



September 2005 Newsletter



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Brazos Valley Workforce Solutions offers help to Hurricane Katrina Evacuees

In an effort to coordinate job opportunities available for Hurricane Katrina evacuees, in September Brazos Valley Workforce Solutions encouraged area employers to post their vacancies with the Brazos Valley Workforce Solutions office. The centralized location assisted evacuees with a place where they could learn about potential jobs in our area (temporary, part-time and full-time), as well as, obtain information about and apply for certain disaster relief benefits, such as disaster unemployment through an interstate application. The Brazos Valley Workforce Solutions office also had information on the shelters in our area, as well as other useful items such as maps, assistance agencies, etc.

In the Brazos Valley Workforce Solutions, there has been a 31% increase in job openings since the appeal for employers to hire evacuees was made. There has been a 167% increase in job seekers and a 20% increase in job referrals (people finding a job!) As of September 18, across the state for the time period of August 29 thru September 18 when compared to the time period of August 22 thru August 28, there has been an:

- 94.44% increase in the number of employer accounts in WorkInTexas
- 29.02% increase in the number of job openings in WorkInTexas
- 157.10% increase in the number of job seekers registering WorkInTexas
- 36.23% increase in the number of contacts (referrals) made

The Center for Regional Service has been open on Saturdays and every day during the week, including the Labor Day Holiday,

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IRS Increases Mileage Rate

The Internal Revenue Service and Treasury Department announced September 9, 2005 an increase to the optional standard mileage rates for the final four months of 2005. The rate will increase to 48.5 cents a mile for all business miles driven between September 1 and December 31, 2005. This is an increase of 8 cents from the 40.5 cent rate in effect for the first eight months of 2005.

- IRS press release

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: Research-Based Knowledge

The **SHRM Foundation** promotes the use of "research-based knowledge". What does that mean for you? It means enhanced credibility. Imagine proposing a new program to senior management and being able to cite solid research to demonstrate the benefits of your proposed change. The Foundation is funding practical research every year to help you do just that.

Current research projects focus on critical areas such as *Technology & HR*, *HR Measurement*, *Global HR*, and *The Changing*

Role of the HR Professional. Research results will help provide research-based answers to questions such as: How should an organizational mentoring program be structured for maximum effectiveness? How do HR leaders make a strategic impact on their organizations? To review **SHRM Foundation** research findings, visit www.shrm.org/foundation.

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

Legal News for HR

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, for which I serve as Co-Director of Legislative Action for all 35 chapters in Texas. Feel free to forward this email to anyone who might benefit . . . all are welcome to join this free email group of 2600+ subscribers!

A special welcome to new subscribers I met while speaking at the TAB Employment Relations Symposium in San Antonio, the Fort Worth HRMA August meeting, and the Pulse Conference at InfoMart. Here's the news:

1. **Not So Hot** – The California Supreme Court is allowing a discharged sales manager to proceed on her retaliation claim, after she refused to follow a male general manager's order that she perceived as being discriminatory. What did he tell her to do? Discharge a female sales associate because she was "not good looking enough" and "get me somebody hot." What happened to her next? She alleges that she was subjected to negative performance reviews, criticism in front of subordinates, solicitation of negative feedback about her and suffered a stress-related breakdown from which she did not return to work. The dissent argued that retaliation protection does not apply because the plaintiff admittedly did not expressly complain about the conduct.

Yanowitz v. L'Oreal USA, Inc. (Cal. 8-11-05).

Mapped Out – Federal contractors gathered during the National Industry Liaison Group meeting recently held in Dallas to gather pearls of wisdom including [1] the OFCCP's proposed changes to definition of an applicant is at OMB; [2] the OFCCP's proposed policy on methodology for performing compensation audits is still under review; and [3] the OFCCP and EEOC are not in agreement on either. OFCCP is moving away from selecting companies for review based upon Standard Form 100 (aka EEO-1 report) but it looks like the infamous Equal Opportunity Survey (EOS) is not going to be the way they're picked for audit either. The EOS remains under evaluation by an outside contractor (and has been there for a very long time). OFCCP has been moving away from on-site compliance reviews and relying on desk audits (i.e., review of data submitted by contractors) to identify problem areas. And they prefer to look for company-wide errors, rather than limiting the scope to a single facility.

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Meet Your Fellow BVHRMA Members



Windelan Johnson

- Place of birth: St. Louis MO.
- Hometown: Bryan TX
- Family: Married 16 years to Loren Johnson, Son Tobey – 14 months, Daughter – Rochelle 2 months

Education: BM in Music Business – Hardin-Simmons University, Abilene TX

Hobbies / Interests: Windelan enjoys watching NASCAR. She also enjoys going birding with her husband. They currently have over 250 birds on their life list. Windelan also enjoys playing the piano, sewing, and volunteering at her church.

BVHRMA Chapter: Windelan has been a member of BVHRMA for 3 years, serving on the board since January 2005.

Human Resources: Windelan has worked in Human Resources for 4 years. Her first job in HR was as Human Resources Assistant at Neutral Posture in Bryan.

One of the best aspects of working in Human Resources for Windelan is the challenge of the position. The balancing of the various details and deadlines is enjoyable. And, of course, the variety is good. Windelan says, "The best description I received about Human Resources when I started was that HR was the pop-up department. You usually end up working on what 'pops-up' that day." Flexibility and a sense of humor are two important skills needed in the Human Resources field.

In giving advice to someone just starting out in Human Resources, Windelan recommends never stop asking questions. And when mistakes are made, step-up and take responsibility for them. Problems are easier to resolve the sooner rather than later and you will retain your credibility along the way.



HR Southwest

Conference and Exposition

October 26 – 28, 2005

"HR: A Hallmark of Excellence"

To register log on to the website at www.hrsouthwest.com and click on Attendees, then Registration Form and Rates. Under Chapter Name write or type "Brazos Valley Human Resource Management Association" and I am the Chapter Ambassador.

Tom Owen, SPHR
Professional Development Coordinator

BVHRMA Board Succession Plans

As the current BVHRMA board starts succession planning for the upcoming 2006 year, we are struggling for continued leadership in the chapter. There are a variety of positions, needs, and areas that the chapter would like to provide each year. Unfortunately, our ability to provide the high quality of service and opportunities is directly related to the available and willing leadership within our chapter. The following is a list of the officer and committee chair positions that are currently held in our chapter. Please consider volunteering for a place on the board. If you are interested in serving for the 2006 year, please contact the person currently serving in that area or Leah Smith.

- President – Leach Smith, leah.smith@trajen.com
- President Elect – vacant
- Vice President of Programming – Konny Goff, konny@iGoErgo.com
- Vice President of Membership – Krystal Broussard, krystal@boydreadymix.com, and Steve Davee, scdavee@txcyber.com
- Secretary – Kari Griffin, kgriffin@bryantx.gov
- Treasurer – Jamie Boyd, Jamie@mjs-online.com
- Certification – vacant
- Diversity – Kathryn Greenwade, greenwade@afs.tamu.edu
- Legislation – Leah Smith, leah.smith@trajen.com
- Newsletter – Windelan Johnson, Windelan@iGoErgo.com
- Public Relations – vacant
- School to Work Initiative – vacant
- SHRM Foundation Representative & Advisory council – Thom Holt
- Texas State Council SHRM Foundation Chair - Leah Smith, leah.smith@trajen.com
- Student Liaison – Tom Owen, twoen@tfs.tamu.edu
- Website – Bob Hensz, r-hensz@tamu.edu

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providing services to the evacuees. They have maintained a “One Stop Shop” where the United Way, Red Cross, Salvation Army, BISD, CSISD, Brazos Food Bank, Texas Veteran’s affairs, Twin City missions, Phoebe’s Home, Social Security, PLUE the “in-house” agencies such as Child Care Management Services, Brazos Valley Workforce Solutions, and Housing Choice Voucher Program all maintained a table and a place to address evacuees’ needs.

Critical to the evacuees was the ability to obtain FEMA Identification numbers. At the Center for Regional Services, 58 computers in two computer labs were used to accomplish this. Although trying at times due to the heavy national internet traffic, most evacuees were able to obtain the identification numbers and therefore were able to qualify for the Brazos County housing assistance. Over 300 Brazos County housing vouchers had been issued as of

September 9th. These vouchers provide the bridge for families to get out of the shelters and into more permanent housing in local apartments and houses. The Center has also helped the Brazos County Emergency Operations Center by opening a Furniture Donation and Distribution center. Evacuees can pick up any furniture they need once they have located to a new home. As of September 9, 2005, 119 people have picked up furniture dropped off by Brazos Valley residents.

At the same visit, most were able to register with “Work in Texas” to assist in their search for a job. Many of the evacuees told the staff of the Center they now consider Brazos County their new home.

Brazos Valley Workforce Solutions is continuing to help Katrina evacuees and Brazos Valley residents find employment. Please remember this valuable resource that is available as you look for potential employees.

Daylight Savings Time to get Early Start in 2007

The period of the year when clocks “spring” forward and later “Fall back,” daylight-savings time, will get longer, beginning in March 2007, as a result of legislation recently signed by the president. Daylight-saving time will begin the

second Sunday of March and end the first Sunday of November, according to a provision contained in the Energy Policy Act of 2005, H.R. 6.

Tyson Foods Sued for Race Bias and Retaliation

The US Equal Employment Opportunity Commission has filed a discrimination lawsuit against Tyson Foods, Inc. The suit alleges that Tyson violated Title VII by establishing and maintaining a locked bathroom at its Ashland Alabama facility, which on occasion had signs posted on it stating “Out of Order” and “Whites

Only.” Keys to the facility were distributed to white employees only. After two African-American employees complained of the segregated facility, management subjected them to adverse employment actions, including suspensions and disciplinary write-ups.

<h3>BVHRMA Meetings 2005</h3>	
<p>Recognizing & Avoiding the Hazards in the Discipline & Termination Process October 6, College Station Conference Center Room 101 Russ Moen, SPHR, Express Business Solutions</p>	
<p>Performance Measurement Plans November 10, College Station Conference Center Room 105 Jan Pfannstiel, AMS Training Services</p>	<p>Holiday Luncheon December 8 BRIARCREST COUNTRY CLUB</p>
<h3>Upcoming Seminars & Conferences</h3>	
<p>Central Texas HRMA Study Group Sept 10 - Nov 19, 2005 in Temple & Killeen www.bvhrma.org</p> <p>This program is being developed <u>at no cost</u> to Texas State Council (TSC) affiliated chapter members and SHRM members. We ask that those who attend free and pass the SPHR return to teach one session in 2006.</p>	<p><u>Workplace Diversity Conference & Exposition</u> October 24-26, 2005 Las Vegas, NV http://www.shrm.org/conferences/diversity/</p> <p><u>Conference Sessions</u> will focus on the following topics: Practitioner Exchange, Diversity Issues, and Strategies and Tools.</p>
<p><u>Strategic HR: Aligning With the Business to Drive Results</u> October 26-28, 2005 New York, NY http://www.shrm.org/conferences/strategy/</p> <p>This conference is designed to give you strategy practices that will help advance your thought process and focus your efforts on what will get results quicker and with greater success.</p>	<p><u>SHRM Annual Conference & Exposition</u> June 25-28, 2006 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>

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2. **Capped Out** – Per an August 12 press release, USCIS has reached the H-1B cap for FY 2006, and petitions received after August 10, 2005 will be rejected. Petitions received on or before August 10 will be subject to a random selection process. Petitioners may re-submit their petitions when H-1B visas become available for FY 2007 (earliest filing date is April 1, 2006). This is the first time that the cap was hit before the fiscal year began, which supports employers' argument that the caps are too low. Go to the USCIS website at <http://uscis.gov/graphics/publicaffairs/pachron.htm> and click on "USCIS Reaches 2006 H-1B Cap", for more details.
3. **Heads Up, IL Employers** – The governor of Illinois signed off on new employee rights, including unpaid, job-protected leave to the spouse or parents of soldiers being called up for active military duty by the state or federal government, eff. 8-15-05 (S.B. 1627). Employers of 15 to 50 employees must grant up to 15 days and employers of 50 or more employees must provide up to 30 days. Such leave is available to employees (broadly defined, by the way, to include independent contractors) who have worked for the employer for at least 12 months, and have worked at least 1250 hours during the 12 month period immediately preceding the leave. [Note: Several attempts to expand FMLA, to include time off for the immediate family of an activated soldier, have failed.] Enactment of another bill, H.B. 3485, has been temporarily stayed by a state court. If found constitutional, the new law will require that hotel room attendants in Cook County (i.e., Chicago area) receive two 15-minute breaks and a 30-minute meal break in a workday of seven or more hours, and a comfortable break area with access to clean drinking water at no charge. For full text of IL law, go to www.ila.gov.

4. **Hot Properties** – Hip hip hooray for Texas business! The just-released Fortune magazine "Hot 100" fastest-growing companies is peppered with 17 companies that call Texas home, including many Legal Briefs for HR subscribers! Our ten-gallon hats off to:
- Valero Energy in San Antonio (19)
 - Silicon Laboratories in Austin (33)
 - Advanced Neuromodulation Systems in Plano (38)
 - Edge Petroleum in Houston (40)
 - ConocoPhillips in Houston (41)
 - Collegiate Pacific in Dallas (50)
 - Remington Oil & Gas in Dallas (52)
 - Holly in Dallas (54)
 - Sanders Morris Harris Group, Houston (71)
 - XTO Energy in Fort Worth (74)
 - Pilgrim's Pride in Pittsburg (77)
 - Encore Wire in McKinney (78)
 - Carrizo Oil & Gas in Houston (87)
 - Cal Dive International in Houston (96)
 - Encore Acquisition in Fort Worth (98)
 - Commercial Metals in Irving (100)
- Go to www.fortune.com for a complete list.
5. **Just A WARNING** – Subject to the court's approval, Yellow Roadway Corp. will shell out \$7 million to settle consolidated claims filed by former USF Red Star employees, the Teamsters and the CT Dep't of Labor. The Teamsters claim USF Red Star shut down all of its trucking terminals in response to an organizing drive and a one-day work stoppage, and did not provide employees with either the 60-day notice mandated under WARN or severance pay. This activity took place during the same month that Yellow Roadway Corp. purchased USF Corp. The proposed settlement divvies up \$6.6 million between all workers at terminals that employed 50 or more (minimum of \$3200.00 apiece), and the 376 employees from smaller terminals will get about \$1000.00 apiece. In *re USF Red Star Worker Notification Litigation* (E.D. Pa. 8-16-05). In another case, a group of lenders who hired a consulting firm to run a company they were in the process of buying must face WARN claims by 26 laid-off employees of the failing company. The 6th Circuit joins

three other circuits (9th, 8th and 3rd), in finding that secured lenders can be liable under WARN if the lender becomes sufficiently involved in operations and assumes responsibility for management of the target company. *Smith v. Ajax Magnathermic Corp.* (6th Cir. 7-26-05).

6. **Disorderly Conduct** – An HR department’s alleged misrepresentations about an employee’s eligibility for a supplemental LTD plan will be allowed in, as evidence of a breach of the employer’s fiduciary duty. At issue is the alleged failure of HR to inform the employee that he would have to enroll in the optional benefit plan after his salary exceeded a certain amount. The plaintiff’s monthly disability benefit, after suffering a debilitating stroke, was nearly halved due to the lack of “excess” coverage. To support his claim that HR’s “administrative dysfunction” amounted to a fiduciary breach, the plaintiff will be allowed to describe his own situation, and submit evidence that plan participation decreased at the time it should’ve increased, when 300 employees became newly eligible. *Hussey v. Chase Manhattan Bank* (E.D. Pa. 7-29-05).
7. **“Off the Clock” is Off the Hook** – Yet another employer will pay big bucks (\$1.64 million) to settle with the U.S. Dep’t of Labor on claims of failure to pay overtime and keep proper time records. The settlement will cover 939 employees in 30 locations of an HMO, over a two-year span. The company has moved from a manual to an automated time-keeping system, and provided time-keeping training for all staff members. *Chao v. Group Health Cooperative* (W.D. Wash. 7-29-05).
8. **Merrill Lynched?** - Brokers employed by Merrill Lynch in CA will have money to invest, if they collect a \$37 million preliminary settlement on claims of failure to pay overtime due to misclassification as exempt from state and federal wage and hour law. The agreed-upon settlement amount and class must be approved by the

court, and is only one of several pending actions involving stock brokers. Plaintiffs argued that neither the administrative nor the retail sales exemptions apply based on the way they were paid (incentive-based vs. salary) and their duties. *Burns v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (N.D. Cal. 8-4-05).

9. **Hush, Sir** – A company president is defending against defamation claims, based on his remarks and actions during a press conference about an ongoing labor dispute. Following a 40-month strike, the president announced that the company was suing the Steelworkers union under RICO and also suing 100 employees for filing bogus disability claims of work-related hearing loss. He then distributed copies of the complaint, which gave the employees’ names, addresses and job titles in an appendix. The lower court granted the president’s motion for summary judgment, but the 8th Circuit reversed, explaining that those listening could easily ascertain who the president was accusing of fraud, even if he did not state each person’s name during the press conference. *Ball v. Taylor* (8th Cir. 7-29-05).
10. **Keep on Truckin’** – DOT final rules allow commercial drivers to drive up to 11 hours in a workday, if immediately preceded by 10 consecutive hours off-duty. The new rule takes effect October 1, and replaces the old limit of 10 hours max, after an 8-hour break in service.
11. **New Rules** – A number of new laws impacting employers in Texas take effect on September 1, 2005. If you would like a summary of the new enactments, just let me know and I’ll send you a copy. The chart has also been provided to the legislative chair and/or president of each Texas SHRM chapter, to educate the membership.

Until Next Time,
Audrey E. Mross

