



2019 State SHRM Conference

May 8th – 10th, 2019

Aberdeen, SD

Northern State University, Johnson Fine Arts Center



UNLEASH *your* POTENTIAL

LEARNING TODAY FOR A CHANGING TOMORROW

Conference Registration Fees

Early Bird Cash	\$225	1 Day Cash	\$100
Early Bird Credit Card	\$235	1 Day Credit Card	\$110
Cash – After 3/31	\$275	Student Rate	\$99
Credit Card – After 3/31	\$285	Guest Meal	\$25

More information can be found at AAHRA's website <https://aahra.shrm.org> or on the SoDak State SHRM Council's website www.sodakshrm.org.

Accommodations are available at AmericInn and My Place Hotel in Aberdeen.

Please direct questions to Conference Chairs:
Kim Bowman—kim.bowman@dacotahbank.com
Kristin Kroell—kristin.kroell@agtegra.com

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Justice Department Says ACA Should Be Struck Down

March 26, 2019—The Justice Department is supporting a federal judge's ruling that the Affordable Care Act (ACA) is unconstitutional in a case that could eventually be heard by the U.S. Supreme Court. In the meantime, all ACA coverage and reporting obligations for employers remain in place.

"The Department of Justice has determined that the district court's comprehensive opinion came to the correct conclusion and will support it on appeal," said Kerri Kupec, spokesperson for the Justice Department, as reported by CNN.

On Dec. 14, in *Texas v. United States*, district court judge Reed O'Connor ruled that because Congress eliminated the penalty on individuals without ACA-compliant health coverage effective Jan. 1, 2019, the ACA's individual mandate requiring people to have health insurance "can no longer be sustained as an exercise of Congress's tax power." O'Connor, who sits in the Northern District of Texas, then struck down the ACA in full, concluding that the individual mandate is so connected to the law that Congress would not have passed the ACA without it.

The suit against the ACA was filed last year by a group of Republican state attorneys general and others opposed to the statute. The appeal is led by Democratic state attorneys general.

O'Connor allowed the law to stand while his judgment is under appeal to the 5th U.S. Circuit Court of Appeals in New Orleans. "No matter how the appeals court rules, the matter is certain to move on to the Supreme Court," said Edward Fensholt, senior vice president and director of compliance services at Lockton, a benefits brokerage and consultancy based in Kansas City, Mo., in previous *SHRM Online* coverage.

However, Andrew Douglass, an attorney with Reed Smith in Chicago, predicted that if the 5th Circuit reverses the district court decision, the Supreme Court is unlikely to review the case. But he predicted that the 5th Circuit, which he characterized as conservative, would affirm, in which case Supreme Court review would be likely.

Some think the Supreme Court is likely to uphold the constitutionality of the law, which Congress arguably reaffirmed when it amended the statute in 2017 by lowering the individual mandate tax to zero, said Brian Johnston, an attorney with Jackson Lewis in Kansas City, Mo. He said the Justice Department's new position makes more sense than its assertion before the district court ruling that pre-existing conditions were constitutional but the rest of the law wasn't.

The Supreme Court in 2012 decided that Congress had the power to enact the ACA because of the individual mandate, which the court interpreted to be a tax, Johnston noted. Without the tax, arguably there is no basis to uphold the law, he added.

If the Supreme Court strikes down the entire ACA as unconstitutional it would be "monumental," as the number of uninsured individuals would be likely to swell, he predicted.

Democrats in the House of Representatives are likely to file a brief in support of the constitutionality of the law, Douglass noted. *(continued on next page)*

Staying Compliant

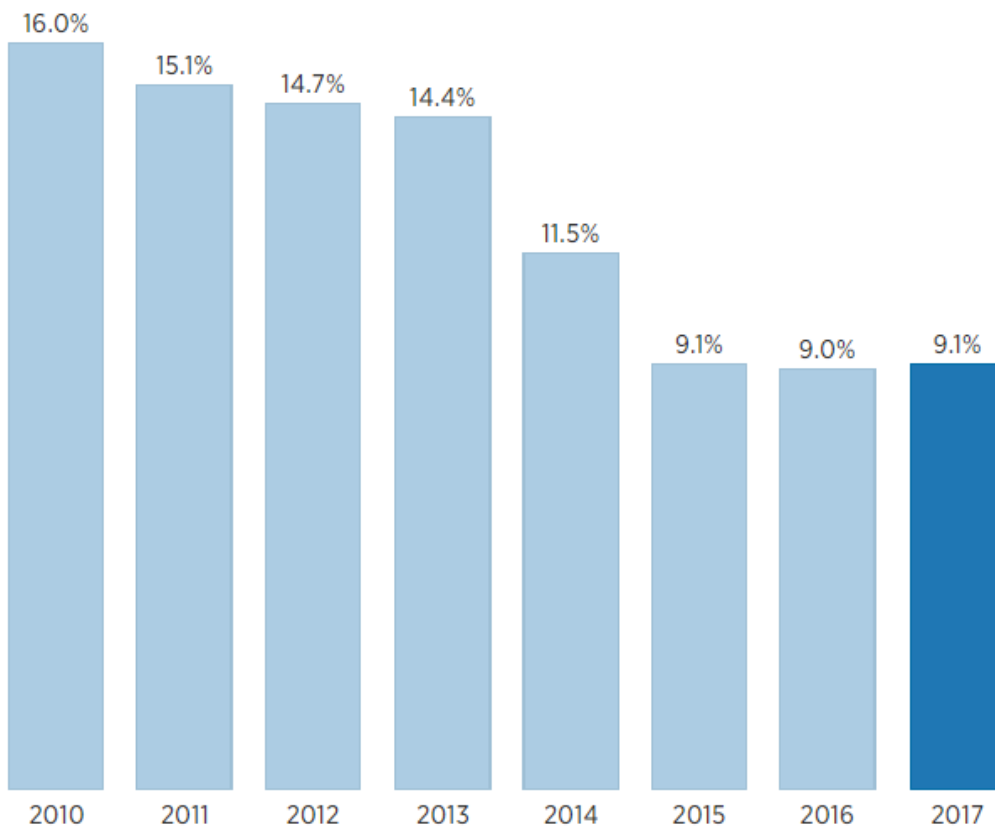
For now, employers should remember that the ACA is still the law and the Justice Department's stance does not change their present compliance obligations, said Stephanie Smithey, an attorney with Ogletree Deakins in Indianapolis. Employers still have to offer health care coverage to at least 95 percent of full-time employees and properly report offers of coverage, so they are not penalized.

"Employers don't have any option other than staying the course. The ACA is still the law," said Ann Caresani, an attorney with Tucker Ellis in Cleveland.

Source: Beth Mirza via SHRM.org (online article)

The number of Americans with health insurance saw years of gains. That's come to a halt.

Health uninsured rate creeps slightly



Source: [National Health Interview Survey](#)



Source: Angelica LaVito via www.cnbc.com, published May 22, 2018 (online article)

Those 'Best' and 'Worst' Places for Working Women Have Some Things in Common

Do geography, politics and female lawmakers make a difference?

March 27, 2019—For years, organizations have ranked cities, states and countries according to how friendly their workplaces are toward women, using barometers such as paid maternity leave, gender pay equity, flexible schedules and the percentage of managerial jobs held by women.

There are some common themes on these lists of the best and worst places for working women: Typically, the "best" places are in states that tend to choose Democratic presidential candidates and that are often on the East and West coasts or north of the Mason-Dixon Line. The "worst" places tend to be in the South, religiously or socially conservative states, and places where female legislative representation is lacking.

"It seems pretty clear from the results [of these studies] that more-liberal [areas] are better for female entrepreneurs, female politicians, moms and women in general," said Stefanie K. Johnson, associate professor at the Leeds School of Business at the University of Colorado Boulder. "This makes sense, because more-conservative values, like we tend to see in the South and Midwest, include a greater emphasis on traditional gender roles. Women stay home with children, men go to work. It's hard to check those values at the [workplace] door."

The Latest 'Best' List

MagnifyMoney, a personal finance website for consumers, recently published its list of best and worst places for working women. MagnifyMoney analyzed and ranked the 50 largest U.S. cities based on eight factors that affect women's ability to achieve financial and professional success. The study concluded that:

- **Washington, D.C.**, is the best place overall for working women. It has the highest percentage of managerial jobs held by women . It also has some of the strongest parental- and pregnancy-leave policies of the 50 cities surveyed, and it has the most affordable child care among the top 10 cities on the list.
- **Boston; Providence, R.I.; and Sacramento, Calif.**, were among the top 10 cities, thanks in large part to their high rates of women in management.
- **Seattle and San Diego** have among the highest number of women-owned business. "The West Coast, in general, is a place where women entrepreneurs are succeeding," the study authors wrote.
- **Minneapolis** has the lowest unemployment rate for women of all the cities surveyed and the highest percentage of working women covered by employer health insurance.
- **Denver** is another top 10 city with low unemployment among women.
- **Los Angeles** has the lowest gender wage gap, with an 11.2 percent spread between women's wages and men's.
- **San Diego and Sacramento, Calif.**, had the next-smallest gender wage gaps, at 12.4 percent and 13.7 percent, respectively.

(continued on next page)

Those 'Best' and 'Worst' Places for Working Women (continued from previous page)

And the 'Worst' Cities Are ...

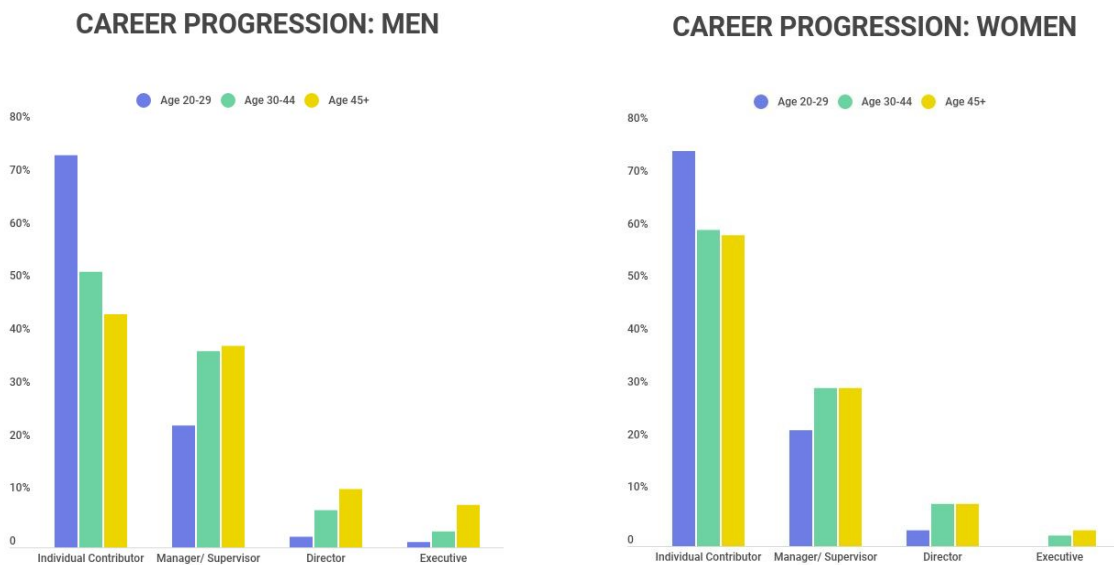
Here are details on the cities' rankings:

- **Memphis** faces low female representation in the Tennessee Statehouse. The state has one of the lowest percentages of women in state legislative offices. Memphis also has a relatively high unemployment rate for women.
- **New Orleans** has the widest gap in earnings between men and women of all 50 cities, at 26.6 percent. There's also a low rate of female representation in the Louisiana Statehouse.
- **Birmingham** also faces a low rate of female representation in the Alabama Statehouse.
- **Detroit** has a high unemployment rate for women, as well a wide gender pay gap.
- **Houston** has the lowest percentage of women in management.
- **Salt Lake City** and **Oklahoma City** have low percentages of women in management. And Salt Lake City has a high gender pay gap.
- In **Miami**, fewer than half of working women receive health coverage through their employers.
- **Charlotte** came in last in the rankings. In that city, women have "nearly nonexistent parental protections," the report authors wrote, and more of their paychecks go toward child care there than in any of the other surveyed cities: More than a quarter of their paychecks, on average, go to child care.

Please visit <https://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/best-cities-for-working-women-.aspx> to read the full article and view more statistics.

Source: Dana Wilkie via SHRM.org (online article)

THE STATE OF THE GENDER PAY GAP 2019



Please visit <https://www.payscale.com/data/gender-pay-gap> to read the full report and see more statistics.

Source: PayScale via PayScale.com (online report)

Short Work Shifts Were Not Required Accommodation

March 26, 2019—plaintiff failed to persuade a federal district court that eight-hour work shifts would have been a reasonable accommodation when longer ones were regularly required and considered an essential job function.

The plaintiff had been employed as a process coach at one of the employer's assembly facilities. After two periods of lengthy medical leave, he sought to return to his position with the accommodation that he not be required to work more than eight hours per shift or 40 hours per week. For nine months, the company denied the plaintiff's reinstatement on the grounds that process coaches were, during this period, working 10- to-14-hour shifts and no eight-hour shifts were available. The company eventually reinstated the plaintiff with his requested work limitations, anticipating that workloads would decrease in the coming months, but the plaintiff soon initiated another period of medical leave and did not return to work.

The plaintiff sued, alleging that the employer had neglected to engage in the interactive process for identifying a reasonable accommodation and failed to accommodate him, in violation of the Americans with Disabilities Act (ADA).

In dismissing the claims, the court concluded that the employer had properly denied the plaintiff's reinstatement during the nine months he had requested it because the company had proven that no open positions were available for the plaintiff to fill. The plaintiff argued that there was an abundance of work for process coaches to perform, and therefore the company easily could have provided him a position limited to eight-hour shifts.

The company countered that although plenty of work existed, its practice was to manage periods of heightened workload by requiring process coaches already on staff to work longer shifts and transferring underused process coaches from other facilities. According to corporate policy, local management could require longer hours but could not increase head count. Therefore, the plaintiff could not identify an open position that he was eligible to fill. Because the ADA does not require employers to create new jobs to accommodate individuals with disabilities, the plaintiff's failure-to-accommodate claim failed.

The court also concluded that the employer would not have been required to reinstate the plaintiff even if an open position had existed. Although the ADA requires employers to accommodate employees with disabilities by relieving the employees of nonessential functions they cannot perform, employers are never required to remove essential functions. The court concluded that the company was justified in determining that the ability to work shifts exceeding eight hours was an essential function of the plaintiff's position. Significantly, the court relied on the employer's judgment and written job descriptions in determining which job functions were essential.

Johnson v. Ford Motor Co., E.D. Mich., No. 1:17-cv-11412 (Jan. 2, 2019).

Professional Pointer: This case illustrates that written policies and procedures can provide employers a significant advantage in litigation. Although the employer refused to accommodate an indisputably disabled employee—and even refused to discuss potential accommodations with him—the employer prevailed because it proved that head counts were set at the corporate level and that local managers had to manage additional workload by using existing employees. Therefore, even though the plaintiff could identify work he was able to perform, he could not identify an open position that was available.

Source: Michael J. Lorenger via SHRM.org (online article)

congrats!

Our NESD SHRM Chapter qualified to be a 2018 SHRM Foundation Chapter Champion!

Our chapter received this honor because we completed all three SHRM Foundation activities outlined in the 2018 SHAPE workbook: (1) made a donation to the SHRM Foundation from chapter funds; (2) hosted a fundraising event to benefit the SHRM Foundation; and (3) conducted a leadership campaign.

Every gift received, including donations from our chapter and others, was used to deliver 300+ scholarships in 2018 and to continue work on engaging and integrating military veterans in the workplace. Additionally, our contributions supported the launch of the Foundation's Veterans at Work Certificate, a program developed for HR professionals to help them better understand the value veterans bring to the workplace and how to integrate veterans in their organization.

Last, **THANK YOU** for making a difference in the lives of HR Professionals!



Turning obstacles into opportunities takes teamwork... Join us to make a difference!

Team Empower (TE) is a special group of passionate individuals who are dedicated to helping empower HR professionals to build inclusive organizations. Established in 2017, TE is the SHRM Foundation's newest and most accessible giving circle. Your annual donation of \$30 or more will automatically add you to the team.

All members of TE will:

Be recognized by the SHRM Foundation throughout the year for their support and dedication.

Receive quarterly email on SHRM Foundation initiatives.

Wear a special TE ribbon at SHRM Annual Conference and Volunteer Leaders' Summit.

Be invited to hear how their work makes a difference during our annual webcast each fall.

Please visit <https://www.shrm.org/foundation/getinvolved/donate/join-team-empower/pages/default.aspx> to learn more and/or donate!

Congrats! 2019 NESD SHRM LATI Scholarship Winner



Pictured from left to right: Sheila Mennenga (NESD SHRM), Brandon Steele (Scholarship Recipient from Lake Mills, IA) and Laurie Gates (NESD SHRM)



Our NESD SHRM Chapter came out strong for our “PACHing party” on Wednesday, 3/27/2019—**AWESOME JOB!**

A note from People Against Child Hunger (PACH):

Dear NESD SHRM,

Thank you for participating in our “PACHing party” and helping to pack over 500 foodsacks. Thank you to those who helped with prep work. We are grateful that you volunteered your time and energy to this worthwhile project and hope that you had a rewarding experience. Without volunteers like you, we would not be able to provide for children who need food assistance over the weekends. Because it is vital that we continue to offer an experience that is rewarding and meaningful to the organizations, we are always looking for ways to improve the services we offer. If you have any suggestions or concerns based on your experiences with PACH, we would appreciate hearing from you.

On behalf of our board of directors and the children we serve, ***we thank you for your support.***

Sincerely,

Volunteer Coordinators—Sue Luken and Lisa Fuhrer

*Watertown Area Chamber of Commerce
presents :*

RECRUITING IN TIMES OF LOW UNEMPLOYMENT



Learning Workshop with

Mike Henke

Date: Wednesday, April 3rd

Time: 11:00-1:00

Location: Watertown Event Center

How do you attract candidates in these challenging times, and what are potential employees looking for? Hear the latest innovative methods that can assist you in filling openings!

Through this interactive workshop you will learn:

- * Total revision of your job postings
- * How to improve your interview process
- * Finding the "hard to find" candidates!

\$40 Chamber Members, \$50 non members

Includes lunch!

RSVP by April 1 to: coc@watertownsd.com





Contact Us

We are a network of HR Professionals. If you have a question, concern or inquiry, please reach out to one or all of us. We are here to help and teach each other!

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Our last-minute tidbits and events:

- ▶ Mount Marty College (MMC) in Watertown now offers **Business and Industry Talent Development Seminars** customized to the needs of your organization. If you are interested, please email Heidi Schooley at heidi.schooley@mtmc.edu or Cristina Gordon at cristina.gordan@mtmc.edu. Or, you may call them at 605-886-6777 for more information.
- ▶ **2019 NESD SHRM Wage Survey:** work is in progress to get this template set up and ready for distribution soon. We strongly encourage all employers to participate, so we can gather the most accurate information for our area. If you have any questions, please contact Laurie Gates at 605-753-8215 or lgates@escomfg.com. More to come on this topic!
- ▶ Are you looking to get **HRCI or SHRM certified** soon? Are you looking for a local study group to help you? If so, contact Tammy Davis at tammy.davis@we-online.com for more information.

HR HUMOR: only HR will fully appreciate these comics!



WRONG!

