



# NEWSLETTER

JANUARY 2017 ISSUE

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## President's Address

Happy New Year everyone! I hope you've all enjoyed the holiday season and survived the weather that it's surprised us with.

First and foremost, I want to thank you all for giving me the opportunity to serve as President of NUHRA in 2017. I've only been a member of this chapter for a handful of years, but I have learned so much from all of the conferences, speaker presentations, and of course the members themselves. I have gained both friendships and partnerships while being an active member of SHRM and NUHRA and am very excited to see what the future holds as well!

I believe that NUHRA has a strong leadership team this year who is fun, friendly, and actively making NUHRA a valuable network and membership to be a part of. The most valuable part about NUHRA to me, truthfully, are all of our members. I value all of the different backgrounds and experiences that each of you bring to the meetings. I have learned so much from each of you and hope that all of you will continue meeting with us in the new Davis Hospital meeting location!

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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



# Upcoming Events

## January Luncheon

January 19th @ 11:30 a.m.

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

Presenter | Curt Howes

Developing a Strategic Focused Culture &  
Performance System

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## 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  
Employment Discrimination & Legal Updates

For more information on upcoming events visit

[www.nuhra.org](http://www.nuhra.org)



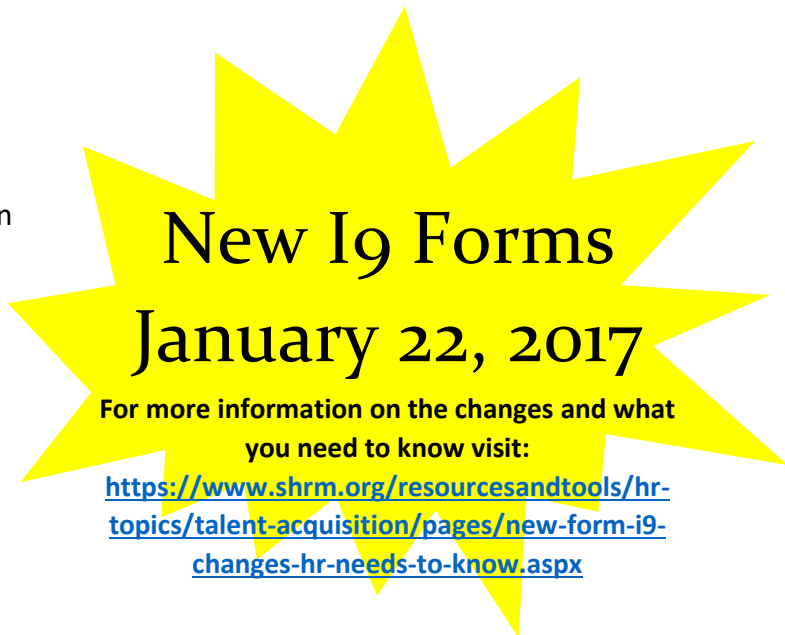
## President's Address Cont.

Please review the included map for driving directions to the new location.

If you have not received email communication about this change, please reach out to me to update your contact information.

Thank you and see you all soon at Davis Hospital!

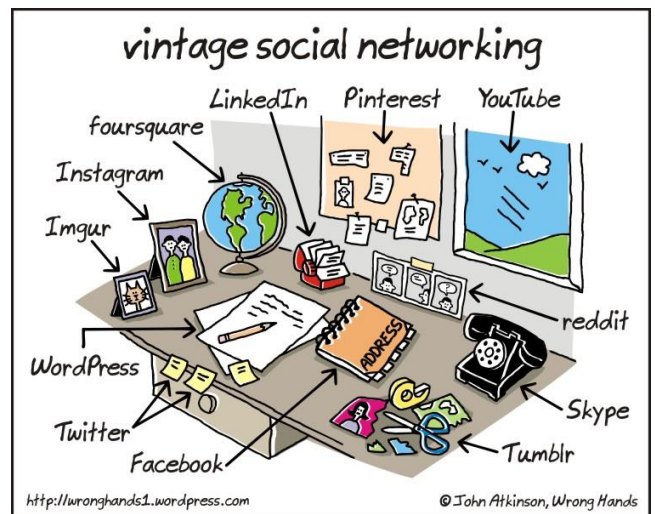
Alison Evans – NUHRA President



# 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>



# \$275,000 Awarded for Harassment Despite Employer's Investigation

By: Michael G. McClory  
Attorney with Bullard Law the Worklaw Network member in Portland, OR

In a case involving an employee's complaint that an Instagram photo posted by her co-workers compared her to a fictional chimpanzee from the movie "Planet of the Apes," liability may be imputed against the employer where "the employer either provided no reasonable avenue for complaint or knew of the harassment but did nothing about it," according to a federal district court.

A \$275,000 award for harassment was upheld, even though the employer investigated the Instagram post and reprimanded the responsible employees, because the employer failed to take action on the ensuing hostile work environment, according to the court.

Mermaid Manor Home for Adults employed Lisa Fisher, who is black, as a home health aide. Fisher's co-workers included Yvonne Kelly, a black Jamaican woman, and Lisi Laurent, a black Haitian woman. There was tension in the workplace between black employees from the United States and workers whose origins were in the Caribbean and the West Indies, disparagingly referred to as "the coconuts" by some employees.

Fisher complained to Mermaid Manor after Kelly and Laurent posted a photo on Instagram comparing Fisher to a fictional chimpanzee from the movie "Planet of the Apes." Mermaid Manor, which had an anti-harassment policy and a complaint process, immediately investigated the Instagram post. After concluding that Fisher's allegations had merit, Mermaid Manor spoke with Kelly, verbally reprimanded Laurent and conducted an in-service training regarding its anti-harassment policy.



However, these actions did not eliminate the hostile work environment. The court said that following Fisher's complaint, Kelly proceeded "to ridicule [Fisher] continuously and unrelentingly" by, among other things, ripping up Fisher's patient book, destroying the beds of her patients, and laughing at or ridiculing Fisher in front of co-workers. Despite Fisher's complaints, Mermaid Manor "took no meaningful action to protect [her] and to rectify the hostile work environment that resulted from Ms. Kelly's unceasing harassment."

Fisher filed a complaint with the Equal Employment Opportunity Commission alleging a racially hostile work environment in violation of Title VII of the Civil Rights Act of 1964. After receiving a right-to-sue notice, she filed a civil complaint with the U.S. District Court for the Eastern District of New York asserting Title VII and state law hostile work environment and retaliation claims. Following trial, a jury unanimously found in favor of Fisher, granting her \$25,000 in actual damages and \$250,000 in punitive damages.

Post-trial, Mermaid Manor moved for judgment as a matter of law or, in the alternative, a new trial.

# Snapchat Sued by Former Employee

Ex-worker claims the company demanded trade secrets about Facebook and lied about its finances

The social sharing platform Snapchat is being sued by a former employee who claims the company misrepresented its finances while recruiting him and then insisted he divulge Facebook's proprietary information, which he refused to do.

Anthony Pompliano was fired after working for three weeks at Snapchat in 2015, according to The Los Angeles Times, which was the first of many publications to report the lawsuit. He was an employee in the social networking site's business operations department.

In court papers filed in early January, Pompliano alleged that Snapchat has lied about the reasons for his termination to his prospective employers, which has made it difficult for him to find another job in the social networking field.

He was fired from Snapchat, the lawsuit states, "because he refused to participate in a scheme to deceive the public and artificially inflate Snapchat's valuation in anticipation" of its first public stock offering. Pompliano's suit also states that he declined to give Snapchat information about his former employer, Facebook.

In a statement issued by Los Angeles-based Snap Inc., which operates Snapchat, company spokeswoman Mary Ritti said the complaint was without merit.

"It is totally made up by a disgruntled former employee," she said.

The Los Angeles Times reported, "Snap Inc. ... recently began talking to investors about its plans to publicly list shares as early as March. The IPO [initial public offering] could value Snap at more than \$25 billion while raising around \$4 billion."

Snapchat would then be more than twice the value of Twitter, according to financial education website Investopedia. More than 150 million people use the Snapchat mobile app daily to view videos and photos from friends, companies, news sites and other entities.

"Driven by its fierce rivalry with Facebook—spurned suitor turned keen competitor—Snapchat fraudulently induced Mr. Pompliano away from Facebook to run Snapchat's new user growth and engagement team by falsely representing to him, among other things, the company's growth," the lawsuit states. The suit also states he was fired because he was "incompetent."

Pompliano's 21-page filing was reportedly made in the Los Angeles County Superior Court. Several pages were redacted. Pompliano's attorney, David Michaels of Kilometer Partners LLP in Los Angeles, told The Times that portions of the lawsuit were blacked out to shield information that was part of a confidentiality agreement between his client and Snap, including two statistics Pompliano says Snap gave him before he was hired that Pompliano claims are false.

Had he passed along information about Facebook to Snapchat, Pompliano could have risked running afoul of federal law. Last year, President Barack Obama signed into law the Defend Trade Secrets Act of 2016 (DTSA), "which amends the Economic Espionage Act of 1996 to provide a federal cause of action to private companies for trade secret misappropriation," according to the National Law Review website.

As the Society for Human Resource Management reported when DTSA became law last May, HR must be vigilant when training employees "about what constitutes a trade secret and how trade secrets are protected."



## Award for Harassment cont.

The key ground for seeking judgment as a matter of law was Mermaid Manor's contention that Fisher failed to prove that it should be found liable for a hostile work environment created by co-workers.

The district court explained that Fisher's burden was to "demonstrate a specific basis for imputing the conduct creating the hostile work environment to the employer." That burden requires evidence that the employer "provided no reasonable avenue for complaint or knew of the harassment but did nothing about it."

Although the evidence clearly showed that Mermaid Manor had a policy and complaint process, that it investigated the Instagram complaint, and that it took responsive action following the investigation, the court held that Mermaid Manor's response failed to address the hostile work environment. "As became clear during trial, the Instagram photo was merely a symptom of the hostile work environment created by Defendant, and treatment of the symptom failed to cure the disease: 'hostility' between African American and Caribbean workers," the court said. The fact that Kelly continued to take hostile actions toward Fisher showed that Mermaid Manor had "overlook[ed] the appropriateness of its remedial action."



"I need your Facebook password before I can hire you. If you're not on Facebook, I need you to join and post a bunch of personal stuff you don't want me to know about."

## 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: What do you do if you're suspicious that an employee is fraudulently claiming workers comp?

A: I'm not a Safety or Workers Comp expert by any means, but in a Human Resources role within my company I help investigate workplace injuries and file claims to our workers comp insurance as a backup to our Safety Manager. Personally, I tend to get suspicious when an employee doesn't notify us of an injury at the time it happens or if they don't have any witnesses, but I've learned that these things don't always mean they aren't being truthful. Sometimes I get suspicious of an employee's body language or inconsistency in their stories, but this has taught me to ask more questions and document their answers. I also find it interesting when an employee has repeat injury claims. It is most definitely illegal to terminate someone as a response to repeating injury claims (or even one for that matter), but it's frustrating when it's the same person over and over. In this situation I would suggest more training for that individual, work with them to find alternative ways to do things if possible, or consider other positions that they might be better suited for.

In any of these scenarios, I think the key to managing fraudulent workers comp claims from an HR perspective would be through proactive training and documentation. I believe each injury can be used to help make trainings, processes, and environments safer and better. I truly believe safety trainings should be mandatory and should be documented. I believe safety equipment is extremely valuable and should be required as well. Documenting the receipt of such trainings and when receiving safety equipment can be a huge help when working with injuries and filing claims. With each injury, the company should be documenting exactly when it occurred, when it was brought to their attention, what happened and when, were there any witnesses, was safety equipment being used properly, what treatment was given if any, and what information there might be that makes you question the validity of the claim. All of this information is used when filing a workers comp claim.

If you believe the claim is fraudulent and the employee might have injured themselves away from work or in a manner inconsistent with what they claim, you should submit this information and any supporting documentation to your workers comp insurance for further investigation. Don't forget that I'm not an expert in this arena, but I do hope that my suggestions are somewhat valuable to someone out there. Best of luck in keeping your employees happy and safe out there!

Submitted by: Alison Evans

