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President's Letter

Greetings from the President!

At the June meeting, we received quite the wake-up call about the extent to which most of the data in our computer is insecure. Randy Marchany from the Virginia Tech IT Security Office demonstrated how easy it was to obtain information on people and provided examples of scams designed to elicit personal information. Randy then provided examples of how Virginia Tech protects files with sensitive data such as social security numbers and birth dates. A real eye opener for the audience was the realization that passwords only keep a person from opening your file; with the proper software, an intruder can still read the contents of a password-protected file! I think most of us left the meeting and immediately made some changes in our IT security.

This week, the U.S. Supreme Court released its much-awaited decision in the *Ricci v. DeStefano* case. In a 5-4 decision, the court ruled in favor of the New Haven, CT firefighters who were denied promotions because the City feared that the adverse impact of the promotion exam would result in a discrimination lawsuit from minority candidates. This decision is an important reminder for employers to pay attention to hiring practices *prior* to actually testing applicants. I am sure the *Ricci* case will be a topic of the next legal update at one of our chapter meetings. By the way, if you want to get a look at some of the behind-the-scenes politics that were played by the New Haven administrators during the testing process, be sure to read the full Supreme Court opinion. It is not as exciting as a Tom Clancy or Patricia Cornwell novel, but it makes good summer reading. As I read about the politics involved in New Haven's initial decision not to certify the test results, I thought about the difficulty our members in the public sector must have in keeping the politicians out of the merit process. I now have even more respect for Karen Edmonds (County of Montgomery), Clay McCoy (Town of Christiansburg), Trish Cox (City of Radford), and Elaine Gill (Town of Blacksburg).

This month, our chapter meeting will be a breakfast meeting beginning at 7:30 a.m. on July 16 at the Hampton Inn in Christiansburg. Wanda Osborne from Virginia Tech will talk about "case management" of troubled employees. An HR Case Manager is a unique role, and the talk will be a nice follow-up to Darrin Wagon's April presentation on EAPs.

I look forward to seeing everyone at the Hampton Inn.

Best Regards,
Mike Aamodt

Meeting Notices

CHAPTER INDUSTRIAL MEETING

Be sure to mark your calendars to attend the next meeting that will be held on Tuesday, July 7th 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 Jeff Hamley at (540) 639-8971 or jeffrey.hamley@atk.com for more information on the Industrial Meeting.

Chapter Financial Report

Beginning Balance as of May 31, 2009	\$ 2,906.59
Ending Balance as of June 30, 2009	\$ 2,199.87
Scholarship Balance	\$ 2,111.76
Certificate of Deposit	\$ 2,500.00
TOTAL ASSETS	\$ 6,811.63

Announcements

SHRM to Hold Regional Webinars

Mark your calendars! SHRM's Southeast Regional Team will be holding special webinars to showcase new additions to the website, enhanced member benefits, ways to earn recertification credits, and more! Plan to join in on the webinars as listed below.

SHRM will also be giving away a free membership to someone who is a chapter member but NOT a current SHRM member on the August 5th call. Angella Clark from Louisville KY was the lucky winner of a free membership in April. Upon winning, Clark said, "I'm excited to win! I now have access to a variety of reliable and current HR information." **YOU could be the next winner!**

- Wednesday, July 22, at noon ET/11:00 CT
- Wednesday, August 5, at noon ET/11:00 CT (giving away a membership for non-SHRM members)

Wednesday, August 26, at noon ET/11:00 CT (special content for small businesses with <100 employees)

To participate in these webinars, watch your email inbox. Details for each one will be sent via email, so make sure your spam filter allows emails from @shrm.org. Each webinar is limited to the first 100 participants. If you can't get into the webinar, it is likely full, so be sure to login early.

Here's what your fellow HR professionals have said about these webinars:

- *I really enjoyed the SHRM presentation this afternoon. I am planning on joining today.*
- *I was unaware of all the benefits in the membership and will invest in the association.*
- *I would also like to take a moment to say "Thank You" for the information from the session. With just the introduction to the information available to me I am excited to get further into the field that I have become interested in.*
- *I'm new to HR - thank you very much for the presentation. I appreciate the roadmap you provided for accessing the knowledge I need!*
- *Thanks so much for your presentation. It was very informative and although I have been a member for years, I discovered that there are resources available to me that I was unaware of. I would greatly appreciate your sending me the link to the slide presentation. Again, thank you!*



Xerox welcomes Ursula Burns, first black female CEO of Fortune 500 company



Friday, May 22, 2009 - Changes in the corner office come a dime a dozen, especially during this time of economic turmoil, but there is one on the horizon that is a testament to how far our nation has come since the Civil Rights and Women's Rights movements.

On Thursday, Anne Mulcahy, who earlier this decade spearheaded a multibillion-dollar turnaround at Xerox, announced that she would retire but would remain chairman of the board. Filling Mulcahy's spot is Ursula Burns, a Xerox veteran, who may soon become a household name.

Why? Burns is set to become the first African-American female CEO to lead a Fortune 500 company. The leadership change also marks the first time that the baton was passed directly to another female executive at a Fortune 500 firm.

Burns joined Xerox in 1980 as a mechanical engineering summer intern and climbed her way up the corporate ladder, with roles including product development and planning, heading up manufacturing and supply chain operations. In April 2007, Burns was named president of Xerox and will take over the CEO role in July.

"It is humbling to follow such a great leader and to serve as CEO of such a great company," Burns said in a statement. "I'm grateful for the opportunity and, like Anne, focused on creating value for our customers, our people, our shareholders and our communities."

In a male-dominated corporate America, fewer than 3 percent of the CEOs at Fortune 500 firms are women. And while Burns' ascension to the top shatters the glass ceiling once again for female executives, I've said it before and I'll say it again: Diversity within the rank and file is just as key as diversity in the corporate suite. Tapping into different perspectives from a diverse pool of employees can only help contribute to a company's bottom line.

While Burns' appointment symbolizes a major milestone in corporate America, she will be judged by how she is able to steer the printer and copier giant out of a revenue slump that has weighed on the company during the recession.

Social Activities Update

I wish to express my gratitude for all the attendees at last month's Chapter meeting who participated in the Activities Interest Survey. We had put together a quick impromptu survey to gather information on which social activities the Chapter would most likely participate in. We had over 70% of the attendees complete the survey. After tabulating the results we then sorted the activities in the order that would generate the most participation. We even had a tie for the third place activit(ies). The activities are listed below.

1. Christmas Store
2. 2nd Harvest Food Bank
3. Holiday Social
3. Wine & Cheese meet and greet
4. Hike/Picnic/Cookout
5. Habitat for Humanity
6. Mill Mountain Zoo
7. Bowling
8. Baseball Game

The next step is for the Social Committee to schedule times, dates, and specifics for the events. We should have all the details worked by the August Newsletter. Thank you for your patience, and we look forward to providing some fun and interesting way for our members to connect with each other and our families.

Legal Update

SO THEY WANT “RESPECT” And Not the Type Aretha Franklin Spoke of ...

by Jimmy F. Robinson, Jr., Esq. of LeClairRyan

Many nonunion companies have never heard of the National Labor Relations Act (NLRA). For these companies, it is an inconceivable idea that a government agency could intrude upon their administrative offices and pore over company policies and practices, searching for labor violations. But it does happen, and with far more regularity than one might imagine. As a practical matter, nonunion companies are regularly summoned before the National Labor Relations Board (NLRB) to reply to allegations that they violated the NLRA. Therefore, it is essential for nonunion companies to remain vigilant and up-to-date on legislation impacting the NLRA -- especially legislation giving rights to nonunion employees.

Unionized companies, on the other hand, have a long and storied history with the NLRA. One of the most controversial, and arguably salacious, federal labor law battles involves the long-debated question of what makes an employee a “supervisor.” This battle reached its peak in 2006 when the NLRB attempted to provide workable interpretations to the three most controversial terms of the “supervisor” definition: “assign,” “responsibly direct,” and “independent judgment.” Unions, however, were dissatisfied with the NLRB’s efforts. They believed the NLRB’s guidance regarding those terms favored management and effectively excluded large numbers of employees from the NLRA’s protection.

In September 2007, union-friendly members of Congress introduced a bill euphemistically called the RESPECT Act. The acronym RESPECT is short for “Re-Empowerment of Skilled and Professional Employees and Construction Trades Workers.” This legislation seeks to subtly change the definition of supervisor in ways that will have far-reaching effects, including effects well beyond the union versus management playground. As such, the RESPECT Act demands the attention of both nonunion and unionized companies.



What Is The RESPECT Act?

Statutorily, supervisors are excluded from NLRA protection. From a traditional labor perspective, supervisors align with the management of the company and cannot be organized by unions. The NLRA currently defines a supervisor as: “Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or to responsibly direct them, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” In sum, a supervisor is someone who assigns work to other employees, is responsible for directing subordinate employees to undertake specific duties, and has the authority to make decisions without close direction from management. Even if a supervisor does not spend a majority of his or her time actually hiring, disciplining, and firing, he or she is still excluded from bargaining units.

The proposed RESPECT Act would make two fundamental changes to the NLRA’s current definition of “supervisor.” First, it would eliminate the two most common supervisory duties in a majority of industries—the authority to “assign” other employees and the authority to “responsibly direct” other employees. Second, it would require that the “majority of a supervisor’s worktime” be spent engaging in the remaining duties set forth in the current definition, before they could be considered “supervisors.” If Congress were to pass the RESPECT Act, the new definition of "supervisor" would be: “Any individual having authority, in the interest of the employer, and for a majority of the individual's worktime, to hire, transfer, suspend, lay-off, recall, promote, discharge, reward, or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

In effect, by deleting the duties of “assigning” and “directing” the categorization of who qualifies as a supervisor is severely restricted. Historically, only a very small number of supervisors truly spend more than 50% of their time hiring, firing, disciplining, and promoting. Therefore, if the RESPECT Act were to pass, many supervisors would fall short of the Act’s limiting definition and consequently be eliminated from the supervisor class.

Impact of the RESPECT Act on Traditional Labor Law

Unionized companies fear such a far reaching change to the definition of “supervisor” would topple the long-established equilibrium between labor and management in the workplace. This is because the dramatic changes proposed by the RESPECT Act would fundamentally alter the dual functions of the national labor policy, which are: a) to protect the rights of rank-and-file employees in exercising their rights to form, join, or assist a union without managerial or supervisory interference; while at the same time b) ensuring that supervisors act as agents in the interests of their employers in matters of labor-management relations. The RESPECT Act’s proposed definition change practically eliminates the status of supervisor from labor law, as virtually all employees would become non-supervisors. This is important because under federal law, unions cannot organize employees classified as “supervisors,” who are considered “agents” of management, and therefore are statutorily excluded from NLRA protection. The RESPECT Act would thereby enlarge the pool of employees able to be organized by the union.

The RESPECT Act would also dramatically simplify union organizing campaigns by limiting an employer’s ability to communicate with workers during organizing drives. Currently, employers rely on supervisors to communicate to employees the downsides of unionizing which unions deliberately omit, including corruption, dues increases, strike histories, political involvement, and lavish salaries for union staff. By virtually eliminating all supervisors, the RESPECT Act would hinder a company’s ability to educate their workers during organizing drives, because it is illegal to ask an employee to help oppose an organizing drive. Increased union organizing would result from this decreased employer contact.

Another impact of the RESPECT Act would be the creation of “divided loyalties.” Divided loyalties would impact the relationships between employers, supervisors, and non-supervisory employees. In order to promote corporate efficiency, the undivided loyalty of supervisors is essential. Supervisors must make unbiased decisions rooted in competence and merit.

These decisions do not need to be hindered by union politics or the threat of disciplinary action and fines if a choice conflicts with a union position. Further, with the RESPECT Act's passage, employers would no longer have the benefit and comfort of relying on a supervisor's undivided loyalty. Supervisors, subject to union influence, would be free from disciplinary action if they sided with the union, rather than the employer. Non-supervisory employees would also suffer if supervisors suddenly became a part of the collective bargaining unit. It is important to maintain the distinction between supervisors and non-supervisory employees in the collective bargaining context because workers need the liberty to dispute with their union without fearing retribution from their bosses. Using their authority, supervisors could improperly sway union members in crucial decisions.

One example of divided loyalties potentially created by the act is with front-line supervisors who assign work to employees. Under the RESPECT Act, such supervisors would now be covered by the NLRA and therefore be: a) able to form, join or assist labor organizations; b) eligible to vote in NLRB supervised elections; c) permitted to solicit signatures for union authorization cards from "co-workers," and d) allowed to picket, go on strike, or otherwise engage in other work stoppages that would be inconsistent with a supervisor's duty. Few workers would refuse to sign a union card when their boss (notwithstanding whether he/she is called their supervisor for NLRA purposes) presses them to do so, regardless of whether or not they actually wanted union representation.

Impact of the RESPECT Act on Traditional Employment Law

The RESPECT Act will have broad legal consequences, not only for the definition of a supervisor under the NLRA, but also potentially under a variety of other labor laws, such as the Fair Labor Standards Act, Occupational Safety and Health Act, anti-discrimination laws, and other federal and state statutes. Additionally, regulations and rules in which a determination of supervisory or exempt status is necessary could be used to hold an employee liable for the acts of its supervisory agents. The RESPECT Act could also trigger an explosion of litigation involving individuals currently classified as "supervisors" performing non-managerial duties not listed in the definition, yet who are vital to the success of an employer's business.

Recommendations

To prepare for the RESPECT Act, all companies should do the following:

Review all supervisors' job descriptions, checking for accuracy, and paying close attention to ensure that the job descriptions contain appropriate duties;

Provide any necessary training;

Examine each supervisor's actual duties, checking to make sure that the duties comply with the NLRA's current definition of supervisor; and

Develop contingency plans for restructuring duties in case the RESPECT Act becomes law.

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Questions can be directed to Jimmy Robinson in LeClairRyan's Richmond office at 804.783.7540 or via email at jimmy.robinson@leclairryan.com.

**NEW RIVER VALLEY SHRM
MEMBERSHIP MEETING
July 16, 2009**

Topic: HR Case Management: Putting the Pieces Together
(Learn about a new concept of an in-house counselor who provides cases Management to assist employers and employees.)

Speaker: Wanda Osburn,
Case Manager, Virginia Tech

Location: Hampton Inn,
Christiansburg, VA

Time: 7:30 a.m.—9:00 a.m.



APPROVED FOR RECERTIFICATION CREDIT

This program has been approved for 1 credit hour towards PHR, SPHR, and GPHR recertification through the Human Resources Certification Institute (HRCI)