



March 2007

CHAPTER #0330

www.bvhrma.org



Creativity: Work's New Core Competency

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What: BVHRMA Monthly Meeting and Luncheon

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

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

"Increasingly, the new core competence [at work] is creativity – the right-brain stuff that smart companies are now harnessing to generate top-line growth. The game is changing. It isn't just about math and science anymore. It's about creativity, imagination, and, above all, innovation." – BusinessWeek magazine

There is no doubt about it. The world economy is in the throes of a revolutionary transformation. A new Creative Knowledge Economy is rapidly replacing the old industrial economy. New ideas are the fuel of our time. The most successful companies in the future will be those that foster a climate where creative ideas flourish at all levels of the organization, and then cull the best ideas and turn them into profitable innovation.

HR managers have a major role to play in helping their organizations prepare for the change that is now hurtling at us. We will have major responsibilities for ensuring that the organizational culture embraces and fosters creative thinking and that all levels of the workforce have the skills and systems to produce, capture and process lots and lots of ideas.

This presentation will provide a dynamic overview of the changes now sweeping business, and provide insights into what HR managers need to be doing today and tomorrow to keep their organizations competitive in the Idea Era.

The speaker for March is William "Bud" Wurtz, Director of Business and Community Services for the Institute of Applied Creativity at Texas A&M University. Nationally recognized for his expertise in organizational innovation, Bud is currently serving his second term as president of the American Creativity Association, the premier professional association in the creativity field. He has over twenty years of experience as a manager and senior consultant in OD and training for Fortune 500 companies in such diverse industries as hi-tech, telecommunications, energy and agribusiness. Bud is currently a doctoral candidate in the Texas A&M educational psychology department's creativity and intelligence program.

Legal Briefs

by Audrey E. Mross

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 a monthly update on new laws, recent court cases, helpful websites and pending legislation.

Anyone is welcome to join the group and receive this FREE newsletter, which is sent to over 3300 subscribers all over the U.S. (and even a few overseas)! Just email me to be added to the group (or removed) and you can find previous editions posted on the Munck Butrus P.C. law firm website at www.munckbutrus.com under E-Newsletter.

Here's my valentine to you:

I. **Overtime Onus Continues** – Several big bucks settlements between employers and the Wage and Hour Division (“WHD”) of the U.S. Department of Labor are not-so-subtle reminders that there are many ways to make a mistake when it comes to paying overtime. The new year is an ideal time to double-check your classifications, policies and methods, to avoid these mistakes:

- a. The largest settlement in WHD history (\$33 million) arose from Wal-Mart's self-reported concern over its record-keeping and compensation practices. The five specific mistakes were [i] paid overtime to salaried non-exempts only after they worked more than the 45 to 48 hour “fixed” workweek; [ii] premium based on geographic location not included in the regular rate; [iii] nondiscretionary bonuses not included in the regular rate; [iv] failure to include paid time off in calculating bonuses that are subject to overtime; and [v] computing regular rates based on biweekly pay periods instead of the work week. The records review uncovered overpayment of about 215,000 current and former workers, but Wal-Mart agreed it would not seek to recover those amounts.

Wal-Mart has set up a website (www.dol.settlement.wal-mart.com) and a toll-free number (888.262.1559) to field questions and has agreed to include affected workers going back five years, rather than the normal two-year limitations period, for workers in all 50 states. *Chao v. Wal-Mart Stores Inc.* (W.D. Ark. 125-07). California's DOL filed a lawsuit the same day, making similar allegations that are specific to workers in that state.

- b. A \$12.8 million settlement will be divvied up among a class of Wells Fargo technical workers who claimed they were mistakenly treated as exempt from the FLSA's overtime requirement, denied meal mandatory meal breaks, and the failure to properly credit all hours worked to a cash balance plan violated ERISA. The class of 4500 workers in 39 states were called “business analyst” and “business consultant” but their duties involved producing and updating automated versions of documents and routine support, such as updating user profiles. *Gerlach v. Wells Fargo & Co.* (N.D. Cal. 1-19-07)

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2. **Troubling Trend** – Employers already know (or should know) that the U.S. Supreme Court issued a new standard last summer for Title VII retaliation claims, allowing conduct that falls short of an ultimate employment action (e.g. firing, pay cut) to support a claim. See Legal Briefs for HR #6-2006. States are also jumping on the bandwagon, as demonstrated by a case where a former employee is proceeding on a claim of retaliatory discharge in violation of public policy, claiming he was fired for reporting an incident of workplace violence. The incident? Per plaintiff's complaint, a subordinate employee "angrily disagreed with Plaintiff, raised his voice to a loud tone, and stood over the Plaintiff in a threatening manner" during a workplace meeting. What public policy? The court observed that the state constitution provides for the "health, safety and welfare of the people" and recently enacted statutes require health care employers to have a plan for reporting workplace violence and employers must provide job-protected leave for victims of violence. The message? Involve HR and/or legal counsel in termination decisions and be sure to check the state statutes and common law, which may provide additional recourse to an unhappy former employee. *Daoust v. Abbott Labs* (N.D. Ill. 1-11-07)
3. **The World is Not Your Oyster** – A company president, facility manager and the HR manager pled guilty to conspiracy to hire undocumented aliens and each faces up to six months in prison and a \$3000 fine per illegal alien. This, in addition to the company being on probation for five years and paying a \$500,000 fine. The seafood processing company was found to have violated multiple federal immigration laws by, among other things, fraudulently obtaining H2-B visas and failing to properly react to SSA "no match" letters on nearly 900 employees. Exhibit A? A binder labeled "Bad SS#s" . . . ouch. *United States v. Hillman Shrimp & Oyster Co.* (S.D. Tex. 1-16-07).
4. **Speaking of the World** – Effective January 23, 2007, air travelers who are citizens of Canada, Mexico and Bermuda, as well as U.S. citizens who are returning to the U.S., must show their passport to enter the U.S. The same requirement will apply to entrants who come via vehicle, cruise ship or on foot, next year. Take note, both business and pleasure travelers and get or renew those passports!
5. **Simply the Best** – The January 22 issue of Fortune magazine is a great read, including its annual "100 Best Companies to Work For." Our ten-gallon hats are off to Texas-based employers (and LB4HR subscribers) who are being recognized, including:
 - a. #4 – Container Store (Coppell)
 - b. #5 – Whole Foods Market (Austin)
 - c. #9 – Methodist Hospital System (Houston)
 - d. #12 – David Weekly Homes (Houston)
 - e. #22 – Valero Energy (San Antonio)
 - f. #65 – Alcon Laboratories (Fort Worth)
 - g. #79 – TDIndustries (Dallas)
 - h. #83 – EOG Resources (Houston)
 - i. #86 – National Instruments (Austin)
 - j. #87 – Texas Instruments (Dallas)
 - k. #90 – Mens Wearhouse (Houston)

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Diversity Calendar for March 2007

- 1 - [St. David's Day](#) (Welsh)
- 2 - World Day of Prayer
- 3 - The Doll Festival (Japan)
- 4 - [Purim \(Jewish\)](#)
- 8 - International Women's Day (United Nations)
- 11 - [Daylight saving time begins](#) (3/11-11/4)
- 17 - [St. Patrick's Day](#) (Ireland, United States)
- 20 - Spring Begins (March 20-June 21)
- 21 - [Naw-Ruz](#) (Baha'i, Persia)
- 22 - New Year's Day (India)
- 25 - Feast of Annunciation (Christian)

March is...

- ☘ Deaf History Month
- ☘ Greek-American Heritage Month
- ☘ Irish-American Heritage Month
- ☘ Mental Retardation Awareness Month
- ☘ National Chronic Fatigue Syndrome Awareness Month
- ☘ National Multiple Sclerosis Education and Awareness Month
- ☘ [National Women's History Month](#) (United States)
- ☘ Spiritual Wellness Month

National Women's History Month was initiated by the [National Women's History Project](#) (NWHP), a nonprofit educational organization founded in 1980 to "promote gender equity through education about women's diverse lives and accomplishments." The organization was an outgrowth of a 1978 California committee formed to address the lack of inclusion of women's history in the educational curriculum of K-12 schools. IN 1981, the NWHP successfully lobbied Congress to declare a Joint Congressional Resolution for "National Women's History Week." Congress expanded the celebration to an entire month in 1987.

Congressional Resolution Designating the Month of March "Women's History Month"

Whereas American women of every race, class and ethnic background have made historic contributions to the growth and strength of our Nation in countless recorded and unrecorded ways;

Whereas American women have played and continue to play a critical economic, cultural, and social role in every sphere of the life of the Nation by constituting a significant portion of the labor force working inside and outside of the home;

Whereas American women were have played a unique role throughout the history of the Nation by providing the majority of the volunteer labor force of the Nation;

Whereas American women were particularly important in the establishment of early charitable, philanthropic, and cultural institutions in our Nation;

Whereas American women of every race, class, and ethnic background served as early leaders in the forefront of every major progressive social change movement;

Whereas American women have been leaders, not only in securing their own rights of suffrage and equal opportunity, but also in the abolitionist movement, the emancipation movement, the industrial labor movement, the civil rights movement, and other movements, especially the peace movement, which create a more fair and just society for all; and

Whereas despite these contributions, the role of American women in history has been consistently overlooked and undervalued, in the literature, teaching and study of American History;

Now, therefore, be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that March is designated as "Women's History Month." The President is authorized and requested to issue a proclamation for each of these months, calling upon the people of the United States to observe those months with appropriate programs, ceremonies and activities.

Mediation Training Offered at the Dispute Resolution Center

The Dispute Resolution Center will conduct its next 40-hour Basic Mediation Training on two weekends, April 20-22 and 27-29. Some take this training and then serve as mediators in formal mediation settings. Others find they have gained an expertise in conflict management that is useful in their daily life and work.

These skills may be applied in a variety of work settings such as in negotiations with a supplier, handling matters of employee conduct or determining changes in business practice. Their application also becomes useful in resolving personal issues as in settling differences among family members or discussing charges with someone to do household repairs.

Human resources professionals, clergy, business owners and managers and governmental administrators are among those who have taken mediation training through the Dispute Resolution Center. While some may later wish to serve as volunteer mediators at the Center, all have gained conflict management skills.

For additional information and to register for the class contact the Dispute Resolution Center at 979-822-6947.

HR Southwest

HR Southwest will once again be held in Fort Worth on October 23-26, 2007. Registration will be available on March 1, 2007. Additional information about HR Southwest can be found at:

<http://www.hrsouthwest.com/index.htm>. When registering, please be sure to note our chapter name and our HR Southwest Ambassador, Tom Owen.

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6. **On the Bubble?** – Some small employers successfully avoid Title VII and ADA claims by arguing they have less than the requisite 15 employees (in a 20-week period during the current or prior calendar year). In 2003, the U.S. Supreme Court set out a 6-factor test, to determine if a shareholder-director of a professional corporation should be included in the headcount, for determination of employer status. Now, the 1st Circuit has determined the same test should be applied to closely held corporations. *DeJesus v. LTT Card Services Inc.* (1st Cir. 1-19-07). If you're on the bubble, consider [1] whether the entity can hire/fire or set the individual's work; [2] to what extent the individual's work is supervised; [3] whether the individual reports up to another person; [4] to what extent the person influences the entity; [5] parties' intent as expressed in written agreements; and [6] whether the individual has the opportunity for profit/loss and shares in liabilities of the entity.
7. **Thinking Green** – Per the 2-2-07 Dallas Morning News, Bank of America is extending the geographic scope of a \$3000 reimbursement (for buying a new hybrid car) to employees in Texas. The benefit was offered last year to workers in Boston, Charlotte NC and Los Angeles and will now encompass 185,000 employees across the country. Per the Fortune magazine article, Google offers its employees \$5000 per hybrid car purchase.
8. **Define "Relevance"** - HR has long encouraged hiring managers to focus on job-related attributes while interviewing and making selections. The City of Lansing, MI has taken it a step further, by prohibiting employment discrimination that is based on "irrelevant characteristics" effective 12-20-06. Per the ordinance, those characteristics include but are not limited to the person's actual or perceived race, religion, ancestry, national origin, color, sex, age, height, weight, student status, marital status, familial status, housing status, veteran status, political affiliation or belief, sexual orientation, gender identity or expression, mental or physical limitation, and source of income. Violators will be fined \$150 for a first offense, up to \$250 for second offense and up to \$500 for a third offense. Lansing's City Council passed a similar ordinance in March 1996, but it was eliminated via a voter referendum the following November. Opponents of the 2006 measure say they will try to overturn the measure by getting it on the ballot again, in 2007.

9. **Bye Bye, Baby UI** – The U.S. DOL published a final rule on 1-16-07, limiting all states' payment of unemployment compensation to individuals who are able and available ("A&A") for work. The rule becomes effective 2-15-07. The A&A requirement has been implied and acquiesced to, but not expressly included in either federal law or the Code of Regulations, until now. The omission became a source of controversy during the creation and ensuing rescission of the Birth and Adoption unemployment compensation regulation (aka Baby UI), with both sides citing to the omission to make their case. Baby UI temporarily allowed states to amend their laws and offer UI to parents of newborn children who chose to stay at home. The new reg can be found at 20 CFR Part 604.
10. **Smoke Signals** – Smoking in the workplace is increasingly regulated as a matter of state law and/or local ordinance. Texas employers can tap into an ordinance database, provided by the Texas Dep't of State Health Services, at <http://txshsord.coe.uh.edu/createReports.aspx>. Also, add RI to NM and MD, as states that mandate inclusion of payment for smoking cessation in certain individual and group health plans. The RI requirement is triggered by having a plan that provides for coverage of physician's services and major medical or other comprehensive coverage. The MD requirement is triggered by the inclusion of prescription drug coverage in the plan. Oddly, the NM requirement is triggered by a plan that offers maternity care.
11. **Tick Tock** – If you were thinking about commenting on pending revisions to the FMLA regs, it's not too late! U.S. DOL extended the deadline to 5 p.m. on 2-16-07. You can tell them how it really works by writing to Richard M. Brennan, Wage and Hour Division, ESA, U.S. Dep't of Labor, Room S-3502, 200 Constitution Ave. NW, Washington DC 20210. You can also vent via email at whdcomments@dol.gov or send up to 20 pages via fax to 202.693.14332.

Until next time,

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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

April 5, 2007	May 3, 2007	June 7, 2007	July 5, 2007
Topic: Innovation & Creativity	Topic: TBD	Topic: TBD	Topic: TBD
Speaker: Dr. Joyce Juntune			

Upcoming SHRM Conferences

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

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

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

June 24-27, 2007
59th 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 or (979) 862-1016.