

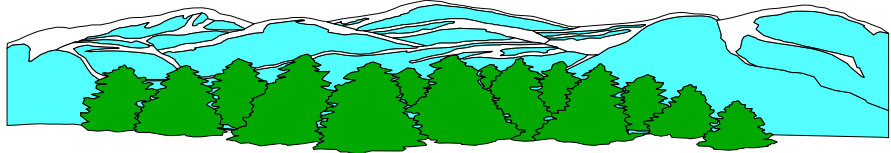
April 13, 2006

NEW RIVER VALLEY SHRM CHAPTER

AFFILIATE OF



www.nrvshrm.com



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Greetings From The President

NRV SHRM Chapter Members,

We have completed arrangements for our four lunchtime programs for 2006. These programs are intended to reach out and provide greater opportunity for more Chapter members to benefit from the programs, as well as exchange ideas to better meet the needs of our changing profession. We will meet at the Farmhouse Restaurant beginning at 12:00 noon. Because lunch will be served, please reserve a full hour and a half for these meetings.

At the last Board meeting, it was suggested and approved that the Chapter pick up a \$5.00 portion of the cost of lunch. **The purchase of lunch is not a requirement to attend!** Our program speaker is Mr. Jack Smalley from Express Business Solutions.

I am pleased to announce that we have received word from SHRM, that the New River Valley Chapter has achieved a Superior Merit for 2005. Congratulations to all members for your contributions to this award, which is a testament to your commitment to not only the Chapter, but our chosen profession. We will continue our efforts in 2006 to ensure a repeat congratulatory hoorah next year! Well done, everyone.

I would like to express thanks to our very own Ms. Christy Porterfield for last months program, centering on Diversity in the Workplace. Christy reviewed the "essentials" as outlined in the FACETS, but also provided the members with additional resources on best ways to develop a balanced Diversity Scorecard and Diversity Metrics. We have plenty of hand-out materials still available. Just contact me via phone or e-mail.

I look forward to seeing everyone on April 20, 2006 at the Farmhouse.

Sincerely,
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, May 9th** 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, May 2nd** 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.

Board Meeting Minutes

Date: April 4, 2006

Attendees: Mike Driscoll, Chuck Swain, Keith LaShomb, Teresa Harless, Carol Dudding, Mike Aamodt, Karen Edmonds, Valerie Crabtree

- Keith LaShomb will produce a flyer to have distributed by the Chamber of Commerce. The Chamber will send the flyers to approximately 1,000 businesses. Hopefully this mailing will encourage new membership to the Chapter.
- Our current Chapter membership is 108 which includes 28 new members. Valerie Crabtree has attempted to call members that have not renewed.
- The salary survey is almost complete. Participation in the survey was better than anticipated.
- The Chapter website will move over to Radford University within 2 months. The Radford SHRM Student Chapter will maintain the website.
- The Chapter will pay \$5 of the luncheon expense for the April meeting.

Chapter Financial Report

CHAPTER FINANCIAL REPORT

Beginning balance as of February 28, 2006	\$8,052.87
Ending balance as of March 31, 2006	\$9,471.49

Visit nrvshrm.com for a detailed listing of transactions.

Announcements

nrvshrm.com JOB DATA BANK

The Chapter has a job posting area on the web site that is available to NRV SHRM members. 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 May newsletter are due April 25, 2006. They may be sent to the chapter's secretary, Teresa Harless, at tharless@blacksburg.gov. Teresa's telephone number is 540-558-0721.

SHRM REGIONAL SCHOLARSHIPS

Did you know... The SHRM Foundation provides \$50,000 annually to fund the Regional Scholarship Program? The scholarships support SHRM members working full-time and pursuing HR degrees or professional certification. New for 2006! Four academic scholarships of \$1300 each and eight certification scholarships of \$600 each will be awarded in each region. Each of the five SHRM regions receives \$10,000 to award to applicants in their part of the country. SHRM members, chapters and state councils may submit an application to SHRM by July 15 for consideration. Scholarship applications and complete details are available at www.shrm.org/foundation/2002_scholguidelines.asp.

2006 SHRM Golf Tournament

Date: October 11, 2006
 7:30 AM Registration
 8:00 AM Shotgun Start
 1:00 PM Awards & Lunch on the Deck

Sponsored by:
 > Roanoke Valley SHRM
 > New River Valley SHRM
 > Virginia SHRM State Council

Hanging Rock Country Club (15 minutes from The Hotel Roanoke)

18 holes of Captain Choice
Prizes for the Winning Teams
Closest to Pin on Par Three's
Beginners are Welcome

Cost: \$50 per player
 \$200 per team

Please submit your entries by September 20, 2006:

Coy Renick, SPHR
 2045 Mountain View Road
 Vinton, VA 24179
 Phone 540-890-3153
 Cell 540-556-4480
 Email crenick@cox.net

ESTABLISHING A DISABILITY UNDER THE ADA IS NECESSARILY DIFFICULT

by Vijay A. Mago, LeClair Ryan

The Fourth Circuit Court of Appeals recently issued an opinion upholding the dismissal of a lawsuit alleging failure to accommodate and termination in violation of the Americans with Disabilities Act (“ADA”). In so doing, the Court rejected the employee’s attempt to avoid dismissal prior to trial by establishing that he was disabled under the ADA by virtue of a lifting restriction that precluded him from qualifying for a number of jobs in the region.

I. FACTS – TAYLOR SUFFERS A WORKPLACE INJURY AND REFUSES TO RETURN TO WORK.

For twelve years, beginning in 1988, Taylor worked as a Federal Express courier in Maryland. In 2000, Taylor injured himself while working and began to suffer back pain. Although he received medical treatment, Taylor experienced “difficulty bending, standing for prolonged periods of time, and lifting more than 30 lbs.” Because Taylor’s position as a courier required lifting packages weighing up to 75 pounds, Taylor was unable to return to work. In fact, Taylor’s treating physician determined that “persistent pain” would prevent Taylor from returning to work as a laborer, and a physical therapist recommended “returning to work at the LIGHT-MEDIUM (30 lbs.) level with restricted sitting and standing tolerances and restricted stair climbing and overhead reaching.”

Federal Express provided a temporary light-duty job for 90 days, and subsequently placed Taylor on short-term disability leave followed by long-term disability leave. In February, 2001, Federal Express determined that Taylor was not entitled to long-term disability benefits, and presented the option of returning to work as a courier or taking a 90-day leave of absence to seek alternative positions with Federal Express or elsewhere. At the same time, Federal Express informed Taylor of his right to appeal the disability benefits determination.

Taylor appealed the denial of benefits decision and elected not to return to work as a courier. On March 6, 2001, Federal Express sent Taylor a letter confirming his apparent decision to request a 90-day leave of absence to seek positions within Federal Express for which he qualified and could perform.

In June, 2001, Federal Express extended Taylor’s leave of absence pending an independent medical examination. On September 25, 2001, and after the examining physician cleared Taylor to return to work, Federal Express offered Taylor a part-time courier position in writing and stated, “if you are unable to accept this position, your voluntary resignation will be processed for failure to return from Leave of Absence.” On September 27, 2001, Federal Express rejected Taylor’s application for a dispatcher position. On October 15, 2001, Federal Express sent Taylor a final letter terminating his employment.

Following his termination, Taylor spent six months searching for other employment without success. Taylor also met with a vocational consultant to evaluate his prospects for employment given his lifting restriction. Significantly, the vocational consultant with whom Taylor met estimated that Taylor’s work experience and educational background qualified him for 3,281 job titles out of the 12,741 job titles listed in the Department of Labor’s Dictionary of Occupational Titles. Thus, despite his lifting restriction, Taylor remained able to perform the work involved in 1,410 job titles, or over 130,000 jobs in the region.

On March 21, 2002, Taylor filed a Charge of Discrimination with the EEOC asserting that Federal Express discriminated against him on the basis of his disability. After six months, the EEOC issued a “no-cause” finding, and on November 15, 2002, Taylor commenced a lawsuit against Federal Express asserting the same violation of the ADA.

In his deposition, Taylor conceded that he drives over one hour each way to college, sits in classes for two to three hours, performs yard work, camps with his family, plays catch with his children, and cleans his house. Based on this evidence, the trial court dismissed Taylor’s lawsuit prior to trial, and Taylor subsequently appealed to the Fourth Circuit.

II. COURT'S DECISION – TAYLOR'S LIFTING RESTRICTION DOES NOT RENDER HIM DISABLED UNDER THE ADA.

On appeal, Taylor's primary argument was that that the trial court failed to give adequate consideration to the vocational report indicating that Taylor's impairment precluded him from 1,871 kinds of jobs and "locked him out of the job market." Taylor argued that had the trial court afforded appropriate weight to his vocational report, it would not have dismissed his lawsuit prior to trial.

In response to this argument, the Fourth Circuit conceded that "[s]uch vocational evidence is certainly relevant in determining whether an impairment affecting an individual's ability to work constitutes a disability under the ADA." More importantly, however, the Fourth Circuit stated that the issue which Taylor's appeal presents is whether he suffers from a disability as defined under the ADA. After noting that the ADA defines a disability as "(A) a physical or mental impairment that substantially limits one or more of the major life activities . . . (B) a record of such an impairment; or (C) being regarded as having such an impairment," the Fourth Circuit rejected Taylor's claim that his back impairment substantially limits his ability to work, and therefore constitutes a disability under the ADA.

Just as with the trial court, the Fourth Circuit was most persuaded by the broad range of jobs that remained available to Taylor in spite of his lifting restriction. The Fourth Circuit agreed with the trial court that no reasonable juror could conclude that Taylor was substantially limited in the major life activity of working in the face of such evidence. The Fourth Circuit added that the terms "substantially limits" and "major life activity" must continue to be interpreted strictly to create a demanding standard for qualifying as disabled. In fact, the Supreme Court has instructed lower courts to interpret these phrases strictly for this very reason. Because Taylor admittedly retains the ability to engage in a wide range of daily activity, and to work in over 100,000 jobs in his geographic region, no reasonable person could find that his impairment substantially limited his ability to work, or rendered him disabled for purposes of the ADA. Thus, the trial court's dismissal of the lawsuit prior to trial was appropriate. *Taylor v. Federal Express Corp.*, 429 F.3d 461 (4th Cir. Nov. 16, 2005).

III. LESSON LEARNED

In reaching this decision, the Fourth Circuit noted more than once that disability determinations under the ADA require an individualized inquiry. Thus, whenever you are presented with an individual who refuses to return to work due to physical limitations, you must evaluate the entire situation carefully to assess whether such limitations qualify as a disability under the ADA. Although you should err on the side of caution in deciding on an appropriate response, you should also recognize that the Supreme Court has created a high standard for qualifying as disabled.

Specifically, to be substantially limited in the major life activity of working, one must be precluded from more than (i) one type of job, (ii) a specialized job, or (iii) a particular job of choice. If jobs utilizing an individual's skills (but perhaps not his or her unique talents) are available, one is not precluded from a substantial class of jobs. Similarly, if a host of different types of jobs are available, one is not precluded from a broad range of jobs. To put it in the terms that both the EEOC and Supreme Court have used:

With respect to the major life activity of working, the term substantially limits means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities.

In dismissing Taylor's lawsuit, the trial court and Fourth Circuit have demonstrated that the application of this standard requires thought, but more importantly, common-sense. Although the vocational evidence that Taylor presented suggested that his impairment precluded him from many jobs for which he would have qualified prior to his injury, this evidence did not raise a real question as to whether the impairment substantially limited Taylor's ability to work. Instead, the evidence established that Taylor could perform a range of daily activities requiring endurance, flexibility, and some strength, and that even with the impairment he qualified for over 1,400 different types of jobs and over 130,000 actual jobs in the Baltimore-Washington region.

Aside from demonstrating the importance of approaching disability determinations with common-sense, and on an individualized or case-by-case basis, this decision demonstrates that vocational rehabilitation consultants (and their opinions) are sometimes just as useful as independent medical examinations. In Taylor, for instance, the very vocational rehabilitation expert with whom Taylor consulted provided the opinion that ultimately doomed his lawsuit.

For more information, you can contact Vijay Mago at 804-783-7579 or via email at vijay.mago@leclairryan.com. This article has appeared in the *Virginia Employment Law Letter*, published by M. Lee Smith Publishers, Inc. For information on that publication, please call 1-800-274-6774.

APRIL NRV SHRM LUNCH MEETING

SPEAKER: Jack Smalley, Express Business Solutions
TOPIC: The Performance Appraisal: Friend or Foe?
TIME: 12 noon—1:30 p.m.
PLACE: Farmhouse Restaurant, Christiansburg
DATE: April 20, 2006
COST: \$8.00 This amount includes tax and gratuity. Payments can be cash or a check payable to the NRV SHRM and should be paid the day of the luncheon. There is no charge if you wish to attend the meeting and not have a meal.

Menu

Farmhouse Burger (with Bacon & Cheddar or Mushrooms and Swiss), French Fries and Beverage

Turkey & Swiss Sandwich with French Fries and Beverage

Grilled Chicken Sandwich with French Fries and Beverage

Pasta Primavera with Salad and Beverage

Vegetarian Pasta with Beverage

Please contact Teresa Harless at tharless@blacksburg.gov or (540) 558-0721 by Tuesday, April 18, 2006 to RSVP. Please specify your meal selection when sending your RSVP. It is important that you let us know that you're planning to attend so that we will have an accurate number for the Farmhouse.

2006 Calendar of Events & Annual Meeting Schedule

DATE	SPEAKER	TOPIC
January 19, 2006	James Cowan with LeClair Ryan Flippin Densmore	Legal Update
February 16, 2006	Fred Starling	How To Train Supervisors and Managers in Counseling, Discharge and Discipline
March 16, 2006	Christy Porterfield	Diversity
April 20, 2006*	Jack Smalley, Express Business Solutions	The Performance Appraisal: Friend or Foe?
May 18, 2006		
June 15, 2006*		
July 20, 2006		
August 17, 2006		
September 21, 2006*	Steve Miranda	The Quick and the Dead: HR Strategies for the New Millennium
October 19, 2006		
November 16, 2006*		
December 7, 2006	Holiday Social	

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

*The NRV SHRM meeting on April 20th, June 15th, September 21st, and November 16th will be lunch meetings that will be held from 12:00 noon until 1:30 p.m. The locations and details regarding the lunch meetings will be sent to members at a later date.