



August 2006 Newsletter



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THE COMMUNITY OF RESPECT INITIATIVE LUNCHEON JULY 13, 2006

In a joint meeting with the Brazos Valley American Society for Training & Development on July 13, 2006, the history, focus, and goals of a new cross-cultural training program in the Brazos Valley was introduced and explained. The Community of Respect Initiative is the product of months of collaboration between five grant partners - Blinn College, The Bryan-College Station Chamber of Commerce, The City of Bryan, The City of College Station, and Texas A&M University. This program is partially funded by a Cooperative Training Grant from NAFSA: Association of International Educators supported by the U.S. Department of State. The goal of "A Community of Respect" is to provide broad-based training to help both the U.S. and international communities understand and implement cross-cultural skills in their interactions with each other.

The curriculum is divided into three modules. Participants at the luncheon were given an example of the first module through a cultural-awareness demonstration. During this simulation the conference room was completely quiet. One could have heard a pen drop, as all watched with rapt attention. The goal of the first module to help participants to identify their own culture and it impacts how we interpret other cultures. The other modules provide application of the knowledge and skills learned by examining case studies and exercises on cross-cultural misunderstanding. The case studies are tailored to the participants and their normal cross-cultural interactions.

This groundbreaking training has been met with overwhelming positive post training comments and results. After going through the training, many have reported more understanding of different cultures and more confidence in their ability to think through the impacts culture may be having on certain circumstances. Several are agencies have already imbedded this training into their standard training program.

For more information about the Community of Respect Initiative and how to register for a training class go to <http://bcsrespect.tamu.edu/>.

-Windelan Johnson

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

PROSE FROM THE PRES:

BVHRMA members are in positions ranging from novices who are relatively new to those in executive positions whose careers have spanned the entire spectrum of the human resources field. Whatever level, we must remember two things: first and foremost – in our ever changing world there are always new things in HR that we need to learn; and second, as we advance in the HR field, we are examples to others.

BVHRMA provides the opportunity to gather as professionals and learn about all aspects of our profession – some which we work with every day, and some which we may

encounter in the future. As we attend these learning opportunities, we also set the example for those new to the HR field. If our actions indicate that continual learning about our profession is important, others will want to follow our example. The opposite is true also. So the question remains . . . what example are you setting for those in your organization? See you at the next BVHRMA luncheon!

-Bob Hensz, President BVHRMA

YOUR FOUNDATION AT WORK: HR Student Scholarships

Each year, the **SHRM Foundation** provides \$13,000 to support the development of future HR leaders through national student awards and scholarships. The Leonard R. Brice, SPHR, Undergraduate Leadership Award and the **SHRM Foundation** Graduate Student Leadership Award, presented each June, are designed to recognize and encourage the development of leadership skills in students preparing to enter the HR profession. The **SHRM Foundation** Student Scholarships, awarded in the fall, recognize

outstanding academic achievement. In recognition of the important work of SHRM chapter advisors to the student membership program, the Foundation sponsors the annual Advisor of the Year Award. For more information on Foundation sponsored awards & scholarships, visit www.shrm.org/foundation.

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 3000 subscribers.

Here's the latest:

- 1. Blue Dissuade Shoes** – Uh oh. Life just got easier, for plaintiffs to avoid summary judgment dismissal of their claims and get in front of a sympathetic jury instead. On June 22, the U.S. Supreme Court addressed a split of circuit court opinions by deciding “What type of adverse employment action is needed, to support a Title VII retaliation claim?” Some courts had held that it must be an “ultimate” employment action (e.g., firing, cut in pay, demotion). Others had found lesser punishments were sufficient. Going forward, courts are instructed to rely on the mythical objective, reasonable employee who (subjectively) would've found the employer's conduct “materially adverse,” which means it might have dissuaded a reasonable worker from making or supporting a charge of discrimination. The Court also said that employer actions that could support a retaliation claim are not limited to those that are related to employment or occur at work. Why? Read the statute. The anti-retaliation provisions are broader than the anti-discrimination provisions, since a ticked-off employer could take action not directly related to the complaining employee's job or could cause harm outside the workplace. Breathe deeply and count to ten. This decision provides yet another reason for HR and/or counsel to do two things – [1] audit your policies and procedures; and [2] if needed, ramp up training of decision-makers and monitoring of their decisions (preferably before the employment action is taken). *Burlington Northern Santa Fe Railroad v. White* (U.S. 6-06).
- 2. Burning Issue** – The U.S. Surgeon General released a report that ups the ante on the health risks of second-hand smoke. What should you do? Start by checking your local and state law. Most states and thousands of cities have laws and ordinances that regulate smoking in public places and workplaces, ranging from complete bans to attempts to balance the preferences of smokers and non-smokers. Some states have “lifestyle discrimination” laws that prohibit an employer from taking adverse employment action based on lawful after hours/off premises conduct, such as smoking. Two websites that can get you started on your research are www.lungaction.org and www.tobacco.org.
- 3. Psst! Here's a Tip** – As many as 100,000 former and current Starbucks baristas in CA may get more jingle in their tip jar, if claims against their employer are successful. At issue is a company policy allowing shift supervisors to partake in the tip pool. Plaintiffs are alleging violation of both the Labor Code (sec. 203) and the Business and Professions Code (sec. 17200). *Chou v. Starbucks* (Cal. Super. Ct. 6-06). That could be a latte money . . .
- 4. Immigration Update** – Although a conference committee has not yet convened, to begin harmonizing disparate House and Senate immigration reform bills, both legislative bodies plan to start by focusing on enforcement and control of the borders, while leaving guestworker and “earned citizenship” programs for another day. Sen. John McCain (R-Ariz.) said a phased-in approach, beginning with “bolstered enforcement” would be acceptable, on June 27. The next day, Rep. John Boehner (R-Ohio) announced the first hearings would focus on “border vulnerabilities.” Both bills contain mandatory employment verification, via expansion of the existing Dept. of Homeland Security “Basic Pilot” system. And check out #6, below, for what happens if your Social Security Administration “no match” letter is not properly handled.
- 5. A Gem of a Settlement** – About 1400 jewelry store employees (from 1200 locations in 41 states) will benefit from a \$1.29 million settlement arising from incorrectly calculated overtime. The employer voluntarily disclosed its violations

to the DOL and cooperated in the fix. What happened? A self-audit revealed that incentive pay was not included when calculating nonexempt employees' "regular rate" and the electronic time-keeping system improperly rounded hours worked. *Chao v. Sterling Jewelers, Inc.* (N.D. Ohio 6-06). Two suggestions – [1] until the FLSA regulations on including incentive pay in the "regular rate" are changed, do it or switch to percentage bonuses, which calculate the bonus as a percentage of an employee's earnings (including overtime); and [2] review the regs on rounding practices. Generally, rounding to the nearest five, ten or fifteen minute increment is OK so long as it averages out over time. Hint: If you always round down, it will never average out, and your practice is denying pay for time actually worked. Also, just because your nifty electronic time-keeping system has the capability of doing something, that does not mean it is lawful. The burden is on the employer to make sure it is used in a lawful manner.

6. **Matchmaker** – Check out new proposed regulations from DHS on employer handling of SSA "no match" letters. For a copy, go to www.gpoaccess.gov/fr/ and put "page 34281" in the search box for 2006 (Volume 71). There is a proposed "safe harbor" procedure for responding to those letters, but if the discrepancy cannot be resolved and the worker's ID/work authorization cannot be verified "the employer must choose between taking action to terminate the employee or facing the risk that DHS may find that the employer had constructive knowledge that the employee was an unauthorized alien and therefore, by continuing to employ the alien, violated [federal immigration law]."
7. **RICO Returned** – We've been watching an 11th Circuit case that alleges an employer and recruitment firms conspired to hire illegal workers, thereby driving down wages, workers' comp claims and attempts to unionize, to the detriment of a broad class of "legal" employees. The 11th Cir. held the plaintiffs could proceed with claims of racketeering, in violation of RICO, but the Supreme Court remanded the case on June 5, to be reconsidered using a new causation standard. This time around, plaintiffs must show a "direct" injury arising from illegal acts related to the alleged conspiracy. *Mohawk Industries v. Williams* (U.S. 6-06). Stay tuned!

8. **Stepping Out** – Under a new law, DOL VETS must engage in outreach with prospective employers of vets and disabled vets, and they must use "labor exchanges" (think Internet-based services) to facilitate such employment. Recruiters, get ready . . . the new law requires DOL to meet with you, in person!
9. **More Kudos!** – Last month, I tipped my virtual hat to Park Place Lexus, for winning a Malcolm Baldrige award, but failed to mention that Dallas is home to two winners this year! Kudos to Richland College, the first U.S. community college to receive the coveted national quality award! For a press release, check out www.richlandcollege.edu/news/baldrige_ceremony.htm.
10. **More Education!** For info on HR conferences hosted by proud Texas SHRM chapters, check out www.ahrmaconference2006.com (August 24 & 25 in Austin) and www.waco.hr.org/events.asp (August 10 in Waco).
11. **We Need This** – A man is suing a web site (www.dontdatehimgirl.com) for defamation, after being included on the "cost-effective weapon in the war on cheating men." Does it occur to you that HR professionals, especially recruiters, could use a similar site? Maybe www.donthirethem.com?

Until next time,

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Legal Briefs for HR is provided to alert recipients to new developments in the law and with the understanding that it is guidance and not a legal or professional opinion on specific facts or matters. For answers to your specific questions, please consult with counsel.

DIVERSITY NOTES

AUGUST 2006

August

- 1 - Lammas and Lughnassad (Britain, Pagan, United States)
- 3 - Tisha B'av* (Jewish)
- 4 - Nelson Mandela Arrest: 44th Anniversary
- 10-20 - Missouri State Fair, Sedalia, Missouri
- 12 - Bon Festival/Feast of Lanterns (Japan)
- 14 - Pakistan's Independence Day
- 15 - India's Independence Day
- 15 - Liberation Day (Korea, South Korea)
- 26 - Women's Equality Day (United States)
- 28 - March on Washington Anniversary

AFRICAN-AMERICAN BUSINESSES ARE FASTEST GROWING IN U.S.

The Census Bureau reported that black-owned businesses grew 45 percent from 1997 to 2002, four times faster than the national rate for all businesses. Revenues increased to \$89 billion, up 25 percent during the five-year period.

The number of black-owned business are growing but the next step is to expand them in size. Almost all the businesses (92 percent) had no employees other than the owners compared to 75 percent of the rest of U.S. businesses without employees.

The largest area of black-dominated businesses is in health care with 246,000 black-owned companies. The next largest sector are other services, such as personal services, repair and maintenance, with 210,000 firms. Black-owned firms are highly concentrated in urban centers like Chicago, New York and Los Angeles. Blacks own five

percent of all non-farm businesses in the U.S., around 1.2 million.

"Black entrepreneurs have been helped by improved education levels and increased incomes among black consumers and business owners," says Harry Alford, president and CEO of the National Black Chamber of Commerce, "We've got the first generation of significantly educated people. There's a black middle class like never before."

The report's results are based on administrative records and a survey of 2.4 million businesses.

Source:

4-18-2006, The Associated Press, "Black-owned businesses among fastest growing," MSNBC, <http://www.msnbc.com>

Upcoming Seminars & Conferences

<p><u>2006 Diversity Conference "Melting Pot"</u> August 10, 2006 at the McLennan Community College Conference Center, Waco TX http://www.wacohr.org/events.asp</p> <p>Anyone interested in inclusive, diverse and supportive work environments is invited to attend this conference is being co-sponsored by the Heart of Texas Chapter of the Society for Human Resource Management (HOT SHRM) and the Central Texas Human Resource Management Association (CTHRMA). Receive 5.5 hours of HRCI recertification credit. Payment for \$45 advance registration must be postmarked by Saturday, July 29, 2006. After July 29th, registration is on-site and will increase to \$50 per person..</p>	<p><u>2006 Strategic HR Conference</u> October 4-6, 2006, Westin Kierland Resort Phoenix, Arizona 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> October 16-18, 2006, 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>HR Southwest</u> October 17-20, 2006 Fort Worth Convention Center Fort Worth, Texas http://www.hrsouthwest.com/</p> <p>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>

BVHRMA Chapter Meetings & Events

When: Thursday, August 3, 2006
Lunch served from 11:30 a.m. - 12:00 p.m., Program begins at 12:00
Topic: **Mediation - How It Can Benefit Your Organization**
Speaker: Deborah Henshaw Urbanski, Supervisory Attorney-ADR Coordinator
Where: College Station Conference Center, Room 101

Deborah Henshaw Urbanski is the Supervisory Attorney-ADR Coordinator for the Mediation Program at the Houston District Office of Equal Employment Opportunity Commission since 1999 and ADR Coordinator for the New Orleans Field Office since January 2006. Prior to coming to the EEOC, she founded a private dispute resolution corporation in Houston, Texas. Formerly, she was the founding Executive Director of the non-profit Fort Bend County Dispute Resolution Center. She is a graduate of the University of Texas and South Texas College of Law and is licensed by the State Bar of Texas.

Deborah Urbanski has been mediating since 1991 and has conducted well over 1000 mediations. She is a frequent speaker on dispute resolution topics and regularly directs courses in conflict resolution, negotiation and related topics for mediators, schools and business.

Prior to taking her position with the EEOC, she helped a wide variety of organizations design and implement ongoing conflict resolution systems. Among her other endeavors in the peaceful resolution of conflict, Deborah previously supervised and mediated on a panel of mediators contracted by the Texas Education Agency to resolve special education disputes between parents and schools for three years.

When: September 7
Topic: Useful Websites for HR Professionals
Speaker: Audrey E. Mross, Labor & Employment Attorney
Where: College Station Conference Center, Room 101

When: October 5
Topic: Multi-Generations in the Workplace
Speaker: Dr. Sharon Barnes, Texas A&M University
Where: College Station Conference Center, Room 101

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.

November 2

December 7