AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

TVC~SHRM
TENNESSEE VALLEY CHAPTER OF SHRM - ALABAMA

January Newsletter

January Meeting

Wednesday, January 14th

Decatur Country Club

$15.00

11:45 am —1:00 pm

Networking will begin at 11:15 a.m. and the program will start at 11:45 am.

If you **RSVP** that you are coming and then you don't attend, you will still be charged for the meal.

If you are unsure about attending and paying for a lunch, you can always save-a spot for the salad bar.

For reservations, contact Patti Fowler at pfowler@alliancehrservices.com

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HR CERTIFICATION INSTITUTE™ PRE-APPROVED 2015

January 14, 2015

Our Speaker:

Robert Lockwood

Topic:

"The Family and Medical Leave Act and Strategies For Avoiding Employee Abuse"

Robert C. Lockwood is a shareholder in the law firm of Wilmer & Lee, P.A., where his practice focuses on labor and employment law, general civil litigation, and health care compliance. Mr. Lockwood is a member of the Alabama Board of Bar Examiners and he is a past-president of the Huntsville-Madison County Bar Association. He is rated as an AV preeminent attorney by Martindale-Hubbell and has been named an Alabama Super Lawyer in the area of employment law since 2011. Mr. Lockwood is the author of Alabama's Statutory Exception to the Employee-At-Will Doctrine: Retaliatory Discharge Claims Under Alabama Code Section 25-5-11.1, 47 Ala. Law. Rev. 541 (1996). Prior to joining Wilmer & Lee, P.A., Mr. Lockwood served as a judicial clerk for United States District Court Judge C. Lynwood Smith, Jr. He is admitted to practice before all of Alabama's state and federal courts.

This presentation will focus on general requirements that are imposed upon employers by the Family and Medical Leave Act. We will briefly discuss the concept of FMLA leave and an employee's right to request FMLA leave. Then, we will focus on the statutorily-mandated process that must be followed for an employee to successfully request and receive FMLA leave and the employer's right to insist upon compliance with that process. Finally, we will focus on an employer's rights and responsibilities in responding to requests for FMLA leave. By the end of the session, attendees should possess a good understanding of the "do's and don'ts" related to FMLA leave and possess strategies for combatting employee abuse of FMLA leave.

Update on the Patient Protection & Affordable Care Act ("ACA")

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

The time is here for employers with 100 or more full time employees (or full time "equivalents") to "pay or play." Effective January 1, 2015, "applicable large employers" must offer affordable, minimum value health coverage to at least 70% (95% beginning in 2016) of its full time employees (minus up to 80 full time employees in 2015, and 30 thereafter) and their applicable dependents, or be subject to an annual penalty of $2,000 per each full-time employee who receives a premium tax credit or "subsidy" through a health care exchange/marketplace. If an applicable large employer offers health coverage to at least 70% (95% beginning in 2016) of its full time employees and their applicable dependents, but such coverage is not deemed "affordable" or the coverage does not provide "minimum value," then the employer may be assessed an annual penalty of up to $3,000, calculated on a monthly basis, based on each full time employee who receives a premium tax credit or "subsidy" through a health care exchange/marketplace.

Coverage is considered to be "*affordable*" if an employee's share of the premium does not cost the employee more than 9.5% of that employee's annual household income. Most employers are choosing to use the employee's W-2 wages for the affordability test, which is considered a safe harbor.

A plan is considered to provide *minimum value* if it covers at least 60 percent of the total allowed cost of benefits that are expected to be incurred under the plan. The Department of Health and Human Services (HHS) and the IRS have produced a *minimum value calculator* which may be accessed at the following link: http://cciio.cms.gov/resources/regulations/index.html.

The above-referenced requirements are effective beginning January 1, 2016, for employers with 50-99 full time employees (or full time equivalents).

Many employers are still working diligently to identify who qualifies as a "full-time employee" for purposes of the requirement to offer coverage. Under the ACA, a "full- time employee" is any employee who performs an average of 30 or more hours of service per week.

Employers may choose to use the "month to month" method to determine full time status, or, the "look back" method using a pre-determined 3-12 month standard measurement period. For mid-size employers (50-99) whose obligations will be effective in 2016, now is the time to determine which method it will use to determine full time employee status.

A covered employer does not have to offer coverage to part time employees, even if those employees were counted in the determination of the employer size. Employers should be cautioned, however, to document the method used to determine the status of all employees, including those who work "variable hours." Ifa new employee is hired and is reasonably expected to work full time (average of 30 hours or more per week), then such employee must be offered coverage within three months (90 days) of their hire date. Similar rules also apply to employees who are transferred, or have another "change in status" that could affect their work hours.

Some transitional relief is available for "non-calendar year" plans. Eligible plans may be able to delay implementation of the "affordable" and "minimum value" requirements until the beginning of its plan year in 2015; however, ALL full time eligible employees must be offered coverage beginning on January 1, 2015, or penalties may still result.

Additional obligations of which employers should be reminded include the following:

1. **Retaliation and Whistleblower Protection:** The ACA prohibits an employer from taking an adverse employment action against an employee for, among other things, receiving a subsidy to purchase coverage from a public health care exchange.
2. **Breaks for nursing mothers:** The ACA amended the Fair Labor Standards Act (FLSA) to require employers to provide reasonable break time and a suitable location for a nonexempt employee to express breast milk for her nursing child (this has been effective since March 23, 2010).
3. **Cap on health flexible spending accounts:** Employee contributions are capped at $2,550/ year for 2015.
4. **Transitional Reinsurance Program Fees:** The Transitional Reinsurance Program fee provides funding to assist health insurers with the additional costs associated with insuring high risk individuals in the individual marketplace. The fee of $63/ covered life per year ($5.25 /month) applies to major medical plans. For self-funded plans, the plan sponsor is ultimately responsible for the fee. The first payment is due January 15, 2015, and the second payment is due November 15, 2015.
5. **PCORI Fee**: Employers sponsoring self-funded plans must pay the applicable fee for each covered life per year under the health plan to help fund the Patient Centered Outcomes Research Institute (PCORI). The fee is $2.08 for each covered life for plan years ending on or after October 1, multiplied by the average number of covered lives under the policy. The first payment for most plans is due by July 31 of the year immediately following the last day of the plan year.
6. **W-2 Reporting**: Employers that generate 250 or more W-2's must report the cost of employer-sponsored health coverage on their employees' W-2.
7. **HPID**: The requirement that health plans register for a Health Plan Identifier (HPID) number has been delayed pending further guidance.

Update on the Patient Protection & Affordable Care Act ("ACA")

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Courtesy of Lehr Middlebrooks & Vreeland, P.C.

As employers navigate through these and other ACA requirements, changes, and delays, one issue looms largely in the background. We alerted you on July 22, 2014, that two federal appeals courts issued contradictory rulings with regard to the availability of subsidies under the ACA. In *Halbig v. Burwell*, the D.C. Circuit Court of Appeals ruled that the ACA only authorized the availability of tax credits/subsidies to individuals who buy insurance through exchanges "established by the states." Just a few hours later, the Fourth Circuit Court of Appeals ruled in *King v. Burwell* that regulations issued by the IRS properly interpreted the ACA to allow individuals to purchase subsidized health insurance coverage through the federal marketplace.

The Supreme Court has agreed to review one of these cases, *King v. Burwell*, to address the following question: "Whether the IRS may permissibly promulgate regulations to extend tax credit subsidies to coverage purchased through exchanges established by the federal government under Section 1321 of the PPACA?" A decision is expected to be handed down mid-2015. If the Supreme Court rules that the IRS regulations extending tax credits to individuals who purchase insurance through the federal marketplace, rather than just those who buy it through a state exchange, were not permissible, the employer mandate may be rendered meaningless.

For now, employers must proceed "full steam ahead" with the obligations as they currently stand.

Race, Gender and First Impressions

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

Recent tragedies in Ferguson, Missouri, and New York have raised broader questions about perceptions of race beyond the interactions between law enforcement officers and citizens. Rather, the broader principle, as Nicholas Kristof stated it, is that "We as a nation need to grapple with race because the evidence is overwhelming that racial bias remains deeply embedded in American life." His point and the point of other commentators is that as overt prejudice has substantially diminished, subconscious biases and preconceptions remain and have been empirically proven to influence behavior. For example, two economists studied the propensity of National Basketball Association officials to call fouls and found that white officials called fouls on black players at a higher percentage than on white players, and, while the difference was less pronounced, black officials called fouls on white players at a higher percentage than on black players. If even people whose key job is to be fair, whose fairness is subject to public and private scrutiny, and who also work in an incredibly racially-diverse field can be the victims of their unconscious biases, what about the rest of us?

In the employment context, we often think of race in the context of illegal race discrimination. Proving race discrimination is a difficult burden, as is proving any kind of employment discrimination. Even the EEOC concludes that a charge of discrimination has merit only about 5% of the time. A few years ago, a plaintiff in a race discrimination case we defended said that he could tell his supervisor was biased based on how he looked at the employee. That wasn't sufficient to sustain the claim, but was the plaintiff therefore wrong about his impression? Although employers take justifiable pride in avoiding or defending race discrimination claims, the real challenge is to examine employment decisions and workplace relationships to root out instances where unspoken and likely unconscious preconceptions about race (and gender for that matter) have influenced those decisions and relationships.

Gender stereotypes have in some ways been more persistent, at least when it comes to assumptions about "appropriate" work for each gender. Some patients assume the man in scrubs is the doctor, even though he is the nurse. Some travelers mistake female pilots for stewardesses. Consider the old brainteaser: A father and his son are in an auto accident and the father and son are rushed to the hospital. The son is brought to the operating room, and the surgeon says, "I cannot operate, this is my son." How would you explain that? The answer—that the surgeon is the boy's mother— challenges stereotypes about the jobs women—and mothers—are expected to hold.

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Save the Date! Upcoming Events

- **Friday, January 23, 2015**
  Alabama SHRM Leadership Conference at Innovation Depot in Birmingham (http://innovationdepot.net/)
- **January 31, 2015**
  TVC-SHRM Membership Renewal Form Deadline
- **February 17, 2015**
  Job Networking Group at Decatur Public Library at 5:30 pm
- **Every 1st Wednesday**
  Workforce Coalition meeting at The Chamber of Commerce
  (Contact Taylor Simmons- taylor@dcc.org *for more info)*

Please contact Tiffany Weaver at tweave@ascendmaterials.com if you have an upcoming event that you would like to add.

Our February meeting will be held on Wednesday, February 11, 2015 at the Decatur Country Club.

Hope to see everyone there!

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