



# January 2008

CHAPTER #0330

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## January Monthly Luncheon

**TOPIC:** To be announced  
**WHEN:** January 10, 2007 11:30am - 1pm  
**WHERE:** College Station Conference Center  
**COST:** \$10/members, \$10/first time guest, \$15/non-RSVP guest  
**SPEAKER:**  
**RSVP:** [www.bvhrma.org](http://www.bvhrma.org)

## BVHRMA Upcoming 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

FEBRUARY 7, 2008

Developing and Empowered Culture, Jon Stigliano, Strategic Solutions Group

## SHRM Upcoming Events...

### SHRM Employment Law & Legislative Conference

March 10-12, 2008 Washington, DC

### SHRM Global Conference & Exposition

March 31-April 2, 2008 Boston Marriott Copley Place, Boston, Massachusetts

### SHRM Staffing Management Conference & Exposition

April 14-16, 2008 Gaylord Opryland, Nashville, TN

### SHRM 60th Annual Conference and Exposition

June 22-25, 2008 Chicago, Illinois

Welcome to Legal Briefs for HR! This update on issues that matter to employers is provided to HR professionals, in-house counsel, business owners and others who can benefit from receiving monthly updates on new laws, court cases, helpful websites and more. Anyone is welcome to join . . . just email me to be added to (or removed from) the group of over 3500 subscribers. Missed one? Past editions are posted at [www.munckbutrus.com](http://www.munckbutrus.com)

A warm welcome to new subscribers who attended speeches I gave for Corpus Christi HRMA and North Texas SHRM, and happy holiday greetings to y'all!

Here's what's up:

1. Tick Tock - The new Form I-9 was published in the Federal Register on Nov. 26, which means you must begin using the new version on Dec. 26 for new hires and when it's time to re-verify information on a current employee. As mentioned in last months' LB4HR, the form and a very helpful guidebook are available at [www.uscis.gov/files/form/I-9.pdf](http://www.uscis.gov/files/form/I-9.pdf) and [www.uscis.gov/files/nativedocuments/m-274.pdf](http://www.uscis.gov/files/nativedocuments/m-274.pdf). You can start using the new form immediately, if you wish, but it's not required until Dec. 26.
2. No Match Update - The U.S. Department of Homeland Security (DHS) appealed to the Ninth Circuit to lift the injunction imposed by a District Court judge in northern California. DHS Secretary, Michael Chertoff, said DHS would work to [a] overturn the injunction; and [b] modify the final no-match rule to address the concerns of the Court which were, primarily, the lack of accuracy of the SSA database and the resulting costs to business in complying with the rule. Stay tuned! In a related development, a group of employers led by the Arizona Contractors Association has re-filed suit requesting a temporary restraining order to stop implementation of an Arizona state law that would mandate use of E-Verify on all new hires, effective January 1. SHRM has filed an amicus brief in support of the employer group. If you have employees in Arizona, read the pleadings and follow developments at [www.azca.com](http://www.azca.com).
3. You Talkin' to Me? - A recent sexual harassment case provides good insight into the importance of an effective harassment policy and complaint procedure. A 16-year old in a fast-food restaurant was allegedly subjected to repeated comments, rubbing, attempted kisses and propositions from her store manager. Her complaints to shift supervisors and an assistant manager did not help the situation, so her mother went to the restaurant to complain. The worker was fired. She filed an EEOC charge and the subsequent lawsuit (filed by the EEOC) was dismissed on a motion for summary judgment because the worker had failed to use the employer's complaint procedure. However, the 7th Circuit reversed finding that there was no effective procedure. Specifically, the employer was faulted for [1] not having procedures that could be understood by the average teen-ager (since they hire lots of them); [2] having a procedure in the handbook that directs employees to speak to their district manager (but not identifying that person by name and/or giving directions on how to contact their DM); and [3] specifying that complaints must go through the General Manager (even when the GM is the problem). EEOC v. V&J Foods, Inc. (7th Cir. 11-7-07). A good policy and a prompt and

effective response to complaints will nix employer liability in most cases, so take the time to ensure your words are clear and your system works.

4. On the Road Again - Home health care workers in Pennsylvania will divvy up \$2.2 million as reimbursement for previously unpaid travel time (between assignments), overtime and travel expense (e.g., bus fare). The employer must also eliminate a "drop in rate" approach to pay, where employees' rate of pay dropped if they failed to work "x" hours per pay period. The Service Employees International Union (SEIU) reports that it is considering the filing of similar lawsuits in other states who have wage and hours laws that are more protective than the FLSA approach (as interpreted in *Long Island Care at Home v. Coke*) to companionship services. *Thomas v. Total Health Home Care Corp.* (Pa. Ct. of Common Pleas 11-26-07). Is compensability of travel time for nonexempt employees the next big thing in "off the clock" litigation? We'll see.

5. Testing, Testing, One, Two, Three - Hop on over to the EEOC's website ([www.eeoc.gov](http://www.eeoc.gov)) for a newly released guidance on employment tests and selection procedures. There's a link to transcripts of testimony on the topic in addition to the guidance, which features a rehash of the applicable law, recent litigation and settlements and a "best practices" list. The most important thing to note may be under the second bullet on the "best practices" list . . . "While a test vendor's documentation supporting the validity of a test may be helpful, the employer is still responsible for ensuring that its tests are valid under the [Uniform Guidelines on Employee Selection Procedures]." Validation means the test is job-related and consistent with business necessity. The ease with which on-line testing tools are made available does not mean "plug and play." Do your homework.

6. FMLA Expansion Gets Marching Orders - Get ready to offer FMLA leave to a class of employees who were not eligible in the past. While past efforts to expand the FMLA have failed, who was going to say "no" to offering up to 12 weeks of FMLA to the family members of service men and women to see their loved ones off, as they are called to active duty, or 26 weeks of FMLA to care for them when they return home injured? The House didn't, and the Senate (on Dec. 14) didn't either. President Bush says he will sign the National Defense Authorization Act (H.R. 1585) into law shortly. And for you folks with employees in Ontario, Canada, there is new legislation which provides job-protected leave for military reservists serving with the Canadian Forces.

7. ADA Adjustment? - As mentioned in LB4HR #9, Congress is considering legislation (H.R. 3195 and S. 1881) which would dramatically expand the scope of the Americans With Disabilities Act (ADA) by removing "substantial limitation of a major life activity" from the analysis and disallowing consideration of an impairment in its mitigated state (e.g., with the benefit of medication or an adaptive device) when determining whether or not the person is a "qualified individual with a disability." The bad news is that testimony taken before a Congressional panel was heavily skewed toward expansion of the law, with very little discussion of how such a change would negatively impact the workplace. If you are concerned about the prospect of not-so-reasonable accommodation, contact your legislators (via SHRM HRVoice [for SHRM members] or via [www.senate.gov](http://www.senate.gov) and [www.house.gov](http://www.house.gov) and educate them about the pitfalls of elevating less serious impairments to protected status.

8. Simply the Best - The Texas Association of Business (TAB) will host a two-day conference in Austin on January 24 and 25, 2008, featuring [1] health care experts and state government leaders who will speak on the issue of costly health care; [2] a salute to state legislators who stood up for business in 2007; and [3] a luncheon to honor the winners of the "Best Companies to Work for in Texas 2008." TAB, the SHRM Texas State Council and Texas Monthly magazine teamed up to identify the best companies that do business in Texas. Go to [www.txbiz.org](http://www.txbiz.org) for the complete agenda and registration info. I hope to see YOU there!

9. Goin' Green - HR departments are leading the charge, in workplace efforts to "go green" by using less electricity and making less trash. Before you head out for the holidays, think about unplugging anything that will not be used while you're gone, lowering the thermostat on heating systems and perhaps asking Santa for the latest and greatest in power-saving gadgetry (e.g., motion detectors that turn off the lights automatically when a room is vacant). For those in the DFW area, check out the current issue of "D" magazine for tons of ideas to begin using next year!

10. Goin' Global - If your HR practice includes international operations, don't miss this one-day forum called Global HR - Exploring the Opportunities. It will be held on January 15, 2008 at the Marriott West Loop by the Galleria in Houston and is hosted by the SHRM Texas State Council. Go to [www.tsc-shrm.org](http://www.tsc-shrm.org) for details and to register!

11. Goin' Home - I hope the holiday season affords you the chance to be with your closest family and friends and to recharge your batteries on home cookin', endless bowl games, the retelling of favorite stories by a crackling fire and the beauty of snowfall and cold, starry nights. If you are traveling, be safe, and I'll talk to you again next year!

Until next time,

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