



*BVHRMA Newsletter*

*March 2010*

*Chapter #0330*



## Articles

## *Monthly Program & Luncheon*

➡ Monthly Program and Luncheon

**TOPIC:** EMPLOYEE FREE CHOICE ACT AND AVOIDING UNIONIZATION

➡ Calendar of Events/Updates

**WHEN:** Thursday, March 4, 2010

➡ Job Fair

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

➡ Legal Briefs

**WHERE:** College Station Conference Center

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

**PROGRAM:** This presentation which does touch on the effects of this act if passed, is directed more at providing important information on what organizations should be doing in preparation for the acts passage. The speaker will discuss early assessment needs, successful management/employee communications programs, the lies unions use to obtain interest, union organizing methods, and early warning sign

**SPEAKER:** Dennis Dyszelski-President of Professional Consulting Services

Dennis is president of Professional Consulting Services a nationwide labor relations consulting firm specializing in helping organizations maintain a union free environment. With his office located in Roanoke, TX., Dennis brings over 30 years of consulting experience, successfully advising hundreds of clients in health care, manufacturing, insurance, transportation, utilities, and beverage industries. Prior to consulting, Dennis held the position of Corporate Director of Labor Relations for Sperry-Vickers in Troy, Michigan. He joined the labor relations consulting firm Modern Management Methods as a partner in 1976. He formed PCS in 1987. Dennis has worked closely with CEO's, resolving critical issues, developing communication programs, training supervisors in labor relations, and providing solutions for counteracting unionization. In addition, he has served as chief spokesperson in labor contract negotiations.

**If Attending:** RSVP to Katherine at [rsvpprograms@gmail.com](mailto:rsvpprograms@gmail.com) by noon on Tuesday, March 2, 2010



## *Benefits Seminar Update*

On February 5<sup>th</sup>, Brazos Valley HRMA and Workforce Solutions co-hosted a Benefits Seminar at the Center for Regional Services in Bryan, Texas. A total of 48 participants attended the seminar--some commuted from as far as Waco, Texas!

Ouida Peterson, vice president for education and product development at CONEXIS, was the speaker at the seminar.

Ouida's first session was on COBRA and changes in compliance with this law. The presentation included information about:

- Who must comply with COBRA
- COBRA subsidy extension(s), duration of the subsidy, and the amount of the subsidy
- COBRA and state continuation
- New COBRA notices and what benefit plans to include in COBRA notices
- How FMLA, Workers' Comp, STD, LTD, and COBRA all work together

Ouida's second session was on Cafeteria Plans and updates to this law. The presentation included information about:

- What a Cafeteria Plan is
- What a plan document is
- What needs to be included in the plan document
- The new rules for cafeteria plans
- Non-discrimination tests for 125 plans

Overall, the seminar was a success! Not only did we receive good and useful information, we were also all entertained by Ouida's superb presentation.

Please make plans to attend our next seminar on November 16, 2010.

## What else is coming up?

**March 26**, Texas Business Conference

**April 13**, Bryan-College Station Chamber Job Fair (see below)

**April 18-24**, Volunteer Appreciation Week! 😊

**October 10-13**, HR Southwest Conference

[www.hrsouthwest.com](http://www.hrsouthwest.com)

### JOB FAIR INFORMATION:

The B/CS Chamber of Commerce will be holding their local job fair on 4/13/2010. As in the past, BVHRMA will be offering a resume review service as part of our service to the community. If you are interested in volunteering to critique resumes, please sign up for one of the below shifts:

Shift A 1:45-

3:15

Shift B 3:00-

4:30

Shift C 4:15-

6:00

E-mail your availability to Sarah Tobola [s-tobola@tamu.edu](mailto:s-tobola@tamu.edu)

Also, the Chamber has requested help with the *below* survey questions - they want your feedback whether you have or have not participated in the job fair. Your candid feedback is appreciated and can be sent to Jordan Meserole at [Jordan@BCSChamber.org](mailto:Jordan@BCSChamber.org)

Thanks for volunteering your time and expertise!

--Has you or your company participated in a B/CS Chamber of Commerce Job Fair?

--If so, please give your thoughts on the Job Fair (ie: "terrible", "smoothly run", etc).

--In your experience with Job or Hiring Fairs, what tends to work when attracting qualified or "professional" applicants?

--What doesn't seem to work?

--Has your company reduced the amount of Job Fairs they attend? Is your company planning on reducing the amount of Job Fairs they attend?

--Does your company use the Internet or computer to pursue more applicants these days?

--Does your company accept paper applications anymore?

--What is the primary way your company pursues applicants? (College job fairs, Newspaper ads, Community Job Fairs, Internet postings, etc)

--Based on your experiences, if there were seminars that would assist a community member in preparing to apply for a job, what would they be? (Topics such as "Communication skills" or "Properly filling out on-line applications", etc)  
Continued...

--If there were seminars that would assist in further development of your current employees or managers, do you think your company would be interested in sending them?

--If so, what topics would be useful to developing a more educated "already employed" workforce? (Topics such as "Interviewing skills" or "Investing in your company", etc)

--Predicting changes is tough, but is it likely that your company will be hiring in April of 2010? (The month of the Job Fair).

--If so, for what type of position, and how many? (Part-time, full-time, temporary)

--Is your company under a temporary hiring freeze, or expecting to be under a freeze in April of 2010?

--Whether your company is hiring or not, do you expect your company to (potentially) participate in the 2010 Job Fair?

--Open Ended Section for any thoughts on the B/CS Chamber of Commerce Job Fair, or past job fairs in other cities you have participated in, or suggestions that may assist the Workforce Development Committee:

## 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 to help them stay in the know about employment issues.

Here's what's up:

- 1. This is Not a Text** - Effective January 27, commercial truck and bus drivers are banned from sending text messages while driving, per new guidance issued by the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation (DOT). Violations are subject to criminal and civil penalties, up to \$2,750.00. DOT will now take steps to put the ban into its regulations and may expand the scope to address other forms of distracted driving. At the state level, there are bans on hand-held device use while driving in CA, CT, DC, NJ, NY, OR, WA and VI and bans on texting while driving in AL, AR, CA, CO, CT, DC, IL, LA, MD, MN, NH, NJ, NY, NC, OR, RI, TN, UT, VA, WA and Guam. For more info on the subject, including links to these state laws, check out DOT's designated webpage at [www.distraction.gov](http://www.distraction.gov). Keep in mind there are also many local ordinances banning texting while driving, such as the one in Austin, TX which took effect January 1. See sec. 12-1-34 of Austin City Code. If you have employees who drive on behalf of your organization, know what the laws require you to do, then think about what you should do if there is no applicable law in your geographic area.
- 2. Bucks for Hiring** - Legislation has been introduced to incentivize employers to hire more folks. In the 30's after the Depression, Congress enacted the Fair Labor Standards Act which encouraged employers to hire more people via the economic disincentive of mandatory overtime pay for employees who worked more than 40 hours in a workweek. Fast forward to the current economic crunch, and this time they're thinking of offering a tax credit for employers who add headcount, increase hours worked by existing staff or restore lost employee pay. The current version suggests a credit of 15% of payroll, to any business that expands payroll by at least 3% in any quarter of 2010, and 10% for an expansion of at least 5% in any quarter of 2011. For full text and to monitor progress of this bill, go to <http://thomas.loc.gov> and put H.R. 4437 in as the bill number.
- 3. Bucks for Hunting** - The proposed federal budget for fiscal 2011 is out and includes \$117 billion for the U.S. Dep't of Labor, with \$25 million and 100 additional enforcement personnel earmarked to hunt for employers who are misclassifying their employees as independent contractors. For a summary of the DOL proposed budget, go to [www.whitehouse.gov/omb/factsheet\\_department\\_labor/](http://www.whitehouse.gov/omb/factsheet_department_labor/). If you are not sure that you're handling this issue correctly, get expert help to do a self-analysis and correction before someone else does this for you.
- 4. Take Notice** - Updated COBRA notice forms are available at [www.dol.gov/ebsa/COBRAModelNotice.html](http://www.dol.gov/ebsa/COBRAModelNotice.html). The updated forms reflect extension of

the subsidy eligibility period, which was due to expire on Dec. 31 but has been extended to Feb. 28 (and a further extension is in the works). Other changes made under the Dep't of Defense Appropriations Act include extending the length of assistance from nine months to fifteen, and allowing retroactive extensions for those who stopped paying premiums when his/her subsidy expired.

5. **Ever-Evolving Employee Handbooks** - A new year is a good time to browse your employee handbook and see if it's kept up with the times. Here are a few needed changes to check for:
  1. **FMLA** - Has your policy been updated to include care-giver and exigent circumstances leave involving your employee taking time off to tend to family members in the U.S. military? Did you note the expanded categories of military personnel these leaves apply to, as of October 2009? Are you REALLY still using a fixed 12-month period to track use of FMLA when a rolling, backward-looking 12-month period would probably suit you better?
  2. **Electronic Communications** - Did you know that employers can be liable for the unsolicited or solicited false or misleading statements their employees make in the blogosphere about their employer's products and services, under Federal Trade Commission (FTC) guidance which took effect on December 1? Does your electronic communications policy advise employees what to do and provide you with a potential defense?
  3. **State Law Quirks** - These are too numerous to mention but include things like up to ten days of job-protected leave for volunteer members of the Civil Air Patrol in CA, effective January 1, 2010 and a statewide smoking ban, to include private and public places of employment, which takes effect on May 1.
  
6. **Calendar Conundrum** - Payroll pros are already onto this, but did you know that employers who issue bi-weekly paychecks are going to have 27 paydays this year, not 26? So decide real soon how to handle various deductions and accruals that are annualized, and whether you will pay above employees' stated annual salary to make that 27<sup>th</sup> payday, or reduce the amount of pay to be consistent with the agreed-upon salary amount. This recurring surprise happens because 26 pay periods of 14 days comes to 364 days, but your calendar has 365 days per year. This extra day plus the addition of Feb. 29 to the calendar every four years, means this 27<sup>th</sup> payday pops up every five to six years (and with no year containing 25 bi-weekly paydays, there is no offset to rely upon). Happy New Year!
  
7. **Fortunate Ones** - My hat's off to all employers honored by Fortune magazine's "100 Best Companies to Work For" with special love directed to the 12 who are HQ'd in Texas (most of whom are LB4HR subscribers)! The Texas honorees in the January 2019 edition of Fortune are: Camden Property Trust (#10), Methodist Hospital System (#17), Whole Food Markets (#18), NuStar Energy (#21), Shared Technologies (#33), Container Store (#36), TDIndustries (#39), USAA (#45), EOG Resources (#67), Mens' Wearhouse (#68), Balfour Beatty Construction (#76) and National Instruments (#87). The folks reading this email have a lot to do with that level of employee satisfaction, so pat yourself on the back!

8. **Heads' Up, Department of Defense Contractors** - In legal circles, there's an old adage that goes "bad facts make bad law." Combine that with simmering distaste for mandatory arbitration of employment claims in the executive and legislative (see Arbitration Fairness Act at H.R. 1020 & S. 931) branches of the federal government and here's what you get. Apparently a private sector female worker was raped by co-workers while working overseas on a DOD contract. When she tried to sue her employer for the assault, they pointed to a mandatory arbitration agreement she had signed and compelled arbitration in lieu of her day in court. Fast forward to this year's Dep't of Defense Appropriations Act, where language was added to prohibit certain DOD contractors from enforcing arbitration agreements in cases of sexual assault, but amended before enactment to broaden the scope of the prohibition. The "Franken Amendment" applies to DOD contracts for \$1 million or more entered into more than 60 days after December 19, 2009 and prohibits covered DOD contractors from entering into new or enforcing existing agreements which require, as a condition of employment, that employees or independent contractors resolve Title VII, tort claims arising out of sexual assault or harassment (including assault and battery), intentional infliction of emotional distress, false imprisonment or negligent hiring/supervision/retention claims via arbitration. This is not limited to the employees who work on the DOD contract. Also, the prime contractors must certify that their subcontractors (with subcontracts in excess of \$1 million) have agreed to the same prohibition (in this case, limited to employees and independent contractors who work on the DOD subcontract).
9. **Promises, Promises** - A small company formed in 1996 experiences a rough patch in 1997. In order to get eight original employees to stick around, they are promised 5% of the proceeds from any sale or merger of the business. Seven of them are still around in 2001 when the deal goes down, but no pay-out is forthcoming so they sue the company and its shareholders (who allegedly received the assets). Round One goes to the employer, based on finding that the promises to pay were illusory, since the employee were at-will and could be let go at any time. Round Two in the Court of Appeals also goes to the employer, but the Texas Supreme Court took a different view in Round Three, siding with the employees. They noted that this was not akin to noncompete agreements, where there is an exchange of promises (aka bilateral agreement). Instead, here the employees acted on the promise by sticking around, and once they performed, the unilateral agreement became enforceable. The Court explained by using the example that an offer to pay to have one's house painted can be withdrawn at any time . . . until the person performs by painting the house. *Vanegas v. American Energy Services* (Tex. 12-09).
10. **Data Breach Is No Day at the Beach** - The federal and state governments continue in their quest to prod organizations into preventing electronic and hard copy personal identifier (PI) data (e.g., name, address, phone number, SSN, PIN numbers, credit card info, medical info) from falling into the wrong hands. Just a few samples:
1. Texas - Cornerstone Fitness will pay \$28,000.00 and is subject to a permanent injunction barring them from improperly disposing of customers' records

containing PI, including SSNs and driver license numbers. The Texas Attorney General found that when the fitness center changed locations, the contents of a cabinet with personal training contracts were placed into a dumpster. Going forward, they must make that information unreadable, via shredding or other means, before disposing of it.

2. Massachusetts - Starting March 1, PI that is electronically transmitted or stored on portable devices must be encrypted. Also companies must have a written security plan and any contract with a third party that handles their PI must include safeguards to protect against disclosure of the PI.
  3. Connecticut - Attorney General is suing a multi-state managed care company that did not properly secure patients' medical records and financial information, and failed to notify affected enrollees until nearly six months after it learned a laptop containing the unencrypted PI of 1.5 million members (446,000 of them in CT) had gone missing.
  4. Federal - Use <http://thomas.loc.gov> to see Data Breach Notification Act (S. 139) and Personal Data Privacy and Security Act (S. 1490) for attempts to replace the patchwork of state laws with a streamlined federal approach to the problem.
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 **March 4<sup>th</sup>**:

RSVP to Katherine at  
[rsvpprograms@gmail.com](mailto:rsvpprograms@gmail.com) by  
noon on **Tuesday, March 2, 2010**