



# June 2006 Newsletter



## 2006 OFFICERS

### President

Leah Smith  
[sorealee@yahoo.com](mailto:sorealee@yahoo.com)

### President Elect

### Vice President- Programming

Konny Goff  
[Konny@igoergo.com](mailto:Konny@igoergo.com)

### Co-Vice President- Membership

Sarah Tobola  
[s-tobola@tamu.edu](mailto:s-tobola@tamu.edu)

### Co-Vice President- Membership

Steve Davee  
[scdavee@txcyber.com](mailto:scdavee@txcyber.com)

### Secretary

Kari Griffin  
[kgriffin@bryantx.gov](mailto:kgriffin@bryantx.gov)

### Treasurer

Krystal Broussard  
[krystal@boydreadymix.com](mailto:krystal@boydreadymix.com)

## IN THIS ISSUE

BVHRMA Events	Pg 6
Diversity Notes	Pg 3
HR Southwest	Pg 3
Legal Briefs	Pg 2
PEOs	Pg 1
Resume Review	Pg 6
Seminars	Pg 5
SHRM Foundation	Pg 2
New Members	Pg 4

## CHAPTER MEETING, MAY 4

### PROFESSIONAL EMPLOYER ORGANIZATIONS

At the May 4<sup>th</sup> BVHRMA meeting, Tim Konderla of USA Staffing explained the function of Professional Employer Organizations and what services they can provide companies. Many HR professionals have wondered what using a Professional Employer Organization (PEO) would mean for their job. As PEOs are sometimes confused with temporary staffing agencies, some assumptions have not always accurate. In this interactive session, Tim created a Mind Map of what a business looks like as it pertains to Staff Leasing and demonstrated how businesses are outsourcing already in PARTNERSHIP with the HR professionals - *not in replacement of HR professionals.*

PEOs are organizations that enable businesses to outsource their employee benefits, payroll, workers' compensation, and other functions to one organization instead of outsourcing to several different companies.

Use of these organizations has been attractive to some smaller employers – those with fewer than 100 workers. Through these organizations smaller employers may be eligible for lower group health insurance rates. Other benefits include access to a team of professionals and improved risk management. Most of these smaller businesses do not have full-time HR personnel. Using a PEO many times relieves the controller, the office manager or CEO of HR related duties.

The use of PEOs is not the “perfect” fit for every business or for every situation. But they do provide services and benefits of which all HR professionals should have an accurate understanding.

-Windelan Johnson

Brazos Valley HRMA is an affiliate of SHRM (Society for Human Resource Management). For more information about HR employment, résumés for individuals seeking a career in HR, and to find helpful links to other HR relevant web sites, go to [www.bvhrma.org](http://www.bvhrma.org).

## YOUR FOUNDATION AT WORK: MAKING A DIFFERENCE

You know what excellence is. It's people...with talent. People who are dedicated and work hard to continually improve themselves, to be the best they can be. They are able to work with others, to be part of a team and to achieve something bigger than themselves. That's what the HR profession is all about. You work behind the scenes to help your employees and companies achieve excellence. You play a major role in finding talented and dedicated people and you help them develop as individuals and team members. This is an exciting time to be an HR professional. The opportunities to provide

leadership in your organization have never been greater, but you must continually increase your professional knowledge and stay one step ahead of the rapid changes taking place all around you. The **SHRM Foundation** helps you to meet these challenges through its support of research, publications and education. The Foundation enables HR professionals like you to make a difference.

The SHRM Foundation:  
*Investing in Your Future as an HR Leader*

### ***Legal Briefs for HR***

By Audrey E. Mross

Welcome to Legal Briefs for HR! This update on issues that matter to employers is provided as a service of the SHRM Texas State Council, which I serve as Co-Director of Legislative Action. Feel free to forward this email to anyone who would benefit . . . all are welcome to join this FREE service with over 3000 subscribers!

Here's the latest:

1. **Not Just a Game** – A video game company is the latest employer to lose big in the game of employee classification. The settlement is for \$14.9 million and the finding is that about 600 current and former salaried “software engineers” (who functioned as computer programmers) should’ve been treated as non-exempt from overtime pay requirements. The engineers argued that they didn’t manage anyone, had little creative control in the production of video games and they had no engineers’ training or license. This settlement is in addition to an earlier one, for \$15.6 million, involving more than 600 computer graphic artists employed by the same company. *Hasty v. Electronic Arts Inc.* (Cal. Super. Ct. 4-25-06). If you have changing technology and morphing job duties, revisit job classifications regularly.
2. **Bank Blues** – A bank will settle claims of unpaid overtime for 2961 employees, to the tune of \$1.03 million. The DOL found that tellers, customer service reps and financial service reps at branches in AL, AZ, CO, FL, NM and TX “routinely” worked through lunch and after normal work hours, without pay, doing paperwork, calling customers and attending meetings. An investigation in AL led to the broader sweep. Check your procedures and train those managers, to make sure they understand that allowing “off the clock” work is a way to find themselves “off the job.”

*-continued LEGAL page 5*

## **DIVERSITY NOTES**

### **JUNE 2006**

- 2-3 - Shavuot\* (Jewish)
- 5 - World Environment Day
- 6 - D Day (United States)
- 14 - Flag Day (United States)
- 15 - Corpus Christi (American, Roman Catholic - Observed Jun. 18)
- 16 - Martyrdom Day of Guru Arjan (Sikh)
- 18 - Father's Day (United States)
- 19 - Juneteenth (United States)
- 21-Sep. 23 - Summer Solstice
- 25 - America's Kids Day
- 27 - Martyrdom of Joseph & Hyrum Smith (Mormon)
- 28 - Stonewall Rebellion Day (United States)

Gay and Lesbian  
Pride Month

**Juneteenth** celebrates the freedom of over 250,000 slaves at the close of the Civil War. The holiday is based on events that occurred mainly in Texas but is now celebrated nationwide. The celebration takes its name from June 19, 1865, the day federal troops arrived in Galveston to enforce the Emancipation Proclamation. Although the Proclamation had taken effect on January 1, 1863, it freed few, if any, slaves.

News of the war's end did not reach Texas until well after the Confederate surrender at Appomattox. Many speculate that the news was deliberately withheld so that slave owners could

bring in one last crop. Others believe that the news was delayed because the messenger traveled by mule while some believe the original messenger was murdered en route.

When the news was finally delivered, it was celebrated in great fashion. Over the years, Juneteenth festivals have evolved into daylong events that include picnics, parades, music, dancing, and baseball.

For information on Juneteenth celebrations, see the National Juneteenth Observance Foundation's website at <http://www.njof.org/>

### **DEADLINE APPROACHES**

The early registration deadline for the 2006 HR Southwest Conference on Oct 17-20, 2006 in Fort Worth is June 15, 2006. Tom Owen is serving as the HR Southwest Ambassador again this year. When you register for the conference you should enter our chapter name and Tom's name as Ambassador in the appropriate areas. A blank HR SW registration form with those entries already made is attached to this newsletter.

# WELCOME NEW MEMBERS!!

JAMIE BOYD

JABOYD SMALL BUSINESS CONSULTING AND SERVICES

MERLE VOIGT

YOUNG CONTRACTORS

KIMBERLY TRAMEL

CC CREATIONS



## Upcoming Seminars & Conferences

<p><b><u>SHRM Annual Conference &amp; Exposition</u></b>          June 25-28, 2006 Washington, D.C.  <a href="http://www.shrm.org/conferences/annual/">http://www.shrm.org/conferences/annual/</a></p> <p>The SHRM Annual Conference &amp; Exposition is a three-and-a-half-day conference designed to give you, the HR professional, the most comprehensive and relevant professional development programs that improve your knowledge, skills and abilities.</p>	<p><b><u>2006 Strategic HR Conference</u></b>          October 4-6, 2006, Westin Kierland Resort   Phoenix, Arizona</p> <p>This three-day meeting promises to accelerate your strategic thought process, expand your view of what's possible, and give you key insights and ideas that you can use immediately to impact the success of your organization. An esteemed team of HR experts, leaders and visionaries will share their wisdom and best practices on how to think and act strategically.</p>
<p><b><u>2006 SHRM Workplace Diversity Conference &amp; Exposition</u></b>          October 16-18, 2006, Century Plaza Hotel and Spa   Los Angeles, California  <a href="http://www.shrm.org/conferences/diversity/">http://www.shrm.org/conferences/diversity/</a></p> <p>Join leaders in the field of diversity management at this two-and-a-half-day forum. You will attend guided dialogue sessions that focus on emerging issues, current research, and legislative and regulatory compliance. This conference promises to be an excellent learning and networking opportunity for all professionals who are responsible for diversity within small, medium and large organizations.</p>	<p><b><u>HR Southwest</u></b>          October 17-20, 2006          Fort Worth Convention Center          Fort Worth, Texas  <a href="http://www.hrsouthwest.com/">http://www.hrsouthwest.com/</a></p> <p>World-renowned keynote speakers, one of the most extensive schedules of educational sessions, fantastic networking forums, fabulous prizes, and a first-class venue for exposure to the newest HR products, techniques and services.</p>

### LEGAL continued from page 2

3. **Keep on Truckin'** – In another “off the clock” case, a trucking company found it should've paid its drivers for time used to attend company meetings, taking random drug tests, pre-trip prep and delays and meals eaten while working. The drivers are to report to work at 6 a.m., to perform pre-trip inspections and run the motors of their trucks. They then wait for their driving assignments and may not leave the garage until 9 a.m. The employer conceded FLSA violations for the meetings and drug tests, but argued that the waiting time was not “work” since the drivers socialized and drank coffee and pop,

and should be noncompensable as “preliminary” activity under the Portal to Portal Act. The court found, however, that “work” is time controlled by the employer and that activities occurring before or after normal work hours may be compensable “integral and indispensable” activities as opposed to unpaid preliminary activities. The court also concluded that the drivers should be paid for meals taken on the job (unless they were completely relieved of duties). *Twaddle v. RKE Trucking Co.* (S.D. Ohio 3-29-06).

-continued LEGAL page 7

<b>BVHRMA Chapter Meetings &amp; Events</b>	
When:	Thursday, June 1, 2006
Topic:	Future Plans & Development for BVHRMA
Speaker:	BVHRMA Board
Where:	College Station Conference Center, Rm. 101
When:	July 13 <sup>th</sup>
Topic:	The Community of Respect (COR) Initiative
Where:	with ASTD, College Station Conference Center Room 127
When:	August 3
Topic:	Reasons for Mediation
Speaker:	Deborah Henshaw Urbanski, Supervisory Attorney-ADR Coordinator
Where:	College Station Conference Center, Room 101
When:	September 7
Topic:	Useful Websites for HR Professionals
Speaker:	Audrey E. Mross, Labor & Employment Attorney
Where:	College Station Conference Center, Room 101
When:	October 5
Topic:	Multi-Generations in the Workplace
Speaker:	Dr. Sharon Barnes, Texas A&M University
Where:	College Station Conference Center, Room 101
November 2	
December 7	

## BVHRMA MEMBERS REVIEW RESUMES

BVHRMA joined forces with the Bryan / College Station Chamber of Commerce on Wednesday, May 24, 2006 at the Job Fair to offer resume reviewing. Many job seekers at the job fair took advantage of this free service. Putting a resume together can be a challenge, even for the most experienced worker. And finding someone to proof and offer suggestions can be an even greater challenge.

BVHRMA members and other volunteers offered to meet this challenge for those candidates that were interested. The volunteers reviewed the resumes, noting corrections and improvements

that could be considered. Helping those who are looking to improve their resumes is a community service project that BVHRMA is proud to have been a part of for the past several years and hopes to continue this beneficial service in the years to come. Thank you to those members who were able to take time away from their busy schedules and volunteer in this project.

Look for future announcements about more ways you can volunteer, give back to our community, and help with "Building the Reputation of BVHRMA" this year.

## **LEGAL continued from page 5**

4. **Bad Moon Rising** – A Fresno, CA jury awarded a 53 year old woman \$1.7 million for being spanked on her backside three times, in front of co-workers, as part of an alleged camaraderie-building exercise. Since when does humiliation build team spirit? *Orlando v. Alarm One Inc.*
5. **Poster Child** – Did you know that 14 states have made changes in 2006 to their employment law posters? If you have operations in AL, CA, CT, DC, FL, HI, MD, NV, NJ, NC, OR, RI, TX or WA, check with the state agency to get new posters.
6. **Kiss and Make Up** – While sex-based grooming and appearance codes can be a form of sex discrimination, the 9<sup>th</sup> Cir. held that a casino's "Personal Best" standard, which requires female employees to wear make up (and prohibits men from doing so) is neither an unequal burden nor sex stereotyping. The Court cited to similar findings in the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and DC Circuits, explaining that the material issue is not whether the policies for men and women are different, but whether the policy creates an unequal burden based on plaintiff's gender. Plaintiff said she did not wear make up and doing so would make her feel degraded and demeaned. *Jesperson v. Harrah's Operating Co.* (9<sup>th</sup> Cir. 4-14-06). What are the odds she will now claim an allergy to cosmetics and ask for reasonable accommodation via suspension of the policy?
7. **Two Fer** – New Jersey is going after employers who misclassify workers as independent contractors with a double whammy – the Treasury and Labor Departments. An audit of 2.5% of employers found 26,000 not-so-independent contractors, who represented a \$15 million underpayment in income tax as well as UI and disability fund payments. The NJ three-factor test is [a] who controls and directs performance; [b] whether the service is within the employer's usual course of business; and [c] whether the worker is really running an independent enterprise. The governor has directed Treasury and Labor to identify and penalize employers who fail the test.
8. **Salary Slip Up** – A DOL Opinion Letter explains that deducting from an exempt employees salary, for loss of or damage to company equipment, will jeopardize exempt status. The FLSA regulations list permissible deductions (e.g., full day absence for personal reason) but none of them encompass docking for a lost laptop or damaged cell phone. A policy that allowed this would defeat the exemption because the salary is no longer paid "free and clear." Further, taking the deduction in increments or requiring the employee to reimburse the company would also result in "impermissible reductions in compensation." If you would like to receive FLSA and FMLA Opinion Letters, you can sign up from the DOL home page, at [www.dol.gov](http://www.dol.gov).
9. **Envelope, Please** – Texas organizations figure prominently in this years OFCCP awards. The Opportunity Award went to **Dell** for its innovative programs and initiatives designed to ensure EEO for applicants and employees. You can read more about their programs under Press Releases (see April 26) at [www.dell.com](http://www.dell.com). The Exemplary Voluntary Efforts ("EVE") Award went to **Southern Methodist University** and two other contractors. The SMU press release is at [www.smu.edu](http://www.smu.edu) and click on More SMU News (April 27). Kudos to both!
10. **HR Boot Camp** – Check out [www.NorthTexasSHRM.org](http://www.NorthTexasSHRM.org) for registration forms and info on the North Texas SHRM Annual Conference – HR Boot Camp on June 7 and 8!

Until next time,

Audrey E. Mross  
Labor & Employment Attorney  
Munck Butrus, P.C.  
900 Three Galleria Tower  
13155 Noel Road  
Dallas, TX 75240

972.628.3661 (direct)  
972.628.3616 (fax)  
214.868.3033 (cell)  
[amross@munckbutrus.com](mailto:amross@munckbutrus.com)  
[www.munckbutrus.com](http://www.munckbutrus.com)