



BVHRMA Newsletter

April 2009

Chapter #0330



Monthly Program & Luncheon

Articles

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TOPIC: Your Fiduciary Responsibility Under ERISA

WHEN: Thursday, April 2, 2009

TIME: 11:30AM – 1:00PM

WHERE: 1300 George Bush Drive and Holik Drive,
College Station Conference Center, Room 127

COST: \$10/member & first time guest
\$15/non-RSVP guest

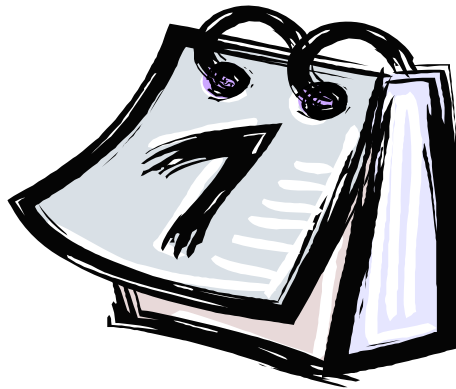
SPEAKER: ***Karla Bounds-UBS Financial Services Inc.***
Karla has earned extensive professional recognition for her achievements over the years. She began her career in financial services with Ernst & Young as an auditor in 1994 and worked for nine years as a Controller for Good Shepherd Medical Center Marshall.

DESCRIPTION: Responsibility for retirement plans usually falls upon the HR personnel, so it is important to know, understand and manage fiduciary responsibilities under ERISA. We'll discuss being a plan sponsor, fiduciary responsibilities under ERISA, who is a plan fiduciary. Which individuals can be plan fiduciaries, business decisions VS. fiduciary decisions, what employer duties are as an ERISA fiduciary, liabilities for breaches of fiduciary duty, minimizing exposure to liability, insurance, prohibited transactions, and reporting/disclosure obligations.

NOTE: *This program has been approved for 1.0 (General) recertification credit hours toward PHR, SPHR and GPHR recertification through the HR Certification Institute. Please be sure to note the ***program ID number on your recertification application form. *If you would like to count this program as 1.0 recertification credit towards your PHR, SPHR, or GPHR, please be sure to pick-up your receipt for this meeting, the program ID # will be listed on the receipt. You'll need to pick-up your receipt on 04/02/09.*

MENU: Enchiladas, pinto beans, Spanish rice, sour cream, salsa and chips, sweet and un-sweet tea (subject to change).

RSVP: LGalvan1984@gmail.com by noon on Tuesday, **March 31, 2009.**
Please reply by the deadline to ensure that the appropriate number of meals are ordered.



Mark Your Calendar!
BVHRMA May 2009 Program

Please join us on May 7, 2009 when *Monica Toth* will give a presentation about the **Recent Benefits Legislation: COBRA and the CHIP Reauthorization Act.**

This program has been submitted to the HR Certification Institute and is pending approval for (1) General Credit Hour

SHRM & Other Events

Please visit the web address listed below for more information about these events.

2009 SHRM®

Staffing Management Conference

<http://shrm.org/conferences/staffingmanagement/>

April 28 - 30, 2009

Las Vegas Hilton

Las Vegas, NV

2009 SHRM®

Annual Conference & Exposition

<http://shrm.org/conferences/annual/>

June 28 – July 1, 2009

New Orleans, LA

HR Southwest

HR Rocks!

<http://www.hrsouthwest.com/>

October 13 – 16, 2009

Fort Worth Convention Center

Fort Worth, TX

REGISTER NOW!

**** (Indicate our Chapter number- #0330 during registration & our Chapter will get credit!) ****

March is:

Alcohol Awareness Month
Autism Awareness Month
Cancer Control Month
Celebrate Diversity Month
Child Abuse Prevention Month
National Humor Month
National Poetry Month
Stress Awareness Month

Diversity Dates

1 – April Fool's Day
5 – Palm Sunday
9 - Passover
10 – Good Friday
12 – Easter Sunday
15 – Tax Sunday
22 – Earth Day & Administrative
Professionals Day

“Sometimes a headache is all in your head. Relax.” ~Hartman Jule

Legal Briefs

Welcome to Legal Briefs for HR, an update on employment issues sent to over 3800 HR professionals, in-house counsel and business owners to help them stay in the know about employment issues. Anyone is welcome to join the email group . . . just let me know you'd like to be added to the list and you're in! Back issues are posted on my firm's website at www.munckcarter.com under E-Newsletter. Welcome to new subscribers who attended my FMLA speech on behalf of the Texas Association of Business. And if you'd like to hear what's up for employers this year, see # 10 and 11 below for presentations of "Don't Mess With Texas (Employers)": A Legal and Legislative Update."

- 1. March Badness** - Yep, it's almost that time of year and the number of type of electronic devices that can display streaming video of the NCAA basketball tourney have multiplied like rabbits. In the "old" days, your employees might've taken a long lunch at the neighborhood sports bar. Then the NCAA partnered with CBS.com a few years ago, allowing employees to watch the game via desktop computer from the comfort of their cubes. They even added a "Boss Button" to hot key to a generic spreadsheet when the boss was approaching. Now, add the array of hand-helds that carry live video and "game on" can happen just about anywhere. Let your imagination wander. Some employers will try to ban web-watching as nonproductive activity. Increasingly, however, many employers subscribe to the "if you can't beat 'em, join 'em" theory, and use the games to promote team spirit and have some fun at work. With the economy wearying and worrying most of us, maybe a bit of fun is just what's needed? Up to you.
- 2. GINA's Almost Here** - The Genetic Information Nondiscrimination Act (GINA) was signed into law on 5-21-08 and scheduled to take effect at various times this year. We've been waiting to see the EEOC's proposed regulations, which issued this week. Go to <http://edocket.access.gpo.gov/2009/E9-4221.htm> to print out your own copy.

GINA has two titles. One applies to health plans (Title I) and one to employers (Title II). This reg, which came from the EEOC and applies to Title II, takes effect on Nov. 21, 2009. A request for comments on Title I, which takes effect on May 21, 2009, issued in October 2008 from the Dep'ts of Labor (EBSA), Health & Human Services and the Treasury (IRS) and we're waiting on final regs. The gist of Title II is to restrict the acquisition and use of genetic info for purposes of making employment decisions, and to strictly limit the confidentiality and disclosure of such info. In addition to nondiscrimination and nonretaliation provisions, a covered entity may not request, require or purchase genetic info (as defined in the reg) with exceptions for [1] inadvertent acquisition, such as "water cooler" conversations or responses to a general inquiry about one's health or one's family's health; [2] voluntary wellness programs if there is prior knowing, voluntary and written authorization and the identifiable info goes only to the individual or the program's licensed health care providers or counselors and not to the employer (unless info is aggregated and anonymous); [3] FMLA and other state/local law leave of absence certifications; [4] info contained in commercially available documents (e.g., newspaper) and media (e.g., Internet) but employers may not search medical databases or court records; [5] genetic monitoring for workplace exposures to toxic substances; and [6] tests of forensic labs who are tested for quality control to detect contaminated samples. You should store genetic info in the same manner as medical exam and inquiry info under the Americans With Disabilities Act (i.e., "separate and confidential") but it's OK to put genetic info and ADA info in the same protected file. Disclosure of genetic info is prohibited (except info that came from [4] above) with exceptions for [1] the subject individual; [2] compliant health researchers; [3] in response to a court order (but you must notify the individual, if the individual is unaware of the court order); [4] to government officials investigating GINA compliance; [5] if tied to compliance with leave requirements under FMLA and similar state/local leave laws; or [6] to a government public health agency involving imminent threat from a contagious disease.

3. **Speaking of FMLA** - Your legislators in DC are busy being stimulating, but they can still find the time to file bills to expand the FMLA. A bill from the last session, proposing 12 weeks of PAID FMLA for eligible employees, has yet to be refilled but is expected. Bills already on deck this session include proposals to drop the covered employer definition to 25 (HR 824), eliminate the "hours worked" requirement (HR389) and expand the list of qualifying reasons to include victims of hate crimes (HR262), time off for kids' or grandkids' school and community activities and their routine medical/dental appointments, as well as time to care for the needs of elderly relatives (HR 824). Since the National Defense Authorization Act effected the first-ever amendment of the FMLA last year, it's likely that additional changes will be met with less resistance than past bills.
4. **Take That!** - Legislators who are not wild about the Employee Free Choice Act have countered with the Secret Ballot Protection Act (HR 1176). If passed, it will amend the National Labor Relations Act to specify that union elections will be held via secret ballot and any attempt to recognize a union without such an election is an unfair labor practice. Another backlash bill is the Government Neutrality in Contracting Act (HR

983) which would codify former President Bush's prohibition against project labor agreements. This bill was filed shortly after President Obama issued E.O. 13502 which revokes the Bush E.O. and encourages (but does not mandate) that federal agencies use PLAs for federal construction projects of at least \$25 million.

5. **Don't Be an April Fool** - Unsuspecting Texas employers may not realize there are a number of new laws taking effect on April 1. Some are repackaged and expanded data security provisions and some are brand spanking new. Did you know that there must be a written agreement between you and any employee who is paid, in whole or in part, via commissions? And that the agreement must include the method by which commissions will be computed and paid? And that the sales rep must be provided with a copy? And that any provision for a venue outside of Texas and/or waiver of this right is void? See Chapter 54 of the Texas Business & Commerce Code. I'm not foolin'!
6. **Guns in the Parking Lot: The Sequel** - As the story unfolded, OK passed a law in 2004 that was supposed to prevent employers from disciplining or discharging employees who kept guns in their cars while parked in their employers' workplace lots and garages. A coalition of employers, alarmed by the law, were granted a temporary restraining order in 2004, followed by an October 2007 permanent injunction, blocking enforcement and preserving their right to choose whether guns just outside the workplace door is a good idea or not. The decision was appealed to the 10th Circuit, which reversed the District Court in February 2009, holding that the OSHA general duty to provide a safe workplace did not preempt the state law. Emboldened by this development, a bill has been filed in the Texas legislature to similarly prohibit employers from banning guns in their parking areas, in Texas. This same bill failed during the 2007 session.
7. **Let's Try This Again** - Despite failed attempts in the past, a bill has been introduced in Congress to establish nonexempt employees' option to use comp time in lieu of overtime, in the private sector. The Family-Friendly Workplace Act (HR 933) would give employees the chance to use 1.5 hours of paid time off for each hour of overtime worked. A prior attempt had the support of Sen. Kay Bailey Hutchison, looked viable and was strongly supported by SHRM. Proponents say comp time helps low wage earners get paid time off for FMLA and similar personal needs, while opponents claim it deprives them of overtime pay. This version squarely addresses that objection, by giving the employee the right to choose time off or cash.
8. **Snake Handlers** - Which is another phrase for persons tasked with handling COBRA, including the new employer subsidy available under the American Recovery and Reinvestment Act of 2009 ("ARRA"). Additional guidance is expected but for now, go to www.dol.gov/ebsa/cobra.html for a fact sheet, FAQs, the new workplace poster (in two sizes), a flyer for employers and one for employees and a link to the IRS webpage where you'll find the Form 194, which is used by employers to report their premium assistance payments and take advantage of the subsidy. To qualify for the premium assistance, the employee (or former employee) must have been involuntarily separated

(no word yet on whether "mutual" partings will qualify) between 9-1-08 and 12-31-09. Those who lost their jobs between 9-1-08 and ARRA enactment and did not opt into COBRA will get a 2nd 60-day period to opt in. Top earners (\$125,000 or \$250,000 for joint returns), those who are eligible for coverage under another health plan (e.g., spouse's) and those who are Medicare-eligible do not qualify for the subsidy. If you have a question now and can't wait for additional guidance, you can call a U.S. Dep't of Labor Benefits Advisor toll-free at 866.444.3272.

9. **Check it Out** - Yours truly will deliver the luncheon keynote for Dallas HR's annual Employment Law Conference, to be held on Tuesday, March 10 at the Omni Hotel Park West (I-635 and Luna). It will be a challenge to cover the new laws and pending changes in an hour, but I'm up to the task! Bring your pen and be ready to make a personalized "to do" list. For more info and to register, go to www.dallashr.org. Hope to see YOU there!
10. **Check it Out (on the Beach)** - And for friends in Corpus Christi, I'm coming to your town to share the good word at the March 19 luncheon meeting of the Corpus Christi HRMA. For more info and to register, go to www.cchrma.org and click on RSVP Meeting and Event Calendar.
11. **For the Birds** - If you like being "tweeted" and want breaking news on employment law changes, follow me on Twitter. I'm at @amross.

Until next time,

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Legal Briefs for HR ("LB4HR") is provided to alert recipients to new developments in the law and with the understanding that it is guidance and not a legal or professional opinion on specific facts or matters. For answers to your specific questions, please consult with counsel.

Chapter Announcements

Welcome to our new member!

Kerri Spann



Please remember to RSVP to

LGalvan1984@gmail.com

**by noon on Tuesday, March 31,
2009** for the 04/02/09 Program:

**Your Fiduciary
Responsibility Under
ERISA**



TBA