



OCTOBER 2012



SHRM

Montgomery

ADVANCING THE PROFESSION AND SERVING THE PROFESSIONAL

General Membership Meeting

Date: Thursday, October 25th, 2012
Topic: **Domestic Violence in the Workplace**
Speaker: **Steve Searcy, Family Justice Center**
Time: Luncheon Meeting
11:30am – 1:00pm
Location: **ASU**
Acadome Banquet Room
1595 Robert C. Hatch Dr.
Montgomery, AL



Registration Deadline: October 23rd

Meeting Guidelines Checklist:

- Please go to <http://shrmmontgomery.shrm.org> and click the "Meeting Reservation Link."
- All members, guests and students must go to the website to make a reservation in order to attend the meeting.
- Cancellations must be made 24 hours in advance of the meeting. SHRM-Montgomery reserves the right to bill if cancellation is not made in a timely manner.
- Luncheon Meeting Fees, payable at the door
 - Basic Members (excluding all-inclusive members) - \$15
 - Guests - \$20

SAVE THE DATE
November 28th
Next General
Membership
Meeting



From the desk of Richard Lehr...

Expanding Anti-Retaliation Provisions to Employee Benefits Issues

We know all too well that “retaliation” is the most rapidly expanding employment claim and has been for the past three years. The case of *George v. Junior Achievement of Central Indiana, Inc.* (7th Cir. September 4, 2012) further expands the field of retaliation claims by including retaliation as an outcome of an employee inquiry about benefits.

The Employee Retirement Income Security Act (“ERISA”) in Section 510 prohibits retaliation “*against* any person because he is given information or has testified or is about to testify in any inquiry or proceeding” involving benefits covered under ERISA. One would think that “testify” and “inquiry or proceeding” would exclude questions arising at the workplace, but that was not the opinion of the court in the *George* case.

George was Vice President of Junior Achievement of Central Indiana until his termination in January 2010. During the summer of 2009, George raised a question about deductions that were made from his pay which were supposed to be deposited into his retirement account and health savings account, but were deposited in neither. Approximately three months later, Junior Achievement issued George checks for what had been deducted and not deposited. Between October 2009 and January 2010, George discussed with Junior Achievement’s board of directors various approaches to consider for his retirement. They did not reach an agreement, and George was notified on January 4, 2010 that he was terminated. George sued under ERISA, and the district court, agreeing with Junior Achievement, granted summary judgment stating that George’s question about his retirement account was neither an “inquiry” nor a “proceeding” as defined under ERISA.

In vacating the summary judgment decision, the court noted other circuit courts that ruled that “inquiry” and “proceeding” “applies to unsolicited informal complaints. When dealing with this ambiguous anti-retaliation provision, we are supposed to resolve the ambiguity in favor of protecting employees.” The court stated that, “Inquiry could mean something official, such as the investigation that the Department of Labor conducts before deciding whether to file suit under ERISA, but sometimes an inquiry means nothing more than a question.”

Perhaps the most critical factor in evaluating the risk of a retaliation claim is the timing of an adverse decision in relation to when an employee raised a protected issue. Thus, employers should just process benefits inquiries as one more factor to consider regarding the timing for a potential retaliation claim. Employees who raise questions about benefits, pay, discrimination, harassment, safety or any other matter protected under state or federal law are not immune from the consequences of accountability for their attitude, attendance, performance or behavior. However, employers need to be sure that the closer in time the adverse decision is made in relation to when the employee engaged in protected activities, the greater the clarity must be that the decision would have been made regardless of that protected activity.

2012 SHRM-Montgomery

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Please Welcome New Board Members for 2013

Alvin Tucker
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Mike Polis
Tara Langley



Social Security Tax Bulletin!

Last year, Congress extended the **Payroll Tax** cuts through December 2012; however, it is highly unlikely that Congress will allow these cuts to continue after the end of this year. If this is the case, the Social Security Tax rate will revert to 6.2% from the current 4.2%. Please be aware of this possible increase as it will affect the amount withheld from paychecks for Social Security