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Inside This Newsletter

LHRMA
Lincoln Human Resource Management Association

AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

June Program

Program on June 12 Features **— "Developing Metrics and Measures of Organizational Performance"**

Join us for our Program on June 12. Jason Jackson, Chief HR Officer, State of Nebraska will present from 12:00—1:00 p.m.

About the Presentation

Developing Metrics and Measures of Organizational Performance

The presentation will give the HR business partner a practical approach for measuring service delivery in the HR function and contributing to the development of organizational goals for the business you are supporting. Attendees will learn how to identify the customer/receiver of business services and the identified goals in order to establish the metrics necessary to measure organizational and individual performance.

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2018

SHRM EXCEL 2017

About the Presenter:

Jason Jackson is the Chief HR Officer with the State of Nebraska.

As the Governor's HR Business Partner Jason acts as executive coach to cabinet officers and leads strategic talent initiatives focused on making the state workforce more customer focused and efficient. Prior to joining the Ricketts Administration Jason worked in HR in the software industry, where over a six year period he led the transformation of a startup HR shared services organization into and industry leader in employee satisfaction.

Before beginning his HR career Jason served for 5 years as a Navy officer, earning the Navy Achievement Medal and Navy Commendation Medal for his service in the War on Terrorism. He is a contributing author to the LA Times best seller, In the Shadow of Greatness, a memoir on the experiences of young military leaders in armed conflict.

Jason received his undergraduate degree from the United States Naval Academy and has earned an MA in political science from San Diego State University and a JD from Thomas Jefferson School of Law.

WHEN AND WHERE

Tuesday, June 12, Program 11:00-1:00 p.m. at Embassy Suites, 1040 P Street, Lincoln, NE

LUNCH PROGRAM REGISTRATION FEES:

LHRMA members – $15
All Other Attendees – $25
College Student Chapter Members—FREE (Luncheon attendance is free for SHRM designated student chapter members. Current SHRM designated chapters include: University of Nebraska-Lincoln. Students must register through Jenessa Keiser, College Relations Chair, college.relations@lincolnhr.org for free meeting attendance.)

REGISTRATION DEADLINE

Register by Friday, June 8th at noon.

2018 LHRMA Membership Renewals

If you have not yet renewed your membership for 2018 you still have time. Please be sure to do so right away!

WELCOME NEW MEMBERS

LHRMA welcomes the following new members:

Kylie Hatten
HR Partner
Nebraska Department of Veterans' Affairs
Kylie.hatten@nebraska.gov

Christie Nguyen
HR Administrative Assistant
State of NE Department of Health and Human Services
Christie.nguyen@nebraska.gov

CONGRATULATIONS!!!

LHRMA is pleased to recognize the following human resource professionals who earned the new SHRM credentials during the Winter Exam Window (12/1/17 – 2/16/18):

Maria Betancourt, SHRM-CP
Lisa Forbes, SHRM-CP
Maggie Hayek, SHRM-CP
Melissa Hynes, SHRM-CP
Sarah Larson, SHRM-CP
Jasmine Lionberger, SHRM-CP
Katie Welp, SHRM-CP
Stuart Zetterman, SHRM-SCP

SHRM Certification includes taking an exam to show mastery of the SHRM body of knowledge and participating in approved furthering education opportunities to keep the designation. SHRM Certification is a symbol of professional achievement.

President's Message

By Lindsay Selig, LHRMA President

May always seems like a very busy month – school letting out, graduations, the start of wedding season and even Memorial Day cookouts! Along with all these exciting things, it's also the month that SHRM announces the winners of their Excel Award.

I'm excited to announce that LHRMA has once again achieved the Platinum Excel Award status. The Excel Award is based on the chapter's prior year's goals and strategic initiatives in support of the HR profession and to meet the needs of HR professionals. These goals and initiatives allow chapters to increase their visibility and effectiveness as well as expand impact within the HR community.

The Platinum Award requires at least 4 goals/strategic initiatives to be accomplished in the preceding year. So a huge thank you to our board, volunteers and membership for bringing these goals and initiatives to life! Without your active participation in everything we do, this would not be possible!

Also, I would be remiss not give a shout-out to past president, Joel Scherling, who submitted this winning application! Thank you, Joel!

Once again, thank you to all of you, and please give yourselves a quick pat on the back for a huge achievement.

Now, it's time to get out and enjoy that sunshine!

Legal Update

Supreme Court Sides with Employers and Holds Individual Arbitration Agreements Enforceable

By Susan K. Sapp
Jody N. Duvall

Should employees and employers be allowed to agree that any disputes between them will be resolved through one-on-one arbitration?

On May 21, 2018, the U.S. Supreme Court released its widely-anticipated decision in *Epic Systems Corp. v. Lewis* and answered an important question for employers with a resounding "yes." At issue in *Epic Systems* was whether the Federal Arbitration Act's ("FAA") mandate to enforce arbitration agreements according to their terms is overridden by Section 7 of the National Labor Relations Act ("NLRA"), which provides employees the right to engage in certain concerted activities for mutual aid or protection. Specifically, **the Supreme Court addressed whether employers can require employees to enter into agreements to adjudicate employment disputes through private, individual arbitration or whether the NLRA grants employees a substantive right to pursue group legal action that invalidates such agreements.** In a victory for employers, the Supreme Court held in a 5-4 ruling that employers may enforce individualized arbitration agreements with their employees and prohibit employees from participating in class or collective actions. The Supreme Court's newest member, Justice Neil Gorsuch, delivered the opinion of the Court.

The Federal Arbitration Act

In response to hostility towards arbitration agreements by 19th and early-20th century courts, Congress enacted the Federal Arbitration Act ("FAA") in 1925, which commands courts to treat arbitration agreements as valid, irrevocable, and enforceable agreements. The FAA also specifically directs courts to respect and enforce the parties' chosen arbitration procedures, including terms that specify with whom the parties choose to arbitrate their disputes and the rules under which the arbitration will be conducted. Since enactment of the FAA, courts have interpreted the FAA as providing a liberal federal policy favoring enforcement of arbitration agreements. Generally speaking, courts will enforce arbitration agreements pursuant to the FAA unless the agreement falls within the FAA's "savings clause," which allows courts to decline to enforce arbitration agreements "upon such grounds as exist at law or in equity for the revocation of any contract."

Applicable Federal Labor Laws: the Norris-LaGuardia Act and National Labor Relations Act

Ten years after enactment of the FAA, Congress enacted the NLRA, which expanded workplace protections for employees that were previously set forth in the Norris-LaGuardia Act. Specifically, Section 7 of the NLRA provides employees:

[T]he 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.

Throughout its history, the governmental agency that administers the NLRA, the National Labor Relations Board ("NLRB"), has generally taken the position that Section 7 of the NLRA focuses on the right of employees to organize unions and bargain collectively. **However, in 2012, the NLRB asserted, for the first time in the 77-year history of the NLRA, that the NLRA effectively nullifies individualized arbitration agreements between employers and employees**.

Since the NLRB's 2012 proclamation, some federal courts, including the U.S. Courts of Appeal for the Second, Fifth, Eighth (our circuit court), and Eleventh Circuits weighed in on the issue and determined that individual arbitration agreements between employers and employees are enforceable agreements under the FAA, notwithstanding Section 7 of the NLRA. In similar cases, however, the U.S. Courts of Appeal for the Sixth, Seventh, and Ninth Circuits held that individual arbitration agreements between employers and employees violate the NLRA's guarantee that employees can engage in concerted activities for the purpose of mutual aid or protection. The Supreme Court's decision in *Epic Systems* resolved that circuit split.

The Supreme Court Decides: Individual Arbitration Agreements Between Employers and Employees Are Enforceable

In *Epic Systems*, the Supreme Court analyzed three cases that differed in factual detail, although the legal issues were identical. All three cases involved arbitration agreements mandating arbitration of all disputes that might arise between the three employers and their respective employees. The employees challenged the arbitration agreements on two separate grounds, arguing that:

(1) The arbitration agreements fall within the savings clause of the FAA, thus the Supreme Court should decline to enforce them under the FAA since the terms of the arbitration agreement violate employees' legal rights under Section 7 of the NLRA.

Legal Update (continued from page 5)

(2) The NLRA overrides the FAA since Section 7 of the NLRA and the FAA conflict.

Rejecting the employees' arguments, the Supreme Court first identified that the savings clause can be used to invalidate arbitration agreements only on the basis of generally applicable contract defenses such as fraud, duress, or unconscionability. The employees did not object to the arbitration agreements at issue because they were procured by fraud, duress, or some other unconscionable measure, but simply objected because they required individualized arbitration instead of class or collective arbitration. Accordingly, the Supreme Court held that the arbitration agreements did not fall within the scope of the FAA's savings clause.

Second, the Supreme Court held that the FAA and Section 7 of the NLRA do not conflict, but determined that the two statutory schemes could be harmonized. In so doing, the Supreme Court found that the final "catch-all" provision of Section 7—which states that employees can engage in "other concerted activities for the purpose of…other mutual aid or protection"—could not be given such a wide-ranging definition as to include class or collective actions, given that neither class nor collective actions are mentioned in the NLRA and Section 7 of the NLRA contains a specific list of covered activities, including "self-organization," "form[ing], join[ing], or assist[ing] labor organizations" and "bargain[ing] collectively." The Supreme Court explained that when a general term follows specific terms in a statutory list, the general term is interpreted to embrace only those objects similar in nature to the objects enumerated in the specific terms. Accordingly, Justice Gorsuch explained that the "catch-all" provision of Section 7 of the NLRA should be understood to protect things employees "just do" in the course of exercising their free association right in the workplace, but does not extend to protect the highly-regulated and courtroom-bound activities of group litigation.

Finding no conflict between the FAA and the NLRA, the Supreme Court stated that "the law is clear: Congress has instructed that arbitration agreements like those before us must be enforced as written."

Takeaways for Employers

The Supreme Court in *Epic Systems* provided much needed clarity and certainty for employers. Employers now have an option to minimize litigation risks by requiring their employees to enter into arbitration agreements that waive employees' rights to bring costly class and collective action lawsuits. The decision repudiates the NLRB's prior position that individualized arbitration agreements and class action waivers are unenforceable, and reinforces that employers may mandate arbitration procedures in such agreements with the understanding that they will be upheld.

4851-0256-5734, v. 1

i__ S. Ct. __, 2018 WL 2292444 (2018)(referred to herein as "*Epic Systems*").
ii 9 U.S.C. § 2.
iii See 9 U.S.C. §§ 3-4.
iv See, e.g., Moses H. Cone Memorial Hospital v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983).
v 9 U.S.C. § 2.
vi The NLRA is found at 29 U.S.C. §§ 151-169.
vii 29 U.S.C. § 157.
viii D.R. Horton, Inc., 357 N.L.R.B. 2277 (Jan. 3, 2012).
ix NLRB v. *Murphy Oil USA*, 808 F.3d 1013 (5th Cir. 2015); *Epic Systems Corp. v. Lewis*, 823 F.3d 1147 (7th Cir. 2016); *Ernst & Young v. Morris*, 834 F.3d 975 (9th Cir. 2016).

Jobs, Jobs and More Jobs!

If you are an employer with an employee that is a current LHRMA member, then you can post your HR-related job opening on our website for **FREE**! Just email lhrma0048@yahoo.com.

If you are looking for a human resource position, then check it out! Go to: http://lincolnhr.org/blog/hr-job-openings/

This is also an excellent resource for students who are seeking an HR position or for companies to advertise if they have summer internships available. Take advantage of this great resource—you can't beat the price!

Sitting Continues to Cause Health Problems!

“In a recent peer-reviewed study, scientists at UCLA asked subjects to complete reports on their own sedentary behavior. These reports were then compared with MRIs of the subjects’ brains. The result: There was a link between excessive sitting and a reduced thickness in the medial temporal lobe of the brain, the region responsible for memory and certain forms of perception.

Perhaps this connection shouldn’t come as too much of a surprise, since previous studies have associated physical inactivity with diminishing brain cells, and regular aerobic exercise has been shown to increase brain volume. But this latest research appears notable for the link it establishes with this specific region of the brain, and the serious consequences it implies for how sitting may impact memory, especially as we age. Essentially, too much time on your bum may lead to impaired episodic memory — the ability to remember autobiographical events. For all the comforts sitting affords us, it may not be worth this steep price down the road.”

See the full article by Sarah Garone @ https://www.brit.co/sitting-too-long-health-risks-bad-for-brain/

McCracken Chiropractic

HELPING *Supervisors* UNDERSTAND THEIR ROLE IN CREATING A RESPECTFUL WORKPLACE

There have been a lot headlines made recently related to sexual harassment, bullying behaviors and the need for more civility in the workplace. It may appear straightforward and easy to create a culture of respect, but research tells us that we are not doing enough.
Christine Porath, a professor and researcher at Georgetown Business School, found that nearly every employee surveyed had either experienced incivility or witnessed it at work. There are many ways organizations can address these issues, but it is vital that managers and leaders understand that civility is a core value and an expectation in the workplace, and that it is **their role** to manage employees when they are not treating others in a respectful manner.

HERE ARE SOME ESSENTIAL ACTIONS **LEADERS CAN TAKE…**

1. Promote a Respectful Workplace — Talk about expectations related to civil behavior and educate your employees regarding rules. Post your policies and host trainings related to civility, bullying prevention and workplace harassment.

2. Model respect on the job — Respect is an organizational mindset that must be promoted and practiced from the top down. Employees take a lot of their behavioral cues from supervisors and managers so it is essential that leaders develop a sense of self-awareness. No one is perfect, but when supervisors are conscientious of how their behavior affects the culture and model the kinds of behaviors that they would like employees to demonstrate, it makes a difference.

3. Reward good behavior — Praise employees when you see them practicing civility. Be specific in your praise and appreciation. Depending on the employee, praise them privately and/or publicly.

4. Don't excuse bad behavior — Few things buy trouble like excusing bad behavior. Left unchecked, disrespectful interactions feed upon themselves and are dangerous because they can become contagious. People tend to mimic or model the behavior that they witness from others. So treat it as an infectious disease. Provide feedback to employees if they act disrespectfully or abusively with co-workers. Intervene and correct behavior as needed and use corrective action or performance improvement plans when appropriate.

Employer liability isn't limited to cases of sexual harassment. Therefore, it is necessary to always take a proactive approach to eliminating workplace bullying and harassment. Continuum EAP consultants can offer guidance and support to identify a plan to address these issues. Our workplace consultants can talk with you about ways to intervene and confront behaviors, as well as exploring options for educating your employees.

For more information about Continuum EAP and its services, contact Gail Sutter.
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