



BVHRMA Newsletter

August 2009

Chapter #0330



Articles

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Monthly Program & Luncheon

TOPIC: Human Resources or Risk Management?



*This program has been approved for 1.0 (General) recertification credit hour towards PHR, SPHR and GPHR recertification through the HR Certification Institute. Please be sure to note the ***program ID number on your recertification application form. For more information about certification or recertification, please visit the HR Certification Institute website at www.hrci.org.*

*****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 number will be listed on the receipt. You will need to pick-up your receipt on 08/06/09.**

WHEN: Thursday, August 6, 2009

TIME: Lunch served from 11:30AM to noon;
Program from noon to 1:00PM

WHERE: 1300 George Bush Drive and Holik Drive,
College Station Conference Center Room 101

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

SPEAKER: **David Kester, SPHR, CEBS**-Director, Human Resources & Risk Management - Harris County, Texas

He has a B.B.A.-Management and a Masters Degree in Human Resources from the University of Houston. He is an adjunct professor for the Graduate program at the College of Business and Economics at Houston Baptist University Graduate School, and has taught at The University of Phoenix-Houston Campus, and for the College of Business and Public Administration at the University of Houston.

He received a Senior Professional in Human Resources (SPHR) designation from the Society of Human Resource Management, Certified Employee Benefits

Specialist (CEBS) with Fellowship designation from the Wharton School of the University of Pennsylvania as well as a Certified Government Benefits Administrator (CGBA) designation from Eastern Kentucky University.

He is the President of the Texas Chapter of Public Risk Management Association (PRIMA) and is a past president and Treasurer of the State and Local Government Benefits Association (SALGBA).

Mr. Kester has done research in the areas of risk management, employee benefits and compensation, employee assistance programs (EAP's) and grant proposal writing. He is a frequent speaker for trade associations, business groups and other educational meetings.

He received recognition as a member of Phi Alpha Alpha, a national honor society for outstanding achievement in a public affairs program. He was honored as the Texas Chapter PRIMA's Risk Manager of the Year in 2000 and the National PRIMA's Risk Manager of the Year for 2006.

Mr. Kester worked several years in the private sector and for an oil field supply manufacturer before joining Harris County in 1987.

DESCRIPTION: HR and Risk Management Functions

- Strategic Issues: Workforce Change and Dynamics
- Roles of Management and Supervisors
- Integration of Employee Benefits
- Administrative Issues and Customer Service
- Limitations and Considerations

MENU: Hamburger steak, twice baked potato casserole, corn, rolls, tossed salad, and sweet and un-sweet tea.

RSVP: rsvpprograms@gmail.com **by noon on Tuesday, August 4, 2009.** *Please reply by the deadline to ensure that the appropriate number of meals are ordered.*



Mark Your Calendar!
BVHRMA September 2009 Program

Please join us on September 3, 2009 when we will be **“Hearing It Straight from the EEOC”**. **Joe Bontke**, Ombudsman & Outreach Manager (Houston area), will present the program.

This program has been approved for 1.0 (General) recertification credit hours toward PHR, SPHR and GPHR recertification through the HR Certification Institute.

SHRM /Other Events & Announcements!

BVHRMA is recognized in the 2008 Campaign Contributors SHRM Foundation Honor Roll as a contributor in the "President's Circle"

Congrats! --- Windelan Johnson received her PHR!

Educational Opportunities: 2009 Essential Employment Law Conference

Presented by the University of Texas School of Law

September 10, 2009, Four Seasons Hotel, Houston, TX

September 17, Cityplace Conference Center, Dallas, TX

September 25, 2009, Four Seasons Hotel, Austin, TX

Early Registration Fee \$235 | please visit web site for more details

Credit Hours: up to 6.50 hrs of MCLE credit

Essential Employment Law is a one-day program designed to provide overviews and updates on issues related to Texas employment law. Content is extensive and exhaustive with topics ranging from employment-at-will to discrimination issues, wage and hour violations, retaliation, FMLA and more. This practical course provides detailed written materials, forms, sample employment contracts, and handbook recommendations. This seminar is ideal for HR professionals and beginning employment lawyers.

To register or for more information go to:

<http://www.utcle.org/conferences/EE09> or contact the University of Texas School of Law at 512-475-6700

**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!) ****

Legal Briefs

Welcome to Legal Briefs for HR, an update on employment issues sent to over 4000 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 munckcarter.com under E-Newsletter.

Here's what's hot:

- 1. What is Your World View?** - Here's a brain teaser . . . does a nonexempt employee of a Texas-based consultancy who resides in Pennsylvania but performs some work in Canada and the UK earn overtime for the work performed outside our borders? According to a judge in Pennsylvania, the answer is "yes." The employer was correct in pointing out that the FLSA does not apply to work performed outside of the U.S., however the employee was also correct in pointing out that the FLSA can be trumped by state law which often provides a higher wage to employees and, in this case, contained no language which limited its overtime pay requirement to work done stateside. *Truman v. DeWolff, Boberg & Associates* (W.D. Penn. 7-09). Lesson learned? When determining your obligations as an employer, knowing the federal law is not enough. States and municipalities have increased their regulation of employment issues to a remarkable degree over the last decade or so and it's not unusual for the analogous federal statute to defer to a state/local law which provides more employee protection.
- 2. Millions for Misclassification** - A California jury awarded a sales rep \$8.4 million in damages, after he was fired for complaining about reduced commissions and failing to show up at meeting to talk about it. The employer tried to argue that the rep was an independent contractor and it could deduct from his commissions at will. The jury disagreed, finding that the employer had sufficient control over the rep to confer employee status (citing to the employer's demand to attend that meeting) and went on to find that termination of his employment violated public policy. *Gardner v. Baby Trend Inc.* (Cal. Super. Ct. 6-09). Penalties for misclassifying employees as independent contractors have been gaining steam for several years and the trend shows no sign of slowing. Make sure that the decision to create that type of arrangement is carefully vetted and documented before you go there.
- 3. Silver Bird** - The mandatory retirement age for commercial airline pilots was bumped from 60 to 65 in December 2007 and the FAA has now published the final rule implementing that change. Pilots may fly domestic flights until their 65th birthday and may pilot international flights that originate or end in the U.S., so long as there is a co-pilot under age 60. The change is a nod to longer life-spans and healthier life-styles. Given that several potentially disastrous flights were skillfully handled by "experienced" pilots (think Iowa cornfields and New York rivers), aren't you happy to see some silver in the cockpit when traveling?

4. **Now Hiring** - The Obama administration is filling key positions in federal agencies that oversee employment issues. On deck now are Jacqueline A. Berrien (associate director-counsel at NAACP), as chair of the EEOC, and three nominees for the NLRB - Craig Becker (associate general counsel for SEIU), Mark Pearce (law firm partner representing unions) and Brian Hayes (Republican labor policy director for the Senate Health, Education, Labor and Pensions [HELP] Committee).

5. **By the Book** - In response to the dip in the economy and ensuing spike in reductions in force, EEOC has posted guidance on its website to help employees understand those severance agreements they're signing. "Understanding Waivers of Discrimination Claims in Employee Severance Agreements" is 16 pages of "gotcha" for employers who do not prepare and use these agreements properly. A severance agreement containing a release of claims is one document you should never pull off the dusty shelf or assume that "one size fits all" during a multi-state reduction in force. Need proof? How about a RIF'd employee who received his severance agreement, read it and hired a lawyer, negotiated changes to the severance agreement, signed the agreement, took the \$100,000 payment and then sued the employer under the ADEA. Turns out the forms did not include all info required under the OWBPA amendments to the ADEA, making the ADEA release invalid. And just to add insult to injury, the plaintiff was not required to "tender back" the severance payment in order to sue his former employer. *Ferruggia v. Sharp Electronics Corp.* (D.N.J. 6-09). Be as informed as your employees increasingly are . . . talk to your counsel first, before seeking waivers of claims via severance agreements.

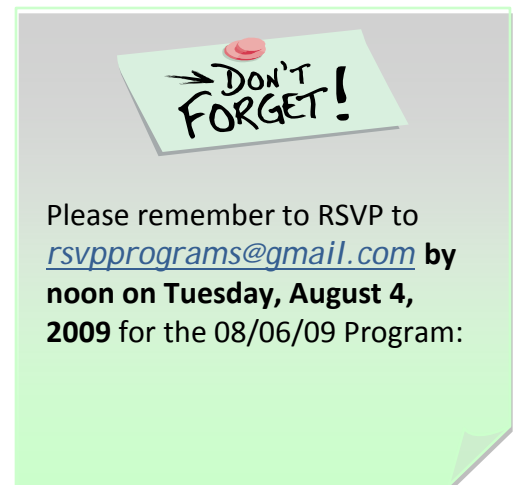
6. **Fair WARNING** - The Federal Oversight, Reform and Enforcement of the WARN Act (FOREWARN) was filed in Congress on June 25 (S. 1374, H.R. 3042) to expand the reach of existing plant closing/mass lay-off law and increase the penalties for noncompliance. FOREWARN proposes to [a] drop covered employer size from 100 to 75 employees; [b] drop trigger from 50 to 25 affected workers; [c] lengthen advance notice period from 60 to 90 days; and [d] increase penalties to double back-pay. And just to reiterate the message from 1., above, do look into whether there is a state statute and/or local ordinance which may apply to your situation, even when WARN does not. At last check, CA, CT, HI, IL, KS, ME, MA, MI, MN, NH, NJ, NY, OR, RI, SC, TN and WI all had WARN "clones." So does Philly, PA.

7. **Training Topic** - It's a really good idea to provide basic EEO training to any person involved in the interviewing process in your organization and an even better idea to refresh that training periodically, as memories fade and the laws change. Case in point . . . as of May 22, public and private employers in Oklahoma may not ask employment applicants whether they own or possess a gun. The penalty for this faux pas question is a fine of up to \$1000. The purpose is to punish employers who may be trying to evade the OK statute which prohibits them from banning guns in locked vehicles parked on their premises.

8. **Never Mind** - Ignore the June 30, 2009 expiration date in the top right corner on your Form I-9 (with 2-2-09 revision date in bottom right corner) and continue using until CIS issues a new one.
9. **Post It** - Go to dol.gov/esa/whd/regs/compliance/posters/flsa.htm for a link to print new federal minimum wage posters. Or leave your July 2007 poster in place . . . that version remains acceptable for satisfying the posting requirement. As you likely already know, the federal minimum wage increased to \$7.25/hour on July 24.
10. **Got Milk?** - A bill introduced in Congress on June 10 (H.R. 2819) would amend the FLSA, requiring employers of 50+ employees to [a] provide breast-feeding employees "reasonable break time" to express breast milk during the workday within one year of birth of the employee's child; and [b] make reasonable efforts to provide a private space, other than a bathroom, in which to express milk. The bill offers employers a 50% tax credit of up to \$10,000 per year, to promote and support these efforts. For full text of the bill, go to [://thomas.loc.gov](http://thomas.loc.gov) and insert the bill number. This is another area where the states are way ahead of the Feds. Check out .lli.org/Law/LawBills.html for links to summaries of breastfeeding laws in the U.S. and abroad. The website is sponsored by La Leche League International.
11. **Summer School** - If you're interested in a live legal update with yours truly, I'll be speaking at the Dallas/Fort Worth Texas Recruiters Network meeting at Prestonwood Country Club on August 5. For registration info, go to dfwtrn.org.
12. **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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HR Focus Areas

Online communities for specialized HR content, including:

- Compensation & Benefits
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- HR Consulting
- HR Measurement
- Staffing Management
- Business Leadership
- HR Outsourcing
- HR Technology
- Workplace Diversity
- Workplace Law
- Public Sector
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