



November 2005 Newsletter



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“Second-Hand” Harassment: Can An Employer Get Burned?

By Matthew Thomas Deffebach & Dean J. Schaner



You’ve probably heard about the dangers of second-hand smoke. But what about the employment-related danger of “second-hand” harassment? Consider this scenario: Mr. Jerk, a bank manager in the credit department, repeatedly harasses his administrative assistant, Gina. He invites Gina to have drinks with him, repeatedly touches her shoulders, and brushes up against her. Gina never complains to anyone in bank management about Jerk’s conduct.

A few months later, Rhonda, a file clerk working in the same department, files a sexual harassment lawsuit and maintains that several men in the department told inappropriate sex jokes in front of her and downloaded pornography from the Internet. To support her lawsuit, Rhonda relies on Gina’s allegations concerning Jerk’s comments and touching. Rhonda, however, never personally observed or experienced Jerk’s conduct. Gina told Rhonda about her experience with Jerk during an after work happy hour.

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

Your Foundation at Work: HR Role Models

The **SHRM Foundation** has recently created a new DVD video entitled HR Role Models. Narrated by author and consultant Dr. Wayne Cascio, this highly acclaimed video features HR executives and their CEO's discussing what it means for HR to be a strategic leader in the "real world" of business. The video features interviews with top HR leaders including Michael Holmes of Edward Jones, Libby Sartain of Yahoo, Inc. and Joe Frick of Independence Blue Cross. Professor John Boudreau of Cornell says the video "enables HR educators and field professionals to experience firsthand some of

the most innovative examples of cutting-edge human resource management." The DVD package includes four separate programs each running from 10-20 minutes in length, plus a 40-page discussion guide. Visit the [SHRMStore](#) to order your copy.

The SHRM Foundation: *Investing in Your Future as an HR Leader*

HR Legal Briefs

By Audrey Mross

Welcome to Legal Briefs for HR! This email update on issues that matter to employers is provided as a service of the SHRM Texas State Council, which I serve as Co-Director of Legislative Action. Feel free to forward this to anyone who might benefit . . . all are welcome to join this FREE email group of 2600+ subscribers!

A special welcome to new subscribers who attended my talks at the University of Dallas, HR Southwest Human Resources Conference and Exposition in Fort Worth, the real estate HR group, and the Remington Hotels HR staff meeting! And I look forward to speaking at SHRM chapter meetings in Corpus Christi (Nov. 17) and Denton (Nov. 22) later this month. Here's the latest:

1. Hot Tip – Unlike a voluntary tip, an "imposed gratuity" cannot be counted toward a tip credit used to bring a non-exempt worker's wages up to the minimum wage. The subject of the recently issued DOL Wage and Hour Division Opinion Letter was a chauffeur for a limousine company, but the same rule applies to other tipped workers, such as wait staff who automatically tack on a fixed percentage of the bill for large groups served in restaurants. If you'd like to receive DOL WH opinion letters, hot off the presses, just go to www.dol.gov and click on "Subscribe to e-mail updates" in the right hand margin.

2. Taking Credit – Check out S. 1868 which, if passed, would give both employees and employers a tax credit for telecommuting (in lieu of guzzling gas to get to and from work). The

credit would apply to "furnishings and electronic information equipment" up to \$1000/year for employees and \$2000 for employers. For complete text, go to www.thomas.loc.gov and put the bill number in the search box. In the meantime, go to <http://autos.msn.com/everyday/gasstations.aspx?zip=&src=Netx> and put in your zip code, to find the cheapest gas for sale in your area!

3. Giving Credit – The Environmental Protection Agency is giving kudos to 90 Fortune 500 employers who offer employee commuter benefits designed to reduce fuel consumption, vehicle emissions and traffic congestion. It's "Top 20" list recognizes companies who offer the benefits to the highest percentage of their U.S. workforces and includes Texas-based Texas Instruments. The top five are Intel, Qualcomm, Oracle, Sun Microsystems and Microsoft. For a complete list, go to www.epa.gov and click on EPA Newsroom. A North Texas coalition is recognizing eco-friendly employers, too, with a full page ad in the Nov. 1 Dallas Morning News.

4. Finally! – After years of study, the OFCCP has published its final rule which contains the definition of an electronic applicant, as it applies to federal contractors' record-keeping requirements. The rule, which takes effect 120 days after Oct. 7, is not much different from the March 2004 proposed rule. The four criteria to be deemed an applicant are [1] the individual submits an expression of interest in employment through the Internet or related electronic data technologies; [2] the contractor considers the

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Educational Level of Texas' Workforce Projected to Decline

The average level of education of Texas' workforce is projected to decline over the next 20 years according to a study released November 9th by The National Center for Public Policy and Higher Education. Unless the state can increase the number of minorities going to college, as Texas' workforce continues to become more diverse, its education level will decrease. Hispanics are the fastest-growing ethnic group in Texas. And, along with African-Americans,



they have the lowest levels of education in the state. While only 9% of whites have less than a high school credential (diploma or GED) 48% of Hispanics and 19% of African-Americans do not have this basic education level. This projected decline in educational levels corresponds with a growth of jobs requiring most workers to have higher levels of education.

You may access the full report and state supplements at www.highereduction.org.

Brazos Valley Chapter Announces 2006 Officers

The election of officers for 2006 was held at the membership meeting on Thursday, November 10, 2005. The chapter is pleased to announce the following will be serving you as the 2006 Board of Officers:

PRESIDENT	Leah Smith
PRESIDENT ELECT	Dana Sparks
VICE PRESIDENT OF PROGRAMMING	Konny Goff
CO - VICE PRESIDENT OF MEMBERSHIP	Steve Davee
CO - VICE PRESIDENT OF MEMBERSHIP	Sarah Tobola
SECRETARY	Kari Griffin
TREASURER	Krystal Broussard

Texas State Council receives State Council Pinnacle Award

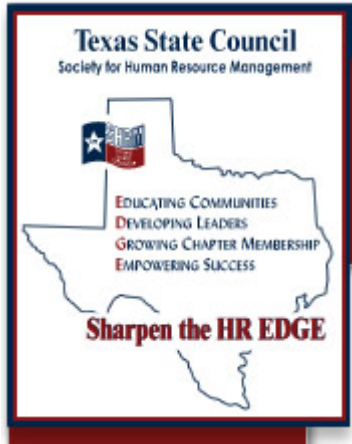
Your SHRM Texas State Council is the recipient of the first ever State Council Pinnacle Award! We, along with the New Jersey SC, were selected to receive this honor. The actual award will be given during the SHRM National Leadership Conference in Washington, D.C November 17-20, 2005.

Since the TSC is comprised of you, Texas' volunteer leaders, our receiving the Pinnacle Award is a direct reflection of your contributions to your profession, your community, and your chapter. So, thanks to you for making this honor possible.

Virida Rhem, TSC State Director

Submitted by: Leah S. Smith, PHR

New Texas State Council Website Unveiled



The SHRM Texas State Council has updated and released a new website: <http://www.tsc-shrm.org/>. This website is the latest tool of the State Council as they work to assist you in advancing our chapter, your profession and your career. They plan to continually add timely, relevant content to the site. Through this site you can find professional and student chapters throughout Texas, copies of HR Matters (the Texas State Council quarterly magazine), and copies of HR Legal Briefs, among other items of interest. We hope you will visit the site often and that it becomes an invaluable resource.

HR Team Responds to Employees Needs After Hurricane

When a Raytheon team of Human Resources and health professionals traveled to the Gulf Coast to assist employees who were victims of the recent hurricanes, they embarked on a three-state odyssey. Support efforts for victims of Hurricane Katrina began immediately after the hurricane made landfall on the coast of Mississippi and Louisiana, where several Raytheon businesses are represented.

Hours after the disaster, a team of business and Human Resources leaders had established a response team to work together to address the immediate needs of employees. Managers made personal contact with employees, visiting them individually to assess their situations. Among the initial issues addressed were basic needs such as water, food, cash advances, payroll issues and medical questions.

In the second assistance phase, a larger team of employees met with additional employees affected by the storm and provided them with

both emotional support and direct assistance. During their on-site visit, one of the team's most important goals was to provide information to affected employees about the resources offered to them by the company's Employee Disaster Relief Fund program.

The hurricanes may be over, but Raytheon's support of its employees will continue through Human Resources. John Cannon, head of Human Resources for RTSC's System and Product Support Solutions, says, "The immediate events have passed, but the effects may be felt for some time." Offering encouragement to affected employees, he counsels those in need to maintain contact with their Human Resources representative and to take advantage of the company's EAP.

*-taken from Raytheon's Website,
http://www.raytheon.com/feature/katrina_05/ks10/*

Smoke (Continued from page 1)

Given these facts, can an employer be liable for Jerk's harassment based on conduct Rhonda did not personally witness or observe? Until recently, the answer to this question was unclear. The Fifth Circuit Court Appeals, which covers Texas, Louisiana, and Mississippi, recently determined that "second-

hand" harassment, like the harassment experience Gina conveyed to Rhonda, may not support a plaintiff's hostile environment claim.

-Houston Business Journal, October 18, 2005

Upcoming Seminars & Conferences

<p><u>23rd Annual Employment Law & Legislative Conference</u> <i>March 13-15, 2006</i> , Capital Hilton Washington, D.C. http://www.shrm.org/conferences/leg/</p> <p>The Employment Law and Legislative Conference provides the information you need to stay informed about the latest legislative issues pending at the federal and state level as well as compliance and regulatory issues that affect how you conduct day-to-day HR business.</p>	<p><u>Global Certification Preparation Course</u> <i>Saturday, March 18–21, 2006</i> Caesars Palace Las Vegas, Nevada USA http://www.shrm.org/conferences/global/</p> <p>. Strengthen your knowledge base of the entire body of international HR knowledge while preparing for the GPHR™ exam. Using the SHRM Global Learning System, this comprehensive course highlights content areas that may appear on the certification exam.</p>
<p><u>29th Annual Conference & Exposition of the SHRM Global Forum</u> <i>March 20-22, 2006</i> , Caesars Palace Las Vegas, Nevada USA http://www.shrm.org/conferences/global/</p> <p>Join other HR professionals from around the world for strategic discussions, workshops and presentations about global HR practices and issues. Hear from highly acclaimed keynote speakers who provide differing perspectives and viewpoints that enhance your understanding of HR in the global community and marketplace. Their messages supplement concurrent session offerings on a wide variety of international HR topics.</p>	<p><u>37th Annual Employment Management Conference & Exposition</u> <i>March 30-April 1, 2006</i> , Manchester Grand Hyatt San Diego, California http://www.shrm.org/conferences/ema/</p> <p>Join us at SHRM's 37th Annual Employment Management Conference and Exposition—the one and only conference dedicated to HR professionals specializing in employment and staffing. This conference is specifically designed to focus on the distinctive interests and professional development needs of employment professionals.</p>
<p><u>SHRM Annual Conference & Exposition</u> <i>June 25-28, 2006</i> Washington, D.C. http://www.shrm.org/conferences/annual/</p> <p>The SHRM Annual Conference & Exposition is a three-and-a-half-day conference designed to give you, the HR professional, the most comprehensive and relevant professional development programs that improve your knowledge, skills and abilities.</p>	<p><u>2006 SHRM Workplace Diversity Conference & Exposition</u> <i>October 16-18, 2006</i>, Century Plaza Hotel and Spa Los Angeles, California http://www.shrm.org/conferences/diversity/</p> <p>Join leaders in the field of diversity management at this two-and-a-half-day forum. You will attend guided dialogue sessions that focus on emerging issues, current research, and legislative and regulatory compliance. This conference promises to be an excellent learning and networking opportunity for all professionals who are responsible for diversity within small, medium and large organizations.</p>
<p><u>2006 Strategic HR Conference</u> <i>October 4-6, 2006</i> , Westin Kierland Resort Phoenix, Arizona</p> <p>This three-day meeting promises to accelerate your strategic thought process, expand your view of what's possible, and give you key insights and ideas that you can use immediately to impact the success of your organization. An esteemed team of HR experts, leaders and visionaries will share their wisdom and best practices on how to think and act strategically.</p>	

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individual for employment in a particular position; [3] the individual's expression of interest indicates the individual possesses the basic objective qualifications for the position; and [4] the individual at no point in the contractor's selection process prior to receiving an offer of employment from the contractor, removes himself or herself from further consideration or otherwise indicates the he or she is no longer interested in the position. The old "any expression of interest" rule still applies to non-electronic applications (unless both electronic and non-electronic apps are accepted for a particular position . . . then the new definition applies to both types). Go to www.dol.gov/esa/reggs/fedreg/final/2005020176.htm for a copy of the final rule.

5. FMLA Follies – An employee had no FMLA protection from termination of his employment because he did not give sufficient notice of the need for leave to his employer, and ignored letters asking for medical certification of the need for leave. The employee called the security office, which is staffed by contractors, to say he would be out sick for a few days due to a knee injury. Some cases have held failure to comply with internal notice procedures won't nix FMLA rights, so long as the employee gave timely notice. In this case, however, employees were expressly notified not to ask for FMLA via the security office, and by notifying only contractors of the need for leave, the employer had not been properly notified. *Walton v. Ford Motor Co.* (6th Cir. 9-28-05).

6. More Fun with FMLA – FMLA leave for placement of an adopted or foster child in the employee's home applies only to a "new" placement, and not when the employee decides to adopt a foster child who has been in the home for awhile. In addition to the regulation which limits FMLA leave entitlement to the first 12 months after the birth/adoption/foster placement of a child, the language also expressly mentions that the employee is needed to care for a "newly placed child." See CFR sec. 825.200(a).

7. Check Your Policy – A rule that requires employees to give two weeks' notice before using vacation can violate the FMLA. A nurse who took unforeseeable leave to care for her terminally ill father was wrongfully denied the ability to use vacation pay to cover the absence.

Employees have the right to substitute accrued paid time off for FMLA leave taken, whether foreseeable or not. The court found the rule created an economic hardship (two weeks without pay) that could discourage use of FMLA leave. *Solovey v. Wyoming Valley Health Care Sys.* (M.D. Pa. 10-13-05).

8. Bring Home the Bacon – Suspension of the Davis-Bacon Act (which guarantees payment of prevailing wages to workers on federally funded construction contracts) is being reversed by the Bush administration. The Act was suspended on Sept. 8, to help reduce the cost of rebuilding hurricane-ravaged areas, but will be reinstated on Nov. 8, after outcries that the effect was to displace unemployed storm victims with out-of-state workers and line the pockets of profiteers.

9. New Home for Workers' Comp – Go to www.tdi.state.tx.us for the new home of workers' compensation in the state of Texas. If you go to the old website at www.twcc.state.tx.us you will be automatically redirected to the new site. The TWCC was abolished, effective Sept. 1, and the Texas Department of Insurance has assumed those duties.

10. Thanks, Governor! – For the second year in a row, Governor Rick Perry of Texas has declared October "HR Awareness Month" and publicly recognized the HR profession for "fostering business excellence and promoting prosperity." Go to www.tsc-shrm.org and click on two links in the left hand margin, to see the proclamation and cover letter from the governor. And while you're there, check out the new website features!

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