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May 2007

CHAPTER #0330

WWW.BVHRMA.ORG



Employee Protection vs. Employer Expense

Who: Dwayne P. Walters, M.Ed., SPHR

What: BVHRMA Monthly Meeting and Luncheon

When: Thursday, May 3, 2007 from 11:30 to 1:00

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

“Safety” in the workplace has changed. Currently, 15 people die every day in workplace accidents. Concerns were once about machinery and construction. Today, the number one cause of workplace death is “Transportation and Vehicles” and the number three cause of death is “Assaults and Violent Acts”

Prose from the President

Spring is in the air and summer is almost here but in BVHRMA we rolled up our sleeves long ago – not because of the heat, but because your board and committees have been working hard to make BVHRMA the type of organization that will benefit you the most. We have been setting and refining our goals with an eye toward increasing our membership and participation in our various programsBUT we have been missing quite a few of you at our meetings! We had terrific programs on creativity and innovation; and if you think that HR is not about creativity, just try to develop a recruiting and retention program without a bit of creativity! In addition, we are setting up some volunteer programs for you to lend your HR skills to the community. These will not take a lot of your time, just an hour or two, so why not volunteer and in doing so, also hone your own HR skills? Soon we will be setting up some surveys, so this will be a chance to tell us what types of programs you want, but always remember, that if a program is not directly in your area, it may be in an area that keeps you a well-rounded HR professional.

On a final note, we recently have had some vacancies in our board and committees. We are looking for a co-Vice President for Programs to assist Nikki Felcman, and Committee Chairs for Communications and the Website. If you are interested or know of someone who is, please contact any member of the board and pass along the information. Remember, BVHRMA can only be a great organization with your help!

Legal Briefs

by Audrey E. Moss

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 of over 3400 subscribers to this free newsletter. Just email me to be added to the group (or removed) and you can find previous editions posted on the Munck Butrus P.C. firm website at www.munckbutrus.com under E-Newsletter.

A warm welcome to new subscribers I had the pleasure of speaking to during presentations to the Heart of Texas SHRM chapter (Waco), the Dallas HR Employment Law Conference at SMU and the Dallas Bar Association Computer Law section CLE.

Here's what's up:

1. **It's Settled** – FedEx is waiting for approval of a \$55 million settlement of claims of race and national origin discrimination involving a class of approximately 20,000 current and former employees. If approved, the four-year consent decree includes [a] discontinued use of a “skills” test in certain entry-level jobs; [b] adverse impact analysis on any new test used for employee election purposes; [c] changes to selection and evaluation procedures to ensure greater consistency in disciplinary actions; [d] development of diversity training; and [e] annual written notice of the consent decree to all officers, managers and employees, in addition to the aforementioned monetary relief. *Satchell v. Federal Express Corp.* (N.D. Cal. 4-07). Each of these areas should be on HR's radar for periodic review and employee tests, in

particular, must be carefully designed, implemented and monitored by employers (without misplaced reliance on the sales pitch that came with the system(s)).

2. **Heard on the Hill** – The Fair Pay Act of 2007 (S. 1087), if passed, would amend the FLSA and prohibit wage discrimination based on gender, race or national origin. Current federal equal pay law focuses on gender only. Employer groups are working diligently, to strip out debarment provisions from pending appropriations and minimum wage bills. Both bills, as written, would debar employers who “knowingly” hire illegal workers from potentially lucrative government contracts for up to ten years. LEGAL *Continued on page 4*

Use Existing I-9 Form Until Replacement Is Available

By Fragomen, April 17, 2007

The U.S. Department of Homeland Security (DHS) is allowing employers to continue to use the government's Employment Eligibility Verification Form I-9, which expired on March 31, until a replacement form is ready.

Since 1986, the Immigration and Nationality Act has required all U.S. employers to verify the employment eligibility and identity of all employees hired to work in the United States. To comply with the law, employers are responsible for the completion of Form I-9 for all employees, including U.S. citizens.

Completed I-9 forms are not filed with the federal government; rather, employers are required to retain them in their own files for three years after the employee's date of hire or one year after the date that employment is terminated, whichever is later.

DHS is currently updating the Form I-9; the revised form is expected to become available during 2007. The modifications are likely to reflect the legislative changes to the employment eligibility verification system, particularly for electronic storage of Form I-9s. However, despite a split among government authorities over the use of an expired form to complete a government requirement, employers are advised to continue to use the expired Form I-9 and avoid being accused of not complying with the Immigration and Nationality Act.

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Resume Review Volunteers at BCS Chamber of Commerce Job Fair

As a professional organization, one of the goals of BVHRMA is to provide service to our community. For the past 4 years, the BVHRMA Chapter has received Superior Merit recognition from SHRM, and one way we continue to receive this honor is by completing service projects such as resume reviewing for our surrounding community.

For the past several years, BVHRMA has provided a resume review service at the B/CS Chamber of Commerce job fair. This year, the job fair will be held on Tuesday, May 1st from 2pm-6pm at the College Station Hilton. We need volunteers for the following shifts. If you are interested in helping out, please e-mail Sarah Tobola (s-tobola@tamu.edu) your name, e-mail, and shift preference.

Volunteer Shifts: 1:30 - 3:00 3:00 - 4:30 4:30 - 6:00

Thank you for volunteering and helping to make a difference in someone's life!

LEGAL Continued from 2

3. **Going, Going, Gone** – Per Cindy Kang’s warning in LB4HR #3, the H-1B cap for fiscal 2008 was reached quickly, on April 2, 2007. Petitions received on April 2 and 3 will be subject to a computer-generated random selection process. Petitions that were filed late or not selected will be returned, with filing fees. The next filing date will be April 1, 2008 for FY 2009 (for H-1B employment with a start date of October 1, 2008). For a press release with more details, go to www.uscis.gov/portal/site/uscis and click on “USCIS Reaches FY 2008 H-1B Cap” and subsequent announcements about the process.
4. **E-Mail Oops** – A federal circuit court agrees with the NLRB that an employer’s selective enforcement of its e-mail use policy was an unfair labor practice under the NLRA. While the employer’s policy said “no nonbusiness use of e-mail,” employees used the system for personal, social and charitable purposes. The dispute began when employees who served as union officers were banned from using the system to discuss union business. *Media General Operations Inc. v. NLRB* (4th Cir. 3-07). Before installing a “no personal use” e-mail policy, employers should consider whether that is a standard they can meet and apply consistently.
5. **Talkin’ Trash** – The Texas Attorney General is very interested in what’s in your dumpster. In less than one month, enforcement actions have been pursued against four Texas businesses that failed to properly dispose of documents containing employees’ and customers’ personal identifying information (e.g., names, SSNs, phone numbers, addresses, credit/debit card #s, medical information). Penalties are available under sec. 48.201 (up to \$50,000 per violation) and sec. 35.48 (up to \$500 for each record) of the Texas Business and Commerce Code. For more details, check out the press releases at www.oag.state.tx.us, then check out your trash!
6. **More Fun With FMLA** – Are FMLA rights forfeited when an employee fails to follow either his union’s CBA notice procedure or the FMLA notice procedure? Not necessarily. In this case, an employee with a seriously ill mother knew he needed to take extended leave to care for her. When he approached his boss, he was told he lacked sufficient leave time and the only option was to quit . . . which he did. Later, the employee read his handbook and realized he was likely eligible for job-protected leave under FMLA, but his request for reinstatement and leave was denied. The court decided that providing the employee with false information, whether intentionally or not, amounted to a preemptive denial of leave and interference with FMLA rights. *Williams v. Illinois Department of Corrections* (S.D. Ill. 3-07). While the employee did not ask for FMLA, he relayed enough information about his mom’s condition to trigger the employer’s further investigation of the facts. This case is a good example of why supervisors and managers must be educated on employment law basics, including FMLA

7. **Hot Tip** – Voters in Missouri raised the state minimum wage from \$5.15/hour to \$6.50/hour effective January 1, 2007. Further, there is no exemption for tipped employees such as waiters and bartenders, who now must be paid a base rate of at least one-half that amount (\$3.25/hour) plus tips. An original interpretation of the new law by the MO Dep't of Labor and Industrial Relations mistakenly stated that tipped employees' base rate would remain at one-half of \$5.15/hour. Uh, never mind.
8. **Watch Your Words** – A federal circuit court agrees with the NLRB, in finding that merely publishing an overbroad confidentiality policy in an employee handbook violates sec. 8(a)(1) of the NLRA. The offending policy statement said, in part, that “we recognize and protect the confidentiality of any information concerning the company, its business plans, its partners, new business efforts . . .” In this company, “partners” means “employees.” Under section 7 of the NLRA, employees have a protected right to discuss their terms and conditions of employment and sec. 8(a)(1) identifies interference with this right as an unfair labor practice. It did not matter that [a] the policy did not expressly prohibit protected activity (a reasonable interpretation is all that's required); [b] no employee actually construed the limitation in that way (it was sufficient that they could vs. did read it that way); and [c] the rule was never applied via disciplinary action (because the chilling effect was enough). *Cintas Corp. v. NLRB* (D.C. Cir. 3-07). Lesson? Your employee handbook should be reviewed and updated periodically, preferably by someone who stays on top of labor and employment developments in the law. Unlike what your mother told you, words can hurt you.
9. **You've Been WARNed** – The Worker Adjustment and Retraining Act (WARN) was violated where a plant was closed without the requisite advance written notice to employees and government officials, even though there was an asset purchase and job offers to most workers. Why? There was an eight-day gap between the last day worked and the close of the asset sale. The silver lining is that after job offers were accepted, less than the requisite 50 employees lost jobs, so the notice requirement was mooted. *Phason v. Meridian Rail Corp.* (7th Cir. 3-07). When preparing your due diligence checklist and timelines prior to an acquisition, watch out for those WARN triggers. And check state and local law, for WARN “clones” with even shorter triggers than the federal law.
10. **Hope To See YOU There** – Yours truly will be presenting at these upcoming seminars:

1. April 26 – SHRM Texas State Council Legislative Impact Day in Austin; go to www.tsc-shrm.org for information; topic is pending legislation; for a summary of pending bills of interest to Texas employers, go to www.munckbutrus.com and click on E-Newsletter
2. May 9 – 49th County Auditors Institute at UT-Austin
3. May 15 – Texas Cooperative Extension – Leadership Extension Program in Austin
4. May 23 – Self Opportunity’s “Meeting of the Minds” in Grapevine

Until next time,

Audrey E. Mross

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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 email group, simply reply and put “Remove” in the subject line. You may also reply to notify the author of a change in your email address or if you wish to receive LB4HR at an additional email address.

May is...

- Asian/Pacific American Heritage Month
- Jewish-American Heritage Month
- National Better Hearing and Speech Month
 - National Mental Health Month
 - National Older Americans Month
 - Women's Health Care Month

May Diversity Dates

- 1 - May Day
- 2 - May Day Bank Holiday (United Kingdom)
- 3 - Israel's Independence Day (Yom Ha'Atzma'Ut)
- 3 - National Day of Prayer (United States)
- 5 - Cinco de Mayo (Mexico)
- 9 - Victory Day (Russia)
- 13 - Mother's Day (United States)
- 19 - Malcolm X's birthday (African-American, United States)
- 19 - Armed Forces Day
- 20 - Ascension Day (Christian)
- 22 - Shavuot *begins at sundown (Jewish)
- 23 - Declaration of the Bab (Baha'i)
- 28 - Memorial Day (observed)
- 29 - Ascension of Baha'u'llah (Baha'i)

The following webcasts related to diversity are available to all SHRM members. Replay any of the following webcasts by going to <http://www.shrm.org/diversity/webcast/>:

- Leveraging Diversity as a Competitive Advantage
- *Managing an Intergenerational Workforce for Organizational Success*
- Recruiting Older Workers
- Age Discrimination and the Changing Demographics of the Workforce
- *Win-Win: The EEOC's National Mediation Program*
- *The Business Case for Hiring Persons with Disabilities*
- Executive Diversity: Room at the Top

BVHRMA Awarded the 2006 Superior Merit Award



On behalf of the Society for Human Resource Management, I am pleased to confirm that your chapter has been awarded the 2006 Superior Merit Award. This award recognizes excellence in chapter operations and a commitment to providing meaningful programs and services to your members.

By achieving this award, your chapter distinguishes itself as an outstanding organization dedicated to serving the needs of your members and to the advancement of the human resource management profession. Throughout the year, we will continue to recognize your chapter's achievement as a Superior Merit Award chapter.

Congratulations on your achievement.

Sincerely,

Keith J. Greene, SPHR

Vice President, Member Relations

New Member Orientation Held

On Friday, April 20, 2007, the Brazos Valley Human Resources Management Association held its first "New Member Orientation." Three new members were able to attend this information meeting at the College Station Conference Center. The goal of this orientation is to provide new members with information about the benefits of membership, opportunities available to members, an overview of programs planned and information available on BVHRMA's website, www.bvhrma.org. This orientation also gave new members the opportunity to meet and visit with board members in an informal setting, allowing them to get to know board members and other new members, which will lead directly to more involvement in the chapter for the years to come. These orientations will be held once a quarter, or more often if needed depending on the rate of new members joining BVHRMA.

A Big Welcome to Our New Members!

Amy Suter, Assistant Director, Student Financial Aid, TAMU, astuer@tamu.edu

Mike Roth, Mission Support Associate, Hospice Brazos Valley Inc., mroth@hospicebrazosvalley.org

Chantale Deuel, Senior HR Representative, TEES Personnel, c-deuel@tamu.edu

Robert Richers, Graduate Student in HRM at TAUM, bobrichers@txcyber.com

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

June 7, 2007

Topic: TBD

July 5, 2007

Topic: TBD

August 2, 2007

Topic: TBD

SHRM Upcoming Events...

59th Annual SHRM Conference & Exposition

June 24-27, 2007

Las Vegas Convention Center | Las Vegas, Nevada

Strategic HR Conference

October 10-12, 2007

Tampa Marriott Waterside Hotel & Marina | Tampa, Florida

HR Southwest 2007

October 23-26, 2007

Fort Worth Convention Center | Fort Worth, Texas