



# April Newsletter

## April Meeting

Wednesday,  
April 9th

Decatur Country Club

**\$15.00**

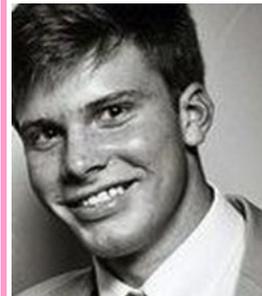
11:45 am — 1:00 pm

Networking will begin  
at 11:15 a.m. and the  
program will start at  
11:45 a.m.

If you **RSVP** that you  
are coming and then  
you don't attend, you  
will still be charged for  
the meal.

For reservations,  
contact

Patti Fowler at  
[pfowler@alliancehrservices.com](mailto:pfowler@alliancehrservices.com)



**April 9, 2014**

**Our Speaker:**

**Will Shafferman**



**Topic:**

***“Saving for Future College Costs – Employers  
and 529 College Savings Plans”***

Will Shafferman graduated from Furman University in May 2010 with a degree in political science. Upon graduation, Will immediately took a position with Union Bank & Trust Company as a marketing representative for CollegeCounts, Alabama's 529 plan. In 2012, he assumed the position of grassroots marketing coordinator and now directs the overall marketing efforts for the plan. For nearly four years, Will has been traveling the state, speaking with and presenting to professional and service-oriented groups, community organizations and many others while working with the state Treasurer's office to review and improve the marketing efforts for the plan. Will is married to Ashley Shafferman, a Birmingham native and medical student at UAB. They are members of Christ the King Anglican Church in Birmingham where they serve on the missions board and worship team.

The presentation will educate HR professionals on the ins and outs of Section 529 college savings plans, and the various options employers have to encourage employees



**Thank you to Daikin and America's Party Pros  
for sponsoring our April meeting!**

## Employer Policy Requiring Sick Employees to Remain at Home

*Courtesy of Lehr Middlebrooks & Vreeland, P.C.*

We all know about the frustration over the use of sick days and/or FMLA tagged onto a weekend or a holiday, creating a “sickation.” The case of *Corbin v. Town of Palm Beach* (S.D. FL, Jan. 23, 2014) upheld an employer’s policy that employees who call off sick must remain at home.

The Town’s sick leave policy provided that if an employee called in sick, the employee had to remain at home unless the employee received approval from a Town official to be elsewhere. The policy also provided that the Town could send a representative to the employee’s home to confirm that the employee was there. The intent of the policy was to prevent the abuse of sick time.

Corbin was terminated after he called in sick while on vacation. The employer unsuccessfully tried to reach Corbin at home. Corbin’s wife called the employer back and told the employer that Corbin was at home and sick. Corbin subsequently spoke to a Town official and said that he was at home sick, but abruptly hung up. Corbin was terminated after the Town determined that he was not at home, but rather returning home from vacation. Corbin claimed that he was diabetic and the application of the employer’s policy adversely affected diabetic employees compared to any other.

In granting summary judgment for the employer, the court stated that Corbin failed to provide any evidence that this policy was applied toward diabetics in a discriminatory manner compared to other employees.

According to the court, “Plaintiff has not shown, as a matter of law, that the verification visits were being used against diabetics as opposed to chronic sick leave abusers.”

Employers are becoming creative and aggressive in the use of their rights to address sick leave/FMLA abuse. The policy discussed in this case is one example of an approach employers may consider. Furthermore, more employers are utilizing surveillance regarding suspicious sick leave absences, just as surveillance would be used for suspicious workers’ compensation claims.

## Is a “Negative Attitude” Protected Activity?

*Courtesy of Lehr Middlebrooks & Vreeland, P.C.*

This issue was considered by a three-member panel of the National Labor Relations Board in the case of *Copper River of Boiling Springs, LLC* (Feb. 28, 2014). NLRB Chairman Mark Gaston Pearce considers disciplinary discharge for a “negative attitude” as chilling employee rights to be critical of their employer. According to Pearce, this interferes with employee rights to engage in concerted activity regarding wages, hours or conditions of employment. The three-member panel included the two Republican members of the NLRB, Philip Miscimarra and Harry Johnson, both of whom concluded that the employer’s “bad attitude” rule was permitted.

Copper River is a restaurant. Its handbook prohibited “insubordination to a manager or lack of respect and cooperation with fellow employees and guests...includ[ing] displaying a negative attitude that is disruptive to other staff or has a negative impact on guests.” Two employees were terminated after the company received reports that the employees used foul language in complaining to customers about the employer. In upholding the discharges, Miscimarra and Johnson stated that the employer’s policy “limits the rule to unprotected conduct that would interfere with the Respondent’s business interests.”

“Attitude” is not a self-defining term. The NLRB upholds employer terminations when an employee’s attitude relates to an employee work assignment or an employer’s business interests, such as communications to customers. Even a bona fide employee concern may be unprotected if it is expressed inappropriately.

Get Connected (Clickable Icons)



2014 SHRM Conferences

What	When	Where	Who
Employment Law & Legislative Conference	March 17 – March 19, 2014	Washington, D.C. (Washington Renaissance)	HR managers, directors, VPs, general counsel, compliance officers, and HR consultants
Talent Management Conference & Exposition	April 28 – April 30, 2014	Nashville, TN (Gaylord Opryland)	Recruiters, HR generalists and specialists with recruitment and talent management responsibilities
Council for Global Immigration Symposium	June 2 – June 5, 2014	Alexandria, VA (Westin Alexandria)	HR professionals with high-skilled-worker immigration and mobility responsibilities, immigration attorneys, and immigration specialists
Annual Conference & Exposition	June 22 – June 25, 2014	Orlando, FL (Orange County Convention Center)	HR directors, generalists, managers, and specialists from all size organizations and industries
Strategy Conference	September 30 – October 2, 2014	Las Vegas, NV (Wynn Las Vegas)	HR directors and VPs in mid-size organizations, and aspiring HR leaders
Workplace Diversity & Exposition	October 13 - October 15, 2014	New Orleans, LA (Sheraton New Orleans)	D&I directors, D&I educators, senior HR generalists responsible for D&I programs, and EEOC professionals

## Temporary Impairments – When Do They Qualify as a Disability?

*Courtesy of Lehr Middlebrooks & Vreeland, P.C.*

We know this issue of the ELB appears to be the medical/ADA issue, but there are a number of important recent developments regarding these subjects which we want to bring to your attention. For example, on January 23, 2014, in the case of *Summers v. Altarum Institute Corp.* (4th Cir.), the court became the first federal appeals court to address the expanded definition of “disability” as it relates to temporary impairments.

Summers worked for Altarum as a senior analyst. He suffered serious injuries to both legs which limited him from walking for at least seven months. He was terminated two months after suffering the injury.

Summers argued that he had a disability as defined under the Americans with Disabilities Act Amendments Act (ADAAA), while Altarum argued that his medical condition was “temporary” and did not meet the definition of a disability.

The court ruled that Summers’ condition met the statutory definition of a disability. The court noted that the definition of disability is “construed in favor of broad coverage . . .” The court also noted that in its regulations implementing the ADAAA, the EEOC stated that in defining whether a temporary condition is a disability, “effects lasting or expected to last fewer than six months can be substantially limiting.” In this case, Summers fractured his left leg, tore tendons in his left leg, fractured his right ankle and ruptured a tendon in his right leg and had multiple surgeries, followed by extensive therapy. His job involved meeting with clients at the client location. Summers asked to work from home, to which the company did not respond. The company terminated him effective December 1, 2011, less than two months after his accident.

In rejecting that the temporary nature of Summers’ impairment did not qualify as a disability, the court noted that the EEOC’s regulations state that “duration of an impairment is one factor that is relevant to determining whether the impairment substantially limits a major life activity.” The EEOC regulations add that “Impairments that last only for a short period of time are typically not covered,” however, impairments may be covered “if sufficiently severe.” The court concluded that “Nothing about the ADAAA or its regulations suggested distinction between impairments caused by temporary injuries and impairments caused by permanent conditions. The stated goal of the ADAAA is to expand the scope of protection available under the Act as broadly as the text permits. The EEOC’s interpretation – that the ADAAA may encompass temporary disabilities – advances this goal.”

In contrast to Summers’ situation, a court ruled that an employee with a breast infection that lasted two or three weeks did not have a disability, even under the broad protection of the ADA Amendments Act. *McKenzie- Nevolas v. Deaconess Holdings, LLC* (W.D. OK, Feb. 7, 2014). The court stated that because the infection was limited to an isolated area and “was not chronic but temporary and of short duration,” she was not covered by the ADA.

### It’s a Girl!!

Congratulations Mary Ila Ward on the beautiful new addition to your family!

**Paige Elizabeth**  
March 2014



### Welcome the Newest TVC-SHRM Members

- **Pamela Patterson**, HR Coordinator, Matthews Industries, Inc.
- **Erin Miller**, HR Generalist, CDD, NCA, Inc.
- **Rebecca Dubach**, HR Clerk, National Packaging Company

**2014 TVC-SHRM BOARD****President****Amy Smith, PHR***Big Heart Pet Brands*[Amy.Smith@bigheartpet.com](mailto:Amy.Smith@bigheartpet.com)**Vice President of Programs****Mary Ila Ward, SPHR***Horizon Point Consulting*[miw@horizonpointconsulting.com](mailto:miw@horizonpointconsulting.com)**Valerie Curtis***Alliance Source Testing*[Valerie.Curtis@StackTest.com](mailto:Valerie.Curtis@StackTest.com)**Vice President of Membership****Beverly Thompson**[msb12359@charter.net](mailto:msb12359@charter.net)**Secretary****Patti Fowler***Alliance HR*[pfowler@alliancehrservices.com](mailto:pfowler@alliancehrservices.com)**Treasurer****Pat Bearden***National Packaging Co., Inc.*[pat.bearden@npcoinc.com](mailto:pat.bearden@npcoinc.com)**Legislative Director****Pam Werstler, SPHR***National Packaging Co., Inc.*[Pam.werstler@npcoinc.com](mailto:Pam.werstler@npcoinc.com)**Director of Community Relations****Diversity Director****Dr. Denny Smith, PHR***Calhoun Community College*[dws@calhoun.edu](mailto:dws@calhoun.edu)**Director of College Relations****Director of SHRM Foundation****Jeff Powers, SPHR***Toray Carbon Fibers America, Inc.*[Jeff.Powers@toraycfa.com](mailto:Jeff.Powers@toraycfa.com)**Director of Certification****Forrest Keith, SPHR***Daikin America*[forrestkeith@daikin-america.com](mailto:forrestkeith@daikin-america.com)**Past President****Robin Jackson***Cook's Pest Control*[Robin.Jackson@cookspet.com](mailto:Robin.Jackson@cookspet.com)**Special Events Advisor****Newsletter****Tiffany Weaver***Ascend Performance Materials*[tweave@ascendmaterials.com](mailto:tweave@ascendmaterials.com)**Advisor to the Board-Technology****Amanda Tidwell**[Amanda.tidwell@npcoinc.com](mailto:Amanda.tidwell@npcoinc.com)**Do you know an HR professional in the area that is not currently a TVC-SHRM member?**

All of us probably know at least one person to bring as a guest to a monthly chapter meeting that might be interested in being part of our group.

As both a membership initiative for 2014 and an incentive for our chapter members to attend the AL SHRM state conference, we will hold a drawing for all TVC-SHRM Professional members who bring a guest to the February, March or April chapter meetings for a full conference registration fee at the AL SHRM state conference in May. This conference will be held on May 13th and 14th at the Birmingham Sheraton in downtown Birmingham. This event will offer 11 HRCI recertification hours and will have a wellness theme. The conference normally sells out and is always very engaging.

The winner of the contest will win a paid registration to the conference. If the winner decides to stay overnight in Birmingham, they will be responsible for their own travel and hotel costs.

Thank you for your help with this initiative. We hope to achieve STAR and/or SUPER-STAR status with our chapter this year.

**Save the Date! Upcoming Events**

- **April 22 & April 23 from 8:00 am - 5:00 pm.**  
**SHRM Certification Study Course** (Lunch will be provided)
- **May 13-14, 2014**  
**Alabama State SHRM Conference** Birmingham. Go to AL SHRM to register <http://al.shrm.org/conference-information-0>
- **June 22-25th**  
**SHRM 2014 Annual Conference** in Orlando, FL. Go to [shrm.org](http://shrm.org) for more information and to register for the event.
- **September 10, 2014**  
**TVC-SHRM Fall Workshop** at the Garden Plaza Inn (More details coming soon)
- **Every 1st Wednesday**  
**Workforce Coalition meeting** at The Chamber of Commerce  
(Contact Taylor Simmons- [taylor@dcc.org](mailto:taylor@dcc.org) for more info)

Please contact **Tiffany Weaver** at [tweave@ascendmaterials.com](mailto:tweave@ascendmaterials.com) if you have an upcoming event that you would like to add.

**Our June meeting will be held on Wednesday, June 11, 2014 at the Decatur Country Club.**

**Hope to see everyone there!**



**Tennessee Valley Chapter SHRM**  
PO Box 1271  
Decatur, AL 35602  
[www.tvcshrm.org](http://www.tvcshrm.org)