



2007 SHRM **SUPERIOR MERIT AWARD**  
CHAPTER



**JANUARY 2009**

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

## January 8<sup>th</sup> - MONTHLY MEETING

1 Hour Credit



**SPEAKER:** Kathryn Bernard, General Counsel for CBS Personnel Holdings  
**COST:** \$13.00 Members, \$15.00 Non-Members  
**DATE:** Thursday, January 8, 2009  
**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: Legal Risks Using Temporary Employees**

Everyone uses temporary employees, right? What do you know about co-employment? What should you know about co-employment? Is co-employment a dirty word? What should you be aware of in dealing with a temporary company? What is my company's legal responsibility when using a temporary employee? How do you avoid the pitfalls from "less-than-ethical" companies or the "less-than-honest" temporary employee? Attorney Kathy Bernard will answer these and other questions you may have about the "Risks of Using Temporary Employees".

Kathryn has been a regional and national speaker on workers' compensation issues, employment law issues, leasing issues and temporary staffing issues. She is active in state and national legislative efforts and written numerous articles for specialty publications on temporary staffing, workers' compensation issues and leasing. Named in Who's Who in the Professional Employer Organization industry in the April 1999 edition of *The ProEmp Journal*, Kathryn received her law degree from the University of Cincinnati, College of Law.

Please reserve your seat by **Friday, January 2<sup>nd</sup>** by emailing Kristi Cain at [kristi.cain@craneamerica.com](mailto:kristi.cain@craneamerica.com) or by calling 937-293-6526 ext.246.

## President's Message

The end of 2008 is upon us. Jeff Shoskin gave a very informative presentation at our December meeting about the new amendment to the ADA. The legislative section on the National SHRM website is a great resource for keeping up with legislative changes and new regulations.

Our board is working very hard to make 2009 a great year of presentations. If you have a topic you'd like to hear please let a board member know.

I hope everyone is enjoying this Holiday Season and I look forward to seeing you in 2009.

Kristi Cain, SPHR  
President, B/WSHRM

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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.

**We hope to see you soon!**

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## 2009 Ohio Minimum Wage

Effective **January 1, 2009** Ohio's minimum wage will increase as follows:

- \$7.30 per hour
- \$3.65 per hour for tipped employees (plus tips)

The Ohio minimum wage is \$6.55 per hour for:

- Those employees whose employers gross \$267,000 or less
- 14 & 15 year olds

On **July 24, 2009** the Ohio minimum wage increases to \$7.25 per hour for:

- Those employees whose employers gross \$267,000 or less
- 14 & 15 year olds

Make sure you have updated your workplace posters; [click here](#) for a link to the Ohio poster.

### 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.

**Due to the holidays, if you take an exam between the dates of 12/16/08 and 1/5/09, your scores will be mailed on 1/9/09. We apologize for any inconvenience that this delay may cause you.**

**Make the commitment. Take your HR career to the next level and earn your HR certification.**

HR certification is a career-long commitment that proves to your peers and your organization that you are driven to be successful in HR management. Earning your HR credentials can:

- Increase your professional confidence
- Set you apart from your peers
- Result in greater respect from the organization in which you work

Organizations that employ certified HR professionals can be assured that their certified employees understand and can apply forward thinking employment practices and policies and are staying abreast of changes in the field through recertification.

## Retaining Talent

**A new report from the SHRM Foundation**

One of the most critical issues facing your organization today is how to retain the employees you want to keep. This new Effective Practice Guidelines report will help you to analyze and manage employee turnover. Learn how to develop an effective retention management plan. [Download your free report now.](#)

### START OUT 2009 RIGHT WITH THIS HR TO DO LIST

#### A. Introduction

As you plan for 2009, every employer should take steps to address the Amendments to the ADA Act of 2008, the new FMLA regulations, and the anticipated passage of the Employee Free Choice Act. The following is a suggested To Do List.

#### B. To Do List

##### 3. **Take Proactive Steps to Protect Yourself Against Increased Exposure to Disability Discrimination Claims Under the New Amendments to the ADA**

On September 25, 2008, President Bush signed The ADA Amendments Act of 2008 (ADAAA). This Act overturns two U.S. Supreme Court decisions that narrowed the definition of disability. It also expanded what conditions are considered disabilities under the ADA. *These new amendments become effective on January 1, 2009.*

Because these amendments will make it easier to bring disability discrimination claims and harder for employers to defeat these claims, employers need to take some proactive steps:

- a. Review and update your policies and practices regarding the ADA's interactive dialogue process, and focus on your reasonable accommodation procedures.
- b. The ADAAA will increase litigation under the first two prongs of the "disability" definition.<sup>1</sup> Consequently, keeping accurate records of when an employee requests an accommodation, and the accommodations denied and/or provided, along with some evidentiary back-up for the decisions that are made, requires attention.
- c. Finally, refresher training of HR professionals and line management regarding the ADA's requirements concerning the interactive dialogue with an employee who requests an accommodation and the employer's obligation to reasonably accommodate an employee's disability, must also be done.

##### 4. **Revise Your FMLA Policy and Forms to Comply with the New FMLA Regulations.**

*The new FMLA regulations go into effect January 19, 2009 – are you prepared?*

These new regulations do two things: (1) revise the existing regulations to improve employee-employer communications about the FMLA; and (2) implement the active duty and military caregiver leave requirements included in the National Defense Authorization Act.

Here are 5 changes you **MUST** make and four you should consider:

- \* 1. Update your notice forms (and decide whether to use the new limited rights to provide some notices electronically).
- \* 2. Update your handbook and/or FMLA Policy.
- \* 3. Add new military leave certification notice forms.
- \* 4. Update your standards for granting FMLA medical leave, and the FMLA significance of light duty.
- \* 5. Update your medical certification notice forms, and modify your certification and re-certification procedures.
- 6. Consider updating your rules on return-to-work certification to take advantage of the new employer rights.
- 7. Consider whether to change your rules about the use of paid leave to take advantage of the new flexibility.
- 8. Consider whether to begin tighter enforcement of abuse notification rules and procedures.
- 9. Finally, consider whether to modify various bonus programs to take advantage of the new flexibility.

<sup>1</sup> These two prongs are any individual who: (1) has a physical or mental impairment that substantially limits one or more of such person's major life activities; (2) has a record of such impairment.

## 5. If You Are a Non-Union Employer, Prepare Your Organization for the Expected Passage of the Employee Free Choice Act During the First 100 Days of the Obama Administration

Quickly passing the Employee Free Choice Act (EFCA) in 2009 is organized labor's number one priority and it has an ally in President Elect Obama, an original Senate sponsor of this Act.

The EFCA will make revolutionary changes to national labor policy. Most disturbingly, it will replace secret ballot elections for determining whether employees in a bargaining unit want union representation with a card check procedure.

EFCA will also make three radical changes to the collective bargaining process: (1) it would require negotiations over an initial contract to begin within 10 days after the union makes a request for bargaining; (2) it would require mediation (by the Federal Mediation and Conciliation Service (FMCS)) if after 90 days the employer and union are unable to reach an agreement; and (3) if after 30 days of mediation the parties remain unable to agree, the terms of the initial contract would be determined by an arbitration board established by the FMCS, not the parties.

In addition, EFCA would significantly strengthen the NLRB's remedies for unfair labor practices. Most importantly, in cases involving the discharge of employees for seeking union representation, the NLRB would have the authority to award the equivalent of treble damages.

Although no one can predict what version of the EFCA will pass, employers must put themselves in a position to launch their union free campaigns before a union targets them for a card signing campaign.

Here are six steps every non-union employer should take *now*:

1. Designate an EFCA Response Team to monitor EFCA developments, to understand how organizing may be directed at your employees, to develop a written response plan, to assess the risk of union organization, and to create an implementation action calendar.
2. Adopt and communicate a basic union-free policy to your employees that emphasizes the importance of employees being able to deal directly with management.
3. Assess, and regularly reassess your company's vulnerability to a union organizing campaign and promptly address any identified weaknesses in the areas of wages, benefits, working conditions, bad supervisors, etc.
4. Train your managers and supervisors to watch for signs of unionization and educate them about the importance of your company's union-free status to its continued success.
5. Educate your managers and supervisors about unions: what they can and cannot do for employees and the real costs of being a union member (initiation fees, dues, assessments, and fines; loss of freedom because employees will be bound by the union's constitution and by-laws that the union will likely not show the employee before asking him/her to sign an authorization card; and the potential loss of their jobs if they are replaced during an economic strike).

### C. Practical Advice

Although 2009 looks like it will be a hectic year, you can reduce the pressure on yourself and your organization by implementing the preventive measures under the To Do List discussed above. Remember, as Benjamin Franklin once said, "Never leave that till tomorrow which you can do today."

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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