



## Articles

## Monthly Program & Luncheon

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**TOPIC:** *Diversity*: The importance of understanding diversity beyond race and ethnicity in the workplace

**WHEN:** Thursday, July 1, 2010

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

**WHERE:** College Station Conference Center

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



**SPEAKER:** Dr. Edward W. Romero

Dr. Edward W. Romero has over 18 years of experience in academia and business, dealing primarily in agriculture with emphasis in agricultural literacy, minority student recruitment, retention, diversity, and student development.

He is currently the Director of Diversity and Inclusion for Texas A&M AgriLife Human Resources, which serves approximately 5,000 employees in three state agencies (*Texas AgriLife Research, Texas AgriLife Extension Service, and Texas Veterinary Medical Diagnostic Laboratory*) and the College of Agriculture and Life Sciences at Texas A&M University. Prior to his current role, he held several positions within the College of Agriculture and Life Sciences at Texas A&M University. He was the founding Director of the Office of Student Diversity, and also Assistant Dean in the College. In his early professional career, he was also employed with New Mexico State University for three years. He holds a B.S. in Agricultural Business and Agricultural Economics with an emphasis in Finance and an M.A. in Agricultural and Extension Education from New Mexico State University. He also holds a Ph.D. in Agricultural Education from Texas A&M University. He resides in Bryan, TX with his wife Margaret and their twelve-year old daughter, Naomi.

**PROGRAM:** Understanding diversity in its entirety can be meaningful, productive, and beneficial to all in the organization in addition to improving performance. The presentation will explore different diversity dimensions and human characteristics that make up who we are. We will also investigate the differing diversity categories we often have to deal with in the workplace in the name of diversity management.

**If Attending:** RSVP to Katherine at [rsvpprograms@gmail.com](mailto:rsvpprograms@gmail.com) by noon on Tuesday, June 29, 2010

*This program has been submitted to the HR Certification Institute and was approved for (1) General Credit Hour.*

# What's coming up?

**October 10-13, 2010 HR Southwest Conference**  
Fort Worth Convention Center | Fort Worth, Texas  
[www.hrsouthwest.com](http://www.hrsouthwest.com)

Earn up to 21.25 Recertification Credit Hours (Pending Approval)

TX Chapter/SHRM rate \$735

Non-member rate \$885

**\*\*Keynotes:** Ambassador Nancy G. Brinker, The Passing Zone, and Chad Hymas  
For more information on Keynotes: <http://www.hrsouthwest.com/pages/Keynotes.htm>.

Over 100 Educational Sessions will be offered to include:

Seven Pre-conference Workshops

For more information, go to [http://www.hrsouthwest.com/pages/Pre\\_Conference.htm](http://www.hrsouthwest.com/pages/Pre_Conference.htm).

Three Mega Sessions

Over 200 exhibitors in the Expo hall!

## Total Rewards Seminar

Hosted by BVHRMA and Workforce Solutions - Brazos Valley

**Tuesday, November 16, 2010**

@ Center for Regional Services

**November 18-20, 2010 SHRM Leadership Conference**

## Special Note...

As of June 10, 2010 there is a new requirement for Federal Contractors. It's the posting of employee rights to organize a union in the organization.

The only federal contractors and subcontractor NOT required are prime contracts for less than \$100,000. Subcontractors for less than \$10,000.

All others will be required to erect posters in their facility informing employees of their rights to organize a union. This poster will be in English, and Spanish, and other languages where appropriate.

### 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 all over the U.S. to help them stay in the know about employment issues.

Here's what's heating up:

1. **Post It** - Federal contractors (\$100,000 or more) and subs (\$10,000 or more), you have new obligations taking effect June 21. Per Executive Order 13496 (and final reg at 29 CFR sec. 471), you must [a] add certain language to your contracts (which can be incorporated by reference instead of inserting full text); and [b] post a notice of employee rights under federal labor laws. You can find copies of the EO, regulation, a Fact Sheet and the new poster at [www.dol.gov/olms/regs/compliance/EO13496.htm](http://www.dol.gov/olms/regs/compliance/EO13496.htm). Electronic posting is an option, but note that if you do that it must include a direct link to the Office of Labor-Management Standard's website. If you have not already taken down your Beck poster, do it now and replace with this one.
2. **Sex and the City** - No, not the movie. The New York Court Appeals held that employers in New York City can be held strictly liable when a supervisor or manager harasses an employee and the employers' affirmative defense articulated in the U.S. Supreme Courts' *Faragher* and *Ellerth* decisions is not available under the plain language of the NYC law. *Zakrzewska v. New School* (N.Y. 5-6-10). In cases where use of the defense is allowed, an employer can avoid liability if it can show that [a] the

complainant suffered no tangible job detriment; [b] the employer was reasonable in its efforts to prevent and remedy harassment (e.g., harassment policy, procedure, training); and [c] the complainant failed to notify the employer of the harassment and avail him or herself of the employers remedial measures.

3. **Stay Tuned for the Three P's** - U.S. Dep't of Labor wants employers to go on the offense and stop playing defense when it comes to compliance with wage and hour, safety and anti-discrimination laws. In response to the perception that employers play "catch me if you can" and only comply after being caught, DOL announced a "Plan, Prevent and Protect" strategy. This strategy forces employers to prove compliance to the DOL and gives employees a road map to making complaints, if they feel the measures don't add up. Some believe the strategy is an end-run around Congress, just in case they do not enact the Employee Misclassification Prevention Act (S. 3254, HR 5107; see LB4HR #4-2010 for summary) since the three P's would require similar analysis and communication of results to employees.
4. **Taking Stock?** - In recent years, the Texas Supreme Court issued decisions making noncompete restrictive covenants a bit easier for employers to enforce. First, in *Shesunoff*, they decided that the consideration supporting the promise not to compete did not have to be provided at the time the promise not to compete was made. Providing the employee with access to the employers trade secrets and/or specialized training are pretty much the only types of consideration that "give rise" to the need for the employee's promise and those things are hard to provide on the first day of work when the employment agreement containing the restrictive covenants is normally signed. Instead, the promise not to compete can now become enforceable at the time that consideration was given, even if that is weeks, months or years later. The second softening of the tough Texas standard found an enforceable covenant where the giving of trade secrets was implied but not expressly stated in the employment agreement, in *Mann Frankfort Stein & Lipp*. Now, the Court has granted a petition to review a decision (*Marsh*) and address a split in the appeals courts as to whether stock options given to an employee can be the kind of consideration which will support a noncompete covenant. Houston says "yes" and Dallas says "no." Argument is expected to be scheduled for the next term of the Court, which begins September 1. Stay tuned!
5. **Coming to Your Mailbox** - The IRS wants to take a peek at your 401(k) plan. Approximately 1200 employers will receive a letter, asking them to fill out a "voluntary" questionnaire on-line. If you are one of the lucky ones, be sure it is completed by someone who thoroughly understands plan administration and requirements. A similar "voluntary audit" of university executive pay and other income in 2008 resulted in 30 IRS audits at certain colleges this year.
6. **Fresh Form** - IRS Form 941 (Employers Federal Quarterly Tax Return) was revised to allow employers to take advantage of a new tax credit for hiring and retaining unemployed workers under the HIRE Act. The revised form can be found at

[www.irs.gov](http://www.irs.gov). Just click on "Form 941" in the top left corner of the homepage under "Forms and Publications."

7. **Workin' on the Railroad?** - U.S. Dep't of Transportation's Federal Railroad Administration has issued a proposed rule which will ban use of cell phones and other distracting electronic devices and require removal of ear pieces when railroad employees are [a] on a moving train (except on "deadhead" status and not in a controlling locomotive); [b] on the ground or riding rolling equipment during a switching operation; or [c] assisting in preparation of the train for movement. Add this is to the federal ban on texting by commercial truck and bus drivers, the federal ban on government employees texting and driving, 6 states that ban the use of handheld devices while driving and the 25 states (and counting) who ban texting while driving. See a trend? You may want to consider a prohibition or limitation on employee use of electronic devices while driving company vehicles and/or while on company business.
8. **Stated Differently** - Here is a collection of developments at the state law level that may be of interest:
  1. **Data Breach is no Day at the Beach** - Add MS to the list of states who require notice to affected individuals when an employer or business suffers a breach of their data which includes personal identifiers. When discussed in LB4HR #8-2009, there were only five states left who did not have such laws. Now there are only four (AL, KY, NM and SD).
  2. **Smoked Out** - MI's law prohibiting smoking in places of employment and other public places took effect May 1.
  3. **Credit Barred** - OR prohibits employers from obtaining or using credit history information on applicants or employees for employment purposes, with exceptions for federally insured financial institutions and other employers who are required by federal law to perform credit checks. The law took effect March 29.
  4. **Crackdown on Contractor Status** - CT is increasing civil and criminal penalties against employers who misclassify employees as independent contractor. The civil penalty is increasing from \$300 per violation to \$300 per day, per violation and it is a felony offense to misclassify with the intent to harm the State with respect to the workers' comp fund. In CT, a worker is a contractor for purposes of unemployment comp if [a] the individual is free from direction and control in connection with the performance of the service; [b] the individual provides the service either outside the usual course of business or outside of all of the employer's places of business; AND [c] the individual is engaged in an independently established trade, occupation, profession or business of the same nature as the service performed. The law takes effect October 1.
9. **Safety First** - I'm not in the habit of forwarding You Tube videos via LB4HR but this is one powerful PSA for using seat belts. Check it out at <http://embracethis.co.uk/>. Big thanks to **Javier Lozano**, for sharing it with me and others. You may want to pass this along as a gentle reminder to buckle up, as the summer vacation season begins. Be careful out there. ☺

10. **Did You Know?** - June 25 is Take Your Dog to Work Day? Check it out at [www.takeyourdog.com](http://www.takeyourdog.com).
11. **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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**If attending luncheon on July 1st:**

Please RSVP to Katherine at  
[rsvpprograms@gmail.com](mailto:rsvpprograms@gmail.com) by noon on  
**Tuesday, June 29, 2010**