



BVHRMA Newsletter

February 2010

Chapter #0330



Articles

➔ Monthly Program and Luncheon

➔ Benefits Seminar-February 5th!!

➔ Diversity

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➔ SPHR Certification Congrats!

Monthly Program & Luncheon

TOPIC: Two Brains Are Better Than One: Right-Brain Leadership for Projects -Presented by Dr. B. Michael Aucoin, PE, PMP

WHEN: Thursday, February 4, 2010

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

WHERE: Brazos Valley Center for Regional Services or Workforce Solutions Brazos Valley - Rm A&B
3991 East 29th Street, Bryan, TX 77805.

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

PROGRAM: The future of work is project work! But individuals and organizations struggle with how to manage projects successfully - nearly two-thirds of workplace projects fail to meet their targets or must be terminated. In contrast, studies of projects that have performed phenomenally well attribute much of their success to the right brain - a powerful processing juggernaut that is often misunderstood and whose potential is scarcely used.

Join us for "Two Brains Are Better Than One: Right-Brain Leadership for Projects", an entertaining and informative presentation on the important career skill of managing and leading projects. Learn tips that you can apply immediately to be effective on projects, and help everyone in your organization build a solid foundation for successful and rewarding projects.

SPEAKER: Dr. Michael Aucoin, PE, PMP is an internationally recognized leader in innovative approaches to the challenges of the high velocity workplace. He is the founder of the firms Leading Edge Management, LLC, and Electrical Expert, Inc. in College Station, Texas. He provides training and consulting in electrical engineering, project management and engineering management, drawing upon his extensive experience in diverse

technology projects. He is the author of the books, *Right-Brain Project Management*, and, *From Engineer to Manager: Mastering the Transition*.

Projects he has worked on have been recognized with the IEEE Third Millennium Medal, the R&D 100 Award and the Outstanding Engineering Achievement Award. He is a Registered Professional Engineer in Texas, and he has earned the Project Management Professional certification. Dr. Aucoin has served on the Board of Governors of the IEEE Engineering Management Society and also served as their Vice President of Education. He has served as a member of the B-241 Mishap Investigation Board with the NASA Johnson Space Center.

If Attending: RSVP to Katherine at rsvpprograms@gmail.com by noon on Tuesday, February 2, 2010

Workforce Solutions Brazos Valley is an equal opportunity employer & provides equal opportunity employment programs. Auxiliary aids are available upon request to disabled individuals. Texas Relay (800) 735-2989 TDD (800) 735-2988 Voice

*There's Still Time Left to Register for the **Benefits Seminar***

If you are interested in attending the Benefits Seminar, there is still time left to register! Please visit the BVHRMA website at <http://bvhrma.org/Seminar-Registration2-5-10.pdf> for a registration form.

Date:	Friday, February 5, 2010
Co-hosts:	Brazos Valley Human Resource Management Association and Workforce Solutions Brazos Valley
Presenter:	Ouida Peterson, CONEXIS
Location:	Center for Regional Services - 3991 East 29 th , Bryan, TX
Time:	8:00AM to 4:00PM
Check-In:	8:00AM to 8:45AM
*Session 1:	COBRA
*Session 2:	Section 125 Cafeteria Plans
Registration Fee:	\$99.00
Lunch Menu:	TBD

Please contact Liz Galvan, Seminar Chair, at LGalvan1984@gmail.com if you have any questions.

Benefits Seminar/About the Speaker, Ouida Peterson:

Ouida Peterson is the owner of Attitude Is Everything. She is also vice president of education and product development of CONEXIS, a national COBRA, HIPAA and Section 125 plan compliance service. She has been involved with the COBRA and HIPAA regulations since the introduction of the laws. Mrs. Peterson is an award-winning speaker who is nationally recognized for her expertise on the complex and specialized subjects of COBRA, HIPAA and 125 plans. She has conducted more than 1,200 seminars, webinars and approved continuing education classes across the country. Mrs. Peterson is a highly sought-after presenter known for her personable and engaging style. She delivers a compelling presentation full of anecdotes that bring these difficult subjects to life and quickly engage the audience in the real world of compliance.

Mrs. Peterson has received many industry awards, including the Outstanding Texan of the Year and her professional organization's most prestigious honor, the Hollis Roberson Award. She was also recognized as the first recipient of the William G. Wetzel Excellence in Public Speaking Award.

Mrs. Peterson is recognized as a charter board member of the National Association's Education Foundation and has served on the State Association Board since 1993. She received her B.S. degree in secondary education from East Texas State University.

Please join us on February 5, 2010 when Ouida gives presentations on Section 125 Cafeteria Plans and COBRA.

*****Note:** Benefits Seminar has been pre-approved for 6 hours of credit towards the PHR, SPHR, or GPHR.



February is Black History Month:

Dr. Carter Woodson, second black person to receive a degree from Harvard University and son of former slaves, valued education and felt the innate need to preserve and share his heritage. Dr. Woodson and the Omega Psi Phi fraternity created the Negro History Week in the late 1920's. The month of February was selected as way to honor Abraham Lincoln and Fredrick Douglas, both brave revolutionaries who changed the future of blacks forever. Negro History Week was adapted by cities and organizations across this country. It was later renamed to Black History Month after its extension to a month-long observance in the late 1970's.

Join us as we celebrate the lives and legacy of blacks who have changed our world. Take time to remember heroic individuals of every ethnicity who fought, died, and survived so that we all could be free.

Some Black Inventions and Discoveries:

Elijah McCoy (1843 - 1929) invented an automatic lubricator for oiling steam engines in 1872. The term "the real McCoy" is believed to be a reference about the reliability of Elijah McCoy's invention.

Otis Boykin (1920 -1982) invented electronic control devices for guided missiles, IBM computers, and the control unit for a pacemaker.

James West's (1931 -) research in sound technology led to the development of foil-electret transducers used in 90% of all microphones built today and in most new telephones being manufactured. West holds 47 U.S. and more than 200 foreign patents on microphones and techniques for making polymer foil-electrets. He was inducted into the National Inventor's Hall of Fame in 1999.

Frederick Jones (1892 - 1961) held over 60 patents with most of them pertaining to refrigeration. His portable air conditioner was used in World War II to preserve medicine and blood serum.

Dr. Charles Drew (1904 - 1950) discovered techniques to store blood and developed blood banks.

Joseph Winters invented a fire escape ladder in 1878.

Henry Brown created what is now known as a "strongbox", a metal container to store money and important papers that could be locked with a key in 1886.

Michael Jackson (1958 -) singer, songwriter, and entertainer extraordinaire, was nominated for 12 Grammy awards and won a record-breaking eight in 1984. He has received 13 Grammy awards in his career, and is a double inductee into the Rock and Roll Hall of Fame (as part of the Jackson 5 and as a solo artist). He holds the title of Most Top 10 Singles from an album for Thriller (1982) and the Most #1 Singles from an album for Bad (1987).

Source: www.biography.com/blackhistory

Diversity...

What is Diversity?

According to the University of Oregon, “The concept of diversity encompasses acceptance and respect. It means understanding the each individual is unique, and recognizing our individual difference...it is about understanding each other and moving beyond simple tolerance to embracing and celebrating the rich dimension of diversity...”

What is the cost of ignoring diversity in your workplace?

According to University of California,

Berkley,

“Ignoring diversity issues costs time, money, and efficiency. Some of the consequences can include unhealthy tensions between people of differing gender, race, ethnicity, age, abilities, etc.; loss of productivity because of increased conflict; inability to attract and retain

talented people of all kinds; complaints and legal actions; and inability to retain women and people of color, resulting in lost investments in recruitment and training.”



Sources:

<http://hrweb.berkeley.edu/GUIDE/diversity.htm#ignore12>

<http://gladstone.uoregon.edu/~asuomca/diversityinit/definition.html>

HR CORNER....It's Legal Briefs Time!!!

Welcome to Legal Briefs for HR, an update on employment issues sent to over 4500 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.

1. **Twelve (plus four) Co-Workers Snooping** - Sixteen employees of Harris County Hospital District (Houston, TX area) were fired for accessing the medical records of a first-year resident who worked at one the District's hospitals, after the resident was admitted for treatment of gunshot wounds. HIPAA requires "appropriate actions" for violations of the privacy rule and/or privacy rules of a covered entity, which can range from verbal warning to termination of employment. The District chose to send the message that snooping in medical records is naughty, not nice.
2. **Eleventh Hour Shopping** - In November, OSHA issued a fact sheet providing crowd control guidelines for retailers, in hopes of avoiding injury to retail employees during sales events. The guidance may have been prompted by the death of a worker who was trampled when shoppers burst through the doors for a post-Thanksgiving "Black Friday" shopping event in 2008. Before the number of harried last minute shoppers hits critical mass, retail employers might want to review the fact sheet at www.osha.gov/OshDoc/data_General_Facts/Crowd_Control.pdf. And if you're expecting a huge crowd at your house over the holidays, it couldn't hurt.
3. **Ten Million Independently Contracting** - A Bureau of Labor Statistics study shows that, in 2005, roughly 10.3 million workers (7.4% of U.S. workforce) were classified as independent contractors. A recent surge in legislation and lawsuits seems destined to trim that number substantially. For years, many have opined that state and federal governments are shortchanged on tax collection, individuals are left without employment statute protection (e.g., wage and hour, discrimination, benefits) and employers who misclassify have a competitive edge in the market over those who incur the additional cost of treating their workers as employees. The tide began to turn at the state level, via new laws and regs that sought to identify the, ahem, misinformed employers and then seek compliance and in some cases, mete out civil and criminal punishment. The trend surfaced at the national level about a year ago, and is most recently reflected in legislation introduced by Sen. John Kerry (D-Mass.) on 12-15-09, to close the Revenue Act of 1978 sec. 530 "safe harbor" (for failure to pay taxes on certain contractors) and require new reporting designed to surface scofflaws. See also H.R. 3408, introduced by Rep. Jim McDermott (D-Wash.) last summer. Makes me wonder what kind of arrangement Santa has with his elves. Hmm.
4. **Ninth Circuit Opining** - Can an employer avoid a Rehabilitation Act claim of disability discrimination when it cancels an employment contract with an independent contractor (as opposed to firing an employee)? Depends on where you live. The Ninth Circuit recently joined the Tenth Circuit, in opining that section 504 of the Rehab Act

incorporated the ADA's standards for what conduct violates the Act, but not the definitions, including the definitions for what's a covered entity and who's a protected worker. The ADA applies to the employer-employee relationship and would not apply to a principal-contractor one. The Rehab Act, however, protects "otherwise qualified individuals" and the covered entities are any "program or activity" that receives federal money. The Sixth and Eighth Circuits believe that the ADA's definitions, including the necessity of an employer-employee relationship, have been incorporated into the Rehab Act. *Fleming v. Yuma Regional Medical Center* (11-09).

5. **Eight(een) Legislators Sponsoring** - S. 2730, introduced by Sen. Sherrod Brown (D-Ohio), has 18 sponsors and proposes to extend the American Reinvestment and Recovery Act (ARRA) COBRA subsidy, which applies to employees involuntarily terminated between 9-1-08 and 12-13-09. If passed, the bill will change the eligibility period from 9 months to 15, extend the qualifying period through 6-30-10 and increase the subsidy amount from 65% to 75%. For full text and to keep an eye on the bill's progress, go to <http://thomas.loc.gov> and plug in the bill number.
6. **Seven Factors Applying** - With broader definitions and heightened enforcement of the ADA, employers may want to review their hiring and reinstatement tests to see if they are medical exams, as defined by the ADA, or not. One employer refused to reinstate an employee who tried to return from knee surgery and said it was because she could not satisfy the lifting requirement for two open jobs. The magistrate judge and district court agreed that this was a physical agility test, not a medical exam, so there was no violation of the ADA. The Appeals Court vacated the decision and remanded, by noting that the occupational therapist who conducted the physical capacity exam (PCE) took the plaintiff's blood pressure before and after a treadmill test, and noted her breathing. Applying the seven factors used in EEOC's ADA enforcement guidance to define a "medical exam," the Court noted that the exam was administered by a health care professional, interpreted by a health care professional, designed to reveal an impairment and measured a physiological response to a task rather than measuring the task itself. The ADA requires that exams given to current employees be both job-related and consistent with business necessity, but becoming winded on the treadmill had nothing to do with the job requirement/essential function of lifting 65 or 75 pounds. The Court summed up their position by saying that the purpose of the PCE may have been to determine whether the plaintiff was capable of returning to work, but the substance of the PCE sought information on her impairments or health. *Indergard. v. Georgia Pacific* (9th Cir. 6-09).
7. **Six Thousand Companies Sweating** - The Internal Revenue Service announced that it will examine roughly 6000 companies for compliance with employment tax obligations, including payroll taxes, employee vs. independent contractor classifications, executives rehired as consultants, dual-status employees, employee leasing arrangements, fringe benefits including expense reimbursement, executive compensation and benefits issues like stock options, golden parachutes, retirement contracts and use of the company plane. The audits will include for-profit and nonprofit entities and both public and private sector entities. A similar audit done in

the 80s identified noncompliance and increased revenue collection significantly. That's not sleigh bells you hear jingling . . . it's your piggy bank.

8. **Five Golden Rings** - FLSA nonexempt workers who are responding to the boss or customers via their ringing cellphones and smartphones while not scheduled to work are the latest focus of those who pursue "off the clock" wage and hour litigation. An employer who wants 24/7 connectivity and responsiveness needs to first consider if the wage cost will be too high. And don't forget those State laws which mandate a day of rest each week.
9. **Four Days of Partying** - When one is on paid sick leave for depression, it's generally not a good idea to post pictures of yourself partying at Chippendales. A 29-year old Canadian woman had her sick leave insurance benefits revoked, but the carrier denies the claim was invalidated solely due to the party pics. The employee argued that her psychiatrist had prescribed vacation and she took this to mean three four-day trips when she was feeling low. It's worth repeating, individuals generally have no expectation of privacy for what goes on a public website and unfortunate posts can affect employment.
10. **Three Pages of Warning** - If you're wondering what amount of employer remedial action in the face of a claim of supervisory sexual harassment is sufficient to trigger the U.S. Supreme Court's *Faragher/Ellerth* affirmative defense, read on. Plaintiff was a cashier in a small store who claimed her supervisor made sexually suggestive remarks to her. As soon as the employer heard, it [a] promptly investigated; [b] tried to rework scheduling to minimize shift overlap between the accuser and accused and made sure at least one other manager was in the store when accuser was on duty; [c] determined the accused's actions were not unlawful, but were contra to policy and issued a three-page written warning and required the accused to attend anti-harassment training; and [d] put the accuser on leave when she refused to work if scheduled at the same time of the accused (which was not possible due to small size of the staff) and left her on leave status for months. In analyzing applicability of the defense, the Court detailed these reasonable measures to prevent and correct harassment and compared them to plaintiff's failure to reasonably avail herself of the protective measures (e.g., aware of policy, did not report harassment for at least five months, made no attempt to return to work). Faced with these undisputable facts, summary judgment for the employer was upheld. *Roby v. CWI, Inc.* (7th Cir. 2009). Get out that fresh calendar and let's pencil in some harassment avoidance training sessions for your management team in the new year!
11. **Two Spouses Job Hunting** - Can an employer discharge an employee whose spouse had been let go previously by the same employer? At least in CT, an employer's assumption that the remaining spouse will be unmotivated to work (or worse) is not unlawful discrimination based on marital status, since the same could be said of individuals who are single, divorced or widowed. *Pleau v. Centrix, Inc.* (2nd Cir. 8-09).

12. **And a Holiday Wish From Me!** Let's put 2009 to bed and wake up to a brand new year and all the possibilities it will bring Fa la la la la, la la la la! ☺
13. **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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Special Congrats to ...
Sharon Lindley, SPHR
(Sharon received her SPHR!!) ☺
Manager of Human Resources
O. I. Corporation

If Attending **February 4th**
Luncheon:

RSVP to Katherine at
rsvpprograms@gmail.com by
noon on **Tuesday, February**
2, 2010