AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

TVC~SHRM

TENNESSEE VALLEY CHAPTER OF SHRM - ALABAMA

July Newsletter

July Meeting

Wednesday, July 8th

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 am.

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

If you are unsure about attending and paying for a lunch, you can always save-a spot for the salad bar.

For reservations, contact Patti Fowler at pfowler@alliancehrservices.com

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July 8, 2015

Our Speaker:

Katherine Reeves

Topic:

"Best Practices and Ethical Considerations of Conducting Internal Employment Investigations"

Katherine is an associate in the Birmingham office where she focuses her practice on defending employers before federal and state courts against claims of discrimination, sexual harassment, wage and hour violations, disability discrimination, Family and Medical Leave Act violations, ERISA violations, hostile work environment, retaliation, and related state law claims. Katherine also has extensive litigation experience with covenants not to compete, on both the defense and enforcement side.

In addition to litigation, Katherine routinely works with clients in drafting policies, procedures, severance agreements, and responses to investigations by administrative agencies. Katherine represents clients in a wide range of industries including: retail, manufacturing, restaurant, pharmaceutical, higher education, financial services/banking, and healthcare.

Finding out who did what, when they did it, how it happened, and if someone is at fault can often be tricky for employers. In this presentation, we identify the keys to effective workplace investigations, how to get your employees to open up to you, and how to avoid traps for the unwary. We will help you set investigation goals, develop a plan, teach you how to avoid costly mistakes, and discuss ethical considerations in consulting your legal team.

Thank you to Automation Temporary Service and Athens State College Center for Lifetime Learning for sponsoring our July meeting!

Athens State University Center for Lifelong Learning http://www.athens.edu/CLL

Supreme Court Rules That States' Same Sex Marriage Bans Are Unconstitutional

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

On June 26, 2015, the Supreme Court of the United States ruled by a 5-4 margin that marriage is a fundamental right that cannot be denied to same sex couples. The Court further held that states are required to recognize same sex marriages that have been legally licensed and performed in another State. *Obergefell v. Hodges* (June 26, 2015). Writing for the majority, Justice Kennedy opined that "[n]o union is more profound than marriage, for it embodies the highest of ideals of love, fidelity, devotion, sacrifice, and family." Justices Ginsberg, Breyer, Sotomayor and Kagan joined in the majority opinion which held that the Constitution grants same sex couples the right to "equal dignity in the eyes of the law."

The *Obergefell* case arose from a consolidation of six lawsuits in four states (Michigan, Kentucky, Ohio, and Tennessee) that all defined marriage as a union between one man and one woman. The plaintiffs were fourteen same- sex couples and two men whose same sex spouses were deceased who claimed that their Fourteenth Amendment rights to equal protection had been violated by their states' denial of either their right to marry, or by the failure of their states to provide full recognition of their lawfully performed marriage in another state. The Court acknowledged that states are generally free to vary the types of benefits they grant to married couples; however, the Court recognized the expanding list of rights, benefits, and responsibilities included taxation; inheritance and property rights; spousal privilege in the law of evidence; medical decision making authority; adoption rights; the rights and benefits of survivors; birth and death certificates; health insurance; and child custody, support, and visitation rules. The *Obergefell* Court declared that the Fourteenth Amendment's Equal Protection Clause provided a "fundamental right to marry" that could no longer be denied simply because the partners are of the same sex. The Court further held that the same sex marriage bans at issue burdened the liberty of same-sex couples and denied them the benefits afforded to opposite-sex couples. Accordingly, the Court held that these state laws were invalid to the extent that they excluded same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

Four separate dissents were filed by Chief Justice Roberts and Justices Scalia, Thomas, and Alito. Chief Justice Roberts read the lead dissenting opinion chastising the majority for writing their own social perspectives into the Constitution. He noted that, although the majority suggested that "religious believers may continue to 'advocate' and 'teach' their views of marriage," they left out the word "exercise" with respect to those beliefs, which could lead to religious institutions losing their tax- exempt status if they discriminate against married, same- sex couples. Justice Roberts opined that "[t]here is little doubt that these and similar questions will soon be before this Court." (Justice Thomas echoed this concern in his own dissent, arguing that it was "all but inevitable" that churches will face demands to "participate in and endorse civil marriages between same-sex couples," without regard for their own religious liberty.)

Justice Roberts concluded his dissent by inviting the "many Americans – of whatever sexual orientation – who favor expanding same-sex marriage … to celebrate today's decision. Celebrate the achievement of a desired goal, Celebrate the opportunity for a new expression of commitment to a partner. Celebrate the availability of new benefits. But do not celebrate the Constitution. It had nothing to do with it."

Justice Scalia wrote his own dissent, acknowledging that he also agreed with everything in Justice Roberts' dissent. Noting that all the justices graduated from Harvard or Yale Law School, eight grew up on the coasts, and that not one is an evangelical Christian or a Protestant, Justice Scalia wrote that "[t]o allow the policy question of same-sex marriage to be considered and resolved by a select, patrician, highly unrepresentative panel of nine is to violate a principle even more fundamental than no taxation without representation: no social transformation without representation." Justice Scalia further commented that if he had relied upon the rationale adopted by the majority, he would "hide his head in a bag."

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Supreme Court Rules That States' Same Sex Marriage Bans Are Unconstitutional (continued from page 2)

Courtesy of Lehr Middlebrooks & Vreeland, P.C.

How does this ruling affect employers? The main "take away" from the decision is, of course, that all individuals who are eligible to be married may now enter into same- sex marriages in their own state of residence or any other state, and such marriages must be recognized by all states. Employers should review polices and benefit plans to ensure they are treating all married couples equally. This includes leave polices, non-discrimination provisions, benefit plans, retirement benefits and benefits offered to employees' spouses. Employee benefits such as health insurance, retirement plans, FMLA leave may be impacted by this ruling. Although neither the ACA, the IRS Tax Code, nor ERISA require a private employer to offer group health insurance benefits to employees' spouses, if an employer does provide health insurance and/ or other benefits to opposite-sex spouses of its employees, there is a legitimate argument for same-sex spouses to claim the same right to eligibility. It is advisable that fully insured welfare benefit plans that do provide benefits to opposite-sex spouses are reviewed and revised to include the same coverage for same-sex spouses. Although the legal question arguably remains open as to whether self-insured medical plans may continue to exclude same-sex spouses from coverage, such exclusion could lead to federal discrimination claims, particularly since the EEOC has stated its position is that discrimination based on sexual orientation can be sex discrimination under Title VII. Furthermore, at least one U.S. District Court has already addressed the failure to offer the same benefits to same-sex spouses and found protection for same -sex spouses where a company provided benefits to a male spouse of a female employee, but not to the male spouse of a male employee. Hall v. BNSF Railway Company, (W.D. Wash., 2014). Benefits to domestic partners are also in question, and employers are cautioned against making any abrupt changes.

The IRS issued guidance last year applying the Supreme Court's 2013 decision in U.S. v. Windsor (holding that the Defense of Marriage Act's definition of marriage was unconstitutional and that the federal government must recognize same-sex marriages that are recognized by states) to qualified retirement plans. Interestingly, in Obergefell, the Supreme Court held that this definition was invalid because it undermined "state sovereign choices about who may be married." Although the Obergefell decision made only passing reference to tax implications, the Windsor Court's deference to "state sovereignty" no longer exists and now all 50 states, including the fourteen states that have same-sex marriage bans on the books, are required to issue marriage licenses between two people of the same sex, and to provide full recognition of same-sex marriages legally performed in other states. Accordingly, employers should carefully review the beneficiary and definition sections of their qualified plans to ensure that same are compliant with this change in the law. In particular, plan sponsors should review the definition for "spouse" that may well be buried in the plan materials as well as review the plan's default beneficiary provisions. It is clear that tax qualified retirement plans must recognize same-sex marriages for purposes of spousal rights, but it is less clear whether they must be recognized for plan based rights that aren't legally mandated. But I would be wary of differential treatment without adequately assessing risk. Notwithstanding the Court's proclamation, we do anticipate further challenges, similar to the Hobby Lobby challenges to the ACA, based on religious and ideological grounds.

The FMLA previously provided that married same-sex couples could only be considered married for purposes of the FMLA if they resided in a state that recognized same- sex marriage. The rule was then redefined to recognize the law of the "state of celebration" as the determinative factor in whether or not a same-sex spouse qualifies for FMLA benefits. After Obergefell, all legally married same- sex couples, regardless of where they were married, will presumably be eligible for FMLA benefits under quaalifying circumstances.

It's Not Just a Pedometer: Wearable Fitness Trackers

By Megan Sumners Wellness Chair East Alabama Chapter

Wearable fitness trackers---everyone is wearing them. However, what are they? And how do they affect wellness?

Within the past year there has been a surge in technology and popularity of wearable fitness trackers. You may have seen your friends and colleagues sporting what looks like a rubber bracelet on their wrist. What they are actually wearing are highly effective fitness tracking devices. These devices not only track your fitness and sleep patterns but also serve as a motivational tool. In addition these gadgets have become increasingly sophisticated in the information and insights that they provide users on their journey toward establishing healthier habits.

One of the primary fitness information features that they provide is the amount of steps you take in a day. Why is this important? *A 2010 study of 123,216 people, published in the American Journal of Epidemiology found that the more leisure time spent sitting, the higher the risk of premature death: Women who sat for more than six hours a day were 37 percent more likely to die prematurely than those who sat for less than three hours, no matter how much other physical activity they got.* Wearables may uncover how much or in most cases, how little, you move around during the day. The average U.S. adult walks about 5,900 steps daily while the Center for Disease Control recommends about 7,000 to 8,000 steps per day.

So, how can you use wearables to stay on track? Have a plan in place:

1. **Set goals**. One of the top benefits of wearables is that they streamline your ability to set goals and keep records. You don't have to set an initial goal of 20,000 steps per day. The Mayo Clinic recommends setting short attainable goals. It isn't convenient to write things down in a notebook and carry it with you. Wearables give you up-to-the-minute stats on your daily fitness level and compare it to historical data.
2. **Utilize social functions**. Use wearables to connect with friends and other users who have similar goals. Turn daily activity into a fun competition. Many of the wearables have apps that you can download to your smartphone to see your friend's daily fitness levels and how you compare.

3. **Stay committed**. Even if you had a bad day when you never left your desk don't let that get you down. Start over fresh the next day and see if you can exceed your daily step goal!

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Get Connected (Clickable Icons)

Welcome New TVC-SHRM Members

- **Pamela Parker**, *HR*, Cook's Pest Control

Save the Date! Upcoming Events

- **July 21, 2015**

  Job Networking Club of Decatur

- **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.

Our annual legislative meeting will be August 15th at the Jackson Center in Huntsville with NASHRM.

Hope to see everyone there!

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