Chapter Connection

A publication of the Evansville Area Human Resources Association

October 2022



PRESIDENT'S **MESSAGE**

Happy Fall, everyone! I hope your fall season is starting off wonderful! We are starting ours with the EHRA Fall Conference! I can't believe that it's here!

I first want to thank the Fall Conference Committee members that have helped put this together. It truly takes a village and everyone has jumped in at some point. The members are: Jennifer Zimmer, Julia Pillow, Amanda Gries, Mary Thompson, Samantha Witte, Madeline Smith, Dana Pool, Katie Kissel, Kalesa Taylor, Nikki Branham, Wendy Gumbel, Debbie Tucker, Jessica Bailey, and Melanie Reed. Thank you ALL!



Have you seen the lineup for the EHRA Fall Conference? We have a great lineup of speakers and are so excited to share the day with you! We will be having some great giveaways, including a SHRM Scholarship! If you haven't already, share our social media pages and be sure to take a peek at the video teaser than Jason Barnaby did for us! I'm looking forward to seeing you all at Bally's on October 20th! You can register here: https://ehranet.org/meetinginfo.php. We will be serving breakfast, lunch, snacks and there's a happy hour afterwards!

Be sure to check out our newsletter page or social media page with our speakers and topics!

I've read through some of the surveys from the September meeting. Thank you for suggestions and comments. It's the ONLY way we can do better!

Amanda Gries

SHRM Tip:

HR Magazine is available to SHRM members to read on your phone as an app! Search for *HR Magazine SHRM* and download the app today!

Follow EHRA on Twitter
@EvansvilleHR

EHRA Mission

The mission of the Evansville-Area Human Resource Association, Inc. is to promote professionalism in the area of Human Resource Management by providing opportunities for networking, comprehensive education and proactive support for its members while serving as a resource and advancing initiatives in the community through the enlistment of engaged and talented volunteer leaders.

Evansville Area Human Resource Association, Inc.

FALL CONFERENCE

Thursday, October 20, 2022 • 7:30 am - 5:30 pm

Bally's Conference Center ~ 421 NW Riverside Drive, Evansville, IN 47708

7:30	Registration/Breakfast – Exhibitors Open
8:00-8:15	Opening Remarks
8:15-9:30	Jason Barnaby – Light Your Fire
9:30-9:45	Sponsor/Vendor Break
9:45-11	Jenn Montague – The Secrets of an Inspirational Leader: How to Integrate them into Your Culture
11-11:15	Sponsor/Vendor Break
11:15-12:30	Danyelle Granger, DE&I
12:30-1:30	Lunch
1:30-2:45	Josh Gessling/Jake Fulcher – Legal Updates
2:45-3:00	Sponsor/Vendor Break
3:00-4:15	Ashley Herd – Putting the "Human" Back in Human Resources
4:15-4:30	Closing Remarks
4:30-5:30	Networking, Happy Hour


Jason Barnaby


Jenn Montague


Danyelle Granger


Josh Gessling


Jake Fulcher


Ashley Herd



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LET US RECOGNIZE YOU (OR A TEAM MEMBER).
IF YOU HAVE A FUN PHOTO OR KNOW OF AN ACCOMPLISHMENT OF ONE OF OUR MEMBERS, SHARE IT WITH US AT JFERTIG@USI.EDU



NLRB Proposes New Joint Employer Standard
By: Olivia Robinson (Legislative Affairs Chairperson)

On September 6, 2022, the National Labor Relations Board ("NLRB") issued a proposal to revise its standard for determining joint-employer status under the National Labor Relations Act ("NLRA").

The NLRB's proposal largely reestablishes its Obama-era standard of joint employment. Under the NLRB's Obama-era standard, one company may be deemed the joint employer of a second company's employees not only where it directly or immediately exercises control over the second company's employees, but where the first company's putative control is indirect or reserved.

Background
The joint employer status has been among the most controversial topics the NLRB has addressed in the last decade.

In 2015, the NLRB issued its decision in *Browning-Ferris Industries of California, Inc.*, 362 NRLB 1599 (2015) ("BFI"), which upended years of precedent by dramatically expanding the definition of joint employer and categorizing many more independent companies as joint employers. Under BFI, two entities were deemed joint employers based on the mere existence of reserved joint control, indirect control, or control that was limited and routine. This contrasted starkly with the prior standard, which required the putative joint employer to exercise actual control over essential employment terms, with such control being "direct and immediate." Thus, BFI drastically increased the number of potential joint employers and was the subject of intense negative scrutiny.

In December 2018, the U.S. Court of Appeals for the District of Columbia Circuit upheld portions of BFI. The court ruled that while evidence of reserved or indirect control could be appropriate factors in determining joint employer status, the NLRB had applied the concept of "indirect control" too broadly. The court returned the case to the NLRB, directing that it reevaluate the case by considering "indirect control" of only those factors directly related to the terms and conditions of employment of the subject employees. The court noted that by "failing to distinguish evidence of indirect control that bears on workers' essential terms and conditions from evidence that simply documents the routine parameters of company-to-company contracting," the NLRB had exceeded its authority. Moreover, the court held, "'global oversight' is a routine feature of independent contracts" – not a factor that should create a joint employment relationship.

In February 2020, the NLRB promulgated a final rule requiring that joint employer status may only be established where a company exercises "substantial direct and immediate control" over the essential terms and conditions of another company's employees, largely rejecting the BFI standard. The rule became effective on April 27, 2020 and is the controlling legal standard today.

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NLRB Proposes New Joint Employer Standard (cont.)

Proposed Rule
The NLRB's new proposed rule rejects the 2020 rule's "substantial direct and immediate control" standard, and it largely restores the BFI "indirect, reserved" control standard. Indeed, by making clear that indirect or reserved control standing alone may be sufficient to prove joint employer status, the proposed rule in some ways goes even further than BFI.

The proposed rule provides that two or more employers will be held as joint employers where either employer "share(s) or codetermine(s) those matters governing employees' essential terms and conditions of employment." More specifically, the NLRB defines "share or codetermine" to mean "possess the authority to control (whether directly, indirectly, or both) or to exercise the power to control (whether directly, indirectly, or both) one or more of the employees' essential terms and conditions of employment."

The proposed rule differs in one respect from the BFI standard, but the practical impact of this difference may be limited. Specifically, the proposed rule states that essential terms and conditions of employment "generally include, but are not limited to: wages, benefits, and other compensation, hours of work and scheduling; hiring and discharge; discipline; workplace health and safety; supervision; assignment; and work rules and directions governing the manner, means, or methods of work performance." The proposed rule expands on the current regulations' exhaustive list, which includes only "wages, benefits, hours of work, hiring, discharge, discipline, supervision and direction." The proposed rule's codification of a non-exclusive list of factors appears intended to address the District of Columbia Circuit's critique of its earlier BFI decision as discussed above. That said, given that the list is broad and non-exclusive, it is not clear that this will provide any meaningful limitation on the standard.

Comments on Proposed Rule
The public may file comments on the NLRB's proposal on or before November 7, 2022. Any replies to comments filed during the initial comment period must be filed with the NLRB on or before November 21, 2022. The NLRB will review these comments, then address or reject arguments raised by them in a final rule. Given that the proposal is likely to generate significant commentary, we do not anticipate the NLRB issuing a final rule much earlier than late winter or early spring of 2023.

This note is for informational purposes only and not for the purpose of providing legal advice. You should contact your legal counsel to obtain advice with respect to any particular issue or problem.

Diversity Update

Madeline Smith, SHRM-CP
EHRA Diversity Chairperson

Did you know October is National Disability Employment Awareness Month? Sometimes referred to as NDEAM, National Disability Employment Awareness Month was established to shine a light on the incredible contributions of individuals with disabilities to the workforce. This October, participate in the movement and spread awareness through actions at your company or in your community by doing things like:

- **Review your company policies -** A great way to show support to employees is to take time to review your company's culture by double-checking that those with disabilities are included.

- **Evaluate your job descriptions –** Bring more candidates to the table by showing you are a great place to work before they even apply.
    - Eliminate requirements for the job that aren't truly essential
    - Be mindful of ableist language
        - Ex. change "walk from station to station" to "move from station to station"
        - Ex. change "type data into a spreadsheet" to "input/enter/record data into a spreadsheet"
- Encourage people to apply and reiterate that your company is an equal opportunity employer. Demonstrate that your company walks the talk through advertising:
    - Mental health counseling
    - Paid parental leave
    - Other inclusive benefits
- **Be an ally through:**
    - Educate yourself
    - Respect individual experiences
    - Hire and promote people with disabilities
    - Diversify your social media feed and amplify voices of people with disabilities
    - Show up for people

You can find resources, articles, and more through providers like these:

https://www.dol.gov/agencies/odep/initiatives/ndeam

https://www.cdc.gov/ncbddd/humandevelopment/become-a-disability-ALLY.html

https://www.socialdiversity.org/updates/00n8u4gcgi02vu7x2xgsvsbbvj6y79





CLASSIFIEDS: JOB POSTINGS & HELP WANTED ADVERTISEMENTS

Help Wanted Advertisements

Companies, Recruiters, and Human Resources Professionals who are seeking applicants for human resource positions may place "Help Wanted" advertisements on the EHRA website. The advertisement, which will run for 30 days, will appear on the EHRA Jobs webpage that can be viewed by the general public. This option also provides additional reach with posts made on the EHRA Facebook, Twitter, and LinkedIn social media pages.

The following rates apply for "Help Wanted" Advertisements:

- SHRM Members: $100/30 days
- Non-SHRM Members: $200/30 days
- Staffing Agencies: $250/30 days

To place a "Help Wanted" job listing, click here and complete the online form. The Communication Chair will review the submission and contact the employer submitting the application. Once the posting has expired, the Communications Chair will contact the employer with an invoice and information on payment.

Job Wanted Advertisements

Members of EHRA who are seeking new career opportunities may place "Job Wanted" advertisements on the EHRA website. The listing, which will run for 30, will appear on the Job Link webpage viewed only by active EHRA members who are logged into the website. If the EHRA member placing this advertisement would like for the listing to be confidential, the EHRA Communication Chair will serve as liaison between the member and interested employers.

These advertisements are free of charge for EHRA members.



EHRA is looking for sponsors for our Monthly Meetings.

Sponsorship provides many benefits including presenting your business to the meeting attendees .

Contact Samantha at samantha.witte85@gmail.com for more details!

HOW DIS-ABILITY CAN BUILD YOUR WORKFORCE



Employing Individuals with Disabilities Awareness Event

October 12, 2022
Old National Events Plaza

Keynote Speaker

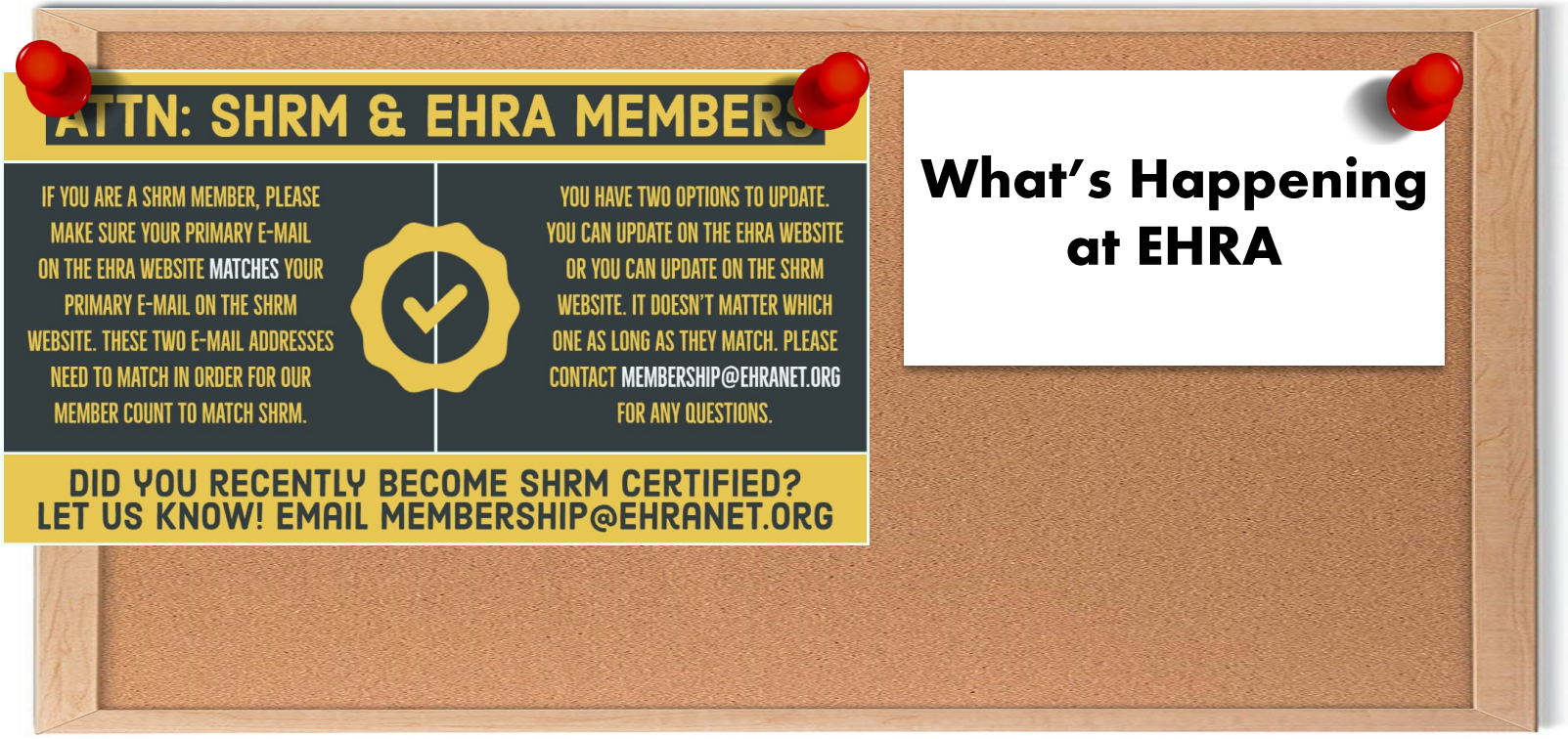
Becky Curran Kekula

10:30 am
Panel Discussion

11:45 am
Luncheon featuring Becky Curran Kekula

1:30 pm–3:30 pm
Job Fair

For more information or to register for the workshop and/or luncheon, please contact the Evansville-Vanderburgh County Human Relations Commission by Friday, September 30 by calling (812) 436-4927 or emailing hrc@evansville.in.gov.



What's Happening at EHRA

2022 board

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agries@kellerschroeder.com

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djtklt@yahoo.com

Secretary
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jessicabailey@berryglobal.com

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metst53@hotmail.com

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juliakpillowhrin@gmail.com

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jfertig@usi.edu

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jgessling@kddk.com

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samantha.witte85@gmail.com

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katie.kissel@phrehab.com

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mreed@scvl.com

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