

March Newsletter

March Meeting

**Wednesday,
March 12th**

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

March 12, 2014



Our Speaker:

**Peggy Anderson, Alabama Dept.
of Rehabilitation Services**



Topic:

***“Understanding the Rehabilitation Act and how to Retain
Employees with Disabilities”***

Peggy Anderson at Alabama Dept. of Rehabilitation Services is a professional in the field of disability management and vocational rehabilitation for 38 years; member of the executive leadership team – Al. Dept. of Rehab Services; state, regional and national trainer/consultant to business and EEOC/OFCCP on disability in the workplace; varied national publications in field of expertise; has worked with thousands of Alabama and national businesses on initiatives tied to employment and disability.

With upcoming Federal contractor mandates on employment people with disabilities, coupled with the desire of businesses to retain valued workers whose job is affected by illness, injury, aging, or disability, this session will have a dual learning objective. The first will be focused on a clear understanding of the new mandates in Section 503 of the Rehab Act and the local resources available to assist businesses at no cost in showing good faith effort and positive outcomes. The second will be to take away knowledge and activities that will minimize turnover & maximize retention of employees, including wounded warriors, who have been affected by physical or mental challenges from disability, aging, or serving in the military.



**Thank you to Snelling and Pine Ridge Day Camp and
Equestrian Center for sponsoring our March meeting!**

Retaliation and ADA Claims Reach a Record High

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

According to the EEOC, 41.1% of all discrimination claims filed during FY2013 alleged retaliation. This is the twelfth consecutive year that retaliation charges climbed. Although the total discrimination charges filed during FY2013 declined from 99,412 to 93,727, the number of retaliation charges increased from 37,836 to 38,539. Disability discrimination charges as a percentage of total charges rose for the sixth consecutive year, to 27.7% from 26.5% in 2012 and 20.4% in 2008.

The expansion of what may be considered "retaliation" is the primary reason why these numbers continue to increase. We have also seen an increase in retaliation claims under the Fair Labor Standards Act, where employees allege that they have been retaliated against for speaking up about employer pay practices, and retaliation claims under OSHA, where employees allege they have been retaliated against for speaking up about safety practices. The two key retaliation prevention approaches employers should consider are: First, be sure that workplace policies address retaliation and a process for employees to report behavior they consider retaliatory. Second, be sure managers and supervisors are taught about the subtleties of retaliation and the importance of consulting with HR where there may be a potential "retaliation event" in the works, such as an employee with performance issues in the context of using FMLA.

We expect ADA challenges for employers to continue. For example, when the ADA was passed in 1990, Congress found that "43 million Americans have one or more physical or mental disabilities, and that number is increasing . . ." According to the 2000 census, 49.7 million, or 20% of our population, was considered disabled. As of today, 65 million Americans meet the ADA definition of a disability. This comprises 22% of our population. Fifty three percent of those older than age 50 have impairments that meet the definition of disability. Employers need to ensure that managers and supervisors understand the ADA reasonable accommodation principles. With the low threshold of what is considered a disability, an unknowledgeable manager or supervisor may fail to recognize that an employee medical issue includes ADA implications.

USCIS Issues Guidance Concerning TNC's & Correcting Immigration Records

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

Late last month, the U.S. Citizenship and Immigration Services (USCIS) issued new guidance concerning E-Verify. When an employer E-Verifies an employee and receives a "Department of Homeland Security Tentative Nonconfirmation Further Action Notice," ("DHS TNC"), the DHS TNC now directs the employee to a new "Fact Sheet," available at <http://www.uscis.gov/e-verify/about-program/whats-new>. Employers are directed to provide a copy of the Fact Sheet to the DHS TNC employee, and the employee should be provided with the Fact Sheet at the time the DHS TNC is issued; however, for existing DHS TNC cases, do not provide another copy of the DHS TNC (if previously issued), merely provide the Fact Sheet. The Fact Sheet provides specific guidance concerning correcting DHS TNC errors, including specific points of contact for USCIS. Requirements for handling Social Security Administration Tentative Nonconfirmations (a/k/a "SSA TNC") remain the same and further guidance is available at <http://www.uscis.gov/e-verify/employers/tentative-nonconfirmations/ssa-tncs>.

**E-Verify Update:
Tentative
Nonconfirmation
Guidance for
Employees**

Time Spent Changing Into/Out of Protective Gear Not Compensable, Supreme Court Says

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

On January 27, 2014, the U.S. Supreme Court issued its opinion in *Sandifer v. United States Steel Corp.*, holding that the protective gear U.S. Steel required employees to wear constituted “clothes” under the Fair Labor Standards Act (FLSA) and thus time spent by the employees putting them on and taking them off (so-called “donning and doffing”) is not compensable under the Act.

In 1949, Congress amended the FLSA to provide that the compensability of time spent changing clothes or washing at the beginning of or end of each workday is an appropriate subject for collective bargaining with a union, leading many FLSA specialists to the conclusion that donning and doffing was not subject to compensation. According to the Court, the term “clothes” is interpreted as having its ordinary, contemporary and common meaning found in the dictionaries from that day (1949). Accordingly, the Court found that for purposes of the FLSA, clothes are items that are both designed and used to cover the body and are commonly recognized as articles of dress. The petitioner employees argued to the Court that the term “clothes” did not include protective clothing.

U.S. Steel required employees to wear twelve of the most common kinds of required protective gear: flame-retardant jacket; pair of pants; hood; hardhat; a “snood;” “wristlets;” work gloves; leggings; “metatarsal” boots; safety glasses; earplugs; and a respirator. The Court found that each of the above items except the safety glasses, earplugs, and respirator fell within the definition of “clothes.”

The Court then considered whether the time spent in donning and doffing the non-clothing items was compensable. While many lower courts have used the “de minimis” rule to hold that time spent putting on these relatively simple items was not compensable, the Court held that this rule does not fit comfortably with the FLSA. As a result, the Court said to determine the compensability of putting on protective gear other than clothing, employers should ask whether the period at issue can, on the whole, be fairly characterized as “time spent in changing clothes or washing.” If the employee devotes the vast majority of that time to putting on and taking off equipment or other non-clothes items, the time would not qualify as time spent changing clothes, even if some clothes items were donned and doffed along with the other protective gear. But if the vast majority of time is spent in putting on and taking off the non-clothes items would also be non-compensable. In the case of the U.S. Steel employees, the Court said they spent nearly all of their time donning and doffing the clothes and very little of it putting on safety glasses, ear plugs, and a respirator, and therefore none of the time was compensable under the FLSA.

The Court’s decision certainly clarifies the law for employers who have increasingly introduced an ever-expanding list of personal protective clothing and equipment to the workplace. Employers who require the use of protective clothing and equipment should review their compensation policies in light of the clarified rules.

Coming Up April 9, 2014

Speaker: **William Shafferman**

Topic: ***Saving for Future College Costs – Employers and 529 College Savings Plans***

Get Connected (Clickable Icons)



2014 SHRM Conferences

What	When	Where	Who
Employment Law & Legislative Conference	March 17 – March 19, 2014	Washington, D.C. (Washington Renaissance)	HR managers, directors, VPs, general counsel, compliance officers, and HR consultants
Talent Management Conference & Exposition	April 28 – April 30, 2014	Nashville, TN (Gaylord Opryland)	Recruiters, HR generalists and specialists with recruitment and talent management responsibilities
Council for Global Immigration Symposium	June 2 – June 5, 2014	Alexandria, VA (Westin Alexandria)	HR professionals with high-skilled-worker immigration and mobility responsibilities, immigration attorneys, and immigration specialists
Annual Conference & Exposition	June 22 – June 25, 2014	Orlando, FL (Orange County Convention Center)	HR directors, generalists, managers, and specialists from all size organizations and industries
Strategy Conference	September 30 – October 2, 2014	Las Vegas, NV (Wynn Las Vegas)	HR directors and VPs in mid-size organizations, and aspiring HR leaders
Workplace Diversity & Exposition	October 13 - October 15, 2014	New Orleans, LA (Sheraton New Orleans)	D&I directors, D&I educators, senior HR generalists responsible for D&I programs, and EEOC professionals

2014 TVC-SHRM BOARD**President****Amy Smith, PHR***Big Heart Pet Brands*Amy.Smith@bigheartpet.com**Vice President of Programs****Mary Ila Ward, SPHR***Horizon Point Consulting*miw@horizonpointconsulting.com**Valerie Curtis***Alliance Source Testing*Valerie.Curtis@StackTest.com**Vice President of Membership****Beverly Thompson**msbl2359@charter.net**Secretary****Patti Fowler***Alliance HR*pfowler@alliancehrservices.com**Treasurer****Pat Bearden***National Packaging Co., Inc.*pat.bearden@npcoinc.com**Legislative Director****Pam Werstler, SPHR***National Packaging Co, Inc.*Pam.werstler@npcoinc.com**Director of Community Relations****Diversity Director****Dr. Denny Smith, PHR***Calhoun Community College*dws@calhoun.edu**Director of College Relations****Director of SHRM Foundation****Jeff Powers, SPHR***Toray Carbon Fibers America, Inc.*Jeff.Powers@toraycfa.com**Director of Certification****Forrest Keith, SPHR***Daikin America*forrestkeith@daikin-america.com**Past President****Robin Jackson***Cook's Pest Control*Robin.Jackson@cookspet.com**Special Events Advisor****Newsletter****Tiffany Weaver***Ascend Performance Materials*tweave@ascendmaterials.com**Advisor to the Board-Technology****Amanda Tidwell**Amanda.tidwell@npcoinc.com**Do you know an HR professional in the area that is not currently a TVC-SHRM member?**

All of us probably know at least one person to bring as a guest to a monthly chapter meeting that might be interested in being part of our group.

As both a membership initiative for 2014 and an incentive for our chapter members to attend the AL SHRM state conference, we will hold a drawing for all TVC-SHRM Professional members who bring a guest to the February, March or April chapter meetings for a full conference registration fee at the AL SHRM state conference in May. This conference will be held on May 13th and 14th at the Birmingham Sheraton in downtown Birmingham. This event will offer 11 HRCI recertification hours and will have a wellness theme. The conference normally sells out and is always very engaging.

The winner of the contest will win a paid registration to the conference. If the winner decides to stay overnight in Birmingham, they will be responsible for their own travel and hotel costs.

Thank you for your help with this initiative. We hope to achieve STAR and/or SUPER-STAR status with our chapter this year.

Save the Date! Upcoming Events

- **April 22 & April 23 from 8:00 am - 5:00 pm.**
SHRM Certification Study Course (Lunch will be provided)
- **May 13-14, 2014**
Alabama State SHRM Conference Birmingham. Go to AL SHRM to register <http://al.shrm.org/conference-information-0>
- **June 22-25th**
SHRM 2014 Annual Conference in Orlando, FL. Go to shrm.org for more information and to register for the event.
- **September 10, 2014**
TVC-SHRM Fall Workshop at the Garden Plaza Inn (More details coming soon)
- **Every 1st Wednesday**
Workforce Coalition meeting at The Chamber of Commerce
(Contact Mary Ila Ward at miw@mceda.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 April meeting will be held on Wednesday, April 9, 2014 at the Decatur Country Club.

Hope to see everyone there!



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