



## September Meeting

Wednesday, September 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.

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](mailto:pfowler@alliancehrservices.com)



# September Newsletter



## September 9, 2015

Our Speaker:

**Dr. James Gauthier**

Topic:

***“Obesity -The Economic Impact and the Business Case for Workplace Wellness”***

James F. Gauthier, MD, MPH, Medical Director, graduated from the University of Alabama, School of Medicine at Birmingham. He completed his residency at Druid City Hospital in Tuscaloosa. Dr. Gauthier joined OHG in 1994. While working at OHG, he received his Master's in Public Health from the Medical College of Wisconsin and completed a residency in Occupational Medicine at Thomas Jefferson University in Philadelphia. In 2004, Dr. Gauthier became OHG's Medical Director. Dr. Gauthier is Board Certified in Occupational Medicine and Family Practice. He is certified by the American Board of Independent Medical Examiners and is a certified Medical Review Officer.

The presentation will define obesity and how the varying levels of an unhealthy weight and eating habits impact not only the employee personally, but also their work performance. Examples of potential impacts, through lost time due to weight related morbidities, or increased work-related injury rates due to unhealthy weight will be discussed. The presentation will also cover what employers can do to impact the employee at the work place. Examples of possible job-related supports such as incentivized wellness programs, healthier vending machines, and so on, will be provided.

**Thank you to OHG for sponsoring our September meeting!**



## Lawful Background Question Plus Untruthful Answer Equal Lawful No-Hire Decision

*Courtesy of Lehr Middlebrooks & Vreeland, P.C.*

It is a fundamental principle that an employer has the right to hold an applicant accountable for an untruthful answer to a lawful question. In the case of *Sweatt v. Union Pacific Railroad Company* (7th Cir. Aug. 6, 2015), the Court found there was no bias when Sweatt made a “fatal mistake” during the interview process—“persisting in a lie about criminal history.”

Sweatt was a track worker for several years at Union Pacific. At age 54, seeking a lighter duty job, he applied for a position as a security guard. The company asked its security guard applicants to complete a “Personal History Statement.” This Statement included the question of whether the applicant had been charged with or convicted of a crime. In conjunction with that question, the company included the following statement: “A conviction may not disqualify you, but a false statement will.”

Sweatt had been arrested for domestic violence but did not disclose that in response to the question. During his initial interview, Sweatt was specifically asked the same question by the interviewer and again responded “no.” The company conducted a comprehensive background check, where it learned of Sweatt’s arrest. Three additional times Sweatt was asked if he had been arrested, and three additional times Sweatt answered “no.” Thus, with a minimum of five times for Sweatt to discuss his arrest, each time he answered untruthfully.

The employer disqualified Sweatt from consideration from the security guard position. Sweatt filed an age and race discrimination lawsuit. He alleged that nineteen other candidates were offered security guard positions and he was not, thus he alleged the company’s decision was motivated by his race and age. In rejecting that claim, the Court stated that not one of the nineteen other candidates was similarly situated to Sweatt. That is, there was no evidence that the other nineteen had lied about their criminal history and covered it up when asked repeatedly during the interview process. Three candidates with criminal records were hired, but they did not attempt to cover their criminal past and, according to the Court, were “forthright and admitted to the prior misdeeds during the interviews.”

The Court noted the job-related nature of these questions. Security guards are responsible for protecting multi-million dollar company assets. Thus, the company had every reason to be concerned about the integrity and honesty of the individuals it hired for that position. The general employment principle extends beyond criminal history records: An employer has the right to hold applicants accountable if they are untruthful in response to permissible interview questions.

## “Undisputed Evidence” Needed in FMLA Case

*Courtesy of Lehr Middlebrooks & Vreeland, P.C.*

In the July 30, 2015, case of *Janczak v. Tulsa Winch, Inc.*, the Tenth Circuit Court of Appeals reviewed the evidence an employer must be prepared to present to defeat an FMLA interference claim. Janczak was employed as a General Manager at the company’s Tulsa location. Janczak was on FMLA leave during July 2012 due to an auto accident. In June 2012, the company considered eliminating Janczak’s position due to a reorganization. Janczak was notified during the time that he was on FMLA that his position was eliminated and he was terminated. He sued, claiming the company interfered with his FMLA rights and retaliated against him for using FMLA.

The company responded to both FMLA theories by stating that his position had been eliminated and it was not due to his FMLA. The Court sustained the company’s argument regarding the retaliation claim. According to the Court, there was no evidence that the employer’s reason—the elimination of the position due to reorganization—was an untrue pretext for retaliation. Furthermore, timing alone on a termination decision is not sufficient to sustain a retaliation claim.

However, the Court permitted the FMLA interference claim to go to the jury. According to the Court, to defeat an interference claim, the employer must offer “undisputed proof” that Janczek’s position was definitively slated for elimination before his leave began. The Court also referred to company emails (“evidence mail”) where those involved in the decision to terminate Janczek had discussed his leave in that context. The Court concluded by stating that enough evidence existed for the interference claim—whether Janczek’s termination was “causally connected” to his use of FMLA leave—but that the same evidence did not support the retaliation claim because it did not show his termination was “motivated by” his use of FMLA leave.

## Welcome Our Newest TVC-SHRM Members!

- **Tina St. John**, *HR Specialist/AP Clerk*, Micor Industries
- **Travis Woods**

# 2015 TVC-SHRM Fall Workshop

TVC-SHRM presents Talent Anarchy in  
**UN-MANAGEMENT**



It's Time to Confront the Inconvenient Truth About Innovation in Your Organization



Register now: [tvc.shrm.org](http://tvc.shrm.org)

**WEDNESDAY, NOVEMBER 4, 2015**



**Double Tree Hotel**  
*(formerly Holiday Inn/ Garden Plaza)*  
 1101 6th Ave NE  
 Decatur AL 35601

**\$50 Student**  
**\$99 TVC-SHRM Member**  
**\$125 TVC-SHRM Non-Member**

0830	Welcome & Opening Comments
0845	Innovation Revisited
0930	The Inconvenient Truth About Innovation
1000	Break
1010	Building a Culture of Connection
1115	Lunch- Presenting Sponsor Presentation
1230	Building a Culture of Inclusion
1330	Break
1345	Building a Culture of Liberation
1445	Break
1500	Action Planning
1600	Closing Remarks



## 2015 TVC-SHRM BOARD

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[miw@horizonpointconsulting.com](mailto:miw@horizonpointconsulting.com)

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Alliance Source Testing

[Valerie.Curtis@StackTest.com](mailto:Valerie.Curtis@StackTest.com)

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[tbs@horizonpointconsulting.com](mailto:tbs@horizonpointconsulting.com)

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[pfowler@alliancehrservices.com](mailto:pfowler@alliancehrservices.com)

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[pat.bearden@npcoinc.com](mailto:pat.bearden@npcoinc.com)

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National Packaging Co., Inc.

[Pam.werstler@npcoinc.com](mailto:Pam.werstler@npcoinc.com)

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Calhoun Community College

[dws@calhoun.edu](mailto:dws@calhoun.edu)

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[Jeff.Powers@toraycfa.com](mailto:Jeff.Powers@toraycfa.com)

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Daikin America

[forrestkeith@daikin-america.com](mailto:forrestkeith@daikin-america.com)

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**Omar Smith**[omar.smith@rehab.alabama.gov](mailto:omar.smith@rehab.alabama.gov)

Director of Wellness

**Heather McDearmond**[Heather.mcdearmond@bunge.com](mailto:Heather.mcdearmond@bunge.com)

Special Events Advisor

Newsletter

**Tiffany Weaver**

Ascend Performance Materials

[tweave@ascendmaterials.com](mailto:tweave@ascendmaterials.com)

Advisor to the Board-Technology

**Amanda Tidwell**[Amanda.tidwell@npcoinc.com](mailto:Amanda.tidwell@npcoinc.com)

Past President

**Robin Jackson**

Cook's Pest Control

[Robin.Jackson@cookspet.com](mailto:Robin.Jackson@cookspet.com)

## GET CONNECTED (CLICKABLE ICONS)



## SAVE THE DATE! UPCOMING EVENTS

- **September 15, 2015**  
**Job Networking Club of Decatur**
- **November 4, 2015**  
**TVC-SHRM Fall Workshop** at the Doubletree Hotel (formerly *Garden Plaza Inn*) in Decatur [Register Here!](#)
- **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](mailto:tweave@ascendmaterials.com) if you have an upcoming event that you would like to add.

**Our October meeting will be Wednesday, October 14th at the Decatur County Club.**  
**Hope to see everyone there!**

Tennessee Valley Chapter SHRM  
PO Box 1271  
Decatur, AL 35602  
[www.tvcshrm.org](http://www.tvcshrm.org)