



April Meeting

**Wednesday,
April 8th**

Decatur Country
Club

Buffet with a soup
and salad
\$15.00

11:45 am — 1:00 pm

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

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



TVC~SHRM

TENNESSEE VALLEY CHAPTER OF SHRM - ALABAMA

April Newsletter



April 8, 2015

Our Speaker:

Robert Ferguson

Topic:

“Forging Values”

As author Jim Collins states in his best-selling book ‘Good to Great’: “Core Values are essential for enduring greatness... The point is not what core values you have, but that you have core values at all, that you know what they are, that you build them explicitly into the organization, and that you preserve them over time.”

Unfortunately, there’s a huge gap. As Ken Blanchard highlights in his work, only 10% of companies actually have defined values. Worse, many companies with stated values don’t define them very well and don’t make it easy for employees to live by them.

This is where my work with values comes in.

Based on our research of the stated values, beliefs, and principles of Fortune 500 companies, we’ve identified 17 common values. While each company might choose a different label, the majority of stated values fit into 17 categories.

In addition, our strong background in marketing has proven that great brands have just a few differentiating values – those values that truly define the brand. Examples include Volvo being known for ‘Safety’; Disney being known for ‘Magic’; and 3M being known for ‘Innovation’. Our mission is to transform organizations “from good to great” by instilling values that make a difference.

Values are more than defining acceptable behavior. They provide strategic direction.

This course is designed to help companies without values to identify and define a set of values. For those that already have values, this course will provide a baseline for comparison and show how to refine existing values to maximize their effectiveness.

Learn more at <http://ForgingValues.com>.

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Thank you to Comp1One and ITW for sponsoring our April meeting!

Behavioral Disability: You See It But What Does It Mean?

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

In last month's Employment Law Bulletin, we discussed the fact that 47 million American adults currently or during the past year have been diagnosed with a mental health condition that qualifies as a disability under the Americans with Disabilities Act. Often, this is manifested in behavior the employer does not know is due to a disability, and the consequences of that behavior may lead to termination. This outcome occurred in two cases decided this month—*Jacobs v. N.C. Admin. Office of the Courts* (4th Cir.) and *Walz v. Ameriprise Fin. Inc.* (8th Cir.)—but the results were different, in large part because of the employees' communication and the employer's documentation.

In *Jacobs*, Christina Jacobs worked as a deputy clerk for the North Carolina Administrative Office of the Courts ("AOC"). There were approximately thirty employees in Jacobs's classification, four of whom were required to work the counter dealing with individuals coming to the AOC to file various documents. When Jacobs worked the counter, she would occasionally have panic attacks and extreme stress. Jacobs told a supervisor she had been diagnosed with social anxiety disorder and that the counter work was affecting her health negatively and that she would need to begin seeing a doctor again. Four months later, Jacobs emailed her three immediate supervisors, again disclosing her diagnosis and requesting to be removed from counter duty. Three weeks later, Jacobs was terminated because her work was too slow, she had recently been observed sleeping at her desk, and the AOC concluded that she could not be moved to another position. Jacobs had not been previously disciplined for any performance issues. Jacobs sued, claiming she was disabled under the ADA due to her social anxiety disorder and her employer failed to reasonably accommodate.

The Fourth Circuit ruled in Jacobs' favor on her disability discrimination, retaliation, and failure to accommodate claims. The AOC had not documented any of Jacobs' performance issues, but it had documented the conversation about her disability in her personnel file, and Jacobs testified that the supervisor who fired her did so with Jacobs' emailed request for accommodation on her desk. It got better (for Jacobs). The co-worker that AOC said told them that Jacobs worked too slowly testified that she never discussed Jacobs' performance with anyone. The allegation that Jacobs slept on the job was shredded by the firing supervisor's failure to mention it or document it during the termination meeting and the firing supervisor's coaching the witness who reported Jacobs' sleeping about her deposition testimony the morning of the witness' deposition. Finally, the failure to accommodate claim progressed because, considering that only four of the thirty clerks needed to work the "counter," the Court stated that there was "ample evidence from which a reasonable jury could conclude that working at the front counter was not an essential function of the position of Deputy Clerk."

In the other case, Marissa Walz acted out during staff meetings, became agitated, talked very rapidly to coworkers, acted disrespectfully toward her supervisor, and sent emails which at times were incomprehensible. For example, she told her supervisor, "no one thinks your position is necessary," and called the supervisor a "puppet." Ameriprise disciplined Walz for her behavior. Walz then asked for a medical leave of absence. She returned with a doctor's note that she had been stabilized on her medications. Walz did not identify her medical condition nor ask for an accommodation, and Ameriprise did not ask what medical condition she had. When Walz acted out shortly after her return, she was terminated, and sued, claiming that she was terminated due to her bipolar disorder and Ameriprise's failure to accommodate.

In upholding summary judgment for Ameriprise, the Court stated that "at no point did Walz inform Ameriprise that she suffered from bipolar disorder or request any accommodation." Although employer representatives testified that they thought Walz may have some type of a mental health condition, the failure of Walz "to disclose her non-obvious disability and related limitations" doomed her ADA claim.

So what is an employer to do with employees whose workplace behavior may be due to a mental health condition which may be covered under the ADA? It is the employee's responsibility to make the employer aware of a condition which may need an accommodation; an employer is not required to make the inquiry. Jacobs' fulfilling this requirement was part of the reason why her case succeeded where Walz's case failed. Handbooks should include language affirming this responsibility, designating a central person to receive such information, and affirming a commitment to reasonable accommodations.

If problematic behavior occurs, the employer cannot go wrong if the employer focuses on the behavior and takes corrective action accordingly. While concurrent documentation is not absolutely required to establish that disciplinary or other issues exist, the reality is that courts and juries expect and trust concurrent documentation.

Finally, regardless of an employee's known or unknown condition, as a general rule, an employer is not required to tolerate disruptive behavior if the employee's job involves dealing with third-parties (the public, vendors or customers) or if the employee's behavior is threatening or intimidating to employees, though we recommend legal review of the decision and documentation.

Employer Confidentiality Agreement Illegal, Rules NLRB

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

In Battle's Transportation, Inc. (Feb. 2015), the employer required employees to sign a confidentiality agreement regarding the employer's human resources and any other business information belonging to the employer. The NLRB ruled that both confidentiality provisions were a violation of the NLRA.

Battle's provides transportation for individuals with limited accessibility. Their customers include the Department of Veterans Affairs. An Administrative Law Judge ruled that language restricting the disclosure of human resources information, which included examples such as investigations, agency charges, and complaints, did not violate the NLRA. However, the NLRB in a two to one vote stated that such language would "encompass terms and conditions of employment or restrict employees from discussing protected activity, such as Board complaints or investigations." The three board members who heard the case all agreed that broad language stating that the employee would not "communicate any Battle's company business with our clients" was overly broad and a violation of the Act. This case arose when an employee talked to clients about the expiration of a labor agreement, and clients mistakenly thought the employee said that the agreement to provide services for clients would expire.

This case is an example of how fact-specific NLRA cases are regarding employer confidentiality policies, including what employees post on social media. The "safe" approach for employers is to end up with a policy that is virtually ineffective. We generally recommend that if an employer has a broad confidentiality or nondisclosure policy, the employer should "fill in" the policy with providing specific examples. This is more likely to be upheld should an issue arise under the NLRA.

SHRM Conferences (Click to Register)



AL SHRM Conference Program-At-a-Glance



Spring Hill Visit



Welcome Our Newest TVC-SHRM Members!

Mandy Price, *Director of Workforce Development*, Decatur-Morgan County Chamber of Commerce

2015 TVC-SHRM Spring Social

Click on the invitation below to send your RSVP to Tiffany Weaver at tweave@ascendmaterials.com.

Hurry the RSVP Deadline is **Monday, May 4th**!



TVC-SHRM Received SHRM Membership Superstar Status for 2014!



The overall membership growth goal remains at 3% for 2015, with a 1.00 to 3.99% increase of in-chapter SHRM membership required for Membership Star status and a **4.0% or higher** increase for **Membership Superstar status**.

2015 TVC-SHRM BOARD

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Get Connected (Clickable Icons)



Save the Date! Upcoming Events

- **April 4, 2015 8:00 a.m.—9:30 a.m.**
Pancake Breakfast at Applebee's in Athens
- **April 7, 2015 5:30 p.m. - 7:00 p.m.**
Job Networking Group of Morgan Co. at the Decatur Public Library
- **May 7, 2015 5:30 p.m. - 7:00 p.m.**
Spring Social at Food Fite
- **May 19-20, 2015**
2015 Alabama SHRM State Conference and Exposition in Birmingham, AL
- **June 28, 2015—July 1, 2015**
SHRM 2015 Annual Conference & Exposition at the Las Vegas Convention Center
- **November 4, 2015**
TVC-SHRM Fall Workshop at the Doubletree Hotel (formerly Garden Plaza Inn) in Decatur
- **Every 1st Wednesday**
Workforce Coalition meeting at The Chamber of Commerce (Contact Mandy Price for more info)

Please contact **Tiffany Weaver** at tweave@ascendmaterials.com if you have an upcoming event that you would like to add.

In lieu of our May meeting, we are encouraging everybody to attend ALSHRM conference.
Hope to see everyone there!

Tennessee Valley Chapter SHRM

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