

MEMBER NEWS

www.williamsoncountyhr.org

January Member Meeting

FMLA: Does it stand for “Find me a Lawyer ASAP?”

Few issues are as challenging for employers as dealing with sick, injured or disabled employees. When is leave an employee's right and when is it an abuse of the Family and Medical Leave Act?

Join us on Friday, January 11th at the Wingate Hotel in Round Rock for the January member meeting – FMLA: Does it stand for “Find me a Lawyer ASAP?” – presented by Judy Osborne, Attorney at Law.

In this presentation you'll learn to:

1. Identify when leave must be granted under the FMLA
2. Understand the intricacies of intermittent leave
3. Recognize the employer's rights, responsibilities and options under the FMLA

INSIDE THIS ISSUE

January Member Meeting	1
President's Corner	1
Legal Briefs	3
SHRM Article	5
Looking Ahead - February	6
Our Sponsors!	6

Judy Osborn counsels employers on how to supervise employees legally and effectively by doing the right thing, and doing it the right way. Concentrating on preventing and resolving workplace problems, she offers personal attention and responsiveness to each client's needs. Her solutions are practical, blending the law with an understanding of human nature.



Judy Osborn, J.D.

President's Corner

Strategic Planning: 2008 and Beyond

Last month, the 2007 and 2008 WCHRMA Boards of Directors met jointly to begin planning for 2008 and beyond. In my first letter to you as WCHRMA President, I'll highlight the results of that meeting.

Culture. The directors began by describing the culture of our chapter. They noted that we are inclusive, friendly, and welcoming with emphasis on communication and focus on continuing education. In the administration of the chapter, we

are business-like, professional, and team-oriented as we seek continuous improvement for the chapter and its members. As the directors continued to plan, this description of the WCHRMA culture served as a reminder of who we are, as an organization, and who we want to be in the future.

Vision. The directors' deliberations resulted in a more aggressive and expansive vision for our chapter: “To be the leader in strategic human

Please see *President's Corner* on page 2

President's Corner from page 1

resources by advancing the profession and supporting our members and the community we serve." The purpose of the vision statement is to give us all a sense of where we, as an organization, are going. This led to the mission statement, which speaks to how, in general terms, we plan to reach our vision.

Mission. After reviewing and discussing the existing mission statement in light of the new vision statement and their description of our culture, the directors added one element to the mission statement (highlighted below):

- a) To be a recognized leader in human resource management
- b) To provide high-quality, dynamic, and responsive programs and services to our membership
- c) To be a voice of the profession about human resource management issues in the local area
- d) To support and develop current and aspiring human resource management professionals**
- e) To facilitate the development and guide the direction of the human resource profession in the local area and promote the highest standards of ethics and diversity
- f) To encourage cooperation and networking among members and their organizations
- g) To support the Society for Human Resource Management and its efforts to establish, monitor, and update standards for the profession

Scan. As the directors analyzed the business landscape of Williamson County, they highlighted considerations relating to how WCHRMA can contribute to the growth of its members and the community.

- a) Help HR professionals in the area of compliance (state, federal, and local)
- b) Maintain our culture as we and the community grow

- c) Connect with and help small, growing companies
- d) Be a positive influence in the face of enormous growth in the health care sector
- e) Help the HRM profession grow

SWOT Analysis. The directors completed an extensive analysis of the internal (WCHRMA) and external environments, which is too extensive to recount here but led to strategic objectives.

Strategic Objectives for 2008. The directors developed twenty-five objectives that grew out of their deliberations on our culture, vision, and mission as well as the scan and SWOT analysis. Those objectives will be reviewed by the 2008 directors with a view to combining, deleting, and adding objectives as necessary.

Next Steps. The 2008 Board of Directors will continue the strategic planning process by developing strategies to achieve the strategic objectives and a plan to put those strategies into action. I hope you will take the opportunity to reflect on the results of the strategic planning process completed to this point and provide feedback to the 2008 directors. I'm looking forward to an exciting and challenging year as President of WCHRMA with a terrific Board of Directors and you, the wonderful members we serve.

*Susan Word, SPHR
2008 WCHRMA President*



Legal Briefs

Welcome to Legal Briefs for HR!

Here's what's up:

Tick Tock – The new Form I-9 was published in the Federal Register on Nov. 26, which means you must begin using the new version on Dec. 26 for new hires and when it's time to re-verify information on a current employee. As mentioned in last month's LB4HR, the form and a very helpful guidebook are available at www.uscis.gov/files/form/I-9.pdf and www.uscis.gov/files/nativedocuments/m-274.pdf.

You can start using the new form immediately, if you wish, but it's not required until Dec. 26.

No Match Update – The U.S. Department of Homeland Security (DHS) appealed to the Ninth Circuit to lift the injunction imposed by a District Court judge in northern California. DHS Secretary, Michael Chertoff, said DHS would work to [a] overturn the injunction; and [b] modify the final no-match rule to address the concerns of the Court which were, primarily, the lack of accuracy of the SSA database and the resulting costs to business in complying with the rule. Stay tuned! In a related development, a group of employers led by the Arizona Contractors Association has re-filed suit requesting a temporary restraining order to stop implementation of an Arizona state law that would mandate use of E-Verify on all new hires, effective January 1. SHRM has filed an amicus brief in support of the employer group. If you have employees in Arizona, read the pleadings and follow developments at www.azca.com.

You Talkin' to Me? – A recent sexual harassment case provides good insight into the importance of an effective harassment policy and complaint procedure. A 16-year old in a fast-food restaurant was allegedly subjected to repeated comments, rubbing, attempted kisses and propositions from her store manager. Her complaints to shift supervisors and an assistant manager did not help the situation,

so her mother went to the restaurant to complain. The worker was fired. She filed an EEOC charge and the subsequent lawsuit (filed by the EEOC) was dismissed on a motion for summary judgment because the worker had failed to use the employer's complaint procedure. However, the 7th Circuit reversed finding that there was no effective procedure. Specifically, the employer was faulted for [1] not having procedures that could be understood by the average teen-ager (since they hire lots of them); [2] having a procedure in the handbook that directs employees to speak to their district manager (but not identifying that person by name and/or giving directions on how to contact their DM); and [3] specifying that complaints must go through the General Manager (even when the GM is the problem). *EEOC v. V&J Foods, Inc.* (7th Cir. 11-7-07). A good policy and a prompt and effective response to complaints will nix employer liability in most cases, so take the time to ensure your words are clear and your system works.

On the Road Again – Home health care workers in Pennsylvania will divvy up \$2.2 million as reimbursement for previously unpaid travel time (between assignments), overtime and travel expense (e.g., bus fare). The employer must also eliminate a "drop in rate" approach to pay, where employees' rate of pay dropped if they failed to work "x" hours per pay period. The Service Employees International Union (SEIU) reports that it is considering the filing of similar lawsuits in other states who have wage and hours laws that are more protective than the FLSA approach (as interpreted in *Long Island Care at Home v. Coke*) to companionship services. *Thomas v. Total Health Home Care Corp.* (Pa. Ct. of Common Pleas 11-26-07). Is compensability of travel time for nonexempt employees the next big thing in "off the clock" litigation? We'll see.

Testing, Testing, One, Two, Three – Hop on over to the EEOC's website (www.eeoc.gov) for a newly released guidance on employment tests and

Legal Briefs from page 3

selection procedures. There's a link to transcripts of testimony on the topic in addition to the guidance, which features a rehash of the applicable law, recent litigation and settlements and a "best practices" list. The most important thing to note may be under the second bullet on the "best practices" list . . . "While a test vendor's documentation supporting the validity of a test may be helpful, the employer is still responsible for ensuring that its tests are valid under the [Uniform Guidelines on Employee Selection Procedures]." Validation means the test is job-related and consistent with business necessity. The ease with which on-line testing tools are made available does not mean "plug and play." Do your homework.

FMLA Expansion Gets Marching Orders – Get ready to offer FMLA leave to a class of employees who were not eligible in the past. While past efforts to expand the FMLA have failed, who was going to say "no" to offering up to 12 weeks of FMLA to the family members of service men and women to see their loved ones off, as they are called to active duty, or 26 weeks of FMLA to care for them when they return home injured? The House didn't, and the Senate (on Dec. 14) didn't either. President Bush says he will sign the National Defense Authorization Act (H.R. 1585) into law shortly. And for you folks with employees in Ontario, Canada, there is new legislation which provides job-protected leave for military reservists serving with the Canadian Forces.

ADA Adjustment? – As mentioned in LB4HR #9, Congress is considering legislation (H.R. 3195 and S. 1881) which would dramatically expand the scope of the Americans With Disabilities Act (ADA) by removing "substantial limitation of a major life activity" from the analysis and disallowing consideration of an impairment in its mitigated state (e.g., with the benefit of medication or an adaptive device) when determining whether or not the person is a "qualified individual with a disability." The bad news is that testimony taken before a Congressional panel was heavily skewed toward expansion of the

law, with very little discussion of how such a change would negatively impact the workplace. If you are concerned about the prospect of not-so-reasonable accommodation, contact your legislators (via SHRM HRVoice [for SHRM members] or via www.senate.gov and www.house.gov) and educate them about the pitfalls of elevating less serious impairments to protected status.

Simply the Best – The Texas Association of Business (TAB) will host a two-day conference in Austin on January 24 and 25, 2008, featuring [1] health care experts and state government leaders who will speak on the issue of costly health care; [2] a salute to state legislators who stood up for business in 2007; and [3] a luncheon to honor the winners of the "Best Companies to Work for in Texas 2008." TAB, the SHRM Texas State Council and Texas Monthly magazine teamed up to identify the best companies that do business in Texas. Go to www.txbiz.org for the complete agenda and registration info. I hope to see YOU there!

Goin' Green – HR departments are leading the charge, in workplace efforts to "go green" by using less electricity and making less trash. Before you head out for the holidays, think about unplugging anything that will not be used while you're gone, lowering the thermostat on heating systems and perhaps asking Santa for the latest and greatest in power-saving gadgetry (e.g., motion detectors that turn off the lights automatically when a room is vacant). For those in the DFW area, check out the current issue of "D" magazine for tons of ideas to begin using next year!

Goin' Global – If your HR practice includes international operations, don't miss this one-day forum called Global HR – Exploring the Opportunities. It will be held on January 15, 2008 at the Marriott West Loop by the Galleria in Houston and is hosted by the SHRM Texas State Council. Go to www.tsc-shrm.org for details and to register!

Legal Briefs from page 4

Goin' Home – I hope the holiday season affords you the chance to be with your closest family and friends and to recharge your batteries on home cookin', endless bowl games, the retelling of favorite stories by a crackling fire and the beauty of snowfall and cold, starry nights. If you are traveling, be safe and I'll talk to you again next year!



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SHRM Article

Managing Smart: Teaching Line Managers how to Supervise

Managing Smart is a unique service available to members of SHRM. Every quarter, a new collection of articles is provided that can help your company's line managers supervise their staffs effectively—and legally.

This online newsletter features authoritative advice from SHRM about communicating with, training, rewarding and motivating employees, complying with employment laws and many, many other hands-on duties managers face on a daily basis. Past issues are archived, so you have access to all the articles since 2000.

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AUSTIN WHITE LIME



Looking Ahead – February Member Meeting

Workforce Trends and Issues
presented by Richard Froschele

Date: Friday, February 8, 2008

Time: Registration begins at 11:15am; Meeting from 11:30 am to 1pm

Place: Wingate Hotel
1209 N. IH35, Round Rock, TX

Cost: \$20 for members; \$25 for non-members

CEUs: Have been requested

[Visit the website soon to sign up!](#)



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