



May 2005 Newsletter



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State Legislatures Retool Workers' Compensation

In March 2005, both the Texas Senate and the House passed workers' compensation reform bills. These bills were sent to the conference committee on May 13, 2005 to develop a final version. The Senate bill, SB 5, would abolish the Texas Workers Compensation Commission transferring regulatory functions to a new department, the Texas Department of Workers Compensation, whose commissioner would be appointed by the governor and approved by the Senate while the House bill, HB7, would transfer regulatory overview activities to the Department of Insurance and to the Texas Workforce Commission, which would deal specifically with return-to-work and workplace safety issues. Both bills would create an Office of Injured Employee Counsel. This office would be the injured worker's advocate and help them understand the system.

In addition both bills would create medical care networks of approved providers. Texas has one of the highest medical care costs per injury of any state, according to insurance industry research, and one of the worst track records on return-to-work. Premiums average about \$3 per \$100 of payroll, the basis for premium calculations, compared with an average of \$2.20 nationally. One out of every four injured workers does not return to full employment. To make it easier for workers to return to work, both bills provide financial incentives to small businesses to employ injured workers and call for better coordination of the state's vocational programs and the workers compensation system so that workers who can no longer perform their previous line of work can be trained for other jobs.

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BVHRMA Named Superior Merit Award Chapter for 2004

For the fourth year in a row, Brazos Valley Human Resource Association has been named a Superior Merit Chapter. This designation is conferred on the chapter by the Texas State Council of the Society of Human Resource Management. After reviewing the work and achievements of each chapter, the Texas State Council conferred on those chapters meeting the qualifications the designations of merit and superior merit on successful chapters. BVHRMA is indebted to the work of the 2004 Board for their work and leadership.

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

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Diversity Awareness			Dates		
MAY 2005						
1	2	3 4		5	6	7
<ul style="list-style-type: none"> ◆▲ Pascha (Easter) - Eastern Orthodox ■ Vappu Day - Finland ■ Santa Cruzan Day - Philippines ▲ Beltane - Wicca ■ Matsu Festival - Taiwan 	<ul style="list-style-type: none"> ◆■ May Day (Bank Holiday) - UK, Ireland, Scotland 	<ul style="list-style-type: none"> World Press Freedom Day - UN 		<ul style="list-style-type: none"> ■ Yom Ha-Shoah - Jewish* ■ Cinco De Mayo - Mexico ■ Kodomo No Hi - Japan ■ National Day Of Prayer - USA ▲ Ascension - Christian 		
8	9	10 11		12	13	14
<ul style="list-style-type: none"> ● New Moon World Red Cross Day ■ Mother's Day - Canada, USA, Australia, New Zealand, Italy, Denmark, Mexico 		<ul style="list-style-type: none"> ▲ Akshaya Tritiya - Jain ■ Yom Hazikaron - Israel 		<ul style="list-style-type: none"> ■ Independence Day - Israel 	<ul style="list-style-type: none"> ▲■ Our Lady Of Fatima - Portugal 	
15	16	17 18		19	20	21
<ul style="list-style-type: none"> Int'l Day Of Families - UN ▲ Pentecost - Christian, Armenian 	<ul style="list-style-type: none"> ▲■ Buddha's Birthday - Hong Kong 	<ul style="list-style-type: none"> ▲ Ázamat (4th Month) - Bahá'í ■ Independence Day - Norway World Telecommunications Day - UN 			<ul style="list-style-type: none"> ■ Citizenship Day - Canada 	<ul style="list-style-type: none"> ▲ Armed Forces Day - USA
22	23	24 25		26	27	28
<ul style="list-style-type: none"> Int'l Day For Biological Diversity - UN 	<ul style="list-style-type: none"> ○ Full Moon ◆▲ Wesak - Buddhism ■ Labour Day - Jamaica ■ Declaration Of Báb - Bahá'í ◆■ Victoria Day - Canada African Liberation Day - Int'l 		<ul style="list-style-type: none"> ■ Independence Day - Jordan May 25-June 1 Week Of Solidarity With Peoples Of All Colonial Territories Fighting For Freedom, Independence, And Human Rights - UN 	<ul style="list-style-type: none"> ■ Independence Day - Guyana 		
29	30	31				
<ul style="list-style-type: none"> ■ Mother's Day - France, Sweden ◆ Ascension Of Bahá'U'Lláh - Bahá'í* 	<ul style="list-style-type: none"> ■ Joan Of Arc Day - France. ■ Memorial Day - USA ■ Spring Holiday - UK, Scotland 	<ul style="list-style-type: none"> World No-Tobacco Day - UN 	Source: www.multiculturalcalendar.com			

Legal News for HR

By Audrey Mross

1. **Battling Bills** - In this corner, you have Sens. Kennedy (D. Mass.) and Miller (D. Calif.) introducing S. 842, with support from the AFL-CIO, to [1] require employers to recognize a union based on a check of signed authorization cards, without a secret ballot election; [2] provide mediation and arbitration if a first contract negotiation exceeds 90 days; and [3] beef up penalties for employers' unfair labor practices. Their opponent is Rep. Norwood (R. - Ga.) who has introduced two bills backed by business. H.R. 874 would require an NLRB-run secret ballot election before a union can be recognized and H.R. 1748 would require secret ballot elections on proposed collective bargaining agreements, before a strike or other work stoppage can be called. Currently, employers can voluntarily recognize a union if presented with signed authorization cards from a majority of the employees, indicating their desire for representation. Grassroots lobbying will be high on both sides, so get ready!
2. **Good Call** - A CA district court found "no interference with FMLA rights" where an employee failed to follow the employer's call-in requirement while on leave. The policy stated that employees were to remain at home while taking sick leave, except to tend to personal needs arising from the illness or injury and they must notify the employer if they leave home during normal working hours. Further, employees were on notice that they were subject to receiving a call or a visit from an investigator, when using sick days. Plaintiff left his home without calling the sick leave hotline on three occasions, and was suspended twice (imposed after returning to work from FMLA leave). The court said the call-in policy was merely a procedure, not a prerequisite to FMLA eligibility, and plaintiff's use of FMLA was not negatively impacted by the policy. In other words, there was no right to be "left alone" while on FMLA leave. *Callison v. Philadelphia* (3rd Cir. 4-19-05).
3. **Bad Result** - Employers lost an estimated \$21 billion in 2004 due to [1] lost productivity, [2] continuation of health benefits, and [3] the expense of overtime and temps to cover for employees on FMLA leaves. The number is an estimate announced by the Employment Policy Foundation, based on its survey of 110 companies with over a half million employees. The upshot? A small but costly minority of employees are taking multiple leaves and in most cases, are not providing advance notice of the need for leave. The complete report is available at www.epf.org/pubs/newsletters/2005/ib20050419.pdf.
4. **At Will vs. Save the Animals** - Many states have public policy exceptions to employment-at-will. As an example, in Texas, an at-will employee can state a claim for wrongful discharge if the employee is fired for refusing to violate a state or federal law which carries a criminal penalty. Some states, like CA, have quite a few public policy exceptions including one created to protect the public's interest in the health of animals. A circus handler may proceed with his claim, in a case involving a lion who died while being transported across the Mojave Desert. The distraught handler had [1] asked that the train stop for water; [2] was forced to dispose of the lion's remains; and [3] was discharged after talking about the circumstances of the lion's death after being warned not to do so. The handler and the circus are both based in VA, but CA law applies since that is where the conduct giving rise to the discharge from employment occurred. LMRA preemption (to remove the case to federal court) did not apply either, since it was not necessary to interpret the Teamsters' CBA to resolve the dispute. Hopefully the lion is in a better place, but the employer is now feeling the heat. *Hagan v. Feld Entertainment Inc. d/b/a Ringling Bros. & Barnum & Bailey Circus* (E.D. Va. 4-15-05).
5. **Speak Up for AHPs** - The SHRM Texas State Council has joined forces with the Texas Association of Business (TAB) on issues of mutual concern. I've attached a request from TAB to use their Voter Voice email service, to support a pending bill in favor of association health plans. The attached email will provide reasons why TAB supports S. 406, and an easy link to their email service. A few things you should know:
 - o Once you register for Voter Voice, you will receive future requests for action direct from TAB. You may unsubscribe to this service, at any time.
 - o The form letter in Voter Voice gives you the option to personalize your opening and closing statements. The opening statement would be the perfect place to


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BVHRMA Meetings 2005

June 2, 2005, 11:30am College Station Conference Center, Rm. 105	USERRA - New Regulations & Impacts on the Employer Linda Sundance, DOL, Ft. Worth
July 7, 2005, 11:30am College Station Conference Center, Rm. 101	Obesity: The Costs on Healthcare & Other Employer Issues, Dr. J.A. Mason, Jr., College Station

Upcoming Seminars & Conferences

<p><u>SHRM Annual Conference & Exposition</u> June 19-22, 2005 in San Diego, CA http://www.shrm.org/conferences/annual</p> <p>Certificate programs, SHRM Academy, the Masters Series featuring world-renowned experts in the field of management sciences, and a variety of other educational programs all designed with your HR needs and development in mind.</p>	<p><u>The Texas Conference on Regionalism: Strategic Directions for Shaping the Future,</u></p> <p style="text-align: center;">September 14-16, 2005</p> <p style="text-align: center;">www.txregionalcouncil.org/conf/index.php</p>
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HR Southwest

Conference and Exposition

“HR: A Hallmark of Excellence”
October 26 – 28, 2005

*Over 100 educational seminars
Four pre-conference workshops
Over 200 exhibitors*

**Register today Use the attached form!!
Save money when you register by 6/15/05.**

Workers' Comp from Page 1

In Oklahoma, both the Senate and the House have passed somewhat different bills both designed to reform the workers compensation system. Both address soaring medical care costs and the high rate of litigation but in different ways. Both seek to reduce the cost of "dueling doctors" when the degree of injury is disputed but the House bill would allow employers to choose the physician who would give a second opinion whereas the Senate bill would allow the worker to choose. Both increase death, burial and disfigurement benefits for injured workers. Other states considering major changes to their workers compensation systems

include Maryland where some would like to establish medical provider networks; Kansas where one of the issues is the definition of an accident and Illinois where the Governor is focusing on ways to reduce fraud.

From AP wire story by Kelley Shannon & Insurance Industry.

mention your chapter and your affiliation with SHRM.

- Sen. Hutchison of Texas is already a sponsor of S. 406. This letter is going to Sen. Cornyn, asking him to co-sponsor as well. AHPs have the potential to make health care accessible to small employers who lack the numbers of employees needed to leverage affordable health care coverage. If passed, the legislation would amend ERISA and allow creation of AHPs for certified trade, industry, professional, chamber of commerce or similar business associations, so that they could aggregate the buying power of their members. If this issue speaks to you, [please use the attached link](#) and feel free to spread the word!

6. **Annie Get Your Gun (out of your car)** - Texas is considering a bill (H.B. 896) which would prevent employers from banning guns from company parking lots and garages. Oklahoma passed such a law, which was to take effect on November 1, 2004, but employers successfully argued the law ignores their rights, as property owners, to ban guns from their entire premises. A temporary restraining order is blocking enforcement of the law, for now. OK senators have passed an amendment which would protect employers from civil liability for gun-related harm on their property, in attempt to appease employers (and the Texas bill contains the same exclusion), but most employers seem to want the right to "just say no." Stay tuned!

7. **Heads Up, New Jersey Employers** - The NJ acting governor has signed a bill, increasing the state minimum wage to \$6.15/hour on 10-1-05 and to \$7.15/hour on 10-1-06. Why? "New Jersey's cost of living is 32.6% higher than the national average." Did you ever wonder how many employees earn the federal minimum wage (\$5.15/hour) or less? Two million, or about 2.7% of all hourly paid workers during 2004, per the Bureau of Labor Statistics.

8. **Heads Up, San Diego Contractors** - A new living wage ordinance requires certain employers doing business with the City of San Diego to pay their employees at least \$10 /hour plus health insurance or \$12/hour with no insurance. Contractors with less than 13 employees and those with contracts for less than \$500,000.00 are exempted from coverage. Why? Since the City's work goes to the lowest bidder, the "worst employers" are rewarded. The intent is to use the lure of municipal contracts to incentivize improved employment practices.

9. **Sublime to Ridiculous Noncompetes** - A former VP was tagged for \$11.2 million, for violating the noncompete and nonsolicitation provisions of his employment agreement, as interpreted under VA law. Yes, Virginia, there are enforceable noncompetes! At the other end of the spectrum, the training provided by Duck Boat Tours was not specialized (e.g., how to make your customers use quacking noisemakers during a tour of Philly) and did not involve proprietary information (e.g., imparting the history of Philly). Therefore, the employee who jumped ship (no pun, truly!) to another duck boat operator could not be enjoined from that employment, since his prior employers' claims were unlikely to succeed. In other words, the Duck Boat Tours lawsuit was not at all what it was quacked up to be.

10. **EPPA Oops** - A Dept. of Defense contractor learned the hard way that the Employee Polygraph Protection Act [1] does not permit an employer to even suggest to employees that they take a polygraph, even when the test is not administered and no adverse employment action is taken; [2] the exemption for federal government employees does not extend to a government contractor that wants to test its own employees; and [3] the exemption for an ongoing investigation did not apply because the employer had no reasonable suspicion that the plaintiff was involved in the loss. What started this? A contractor that ran the mailroom at the Pensacola Naval Air Station found 14 opened and undelivered Christmas cards in the trash, where a supervisor and five mail room clerks worked. Testing was pressed upon all of them as a way to "absolve the company of any responsibility for the theft."

11. **See You at SHRM?** - If you are planning to go to the SHRM national conference in San Diego, please let me know by return email. I will be speaking at the Student Conference on Saturday, June 18 and would love to coordinate a gathering of the Texans at some point during our stay! For those who have them, we need to wear our flashing Texas-shaped lapel pins, so that we can find one another during the conference. If you don't have one, let me know and I'll see how many I can round up, through the TSC.

Until Next Time,
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