AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

TVC~SHRM
TENNESSEE VALLEY CHAPTER OF SHRM - ALABAMA

July Newsletter

July Meeting

Wednesday, July 9th

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.

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

July 9, 2014

Our Speaker:

James Cooley

HR CERTIFICATION INSTITUTE 2014 APPROVED FOR CREDIT

Topic:

"Compliance Assistance Specialist "

Get to know the group, Occupational Safety and Health Administration updates, what can I do to help you as an organization, Q & A period. James Cooley is a Compliance Assistance Specialist from the Department of Labor OSHA. James has a B.S. in Occupational Safety and Health. Retired (21 years) U.S. Army, Son who I'm trying to sell or otherwise get rid of (kidding), married 28 years, been with OSHA for 11 years, 7 years as a compliance officer, 4 years as a CAS.

Aflac

Thank you to Aflac for sponsoring our July meeting!

Unknown Hostile Work Environment Not Evidence of Hostile Work Environment

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

How do courts evaluate the situation where an employee raises allegations of workplace harassment, and as evidence to support that, the employee relies on other workplace behavior the employee was unaware of at the time the employee felt harassed? In the case of Adams v. Austal, USA, LLC, the Court on June 17, 2014, ruled that a plaintiff may not rely on harassment that occurred toward other employees and which the plaintiff was unaware of during his employment in order to prove the plaintiff personally experienced conduct that was objectively severe and pervasive. (11th Cir.). The Court stated, "A reasonable person in the plaintiff's position is not one who knows what the plaintiff learned only after her employment ended or what discovery later revealed."

This case involved racial harassment claims filed by 13 black employees. Six of those employees relied on "me, too" evidence which they were unaware of during their employment to prove their case. The district court granted summary judgment regarding those claims, stating that such evidence was insufficient to establish that employees experienced a hostile work environment. After all, if they didn't know about the behavior directed toward others, how could that have contributed to the hostility?

There are circumstances where "me, too" evidence is admissible. For example, in the Austal case, plaintiffs could submit evidence of secondhand experiences they had of harassing behavior as long as they had those secondhand experiences during employment. So, female employees were permitted to rely in part on being shown—during their employment—photographs of racial obscenities from the men's restroom. Another example is if the employer asserts as a defense that it had in place an effective anti-harassment policy, then "me, too" evidence can be used to rebut the employer's position.

NLRB Affirms Employee Disrespectful and Abusive Behavior

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

This issue was considered by a three-member panel of the National Labor Relations Board in the case of Copper River of Boiling Springs, LLC (Feb. 28, 2014). NLRB Chairman Mark Gaston Pearce considers disciplinary discharge for a "negative attitude" as chilling employee rights to be critical of their employer. According to Pearce, this interferes with employee rights to engage in concerted activity regarding wages, hours or conditions of employment. The three-member panel included the two Republican members of the NLRB, Philip Miscimarra and Harry Johnson, both of whom concluded that the employer's "bad attitude" rule was permitted.

Copper River is a restaurant. Its handbook prohibited "insubordination to a manager or lack of respect and cooperation with fellow employees and guests…includ[ing] displaying a negative attitude that is disruptive to other staff or has a negative impact on guests." Two employees were terminated after the company received reports that the employees used foul language in complaining to customers about the employer. In upholding the discharges, Miscimarra and Johnson stated that the employer's policy "limits the rule to unprotected conduct that would interfere with the Respondent's business interests."

"Attitude" is not a self-defining term. The NLRB upholds employer terminations when an employee's attitude relates to an employee work assignment or an employer's business interests, such as communications to customers. Even a bona fide employee concern may be unprotected if it is expressed inappropriately.

In a 5-4 Decision, U.S. Supreme Court Holds that the HHS Regulations Imposing Contraceptive Mandate Violates the Religious Freedom Restoration Act, As Applied to Closely Held Corporations

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

The United States Supreme Court held today, in a 5-4 decision, that employee health plans of for-profit companies do not have to cover all forms of contraception as mandated by the Patient Protection and Affordable Care Act (ACA), if the owners of the company have religious objections. In writing for the majority, Justice Samuel Alito said that the government failed to demonstrate that the contraceptive mandate was "the least restrictive means of guaranteeing free access to birth control." The Court rejected the argument of the Department of Health and Human Services (HHS) that the companies could not sue because they were for-profit rather than non-profit corporations, and further rejected the argument that the owners could not sue because the regulations applied only to companies rather than individual owners. In fact, the Court recognized that such a finding would "leave merchants with a difficult choice: give up the right to seek judicial protection of their religious liberty or forgo the benefits of operating as corporations."

In 2011, the HHS issued a mandate that required most health insurance policies to provide coverage ensuring that women had the right to all twenty contraceptive medications that had been approved by the Food and Drug Administration (FDA). Four of these twenty FDA-approved contraceptive methods could have the effect of preventing a fertilized egg from implanting in a woman's womb. The owners of three closely held, for-profit corporations (Hobby Lobby, Mardel, and Conestoga Wood Specialties) all demonstrated their sincere Christian beliefs that life begins at conception. These corporations originally brought separate lawsuits against HHS and other federal agencies under the Religious Freedom Restoration Act of 1993 (RFRA) and the Free Exercise Clause of the First Amendment, seeking to enjoin the application of the contraceptive mandate with regard to the four objectionable contraceptives. They argued that it would violate their religious freedom to be forced to provide access to contraceptive drugs that could operate to prevent a fertilized egg from implanting in a woman's womb after conception, which they believed would amount to facilitating abortions.

The Tenth Circuit Court of Appeals ruled in favor of Hobby Lobby and Mardel, and granted an injunction against the enforcement of the contraception mandate. The government appealed this decision. Conestoga Wood appealed a Third Circuit Court of Appeals decision that denied their request for such an injunction.

The Supreme Court held that the "RFRA applies to regulations that govern the activities of closely held for-profit corporations," and that "Congress designed the statute to provide very broad protection for religious liberty." The Court further recognized that "[p]rotecting the free-exercise rights of closely held corporations thus protects the religious liberty of the humans who own and control them."

The Court held that "the regulations that impose [HHS's contraceptive mandate] violate the RFRA, which prohibits the Federal Government from taking any action that substantially burdens the exercise of religion unless that action constitutes the least restrictive means of serving a compelling government interest." Since the mandate would require the owners to "engage in conduct that seriously violates their sincere religious belief that life begins at conception….or face severe economic consequences," the Court held that the Government had failed to establish that the mandate was the least restrictive means of furthering its interest in guaranteeing cost-free access to the four contraceptive methods that were at issue.

Employers should note that the Court specifically held that this decision "should not be understood to hold that all insurance-coverage mandates, e.g., vaccinations or blood transfusions, must necessarily fail if they conflict with an employer's religious beliefs. Nor does it provide a shield for employers who might cloak illegal discrimination as a religious practice."

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Get Connected (Clickable Icons)

Save the Date! Upcoming Events

- **Wednesday, September 10, 2014**

  TVC-SHRM Fall Workshop at the Garden Plaza Inn (More details coming soon)

- **Friday, November 14, 2014**

  Annual Legislative Meeting *(joint venture with NASHRM, Cullman SHRM)* at the Jackson Center in Huntsville

- **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 August meeting will feature Elizabeth Doehrig and will be held on Wednesday, August 13, 2014 at the Decatur Country Club.

Hope to see everyone there!

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