



AFFILIATE OF



FEBRUARY NEWSLETTER

www.nrvshrm.com

Greetings From The President

Hello Everyone!

We finally have our first taste of winter beyond cold temperatures! And, I want to thank the Board members for the excellent attendance at the NRV SHRM Board meeting while it was snowing. I know my drive to Giles County was an interesting one on Tuesday night and certainly appreciate your dedication to our success.

And from the Board meeting, I am pleased to announce the New River Valley Chapter of SHRM was designated as a 2006 Chapter Champion by the SHRM Foundation and received a medal for the honor. The Chapter Champion Award recognizes SHRM Chapters that actively work to support the SHRM Foundation through member education, special events, and contributions to the Foundation. This is a great honor and our chapter will continue to support this worthy cause in the future. We will display it with our chapter banner during the meeting so you can see this great medallion.

On behalf of the chapter, I wish to express our gratitude to Mr. James Cowan, Jr. of LeClair Ryan for starting our new 2007 program year with his presentation on Applicants and Applicant Tracking; Interviewing and Hiring Processes; and general legal pitfalls in the workplace. Thank you, Jim, for this very informative program to help keep us 'in the know'!

We are planning some great programming this year and our next meeting will take a slightly different twist. We had feedback from our members who wanted a roundtable style meeting to discuss local issues and concerns among NRV businesses. Our next meeting will be held on Thursday morning for breakfast on February 15th at the **Microtel Hotel** at 135 Ponderosa Drive in Christiansburg (instead of Hampton Inn) and we will have a roundtable discussion on current topics of interest. Keith LaShomb will facilitate the meeting to include topics such as applicant pools, compensation, healthcare issues, etc specific to the New River Valley. Think of other topics that you would like to share with the group to get ideas and answers, understand how other business do similar processes, and have the opportunity to discuss concerns that affects your business. We will also have our drawing for the \$125.00 gift certificate from giftcertificates.com for those folks who renewed or initiated their membership by Jan. 31st. I hope to see you at the meeting!

Best Regards,
Christy Porterfield

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Meeting Notices

CHAPTER INDUSTRIAL MEETING

Be sure to mark your calendars to attend the next meeting that will be held on **Tuesday, February 13th** 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, March 6th** at 7:30 a.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 December 31, 2006	\$2,869.51
Ending balance as of February 2, 2007	\$2,871.23
Scholarship Balance	\$1,410.00
Certificate of Deposit	\$2,500.00
Total Assets	\$6,781.23

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 March newsletter are due February 27, 2007. 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.

Announcements

2007 NRV SHRM Salary Survey

The annual NRV-SHRM salary survey were emailed to SHRM members on February 1, 2007 and should be returned to Mike Aamodt at maamodt@radford.edu by March 1st.

2007 Membership Renewal Invoices

The 2007 NRV-SHRM membership invoice can be found on the website and attached with the newsletter. Current dues are \$55 for a local membership and if you are a SHRM National member, local membership dues are reduced to \$45.

Please return the form along with your payment to Valerie Crabtree at the address indicated on the invoice. Feel free to contact Valerie Crabtree at 381-2386 with any membership questions.

Legislative Update

Supreme Court To Rule On “Cat’s Paw” Liability

by Joan C. McKenna, LeClair Ryan

Under a “cat’s paw” theory of liability, an employer can find itself liable for discrimination where a non-decision-making employee manipulates a decision-maker into taking action against an employee for some discriminatory reasons. This theory is also known as the “rubber stamp” theory or “subordinate bias” theory of liability, and has been endorsed by a majority of the federal courts of appeal, including the Fourth Circuit, which has jurisdiction over the federal courts in Virginia.

On January 5, 2007, the U.S. Supreme Court granted certiorari to clarify the standard that a plaintiff must prove for a case of “cat’s paw” liability. The high court’s decision will pave the way for what parties must demonstrate in order to establish a discrimination case under the “cat’s paw” theory of liability.

The Decision Under Review

The case accepted for review by the Supreme Court, *Equal Employment Opportunity Commission v. BCI Coca-Cola Bottling Company of Los Angeles*, involved an employee, Stephen Peters, who was fired by BCI Coca-Cola Bottling Company (“BCI”). BCI fired Peters, an African American, for insubordination after Peters’ immediate supervisor directed Peters to work on a Sunday, and Peters refused to do so. The decision to discharge Peters was made by a Human Resources employee based on information provided by Peters’ immediate supervisor without conducting any investigation into the facts provided by the supervisor. The HR employee herself lived in a different city and was not aware of Peters’ race, however, Peters’ immediate supervisor reportedly had been accused previously of making racially disparaging comments at work and of treating black employees less favorably than non-black employees. The United States Court of Appeals for the Tenth Circuit, which covers Oklahoma, Kansas, New Mexico, Colorado, Wyoming, and Utah, reversed the trial court’s entry of summary judgment on behalf of employer BCI, finding that there were enough facts showing possible discrimination to preclude summary judgment.

The Facts

As recounted by the appeals court, Stephen Peters worked as a merchandiser for BCI in Albuquerque, New Mexico for six years prior to his termination. More than 60 percent of the 200 employees at that facility were Hispanic, while only two percent were black. Peters was employed as a merchandiser, responsible for product displays and promotional materials in retail outlets such as grocery stores, and had a generally positive employment record with BCI. As the most senior merchandiser in his district, Peters had weekends off. Peters reported to Cesar Grado, a district sales manager, who is Hispanic, while he was supervised on a day-to-day basis by account manager Jeff Katt, who is white. Only human resources personnel at BCI could make disciplinary or termination decisions, based on facts brought to their attention by supervisors. Neither of the human resources personnel involved in the termination decision challenged in this case had met Peters or were aware of his race until after the firing decision.

During the last weekend in September, 2001, Grado faced a scheduling crisis due to special promotions for Coca-Cola products that required an extra merchandiser to work the weekend, while one of his floating employees was out of commission due to a work-related injury. Grado directed Katt to direct Peters to work on Sunday of the weekend in question. Katt did so but was told by Peters that he could not work that day. According to Grado, Peters told Katt, who told Grado, he “might call in sick” that day. Frustrated, Grado sought advice from the Human Resources department on Friday before the weekend. Because his local Human Resources representative was out, he consulted with her supervisor, Ms. Edgar, who worked from the Phoenix, Arizona office, and conveyed to her his expectation that Peters would refuse to work on the day in question. Edgar told Grado to order Peters to work. Grado then called Peters and asked what his plans were. Peters told Grado that they were “none of his business.” Grado ordered Peters to work on Sunday, and that failure to do so could result in termination, and Peters responded that “he would do what he had to and that Grado should do what he had to.” Grado again contacted Edgar, who told him that Peters’ response constituted insubordination justifying termination, but she did not make any formal decision on that day on firing Peters.

Peters became ill that weekend. On Saturday, he went to an urgent care clinic complaining of a headache, sinus pain and a

cough, and was diagnosed with a sinus infection. The doctor prescribed medicine and directed Peters not to work till Monday. That night, Peters telephoned Katt and explained what had happened. Mr. Katt told him he had no problem with Peters not being able to work. After that call, Katt repeatedly tried to page Grado to convey the information, but Grado never responded to the pages. Peters did not work that Sunday, and Katt and Grado personally worked to cover the shifts needed that weekend.

On Monday, Grado conveyed what had happened to HR, which pulled Peters' file and found one prior disciplinary action for insubordination from another supervisor, for refusing to work on a day off and being rude and unprofessional in his conduct. Although the information was not contained in the file, Peters had in fact been upset during that incident because of the death of his stepson, whom he has raised as his own child, and had refused to work on the day in question because he was to serve as a pallbearer in the young man's funeral. By the end of the day Monday, Ms. Edgar made a decision to fire Peters for insubordination. The primary reason provided by HR for the termination was the conduct of Peters in speaking with Grado on Friday. Grado did not learn until Monday evening, in speaking with Katt, that Peters had called in sick to Grado. Peters was fired Tuesday morning.

Peters filed a charge with the Equal Employment Opportunity Commission ("EEOC"), which filed suit in his behalf under the "cat's paw" or "rubber stamp" theory of liability, on grounds that while Edgar was the decision-maker, Grado harbored racial bias and was substantially involved in the termination process, as the sole source of information on the events that led to Peters' firing.

Evidence of Supervisor's Bias

The EEOC attached affidavits from three other merchandisers who worked under Grado's supervision, two black and one Hispanic, who claimed that Grado treated black employees worse than those of other races. The employees conveyed racist comments made by Grado about blacks, including times when Grado made jokes about black men dating white women, made comments about blacks not liking cold weather, and stated that blacks did not look good driving trucks and should drive Cadillacs instead. One black employee noted that Grado constantly treated him in a demeaning fashion and threatened to replace him, but treated Hispanic employees with respect.

The employees also recounted a strikingly similar event when a Hispanic merchandiser refused to work on a weekend but Grado took no action whatsoever against the employee, stating only that "You can't make somebody work one of their days off."

District Court's Decision

The district court granted judgment in favor of BCI, holding that under the *McDonnell Douglas* burden-shifting framework, the EEOC had established a *prima facie* case of discrimination, but that BCI had stated a legitimate, non-discriminatory reason for Peters' termination, that is, his insubordinate conduct toward Grado. The district court held that there was no genuine issue of material fact regarding whether the reason given was pretextual, because Edgar honestly believed that Peters was insubordinate. Although the court found that the EEOC had raised a genuine issue of fact regarding whether Grado harbored racial bias, it ruled in favor of BCI on grounds that other circuits' "rubber stamp" cases involved situations in which the decision-maker acted on actual recommendations by the biased party, unlike this case, where Grado had made no recommendation to the decision-making party, Edgar. The EEOC appealed.

The Appeals' Court's Decision

On appeal, BCI conceded that the EEOC had established a *prima facie* case of discrimination, but that BCI had put forth a neutral reason for the decision, Peters' insubordination, and that the underlying facts regarding Peters' actual absence from work did not make any difference to the reason for the termination. The issue appealed was whether EEOC had made a sufficient showing of pretext to cast doubt on BCI's non-discriminatory reason for the termination.

Discussing the "cat's paw" or "rubber stamp" doctrine of liability, the Tenth Circuit noted that the theory is named after a La Fontaine fable, in which a monkey convinces a cat to pull hot chestnuts from a fire, allowing the cat to burn its paws, while the monkey eats all of the chestnuts and leaves none for the cat. "In the employment discrimination context, " 'cat's-paw' refers to a situation in which a biased subordinate, who lacks decision-making power, uses the formal decision-maker as a dupe in a

deliberate scheme to trigger a discriminatory employment action,” the court noted. “The ‘rubber stamp’ doctrine,” the court explained, refers to situations in which a decision-maker gives perfunctory approval for an adverse employment action explicitly recommended by a biased subordinate.” The appeals court went on to note that while the doctrine is widely accepted in other circuits, that the circuits vary as to the level of control that a subordinate must exert over the decision under the doctrine. Some courts, such as the Fifth Circuit, recognize this theory when the subordinate only exerted influence over the decision-maker. Under this approach, the mere reporting of facts to the decision-maker can qualify under the subordinate bias theory. At the opposite end of the spectrum, the Fourth Circuit has held that the theory may only apply when the subordinate exercises “substantial influence” or plays a “significant role” in the employment decision. Underpinning this approach, the Fourth Circuit recognizes that in such instances the subordinate is the actual decision maker.

The Tenth Circuit adopted the approach of the Seventh Circuit, finding that the subordinate must do more than exert “mere influence” on the decision-maker or provide input to the decision for liability to be imputed to the employer, but must have “caused the adverse employment action.”

Applying its analysis to the facts before it, the appeals court agreed that the EEOC had created a jury question regarding Grado’s racial animus, and that the dispositive question was whether the EEOC had pointed to sufficient evidence of pretext. Noting that BCI’s reason for the termination was at first *both* Peters’ insubordination and his absence, and then later, the court observed, BCI claimed the firing was based only on Peters’ insubordination, a jury under either reason could find pretext. If the absence from work was the reason for the termination, BCI’s reason is weak because of the evidence of a reasonable justification for the absence. If it was insubordination that was the reason for the termination, a jury could find pretext because Edgar relied solely on Grado’s facts in firing Peters and conducted no investigation to support the firing. Considering the facts in the light most favorable to the EEOC, the Tenth Circuit found that entry of judgment for BCI was improper.

The U.S. Supreme Court’s ruling and explanation on the decision, which will be announced by June, should erase any doubt regarding the proper standard for analysis of such subordinate bias claims.

Importance of Independent Investigation

Clearly, in light of the Tenth Circuit’s decision, employers are well advised to conduct independent investigations of the underlying facts before taking an adverse employment action based solely on the input of a single supervisor. As the Tenth Circuit commented in the BCI case, the HR director could legally have terminated Peters for his insubordination under company policy, but the court reversed summary judgment because it was unclear whether insubordination had actually motivated the firing, or whether it was Grado’s improper motive and influence over Edgar. The absence of an independent investigation by the human resources department appears to have been the deciding factor in the decision against the employee. So the message for employees is: Always investigate!

The author can be reached at joan.mckenna@leclairryan.com or (804) 783.7512.

Diversity Corner

According to “The Business Case for Diversity,” there are many ways to create a culture of diversity in the workplace. Examples include leadership involvement, an attitude toward individuality, recruitment that works, partnering with business organizations, recruiting on college campuses, tapping employees, affinity groups and employee councils, publicizing the company’s commitment to diversity, advertising on websites and hosting career fairs or networking events. Keep these in mind as you strive toward a more inclusive and welcoming environment where you work.

2007 Calendar of Events & Annual Meeting Schedule

DATE	SPEAKER	TOPIC
January 18, 2007	James Cowan with LeClair Ryan Flippin Densmore	Legal Update
February 15, 2007	SHRM Roundtable: Current HR Issues of the NRV*	Keith LaShomb—Facilitator
March 15, 2007	Legal Update: What HR Professionals Need to Know About the New Electronic Discovery Rules	Todd A. Leeson, Partner with Gentry, Locke, Rakes & Moore
April 19, 2007	Employee Engagement & Commitment	Dr. Paula Wilder
May 17, 2007		
June 21, 2007	The Toxic Employee and How to Deal with Them	Mauricio Velasques, President and CEO of The Diveristy Training Group
July 19, 2007		
August 16, 2007		
September 20, 2007		
October 18, 2007		
November 15, 2007		
December 6, 2007	Holiday Social	

***THE FEBRUARY MEETING WILL BE HELD AT THE MICROTEL WHICH IS LOCATED AT 135 PONDEROSA DRIVE IN CHRISTIANSBURG**

PLEASE BE SURE TO EMAIL SUSAN GRAVES (sgraves@duncanauto.net) IF YOU ARE PLANNING TO ATTEND THE FEBRUARY 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

**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): _____