



February 2014/March 2014 Newsletter

Butler/Warren County SHRM The BUZZ

President's Message



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Each year in March BWSHRM holds a joint meeting with our Miami University Student Chapter. This is a great opportunity for the community's HR leaders to support the development of our upcoming business professionals. Typically we have a speaker that is hosted at the Miami University Campus. This year the student's have asked for something a little different and challenging that will offer them more results to their education and experience. They have asked our membership to give them real-world business case issues and they will present the recommended solution at the March meeting. In addition, the BWSHRM Board and members will sit on a discussion panel. The rest of the details will soon be released. We hope that you can join us in supporting our future business professionals!

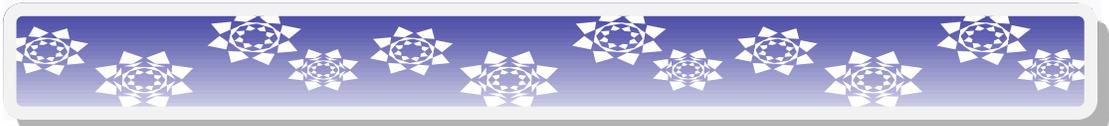
Have you ever thought about becoming more involved as a volunteer leader with the BWSHRM chapter, but you're not sure if you would like doing it or have the time? We may have a great opportunity for you! We are looking for members to join our membership committee. This is a great way for you to get some exposure to a leadership role without the total commitment of being a board member. If interested or for questions, contact Amy Therien at amy@bwshrm.org.



I hope your year has gotten off to a great start and I will see you at our upcoming meetings!

Michelle Ezerski
President

Michelle Ezerski
President



SAVE THE DATE....

The Butler/Warren Society for Human Resource Management and the Miami University Student SHRM Chapter Meeting is planned for Tuesday, March 18, 2014 at 6:00 pm.

The Miami University Students will present business case solutions on three different Human Resources topics facing businesses today.

Details regarding this event will be forthcoming.

Please save the date and plan to join us to make this a memorable event for everyone!

Join us on LinkedIn– Butler/WarrenSHRM to get information on all of the latest events or send an email to amy@bwshtm.org for more information on this event.



Check us out on the Web!

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

Know anyone interested in Sponsoring a BWSHRM Meeting?

The BWSHRM Chapter offers opportunities for sponsorship of our meetings normally held at 7:30 AM on the first Thursday of every month. Examples of topics for our meetings include: safety and security, recruiting, diversity, best practices, legal updates, health insurance updates and many other topics.

The cost for sponsorship is only \$100 and includes:

Your ad in the monthly *Buzz* newsletter (2 months)

Recognition at the meeting including a table for your company information or information to be placed on all tables for attendees

A 5 minute "commercial" to talk about your company's product or service at the beginning of the meeting

Free breakfast

An opportunity for you to provide a door prize giveaway and collect business cards

Meeting sponsorship is a great way to get your company's product or service out to the areas Human Resources decision makers. If you know someone who would like to sign up today, simply call Michelle Ezerski at 937-833-1883 or email: mezerski@brookhavenoh.org

Diversity Today

The Scapegoat and Free Speech

BK Milburn
2/12/14

The Scapegoat. We have heard about this since we were children. It stems from the biblical act of placing the community's sins upon a goat and sending it away from the village, removing the sins of the year from the community. (Wikipedia.org, accessed February 12, 2014.)

The act of "Scapegoating" can, and does, occur in the workplace setting of modern times too. Some people become concerned about an individual, for various reasons. They may be concerned that the person is trying to change something they do not want changed. They may believe that this person has, or will, become more favored than himself or herself. They may just be bored and harassing someone is something to do. The central theme of all of these are attempts to draw attention away from their own faults. (WS Newsome, Human Behavior and the Social Environment class, February 11, 2014). Quite often, the target of the scapegoating is a woman or minority.

Human Resources can help considerably in establishing what the true problem is and working towards getting it resolved. (Of course, the HR person can risk becoming "THAT individual," if they do not simply agree with the readymade case against the other person.) Sometimes, doing nothing is the solution. One of the speakers (Marc Fleischauer and Rob Shank) at this month's BW-SHRM meeting made the excellent point that one cannot legally act upon information that has not been established to be true.

Exploring the motive of the reporter of the deeds can be critical. Often times, it is merely a matter of having put people together and immediately expecting performance, without having given adequate attention to the process of blending. Sometimes, the reporter may be an attention-seeking individual. And it might be part of a cover-up of prior bad acts by the reporter and/or their associates. (We all know the classic situation that it is not the original "bad act" that gets a person in trouble, but rather the lies and/or cover-up attempts that follow.) There are also numerous other reasons, from the trivial to the most serious.

At a recent BW-SHRM meeting, social media was the topic of interest. It was noted that often, it is one of the employees reporting on another's post. For me, I then become alert to the possible foolish behavior of the subject employee, with the posting of negative information about the company. But I also start thinking about the motives of the person reporting it. Have they nothing better to do with their time? Why are they involving themselves with such potential trivia? Or are they truly providing valued information for which action, or at least additional information-seeking, is appropriate?

We all have the right to free speech, but untruthfully yelling "FIRE" in a crowded area has been illegal for years. With social media, everyplace is now a "crowded area." What laws will we have in the future to protect ourselves, and others, from untruthful allegations made in the context that the world can now hear? In addition, how will we handle incivility and unkindness, while possibly true at the core, can cause unwarranted pain for the targeted individual?

Therefore, a new problem has old solutions. As always, think before you act, including repeating what you "learned." In addition, it can be difficult, if not impossible to control others, so control one's self so as to not make things worse. Finally, know that there often is no simple solution and the optimal result, especially on an individual level, may be not making a situation worse.

Brenda

When Settlement Isn't the End: the EEOC's War on Certainty in Severance Agreements

Imagine this scenario faced by many employers with exiting employees: the employer gives the departing employee the option to contractually waive any future right to sue the employer in exchange for a lump sum: a golden (or may just silver) parachute. The employee has signed the severance agreement and cashed the check, and that chapter of the company's life is closed.

Or is it?

Recently, the Equal Employment Opportunity Commission ("EEOC") has sued national pharmacy chain CVS for provisions CVS included in severance agreements with employees. The EEOC asserts that the severance agreements improperly condition severance benefits on a variety of "fine print" clauses that force exiting employees to give up their access to the justice system. See *EEOC v. CVS Pharmacy, Inc.*, No. 1:14-CV-863 (N.D. Ill.) (filed February 7, 2014).

I know what you, the HR professional, are thinking. Why would an employer pay an employee to leave without neutralizing the potential for future liability?

But the EEOC's position – not yet adopted by the courts – is that this type of a deal, paying severance in exchange for certainty, is unlawful. As Regional Attorney John C. Hendrickson, lead counsel for the EEOC in the case, explained:

Charges and communication with employees play a critical role in the EEOC's enforcement process because they inform the agency of employer practices that might violate the law. For this reason, the right to communicate with the EEOC is a right that is protected by federal law. When an employer attempts to limit that communication, the employer effectively is attempting to buy employee silence about potential violations of the law. Put simply, that is a deal that employers cannot lawfully make.

See <http://eoc.gov/eoc/newsroom/release/2-7-14.cfm>. In particular, the EEOC, focused on the following routine clauses, claiming they chill employees' ability to report illegal employer practices in the workplace:

A cooperation clause: where the employee agrees to notify in-house counsel if he or she becomes aware of an administrative complaint against the employer;

A non-disparagement clause: where the employee agrees not to make statements against the employer that will harm its reputation or otherwise disparage the company;

A confidentiality clause: where the employee agrees not to disclose the company's confidential information, including personnel information, compensation information, and intra-company staffing/succession plans;

A general release of claims: where the employee agrees to release the employer of all claims, including claims of unlawful discrimination;

Covenant not to sue: where the employee represents that he or she has not filed any claims against the company, whether with a court or an agency (interestingly, the EEOC pointed out language in the severance agreement stating that “[n]othing in this paragraph is intended to or shall interfere with the Employee’s right to participate in a proceeding with any appropriate federal, state or local government agency enforcing discrimination laws, nor shall this Agreement prohibit Employee from cooperating with any such agency in its investigation”); and

Attorneys’ fees provision: where the employee agrees to repay the company’s attorneys’ fees if the employee violates the severance agreement.

If these provisions sound familiar, that is because they are staples in the majority of employer-drafted severance agreements.

What makes this pending case so worrisome for employers, and their counsel, is the potentially far-reaching effects of a decision in the EEOC’s favor. Employers will need to consider what, if anything, they can do to protect themselves from being the next company whose severance agreement ends up in the EEOC’s cross-hairs. One option would be to omit all of the clauses that the EEOC found offensive. Of course, that option comes with a substantial amount of risk. Another possibility is to specifically exclude protected activity, like reporting workplace discrimination to the EEOC, from which the employee must refrain. That has its own problems, as companies and their counsel will likely struggle to tailor the exception narrowly enough without eviscerating the entire severance agreement.

The irony is that the EEOC may “win” by getting a judgment preventing one company from enforcing the provisions of its standard severance agreement, only to “lose” by making severance benefits generally less attractive to companies when they fire employees. Currently, companies often pay severance benefits in exchange for certainty. If this peace of mind is taken away, many companies will lose the economic incentive to provide such benefits. Whether the *EEOC v. CVS* case will result in a public policy “fail” for employers, employees, protected activity, or all of the above remains to be seen.

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Want to Get Involved with BWSHRM???

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Savannah Center, 5533 Chappell Crossing Blvd., West Chester, OH

Your Captain and Crew:

Morning Keynote: EMERGE by Steve Gilliland

Breakout Presenters:

- **Sourushe Zandvakili:** Customer-Centric HR Strategy with Application: The Kroger Co.
- **Carla Messer:** Untangling Recruiting Messages that Signal Performance
- **Scott Schreiber:** Improve the ROI on Your Compensation Investment
- **Hudson Peters:** The Changing World of Employee Contributions
- **Karen Schenck:** Consulting Internally: Enhance Your Skills and Strategic Influence
- **Julie Bauke:** Lunch Presentation Coaching to Career Happiness
- **Wayne J. Owens, M.Ed.:** How to Engage Employees and Inspire Motivation at Work
- **Bob Riess:** Create Real Hands-On Learning
- **Maggie Frye:** Responding to the Leadership Challenge: How to Get Started
- **Karl R. Ulrich and Matt Messersmith:** Using Social Media for Pre-Employment Screening
- **Julie R. Pugh, Esq., PHR and Lee Geiger, Esq.:** Save Me the Money!
- **Megan Leasher, Ph.D.:** Emotional Intelligence
- **Donna Chrobot-Mason:** Leadership in a Diverse Workplace - Building Bridges and Leveraging Differences

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 -Angela Sherrick,
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