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OKLAHOMA CITY
HUMAN RESOURCE SOCIETY
NEWSLETTER



MESSAGE FROM THE PRESIDENT

I hope everyone enjoyed the April meeting with Ed O'Malley. We will not be having a May meeting due to the state conference.

We appreciate all of our vendors that sponsor and support OCHRS. The society does allow vendors to attend our monthly meetings but hope they respect the other members and do not misuse this opportunity by being overzealous in their sales tactics. This is a time for learning and networking with other professionals. We have had complaints from the members regarding this issue and address them when they are brought to our attention.

We have the programs planned for the rest of 2005 and will have that posted on the website soon. We will be starting to plan for 2006 and would love to hear from our members for ideas and suggestions. Please feel free to contact me any time at 359-0594 or sscott@mha-ins.com

I look forward to seeing everyone at the June Meeting!

Stacey Scott, PHR
President

The Oklahoma SHRM State Council Presents 2005 Oklahoma Human Resource State Conference, May 11-13, 2005 in Tulsa, Oklahoma

Are You Ready for a Winning Season?

We will "kickoff" our conference this year with keynote speaker, Rhett Laubach, who will focus on coaching, mentoring and taking people from "GOOD" to "GREAT"! We have two other dynamic keynote speakers "on deck" to keep you pumped up throughout the conference, plus dozens of educational sessions, entertainment, networking opportunities, an exhibition hall, and more! Watch this web site for additional information, which will be posted as it becomes available.

More Than 40 Educational Sessions

This year's conference will feature more than forty sessions covering a wide variety of important topics for HR professionals including:

- Internet Recruiting
- The Generation Gap
 - Baby Boomers through Generation Y
- FLSA – Understanding the Changes
- Workers' Compensation Update
- Financial Statements – Interpreting the Numbers
- HRIS – How to Make Technology Work for You
- Handling Conflict with Skill
- Success Point Coaching – Coaching the Coach

Grand Prize Drawing

A grand prize drawing for a \$2,500 travel voucher will be held Friday May 13 at the Closing Ceremony!

WE LOOK FORWARD TO SEEING YOU THERE!!!!!!

**Gayle L. Barrett
Crowe & Dunlevy, P.C.
OCHRS General Counsel**

United States Supreme Court Expands Scope of the ADEA

On March 30, 2005, the United States Supreme Court ruled that workers age 40 and older may prove discrimination under the Age Discrimination in Employment Act (“ADEA”) using the “disparate impact” theory. *Smith v. City of Jackson*, 125 S.Ct. 1536 (2005). Prior to **Jackson**, the disparate impact theory was available to plaintiffs in discrimination claims under Title VII of the Civil Rights Act of 1964, but not under the ADEA. Before **Jackson**, employees could only prevail under the ADEA by proving that the employer was motivated by intent to discriminate on the basis of age. Now, under the disparate impact theory, employees may recover if they can show that a practice or policy, although facially neutral, in fact falls more harshly on older workers. In other words, the employee need not establish that the employer intended to discriminate.

The **Jackson** opinion unquestionably changes the landscape of age discrimination litigation by expanding the rights of older workers and the potential liability of employers. Yet there is still a silver lining for employers. As discussed below, employers are armed with several unique defenses that will make disparate impact claims under the ADEA harder to prove.

In **Jackson**, the plaintiffs were police and public safety officers employed by the City of Jackson, Mississippi. In order to bring starting salaries up to the regional average and thereby attract and retain qualified people, the City gave raises to all police officers and police dispatchers. Under the policy, officers with less than five years tenure received proportionately greater raises when compared to their former pay than those with more seniority. Although some officers over the age of 40 had less than five years of service, most of the older officers had more. A group of older officers brought suit claiming that the City had intentionally discriminated against them because of their age (disparate treatment claim), and that they were adversely affected by the plan because of their age (disparate impact claim).

Despite the Supreme Court’s finding in favor of a disparate impact cause of action, ultimately, the Court ruled that the officers in the **Jackson** case failed to prove their claim. In reaching this holding, the Court ruled that disparate impact claims under the ADEA are narrower than those under Title VII in two important ways. First, unlike Title VII, the ADEA contains a provision which states that an otherwise prohibited action is not unlawful where the differentiation is based on “reasonable factors other than age.” This provision (referred to as the “RFOA” provision) creates a defense for employers who can show that the employment criteria used was reasonable, in spite of its adverse impact on older workers. **Jackson** was a good example of how an employer can use the RFOA defense. The City’s decision to give a greater percentage raise to persons with less than five years seniority unquestionably favored younger workers. Yet such action was reasonable based on the fact that the purpose was to meet the City’s goal of raising employees’ starting salaries to meet those in surrounding communities.

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The second important difference is that under the ADEA disparate impact cases employees have the burden of isolating and identifying *specific* employment practices that are allegedly responsible for any observed statistical disparities, so that employers are not made liable for “the myriad of innocent causes that may lead to statistical imbalances.”

In *Jackson*, the Court found that the officers did “little more than point out that the pay plan at issue is relatively less generous to older workers than to younger workers.” They did not identify any specific test, requirement, or practice within the pay plan that had an adverse impact on older workers. Failure to identify the specific practice being challenged, combined with the reasonableness of the City’s actions, was fatal to the case.

Practical Pointers

Employers can expect to see an increase in ADEA litigation as a result of this ruling and are particularly susceptible to class action claims, since an employer’s practice or policy will likely be alleged to have an impact on a large number of older workers. Employers should think carefully not only about the business reason for an employment action or practice, but also about the “effect” that those actions or practices will have on older workers. In litigating these new claims, statistical analysis will become important. With advice of their employment counsel, employers should think about doing their own analysis of existing policies and procedures or before implementing new policies and procedures or other workforce changes such as layoffs. Employers should also carefully document the business reasons for their employment decisions.

Volunteers Needed

One comment from our survey at the beginning of the year was member would like to participate more in the group. Here is your opportunity.

We are looking for volunteers to form several different committees:

- Learning Labs
- Community Service Project
- Advance the Profession Project

If you are interested in getting involved or would like more information, please call Stacey Scott @ 359-0594 or e-mail her at sscott@mha-ins.com

Be A Part of the OCHRS / OKC Business Partnership

In 2004, the Oklahoma City Human Resources Society began a partnership with OKC Business, an Oklahoma City business publication. In this partnership, OCHRS provides business and people-related article topics for publication in OKC Business, OKC Business provides a writer to write the article, and OCHRS provides two individuals to be interviewed as subject matter experts for the article. We have found this partnership to be a win-win for everyone involved; OKC Business benefits by having the resources of hundreds of HR professions to help them write articles of value for their readership, OKC Business readers benefit from timely reviews of "best practice" people and talent solutions, while OCHRS and our HR professional benefits from the increased exposure and credibility as strategic business partners.

In order to make this partnership continue to be successful, we need your help. We need OCHRS members who are willing and able to be interviewed on key HR topics for these articles. Please understand that the goal of OKC Business is to present "best practices" around people issues. Our partnership articles have been received well and reflect positively on our profession and on the interviewee. (If you would like to see some of the articles that have appeared as a result of this partnership, go to www.okcbusiness.com and do a site search on "OCHRS".) If you are ready to step forward and help us advance our profession by being interviewed, please email Bradley Davidson, our VP of Public Relations, at bradley.davidson@thehartford.com. Brad will be happy to put you on the list of potential interviewees. Also, Brad will be happy to help you prepare for your first interview. He will even sit in on the interview with you if you prefer.

Thanks, in advance, for helping us continue this excellent partnership.



HELLO & WELCOME NEW MEMBERS

Mike Lee Chief Operating Officer, Drug Recovery, Inc.
April Hatfield HR Director, Dobson Telephone Company
Channa Larson HR Clerk, Imaging at OG&E Energy Corp.
Vikki Walters HR Administrator, OG&E Energy Corp.

FYI-Are you interested in meeting a national speaker and writer who will sign a free (for our attending paid members) copy of her book? Then plan on attending our September 15th meeting, National Speaker and Author, Pamela K. Henry, will speak about diversity. More information coming in the next newsletter!

CONGRATULATIONS!!!!!!

THE UNIVERSITY OF CENTRAL OKLAHOMA STUDENT CHAPTER OF SHRM HAS EARNED THE SUPERIOR MERIT AWARD FOR THE 2004-2005 SCHOOL YEAR, WITH A TOTAL OF 2790 POINTS. YOUR ENTIRE CHAPTER SHOULD BE VERY PROUD OF THIS ACCOMPLISHMENT. WE ARE VERY PROUD OF ALL THE WORK YOU HAVE DONE. GOOD JOB!!!

Legislative Affairs Update:

As your OCHRS representative for legislative affairs, I had the privilege of attending SHRM's national Employment Law and Legislative Conference, March 14-16, in Washington, DC. Please watch for my report on the conference, plus an update on current legislative activity in our great state, coming soon to the OCHRS website.

Lynette Parmley, VP Legislative Affairs, OCHRS



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