

# Green Bay Area Chapter of the Society for Human Resource Management



## *From the President*

Happy Spring! We are through the 1st quarter of the SHRM year already. It always amazes me how time flies. So far we have had meetings on Recruitment, Retention and Succession - Planning for the Labor Shortage, How to Work Effectively with Your Attorney, and Fiduciary Responsibility. We are very excited about our April workshop, as it is a joint venture with the Fox Valley Chapter SHRM, and will be held at the Lambeau Field Atrium. I hope you will join us for this Employment Law Update presented by Godfrey and Kahn. In May, along with our regularly scheduled meeting, we will host the WorldatWork T2 course - Accounting and Finance for the HR Professional.

As HR professionals, we know that our days always hold something new. We sometimes wish for a day when things are uneventful. As we continue to improve the status of HR in our companies, we are called upon to bring our profession to the next level. I encourage you to utilize the resources our chapter can offer, especially the SHRM library at UWGB. I also encourage you to suggest ideas on how the chapter can provide innovative resources to our membership.

I would like to personally congratulate the UWGB Student Chapter team who placed 2nd at the State HR Games. The Student Chapter from UWGB also won the Collegiality Award. A big round of applause goes to Matt Stollack and the students of St. Norbert's for their hard work hosting this year's State Student Conference. I also want to thank the Chapter members who volunteered to speak or be part of the HR Games process. It is nice to see our members get involved. If anyone is ever interested in becoming more involved in the chapter by helping at the registration table, writing articles for the newsletter, introducing speakers, or running for a board or committee position, please contact me at (920) 497-5458.

Don't forget about the logo contest. The deadline for submissions is May 14, 2004. I look forward to seeing you at a chapter event!

*Sincerely,  
Jenny Lowe, President*

## *SHRM Logo Contest*

The Green Bay Area Chapter SHRM would like to introduce a new logo this fall in time for our 10th anniversary celebration. We're hoping a creative SHRM member will share his/her talents in designing the new logo. To get those creative juices flowing, the chapter is sponsoring a logo contest. The artist of the selected logo will receive \$100 and recognition at the anniversary celebration. The logo will also be used on our chapter's website and on any future chapter correspondence.

To qualify, the logo must include the words "Green Bay Area Chapter SHRM." Please submit your original logo ideas to:

Jenny Lowe, SPHR  
Imperial Supplies, LLC  
789 Packer Drive  
Green Bay, WI 54304

The contest deadline is May 14, 2004. Please contact Jenny Lowe at (920) 497-5458 with any questions. Good luck!

**\*\*\*Remember to visit your Green Bay Area Chapter - SHRM online at:  
<http://www.wishrm.org/chapter/grbay/index.html>**

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# ***Legislative Update: Mixed Messages Regarding Return to Work Rights Result in Punitive Damages***

By: Greg Grobe - Legislative Chair - Liebmann, Conway, Olejniczak & Jerry, S.C.  
E-Mail: grobe@lcojlaw.com

Most Human Resource managers realize that decisions relating to employees on medical leave are among the most complicated and risky personnel decisions. A grocery wholesaler in Superior, Wisconsin, recently learned this the hard way when it was ordered to pay \$255,666.00 in back wages and costs, and \$300,000.00 in punitive damages to an employee who claimed that the HR Director and other managers lied to him about his return to work rights. The Wisconsin Court of Appeals recently affirmed the jury award on February 17 ([Betterman v. Fleming Companies, Inc.](#))

The employee, Duane Betterman, sought medical leave due to depression and anxiety disorders, which he claimed was the result of working eleven-hour days and weekends. The Company's HR Manager provided Mr. Betterman with forms describing his rights under the FMLA and under the Company's other medical leave policies. (The company provided both Short-Term ("STD") and Long-Term ("LTD") disability benefits to its employees.) The forms indicated that if Mr. Betterman was unable to return after his 26 weeks of STD expired, his employment would be terminated. (He could continue to receive LTD benefits.) Mr. Betterman testified that the HR Manager pressured him into signing an acknowledgement that he had received and reviewed the forms. He claimed that the HR Manager told him "not to worry" about what the forms said and that signing the acknowledgement form was only necessary to be able to receive STD and LTD.

Mr. Betterman was unable to return to work after his STD was exhausted. He continued to receive LTD benefits for approximately one year. He testified that during this year he spoke with the HR Manager and some other company representatives who wished him well with his healing process and told him he should not worry about his job or work. He also claimed that he was never informed that the company had terminated him after his STD ran out. When asked why she did not specifically inform Betterman that he had been terminated, the HR Manager testified that she did not believe it was her job to inform him. (It appears that the HR Manager and the supervisors had different understandings of whether the company

intended to rehire Mr. Betterman when he recovered from his mental disorders.) When his physician ultimately released him to return to work, Mr. Betterman learned that the company had terminated his employment after the STD expired (as indicated in the forms he had earlier received but not read). Mr. Betterman sued, claiming that he was lied to and claiming that the company breached a promise to re-hire him.

The company argued that Wisconsin employees do not have the right to sue their employers for lying to them, as the Wisconsin Supreme Court previously held in the infamous "Seinfeld joke" case ([McKenzie v. Miller Brewing](#) - discussed in Bruce Deadman's article in the May/June 2001 SHRM Newsletter). However, the Court held that [McKenzie](#) did not apply because the alleged lies told to Betterman were made after the company considered him to have been terminated, not while he was still employed. The jury decided Betterman had been misled by the HR Director and other managers, despite the language in the forms he had received.

## **Lessons Learned from the Case**

There are a number of lessons we can learn from the [Betterman](#) case:

- The [Betterman](#) case does not prevent employers from terminating employees when they cannot return to work after their FMLA or other leave rights expire. The decision simply stands for the proposition that employers must clearly communicate employee's rights and status, and it is preferable that the information be conveyed several times, not just once.
- The fact that the supervisors and the HR Manager had different understandings of Betterman's return to work rights may have stemmed from the supervisor's belief that Betterman's replacement was a superior employee and a subsequent desire to make that replacement permanent. However, Courts are extremely reluctant to allow an employer to replace an employee when the employee is recovering from a medical leave. HR Managers and supervisors must clearly understand and

agree upon an employee's return to work rights, especially for long-term illnesses, and realize they may be restricted from permanently hiring a replacement, even if the replacement ends up being a "star" performer, especially if they have led the employee to believe he has reinstatement rights.

- The case involved "he said - she said" conflicting testimony, which further reinforces that at least two company representatives or managers should be present at meetings with employees to discuss issues relating to their medical leaves and return to work rights. Using documentation and multiple witnesses to such conversations is particularly important when dealing with employees with mental disorders, who may have difficulty comprehending verbal communications and may later recall the communications much differently than actually occurred.
- Employers should review their policies to make sure that there is a clear description of employees' return to work rights following medical leave. A common deficiency in many employers' STD and LTD policies is the lack of any discussion of reinstatement rights, particularly after FMLA is exhausted.
- A single company representative should be appointed to handle all communications with an employee during the medical leave, to avoid mixed messages and avoid misunderstandings as to who is responsible for notifying the employee of their rights and status.
- The affirmation of the \$500,000.00 judgment, including punitive damages (which were likely uninsured) sends a strong message to employers to be more careful when dealing with employees with medical problems. Given the complexity of the FMLA, workers compensation rules, disability discrimination rules, employee handbook leave policies, collective bargaining agreements, HIPAA privacy rules, and STD and LTD policies, it is critical that HR Managers educate themselves and other company managers on these rules and keep up to date with decisions under them.
- Finally, although the Court in Betterman did not modify Wisconsin law concerning misrepresentations to employees, it is still prudent for HR Managers to take steps to ensure that applicants, employees, and ex-employees receive accurate information. If Wisconsin courts con-

tinued to receive claims that employees are being lied to by their managers, it is possible that the courts (or the legislature) could change the current law and allow employees to sue employers for misrepresentations. This would create an enormous new liability to HR Managers and open the proverbial floodgates to increased lawsuits from employees.

## ***Your Foundation at Work: Tell Me More!***

Did you know that the SHRM Foundation is a not-for-profit organization that operates as the research and development arm of the Human Resource profession? The SHRM Foundation strives to advance the knowledge and competency of HR professionals through its funding of related research, publication, and educational programs.

***Q: I've heard that the Foundation can help me as an HR professional to develop my knowledge and skills. How can I learn more?***

**A:** The Foundation provides valuable tools such as the White Papers series for HR professionals on the SHRM website at [www.shrm.org](http://www.shrm.org). The SHRM Foundation also funds a \$30,000 Area Scholarship Program to support SHRM members working full-time and pursuing HR degrees or professional certification. Each of the six SHRM areas of the country receives \$5,000 to be awarded to applicants in their region. SHRM members, chapters, and state councils may submit an application by May 1, 2004 to their SHRM area manager for consideration. Scholarship applications and complete details are available online at [www.shrm.org/foundation](http://www.shrm.org/foundation) under "Education Grants and Scholarships."

***Q: The SHRM Foundation is a great resource! I've referenced the White Papers and want to ensure that resources like this continue to be available to me as an HR Professional. How can I support the Foundation?***

**A:** Anyone can make a donation to the SHRM Foundation by contacting Bridget Moody, Foundation Chairperson, at (920) 469-4880 or [bridget.moody@wgrfurniture.com](mailto:bridget.moody@wgrfurniture.com). Any member or their organization can give donations. The pursuit of HR excellence begins with you!

## ***Career Changes Network***

The following article was distributed to Fox Valley SHRM Members recently. The founder of this group, Jim Barnes, Project Manager & Network Leader with the Fox Valley Workforce Development Board, is hoping to start a similar Career Changers Network in the Green Bay area.

Dear SHRM Members:

This letter serves as an introduction to the Career Changers Network, CCN and a request for SHRM members to consider becoming Associate Members. CCN is a job search-networking group focused on business professionals at all levels, from entry level to senior executives. The group is open to everyone with an emphasis on displaced, or soon to be, salaried professionals. CCN is sponsored and funded as a special project by the Fox Valley Workforce Development Board.

CCN is all about taking charge of a bad situation and making it better through positive actions. The focus is on the future, not the past. Negativity in regard to the past is not accepted in the group. CCN is not a support group! CCN is a networking group of highly motivated professionals with one common goal; to re-establish individual career paths in a manner that will afford the same, or better, standard of living and professional fulfillment provided by the last position. The majority of CCN professionals are seasoned professionals that have no desire to relocate.

CCN works to connect the career changer, through professional networking and collaboration, with local employers and recruiters. We work to connect the career changer to the right people and the right company. Exercising best practices, best employment strategies, and proactive initiatives with area employers accomplish this.

CCN is a no-cost volunteer organization; the level of participation you choose is predicated on your organizations' level of interest. CCN is all about establishing "win-win" scenario's for everyone involved. It is the goal of CCN to protect the confidentiality of information, both personal and business related, that is submitted to the network.

The win-win:

- There is no cost to become an Associate Member.
- You will choose your own level of support and participation.
- Accessibility to the CCN database is restricted

to members only.

- CCN will help reduce the cost and time associated with recruiting.

The commitment:

- Each week we have a guest speaker discuss a topic pertinent to the professional career search. Presenters are asked to prepare a 20 to 30 minute presentation and allow 10 to 15 minutes for questions. CCN asks Associate Members to consider presenting a topic.
- You will have access to electronic folders that contain member profiles that are pre-sorted by profession. Associate Members are asked to review member profiles as appropriate positions become available. You are able to maintain your confidentiality, if you choose, when reviewing profiles
- There is no requirement to attend meetings or events to become an Associate Member. However, periodic attendance is encouraged and always welcome.

Ultimately the goal of CCN is to keep displaced professionals in the community. Your support and participation will be a major step forward in the achievement of that goal. For information please visit [www.foxcitiesbusiness.com/ccn](http://www.foxcitiesbusiness.com/ccn) or e-mail [jimbarnes@fvwdb.com](mailto:jimbarnes@fvwdb.com)

Best regards,

Jim Barnes, Project Manager & Network Leader  
Fox Valley Workforce Development Board

## ***Student Chapter News***

The 2004 Wisconsin Student Conference and HR Games were held at the St. Norbert College Campus on February 27-28, 2004. Students from across the state had the opportunity to enjoy an array of speakers as well as compete in the HR Games.

Congratulations to all teams that participated in the HR Games competition. A special congratulations goes to the University of Wisconsin - Green Bay team who finished second in the competition and also received the Collegiality Award, voted on by their peers. A special thank you to St. Norbert College for hosting the conference and to all the individuals who volunteered their time to make it a successful event.

If you are interested in helping the student chapters in areas such as speaking at student chapter meetings, giving a company tour, participating in a job shadow day, or setting up an internship at your company, please contact Becky Davies, Student Relations Director, at (920) 661-5455 or [rebecca.davies@eams.com](mailto:rebecca.davies@eams.com).

## Newly Certified SHRM Chapter Members

Congratulations to the following Green Bay Area Chapter -SHRM members who earned their professional SHRM certification this past December:

Diane Beinlich, SPHR	Brenda Jerabek, PHR
Rebecca Davies, SPHR	Andrea Miller, SPHR
Claudio Diaz, SPHR	Mary Schlis, SPHR
Suzanne Edgren, SPHR	Karen Sroda, SPHR

If you would like to take the PHR or SPHR this Spring, there is still time to register. The Extended exam registration deadline is April 23, 2004.

PHR exam fee (extended deadline): \$300  
(National SHRM Member)/\$350 (non-National SHRM Member)

SPHR exam fee (extended deadline): \$425  
(National SHRM Member)/\$475 (non-National SHRM Member)

You may access general certification information at [www.hrci.org](http://www.hrci.org). If you have any questions regarding certification, please contact Mary Burich, Certification Chairperson, at (920) 592-3294 or [burichm@schneider.com](mailto:burichm@schneider.com).

## CALENDAR of Events

### April 21, 2004

Afternoon Workshop, 12:30-5:00pm, joint venture with the Fox Valley SHRM Chapter, Lambeau Field Atrium

**Program:** Employment Law Update

**Presenters:** Godfrey and Kahn

### Tuesday, May 11-Thursday, May 13, 2004

WorldatWork T2 course-Accounting and Finance for the HR Professional, Midway Hotel

### KELLY WINTERS

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### Wednesday, May 19, 2004

Luncheon Meeting, 11:00am-1:15pm, Brett Favre's Steakhouse

**Program:** An Introduction to Health Savings Accounts (HSA's)

**Presenter:** Jason Gutzman, Senior Consultant with Virchow Krause Employee Benefits, LLC

### Wednesday, June 9, 2004

Annual Chapter Golf Outing and Dinner  
Thornberry Creek Country Club

Time: TBD

## 2004 Board of Directors

**President** Jenny Lowe, SPHR  
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