

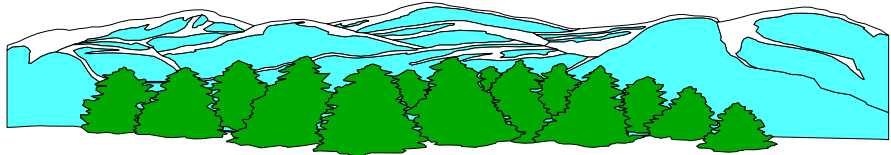
May 17, 2005

NEW RIVER VALLEY SHRM CHAPTER

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www.nrvshrm.com



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Greetings From The President

Spring has finally sprung in the New River Valley and with it are the usual challenges we all face in our professional and personal lives. Our newsletter is late because of me; I offer everyone my apologies.

On Thursday, April 14 our chapter and the Roanoke Valley chapter of the Society for Human Resource Management sponsored a program by nationally recognized speaker Margaret Morford. She spoke on the topic of Power, Politics and Influences... What They Don't Teach You In Business School. Those that were able to attend were entertained and educated.

On April 21 we heard from Ms. Bobbie Raynes, Director of Training and Development, Personnel Research Associates, Inc. and an adjunct instructor at New River Community College teaching Human Resources Management and Organizational Development. Ms. Raynes spoke on Best Practices on Avoiding Workplace Conflict. Ms. Raynes identified a Top Ten list of annoying behaviors in the workplace:

1. Smacking and popping gum
2. Humming, whistling loudly, or listening to a radio in shared workspace
3. Interrupting conversations
4. Smoking at work
5. Inappropriate jokes, language, or comments
6. Inappropriate attire (too casual or risqué)
7. Looking at watch or clock repeatedly
8. Wearing too much cologne/perfume
9. Playing with objects on someone else's desk
10. Constant gossip and negativity

Our speaker for May is Jeanie Adkins with Mercer. She will be presenting on the topic of Total Rewards Systems.

I look forward to seeing each of you at our meeting on May 19th.

Regards,

Jim Hungate, SPHR, CPC
Chapter President

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 June newsletter are due May 31st. 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 March 31, 2005	\$6,136.50
Ending balance as of April 30, 2005	\$7,634.33

Visit nrvshrm.com for a detailed listing of transactions.

NRV SHRM SALARY SURVEY

The 2005 NRV-SHRM Salary Survey were distributed to participants on April 29, 2005. Nineteen SHRM members participated in this year's survey. Copies of the results are available for \$75 to NRV-SHRM members who did not participate and \$125 for non-SHRM members. We will be conducting interviews and surveys this summer to get member feedback on how to increase participation, get surveys returned on time, and what new information should be added to future surveys. If you have any thoughts on the survey, feel free to pass them on to Mike Aamodt at maamodt@radford.edu

RADFORD SHRM CHAPTER RECEIVES AWARD

The Radford University SHRM chapter received notice that they earned the Superior Merit Award for 2004-05. Congratulations to the chapter and to their president, Kristy Singletary who put the award package together.

Meeting Notices

CHAPTER INDUSTRIAL MEETING

Be sure to mark your calendars to attend the next meeting that will be held on **Tuesday, June 14th** 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, June 7th** 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

Court Brings Rationality to Duty to Accommodate Bipolar Disorder.

Evaluating Accommodations Using Definitions Only a Lawyer Could Love

The Americans with Disabilities Act (“ADA” or the “Act”) requires employers with 15 or more employees to provide reasonable accommodation for qualified applicants and employees with disabilities. Reasonable accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to apply for, perform, or gain equal access to the benefits and privileges of a job. The ADA does not require an employer to provide a specific accommodation if it causes “undue hardship,” i.e., a significant difficulty or expense. **Leave and/or job duty modification requests must therefore be evaluated by the employer and approved where they do not impose an undue hardship on the employer and the employee is able to perform the essential functions of the position with the accommodation.**

But how do you make this calculus work in the real world? The difficulty is always in determining when you have gone far enough in seeking to accommodate the employee’s disability-related needs while still meeting your business requirements. Mental disabilities that have an intermittent impact on an employee’s ability to perform ... or even his/her ability to be present to perform ... are particularly challenging.

“You Can Accommodate Me By Not Making Me Do My Job”

On December 9, 2004, a federal court in Roanoke provided helpful guidance to employers in Virginia when it granted summary judgment for Verizon on claims of discrimination and retaliation by a former employee with “bipolar II disorder.” The employee worked as a “customer services and sales associate” in a Roanoke call center, answering customer inquiries and marketing Verizon services. The employee claimed her disorder caused severe mood swings and an inability to control her emotions, making it difficult to perform her job duties. Notably, the court did not decide, but assumed for the purposes of its opinion, that the condition qualified as a disability under the Act.

Over the course of her employment, Verizon typically treated plaintiff’s periodic health-related absences as “excused” and usually relieved her from taking customer calls upon request. However, Verizon denied some of her requests on the basis that to do so would violate its service level obligations under federal and/or state regulation.

The employee also requested to be relieved from working any overtime as an accommodation. Verizon denied this request on the basis that it was not workable due to call volume and staffing requirements. In response to this request, the employee’s supervisor, in apparent frustration, commented that Verizon had already “bent over backward” to accommodate her. Another supervisor, in an e-mail, asked the employee to talk to her physician about whether the job was a good fit for someone with her health conditions. The supervisor later apologized for the e-mail.

“I Would Also Prefer Not To Be Disciplined”

During this period, the employee engaged in a verbal altercation with a co-worker over her leave requests and usage. Both employees were given an informal warning. A few months later, a written warning was issued for failing to meet productivity requirements relating to the percentage of on-the-clock time she was logged in to answer customer calls. The employee claimed that medication taken to treat her disorder resulted in a need for frequent bathroom breaks, thereby lowering her score. In response, she was asked to document this time on a time tracking form developed just for her so Verizon could make adjustments in evaluating her rating. The employee, however, had by that time stopped taking the medication and the issue was dropped.

Later, the employee was given a warning for failing to make a required disclosure to a customer during a randomly monitored call. Rather than denying the policy violation, the employee claimed to have requested relief from taking any customer calls while adjusting to medication changes. Finally, she was put on a “Development Plan” to improve her sales performance. Within two months of these actions by Verizon the employee resigned, claiming she feared she was going to be fired for her absenteeism. Three days later, she sought to “revoke” her resignation, as she was not in a “right state of mind” when she made it. Verizon politely declined the invitation to rehire her.

Court: ADA Is Not a Rubber Stamp for Leave Requests

Noting that the ADA does not require an employer to allow an employee to work only when his/her illness permits, the court held that plaintiff failed to establish any triable question regarding whether Verizon had reasonably accommodated her condition. The court noted with approval the frequent accommodations made by the employer. It then stated that as for those occasions when the employer did not accommodate the employee, “the ADA did not require Verizon to simply grant [employee] time off on demand” Perhaps most importantly, the court relied on the fact that for each denied accommodation, the employer took action in accordance with policy and in response to the employee’s job performance. The court also held that Verizon owed the employee no duty under the Act once she resigned and was entitled to treat her resignation as final. The court similarly found no evidence in the foregoing record to support a claim that she was constructively discharged by Verizon. The findings regarding the resignation are perhaps not surprising in light of her resignation letter that noted she was resigning because the job did not provide her with “the best quality of life,” but that she was “happy” for the experience and knowledge gained in the position.

The Bottom Line

Each request for accommodation due to disability must be evaluated individually, based on its true impact on your operations and whether it will allow the employee to perform the essential functions of his/her position. Granting additional, periodic or intermittent leave must be considered as an accommodation, unless it is a request for an indefinite leave of absence. In making this evaluation, **you can take reasonable steps to comply with the ADA and assist an employee without acceding to every requested accommodation or absence.** You may also enforce workplace policies in an impartial manner, making common-sense adjustments where they implicate the employee’s disability. You can even recover from isolated inappropriate remarks. **The key is to be able to demonstrate material, balanced, good-faith efforts over time to provide accommodation to the employee’s reasonable requests.**

Rush v. Verizon Virginia, Inc., (Wilson, J.) No. 7:04cv00093, Dec. 9, 2004 (W.D. Va.).

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 Jim Cowan can be reached via email at james.cowan@leclairryan.com or via phone at 540-443-3300.

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	Legislative Update—DOL Regulations on Employment Based Permanent Resident Applications	Jeff VanDoren of LeClair, Ryan, Flippin & Densmore
March 17, 2005	Darrin Wagon with Cailion Behavioral Health	EAP/Mental Health—The Battle Between HIPPA and ER Liability
April 21, 2005	Bobbie Raynes, MS—Director of Training Development for Personnel Research Associates	Conflict Resolution—Preventing Workplace Conflict Before It Gets to Mediation
May 19, 2005	Mercer HR Consulting	Total Reward Systems
June 16, 2005	TBD	HR Career Paths
July 21, 2005	Marsh USA	Employee Wellness vs. Disease Management—The Bigger Bang
August 18, 2005	Social Security Administration	Social Security—Then & Now
September 15, 2005	Paula Wilder	Executive Coaching & Counseling
October 20, 2005	TBD	Diversity & Inclusion
November 17, 2005	Jack Smalley	Effective Recruiting & Retention Practices—Love Tehm or Lose Them
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 TUESDAY, MAY 17TH IF YOU ARE PLANNING TO ATTEND THE MAY 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