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The Resource

San Diego Society for Human Resource Management

SHRM Competencies and the New Certification: Strengthening your Professional Profile

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July 15, 2015
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President's Message

Brenda Kasper, Esq., SPHR-CA, SHRM-SCPPresident

Connect, Build, Sustain and Contribute With San Diego SHRM

Brenda Kasper, Esq., SPHR-CA, President

I'm writing this article from the annual SHRM conference in Las Vegas. For those of you who couldn't make it, you missed quite a good time. The year's conference was the biggest ever, with over 16,000 attendees. It provided some great information for HR practitioners, inspirational messages from keynote speakers such as Dr. Oz and top-notch networking opportunities. One of the great things about attending the national conference is you get to meet HR people from all over the country and in multiple industries. I had some great discussions with people in industries ranging from oil and gas to a diversity specialist from the United States Department of Labor. I've returned to the office inspired and connected.

Like the national convention, San Diego SHRM is providing great opportunities to connect and contribute during the rest of this year. Our next professional mixer is August 19, 2015 at Dave and Busters in San Diego. Our last mixer at Stone Brewing was a great time. We had over 90 members in attendance, which just happened to be one of our biggest mixers in years. We anticipate another great turnout in August. Please make sure to be there. You will not only be able to network with fellow HR professionals, but you'll have the opportunity to take home some free gifts from our raffle, including the chance to win a free, one-year membership to San Diego SHRM. Registration will be opening soon!

Finally, as I mentioned in a June email, San Diego SHRM is "redoing" our annual Workplace Excellence Awards. At the end of last year, San Diego SHRM decided to end its awards program partnership with The Union Tribune and return to a stand-alone program for San Diego SHRM's prestigious Workplace Excellence Awards. We heard from many of you that the UT's program was unduly focused on its own award (Top Workplaces) and San Diego SHRM's Workplace Excellence Award recipients were not being given the attention they rightly deserved. We will not be giving Workplace Excellence Awards in 2015 so that we can fully evaluate the program and ensure the awards remain true to the original vision, "The marriage of great human resources with business strategy." We will roll out the new awards program in 2016.

We are kicking off our "Workplace Excellence Awards 2.0" committee in the next several weeks. This gives you a great chance to contribute to SD SHRM and our amazing San Diego HR community. Contact info@sdshrm.org by July 15, 2015 if you would like to be involved. Look for more information on the new Workplace Excellence Awards this November. We're excited to introduce

President's Message Continued

the new phase of the awards.

I hope to actually see you in person sometime before summer is over. Don't miss the San Diego SHRM social mixer on August 19, 2015 and/or join our WEA committee. Remember, our June mixer was a sold-out affair, so register early to make sure you don't miss this one. And, as always, feel free to drop me a note at brenda@kasperfrank.com and let's connect!

Meet Your 2015 Board of Directors

Laurie Chua, SPHR-CA, SHRM-SCP, VP of Conferences

Laurie Chua is an HR Knowledge Advisor for the Society for Human Resource Management. Laurie formerly served as Regional Director for California Employer Association, HR Director at SGIS and Websense, and she has held HR Business Partner roles at Pfizer and Dell Computers. In 2009, Laurie started her own HR Consulting business, which she continues on a limited basis providing guidance to small to mid-sized businesses.

Laurie's passion is organizational development, employee engagement and workforce optimization based on the needs of the business. She is a pragmatic leader that loves to mentor and develop business leaders and HR professionals. Laurie graduated from the University of Arkansas at Little Rock, and has earned her SPHR and CA-certification, and was among the first to attain her SHRM-SCP. Laurie facilitated the Fall 2014 HRCI CA-Certification program and will be facilitating the first SHRM-S/CP certification preparation course for San Diego SHRM. She will also be speaking at the California State Legislative Conference Spring of 2015 on the topic of Technical Difficulties: Attracting and Retaining STEM Workers. Laurie is currently the VP of Conferences for San Diego SHRM.

New Members

Welcome to all of our new San Diego SHRM members since June 1!

Romin Behseth, Arthur J. Gallagher & Co.

Cristina Conde

Elona Dunehew, Fragomen, Del Rey, Bernsen & Loewy, LLP

Mary Elliott, Sempra Energy

Allison Gaughan, Corporate Prana

Eva Gonzalez, IHSS Public Authority

Hasani James, AAA Southern California

Dean Marzano

Rodd Miller, Miller Wealth Management

Natalie Moazzez, Teledyne Impulse

Amber Ohara, ADP-Major Accounts

Elena Ruiz, United Payroll and HR Services, Inc.

Elizabeth Sullivan, NItto Denko Technical Corporation

Member Spotlight
Meet Jonathan Rose

Our Spotlighted Member this month is Jonathan Rose. Jonathan joined San Diego SHRM in January 2013 and is a frequent attendee at San Diego SHRM events. Jon is also a member of the Compensation & Benefits Association and attends their programs, given his Benefits specialty. Jon is the guy who always sits in the front of the room and asks great questions of the speaker. Below is Jon's own narrative of his career.

I was born and raised in Lakewood, NJ, a small town in Central New Jersey, just off the famous Jersey Shore. A great place to grow up, but no place for a real job.

So after coming back home after college, and teaching Physical Science for a year, I packed up everything I owned and headed for Southern California.

After arriving in Los Angeles, I worked an assortment of "jobs" – Retail Buyer Trainee, Distribution Supervisor, Men's Clothing Salesman in Beverly Hills, Fashion Jewelry Salesman also in Beverly Hills, and then I had a break and was hired as a Shortage Control Auditor, for the Robinson's Department Store Beverly Hills Store. That job lead to a position as Group Insurance Accountant in the same large Los Angeles based retailer, which then lead to a promotion to Group Insurance Supervisor.

From there my career switched gears and I went into the world of Hollywood, as an Administrative Assistant for the Insurance Manager of MCA INC., who owned Universal Studios, in the Risk Management Department. It really was not much of a switch, as the Manager had been my boss at Robinson's, the Los Angeles retailer, and for about 15 years we were inseparable. While there I learned everything there was to know in the Benefits Arena, that I didn't already know.

Eventually, we both moved on our separate ways, but at that point I was in Benefits for the long run and found I liked what I did. At MCA, I was promoted to Benefits Analyst and then Fulfillment Team Lead for the Universal Studios Benefits Service Center. When I finally moved on from Universal Studios, I ended up in a smaller company, Silgan Containers, who is the largest food can manufacturer in the United States – They make cans, but not what goes into the cans.

While at Silgan I was the Benefits Supervisor – Retirement Plans administering 12 Pension Plans, true Defined Benefit Plans, four separate 401(k) Plans, Defined Contribution Plans, five Supplemental Unemployment Benefits Plans, which act like State Unemployment Plans and one Non-Qualified Executive Plan. In the end, my practical experience level increased ten-fold in the five years that I worked at Silgan. I only left because a truly golden opportunity presented itself that, as the old saying goes, I could not refuse.

Where I went was a major international law firm, Morgan Lewis, and their Washington, D.C. offices, as a Senior Client Employee Benefits Advisor, which provided a different point of view on Benefits. Regrettably, as things happen, the position and I parted company within the year – It just did not work out. But as things happen, by the time I returned to California, I had an interview for another Benefits position at the third largest Engineering Consulting Firm in the country, Jacobs Engineering.

I ended up taking the position and for the next three years I was Jacob's Senior Benefits Analyst. During my tenure at Jacobs, I continued expanding my benefits knowledge base and my benefits administration experience, including running both a 401(k) and a Pension Committee.

After moving on from Jacobs, I was hired at Qualcomm in San Diego as their Senior Benefits Compliance Analyst over five years ago. I continue to work at Qualcomm now as their Staff Benefits Compliance Analyst and Benefits Subject Matter Expert and have never worked at a better company.

My continued involvement in Benefits has led to a truly great life experience and a great career.

On Wednesday, June 17, nearly 100 individuals gathered at the Stone Brewery Garden in Escondido for our June Membership Mixer. Attendees enjoyed great food, great drinks and even better networking! We would like to extend a warm welcome to everyone who became San Diego SHRM members at our event including Rodd Miller, CFP, PPC who was the lucky winner of a one year membership to San Diego SHRM! Individuals in attendance made contacts, exchanged business cards and enjoyed the beautiful venue. Once again, we would like to thank our sponsors Accurate Background, Arthur J. Gallagher and Ranchero La Puerta for making this event so successful! Check out the photos below, and save the date for our next membership Mixer on August 19!

San Diego SHRM Legal and Legislative Update

Jenna Leyton-Jones, Esq., Vice President of Legislation

Jenna Leyton-Jones, Esq., Vice President of Legislation

AGENCY

New California Family Rights Act Regulations Take Effect July 1st

New California Family Rights Act ("CFRA") regulations will take effect on July 1, 2015. The revised regulations are designed to bring the CFRA into closer alignment with the federal Family and Medical Leave Act ("FMLA"), although some differences between the two laws remain. Changes to the CFRA regulations include several revisions to defined terms, including:

- Revising the term "covered employer" to include successors in interest;
- Explaining that a "joint employer" relationship will be found where the employee performs work that simultaneously benefits two or more employers or works for two or more employers at different times during the workweek;
- Defining "eligible employees" as a full- or part-time employee working in California who has been employed for a total of at least 12 months (52 weeks) with the employer at any time before the start of a CFRA leave, and who actually worked for the employer at least 1,250 hours during the 12-month period immediately before the date the CFRA leave begins;
- Allowing an employee who has met the 1,250 hour requirement, but not the 12-month requirement when CFRA starts, to nonetheless meet the 12-month requirement while on leave (because the leave counts toward length of service); in that case, the employer shall designate the portion of the leave in which the employee has met the 12-month requirement as CFRA leave;
- Clarifying that "reason of the birth of a child" includes bonding with a child after birth; and
- Expanding the definition of "spouse" to mean a partner in marriage (including same-sex marriage) or a registered domestic partner.

The new regulations also clarify that the employee's right to reinstatement now includes a right to reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. The employee is entitled to return to the same position or a comparable position that is equivalent to the employee's former position in terms of pay, benefits, shift, schedule, geographic location and working conditions. However, if a shift has been eliminated or overtime has been decreased, an employee is not entitled to return to work that shift or the original overtime hours upon reinstatement.

The employee's duty to provide notice of the need for CFRA leave was also updated. An employee has an obligation to respond to an employer's questions designed to determine whether an absence is potentially CFRA-qualifying. Failure to respond to permissible employer inquiries regarding the leave request may result in denial of CFRA protection if the employer is unable to determine whether the leave qualifies.

The provisions regarding an employee's need to provide medical certification were amended to clarify that the employer may not contact a health care provider for any reason other than to authenticate a medical certification. Employers are also prohibited from requiring an employee to undergo a fitness-for-duty examination as a condition of the employee's return to work. After an employee returns from CFRA leave, any fitness-for-duty examination must be job-related and consistent with business necessity.

Finally, the amended regulations enhance the anti-retaliation provisions to include protection from interference with CFRA rights, and expand an employer's duty to post notice. Employers are required to prominently post a notice explaining the CFRA's provisions and the procedures for filing complaints with the Department of Fair

Employment and Housing. Employers must translate the notice into every language that is spoken by at least ten percent of the workforce.

Additional information regarding the new regulations can be found at **www.dfeh.ca.gov**.

JUDICIAL

Federal

U.S. Supreme Court Rejects "Actual Knowledge" Standard in Favor of "Motivating Factor" Analysis in Religious Discrimination Case

Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits employers from discriminating against employees on the basis of, among other things, religion. In *EEOC v. Abercrombie & Fitch*, the U.S. Supreme Court broadened protections afforded to employees by explicitly prohibiting employers from using religion as a "motivating factor" in employment decisions.

Plaintiff Samantha Elauf ("Elauf"), a Muslim woman, wore a headscarf to a job interview with clothing retailer Abercrombie & Fitch ("Abercrombie"). Her headscarf was not addressed during the interview and Elauf received interview ratings at a level which would have qualified her to receive an employment offer. Her interviewer, however, harbored concern that Elauf's headscarf could run afoul of Abercrombie's "Look Policy," which forbids Abercrombie employees from wearing "caps."

The interviewer asked her district manager whether the headscarf should be considered a "cap" under the Look Policy, noting her belief that Elauf wore the headscarf for religious purposes. The district managed instructed that, regardless of whether it was worn for religious purposes, the headscarf was a violation of Abercrombie's policy. Based on this appraisal, Elauf did not receive a job offer.

The Equal Employment Opportunity Commission ("EEOC") sued Abercrombie on Elauf's behalf, alleging religious discrimination in violation of Title VII. The trial court granted the EEOC's motion for summary judgment, holding that Abercrombie had discriminated against Elauf on account of her race.

Abercrombie appealed. The Court of Appeals reversed the trial court's decision and instead granted Abercrombie's motion for summary judgment. In doing so, the appellate court held that a claim for religious discrimination against Abercrombie could not survive, as Abercrombie lacked "actual knowledge" of Elauf's need for a religious accommodation.

In reversing the Court of Appeals, the U.S. Supreme Court refused to utilize the appellate court's "actual knowledge" test. Instead, the Court held that a plaintiff need only show that a protected characteristic played a "motivating factor" in an employer's decision. Accordingly, the appellate court erred in granting summary judgment for Abercrombie based on an "actual knowledge" standard.

While the Supreme Court failed to specifically elaborate on the level of employer knowledge or suspicion regarding employees' religious beliefs that may constitute a "motivating factor" in the employment decision, employers must remain vigilant of their legal duties and refrain from engaging in behavior that could create an impression of discriminatory animus.

California

Court of Appeal Holds Premature Plaintiff's Expansive Request for Employee Information in PAGA Action

In *Williams v. Superior Court*, the plaintiff ("Williams") worked at a retail store in Costa Mesa, California operated by defendant Marshalls of California, LLC ("Marshalls"). Williams filed suit against Marshalls, wherein he alleged a host of alleged wage and hour violations and set forth a representative claim under the Private Attorneys General Act ("PAGA"). In his written discovery requests, Williams demanded that Marshalls provide names and contact information for all of its nonexempt employees in California. When Marshalls refused to turn over the information, Williams sought to compel its production. The trial court ordered Marshalls to produce the requested information

for employees at the Costa Mesa store, but denied Williams' demand for state-wide employee information.

The Court of Appeal affirmed, first concluding that state-wide discovery of employee contact information was premature given that no depositions had been taken and no other discovery requests had been made. Moreover, the complaint alleged no facts reasonably indicating that Marshalls had a company-wide policy that violated California law.

The court also rejected Williams' argument that because the PAGA entitled him to serve as a proxy for the Division of Labor Standards Enforcement ("DLSE"), he was entitled to "free access to all places of labor," just as the DLSE would be. According to the court, the PAGA only entitled Williams to bring a civil action to enforce the Labor Code; it did not entitle him to the same level of access to employee information as the DLSE would have.

Finally, the appellate court explained that the privacy rights of Marshalls' employees throughout the state outweighed Williams' "practically nonexistent" need for the information at such an early stage of litigation, particularly since Williams had not even established that he had been subjected to any violations of the Labor Code.

In light of the foregoing, the court held it was reasonable for the parties to proceed with incremental discovery, starting with disclosure of information pertaining to Williams and the Costa Mesa employees.

Court of Appeal Reverses Denial of Petition to Compel Arbitration Despite Employer's Fourteen Month Delay in Seeking to Arbitrate

In *Khalatian v. Prime Time Shuttle, Inc.*, the defendant ("Prime Time") owned and operated an airport charter transport business. Plaintiff Valo Khalatian ("Plaintiff") worked for Prime Time as an airport shuttle van driver. Plaintiff entered into a contract (the "Agreement") with Prime Time providing that the parties must arbitrate "any controversy or claim between the parties arising out of or relating to this Agreement or any alleged breach thereof, including any issues…that this Agreement or any part hereof is invalid, illegal, or otherwise voidable or void." Plaintiff later sued Prime Time for wage and hour violations. He also alleged that he was misclassified as an independent contractor. The trial court denied Prime Time's petition to compel arbitration.

The appellate court reversed, explaining first that the Agreement was subject to the Federal Arbitration Act ("FAA"). In order for the FAA to govern an arbitration agreement, the agreement must "evidenc[e] a transaction involving commerce." While Plaintiff argued that he did not operate in interstate commerce because all of his activities took place within California, the Court of Appeal rejected this argument because some of the passengers he transported were traveling out of state, Prime Time advertised on websites like Expedia, and Prime Time permitted customers to make and pay for reservations online.

The appellate court next concluded that Plaintiff's misclassification claim was arbitrable. According to the court, resolution of this allegation would require determination of whether the Agreement was "illegal, or otherwise voidable or void" for inaccurately characterizing the parties' relationship. Thus, Plaintiff's claim constituted a controversy "arising out of or relating to [the] Agreement."

Finally, the appellate court rejected the trial court's determination that Prime Time waived its right to pursue arbitration even though fourteen months had passed between the filing of the complaint and the motion to compel arbitration. The court reasoned that minimal discovery had been conducted, and there was no evidence that Plaintiff had provided any information he would not have been required to provide in arbitration. Furthermore, Prime Time did not wait until the eve of trial to compel arbitration, as trial was set for more than one year after the motion to compel arbitration was filed. Finally, Plaintiff suffered no prejudice from Prime Time's delay in seeking arbitration. As such, the court concluded that there was no waiver of the right to arbitrate and instructed the trial court to issue an order compelling arbitration.

Court of Appeal Holds Employer Waived Its Right to Arbitrate Wage Dispute After Engaging in Extensive Discovery

In *Oregel v. PacPizza*, a California Court of Appeal upheld a trial court's denial of PacPizza's petition to compel arbitration, finding that PacPizza had waived its right to enforce the subject arbitration agreement.

In 2008, Oregel was hired as a delivery driver for PacPizza. As part of the hiring process, Oregel submitted a written application that included an agreement to arbitrate all claims. In 2012, Oregel filed a class action lawsuit against PacPizza, alleging that PacPizza failed to fully reimburse delivery drivers for necessary expenses associated with their use of personal vehicles to deliver pizza on PacPizza's behalf. PacPizza asserted fifteen affirmative defenses to Oregel's complaint, none of which alleged the existence of an agreement to arbitrate the dispute.

Over the next seventeen months, the parties engaged in extensive written discovery, conducted over 25 depositions, posted jury fees, and attended case management conferences and hearings on discovery disputes. Oregel also filed a motion for class certification. At no time did PacPizza give any indication that it intended to seek enforcement of the arbitration agreement.

A few weeks before PacPizza's opposition to Oregel's motion for class certification was due, and seventeen month after Oregel filed his complaint, PacPizza's counsel sent a letter to Oregel's counsel demanding arbitration of Oregel's claims. After Oregel's counsel rejected the demand, PacPizza filed a petition to compel arbitration, stay the proceedings, and dismiss Oregel's class allegations and representative claims.

In opposition to PacPizza's petition, Oregel's counsel testified that he and other attorneys in his office had spent more than 1300 hours working on this case, which he estimated exceeded $500,000 in fees, and had incurred out-of-pocket costs exceeding $19,000. The majority of the hours were spent performing tasks related to preparing the class certification motion, and preparing for and defending depositions of putative class members who filed declarations in support of class certification.

PacPizza contended that it would have been futile to seek enforcement of the arbitration agreement earlier given the uncertainty surrounding the enforcement of class action waivers, but the trial court found this argument flawed because the arbitration provision in Oregel's job application did not contain a class action waiver. PacPizza provided no other explanation as to how the law had changed in any way around the time it attempted to compel arbitration justifying its delay in doing so. The trial court found that PacPizza's strategic tactics (i.e., conducting extensive discovery on the class claims and then asserting its purported right to arbitrate in order to preempt class certification) should not be rewarded.

In affirming the trial court's decision, the appellate court found that PacPizza had engaged in substantial conduct inconsistent with its claimed right to arbitrate, and that Oregel was prejudiced by PacPizza's delay in seeking enforcement of the arbitration agreement. Notably, the court did not address the validity of the arbitration provision; it ruled only on the issue of waiver.

This case emphasizes the importance of enforcing an arbitration agreement as early as possible during litigation in order to avoid any argument that the right to arbitrate has been waived.

Court of Appeal Rejects Employer's Attempt to "Split" PAGA Claim for Arbitration Purposes

In *Williams v. Superior Court*, a California Court of Appeal rejected an employer's attempt to compel arbitration of an employee's individual PAGA claim while simultaneously litigating a representative PAGA claim in court.

Petitioner Andre Williams ("Williams") filed suit against Pinkerton Governmental Services, Inc. ("Pinkerton"), asserting a single PAGA claim on behalf of himself and other employees based on Pinkerton's alleged rest break violations.

Pinkerton moved to enforce Williams' previous waiver of his right to assert a PAGA claim or, in the alternative, for an order which would stay Williams' representative PAGA claim while his individual claim proceeded in arbitration.

The trial court denied Pinkerton's motion to enforce the PAGA waiver but granted the alternate relief. Accordingly, Williams was required to arbitrate his individual claim against Pinkerton while his representative PAGA claim remained pending in court.

Williams sought reversal of the trial court's order. On appeal, Williams argued that the order contradicted the California Supreme Court's ruling in Iskanian v. CLS Transportation that an employee cannot waive his or her right to assert a PAGA claim. Pinkerton argued that Iskanian was inapplicable, as the Iskanian Court addressed a PAGA waiver that was a "condition of employment," whereas the waiver signed by Williams was not. The appellate court was unmoved Pinkerton's argument, holding that regardless of the fact Williams could have refused to sign the waiver, public policy still prohibits an employee from privately agreeing to waive his or her right to bring a public, representative PAGA action.

The appellate court also rejected Pinkerton's continued request that Williams' action be divided into an arbitrable individual action and a non-arbitrable representative PAGA action, interpreting the dearth of case law in support of Pinkerton's request as a lack of legal authority to grant the relief sought.

The decision in *Williams* is an interesting one, as the willingness (or unwillingness) of other appellate courts to reach the same ruling may foretell a coming decision on this matter by the California Supreme Court. In the meantime, *Williams* serves as a reminder to California employers to carefully consider the implications of each provision in their arbitration agreements, and to have such agreements reviewed by legal counsel in order to ensure their enforceability.

Court of Appeal Vacates Order Compelling Arbitration, Holds Trial Court Must First Adjudicate Exemption to Federal Arbitration Act

In *Garcia v. Superior Court*, the plaintiffs ("Plaintiffs")—a group of truckers hired by Southern Counties Express, Inc. ("Defendant") to haul shipment containers to various facilities in southern California— filed an administrative claim with the Division of Labor Standards Enforcement ("DLSE") alleging that they were misclassified as independent contractors. Defendant attempted to stay the DLSE proceedings and compel arbitration because Plaintiffs had signed independent contractor and vehicle lease agreements containing arbitration provisions.

After an evidentiary hearing, the trial court granted Defendant's petition to compel arbitration, holding the arbitration provisions at issue were not procedurally unconscionable.

Plaintiffs sought reversal of the trial court's ruling, arguing that the Federal Arbitration Act ("FAA"), which generally favors the enforcement of arbitration provisions according to their terms, exempts from its purview employment contracts of transportation workers who are actually engaged in the movement of goods in interstate commerce. Defendant argued that this exemption to the FAA did not apply since the truckers were independent contractors, and thus, did not sign any contracts of employment.

Without specifically ruling on the applicability of the FAA exemption, the appellate court held it was error for the trial court to rule on the unconscionability issue without first determining whether Plaintiffs signed contracts of employment with Defendant. Accordingly, the matter was remanded to the trial court for consideration of this issue.

Garcia has narrow application since it involves a specific exemption of the FAA as applied to truckers involved in interstate commerce. However, employers in the transportation industry should be mindful of this decision when crafting independent contractor agreements.

Appellate Court Holds Inability to Work for Particular Supervisor is Not a "Disability" Under the FEHA

In *Higgins-Williams v. Sutter Medical Foundation*, a California Court of Appeal held that a plaintiff's inability to work for a particular supervisor was not a "disability" under the Fair Employment and Housing Act ("FEHA"). Plaintiff Michaelin Higgins-Williams ("Higgins-Williams") worked as a clinical assistant in the Shared Services Department for Defendant Sutter Medical Foundation ("Sutter"). Higgins-Williams had an immediate supervisor and a regional

manager. Higgins-Williams sought treatment for work-related stress and anxiety. Her doctor diagnosed her as having adjustment disorder with anxiety. He reported her disabling condition as "stress when dealing with human resources and her manager."

Sutter granted Higgins-Williams' request for leave. Thereafter, Higgins-Williams' doctor extended her leave several times and stated that she would only be able to return to work if she were permanently transferred to another department and worked for different supervisors. Sutter terminated Higgins-Williams' employment.

Higgins-Williams sued for disability discrimination, failure to engage in the interactive process, retaliation, wrongful termination, and discrimination. The trial court found that Higgins-Williams was not "disabled" within the meaning of the FEHA. Higgins Williams appealed.

The Court of Appeal agreed, holding that an employee's inability to work under a particular supervisor because of anxiety and stress related to the supervisor's standard oversight of the employee's job performance does nor constitute a "disability" under the FEHA. The court reasoned that being unable to work for a specific supervisor is not a limit on a major life activity. Accordingly, an employer need not accommodate an employee's request to work under a different supervisor merely because the employee is anxious or stressed while working for a particular supervisor.

Court of Appeal Finds Forum Selection Clause Violates California Public Policy Where An Employee's Statutory Rights Could Be Diminished

In *Verdugo v. Alliantgroup, L.P.*, a California Court of Appeal found that enforcing the forum selection clause in an employment agreement violated California public policy where the employee's statutory rights and remedies under the California Labor Code were not available in the designated forum.

Defendant Alliantgroup, L.P. ("Alliantgroup"), headquartered in Harris County, Texas, hired Plaintiff Rachel Verdugo ("Verdugo") as Associate Director of its Irvine, California office. Upon hire, Verdugo signed an employment agreement that included a combined forum selection and choice-of-law clause establishing Harris County, Texas as the proper jurisdiction and venue for all disputes related to the agreement. Verdugo performed inside sales work and provided clerical support for sales staff in California; she had minimal contact with the corporate Texas office. Verdugo was subsequently discharged and brought a class action lawsuit alleging several causes of action under the California Labor Code. Alliantgroup sought to enforce the forum selection clause (i.e., force Verdugo to file a new lawsuit in Texas), and the trial court granted Alliantgroup's motion.

Verdugo appealed. In reversing the trial court's order, the appellate court noted that California generally favors contractual forum selection clauses as long as they are entered into freely and voluntarily, and as long as their enforcement would not be unreasonable. However, California courts will refuse to enforce such clause if doing so would substantially diminish the rights of California residents in a way that would violate California public policy. Where statutory rights are at issue, such as those in the California Labor Code, the party seeking to enforce a forum selection clause bears the burden of demonstrating that the employee's statutory rights will not be diminished.

Though Alliantgroup argued a Texas court would "most likely" apply California law, this speculation was deemed insufficient. Alliantgroup failed to identify comparable Texas law related to overtime pay, meal breaks, and the other compensation issues, and failed to show Verdugo's remedies under Texas law would be "adequate" (or even comparable to those under California law).

The appellate court essentially found that the rights afforded to employees under the California Labor Code are "unwaivable"; accordingly, employers that operate in multiple states and seek to include non-California forum selection clauses in their employment agreements may want to consult legal counsel.

In Times of Transition, Employee Recognition is More Important Than Ever

There comes a time in organizational development where change is necessary for improvement and growth. Casualties inevitably appear in the process, and the ladder of importance determines what programs are the winners and losers.

Deciding who or what stays and goes needs to be viewed through both short and long term lenses. One area that may come under examination is your employee recognition program. When it does, re-examine the conditions that led you to create the program in the first place.

More than likely a few of them were:

- Increasing employee morale
- Recognizing and rewarding key behaviors that you wanted to see repeated
- Creating a culture of appreciation
- Setting goals for areas of the business that drive revenue and profitability
- Maintaining high levels of employee engagement

The same reason you started your employee recognition program is the same reason you need to keep it now. If your program is set up to effectively recognize and reward desired behaviors, nothing has changed from that perspective.

If anything, it's of even more critical importance. In times of uncertainty, employees are faced with doubt and insecurity. With clearly defined goals and expectations, they still understand what is required of them, and your employees continue to perform to those standards.

In mid-2009, Derek Irvine of Globoforce published, "New Market Research - Overcome Morale Crisis with Recognition & Communication," dealing with some of the fallout from the recent recession. The effects of economic recession parallel the effects of an organization in transition.

Some of those effects were:

- 70% of employees indicated that layoffs and the reduction or elimination of programs and benefits will have a negative short or long term impact on morale
- 55% of employees said these cuts will impact their productivity levels now and in the future
- 89% of HR managers agreed that employee morale is being impacted
- 80% of HR managers said productivity will take a hit in the short or long term

Derek also went on to say, "maintaining a recognition program in the face of such instability, companies can infuse life back into your talent base, lift employees out of the recessionary rut and inspire new levels of energy or enthusiasm." In fact, Globoforce also found "75% of HR managers were maintaining their employee recognition programs even as departments around them were feeling cuts while 5% said they were increasing their budget."

In times of economic or intracompany transition, employees can feel undervalued. Many times they feel they are nothing more than a number on a spreadsheet. That crushes self-worth and employee morale. Recognition and appreciation have a significant impact on recovering and then maintaining that lost morale.

For someone receiving an award, there's pride and satisfaction in a job well done, along with the sense they are valued by the company and their management team. For other aspiring hard workers, there's a drive to get to the top. They want the spotlight, and their actions reinforce their efforts to advance in their career. All of these are key drivers enhancing and fostering employee engagement.

As those employees start to separate themselves, trends appear. Performance evaluation is easier to measure when you use a simple tool like metric tracking sheets to monitor KPI and metrics in your employee recognition program. Judging top tier employees and shedding light on under-performance is as simple as referring to the pre-developed criteria you use in your recognition and reward platform.

One final point to consider is the premium on quality talent in the modern workforce. The last thing we want is for our top performers to start thinking the "grass is greener" in another company. In fact, let another company make the mistake of cutting their recognition program. Be seen as the organization that is taking steps toward improvement, while maintaining a commitment to the key component in client communication, service and acquisition: your workforce.

In the end, you will wind up being seen as the greener pasture.

If it's time to review your employee engagement and employee recognition platform, or set one up correctly from the beginning, contact MyEmployees today.

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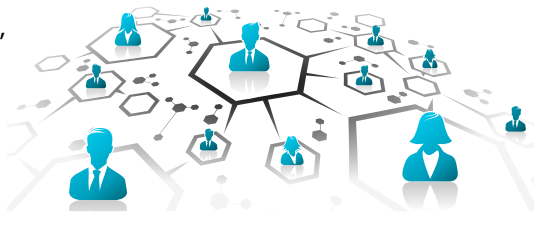
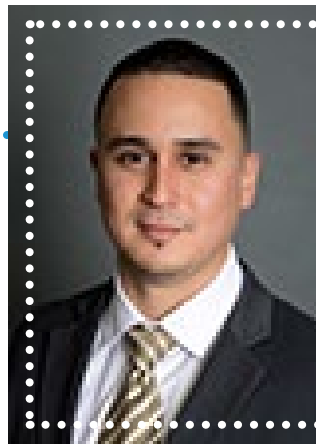


News from San Diego State University's Student SHRM Chapter

Ryan Prout, Incoming SDSU SHRM President SD SHRM Student Liason



Ryan Prout, Incoming SDSU SHRM President SD SHRM Student Liason

On April 16, SDSU SHRM hosted their second-annual HR Professional Mentoring Event, in which chapter members were able to speak to 18 San Diego HR Professionals about HR careers and job search strategies. The event had a "speed-dating" format, such that students were able to meet one-on-one with many of these professionals. Many of the students had resumes prepared for the mentors to review and edit, and SDSU SHRM put together a resume book for mentors to use at the event and take with them. The varied backgrounds of the HR Professionals provided students with great insight into the different paths a career in HR can take.

President of SDSU SHRM, Jennifer Dar, was pleased that student members were able to interact with the HR professionals in an informal environment, so as to help them get their feet wet with regard to networking. Students don't often have the opportunity to interact with professionals in their chosen fields while in school and one of the goals of the annual Mentoring Event is to bridge this gap.

Sophie Zavala, incoming SDSU SHRM vice-president, had this to say, "SDSU SHRM's mentoring event was immensely beneficial, in not only providing the opportunity to network with human resource professionals, but allowing one-on-one time to gain valuable insight into the various fields of HR. I spoke with numerous mentors who work in training and development, talent acquisition, compensation/ benefits and strategic planning. The mentors spoke firsthand of their achievements, struggles and what led to their personal success. SDSU SHRM's mentoring event helped me to establish connections with industry professionals, and I found their advice incredibly constructive in helping me prepare for my career."

Rebecca Delgado, Social Media Director of SDSU SHRM, had a great experience, saying, "The mentoring event was an awesome, valuable experience! Mentors gave all kinds of great advice, everything from tweaking my resume, to how to get my foot in the door after I graduate, and even how to network. Their advice has really helped me better prepare for the 'real world'! "

Not only did the students find valuable information, but the mentors were pleased as well. Casie Martinez, a mentor from Chula Vista Elementary School District and former SDSU SHRM President said, "The thing that stood out to me at the event was the fact that there were quite a few returning mentors. The event had such great feedback the first year. The mentors were pleased to see how prepared and engaged the students were. The fact that many came back a second year shows that they think the event is important as well. I liked that the students knew what they wanted to talk about, and I was impressed at how confident most of them were. It is really tough talking to 20 professionals/strangers and engaging them in a conversation and getting so much out of it in the few minutes they had."

Many of the professionals that attended were San Diego SHRM (SD SHRM) members, and the SDSU chapter is grateful to SD SHRM for its support and participation in making this a successful event. Ryan Prout, incoming SDSU SHRM President, confirmed that the event was a success and is confident that the event will continue to be an annual tradition. The SDSU SHRM chapter looks forward to continued partnerships with SD SHRM to collaborate on additional successful events in the future.

SDSU SHRM received its charter from National SHRM in 2011, and its goal is to support SDSU's HR specialization and all students with an interest in HR. HR specialization students take five courses on a variety of HR topics as part of their Bachelor of Science degree in Business Administration. SDSU SHRM offers students a variety of professional development activities as well as scholarships to sit for the SHRM Assurance of Learning (AOL) Exam. For more information about SDSU SHRM and how you can get involved with HR students at SDSU, please visit sdsushrm.com or email **sdsushrm@gmail.com.**