



May 2008

CHAPTER #0330

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May Monthly Luncheon

TOPIC: Managing the Intergenerational Workforce
WHEN: May 1, 2008 11:30am - 1pm
WHERE: College Station Conference Center
COST: 10/members, \$10/first time guest, \$15/non-RSVP guest
SPEAKER: Faye Hall Jackson, Ph.D., CHE
Associate Professor and Director
Hospitality Industry Diversity Institute
Conrad N. Hilton College of Hotel and Restaurant Management
University of Houston
RSVP: www.bvhrma.org

SHRM Upcoming Events...

SHRM 60th Annual Conference and Exposition

June 22-25, 2008 Chicago, Illinois

Other Events

Houston Gulf Coast Symposium

May 13th and 14th

NTSHRM Conference

April 30st and May 1st

Will Your HR Department Be Our Chapter's Hometown Heroes? Nominations for SHRM's 2008 Human Capital Leadership Awards Program are now open

Maybe you've opened up the talent pipeline. Or championed diversity initiatives. Or overhauled a complex, out-of-date compensation program. Or aligned your organization's innovative employee education, recruitment, and retention strategies with your business goals.

Now's the time to put your achievements (and our chapter!) in the spotlight. The third annual SHRM Human Capital Leadership Awards honor successful HR solutions to major issues facing organizations today. Winners and finalists have leveraged the Human Capital Leadership Award to recruit and/or retain talented employees, as well as to gain positive public exposure among business partners, customers and the community.

Nominations are being accepted through May 30, 2008. Learn more about categories, benefits and guidelines at www.shrm.org/leadershipawards.

Legal Briefs for HR

Welcome to Legal Briefs for HR! You know the drill . . . this update on issues that matter to employers is sent to over 3600 HR professionals, in-house counsel, business owners and others who like to be educated (and entertained) when catching up on employment issues. Anyone is welcome to join . . . just email me to be added (or removed) from the list. Missed one? Past issues are posted on my firm's website at www.munckbutrus.com under E-Newsletter.

So let's spring into what's new:

I. Cost of Misunderstanding – A Minnesota food processor and its staffing agency took a \$1.3 million hit arising from claims that Hispanic individuals were denied employment for not meeting English proficiency standards that were not necessary for the job. In addition to the monetary settlement, the consent decree requires the employer to set up a diversity committee, review all jobs to determine whether or not English proficiency is a legitimate job requirement for each, and repay employees for the cost of English

classes. The staffing agency must review its tests and no longer disclose test results to clients that are apt to use them to deny employment based on race or national origin. *EEOC v. Faribault Foods Inc.* and *EEOC v. The Work Connection* (D. Minn. 3-08).

2. Peekaboo – The federal Electronic Communications Privacy Act (ECPA) places limits on what info an employer can access without violating an employee’s privacy, even when the system is Company property and the employer has a legitimate business reason (e.g., protect trade secrets) to snoop. One employer learned that it did not violate the ECPA when it examined the hard-drive of a former employee’s Company-issued laptop, because it only accessed saved e-mails and not new ones that were awaiting delivery. *Hilderman v. Enea Teksci Inc.* (S.D. Cal. 3-08). This case is a good reminder that, even though your brilliant IT folks can access your employees’ unopened emails, that does not mean they should do so. IT staff are often unaware of the limitations of the ECPA, so be sure that HR and Legal staff are involved before it’s time to go snooping.

3. Association Matters – Most HR practitioners know that a plaintiff can state a claim under the Americans with Disabilities Act, where employment discrimination is suffered due to the person’s own disability, as well as his or her “association” with a disabled individual. What is less well known is that three (now, four) federal Circuit Courts of Appeal recognize “association discrimination” as a viable claim under Title VII, too. The latest case involves an Iona College basketball coach who claimed he was discharged, in part, due to his marriage to a woman of a different race. Although the Second Circuit had never ruled on the issue, it now held that “an employer may violate Title VII if it takes action against an employee because of the employee’s association with a person of another race” and noted that the Fifth, Sixth and Eleventh Circuits already hold that same view. *Holcomb v. Iona College* (2nd Cir. 4-08). The Court rejected a narrow reading of Title VII and explained that where an employee suffers an adverse action because his or her employer disapproves of interracial association, the employee has suffered discrimination because of the employee’s own race. Not sure which Circuit your operations/employees are in? Go to www.uscourts.gov/images/CircuitMap.pdf for a color-coded map.

4. “Me Too” says Massachusetts – Last month, LB4HR noted a number of states that were cracking down on employer misclassification of employees as independent contractors. The latest to jump on the bandwagon is MA, where the governor has established a multi-agency task force to propose legal changes to improve enforcement.

5. E-Verify/No Match Update – Here’s the latest in the States vs. Feds tug-o-war over dealing with immigration:

- a. The Dep’t of Homeland Security issued a new rule relating to SSA “no match” letters, to try to address the concerns of the court which issued an injunction, preventing implementation and enforcement of the earlier rule, which issued in August 2007; the new proposal is posted at www.dhs.gov/xlibrary/assets/press_nomatch-snpirm.pdf.
- b. H.R. 4088, if passed, would require employers to use E-Verify with all hires within four years
- c. Two Congressmen are asking their colleagues to nix H.R. 4088 because the SSA “simply cannot handle the massive new workload”
- d. The governor of Rhode Island issued an executive order that requires executive branch employers and contractors with the state to use E-Verify with all hires

e. The governor of Utah signed a new law that requires public employers and contractors to use E-Verify or another status verification system on all hires, eff. 7-1-09

f. The governor of Mississippi signed a new law that requires employers to use E-Verify using a staggered approach. Public employers and contractors and private employers with 250+ employees must begin verification by 7-1-08. Employers with 100 or more have until 7-1-09; those with 30 or more can wait until 7-1-10; and all employers must be verifying, eff. 7-1-11. In light of E-Verify's database errors, the Guv urged the legislature to come up with "other reliable verification systems."

5. Don't Be Faked Out – The Texas AG brought the hammer down on a Houston-based company that sold "international driver's licenses" for \$225@ and claimed the documents are "authorized under the 1st amendment of the U.S. Constitution" and would enable purchasers to legally buy, insure and drive motor vehicles. True international driver's licenses are sold in the U.S. for \$15@ by only two authorized entities (American Automobile Association and American Automobile Touring Alliance) and are only good when used by U.S. citizens who want to drive in foreign countries that, like the U.S., are parties to the 1949 International Convention on Road Traffic (ICRT) treaty. ICRT licenses issued to U.S. citizens are not valid in this country, and non-citizens must acquire ICRT licenses in their home countries. For more info, go to www.oag.state.tx.us.

6. Trash Talk – As mentioned in earlier editions of LB4HR, the AG went after Texas businesses who disclosed their employees' and/or customers' personal information (e.g., name, address, SSN, phone #, credit card info, medications, prescribing physician) by tossing documents containing such info into trash bins that were accessible to passersby who cared to dumpster-dive. In reaching a settlement, one of the defendants will pay a \$315,000.00 fine AND must overhaul its information security programs AND implement a new employee training program that includes a review of the new security program, applicable state law and an explanation of the cost of identify theft to businesses and individuals AND designate a compliance officer AND set up a system to take employee's anonymous complaints AND post workplace signs explaining proper record storage and disposal procedures AND conduct random checks of at least 3% of its stores every 6 months AND submit sworn compliance statements to the AG for 5 years. As is often the case, the dollar amount of the settlement is a pittance compared to the cost of required compliance measures. Lesson learned? Check out your trash and make sure it does not contain legible personal info. Burn it. Shred it. Get it?

7. They Punted – The EEOC announced on March 25 that it will no longer try to modify the Uniform Guidelines on Employee Selection Procedures (UGESP) definition of an "electronic applicant." The first shoe dropped, back in October 2005, when the OFCCP published its definition of an Internet applicant (which applies only to certain federal contractors). Employers waited and wondered if the EEOC would adopt the same definition, or come up with a different version . . . which would cause compliance woes for employers subject to investigation and enforcement actions by both agencies. After a long series of 3-month extensions, awaiting the EEOC's definition, employers now learn there won't be one. If you're interested, the EEOC is welcoming your comments, by 5-27-08, via the eRulemaking Portal at www.regulations.gov.

8. They Paid – An employer paid a military reservist almost \$34,000 in double damages under USERRA plus another \$50,000 in punitive damages under State law, for refusing to pay money that was owed under company policy (but not USERRA). Why? The federal military leave law, USERRA, requires reinstatement (with certain exceptions) to prior employment when an employee returns to work after U.S. military service. It does not require any pay continuation or supplementation during the absence, but does not prevent employers from offering extra pay. In this case, an employee enlisted in the Army Reserves and was absent from work for six months, due to active duty training. Upon returning to work, he was charged with attendance “points” for the absence. In a meeting of the parties, the “points” were removed and the HR manager conceded that he should’ve received “pay coordination” (i.e., the difference between his civilian and military pay) under company policy. More than \$16,000 was direct deposited to his account, but four days later it was withdrawn by the employer, allegedly based on counsel’s advice that there was no duty to offer “pay coordination.” True, but the Company’s written policy and the HR manager’s verbal promise said otherwise. Fast forward to trial, where the Court found [1] the employer violated USERRA; [2] the employee was owed twice the amount of “pay coordination” due to an award of liquidated damages; and [3] there was also a state law breach of contract, plus unlawful conversion (when the money was withdrawn) which supported \$50,000 in punitive damages. The damage awards were upheld on appeal, on a finding that the employer “knew of or showed reckless disregard for its obligation to pay the differential.” Strongest evidence the employer knew it was on the hook for the money? The fact that the employer agreed to pay and actually deposited the funds. *Koehler v. PepsiAmericas Inc.* (6th Cir. 3-08).

9. They Present – 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 (payable to BNA, not me, in case you were curious). For more info and/or to register, go to www.bna.com and click on “All BNA Events” and then the date of the desired webinar(s).

10. They Rock! – Big thanks to those who made a donation to help send kids with muscular dystrophy to Camp John Marc this summer! I’m still short of my \$1000 pledge, so if you’d like to help out please go to www.geocities.com/legalleaders/index.htm, click on the Hot Hundred button, and then on my name. This will take you to a secure page where you can make a donation by credit card or provide instructions to send a check, if you prefer that method. Any amount would be greatly appreciated by me and the kids!

Until next time,

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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 5, 2008

July 3, 2008

August 7, 2008

September 4, 2008

THEHRA Conference "Get Engaged"

On behalf of the Texas Higher Education Human Resources Association board, I would like to invite you to attend the 2008 Summer Conference on June 8 – 10, at the Hotel Galvez in Galveston. The theme for this conference is "Get Engaged".

Join your colleagues to hear about several interesting and informative topics. We have lined up a great program that you won't want to miss and will be sending out the agenda soon.

Registration for the conference will once again be via the online system developed by PeopleAdmin. Note there is a conference discount if your payment is received no later than May 9th. So please act now to enjoy the savings. Registration fees received by May 9th are \$125 and if received after May 9th will be \$150. Registration link: <http://www.peopleadmin.com/thehra>.

Our cancellation policy is: 100% refund if cancellation of registration is received by May 16th; 50% refund if received after May 16th but prior to May 30th; 25% refund if received after May 30th.

Make your hotel reservations before May 10th to receive the \$85 per night state rate (\$145 double). Reservations after May 10th may not receive the state rate. A limited number of rooms may be available on June 8th and 9th at the state rate. To make your reservation, please call 409-765-7721 or log on to: www.wyndhamhotelgalvez.com.

Glenda F. Herrington, Director of Human Resources
President, THEHRA



SPECIAL OPPORTUNITY

We are very excited to announce a wonderful alliance with *Partners In Leadership*®. They are a widely respected international leadership and management-training organization, specializing in *Accountability Training*®, with over 700 clients in over 20 different industries. For nearly 20 years, *Partners In Leadership* has pioneered the implementation of principles and technologies that assist leaders, teams, and individuals in improving effectiveness in achieving their key results. Furthermore, *Partners In Leadership*® has participated in several National SHRM Conferences for the last several years, including recent success in Las Vegas.

This program has been approved for **6.25 recertification credit hours toward PHR, SPHR and GPHR** recertification through the Human Resource Certification Institute (HRCI). The program ID number for your recertification application form will be made available upon your attendance. For more information about certification or recertification, please visit the HRCI homepage at www.hrci.org.

WHEN, WHERE & HOW MUCH

Partners In Leadership is offering **complimentary seats (regularly priced at \$399) to the first 25 SHRM members** who register for one of their upcoming Public Workshops: *Accountability for Leadership at Every Level*™, based on the best-seller, *The Oz Principle*.

The workshops will be held in **Houston on May 13th**. (There will be a continental breakfast provided at 8am and the presentation begins at 8:30am and ends at 5pm.)

REGISTRATION

For more information and to register, please click here: [Public Workshop Registration](#). To receive a complimentary seat, please use the following **promotional code: 0B005008IGZ** when registering.** (See Below for Limitations)

OBJECTIVES OF THE TRAINING

Create greater accountability and ownership for key results. Stop the Blame Game, minimize finger-pointing, and put an end to the excuses that block results. Learn critical skills for implementing a positive approach to accountability. Create a *Solve It*® mentality in the face of tough obstacles. Develop Individual Accountability Plans that ensure commitment and follow up to achieve the desired results.

VIDEO PREVIEW

To view a **3-minute video clip on Partner In Leadership's Accountability Training** services, please [Click Here](http://www.ozprinciple.com/pil_3min_movie) (http://www.ozprinciple.com/pil_3min_movie).

eSEMINAR

If your schedule is already booked for the day of the workshop, you may register for any of the upcoming complimentary one-hour eSeminars that *Partners In Leadership* conducts. To register, click here: [eSeminar](#).



FAQ: Answers to some of the anticipated questions you may have:

Can I register multiple people for the workshop at the same time?

Yes, you may register more than one person at a time, but unfortunately the provided promotional code only works for one at a time. To register multiple SHRM guests, please contact *Partners in Leadership* directly at (800) 504-6070 x119 and they will provide you with a different code.

Can I bring a guest if they are not a member of SHRM?

If you would like to bring a guest, please also contact *Partners in Leadership* directly.

***Partners in Leadership* does not currently certify external consultants not affiliated with a specific organization for the use of their material. Consequently, the workshop is intended for those that would be practitioners of the material presented rather than consultants thereof.

Please note: This Public Workshop is available to qualified individuals only. Third-party training and consulting firms, independent contractors, executive coaches, or organizational development service providers may not enroll without prior approval. Please call 1-800-504-6070 for additional information.



2007 SHRM **SUPERIOR MERIT AWARD**
CHAPTER
