AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

TVC~SHRM
TENNESSEE VALLEY CHAPTER OF SHRM - ALABAMA

March Newsletter

March Meeting

Wednesday, March 11th

Decatur Country Club

Buffet with a soup and salad $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

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March 11, 2015

Our Speaker:

Richard Lehr

Topic:

"Employer Rights Update"

Richard Lehr has received several business group and peer accolades regarding excellence of practice, including the highest ranking available from The Chambers USA Guide to America's Leading Lawyers for Business; SuperLawyers; Best Lawyers; the Client's Choice Award.

In his presentation Richard will cover current workplace trends and developments, including Department of Labor Initiatives to restrict classes of employees exempt under the Fair Labor Standards Act; NLRB initiatives for quick elections; EEOC compliance and litigation initiatives, and other current developments affecting employer workplace rights and responsibilities.

PINE RIDGE DAY CAMP & EQUESTRIAN CENTER

BT&A Burdick Tax & Accounting

Thank you to Pine Ridge and Burdick Tax & Accounting for sponsoring our March meeting!

Retaliation, Disability, and Pregnancy Claims Expanding, but "Cause" Findings Overall Falling

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

On February 4, the EEOC issued its litigation and charge processing statistics and analysis for fiscal year 2014 (year ended September 30, 2014). Fiscal year 2014 was the first time in the past six years that the total number of charges filed fell below 90,000 (88,778). Out of all charges filed, 42.8% contained a retaliation claim, making it the most frequently-occurring category of complaint. (Of course, charging parties may and often do pursue multiple categories of claims in a single charge). This also marked the eleventh consecutive year that the percentage of charges containing a retaliation claim has increased. Disability discrimination charges were also on the rise, with 28.6% of all charges containing an ADA claim. This is the sixth consecutive year that percentage has increased. The proportion of charges alleging pregnancy discrimination, another major EEOC priority, increased slightly from 3.78% to 3.83%.

Also of note, for the first time, the EEOC released comprehensive information regarding harassment charges. Over 30% of EEOC charges during fiscal year 2014 alleged some type of harassment. Charges alleging sexual harassment numbered 6,862 (about 1,200 filed by men), the fourth consecutive year that number has declined. Though the number of sexual harassment filings is in decline, the EEOC finds "reasonable cause" to believe that sexual harassment occurred in 6.1% of those cases, making them the most successful type of EEOC Charge for charging parties. This rate is almost double the overall EEOC cause finding percentage of 3.1% and over double the rate of cause findings for harassment charges other than sexual harassment, 2.9%.

We expect the EEOC to continue to focus on disability and pregnancy related issues. In both types of claims, the EEOC's rate of cause findings is above its 3.1% average for all claims. The EEOC found cause in 3.7% of disability claims and 3.8% of pregnancy claims.

Going forward, within disability claims, we think the EEOC will pay particular attention to mental, behavioral or emotional disorders. According to the National Institute of Mental Health, 18.6% of American adults (43.7 million) have been diagnosed within the past year or are currently diagnosed as having such a disorder. Over 53% of all American adults older than 50 meet the low threshold definition of "disability" under the ADA.

Regarding pregnancy, the EEOC staked out an aggressive position in an amicus brief in the pending U.S. Supreme Court case of Young v. United Parcel Service, addressing to what extent an employer must reasonably accommodate the work restrictions of a pregnant employee under the Pregnancy Discrimination Act. The EEOC's position is that the PDA requires employers to provide reasonable accommodation to pregnant employees, including assigning employees to light duty jobs even if those jobs historically have been reserved only for those with a job related injury or illness. Regardless of the Supreme Court decision in Young, expect the EEOC and plaintiffs' attorneys to continue to attempt to turn the PDA into an accommodation statute, likely by framing limitations associated with pregnancy as disabilities and pursuing actions under the ADA.

For all the statutes it covers (Title VII, ADEA, ADA, EPA, GINA), the EEOC issued "no cause" determinations in 65.6% of all charges About 17% of charges are disposed of through administrative means, which typically means that the charging party has failed to respond to EEOC communication or that the EEOC concludes that the employer was not covered by the statute (ex: the employer employs too few people to be covered by the statute). The EEOC found "reasonable cause" in only 3.1% of all charges, the lowest percentage of cause findings issued by the EEOC during the past fifteen years. One of the reasons we think the percentage of cause findings has decreased is from proactive employer policies and supervisor training, particularly those addressing sexual and other forms of harassment.

Another reason we see for the decrease in cause determinations is that employers identify early if the charge is a dangerous one, and, if so, how it can be resolved at the earliest, least expensive stage possible. The remaining 14% of charges resolved in fiscal year 2014 were resolved through employer settlements including the EEOC as a party and those conducted separately from the EEOC but that result in the charging party requesting that the charge be withdrawn (though the EEOC is not bound to honor this request). Even where an employer decides to resolve a charge during the EEOC process, it can benefit from attorney advice. EEOC negotiation tactics and reasonableness vary greatly from office to office and even among individual investigators. Additionally, the EEOC has recently begun scrutinizing these agreements, so employers should be advised of the risks and rewards of obtaining or forgoing provisions previously considered standard.

Same Sex Marriage in Alabama – What Does This Mean for Employers?

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

On January 23, 2015, U.S. District Judge Callie V.S. Granade declared same sex marriage bans in Alabama to be unconstitutional and void, because they violated the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution. This ruling was temporarily stayed until February 9th to allow the State of Alabama to appeal the case and try to obtain an extended stay from the Eleventh Circuit Court of Appeals; however, the 11th Circuit and the U.S. Supreme Court have declined to hear the state's petition. The U.S. Supreme Court has agreed to hear similar cases arising in four other states in which federal judges struck down same sex marriage bans. The U.S. Supreme Court's decision in these cases will ultimately affect this issue in Alabama as well.

For now, some probate judges in Alabama are issuing marriage licenses to same-sex couples, and others are refusing to do so based upon Alabama Supreme Court Chief Justice Roy Moore's advisement to probate judges not to issue marriage licenses.

How does all of this confusion affect employers? Well, it causes even more confusion, of course, as these rulings impact employee benefits such as health insurance, retirement plans, and FMLA leave, to name a few. For most benefit issues, the determination of whether a couple is legally married has been based upon the couple's "state of celebration" (where they were married). The U.S. Department of Labor previously defined "spouse" as "a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including 'common law' marriage and same-sex marriage." The IRS issued guidance last year applying the Supreme Court's decision in United States v. Windsor (holding that the Defense of Marriage Act's definition of marriage was unconstitutional and that the federal government must recognize same sex marriages that are recognized by states) to qualified retirement plans.

On February 23, 2015, the DOL changed the test for FMLA applicability to comply with the Windsor decision, and has issued a final rule providing that the "state of celebration," rather than the "state of residence," will determine legality of same-sex marriages for purposes of FMLA leave taken to care for a seriously ill spouse. This rule was published in the Federal Register on February 25, 2015, and will take effect on March 27, 2015.

While it is true that neither the ACA, the IRS Tax Code nor ERISA require a private employer to offer group health insurance benefits to employees' spouses, if an employer does provide health insurance and/or other benefits to "opposite sex" spouses of its employees, there is a legitimate argument for same sex spouses to claim the same right to eligibility. Failure to offer the same benefits could result in a sex/gender based discrimination claim under Title VII. At least one U.S. District Court has already addressed this issue and found protection for same sex spouses where a company provided benefits to a male spouse of a female employee, but not to the male spouse of a male employee. Hall v. BNSF Railway Company (W.D. Wash. 2014).

All of these issues are developing, and there are few definitive answers at this time. Employers are well advised to review their benefit plan documents, policies and procedures to determine whether any changes need to be implemented.

Welcome New TVC-SHRM Members!

- **Nora Vanderploeg**, *HR Manager*, 3M
- **Sharalee Little**, *HR Coordinator*, Community Action
- **Krystle Cranor**, *Recruiting Coordinator*, LyonsHR

2015 Alabama SHRM State Conference Drawing!

Remember if you bring a guest to the March and April meeting, your name will be placed into a drawing for the total registration fee of $325.00 to attend the 2015 Alabama SHRM State Conference, May 19th-20th.

Note: If you brought a guest in January & February your name is already entered.

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tweave@ascendmaterials.com
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Robin.Jackson@cookspest.com

Get Connected (Clickable Icons)

Save the Date! Upcoming Events

- **March 17, 2015 5:30 p.m. - 7:00 p.m.**
  Job Networking Group of Morgan Co. at the Decatur Public Library
- **May 19-20, 2015**
  2015 Alabama SHRM State Conference and Exposition in Birmingham, AL
- **June 28, 2015—July 1, 2015**
  SHRM 2015 Annual Conference & Exposition at the Las Vegas Convention Center
- **November 4, 2015**
  TVC-SHRM Fall Workshop at the Doubletree Hotel (formerly *Garden Plaza Inn*) in Decatur
- **Every 1st Wednesday**
  Workforce Coalition meeting at The Chamber of Commerce (Contact Mandy Price 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 8, 2015 at the Decatur Country Club.

Hope to see everyone there!

Tennessee Valley Chapter SHRM
PO Box 1271
Decatur, AL 35602
http://tvc.shrm.org/