



October 2006 Newsletter



2006 OFFICERS

President

Bob Hensz
r-hensz@tamu.edu

President Elect

Vice President- Programming

Konny Goff
Konny@igoergo.com

Co-Vice President- Membership

Sarah Tobola
s-tobola@tamu.edu

Co-Vice President- Membership

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scdavee@txcyber.com

Secretary

Kari Griffin
kgriffin@bryantx.gov

Treasurer

Krystal Broussard
krystal@boydreadymix.com

WEBSITE WONDERLAND AUGUST 3, 2006

What are some of the website issues impacting employers today? How can you evaluate website and email content? Where are useful website and those "hidden" gems of HR information? Audrey Moss answered all these questions and more at BVHRMA's August luncheon on Thursday, August 3, 2006. Audrey Moss is a Labor & Employment Attorney with Munck Butrus, P.C.

Audrey reminded everyone that the Internet has brought a wealth of information to our fingertips and computers. No longer do we have to purchase volumes of guides, but with the click of a mouse we have volumes of information before us. But what do we do with the information?

Some of the website and email issues impacting employers today are cyber slackers, hackers, privacy issues, and cyber smear campaigns to name a few. The Internet has various sites that can drain an employee's productivity includes some sites that allow you to "play" with a cat or dog and the site has an emergency button that switches to a predestinated site "in case you need to look like you are working"!

When evaluating websites and emails, Audrey recommends checking for the date of the last update on the website. Consider the source of information and whether it is credible. Be wary of emotion-driven tactics and use a hoax checker like www.truthorfiction.com.

The "Must Have" sites for human resources are www.shrm.org, www.americanpayroll.org, and www.dol.gov. Other websites of interest are www.statelocalgov.net, which is a one-stop site of thousands of state agencies and city and county governments and www.neli.org, which provides information about OFCCP and AAP.

And when the stress of the day increases check out www.dumblaws.com, www.purewhitenoise.com, or www.happynews.com. And happy surfing!

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.

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WELCOME NEW MEMBER

Kay Berry is BVHRMA's newest member. Una is the Human Resources Director with West Corporation, a telecommunications firm in Bryan. West Corporation has 600

employees in the local area and Una spends 99% of her time in HR related duties serving these employees. Una is also a SHRM member.

WELCOME KAY!

Your Foundation at Work: Making a Difference

You know what excellence is. It's people...with talent. People who are dedicated and work hard to continually improve themselves, to be the best they can be. They are able to work with others, to be part of a team and to achieve something bigger than themselves.

That's what the HR profession is all about. You work behind the scenes to help your employees and companies achieve excellence. You play a major role in finding talented and dedicated people and you help them develop as individuals and team members. This is an exciting time to be an HR professional. The opportunities to provide leadership in your organization have

never been greater, but you must continually increase your professional knowledge and stay one step ahead of the rapid changes taking place all around you.

The **SHRM Foundation** helps you to meet these challenges through its support of research, publications and education. The Foundation enables HR professionals like you to make a difference.

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



Legal Briefs for HR

By Audrey E. Mross

Welcome to Legal Briefs for HR! This 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 email to anyone who would benefit . . . all are welcome to join this FREE service with over 3100 subscribers! Just email me to be added to the group and you can find previous issues for 2006 on the Munck Butrus law firm website (www.munckbutrus.com) under E-Newsletter.

A special welcome to new subscribers I had the pleasure of speaking to at the Dallas Bar Association Computer Law section meeting and the Brazos Valley HRMA meeting in College Station. I look forward to speaking at the Wichita Falls HRMA conference next week, on Sept. 19.

Here's the latest:

- 1. Sorry to See You Go (Not)! – Say good-bye to the OFCCP's Equal Opportunity Survey!** In a notice published on Sept. 8, the OFCCP said the report "misdirects valuable enforcement resources and fails to provide value to either OFCCP enforcement or contractor compliance" and will no longer be used by the agency. The EOS reportedly took the average contractor 21 hours to complete and cost all contractors around \$6 million per year, to track and file the data needed to complete the survey. Clink your glasses . . . this is a good thing.
- 2. One More Time –** On August 29, California's Fair Employment and Housing Commission (FEHC) issued yet another version of its proposed regulations on mandatory sexual harassment training. One key change is that supervisors who are located outside of CA are no longer subject to the requirement, even if they manage employees who are in CA. Go to www.fehc.ca.gov/ to see the latest version.
- 3. New Chair –** Cari Dominguez, Chair of the EEOC, is stepping down upon completion of her five-year term. The new chair is Naomi Churchill, whose background includes working for the National Institutes of Health (NIH), the Federal Deposit Insurance Corp. (FDIC), the U.S. Dept. of Agriculture and the National Institute of Science and Technology. Ms. Churchill is an attorney and was owner and principal consultant of a firm that advised management on EEO and HR issues.
- 4. Fun With FMLA –** Employers finally have an appellate decision on which to hang their hat, when prorating an employee's "hours based" bonus due to FMLA leave. An employee whose annual bonus was reduced in proportion to an eight-week leave filed an FMLA interference claim. The court relied on Dept. of Labor opinion letters, in drawing a distinction between bonuses that are tied to production (e.g., hours worked or monthly earnings) and those that reward absence of an occurrence (e.g., perfect attendance). In this case, the employer's bonus plan tied individual eligibility for the bonus to continuous employment during the plan year, job level, length of service and hours worked. Further the definition of hours of service was expressly defined as "hours for which an employee is paid or entitled to be paid" for actual work or certain absences (e.g., vacation, holidays, sick time, bereavement, military duty and court duty). The plan language was equally clear that time spent on STD and LTD did not qualify for the bonus. *Sommer v. Vanguard Group* (3rd Cir. 8-24-06).
- 5. Heads' Up, Federal Contractors –** Multi-state contractors who have been using Americas Job Bank as "one stop shopping" to satisfy the VEVRAA requirement of listing most job openings with the applicable state employment service can start mourning. AJB is being put out of business next year, to the chagrin of employers and the delight of other Internet job boards that will likely benefit from AJB's demise.

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DIVERSITY NOTES

OCTOBER 2006



2 - Yom Kippur* (Jewish)
7-13 - Sukkot* (Jewish)
11 - National Coming Out Day (United States)
12 - Columbus Day observed: Mon., Oct. 11 (United States)
14 - Lailat-UI-Quadr (Islamic, Muslim)
14 - Shemini Atzeret (Jewish)
15 - Simchat Torah (Jewish)
21 - Cirio de Nazare (Brazil)
21- Diwali (Buddhist, Hindu)
24 - Eid-Al-Fitr (Islamic, Muslim)
29 - Daylight Saving Time ends (United States)
31 - Halloween (United States)
31 - Reformation Day (Christian)

October is Diversity Awareness Month. The following excerpt from *Leveraging the Power of Difference for Competitive Advantage*, by Nancy R. Lockwood, SPHR, GPHR, HR Content Expert, June 2005, reinforces why Human Resource Professionals must continue to promote and raise awareness of diversity in the workplace.

Studies on Workplace Diversity and the Bottom Line

Several studies link workplace diversity and company performance. The study results run the gamut from identifying critical success factors for diversity initiatives that impact organizational effectiveness to connecting gender and diversity with financial performance.

- **The "Makes and Breaks" of Diversity Initiatives.** This study found that successful initiatives that leverage diversity to enhance organizational effectiveness share certain characteristics and approaches. Specifically, successful workplace diversity initiatives hinge on committed leadership, goals/targets of measures of effectiveness, strong diversity professionals, employee involvement and ties to performance evaluation, as well as data to identify, quantify and communicate progress and challenges.
- **Diversity Practices That Work.** Companies with diversity practices collectively generated 18% greater productivity than the U.S. economy overall.

The results of this study suggest that, at a minimum, diversity progress may enhance productivity through effective good leadership and management practices. Key factors that had the greatest impact on overall perceived effectiveness of diversity initiatives were: 1) a track record of recruiting diverse people; 2) management that is accountable for diversity progress and holds others accountable; 3) leaders who demonstrate commitment to diversity; 4) rewarding people who contribute in the area of diversity; and 5) training and education to increase awareness and help employees understand how diversity can impact business results.

- **The Effects of Diversity on Business Performance.** This study looks at the effects of racial and gender diversity on organizational performance. A key finding reveals that racial diversity has a positive effect on overall performance in companies that use diversity as a resource for innovation and learning. Further, the study results suggest that the best performance outcomes occur when diversity is found across entire organizational units.

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Upcoming Seminars & Conferences

<p><u>2006 Strategic HR Conference</u> <i>October 4-6, 2006, Westin Kierland Resort Phoenix, Arizona</i> http://www.shrm.org/conferences/strategy/ 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>	<p><u>2006 SHRM Workplace Diversity Conference & Exposition</u> <i>October 16-18, 2006, Century Plaza Hotel and Spa Los Angeles, California</i> http://www.shrm.org/conferences/diversity/ 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>HR Southwest</u> <i>October 17-20, 2006</i> Fort Worth Convention Center Fort Worth, Texas http://www.hrsouthwest.com/ World-renowned keynote speakers, one of the most extensive schedules of educational sessions, fantastic networking forums, fabulous prizes, and a first-class venue for exposure to the newest HR products, techniques and services are all apart of this annual conference.</p>	<p><u>Beyond the Borders of Global HR</u> <i>November 1-2, 2006</i> Hilton Houston Westchase Houston, Texas www.tsc-shrm.org The Texas State Council's 6th annual conference includes sessions covering Hiring & Retaining Global Employees, Global Employee Development & Performance Management, and many other sessions.</p>

- **DIVERSITY** continued from pg 4

- **Connecting Corporate Performance and Gender Diversity.** Based on an examination of 353 Fortune 500 companies, this study connects gender diversity and financial performance. (The study does not, however, demonstrate causation.) The key findings show that the group of companies with the highest representation of women on their top management teams experienced better financial performance than the group with the lowest women's representation: that is, 35% higher return on equity and 34% higher total return to shareholders. The

study results suggest there is a business case for gender diversity (e.g., recruiting, developing and advancing women)-specifically, organizations that focus on diversity are in a stronger position to tap the educated and skilled talent in the marketplace. This is important because women comprise 47% of the U.S. paid labor force and hold 46% of management positions. In addition, women earn more than half of all bachelor's and master's degrees in the United States (57% and 59%, respectively) and nearly half of all doctorates and law degrees (45% and 47%, respectively).

BVHRMA Chapter Meetings & Events	
When:	October 5
Topic:	Multi-Generations in the Workplace
Speaker:	Dr. Sharon Barnes, Texas A&M University
Where:	College Station Conference Center, <i>Room 101</i>
<p>What happens when people from different generations work together? This program address issues related to multi-generations in the workplace from the personal, managerial, and training perspectives.</p>	
November 2	
December 7	

HR SOUTHWEST

There is still time to register for the 65th Annual HR Southwest Human Resources Conference and Exposition, October 17-20, 2006 at the Fort Worth Convention Center.

If you would like to register, please use the attached registration form. More information about the conference can be found at: www.hrsouthwest.com

Hope to see you in Fort Worth.

Thanks,
Tom Owen
BVHRMA HR Southwest Ambassador

Pink Emails

RadioShack layed off about 400 workers that it said were being dismissed immediately as part of planned job cuts. RadioShack notified about 400 workers by e-mail that they were being dismissed immediately as part of planned job cuts. Employees at the Fort Worth, Texas, headquarters got messages Tuesday morning, August 29, 2006, saying:

"The work force reduction notification is currently in progress. Unfortunately your position is one that has been eliminated."

The company announced Aug. 10 that it would cut 400 to 450 jobs, mostly at headquarters, to cut expenses and "improve its long-term

competitive position in the marketplace." Company officials had told employees in a series of meetings that layoff notices would be delivered electronically, spokesperson Kay Jackson said. She said employees were invited to ask questions before Tuesday's notification on a company intranet site.

RadioShack has closed nearly 500 stores, consolidated distribution centers and liquidated slow-moving merchandise in an effort to shake out of a sales slump.

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- 6 **You Too, Drug Testers** – An employee who tested positive for marijuana is being allowed to proceed with her wrongful discharge claim under Iowa law. Some states, including IA, are closely regulating how and when employers may drug test their employees. In this case, the state requires employers who drug test to provide detailed notice of their policy to all subject employees. The plaintiff admits that she received the Drug Free Workplace Act notice (required of certain federal contractors) but not the company policy that explained random tests were being used and whether the consequences of a positive test would be disciplinary or rehabilitative. *McVey v. National Org. Serv. Inc.* (Iowa 8-11-06). At last count, only two states WEREN'T regulating employers' drug testing programs, so be sure that you are in the know and your program is compliant. And this case is further reinforcement of the "best practice" of having a separate written acknowledgment of the employer's drug and alcohol policy (in addition to the general handbook acknowledgment) as proof of informed consent.
- 7 **New Limitation in New Jersey** – Under the Worker Freedom from Employer Intimidation Act, employers may not require employees to attend or participate in any communications . . . about religious or political matters. The Act has a 90-day statute of limitations and remedies include restraining orders, reinstatement, lost wages, attorneys' fees and punitive damages.
- 8 **Do You Ever Call Someone in CA?** – Then be sure that you do not engage in undisclosed monitoring or recording of telephone calls, unless you want to face the greater of treble damages or \$5000 per violation. That was the hard lesson learned by a Georgia brokerage that routinely recorded CA-based clients' phone calls. *Kearney v. Solomon Smith Barney Inc.* (Cal. 7-13-06). And make note of the eleven other so-called "two consent" or "dual consent" states that have similar privacy laws – CT, FL, IL, MA, MD, MI, MT, NV, NH, PA and WA.
- 9 **Home Sweet Home** – Sears will pay \$15 million to settle four lawsuits involving over 16,000 employees nationwide over allegations of failure to pay for commuting time. It all began with a new dispatch system and the requirement that technicians download their daily work schedules from home each morning. The employees alleged they were owed pay for the commute to their first assignment since the workday began at home,

and the court agreed. *Lenahan v. Sears, Roebuck and Co.* (7-24-06). Sounding familiar? If not, go to www.munckbutrus.com, click on E-Newsletters and print off a copy of "Texas Lawyer – Effects of the Supreme Court's Don-Doff Ruling." This is not the last "continuous workday" case we will be hearing about.

- 10 **More "Big Box" Woes** – Chicago is the first major U.S. city to set a higher minimum wage for workers in large retail establishments. By a vote of 35-14, an ordinance was approved making the minimum wage \$10 per hour for more than 16,000 workers in 35 stores. It applies to stores of 90,000 square feet or larger run by companies with annual gross revenues of \$1 billion or more. For a complete copy of the ordinance, go to www.brennancenter.org/programs/living_wage/index.html and click on Chicago's Retail Living Wage Ordinance, under Legislation.
- 11 **Kudos!** – Congratulations to LB4HR subscribers who were recently recognized as being Mother-Friendly Worksites: RHD Memorial Medical Center, Blockbuster, EDS, GameStop, Pioneer Frozen Foods and Raytheon Co.! This designation means that the company has developed a policy to support breast-feeding employees.
- 12 **More Kudos!** – Additional attaboys and attagirls to winners of the Alfred P. Sloan Awards for Workplace Flexibility: The Beck Group, Brinker International, the Community Council of Greater Dallas, Fleishman-Hillard Dallas, Kaye/Bassman International, Lee Hecht Harrison, McQueary Henry Bowles Troy LLP and the Salvation Army. For more info, go to <http://familiesandwork.org/3w/>.

Until next time,

Audrey E. Mross
Labor & Employment Attorney
Munck Butrus, P.C.
900 Three Galleria Tower
13155 Noel Road
Dallas, TX 75240

972.628.3661 (direct), 972.628.3616 (fax)
214.868.3033 (cell)
amross@munckbutrus.com

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