



February 2007

CHAPTER #0330

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## Compensation Analysis Research Project

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**What:** BVHRMA Monthly Meeting and Luncheon

**When:** Thursday, February 1, 2007 from 11:30AM to 1:00PM

**Where:** College Station Conference Center, 1300 George Bush Drive, College Station, TX

Dr. Maura Belliveau will be including all attendees for the BVHRMA luncheon this month in a research project on Compensation Analysis for the Mays Business School. During this interactive session, attendees will be asked to review several scenarios on employee evaluations, particularly with different levels of pay and performance, and make "decisions" on salary adjustments. Upon completing the evaluations, all participants will also answer survey questions on how you made your decisions.

Not only should this luncheon provide participants an opportunity to partner with a research project with Mays Business school, it will give the HR professionals in us all a chance to visit our compensation & evaluation process in comparison to others. All findings at the conclusion of the research project will be shared by Dr. Belliveau with participants.

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### *Prose from the President...*

If you are like me, you are seeing that we are nearing the end of January and wondering where all the time went. Some of you are well on your way to meeting your New Year's Resolutions, while others may have already resolved not to follow most of them. I hope that all of you have resolved to work more on your professional development by attending as many of the BVHRMA meetings as possible, and I sincerely hope that you will stick to this resolution. Your new Board is off to a good start this year with all the positions filled thanks to our two newest board members – Co-Vice Presidents for Programs, Marita O'Dell and Nikki Felcman. Throughout this year we will be working to meet our goals and resolutions to make this a great year for BVHRMA, and we will be completely successful when you stick to your resolution to attend more meetings and become more involved. We will continue to provide excellent programs and other opportunities for you to grow as an HR Professional. So . . . mark your calendars now, on the first Thursday of the month for the BVHRMA luncheon. Then come and join us!

## Legal Briefs

by Audrey E. Mross

Happy New Year! And welcome back to Legal Briefs for HR! This update on issues that matter to employers is provided to HR professionals, in-house counsel, business owners and anyone else who can benefit from a monthly update on new laws, recent court cases, helpful websites and pending legislation. All are welcome to join the group to receive this FREE newsletter which is sent to over 3200 subscribers all over the U.S. (and even a few overseas)! Just email me to be added to the group and you can find previous issues for 2006 posted on the Munck Butrus law firm website at [www.munckbutrus.com](http://www.munckbutrus.com) under E-Newsletter. Let's get this year started:

**I. Double Dose of Legislation** – With the new Democrat-led U.S. Congress vowing to make changes and the Texas Legislature also back in session, there will be many bills worth keeping an eye on.

- a. Federal – The House passed a bill to increase the minimum wage from \$5.15/hour to \$7.25/hour over two years, by a vote of 315-116. The action moves to the Senate, to see if a bill with no strings is passed, or if tax breaks for small business will be the quid pro quo for bipartisan support.

State - Your state legislators have much to mull over between Jan. 9 and May 28, including but not limited to an increase in the state minimum wage, limits on cell phone use while driving, discrimination based on sexual orientation and negating employers' right to ban guns from their workplace parking lots. A brief chart of bills that are of particular interest to employers has been posted at [www.munckbutrus.com](http://www.munckbutrus.com) under E-Newsletter. If you would like to read full text of the bills and check their status and level of support, go to [www.capitol.state.tx.us](http://www.capitol.state.tx.us). That site will

also identify your legislators and provide their contact info, if you would like to communicate your views on these bills.

**2. Boxing Match, Round 2** – Chicago Mayor Daley vetoed a “big box” ordinance in 9-06, but similar measures are poised to be launched elsewhere. The Chicago ordinance required retailers within city limits with 90,000+ square feet and \$1 billion+ in annual sales to pay employees at least \$13/hour in wages and benefits by 2010. Detractors of these measures say they will challenge the ordinances in court, using constitutional (e.g., equal protection, commerce) and statutory (e.g., ERISA) arguments. Defenders of the ordinances point to local living wage ordinances that have been upheld in court. Stay tuned!

**3. Hup, Sue, Three, Four** – The 1<sup>st</sup> Circuit has joined others in finding that claims of discrimination under USERRA, the military leave and nondiscrimination law, should be judged by applying the two-prong NLRA standard instead of the three-prong Title VII standard. Under the former, the employee need only show that prohibited discrimination was a “motivating” factor before the burden shifts to the employer. Under the latter, the ultimate burden of proving discrimination rests on the employee. It's also worth noting that comments (“G.I. Joe” and “Girl Scout”) were not dismissed as mere “stray remarks” since they occurred in tandem with other alleged misconduct and the plaintiff's failure to complain to his supervisors did not torpedo his case. Make sure that your supervisors and managers have been trained to [a] understand basic protected employment rights; and [b] recognize and respond to conduct that could support a claim. *Velasquez-Garcia v. Horizon Lines of P.R. Inc.* (1<sup>st</sup> Cir. 1-4-07). **CONTINUED ON PAGE 3**

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4. **EEO Q&A** – Go to [www.eeoc.gov](http://www.eeoc.gov) for a new FAQ on the revised race and ethnic categories to be used on the EEO-I Report which is due on Sept. 30, 2007. A few nuggets – [a] you don't have to resurvey existing employees on their race/ethnicity for the 2007 report; [b] you can if you want to; and [c] you must accept the employee's self-designation of race/ethnicity even if you believe the answer is incorrect. Also note that there is a new category called "two or more races" for those who self-identify as being of mixed race. Double-check applicable state law, too, for additional guidance. For example, in GA, any inquiry into race cannot have an option labeled "other" and must include an option labeled "multiracial." Also note that OFCCP has yet to decide if/when it will require recognition and use of the new categories for purposes of preparing your affirmative action plans.

#### 5. More Fun With FMLA

- a. It's Enough – An employee's litany of physical complaints over a four-month period were sufficient to put the employer on notice of a possible serious health condition that merited FMLA protection. While a report of "feeling sick" is usually not enough, when it is coupled with reported urination problems and time off for a biopsy, "his incapacity due to undiagnosed prostate cancer and the diagnostic procedures . . . entitled him to FMLA leave." *Burnett v. LFW, Inc.* (7<sup>th</sup> Cir. 12-26-06)
- b. Back to the Future – When does a person who worked more than 1250 hours in the first seven months on the job qualify for FMLA leave? When he's a rehire, even if there is a five-year gap between stints with the same employer. The statute is silent on how to measure the "12 months of employment" requirement but the regs make clear any prior employment counts. *Rucker v. Lee Holding Co.* (1<sup>st</sup> Cir. 12-18-06).
- c. On Call Conundrum – A pilot's paid time spent on-call does not count toward the "1250 hours worked" requirement of FMLA leave. *Knapp v. American West Airlines* (10<sup>th</sup> Cir. 11-24-06)

6. **Bad Timing Means Big Bucks** – A woman who claimed she was groped and fired by her supervisor for refusing his sexual advances has netted \$1.2 million. It's believed that the \$1.1 million in punitive damages awarded by the jury stems from testimony that her supervisor was promoted to be the company's Chief Operating Officer after she made her complaint. *Aoki v. Tactical Affairs Corp.* (HI Cir. Ct. 12-6-06).

7. **Your Employees Aren't So Bad** – If you've been in HR for awhile, you've probably dealt with the person who claims he or she is exempt from federal income tax withholding, citing various constitutional, religious or other arguments. One such employee was not satisfied with the explanation of her employer's statutory duty to withhold and began sending invoices, demanding repayment of withholding taxes. When the employee claimed fraud, the employer sued her for defamation. The process server had the papers thrown in his face by the feisty employee, so the judge handed down a partial default judgment and some jail time for the woman (and her hubby, who had jumped into the fray, too). Their demands eventually mounted to \$5.9 million and they claimed a security interest of nearly \$237 million in the lawyers representing the company, as well as the judge. On appeal, the tax dodger asked for an appraisal on the lead attorney's home and threatened to dissolve the law firm, to collect "unpaid debts." Motion denied! *American Axle & Mfg., Inc. v. Murdock* (Mich. Ct. App. 12-19-06). **CONTINUED ON PAGE 4**

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8. **Immigration Update** – A free half-day seminar, moderated by Cindy Kang and presented by Haynes and Boone on March 1, will discuss business immigration and the changes employers are facing. To register, go to [www.haynesboone.com](http://www.haynesboone.com) and click on Seminars.

9. **Data Security Update** – Yours truly will present a lunch-time talk on data security in the workplace at the Thursday, February 15 meeting of the Texas Association of Business. Businesses must come to grips with expansive and occasionally inconsistent rules on collection, storage, use and disposal of the personal identifying information of their employees and customers. Go to [www.munckbutrus.com](http://www.munckbutrus.com) and click on E-Newsletter for the registration form and send to [jcalderon@txbiz.org](mailto:jcalderon@txbiz.org) to sign up for the meeting, which will be held at the Omni Hotel at Luna & I-635, starting at 11:30 a.m.

Until next time,

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## *Diversity Calendar for February 2007*

- 2 - Groundhog Day (United States)
- 2 - Imbolc (Wiccan)
- 3 - Tu B'shvat (Jewish)
- 4 - Rosa Parks Birth Anniversary
- 5 - Mexico - Constitution Day
- 6 - Japan - National Foundation Day
- 12 - Abraham Lincoln's Birthday (United States)
- 12 - NAACP Founded
- 14 - Race Relations Day
- 14 - Valentine's Day (United States)
- 17 - Brazil, Carnival
- 17 - League of United Latin Citizens (LULAC) Founded American
- 18 - Chinese Lunar New Year (China, Korea, Taiwan, Vietnam)
- 19 - President's Day (United States)
- 20 - Mardi Gras (United States)
- 21 - Ash Wednesday (Protestant, Roman Catholic)
- 22 - George Washington's Birthday (United States)
- 24 - Flag Day (Mexico)

February is...

- ♥ American Heart Month
- ♥ National Black History Month (United States)

February is a banner month for recognition of diversity of religions and ethnicity. The following is an excerpt from a SHRM white paper, *Diversity In Business, What it is. Why it's useful. How it works.* Cornelius Grove & Associates, June 1995, Reviewed November 2002, gives an excellent summary of the many reasons that diversity in business is critical:

- Diversity optimizes the willingness and ability of all employees to contribute to business success.
- Demographic trends indicate a workplace of the future comprising ever more human differences.
- Diversity differs from affirmative action in its emphasis on qualitative, not quantitative, goals.
- Research shows that heterogeneity contributes to productivity and innovation in working groups.
- Diversity training reduces stereotyping, prejudice and cross-cultural misunderstandings.
- A "culture of inclusion" requires institutional openness to diverse styles, ideas and perspectives.
- Diversifying a firm's leadership is indispensable for attaining the long-term benefits of diversity.
- A diversity audit is an excellent first step in planning organizational change to support diversity.
- White male backlash is a significant challenge to diversity. White males cannot be ignored.
- Adaptability is vital in this era of business globalization. Diversity enhances adaptability.

## *Employees Can File Their Taxes for Free*

Want to offer your employees a money-saving benefit that will also save them time...and is FREE for your company? It's an electronic tax preparation and filing program called Free File and 95 million Americans are eligible to use it.

Free File is offered by the Internal Revenue Service (IRS) in partnership with the Free File Alliance, LLC, a group of private-sector tax preparation companies. Quite simply, the program offers employees who earn \$52,000 or less the ability to electronically prepare and file their 2006 federal tax returns for FREE using secure, online software.

Tell your employees to visit <http://www.irs.gov/> and click on "Free File" to learn more about the program's benefits:

- Faster refunds
- Ease of use
- Improved accuracy
- No need to buy or download tax preparation software
- Available 24 hours a day, 7 days a week
- Available in English and Spanish.

Since 2002, 15.4 million people have used Free File. In a recent survey, 94 percent of those who used the program said they would use it again.

Make tax time faster and easier for your employees. Tell them about "Free File" today. Free File is available starting on January 16, 2007. For a "Free File" press kit, visit <http://www.irs.gov/pub/newsroom/freefilepresskit.pdf>.

### *BVHRMA Membership Dues Deadline Approaches*

In order to keep your membership in good standing, please remember the deadline for payment of dues is fast approaching. Payments must be received by Thursday, Feb. 15, 2007. Payments can be mailed to: BVHRMA, PO BOX 3442, BRYAN, TX 77805-3442.

If you have not received an invoice or need another copy, please e-mail Krystal Broussard at [krystal@boydreadymix.com](mailto:krystal@boydreadymix.com).

*Upcoming BVHRMA Events...*

Unless otherwise noted, monthly meetings/luncheons are held on the first Thursday of every month from 11:30AM to 1:00PM at the College Station Conference Center, 1300 George Bush Drive, College Station, TX

March 1, 2007 Topic: TBD	April 5, 2007 Topic: TBD	May 3, 2007 Topic: TBD	June 1, 2007 Topic: TBD
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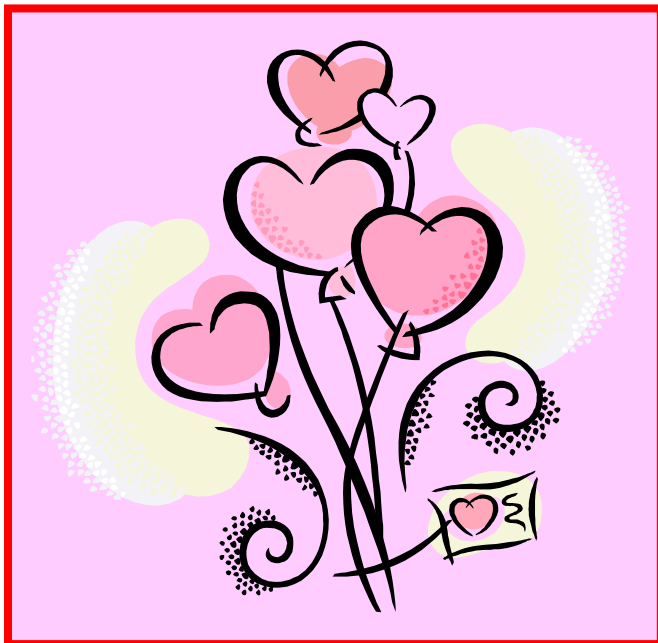
*Upcoming SHRM Conferences*

March 12-14, 2007  
SHRM Employment Law & Legislative Conf.  
Capital Hilton, Washington, DC

March 19-21, 2007  
SHRM Global Forum ® Annual Conf. & Exposition  
Hyatt Century Plaza, Los Angeles, CA

April 23-25, 2007  
SHRM Staffing Management Conference & Exposition  
New Orleans Marriott, New Orleans, LA

June 24-27, 2007  
59<sup>th</sup> Annual SHRM Conference & Exposition  
Las Vegas Conference Center, Las Vegas, NV



*Contact the  
Newsletter Chair*

Would you like to submit an article? Or do you have any comments or suggestions for the monthly newsletter? If so, please contact Liz Galvan at [e-galvan@tamu.edu](mailto:e-galvan@tamu.edu) or (979) 862-1016.