect your workforce. You can view a webcast on SHRM's website at www.shrm.org.

New Members Contest - Back By Popular Demand!

If you missed participating in the New Member's Contest from years past, you are in luck! Back by popular demand, the **winner of the 2008 New Members Contest will have their 2008 State Conference fee paid by Butler/Warren SHRM.** That's a value of \$375.00!

While some contests are a drawing based purely on luck, this contest is one where you have control of the results. The winner is determined not by putting your name in a hat but by you reaching out to other HR professionals and helping them see the benefit of joining the Butler/Warren SHRM Chapter. By helping people join SHRM, you accumulate points toward the prize, The 2008 State Conference.

We are proud to announce that we have increased our membership by 25% over the past year and want to encourage each member to reach out to other HR professionals this New Year!

We have attached an application to the email or you may 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

Or visit our website at www.ohioshrm.org/butler and click on the membership link for more information.

Are you in danger of committing embarrassing or offensive cultural faux pas?

Take this quiz to find out how much you really know about customary behaviors across the globe.

- In most cultures gift giving is a time-honored tradition. However, in many, specific stipulations are in place to ensure that items presented do not conflict with social norms. Which of the following is a gift giving faux pas?
 - Bringing a dessert to an American housewarming party.
 - Bringing one traditional token of appreciation for a Chinese family.
 - Providing gifts during business engagements in Japan.
 - Giving a piece of silver jewelry to a Saudi Arabian man.
- In the United States, making an OK symbol with your hand is considered to be a positive affirmation. In which of the following countries is the gesture offensive?
 - Brazil
 - France
 - Russia
 - Germany
 - All of the above
- True or false: When traveling through Korea strong eye contact is considered to be a sign of attentive listening and respect.
 - True
 - False
- In most parts of the Middle East, people traditionally eat with their hands. What is the appropriate way to do so?
 - With your left hand.
 - With your right hand.
 - With both hands.
 - Alternating hands depending on the meal or occasion.
- Throughout the United States visible athletic socks are widely worn by men. In which global region is this considered culturally ridiculous?
 - Asia
 - Australia
 - Europe
 - South America

Answers to follow in the March newsletter!

Sources: Perceptive Protocol: Top 10 Cultural Faux Pas <http://www.af.mil> ; Kwintessential Cross Cultural Solutions <http://www.kwintessential.com/UK> ; Worldwide Etiquette <http://www.wikipedia.org> ; Etiquette in Europe <http://www.wikipedia.org> ; Quiz taken from Diversity Central www.diversitycentral.com (by Lisa Anderson)