

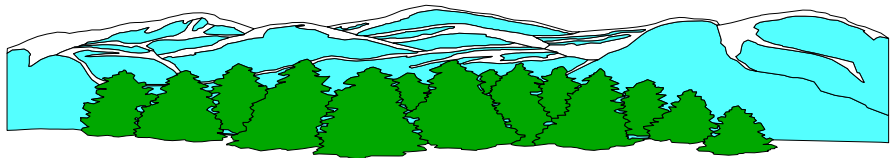
December 11, 2006

NEW RIVER VALLEY SHRM CHAPTER

AFFILIATE OF



www.nrvshrm.com



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Greetings From The President

NRV SHRM Chapter Members,

At long last we have reached the end of 2006. I wish to extend a warm heartfelt wish to all for a safe and joyous holiday season.

I would also like to congratulate the incoming Board Members and wish them great success in 2007. During last months regular chapter meeting, the slate of nominates for the 2007 Board positions was unanimously approved. We also had unanimous approval to accept the Revised Chapter Bylaws with one slight change to correct the Chapters proper name in the last sentence of the first section.

I also wish to express our gratitude to Mr. Richard Lucas from the Luca Law Firm for his presentation on Worker's Compensation and what we need to look for as we seek to protect, not only our organizations but our colleagues well being too. Richard's presentation provided specific examples of recent cases involving work related injuries and some preventative steps that could have been taken to avoid not so pleasant outcomes. Don't forget to mark your calendars for the January 18, 2007 Chapter meeting at the Hampton Inn in Christiansburg. The meeting will start at 7:30 am and will provide us with a Legal Update on what to watch for regarding applicants and applicant tracking, interviewing and the hiring process.

Our annual Holiday Social is December 7, 2006 at the Farmhouse Restaurant, beginning at 5:00 pm. As in the past, we will hold a silent auction to raise funds for the NRV SHRM Scholarship Fund. There will be light snacks and plenty of refreshments. Come and enjoy the fun! We will also unveil the new Chapter logo that was recently approved by the Board.

In parting, I would like to say that it has been an honor to serve as your Chapters President this past year. I have enjoyed working with the Board and will continue to serve and support them as we plan for our future. I would also encourage each member to participate as fully as they can, and continually provide feedback to the Board on what best will support you in your development and growth, and our profession.

Thank you and take care.

Michael Driscoll, SPHR

Meeting Notices

CHAPTER INDUSTRIAL MEETING

Be sure to mark your calendars to attend the next meeting that will be held on **Tuesday, December 12th** 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 3rd** at 7:30a.m. at IHOP in Christiansburg. Any Board members that cannot attend should contact Susan Graves at sgraves@duncanauto.net.

Chapter Financial Report

CHAPTER FINANCIAL REPORT

Beginning balance as of October 31, 2006	\$7,281.18
Ending balance as of November 30, 2006	\$4,993.08
Scholarship Balance	\$1,065.00
Certificate of Deposit	\$2,500.00
Total Assets	\$8,558.08

Visit www.nrvshrm.com for a detailed listing of transactions.

ARTICLES FOR SHRM NEWSLETTER

Articles for each month's newsletter are due on the last Tuesday of the previous month. Articles for the December newsletter are due December 26, 2006. They may be sent to Teresa Harless at tharless@blacksburg.gov. Teresa's telephone number is 540-558-0721.

nrvshrm.com JOB DATA BANK

The Chapter now has a job posting area on the web site. 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 Mike Aamodt (maamodt@radford.edu)
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.

Legislative Update

FREEDOM OF EXPRESSION IN THE WORKPLACE: THE CONCERTED RIGHTS OF PRIVATE SECTOR EMPLOYEES

by Yvette A. Jones, Esq., LeClair Ryan's Labor & Employment Law Practice Group

Much like hiring practices and evaluations, some workplace issues are perennial and remain constantly on the radar of employers and employees alike. One such issue is employee freedom of expression. How employee expression is treated from a legal perspective varies depending on whether an employer is public or private. The focus of this article is on private employers, with a particular emphasis on the "concerted activities" that this category of employees is lawfully permitted to undertake. While some of these protections are obvious, there are others which courts still vary in addressing.

Freedom of expression, a fundamental right guaranteed by the First Amendment to the Constitution, restrains the state from limiting the speech of individuals. In the workplace, this can confine the extent to which employers may limit the speech of employees. However, as a prohibition only on state activity, only public employers and employees are affected by the parameters set by the First Amendment where workplace free speech is concerned.

Unlike their counterparts in the public sector, private employees do not enjoy the protections afforded by the First Amendment against employer limits on speech. However the National Labor Relations Act ("the Act") does provide a broad range of statutory rights to self-expression in the workplace for non-supervisory employees. Section 8(a)(1) of the Act deems it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [of the Act]." The rights enumerated in section 7 are "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." It is these "concerted activities," those activities undertaken in a peaceful manner to exercise some Section 7 right, which generate a great deal of the case law associated with free speech in the private sector.

PROTECTED CONCERTED ACTIVITIES

Generally, activities that are peacefully carried out by employees in asserting their Section 7 rights are considered concerted activities. Examples include economic strikes, sympathy strikes, and a broad range of criticisms aimed at the terms and conditions of employment enforced by employers. As the root of the word suggests, the activities of a group of employees in a non-union workplace must be undertaken "in concert," not individually, to be considered protected employee activity under Section 7, and must be pursued for "mutual aid and protection." With the exception of situations where an individual is designated to act on behalf of a group in furtherance of a previously initiated group effort to protest a particular term or condition of employment, activities in which one employee acts solely on his or her own behalf are typically not considered concerted activities. An individual acting alone for the purpose of enforcing a collective bargaining agreement or of inciting the group to act, however, is considered concerted activity.

The key to the determination that an employee's Section 7 protected activity is a concerted activity is that it is undertaken in a peaceful manner. Examples of this type of activity include the dissemination of literature on company premises in nonworking areas during nonworking time persuading fellow employees to support pro-employee legislation; refusals to accept job assignments the employee claims to be unsafe; complaining to the employer about job safety conditions (as well as filing complaints at government occupational safety and health agencies); protesting alleged discrimination (racial or otherwise) in employment; and turning to administrative or judicial forums to protect the interests of employees.

UNPROTECTED CONCERTED ACTIVITIES

Unprotected concerted activities include employee behavior that is violent or unlawful. Examples include sit-down strikes, where employees unlawfully take control of employers' premises, bar entry to others, and refuse to leave; indefensible disloyalty; and offensive, profane, or insubordinate comments or acts.

The seminal case regarding unprotected employee disloyalty is *Jefferson Standard Broadcasting*. In that case, technicians employed by a broadcasting company were discharged when, during an ongoing dispute between the company and the union the technicians were affiliated with, the technicians distributed handbills attacking the quality of the company's television programming. The U.S. Supreme Court held that the employer was justified in firing the employees, stating that "the legal principle that insubordination, disobedience or disloyalty is adequate cause for discharge is plain enough." The Court opined that, because the employees' activities were undertaken in a manner reasonably calculated to harm the company's reputation and reduce its income, the action was not the kind of free speech protected as Section 7 concerted activity.

Since the Supreme Court's *Jefferson Standard* decision, the NLRB has developed its own two-part test under which an employee's communication to a third party will be deemed protected concerted activity under Section 7: if it "is related to an ongoing dispute between the employees and the employers and the communication is not so disloyal, reckless or maliciously untrue as to lose the Act's protection." Over the years, the application of this test has greatly narrowed the situations in which employees will be found disloyal, broadening the rights of employees to criticize their employer. Today, employees who disparage management or the business may be protected if their remarks address employee interests or working conditions and are not outrageous or materially false. However, in the D.C. Circuit Court of Appeals' recent decision in *Endicott Interconnect Technologies, Inc. v. NLRB*, a discharged employee's detrimental speech regarding his employer, although not materially false, was deemed "sufficiently injurious" to the company's business to deprive him of the protection of Section 7.

While it is often difficult to determine whether disloyal speech is protected under the Act, it is even more challenging for employers to determine whether employees who assert their Section 7 rights in a profane, abusive, or harassing manner are covered under the Act. Employees who express themselves in these ways may lose Section 7 protection, making them subject to discipline. However, the determination of whether specific conduct has been so egregious that it falls outside the scope of activity protected by the Act has not, historically, been an easy one for employers to make, in part because the rulings in this area are very case specific. For example, in *Trus Joist MacMillan*, an employee who criticized the terms of his employment lost his protection under the Act by repeatedly calling a manager "liar," "lying bastard" and "prostitute" and making vulgar gestures in front of other managers. Similarly, in *Aluminum Company of America*, an employee's repeated and profane outbursts, including repeated use of the "f" word, in protest of working conditions caused the employee to lose the protection of the Act. Conversely, in *Felix Industries*, an employer was found to have violated the Act when it discharged an employee who referred to supervisor as a "[explanative deleted] kid" three times in a dispute over the meaning of a collective bargaining agreement.

One thing is clear, though: courts have not given employers blanket permission to discipline employees who express their complaints in a profane way. In *CKS Tool and Engineering*, the Board held that because an employee's habitually argumentative, vulgar language was commonly tolerated by management at meetings, his speech was protected by the Act. Single profane employee outbursts have also been dismissed as merely "a moment of animal exuberance." Likewise, disruptive or insubordinate outbursts towards supervisors are treated differently based on the totality of the circumstances in a given case.

Occasionally, the NLRB has determined that some of an employee's comments are protected, while other comments are not. In *Elko General Hospital*, for example, a top hospital manager held an employee meeting and told attendees that they should serve as "ambassadors and marketers" for the hospital in the community. One employee responded that she "would rather resign than say anything positive about the hospital." Later in the meeting, the same employee stood up and said, "Come on girls. We've got to go cook the food for the prisoners," and refused to take her seat when told by management to sit back down. The employee was terminated immediately following the meeting. The NLRB ruled that the hospital had established a new term and condition of employment when it told employees that they should be "ambassadors and spokespersons for the hospital," and that the discharged employee was protected in voicing her opposition. However, the NLRB also found that the remainder of the employee's conduct was unprotected because she attempted to shut down a meeting called and conducted by hospital management, defied the employer's authority by publicly rejecting direction that she sit down and let the meeting continue, and then proceeding to try to end the meeting – in direct defiance of supervisory orders – by calling on all employees to leave the meeting and return to their cooking duties.

Ultimately, freedom of expression is a slippery issue to tackle, be it in the public or private sector. While Section 7 provides the framework for private employers to determine what may or may not be protected concerted activity, the law in this area is constantly evolving, and remains very case specific, particularly when determinations of degree of offensiveness have to be made. The bottom line for businesses: Keep abreast of recent developments in the law regarding the issue of concerted activity for private employees, and confer with experienced legal counsel if in doubt about the protected nature of a given employee's speech.

Invoice for Annual Chapter Membership Dues
Society for Human Resource Management
New River Valley Chapter
January 1, 2007 – December 31, 2007

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 _____

Certification: New Member Renewing Membership

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 31, 2007 to ensure you will be included in the 2007 Chapter Membership Directory. Dues are as follows:

_____ \$45.00 Annually for National SHRM Members (A discounted rate for National SHRM Affiliation).

_____ \$55.00 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:

Valerie Crabtree
Membership Director, NRV – SHRM
c/o Manpower
100 Arbor Drive, Suite 102
Christiansburg, VA 24073

Questions?
Call (540) 381-2386 or Email
valerie.crabtree@na.manpower.com

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): _____