



March 2008

CHAPTER #0330

[WWW.BVHRMA.ORG](http://WWW.BVHRMA.ORG)



*Inside This Issue:*

- March Meeting
- SHRM Upcoming Events
- BVHRMA Volunteer Opportunity

**2008 Officers**

**President**

[Sarah Tobola, PHR](#)

TEES Personnel Services

**President Elect**

[Lee Felder](#)

Texas A&M University  
HR

**VP Programs**

[Joyce Thornton](#)

Texas A&M University  
Library HR

**VP Membership**

[Nikki Felcman](#)

Texas A&M Foundation

**Treasurer**

[Krystal Broussard](#)

Boyd Ready Mix, Inc.

**Secretary**

[Stephanie Jones](#)

OI Corporation

**Past President**

[Bob Hensz](#)

Texas A&M Agriculture  
HR

*March Monthly Luncheon*

**TOPIC:** TBA  
**WHEN:** March 6, 2008 11:30am - 1pm  
**WHERE:** College Station Conference Center  
**COST:** \$10/members, \$10/first time guest, \$15/non-RSVP guest  
**SPEAKER:** TBA.  
**RSVP:** [www.bvhrma.org](http://www.bvhrma.org)

*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

*Other Events*

**Houston Gulf Coast Symposium**

May 13<sup>th</sup> and 14<sup>th</sup>

**NTSHRM Conference**

April 31<sup>st</sup> and May 1<sup>st</sup>

**2008 South Texas Human Resources Symposium**

April 17, 2008

## *BVHRMA Volunteer Opportunity*

The B/CS Chamber of Commerce will be holding its annual Job Fair on Tuesday, April 22 from 2:00 – 6:00 at the College Station Hilton. BVHRMA will again supply services to the community by holding a resume review booth during the hours of the Job Fair.

Volunteer shifts are:

2:00 - 3:30

3:00 - 4:30

4:30 - 6:00

Interested volunteers should e-mail BVHRMA at [bvhrma@yahoo.com](mailto:bvhrma@yahoo.com) and indicate time available.

Thank you for serving your community and helping individuals in their professional job search.

## *Legal Briefs for HR*

Welcome to Legal Briefs for HR . . . and Happy Valentine's Day! Not all of the news below is sweet, but being uninformed will break your heart and, in some cases, your piggy bank. So, read on . . .

1. Let This Be A Lesson – A company whose former employees were described as “faithless servants” has been awarded a \$23 million jury verdict, and the competitor who benefited from their acts is on the hook for the judgment. The jury did not like that the three workers set up their own company and funneled trade secrets to a competitor during the last 14 months of their employ. And they found that these actions amounted to giving the competitor an unfair advantage and found the competitor guilty of tortious interference with business relationships, civil conspiracy and theft of trade secrets. The “everybody’s doing it” defense offered by the competitor didn’t help a bit. *Innovative Techs. Corp v. Kenton Trace Techs.* (OH Ct. of Common Pleas 1-4-08).

2. Still Undecided – With the settlement of *Huber v. Wal-Mart* prior to being heard by the U.S. Supreme Court, employers will have to wait for another day to learn whether the ADA requires an employer to provide a disabled worker reassignment to a vacant position, even where the worker is not the best qualified candidate for the job. The lower courts had determined that “[T]he ADA is not an affirmative action statute” and does not require reassignment where it “would violate a legitimate nondiscriminatory policy of the employer to hire the most qualified candidate.”

3. Up in Smoke – The California Supreme Court has provided employers with welcome clarity on the issue of “medical marijuana” use in that state. While possession and use of marijuana is illegal under federal law, several states enacted statutes permitting use of marijuana to ameliorate the effects of certain illnesses or injuries, if the need is certified in writing by a physician. The Court held that employers may discharge or refuse to hire individuals who test positive for marijuana, even with the certification, since the law was not intended to limit the rights of employers. Bottom Line? Users of medical marijuana may continue to light up, but they are not entitled to work for an employer who prohibits the use of illegal drugs. *Ross v. RagingWire Telecomm Inc.* (CA S. Ct. 1-24-08).

4. Some Light Reading – Put a fresh ream of paper in the printer and then go to the U.S. Dep’t of Labor website at [www.dol.gov/esa/whd/fmla/FedRegNPRM.pdf](http://www.dol.gov/esa/whd/fmla/FedRegNPRM.pdf) to make yourself a copy of the 127-page Proposed Rule meant to update the FMLA regulations. We’ve been waiting for the DOL to update the regs in light of the U.S. Supreme Court’s 2002 decision in *Ragsdale*, but there are a lot of other proposed changes, including a five year limit on how far an employer looks backward to see if a rehired employee has worked the 12 months necessary to be eligible for leave. Another common sense change is to eliminate the need to use a health care provider when seeking clarification of an employee’s certification of serious health condition, and allowing employers to contact the employee’s health care provider directly (although the employee will need to have OK’d the discussion in advance, due to HIPAA privacy concerns). Happy reading, and note the April 11 deadline for your comments to the U.S. DOL/Wage and Hour Division.

5. Changing the Rules of the Game – If you are tasked with handling EEOC charges, take note that three reasons for dismissal of a charge have been removed from the regulations. Since 1977, the regs provided that EEOC could dismiss a claim under Title VII or the ADA if the Charging Party could not be located, failed to cooperate or rejected an offer of full relief. EEOC claims the provisions no are no longer needed because the Commission’s procedures allow issuance of a final determination on charges where further investigation is not likely to lead to evidence that establishes a violation of the statute.

6. Arizona Update – A federal judge has dismissed a lawsuit filed by business groups meant to stop the Legal Arizona Workers Act in its tracks. The State had agreed to forego enforcement of the new law until March, to give the judge time to rule. The law gives the Superior Courts of Arizona authority to suspend or revoke the business license of employers that knowingly employ illegal immigrants and requires employers to check each worker’s status via the E-Verify system. The plaintiffs argued that immigration is governed by federal law, but the judge opined that the ability to grant or suspend/revoke a license to do business is within the power of the State. Plaintiffs say they will appeal to the 9th Circuit. The Governor of Arizona, in her State of the State message, asked the legislature to fix a few flaws in the law, to prevent waste of resources in response to anonymous complaints from competitors or disgruntled workers.

1. Illinois – Speaking of E-Verify, a bill has been introduced in IL to soften the effect of current law which largely prohibits employers from using the E-Verify system. The new version would merely discourage use of the system, until employers are assured of a rapid and accurate response from the Dep’t of Homeland Security and the Social Security Administration.

2. Minnesota – Per a new executive order, recipients of state contracts valued at \$50,000 or more must use E-Verify for all newly hired employees who will work on the contract, effective February 2008.

7. FMLA Expansion – Effective January 28, employers who are subject to the Family Medical Leave Act must allow an eligible employee to take up to 26 weeks of job-protected leave to care for a spouse, child, parent or “next of kin” who is a member of the Armed Forces (includes National Guard and Reserves) and who is undergoing medical treatment, recuperation or therapy or is otherwise an outpatient or on the temporary retired disability list for a serious disability or illness sustained while on active duty. Some aspects of the FMLA remain the same, such as the definition of a covered employer (i.e., 50 employees) and an eligible employee (at least one year of service and 1250 hours worked in the past 12 months). Also, the employee does not get an additional 12 weeks of leave during the 12-month period for other FMLA-qualifying reasons. If the employee takes 12 weeks for his/her own serious health condition, only 14 weeks of FMLA leave would be available to care for the injured/ill service member. Regs should issue shortly, to give further definition to the terms.

8. More Dirty Dawgs – The Texas Attorney General is alerting Texans to yet another identity theft scheme. This time, the caller identifies himself as an IRS agent and says he can directly deposit the taxpayer’s “Bush refund” by providing his/her SSN and bank account number. While the federal economic stimulus package and tax rebate checks are real, the offer to directly deposit it for you is false! Hang up on the dirty dawgs, and report the call to the IRS at [www.irs.gov](http://www.irs.gov) or by calling 1.800.829.1040. You can also call the Texas AG.

9. Interesting Tidbits

1. Former Dallas Cowboy, Chad Henning, has prevailed on a claim for workers’ comp benefits due to injuries sustained while playing professional football, despite the statute’s limitation on benefits for “certain professional athletes” at TEXAS LABOR CODE ANN. sec. 406.095.

2. An employer sued a former pilot employee for failing to repay a portion of his training costs, which would come due if he left the company before 24 months of employment. The employee countersued, claiming that the promised rapid promotions and training on a variety of corporate jets never happened. The jury sided with pilot, proclaiming the repayment contract invalid and finding the employer had used deceptive trade practices, however the pilot was awarded no damages on his countersuit. Agreements triggering employee repayment of employment-related costs must be carefully drafted, to preserve at-will employment status, to reflect actual costs and to avoid inclusion of certain expenses that are prohibited by law.

3. The U.S. Supreme Court has asked the U.S. DOL to opine whether the 4th Circuit was correct in holding that FMLA rights cannot be released or waived via individual agreements, unless such waiver is reviewed and approved by the DOL (as is the case with FLSA claims).

10. Coming Soon – Join me on Feb. 21 at the Crowne Plaza (on Midway) for a meeting of the Dallas chapter of the Texas Association of Business. Yours truly will speak on the topic of managing the tech-toys that were supposed to save businesses time and trouble but, instead, are behind a loss in worker productivity, increased litigation and a legislative backlash to protect individual privacy. For more info, contact me (hit “reply”) or Monna Miller ([mmiller@txbiz.org](mailto:mmiller@txbiz.org)) and we will send you a registration form. The cost is \$30 and includes lunch.

11. Coming Later – Yours truly will present four webinars on behalf of the Bureau of National Affairs (BNA). Mark your calendar for April 24 (Achieving Diversity Without Buying a Lawsuit), May 1 (Don’t Mess with Texas [Employers]: A Legal and

Legislative Update), June 19 (Website Wonderland: HR Resources on the Internet) and July 24 (Babes in Tech-Toy Land). All webinars are from 1 to 2:30 CT and there is a fee.

Until next time,

Audrey E. Mross  
Labor & Employment Attorney  
Munck Butrus Carter P.C.  
600 Banner Place Tower  
12770 Coit Road  
Dallas, TX 75251

972.628.3661 (direct)  
972.628.3616 (fax)  
214.868.3033 (cell)  
amross@munckbutrus.com  
www.munckbutrus.com

Legal Briefs for HR ("LB4HR") is provided to alert recipients to new developments in the law and with the understanding that it is guidance and not a legal or professional opinion on specific facts or matters. For answers to your specific questions, please consult with counsel. If you wish to be removed from the group, reply and put "Remove" in the subject line. You may also reply to notify the author of an additional or changed email address.

If you wish to post, reprint or send LB4HR for the benefit of your organization, please contact the author for permission. Upon approval, nonprofit entities may post, reprint or send LB4HR to their members for no fee. For-profit entities may be charged a nominal fee. LB4HR is copyrighted work product and may not be posted, reprinted or sent without permission, however, individual subscribers are welcome to forward LB4HR to individuals or within their place of employment without seeking permission, so long as the author's complete contact information is included.

Subscribers are encouraged to notify their Internet Service Provider (ISP) that amross@munckbutrus.com is a trusted source, in order to receive an uninterrupted subscription to LB4HR. Due to the size of the email group and occasional use of sensitive words, LB4HR can be perceived as spam or inappropriate email and deleted or diverted by your ISP's filter.

## *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

April 3, 2008

May 1, 2008

June 5, 2008