



August 2005 Newsletter



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Vague Doctor's Notes Did Not Trigger FMLA

Michael Woods worked as a Production Facilitator at Daimler-Chrysler's North Assembly Plant in Fenton MO. On March 16, 2001, Woods left work four hours early without notifying her employer. On April 20, Woods again left work one-and-a-half hours early without permission. On April 23 and 24, Woods left telephone message for the human resources department, stating he would not be coming to work and would be mailing a doctor's note.

On April 24, DaimlerChrysler sent Woods a letter demanding corroboration of his medical reasons for not work and that he report to work. On April 30, DaimlerChrysler received a doctor's note stating that Woods was advised to remain off work pending further "evaluation and treatment." The note did not identify any serious health condition making him unable to work. A second doctor's note simply state that Woods was "Advised to remain off work" until May 6, but again failed to give a diagnosis or disclose a serious health condition.

When Woods returned to work on May 7, he explained he had left work in April for stress-related reasons and because he was afraid that his health was at risk. That day, Woods was suspended pending an investigation. When Woods was fired for the unexcused absences from work after he failed to provide verification about a serious health condition, he sued for violation of the Family and Medical Leave Act.

The U.S. Court of Appeals for the Eighth Circuit has affirmed that Woods did not give adequate and timely notice to his employer that he needed FMLA leave. After having been requested to do so, he should have given notice as soon as possible that a serious health condition had caused his absence. In addition, the vague doctor's notes he provided did not identify any treatment requiring his absence from work, and DaimlerChrysler had no prior knowledge of any serious health condition. {Woods v. DaimlerChrysler Corp., 409 F3d 984 (8th CA 6-7-05)}

- Payroll Currently, August 5, 2005, Issue #16

HRCI Certification Study Group

If anyone is considering sitting for the HRCI certification exam during the next testing window and would like to attend a study group, please contact Leah Smith by email at leah.smith@trajen.com. She will forward the contact information of individuals to interested parties so that they may get together.

Brazos Valley HRMA is an affiliate of SHRM (Society for Human Resource Management). For more information about HR employment, résumé's for individuals seeking a career in HR, and to find helpful links to other HR relevant web sites, go to www.bvhrma.org.

Legal News for HR

By Audrey Mross

Welcome to Legal Briefs for HR! This email update on issues that matter to employers is provided as a service of the SHRM Texas State Council, which I serve as Co-Director of Legislative Action for all 35 chapters in Texas. Feel free to forward this email to anyone who might benefit . . . all are welcome to join this FREE email group of 2500+ subscribers!

A warm welcome to new subscribers who attended the Davis Munck/Dallas HR Breakfast Seminar on SOX and my privacy presentation at the July meeting of the Executive Women in Texas Government!

Here's what's up:

- 1. The New I-9 is Here . . . Sort Of** – HR professionals have been waiting for a revised Form I-9 which would reflect the shortened list of documents acceptable to prove identity and eligibility to work in the U.S. Well, there is a new I-9, but the changes are largely cosmetic. References to the INS have been replaced with the applicable Dept. of Homeland Security departments and the date on the form is now May 31, 2005. At some point, List A will be revised by removing documents that are currently numbered 2, 3, 5, 8, and 9 (except that a Form I-551 is still acceptable under #5). If you want the rebranded I-9, go to <http://uscis.gov/graphics/formsfee/forms/files/i-9.pdf>. And don't forget that, as of 4-28-05, you are able to store I-9s electronically. Check out <http://www.ice.gov/graphics/news/factsheets/i-9employment.htm> for more info.
- 2. Do Not Try This at Work** – The CA Supreme Court, relying upon EEOC guidance, has found that a male manager's consensual affairs with several female underlings may create a hostile environment for other workers. To date, most cases dealing with sexual favoritism focused on isolated cases and found that the conduct, while unfair, did not discriminate on the basis of gender since both male and female "nonparamours" are disadvantaged for reasons other than their gender. The story is different, however, when there is widespread granting of sexual favors in the workplace, since there is a demeaning
- message being sent that women are "sexual playthings" or that advancement will be conditioned upon submitting to such advances by the boss. Further, the court ruled that an atmosphere that is sufficiently demeaning to women may be actionable by both men and women. If you were looking for another reason to strongly discourage supervisor/subordinate intimate relationships, here it is. *Miller v. Dept. of Corrections* (Cal. 7-18-05).
- 3. Do Not Try This at School** – A math teacher may proceed with her claim of being sexually harassed, at work, by one of her students. In denying the Dept. of Education's motion for summary judgment, the court observed that a handful of district court cases suggest that student-on-teacher harassment is actionable under Title VII, and the school could have eliminated the alleged harassment by disciplining, suspending or even expelling the perpetrator. Johnny can't read but apparently he can . . . never mind. *Plaza-Torres v. Rey* (D.P.R. 7-5-05).
- 4. More Fun With FMLA** – Are you wondering how "hands on" the care must be, when an employee claims to need FMLA leave to "care for" an immediate family member with a serious health condition? One man found out the hard way that driving cross country for four days and checking in on his pregnant wife periodically via phone was not enough. The plaintiff tried to argue that the purpose of the trip was to retrieve a more reliable family car and therefore provide the missus with psychological reassurance that she would have reliable wheels, but the court wasn't buying it. Instead, they held that providing care under FMLA requires "some actual care" and the employee should be "in close and continuing proximity to the ill family member." *Tellis v. Alaskan Airlines Inc.* (9th Cir. 7-12-05).

5. **Dialing for Dollars** – In yet another call center case, Humana Inc. will shell out more than \$1 million to settle allegations that employees were forced to work “off the clock.” At issue was the time employees spend waiting for computer equipment to power up, logging on, and then loading the programs necessary to do their jobs. This case is in addition to the \$5.1 million settlement involving Cingular Wireless and the \$4.8 million settlement involving T-Mobile USA arising out of similar claims. The Wage and Hour Division of the DOL is focusing on call centers as a “new” industry with low-wage workers.
6. **Think It Over** – The EEOC filed a motion to reconsider with the PA judge who sided with the AARP and slapped a preliminary injunction on the publication of new ADEA regulations. The regs, supported by both employers and the EEOC, would have allowed employers to reduce or eliminate health benefits when a retiree becomes eligible for Medicare or analogous state benefits, without violating the Age Discrimination in Employment Act. In its argument to the court, the EEOC pointed to recent Supreme Court decisions holding that agency regulations are entitled to deference, where the law is ambiguous and the reg is a reasonable interpretation of the law. Stay tuned! *AARP v. EEOC* (E.D. Pa. 6-30-05).
7. **Heads Up, Michigan Employers** – A new state law that will take effect 1-1-06 requires employers to avoid using four or more consecutive digits of employees’ SSNs on their ID badges, membership cards, permits, licenses or on the outside of a package or envelope that is sent to the employee. The penalties for violations are not nice . . . a fine of not more than \$1000 and/or up to 93 days in the slammer. In addition, anyone who collects social security numbers must create a policy designed to protect the confidentiality of SSNs. See Mich. Comp. Laws sec. 445.84.
8. **ADA and Cancer** – On July 26, the EEOC posted a Q&A on when cancer is a disability under the ADA, when it can be discussed with employees or applicants, how to handle voluntary disclosures of medical information, and suggested reasonable accommodation (to include telecommuting, in some cases). Check it out at www.eeoc.gov then look under “News.”
9. **Smarten Up** – It’s that time of year . . . back to school! There are several good seminars coming up for HR professionals, including [1] the TAB Employment Law Symposium in San Antonio on July 28 & 29 (details at www.txbiz.org), the DHRMA diversity conference on August 9 (details at www.dallashr.org), a legislative update with Fort Worth HRMA on August 18 (details at www.fwhrma.org) and the Pulse Conference at the InfoMart on August 23 (details at www.tutservices.com/pulse).
10. **Oh Baby** – With the increasing numbers of individuals (read: your employees) looking into international adoptions and asking you for help (especially if the company offers adoption assistance as a benefit), you might want to refer them to the U.S. Dept. of State website to learn the basics. Go to http://travel.state.gov/family/adoption/adopti_on_485.html for a ton of advice, including country-specific information.

Until Next Time,

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Meet Your Fellow BVHRMA Members

Steve Davee

Place of birth: Columbia MO.
Hometown: College Station TX
Family: Married 28 years to Anne Davee, one son: Paul – 32 years old

Education: BA in Sociology – University of California, Berkeley

Hobbies / Interests: Dogs, Ranching, Fishing and Travel

BVHRMA Chapter: Steve has been a member of BVHRMA for 4 years, previously serving the chapter as secretary for 2 years. He is also a member of SHRM.

Human Resources: After college, Steve was on active duty for 6 years in the USAF as a B-52 Navigator. Then he worked for Humble Oil and Refining Company (which is now ExxonMobil) in their Marketing Department. After ten years, wanting to have exposure to all aspects of the business in a large corporation, Steve transferred to Human Resources (then called Employee Relations). His first job in HR was Training Supervisor for Exxon Company, USA Houston Personnel Office. Steve then worked in 9 different assignments over the next 18 years. He retired in 1997 and began private consulting with primary focus on Labor Relations, Industrial Compensation, and Employee Development, as the owner of S. C. Davee Associates.

During Steve's years in the HR field he has seen the field change from a transactional focus to a more strategic one. Additionally he sees the ever-increasing need to stay current with legal and technical developments in the field. In giving advice to someone just starting out in HR, Steve advise them to learn to listen, be flexible and never stop trying to learn more about the businesses you are serving.

Steve says he likes the continuous flow of meaningful problem-solving opportunities that working in HR provides. Once when Steve was managing expatriate administration for Esso Exploration, which had employees in 18 foreign countries, he approved reimbursement to an employee in Somalia for the purchase of a mongoose to protect his house from Cobras. This example seems to bring together the listening, flexibility, and problem-solving skills that are such a vital part of Human Resources.

Lawanna Gustavus

Place of birth: Houston Texas.

Hometown: Bryan TX

Family: Married 27 years to Galen, one daughter: Amber Gustavus-Locke 26 years old.

Hobbies / Interests: Lawanna enjoys spending time with her two dogs, Daisy & Domino and boating in the summertime. But most recently, Lawanna has enjoyed spending time with her new granddaughter, Emily.

BVHRMA Chapter: Lawanna has been a member for six years and has previously served they chapter as Vice President of Programming.

Human Resources: Lawanna has worked in Human Resources for sixteen years. Her first job in HR was with a staffing company and she is now the Branch Manager of Kelly Services in Bryan. One of the best parts of working in Human Resources that Lawanna likes is educating customers and employees. She also likes the problem solving opportunities that working in Human Resources provides.

In giving advice to someone just starting out in Human Resources, Lawanna recommends getting a good understanding of employment law and the best practices.

BVHRMA Board Succession Plans

As the current BVHRMA board starts succession planning for the upcoming 2006 year, we are struggling for continued leadership in the chapter. There are a variety of positions, needs, and areas that the chapter would like to provide each year. Unfortunately, our ability to provide the high quality of service and opportunities is directly related to the available and willing leadership within our chapter. The following is a list of the officer and committee chair positions that are currently held in our chapter. Please consider volunteering for a place on the board. If you are interested in serving for the 2006 year, please contact the person currently serving in that area or Leah Smith.

- President – Leach Smith, leah.smith@trajen.com
- President Elect – vacant
- Vice President of Programming – Konny Goff, konny@iGoErgo.com
- Vice President of Membership – Krystal Broussard, krystal@boydreadymix.com, and Steve Davee, scdavee@txcyber.com
- Secretary – Kari Griffin, kgriffin@bryantx.gov
- Treasurer – Jamie Boyd, Jamie@mjs-online.com
- Certification – vacant
- Diversity – Kathryn Greenwade, greenwade@afs.tamu.edu
- Legislation – Leah Smith, leah.smith@trajen.com
- Newsletter – Windelan Johnson, Windelan@iGoErgo.com
- Public Relations – vacant
- School to Work Initiative – vacant
- SHRM Foundation Representative & Advosry council – Thom Holt
- Texas State Council SHRM Foundation Chair - Leah Smith, leah.smith@trajen.com
- Student Liaison – Tom Owen, twoen@tfs.tamu.edu
- Website – Bob Hensz, r-hensz@tamu.edu

HR Southwest

Conference and Exposition

October 26 – 28, 2005

"HR: A Hallmark of Excellence"

To register log on to the website at www.hrsouthwest.com and click on Attendees, then Registration Form and Rates. Under Chapter Name write or type "Brazos Valley Human Resource Management Association" and I am the Chapter Ambassador.

**Tom Owen, SPHR
Professional Development Coordinator**

Membership Drive Kicks off in September

BVHRMA 2005 membership drive kicks off this September. Each year the BVHRMA chapter has a membership drive. This year the drive will begin in September. For members attending the September meeting, they will receive one of our new BVHRMA T-shirts.

Then to highlight the end of the drive at the October meeting, each member that brings a guest to the meeting will receive the meals free for them and their guest. It is our goal to expand the awareness of our chapter and the benefits that come with being a member.

BVHRMA Meetings 2005

Leading from the Heart September 1, College Station Conference Center Room 101 Jill Pollock, A&M	Recognizing & Avoiding the Hazards in the Discipline & Termination Process October 6, College Station Conference Center Room 101 Russ Moen, SPHR, Express Business Solutions
Performance Measurement Plans November 10, College Station Conference Center Room 105 Jan Pfannstiel, AMS Training Services	Holiday Luncheon December 8 BRIARCREST COUNTRY CLUB

Upcoming Seminars & Conferences

<u>Central Texas HRMA Study Group</u> Sept 10 - Nov 19, 2005 in Temple & Killeen www.bvhrma.org This program is being developed <u>at no cost</u> to Texas State Council (TSC) affiliated chapter members and SHRM members. We ask that those who attend free and pass the SPHR return to teach one session in 2006.	<u>The Texas Conference on Regionalism: Strategic Directions for Shaping the Future</u> September 14-16, 2005 www.txregionalcouncil.org/conf/index.php
<u>Workplace Diversity Conference & Exposition</u> October 24-26, 2005 Las Vegas, NV http://www.shrm.org/conferences/diversity/ <u>Conference Sessions</u> will focus on the following topics: Practitioner Exchange, Diversity Issues, and Strategies and Tools.	<u>Strategic HR: Aligning With the Business to Drive Results</u> October 26-28, 2005 New York, NY http://www.shrm.org/conferences/strategy/ This conference is designed to give you strategy practices that will help advance your thought process and focus your efforts on what will get results quicker and with greater success.

Your Foundation at Work: HR Student Scholarships

Each year, the SHRM Foundation provides \$13,000 to support the development of future HR leaders through national student awards and scholarships. The Leonard R. Brice, SPHR, Undergraduate Leadership Award and the SHRM Foundation Graduate Student Leadership Award, presented each June, are designed to recognize and encourage the development of leadership skills in students preparing to enter the HR profession. The SHRM Foundation Student Scholarships,

awarded in the fall, recognize outstanding academic achievement. In recognition of the important work of SHRM chapter advisors to the student membership program, the Foundation sponsors the annual Advisor of the Year Award. For more information on Foundation sponsored awards & scholarships, visit www.shrm.org/foundation.

The SHRM Foundation: Investing in Your Future as an HR Leader