

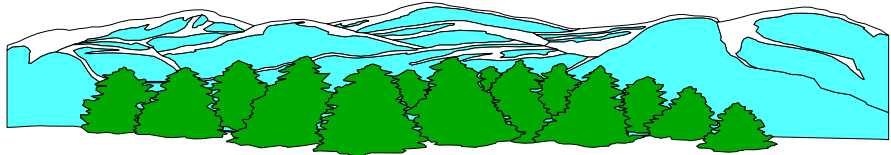
JANUARY 7, 2005

NEW RIVER VALLEY SHRM CHAPTER

AFFILIATE OF



www.nrvshrm.com



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Greetings From The President

Thank you each for your participation in SHRM in 2004, on behalf of the chapter leadership I want to welcome those of you that may be new to our organization. Thank you to those that served in various capacities this past year. Lorraine Washman, our outgoing president has served faithfully, I appreciate and we all benefit from the legacy she and other past chapter presidents has created.

The Society for Human Resources Management (SHRM) provides its members the opportunity to Serve the Profession and Advance the Profession.

The vision for SHRM is as follows:

”SHRM serves the needs of the human resource management professional by providing the most essential and comprehensive set of resources available. In addition, the Society is committed to advancing the human resource profession and the capabilities of all human resource professionals to ensure that HR is an essential and effective partner in developing and executing organizational strategy.”

The New Year is a time for new beginnings, a time of goals and a time of resolutions. I hope that in 2005 the New River Valley Chapter of the Society for Human Resources Management can focus on both advancing and serving the profession in such a way that we each can provide more strategic value to our respective organizations. Additional details as to how this will be accomplished will be forthcoming soon.

Regards,

Jim Hungate

Announcements

nrvshrm.com JOB DATA BANK

The Chapter now has a new job posting area on the web site. Members may begin placing job postings immediately. The data bank can be found under the "Position Postings" link on the web site. Please use the following guidelines when submitting a posting:

Guidelines to Post Vacancies

1. All postings should be submitted by e-mail via the website to Kathy Janosko, Web Site Administrator (kathy@ali-inc.com)
2. There is a 30 day posting limit unless notified to remove sooner.
3. We accept HR related postings only.
4. NRV-SHRM is not responsible for editing the job posting. We reserve the right to determine appropriateness. NRV-SHRM does not endorse any advertiser/submission.

There is no charge to members of NRV-SHRM.

ARTICLES FOR SHRM NEWSLETTER

Articles for each month's newsletter are due on the last Tuesday of the previous month. Articles for the February newsletter are due January 25th. They may be sent to the chapter's secretary, Teresa Harless, at tharless@blacksburg.gov. Teresa's telephone number is 540-558-0721.

CHAPTER FINANCIAL REPORT

Beginning balance as of November 30, 2004	\$8,949.77
Ending balance as of December 31, 2004	\$6,172.86

Visit nrvshrm.com for a detailed listing of transactions.

TSUNAMI RELIEF FUND RAFFLE

The NRV SHRM Chapter will be raffling a Frank Beamer autographed football and a framed Virginia Tech ACC Championship print with all proceeds going to the American Red Cross International Response Fund. These funds are used by the Red Cross to assist Tsunami victims. Tickets will cost \$10 each. Tickets may be purchased from NRV SHRM board members and will be sold at the January meeting. If you are interested in purchasing or selling raffle tickets, please contact Jim Hungate at (540) 557-5323 or email at jhungate@kaydon.com or another member of the NRV SHRM board of directors for information. The raffle will be held at the February NRV SHRM meeting. The NRV SHRM Chapter will match the raffle contribution.

Meeting Notices

CHAPTER INDUSTRIAL MEETING

Be sure to mark your calendars to attend the next meeting that will be held on **Tuesday, January 11th** at IHOP in Christiansburg. IHOP is located between Ryan's and Red Lobster in Christiansburg. This meeting is held on the second Tuesday of every month and meets at 7:00 a.m. Contact Bruce Jennings at (540) 674-7461 or bruce.jennings@volvo.com for more information on the Industrial Meeting.

BOARD OF DIRECTORS MEETING

The monthly Board meeting will be held on **Tuesday, January 11th** at 5:15 p.m. in the LeClair Ryan Flippin Densmore offices located at 2000 Kraft Drive Suite 1000. Any Board members that cannot attend should contact Teresa Harless at tharless@blacksburg.gov.

Legislative Update

Bonuses and the FLSA: Make Sure You Know What They Really Cost

By Heather H. Polzin, Esq.
LeClair Ryan Flippin Densmore

You're a large retailer, and to pump up holiday sales you promise each employee in the store with the largest sales volume in November a \$500 bonus. Or you're a manufacturer who has announced that a plant will close in 60 days and, in an effort to retain staff needed until the shutdown, you announce that you will pay a \$1000 retention bonus to all workers who remain stay with the company until the closing.

Good ideas. Calculating the cost seems simple enough. What could go wrong? If you are paying these bonuses to non-exempt employees, and they work more than forty hours in some or all of the weeks between the announcement of the bonus and the payment, then you'll need to make some additional calculation when you pay the bonus.

Overtime compensation

What's an employee's overtime pay rate? "Time and a half." It is a shorthand answer that is not always accurate. After a non-exempt employees works forty hours in a work week, all time must be paid at one and one-half times the "regular rate." While the regular rate is an hourly rate, it is not all the base hourly rate at which the employee has been paid. Under the FLSA, "all remuneration for employment paid to, or on behalf of" a non-exempt employee must be included in the calculation of his "regular rate," except certain listed categories of payments. Thus any extra compensation for employment, including bonuses, shift differentials, must be included within the calculation of the employee's "regular rate" unless specifically excluded under the statute. So, at the end of the period for which the bonus has been awarded, the employer needs to go back, spread the bonus across the period of time over which it was earned, include the additional amount within a recalculated "regular rate", and figure out the amount of additional overtime compensation due because of the new, higher, regular rate. Then, of course, you have to make a supplemental overtime compensation payment.

The additional amount due can be substantial, particularly if many employees and substantial overtime work has been performed. Being forced to recalculate and pay additional overtime pay after a year or years of bonuses have been paid can be an expensive and confusing nightmare for even a single employee. Not only can it be expensive, but it can be enormously burdensome, as dividing the overtime over an extended period of time can lead to a situation where an individual's overtime pay has to be calculated on the basis of a different "regular rate" every single week. But there is hope. There are some bonuses that need not be included in the regular rate. If your situation falls within one of the exceptions, you needn't be burdened with all of these recalculations. Among the listed exclusions from the regular rate are discretionary bonuses and gifts. Flat rate bonuses also avoid the problem.

Discretionary bonuses

The FLSA excludes from the regular rate "sums paid in recognition of services performed during a given period if . . . both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly . . ."

The key concept is that the employer must have full discretion regarding **both** whether a bonus is paid **and** the amount of any bonus. If a bonus was paid pursuant to any “prior contract, agreement or promise,” it is not discretionary and must be included in the regular rate. Many employers have detailed bonus plans which explain how bonuses will be calculated and when they will be paid. While such plans can be strong motivational tools, an employer needs to keep in mind that such an approach clearly renders the bonus non-discretionary and it must be included in regular rate. If an employer wants to keep a bonus out of the regular rate, it needs to be discretionary. In other words, if you are using the bonus as a carrot to motivate the employee, its needs to be part of the regular rate.

Even where your bonus plan leaves you discretion to decide *whether* a bonus will be paid, if you have describe the method by which any bonus will be calculated, you have rendered it (for purposes of the FLSA) a non-discretionary bonus, which must be included in regular rate calculations. So, for example, if your plan states that “in the sole discretion of management, if economic conditions allow, employees will be paid a year-end bonus of \$500 for each one thousand widgets produced,” it would not be a true discretionary bonus. Any bonus paid to a non-exempt employee under this plan would have to be included within that individual’s regular rate, and for all weeks in which overtime compensation was earned, would require recalculation of the overtime pay rate, and the amount due.

Common types of bonuses which aren’t discretionary and must be calculated into regular rate and overtime include:

- bonuses to increase efficiency or production
- employee retention bonuses
- quality bonuses
- attendance bonuses
- cost-savings bonuses

The gift exclusion

Another common type of bonus is a Christmas or holiday bonus. If handled correctly, a holiday bonus may be excluded from regular rate calculations. The FLSA excludes “sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production or efficiency.” Nor can the bonus be paid pursuant to a contract or promise. However, the mere fact that you have such a long record of paying holiday bonuses that employees have come to expect them will not require you to include the bonus in calculation of the regular rate.

Flat percentage bonuses

There is one type of non-discretionary bonus that, if done properly, will not require you to recalculate the employee’s regular rate and pay additional overtime compensation. If your bonus plan provides that the bonus will be a flat percentage of the employee’s straight-time and overtime earnings, you will not have to recalculate the regular rate or pay additional overtime compensation. The bonus percentage paid on the overtime satisfies in full the FLSA’s overtime compensation requirements.

The bottom line

Many common bonus plans expose employers to the risks of having to recalculate their regular rates and pay additional overtime compensation. Discretionary bonuses, payments in the nature of gifts, and flat percentage bonuses are bonuses that can be paid without such consequences. When an employer identifies a proposed bonus plan, it should be absolutely certain of the total cost of the plan. Otherwise, that bonus plan you announced may cost a lot more than you bargained for.

This article and others written by attorneys in the firm appeared in the *Virginia Employment Law Letter*. For more information, go to www.hrhero.com

Heather Polzin can be reached via email at heather.polzin@leclairryan.com or via phone at 540-510-3047.

**Invoice for Annual Chapter Membership Dues
Society for Human Resource Management
New River Valley Chapter
January 1, 2005 – December 31, 2005**

Part I – Please provide the following information for the Chapter Membership Directory.

Name/Position: _____

Name Preferred for Name Tag: _____

Company: _____

Address: _____

Phone: _____ Fax: _____

E-Mail: _____

Referred By _____

_____ **New Member** _____ **Renewing Membership**

Certification:

_____ PHR _____ SPHR _____ Not Certified

Date of Last Certification _____

(Renewable every 3 years)

Part II – The NRV SHRM Chapter receives financial reimbursement from the National SHRM Organization for every Local Chapter Member who is also a National SHRM Member. Therefore, please provide the following information so we can ensure our records agree with the records of the National Organization.

_____ I am not a National SHRM Member

_____ I am a National SHRM Member (Please provide the information below)

Chapter Affiliation (Chapter Name, City, State) _____

Membership Number _____ Expiration Date _____

Part III – Dues must be received by January 14, 2005 to ensure you will be included in the 2005 Chapter Membership Directory. Dues are as follows:

_____ \$40.00 Annually for National SHRM Members (A discounted rate for National SHRM Affiliation).

_____ \$50.00 Annually for Non-National SHRM Members (Local NRV Chapter Member Only).

_____ \$10.00 Annually for Retired National or Retired Local SHRM Members.

Please make check payable to NRV SHRM and remit with this form to:

Brenda Farmer
Membership Director, NRV – SHRM
c/o Bright Services
1026 East Main St.
Pulaski, VA 24301
Questions?
Call (540) 980-1423 or Email
Brenda@brightservices.net

Part IV – Please provide comments.

What can NRV SHRM do for you?

Please indicate in which of the following areas you would be interested in volunteering –

_____ Membership

_____ SHRM Foundation

_____ Social Events

_____ Industrial Committee

_____ Programs

_____ Wage Survey

_____ Certification

_____ Other (Please Specify): _____

2005 Calendar of Events & Annual Meeting Schedule

DATE	SPEAKER	TOPIC
January 20, 2005	Dr. Richard Wilson—Ability Physical Medicine & Rehabilitation	Preventing Workplace Injuries
February 17, 2005		
March 17, 2005		
April 21, 2005		
May 19, 2005		
June 16, 2005		
July 21, 2005		
August 18, 2005		
September 15, 2005		
October 20, 2005		
November 17, 2005		
December 2005	Holiday Social	

All NRV-SHRM Breakfast Meetings will be held at the Hampton Inn, Christiansburg at 7:30 a.m. unless otherwise noted

PLEASE BE SURE TO REPLY TO THIS E-MAIL FROM TERESA HARLESS (tharless@blacksburg.gov) BY MONDAY, JANUARY 17TH IF YOU ARE PLANNING TO ATTEND THE NOVEMBER MEETING. PLEASE INDICATE IF YOU WILL BE BRINGING ANY GUESTS. IT IS IMPORTANT THAT WE GET AN ACCURATE COUNT OF PEOPLE SO THAT FOOD AND HANDOUTS CAN BE PREPARED ACCORDINGLY. THANK YOU