 

**MHRA Mission Statement: To provide knowledge, skills, and resources while working to enhance personal and professional development.**

BOARD MEETING (Chapter 202) April 24, 2019 7:30 a.m. - 9:00 a.m. Allan Bros. Coffee House/ Albany, Oregon

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| DeeDee Kaundart | Past President |  |  Claudia Hamilton | Sponsorship Chair |
| Jason Bushnell | President  |  | Jill Sharp | Membership Chair & President Elect |
| Kristen Taylor |  Certification Chair |  | Darcee LaCalli | Legislative Liaison |
| Kathy Westberg | Foundation Chair |  | Bonny Ray | Secretary |
| VACANT | Website Chair |  | Karlina Christensen | Programming |
| VACANT | Workforce Readiness |  | VACANT | Diversity Chair |
| Robin Bilyeu | Treasurer |  |  |  |

Highlight if PRESENT

The Board Meeting began at 7:39 a.m.

**Approval of Minutes:** The Board reviewed the March 20, 2019 minutes. DeeDee motioned to approve, Karlina seconded. Minutes were approved.

**President’s Updates and General Discussion Items:**

* Jason passed out the minutes, bylaws and agenda. Bylaws changes include our chapter name and terms. Brief discussion about chapter annual meeting time and term limits of four years in the role. Suggested language: A Board member cannot serve more than two terms in a role unless a successor is not identified at which time the President may extend the term.” Karlina moved to approve the bylaws changes. Dee-Dee seconded. The Board approved these changes.
* Debrief of the ½ day seminar. They ended up doing it virtually since only 8 were registered and 7 attended. It could have been the timing with it being close to Easter and on a Friday. We could consider virtual programming in the future. Maybe we don’t try extra programming for awhile as attendance has been low at extra trainings.
* Attendance at our last two meetings was good in spite of our new practice of charging for meetings. The question came up if we had sent a message out about this. Discussion about putting information about the price change in a communication on the website or in an e-mail was discussed.
* It appears that we don’t have a way to access the chapter e-mail. Jason will check with Jared and Lucille about it. If he does not know Cyndi Bene may have set this up. Claudia will reach out to her about the password/login if needed. The Board discussed having a new chapter e-mail through go-daddy or another e-mail platform. This would allow us to have our own domain @midvalleyshrm.org. Karlina will check in about pricing for this.
* Karlina updated our name change and it is effective on all places except Facebook.
* The Board agreed that the next special program we try is the Vets at work certification: Karlina has books. It is free for certification through the Foundation. This could be a half or full day program and it to be $10 for participants. It is approved for 10 PDC credits. Consider running the program in the fall as we near Veteran’s Day. Possibly in late October such as October 23. The Board meeting could be at lunch that day. We could send out a save the date announcement.
* We provided a $500 donation the Student NHRMA conference. We filled goodie bags for the OSU students and they appreciated them.
* We need to order new business cards if we want to continue having them as we need to update information in terms of logo and e-mail address.
* D&O insurance quote is $1023. Karlina asked them to re-quote as the state charge was less but other chapters had similar quotes. We should see an updated quote soon.
* June 12th we will have a SHRM Foundation. DeeDee and Kathy will be presenting. The presentation that is prepared is full of sales pitches that are not necessary so they would like to use one or two slides but not the whole presentation. We would like to emphasize the vets and foundation donation topics. DeeDee will ask if we can modify the presentation. June could be the yearly time we plug the foundation.
* The running slides are well received at the chapter meetings.
* We have vacant Board positions. Jared and Scott said no. We have not heard from Suzanne yet. DeeDee is communicating with David Parrish about this also. He might be interested in the Workforce Readiness or Communications role. Jason will keep announcing the need at the meetings also. We could use another e-blast to promote the open Board positions to members. DeeDee will send this.
* DeeDee used an e-blast through SHRM to announce the ½ day workshop.
* On May 15th at the Oregon Convention center there is a PHRMA Strategic Conference.
* DeeDee and Kristen met with the Old School staff and things are resolved with the venue.
* NHRMA conference planning is well underway. Board members who volunteer will received steeply discounted rate for attendance. There are some great events planned in addition to the conference itself.

Position Reports:

Treasurer: See Robin’s report for full detail. Robin filed our taxes and paid the Secretary of State. The March sponsorship payment came in. We received a $100 invoice for the 4/19 event. Robin paid for our Business name and donations were sent to the Foundation and the student conference.

* Taxes (990N) were filed
* I have a call into Citizen’s Bank to figure out what paperwork is needed to update our bank account name
* I tried to upload some documents to our Board Webpage, but it wasn’t working, so I don’t have the most recent receipts uploaded, but do have them saved electronically
* Completed budget report for the month
	+ Breakdown of Member Meeting income:
		- $285.87 Eventbrite deposit on 3/19
		- $387.44 Eventbrite deposit on 4/16
		- $10 – collected at door in April
	+ Received sponsor payment ($450) from Barker for April Meeting
		- Corvallis Clinic already paid for May’s Sponsorship
	+ Made our donation to the Foundation ($177.50) for the funds raised so far this year – NOTE, we are still listed as Mid-Willamette HR Association on the Foundation’s page
	+ Filed & paid for annual business registry ($50)

**Certification:** Kristen sent our new bylaws to HRCI as proof of name change. It is updated with SHRM too. All programming through June is submitted. Since the last board meeting I have been in contact with both HRCI and SHRM to update our approved provider profiles in reflection of the new name.

**Foundation**: Training in June and $40 profit from the April basket. SHRM Foundation presentation scheduled for June 12. DeeDee has sent me the presentation and we will meet to discuss how many of the slides we plan to use.

Legislative: An extensive Legislative Update Report was submitted through e-mail. Here it is:

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| **End Reserved Employee Parking by March 31 or Owe 2018 Taxes**To avoid taxes on parking benefits, reclassify employee parking spots as open spots.Employers have until March 31 to reduce or eliminate parking spots reserved for employees, or they'll owe 2018 taxes on those spots, which are considered an employee benefit.Under the Tax Cuts and Jobs Act, as of 2018, "the [costs of providing qualified parking to employees as a tax-free fringe benefit is not deductible](https://www.thebenefitofbenefits.com/2019/03/meter-expiring-on-important-election-regarding-tax-consequences-of-reserved-employee-parking/) by for-profit employers and is subject to a 21 percent tax for tax-exempt organization employers" as an unrelated business income tax expense, wrote Scott Galbreath, an attorney with law firm Murphy Austin in Sacramento, Calif.In December 2018, the IRS issued [Notice 2018-99](https://www.irs.gov/pub/irs-drop/n-18-99.pdf) alerting employers to reclassify by March 31 some or all employee parking spots as open spots. The reclassification is retroactive to Jan. 1, 2018. Reclassifying parking spots "could save significant taxes for the 2018 tax year, but time is running out," Galbreath noted.To avoid retroactive and future taxes on parking benefits, employers should "change the method that made the parking reserved exclusively for employees, such as signage or limited access," Galbreath advised, adding, "This should be done before the meter expires at the end of this month."*[SHRM members-only toolkit:*[*Designing and Managing Flexible Benefits (Cafeteria) Plans*](https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/managingflexiblebenefitsplans.aspx)*]***Parking Requirements**The December 2018 guidance also clarified how employers can calculate the tax on qualified parking benefits.For parking expenses to qualify as a business deduction, more than half the available space must be used by the general public during the business's normal operating hours. "Empty, unreserved spaces available to the general public and not used by employees are [also counted as used by the general public](https://www.mossadams.com/articles/2019/march/deadline-for-employee-parking-arrangements)," wrote Susan Mehlman, leader of the compensation and benefits practice at law firm Moss Adams in Seattle. The term "general public"includes customers, clients, and visitors and people delivering goods or services to the business, she noted. "It doesn't include employees, partners or independent contractors of the business."If more than 50 percent of the total parking spots are available to the general public, "the remaining total parking expenses are deductible under Section 274(e)(7)" of the tax code, she explained.Once the parking spaces are recharacterized, employers should determine how much of the parking costs are taxable. "This includes determining how many spaces are reserved or primarily used (more than 50 percent of the time) for the general public, which are deductible by for-profit employers and not taxable to exempt employers," Galbreath wrote.If no spaces are reserved for employees or the general public, "an allocation based on the typical use of the parking on a normal day between employee use and general public use must be determined," he pointed out.Employers should consider eliminating reserved parking, "even those spots provided to reward employees for a limited amount of time," such as for the employee of the month, said David Fuller, an attorney in the Washington, D.C., office of McDermott, Will and Emery.**DOL Proposes Changes for Calculating Overtime**On March 28, for the first time in 50 years, the Department of Labor (DOL) proposed changing the definition of the "regular rate" of pay—the building block for calculating overtime. If the planned exclusions from the regular rate are adopted, employers may pay less in overtime than plaintiffs' attorneys would like.But companies may be likelier to provide more benefits such as tuition reimbursement, said Tammy McCutchen, an attorney with Littler in Washington, D.C."With clarity that certain perks and benefits are excludable from the regular rate, employers can be more generous in expanding their offerings of perks and benefits," noted Liz Washko, an attorney with Ogletree Deakins in Nashville, Tenn. "This is not just due to limiting the financial costs of such offerings, but also reducing the potential administrative burden of tracking and properly calculating the overtime rate while taking these kinds of compensation into account."**The Regular Rate of Pay**When calculating overtime under the Fair Labor Standards Act (FLSA), employers must pay nonexempt employees an overtime rate of 1 1/2 times their regular rate of pay for all hours worked beyond 40 a week.This is not 1 1/2 times their hourly rate, McCutchen noted. The regular rate includes hourly wages or salary, most bonuses, shift differentials, on-call pay and commissions. It excludes benefits, paid leave, Christmas bonuses, other gifts and discretionary bonuses, she explained."Unless a particular payment is specifically excluded by the statute, it must be included when calculating the regular rate," noted Brett Coburn, an attorney with Alston & Bird in Atlanta. "A quick shorthand for thinking about the regular rate is that it is derived by adding up all non-overtime payments made to an employee in a week and dividing it up by the number of hours actually worked in the week."McCutchen said it was necessary to update the types of compensation on which employers must pay overtime because the DOL last issued a rule on the regular rate in 1968, and many new employer benefits have emerged since then. Plaintiffs' attorneys argue that the value of these benefits should be included in overtime calculations.*[SHRM members-only toolkit:*[*Complying with U.S. Wage and Hour Laws and Wage Payment Laws*](https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/complyingwithuswageandhour.aspx)*]***What's Excluded from the Overtime Calculation**Before the DOL released its proposal, Alfred Robinson Jr., an attorney with Ogletree Deakins in Washington, D.C., noted, "The speculation is that the rulemaking will address whether the amount of a tuition reimbursement, the value of an employee discount or the cost of an employer-provided gym should be part of the regular rate."The proposed rule would exclude all of these from the regular rate, and in addition would exclude:* The cost of providing wellness programs and onsite specialist treatment.
* Reimbursed expenses, including travel expenses that do not exceed the maximum travel reimbursement under the Federal Travel Regulation system.
* Accident, unemployment and legal services, which the DOL considers to be benefits plans.

Recently, some class-action lawsuits have alleged that employers violated the FLSA by failing to include the costs of perks, such as fitness club membership reimbursements, in the regular rate when calculating overtime, Washko noted.**Examples Provided for Bonuses**Simply calling a bonus discretionary does not mean it's excluded from the regular rate of pay, the DOL noted in the proposed rule.Most bonuses are nondiscretionary, said Ryan Glasgow, an attorney with Hunton Andrews Kurth in Richmond, Va., so most bonuses are included in the regular rate of pay. The proposed rule provides examples of the types of bonuses included or excluded from the overtime pay calculation.To be excluded from the regular rate, the bonus must not be paid according to a contract or agreement. For example, any bonus that is promised to employees when they're hired or is the result of collective bargaining would not be excluded.Bonuses announced to employees to induce them to work more quickly or efficiently or remain with the organization are included in the overtime calculation. Most attendance bonuses and bonuses contingent on the worker staying with the organization until the payment is made must be included in the regular rate, the proposed rule states.But spot bonuses and employee-of-the-month awards aren't included, McCutchen observed.The proposed rule hasn't been finalized yet, but, Washko said, "HR should start evaluating its current compensation and benefit offerings to determine whether there may be opportunities to modify or expand those offerings in the next cycle, should the proposed rule go into effect."*[Visit SHRM's resource page on*[*FLSA exemption classification*](https://www.shrm.org/ResourcesAndTools/Pages/FLSA-Exemption-Classification.aspx)*.]***Can Employees Decline FMLA Leave While Using Paid Time Off?**Once an employer knows that a leave of absence qualifies under the Family and Medical Leave Act (FMLA), it must designate it as such, even if the employee wants to first exhaust paid-time-off benefits.The U.S. Department of Labor (DOL) [took this position](https://www.dol.gov/whd/opinion/FMLA/2019/2019_03_14_1A_FMLA.pdf) in a recent opinion letter, though its opinion conflicts with a federal appellate court ruling.The DOL noted that an employer may provide more-generous leave by extending job-protected time off beyond the 12 weeks a year that are covered under the FMLA. Any extension, however, should not be characterized as FMLA leave, said Vanessa Kelly, an attorney with Clark Hill in Princeton, N.J."The opinion letter should serve as a reminder to employers of just how technical the FMLA can be and a warning to continue to be vigilant about employee leaves," she added.DOL opinion letters describe how the agency would enforce applicable statutes and regulations in specific circumstances presented by an employer, worker or other party who requests the opinion. Opinion letters are not binding, but there may be a safe harbor for employers that show they relied on one.**No Wiggle Room**Typically, employers and employees agree when leave is treated as FMLA leave and there are no issues, explained Josh Woodard, an attorney with Snell & Wilmer in Phoenix. However, in the letter to the DOL in this matter, the writer noted that employers sometimes let workers use their accrued sick leave or other paid-time-off benefits before starting the clock for the 12 weeks of FMLA leave that eligible employees can take for certain family and medical reasons. The DOL said this practice is not permitted."Neither the employer nor the employee can decline FMLA leave if the leave is needed for an FMLA-qualifying reason," explained Melanie Pate, an attorney with Lewis Roca Rothgerber Christie in Phoenix.The opinion letter affirms the DOL Wage and Hour Division's "clear mandate that employers must designate a leave as FMLA leave within five business days of learning of a qualifying reason," Kelly said. Failure to do so can give rise to an FMLA interference or denial claim.*[SHRM members-only toolkit:*[*Managing Family and Medical Leave*](https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/managingfamilyandmedicalleave.aspx)*]*Some employers have policies that either require or allow employees to use accrued paid time off to replace wages while taking unpaid FMLA leave. The DOL clarified that the paid leave must run concurrently with the FMLA leave.Significantly, under this DOL guidance, employees cannot save their FMLA leave if they need to take leave now for an FMLA-qualifying reason, said Michele Haydel Gehrke, an attorney with Reed Smith in San Francisco.**Conflicting Court Ruling**The DOL's opinion letter conflicts with a 2014 decision by the 9th U.S. Circuit Court of Appeals, [*Escriba v. Foster Poultry Farms Inc.*](http://cdn.ca9.uscourts.gov/datastore/opinions/2014/02/25/11-17608.pdf), which held that an employee may decline to designate time off as FMLA leave, even if the reason for the leave qualifies for such job-protected time off. The 9th Circuit includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington.So how does the opinion letter affect employers in the 9th Circuit? "This is a somewhat open question, because DOL opinion letters do not carry the same authority as a law, DOL regulation or court ruling," Pate said. However, some employment lawyers consider the *Escriba* case to be an outlier, because it directly contradicts the FMLA regulations, she said. Still, the DOL follows the opinion letters in interpreting the FMLA, and courts may also use them to guide their decisions in FMLA cases, she added.Technically employers in the 9th Circuit are still bound by the *Escriba* decision until it is overruled, Gehrke said. "But the DOL opinion letter may give employers persuasive authority to challenge *Escriba* if they follow the DOL opinion letter and are then sued."While this conflict likely will be resolved at some point, employers may want to seek guidance from experienced counsel as they try to navigate this complicated issue, Woodard said |
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| **2019 Oregon Legislative Session Update *Employment Update*** - Significant Bills of Concern - February 2019 [**Randall Sutton, J.D.**](https://saalfeldgriggs.cmail20.com/t/j-l-xkkhtkk-iydruuxj-a/) **Partner - Employment Law & Litigation Practice Group**The 2019 Oregon Legislative Session is well underway. This is a very active session for employment law bills, with lots of activity and many bills moving forward. The following bills are active and have the potential to significantly impact the workplace. [***Click Here***](https://saalfeldgriggs.cmail20.com/t/j-l-xkkhtkk-iydruuxj-f/) for more information and analysis on the following bills now pending at the Oregon Legislature:* Paid Family Leave & Family Leave Expansion - HB 3031 & HB 3140
* Sexual Harassment/Employment Discrimination & Settlements - SB 726 & HB3333
* Independent Contractor Definition - HB 2498
* White Collar Exempt Minimum Salary Increase - HB 3374
* Noncompetition Agreements - HB 2992
* Pregnancy Accommodation - HB 2341
* Breaks for Expression of Milk - HB 2593
* Accommodation of Off-Duty Marijuana Use - SB 379
* Manufacturing OT Maximum Hours - HB2175 & SB 110
* Employment Agreements - HB 2489

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| **Judge Sets September 30, 2019 Deadline for Employers to Submit****EEO-1 Compensation Report** |
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| If you are an employer who has to file an EEO-1, then you have a new deadline by which you must report wage data pursuant to a recently revived 2016 EEOC regulation. Yesterday, a judge ordered that employers must submit their 2018 compensation report as part of the EEO-1 no later than September 30, 2019. Nothing in this order changes the May 31 deadline for employers to provide the information that the EEO-1 traditionally collects.As you may recall in our March [E-Alert](https://t.e2ma.net/click/28m1sb/6z2q5mb/ydch4o), in 2016, the EEOC added a new requirement for employers to submit compensation reports organized by race, sex, and ethnicity to be able to carefully evaluate pay equity. On August 27, 2017, the Office of Management and Budget (“OMB”) retracted its approval of the EEOC’s regulation and stopped its enforcement. Subsequently, pay equity advocates sought to overturn the OMB’s decision to stay the new compensation reporting requirement and the National Women’s Law Center filed suit in the U.S. District Court for the District of Columbia.  On March 4, 2019, the pay equity advocates succeeded and the judge revived the 2016 EEOC regulations, but it was initially unclear whether employers needed to scramble to meet a May 31, 2019 deadline. Thankfully, employers now have certainty and some breathing room to prepare their compensation reports.  Note, only certain employers must file an EEO-1 and report workforce demographic information. If you have 100 or more employees, or are a federal contractor or first tier subcontractor with 50 or more employees and a contract of $50,000, you have to file the EEO-1. Additionally, if you have an affiliation with another company or operate as a single enterprise where the enterprise employs 100 or more individuals, you have to file an EEO-1. Check out the [EEOC’s website](https://t.e2ma.net/click/28m1sb/6z2q5mb/e6ch4o) (or call your favorite attorney) to confirm whether you do or don’t have to file an EEO-1. For questions on EEO-1 surveys or compensation reporting requirements, contact Josh Goldberg at jgoldberg@barran.com or (503) 276-2107.    |

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**Programming:** Karlina has planned through winter of 2020. At this point 17 people are signed up for May. June is online and ready for registration. Karlina is building the Eventbrite pages also. Programming through June is approved for credit on both sites.

Programming Update:

* Half-day training on 4/19 was virtual with 8 paid attendees
* May and June pages are built for registration
* Focus on getting Eventbrite pages built for rest of year.
* Q1 of 2020 is scheduled.
	+ January – Author- business meetings
	+ February- Legal Updates- Randy Sutton
	+ March- NLRB updates- Kyle Abraham
* Holding on other half day trainings or extra’s for rest of year.
* Website it current with programming.

**Membership:** Jill did an audit to see how our list is matching with SHRM’s list. She is searching this out. We could use an e-blast to recruit members. Jill updated the membership application. She is working on an online process.

**CURRENT ACTIVE MEMBER STATS**

**Current active member count**: 105

**New Members:**

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| **Name** | **Company**  | **Title** | **Date** |
| Dorthy Debusschere | Holiday Tree Farm |  |  |
| Emma Gibson | Tech Labs |  |  |
| Lucy Moore | None Listed |  |  |
| Sandra Speer | Corvallis Clinic |  |  |
| Lori Wolcott | Henderer Design Build |  |  |
| Zahn Marxy | Assured Partners of Oregon |  |  |

**Members that are no longer affiliated**

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| **Name** | **Company**  | **Title** | **Date** |
| Kimberly Cholewinski | Not listed | Not Listed |  |
| Claudine Ditorrice | Willamette Neighborhood Housing Services | Financial Education and Coaching Specialist |  |
| Debbie Green | Chief Education Office | Executive Support Specialist |  |
| Anthony Klotz | Oregon State University | Assistant Professor |  |
| Lisa Lindner | 2 Town Cider | HR Consultant 2 |  |
| Andrea Parrent | Citizens Bank | HR Manager VP |  |
| David Parrish | First Alternative Co-op | HR Manager |  |
| Jessica Thayer | HR Consultant | Oregon State University |  |

**APRIL MEETING STATS**

Total Registered: 35

March Meeting Attendance: Sign in Sheet not available at time of report.

No Shows: Not Available

Attendees Not Registered: Not Available

Attendees on list that are not current members

* 8 + 4 from Barker Urling = 12

**ACTIVITIES**

* Sent email to active members announcing local events
* Created slides for April Monthly Meeting
* Audited member list to SHRM listed provided by Kimberly Weaver
* Updated Membership application with new logo.
* Send emails to members that have fallen off the active members list

**TO DO**

* Still unable to check email box. Learn how to check email box. Need help.
* Create slides and table tents for May meeting.
* Send email about volunteer discount for NRMHA 2019 conference

**Sponsorship: Sponsorship:** Two more tentative sponsors. June and July do not have sponsors. All-star Staffing is doing November. Collaborative Employee Innovations is doing September. If a member brings a new sponsor, they get one year free of meetings. Jason will announce this at the meeting

 Sponsorships for May thru end of the year:

May: The Corvallis Clinic

June: No sponsor as of yet

July: No sponsor as of yet

August: Saalfeld Griggs

September: Collaborative Employee Innovations

October: No meeting

November: All Star Labor & Staffing

December: Jennifer Bauman/RedKite

**Communications/Website:** No update

Diversity: Vacant Role

Next Board Meeting: May 22, 2019

Meeting adjourned at 9:05 a.m.