



September 2007

CHAPTER #0330

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Consultant

Who: Bob Cartwright, Intelligent Compensation, LLC

Linking Performance With Effective Total Compensation, Reward & Recognition Programs Models, Choices, & Practical Applications

What: BVHRMA Monthly Meeting and Luncheon

When: Thursday, September 6, 2007 from 11:30 to 1:00

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

Cost: \$10 for members \$15 non-BVHRMA members

Lunch (subject to change): Smoked Turkey Brisket, Ranch Potatoes, Green Beans, Coleslaw and Cookies

RSVP: n-felcman@tamu.edu or www.bvhrma.org

Topic Description: Performance management and its tie in with total reward strategies is becoming a strategic necessity in today's ultra competitive and highly accountable work environment. As a result, performance management processes linked to total reward and recognition strategies are being adopted by more and more organizations throughout the world. Surveys and studies are now proving that performance managed organizations out perform their respective competitors anywhere from 15% to 100+%. Find out in this presentation what strategic questions to ask and what options your organization has in executing a performance management / total compensation, reward, and recognition program.

Speaker Bio: Bob Cartwright, (SPHR), is founder and chief executive officer of Intelligent Compensation, LLC, a compensation and human resource management consulting firm located in the greater Austin, Texas area. Since 1996, Mr. Cartwright has managed numerous total compensation and human resource management consulting assignments for a wide variety of clients including those in high technology, manufacturing, services, information technology, health care, retail, telecommunications, legal, energy, publishing, non-profits, public entities, municipalities, financial services and defense/aerospace. He has 25+ years of diversified experience in compensation and human resource management.

Prose from the Pres...

Our world today is marked by continuous change at an ever increasing rate. Technology advances have moved us to the place where many have computers at home and work while we stay in touch with our Blackberrys and cell phones. We stay tuned in with our iPods, and even get training via podcasts. These and other changes have had a major effect on the world of Human Resources. Just check out all of the court cases and legislation to see the changes that are being made to the employee/employer relationship due to technology. So... with all of these changes, how do we keep up with them and the fast pace in which they are occurring? It is easy to say "I don't have time to stay as current as I should." Yet if we do not take time to sharpen the saw, our productivity and effectiveness will decrease rapidly. One way to stay up with everything is to attend the BVHRMA meetings and to network with other members. Ok, so maybe the topic does not interest you as much – but what about being able to talk to other HR professionals, who just may be the key to helping you solve your HR problem? Or finding the people to call when you need help.

BVHRMA is a great resource, but it can be even better – it needs you! Not only with your attendance, but also with your volunteer efforts. Working on the board or on a committee can be very rewarding – not only from a sense of accomplishment knowing that you have helped advance the profession, but also from getting to know more HR professionals better. An organization is only as good as its members want it to be. As with many of today's e-mail groups and Wikis, you can just lurk, or you can wade in and become involved. BVHRMA needs your help to become an even greater resource for the HR professionals and people of the Brazos Valley, so what do you say...volunteer to help out!

HR Legal Briefs

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 monthly updates on new laws, court cases, helpful websites and more. Anyone is welcome to join. Just email me to be added to the group (or removed) and you can join over 3500 subscribers to this free update. Past editions are posted at www.munckbutrus.com under E-Newsletter.

A warm welcome to new subscribers who heard my July 12 Website Wonderland speech during the TAB/SHRM Texas State Council employment relations symposium in San Antonio! And I'm looking forward to speaking at the Corpus Christi HRMA meeting on August 16.

Here's the latest:

1. Upping the Ante - With step one of a three-step increase in the minimum wage barely in effect, Sen. Kennedy announced that he plans to file a bill in Congress to raise it further, to \$9.50/hour by 2011. This would be on top of increases to \$5.85/hour (eff. 7-24-07), \$6.55/hour (eff. 7-24-08) and \$7.25/hour (eff. 7-24-09).
2. Budgets and Bills - It's the time of year for Congress to OK spending bills for various federal agencies, which means it's also time to get out your magnifying glass and read the fine print. The EEOC's spending bill passed the House but not before an amendment that would've barred the EEOC from using funds to sue employers over their "English only" rules was removed. A Senate committee OK'd such language in their version, so we'll see who wins. The Dep't of Homeland Security's spending bill passed in the Senate on July 26 and includes \$60 million to beef up the Basic Pilot employment eligibility verification system, which may be mandated for all employers as part of immigration reform. Stay tuned.
3. Aloha AJB - As reported in LB4HR #8 - 2006, America's Job Bank ceased operations on July 1, leaving multi-state federal contractors who are subject to VEVRAA's job posting requirements without a convenient "one stop shopping" place to post their job openings. OFCCP had hoped to issue a revised rule before the closure. Instead, it has announced that it will not cite a contractor for non-compliance solely for failing to post its jobs with the appropriate employment service delivery system or appropriate local employment service, so long as it continues to make good faith efforts to recruit and employ qualified veterans. Go to www.dol.gov/esa/ofccp/index.htm and click on "Mandatory Job Listing Requirement Update" for guidance.
4. More Fun With FMLA - Go to <http://thomas.loc.gov> <<http://thomas.loc.gov/>> and type in the bill numbers, to see full text and check the progress of these bills:
 1. More Leave for Military Reasons - Bills (S. 1894 & S. 1898) have been filed in the U.S. Senate to expand FMLA by providing up to six months of unpaid leave to employees who are the spouse, child, parent or primary caregiver for a soldier who is injured in combat. The leave may be taken continuously or on an intermittent or reduced schedule basis. Another bill (S. 1885) does not amend the FMLA, but does prohibit discrimination (e.g., failure to retain in employment) against the family member (i.e., spouse, child, stepchild, illegitimate child, parent, person(s) who stood in loco parentis and sibling) of a recovering servicemember on the basis of absence for a period of up to 52 workweeks.
 2. More Leave for Organ Donation - H.R. 2808 would amend the FMLA and add "in order to provide a living organ donation" as an additional qualifying reason for eligible employees to take FMLA leave. I silently giggle when I see the emphasis on "living" donors in this and similar state

laws. I did not realize employers were having problems with the deceased asking for FMLA leave.

3. More Leave for Other Family Members - H.R. 2792 would amend the FMLA by adding "same-sex spouse, domestic partner, parent-in-law, adult child, sibling, or grandparent" to the list of persons with a serious health condition for which an employee could take job protected leave. Oh go ahead . . . add "pets!"

5. If the Spirit Moves You - The 8th Circuit agreed that a fired salesman had been discriminated and retaliated against, in violation of Title VII, when he was discharged after objecting to participation in workplace "mind body energy" (MBE) meetings that allegedly conflicted with his Protestant religious beliefs. The owner and president of the company believed in reincarnation and that a person's traumas in past lives can explain present behavior. The company employed MBE coaches and encouraged employees to cleanse their negative energy by attending MBE meetings, but the salesman objected in sales meetings and told the president that MBE was fundamentally against his religious beliefs. Before being fired, the salesman admitted that he had crossed a line in his conversations with a female subordinate (who claimed she'd been sexually harassed), but the termination notice contained no reference to sexual harassment. *Ollis v. HearthStone Homes Inc.* (8th Cir. 7-27-07) This case is an interesting read (e.g., see footnote about the female complainant being fired for stripping and doing nude cartwheels during a golf outing) and is posted at www.findlaw.com/cascode/courts/8th.html. Just put 06-2852 in the Docket Number Search box. And thank your lucky stars these people do not work for your organization.

6. Reality Check - An employer failed in its argument that strict punctuality was an "essential function" of a mold polisher's job, after firing a paraplegic employee for repeated tardiness, which allows the employee to proceed with his failure to accommodate claims. *Holly v. Clairson Industries LLC* (11th Cir. 7-19-07) Supervisors of the 17-year employee testified that he was very good at his job and had received regular merit pay increases, even though he was tardy more often than his peers. The tardiness was attributed to issues with his wheelchair in getting past obstructions near the time clock, waiting in line to punch in, a rule allowing him to punch in only between 5 and 7 minutes before the shift started and car problems that were difficult for the employee to fix, especially when it was raining and he was trying to simultaneously manage his wheelchair and an umbrella. The company knew of these troubles, but did not create an exception for the employee when it imposed a no-fault/zero tolerance (i.e., being one second late counted as 1/2 occurrence) attendance system. The employer argued that punctuality was essential for assembly line work, but there was no evidence offered that plaintiff's tardies had caused co-workers to be idled or that his mold polishing work was ever late. Lessons learned? Although HR has had it hammered into its collective conscious to "treat everyone the same" that mantra must be set aside when dealing with disabled individuals. An employer's view of what job functions are essential will often be given great deference by the courts, but not when it does not match the facts of the individual case. In this case, the company's "new benefits specialist" recommended the new no-fault plan, but failed to recognize that flexibility might be needed.

7. Double Take - Another employer with a strict punctuality rule that fired an employee who used a wheelchair lost their ADA lawsuit, too. The employee had told the employer that his tardiness stemmed from a lack of sufficient handicap parking and navigating a sea of cubicles in the call center to find a vacant one

each day, so he asked for a 15 minute grace period when returning from lunch. Here, the trial court agreed with the employer that punctuality was an essential function, but the appeals court pointed out that plaintiff was not asking that the essential function be eliminated. Instead, the extra time requested would simply create a different time for the plaintiff to return to work. \$100,000 of the \$114,265 award was tied to the employer's failure to engage in the interactive process. *EEOC v. Convergys* (8th Cir. 7-6-07)

8. Tech Toy Trouble - The city of Providence, RI is probably wishing it did not have Total Recall. Why? Total Recall is a recording system that was installed and captured over 750,000 calls in a 10-month period from nearly all phone lines at the Providence Public Safety Complex, including employees' personal phone calls. A group of over 100 employees are suing for invasion of privacy, claiming federal constitution, state constitution, federal wire-tapping and state law violations. The system could've been set to alert users that they were being recorded, but that feature was not enabled. *Walden v. Providence* (D.R.I. 7-6-07). This is the latest example of the perils of an

employer becoming enamored of what tech toys can do, without understanding what they should do. For most organizations, the trinity of HR, IT and Legal must be involved from the earliest stages of development, when various workplace electronic communications devices are being added to the mix.

9. Hairy Situation - Employee refuses to provide a hair sample for a drug test and is fired. She sues, claiming hair-cutting violates her religious beliefs as a Pentecostal. Two of her supervisors did not know she was Pentecostal, but one did. Who wins? For now, the employer. Their motion for summary judgment was upheld on appeal, because the plaintiff did not adequately notify her employer about her belief, and employers are not expected to know every aspect of each religion that might require accommodation. Further, the court upheld award of the employers attorneys' fees, deeming plaintiff's suit groundless. *Collins v. Tarrant Appraisal District* (Tex. Ct. App. 6-14-07)

10. It Pays to be Healthy - Employers who incorporate health measures into their workplaces may receive a healthy tax break, if the Healthy Workforce Act of 2007 becomes law. The bill (S. 1753) could allow employers a tax credit of 50% of program costs, capped at \$200@ for the first 200 employees and \$100@ for the next 200 employees, in any taxable year. The Secretary of Health and Human Services and the Center for Disease Control would certify qualified programs, which must consist of at least three of the four named components – health awareness (e.g., education materials, opportunity for periodic screenings), employee engagement (e.g., committee, assessments, tracking of participation), behavior change (i.e. counseling and other help with tobacco, obesity, stress, nutrition and more) and supportive environment (e.g., on-site policies, participation incentives). By the way, an "employee" is one who averages not less than 25 hours/week during the year. And employers' expenses for food or health insurance cannot be taken into account for the credit. For full text and to monitor the progress of this bill, go to <http://thomas.loc.gov>.

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 | www.munckbutrus.com

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September Diversity Dates

- 1 - Israel Miraji Ascent of Propher Muhammad
- 3 - Labor Day (United States)
- 11 - Patriot Day (United States)
- 13 - Ramadan (Islamic, Muslim, Moslem)
- 13 - Rosh Hashanah* (Jewish New Year)
- 16 - Mexico's Independence Day
- 19 - San Gennaro Day (Italian-American)
- 22 - Yom Kippur* (Jewish)
- 22 - Oct 1 - Religious Freedom Week
- 23 - Autumnal Equinox (Japan)
- 24-30 - Deaf Awareness Week
- 27 -Sukkot* (Jewish)

Sept 15-Oct 15 - National Hispanic
Heritage Month (Mexico)

Healthy Aging Month: National attention
on the positive aspects of growing older.

The **SHRM Workplace Diversity Conference & Exposition** will be held **October 18 - 20, 2007**, in Philadelphia, Pennsylvania. See the SHRM website at <http://www.shrm.org/conferences/diversity/> for specific information regarding the conference.

SHRM Upcoming Events...

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

Workplace Diversity Conference & Exposition

October 18-20, 2007 | Philadelphia, PA

Texas State Council Global Forum Conference

November 7, 2007 | Houston, TX

SHRM Leadership Conference

November 14-15-16 | Washington, DC

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

OCTOBER 4	TBD
NOVEMBER 1	Dr. Elizabeth Umphress Assistant Professor Mays School of Business Diversity and Ethics
DECEMBER 6	Holiday Social