



# NEWSLETTER

February 2017 ISSUE

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## President's Address

A special thank you to all those who attended our January luncheon in the new location at Davis Hospital! As with most changes, we did have a couple of hiccups on the exact entrance location, but we had a great turnout and Davis Hospital has been so great to work with on adjustments and preparation for upcoming meetings.

A survey was sent out to all attendees soliciting feedback on the location, the food, and the speaker. I highly encourage each of you who attended to complete the survey and give us your opinion so we can continue to improve and better meet the needs of our members as we move forward into 2017!

Another way we're trying to improve NUHRA is through networking and supporting each other's HR related questions and dilemmas. We have created a closed group on LinkedIn and would like each and every one of you to become members to help answer questions and share ideas. I truly believe this will help us all become better at what we do and help strengthen our relationships and friendships among the group.

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## 2017 Board Members

- President | Alison Evans
- President Elect | Steven Maughan
- Secretary | Ronda Bateman
- Treasurer | Darrel May
- VP Membership | Dana Williams
- Communications | Trisha Clark
- Webmaster | Christina London
- Programs | Stacey Comeau
- Certification | Shauna Greer
- Hospitality | Rachel Julien
- Workforce Readiness | Tia Larsen
- Diversity | Kevin Smith
- Legislative Representative | Jesse Oakeson
- Public Relations | Kathy Hammerle
- Foundation Liaison | Heather Briskey
- Student Liaison | Pat Wheeler
- Student President | Curtis Waite
- Golf Committee Chair | Shawn Choate
- Past President | Veronica Akers

AFFILIATE OF



SOCIETY FOR HUMAN RESOURCE MANAGEMENT



## President's Address Cont.

Please search for Northern Utah Human Resource Association on LinkedIn and request to become a member. Some questions and conversations have already started on the site. Please join us! Hope to see you there.

Sincerely, Alison Evans

## Upcoming Events

### February Luncheon

February 16th @ 11:30 a.m.

**Davis Hospital & Medical Center**  
**1600 Antelope Dr., Layton**

Presenter | Mike Barrett w/ Utah Labor Commission  
Employment Discrimination & Legal Updates

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### March Luncheon

March 16th @ 11:30 a.m.

**Davis Hospital & Medical Center**  
**1600 Antelope Dr., Layton**

Presenter | Darren Rogers w/ DWS  
Economic Update

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### April Breakfast

April 20<sup>th</sup> @ 7:30 a.m.

**Davis Hospital & Medical Center**  
**1600 W Antelope Dr., Layton**

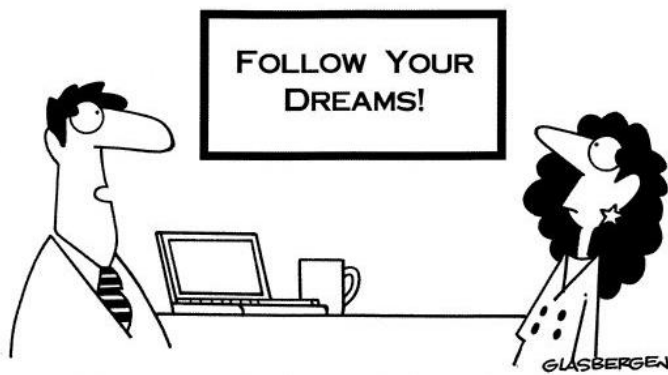
Presenter | Scott Ferrin  
SHRM Regional Field Services Representative  
"Six Key Elements of an Effective Talent Acquisition Strategy"

## New I9 Forms

## January 22, 2017

For more information on the changes and what you need to know visit:

<https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/new-form-i9-changes-hr-needs-to-know.aspx>



"It's supposed to inspire, but most employees see it as permission to take a nap."



## HANDLE WITH CARE...

Our new 'Members Contribution' section of the newsletter, where you, the member, get to submit a workplace issue and resolution and we all get to learn!

Q: Do you think you've ever discriminated, without realizing it?

A: I find that in the workplace, it's easier to discriminate than people realize. I think it's natural, in some situations, for people to make assumptions about another person based on their appearance, their ability to communicate or their perceived education or knowledge of a given issue.

A client asked for a consultant by name, his reputation preceded him and the client knew he would be a great fit for the project. The salesman on the account was hesitant because he viewed the consultant to have decreased mobility and worried that he wouldn't be able to climb the stairs at the client site. He was also concerned with the consultant properly reflecting the company's image. He nearly refused to send the consultant into the client site. After counseling with HR, the salesman called the client to verify that they would be able to accommodate the consultant if needed, either with an elevator or modified work area. The client was happy to do so, if it was requested. The salesman reluctantly sent the consultant to the client site. The consultant performed as well as expected and never asked for any special accommodations. The client was more than satisfied and indicated he would do business with the salesman in the future.

First impressions can be misleading, and the law requires employers to refrain from discriminating. It's the job of HR to make sure that everyone in the company follows company policies as well as the law. Don't let anyone in your organization judge a book by its cover!

## 8 Things to Consider When Updating Employee Handbooks

By: Lisa Nagele-Piazza, SHRM-SCP, J.D.

Federal and state legal developments over the last year brought a lot of changes that impact workplace policies and procedures, making it critical for companies to review their handbooks for compliance.

"2016 was the busiest year I can recall in this regard," said Elaine Diedrich, an attorney with Littler in Pittsburgh.

Workplace rules and regulations may continue to change under President Donald Trump's

administration, but employers should make sure their handbooks are up to date under current laws, she added.

Trump has made overtures that regulations will be pulled back, and if that happens, it could be positive for businesses that have been struggling to keep up with all of the latest changes, said Jason Keck, an attorney with Fisher Phillips in Chicago.

In the meantime, employers should take a close look at their policies. From National Labor

# Employee Loses Wellness Plan Challenge

By: Jeffrey Rhodes

An employee who temporarily stopped receiving health insurance coverage due to a refusal to submit to a wellness plan assessment test but who then received retroactive coverage did not have a valid claim to challenge the legality of the plan, the 7th U.S. Circuit Court of Appeals ruled.

Employer wellness programs use a set of benefits, incentives and/or penalties to improve employee health and lower health insurance costs. Flambeau Inc., a plastic manufacturer headquartered in Baraboo, Wis., adopted such a program in 2012 that included a health risk assessment in which employees answered questions about their medical histories and were measured for health indicators such as weight, cholesterol level and blood pressure. In 2012 and 2013, Flambeau required participation in this assessment as a condition of its contributions to employees' health insurance premiums.

Flambeau employee Dale Arnold was unable to complete a health risk assessment in order to qualify for health insurance coverage for the 2012 benefit year. Flambeau terminated his insurance coverage but gave him the option of buying continuing coverage under COBRA. Arnold decided not to take that option, so his health insurance lapsed.

Arnold filed complaints with the U.S. Department of Labor and the Equal Employment Opportunity Commission (EEOC) claiming violations of the Family and Medical Leave Act and the Americans with Disabilities Act (ADA). After discussions with the Department of Labor, Flambeau agreed to reinstate Arnold's health insurance retroactively as

long as he completed the assessment and paid his own share of the premiums. Arnold did so, and the company restarted his insurance. Before the 2014 benefit year began, Flambeau's management ended the mandatory testing program, finding that it was not cost-effective.

Arnold resigned in March 2014. Six months later, in September 2014, the EEOC filed suit against the company alleging that its mandatory assessment and testing violated the ADA prohibition on involuntary medical examinations.



Flambeau moved for summary judgment, arguing that its wellness plan was covered by the ADA's insurance safe harbor provision, which excludes from the ban on involuntary medical examinations an organization's administration its bona fide benefit plan. The safe harbor also provides that the exception shall not be used as a subterfuge to evade the purposes of the ADA's provisions. Flambeau argued that the health testing was voluntary because it was not a condition of employment.

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## Wellness Plan Cont.

The EEOC filed a cross-motion for summary judgment as to liability, arguing that the insurance safe harbor did not apply to the company's program.

The district court granted Flambeau's motion and denied the EEOC's cross motion for partial summary judgment. It decided that the safe harbor could cover at least some wellness programs and that this was one such program.

On appeal to 7th Circuit, the EEOC argued that the case was not moot because Arnold was entitled to recover \$82 in out-of-pocket medical expenses that Flambeau should have paid and that he could receive emotional distress damages and punitive damages as well. Flambeau argued that these damages were not available.

The court found that the ADA was not clear in defining the scope of the safe harbor provision. In addition, at that time, the EEOC had not yet issued its guidance concerning what would constitute a valid wellness program under the ADA. As a result, the court found that Arnold could not obtain punitive damages against Flambeau for willfully violating his rights.

The court also found that the company voluntarily ceased its program at issue and therefore was not likely to resume it in the same way as before. Noting the difficult questions raised by wellness programs under the safe harbor provision, the 7th Circuit declined to decide whether Flambeau's wellness program complied with those provisions.

## Employee Handbook Cont.

Relations Board (NLRB) decisions to local paid-sick-leave laws, here are some of the important changes to note from the past year.

### 1. NLRB Decisions

"At the federal level, we've seen a lot from the NLRB," Keck said. Employers should review their social media policies, keeping in mind the board's Aug. 18, 2016, decision that found that Chipotle's social media policy prohibiting employees from "posting incomplete, confidential or inaccurate information" violated the National Labor Relations Act (NLRA).

The board said that "in order to lose the act's protection, more than a false or misleading statement by the employee is required; it must be shown that the employee had a malicious motive."

Employers also should examine and possibly rewrite "any policy that simply tells employees they need to act professionally and in a positive manner or be nice to customers," Diedrich said.

The board's decision in T-Mobile U.S.A. Inc. (April 29, 2016) found that several workplace rules were unlawful, including a rule about maintaining a positive work environment.

The NLRB said employees could reasonably interpret the rule to restrict "potentially controversial or contentious communications and discussions," including those involving their right to join a union and bargain collectively.

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## Employee Handbook Cont.

Also review policies about recording in the workplace, media inquiries, reference checks and policies that prohibit disparagement of the employer, Diedrich added.

Keck noted that the U.S. Supreme Court will eventually weigh in on the NLRB's position that class-action waivers in arbitration agreements violate an employee's right to engage in protected, concerted activity.

Until then, employers will have to assess whether to have a class-action waiver in their handbook, he said.

### 2. Reporting Violations

Make sure handbook provisions don't discourage employees from reporting potential legal violations to government agencies:

The Defend Trade Secrets Act of 2016 provides businesses with a legal remedy if trade secrets are misused. However, for employers to receive attorney fees and other enhanced damages, they must provide workers with notice about their right to immunity if they report potentially illegal activity to a government agency or an attorney, Diedrich explained.

The Occupational Safety and Health Administration began enforcing new anti-retaliation provisions on Dec. 1, 2016. Under these rules, employers can't retaliate against employees for reporting a workplace injury. "The agency noted that it would be looking at [businesses'] policies to ensure they would not lead a reasonable employee to believe such retaliation may occur if they reported an injury," Diedrich said.



The Equal Employment Opportunity Commission and the Securities and Exchange Commission also have targeted any policy or agreement that may be interpreted to curb an employee's right to go to these agencies—or other agencies—to report violations of the law, she added, suggesting that employers add language to address this in the handbook.

### 3. Background Checks

Todd Lebowitz, an attorney with BakerHostetler in Cleveland, said employers need to take a look at their background check procedures to make sure they align with local laws.

"Many [cities] now have ban-the-box laws that prohibit asking criminal background questions in the initial application," he said. "These are constantly being added across the country to prohibit criminal background questions before a conditional offer of employment is made."

### 4. Minimum-Wage Changes

"There are lots of new minimum-wage laws taking effect in 2017," Lebowitz said.

Nineteen states raised the minimum wage at the start of the new year, and Maryland, Oregon and Washington, D.C., will see wage hikes in July, according to the National Conference of State Legislatures.

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