



August 2007

CHAPTER #0330

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Who: State Representative Fred Brown

Topic: "What's Happening in Austin"

What: BVHRMA Monthly Meeting and Luncheon

When: Thursday, August 2, 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): King Ranch Chicken, Tossed Salad, Garlic Bread, Peach Cobbler

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

Topic Description: Take this opportunity to come hear from Representative Fred Brown what is going on in Austin and what effects it may have on you as a HR professional.

Speaker Bio: State Representative Fred Brown is known throughout the Bryan/College Station community as a successful businessman, community activist and loving father and husband. Representative Brown is currently serving his fourth term as the State Representative from District 14. Representative Brown is a member of the House Committee on Appropriations and is also the Chairman of Budget and Oversight to the House Committee on Higher Education.

Please Welcome Our New Members!

- Michael Costa, VP HR, St Joseph Health System
- Kama Willems, TAMU - Recruiting Services Coordinator, Employee Services
- Sandra Chavez-Litty, HR Generalist, Knife River

Special Thanks...

To our guests at the July Meeting: Pricilla Johnson of TAMU, Jessica Matson of TAMU & Sean Sterner of SOS Staffing

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, recent court cases, helpful websites and more. Anyone is welcome to join the group of over 3500 subscribers to this free newsletter. Just email me to be added to the group (or removed) and you can find previous editions posted on the Munck Butrus law firm website at www.munckbutrus.com under E-Newsletter.

A warm welcome to new subscribers I had the pleasure of speaking to during presentations to the DFW Texas Recruiters Network (June 6), the North Texas Compensation Association (June 21) and at the SHRM annual conference (June 26) in Las Vegas, baby!

Here's what's up:

1. **More Fun With FMLA** – If your summer reading list needs a dose of seriousness, print out a copy of the just-released FMLA Regulations: A Report on the DOL's Request for Information. It weighs in at 162 pages and summarizes (but does not propose, much less implement) needed changes to the FMLA regulations. Per the executive summary, the three most frequent comments were [1] ee gratitude that FMLA was available to them; [2] ee desire for expanded benefits (e.g., more time, paid time off, inclusion of other family members); and [3] ers' frustration in maintaining staffing levels, absence control and most especially, unscheduled intermittent leave for chronic conditions (especially where business operations are very time sensitive). The medical certification process is also a sore spot, with ees, ers and health care providers. We'll see what changes follow. Sometime.
2. **Speaking of Paid FMLA** – Go to www.thomas.loc.gov and put S. 1681 in the search box, to pull up a copy of the Family Leave Insurance Act of 2007. This bill proposes creation of a national insurance program to fund eight weeks of paid leave per year to ees on FMLA leave. Who pays? Ees kick in .2% of their annual earnings and ers match that amount for each ee. There would be a 5 to 7-day waiting period prior to payment and the amount paid would be tied to the ee's annual income, ranging from 40% to 100% of daily earnings. When would it start? Taxing would begin 1-1-08 and payments would start with leaves commencing on or after 1-1-09. Ers would determine eligibility, pay eligible ees the benefit and then seek reimbursement from the federal fund. And don't forget that S.910 and HR 1542 ("Healthy Families Act"), if passed, will mandate seven days of paid time per year for ees who work 30+ hours/week. It's time to talk to your legislators, if you have strong feelings about these proposed mandates.

3. **Bills Blocked** – Failed cloture motions (intended to stop debate and force a vote) in the U.S. Senate have side-tracked bills on immigration reform (S. 1639) and union election procedure (S. 1041/HR 800). The latter, referred to as the Employee Free Choice Act, would have negated employees' right to a private ballot election when considering union representation, if the NLRB certified a simple majority of signed authorization cards. Per SHRM, their members sent more than 9200 letters to Congress protesting the EFCA shortly before the bill was blocked. As to the former, if you would like to receive periodic email updates on visa and immigration issues, send your email address to attorney Cindy Kang at ckang@fulbright.com.
4. **Famous Last Words** – On May 29, the U.S. Supreme Court held that in a pay discrimination case, each paycheck is an effect of past discrimination, not a new discriminatory act, for purposes of determining whether the plaintiff had filed her charge of discrimination on time. Lilly Ledbetter was living in Alabama, a "nondeferral" state, so a 180-day (rather than 300-day) limitations period applied, meaning her claim was not timely. Justice Ruth Bader Ginsburg penned the dissent (joined by Justices Stevens, Souter and Breyer) and ended it with "Once again, the ball is in Congress' court. As in 1991, the Legislature may act to correct this Court's parsimonious reading of Title VII." Ask and ye shall receive! The "Ledbetter Fair Pay Act" (HR 2831) was introduced in the House on June 22 and was approved by the U.S. House Education and Labor Committee on June 27. It proposes to amend Title VII, the ADEA and the ADA by "clarify[ing] that a discriminatory compensation decision or other practice that is unlawful under the Act occurs each time compensation is paid" In the short run, ees may be more likely to discuss their comp with co-ees and/or file an equal pay claim where inequity based on gender is known or suspected (Note: See LB4HR #4-2007 re: S.1087 which, if passed, will amend the FLSA and prohibit wage discrimination based on race and national origin, in addition to gender). Eers may react by prohibiting and punishing co-ee discussion of their pay, which is not a good idea and may earn them an unfair labor practice claim under the NLRA.
5. **Trash Talk** – Here's an update on the Texas Attorney General's mission to reduce identity theft by enforcing state laws that require businesses to properly dispose of media containing individuals' personal identifying information. One of the six businesses sued in the past two months agreed to a temporary injunction (while the AG moves forward with his case) which requires the following – [1] customer records that are no longer needed must be deposited in secure, nonpublic containers for pickup by a 3rd party disposal company; [2] store managers must be provided with written instructions for implementing this interim process; [3] the process must be announced to ees via posters; and [4] the company must designate an ee or 3rd party who will accept anonymous reports of continued violations. Why not make sure your data disposal procedures are up to snuff, before the AG comes a callin'?

6. **Hot Tip** – Hopefully you've already heard that the federal minimum wage will increase in steps, starting with a jump to \$5.85/hour on July 24, 2007. What you may not know is how that affects the "tip credit." The FLSA allows employers to pay certain tipped employees \$2.13/hour where tips make up the difference in the minimum wage. The change in the minimum wage did not affect the cash wage required to be paid to tipped employees . . . it only increased the amount of the tip credit that can be taken. Be sure you have your employee's written permission to take the tip credit since you are deducting the tip credit from the normally required minimum wage. For more info, go to useful guidance offered by the Texas Workforce Commission at www.twc.state.tx.us/news/efte/allowable_deductions.html.
7. **Watch the Clock** – In another case applying the "continuous workday" standard from the U.S. Supreme Court's decision in *IBP v. Alvarez*, the 2nd Circuit held that the time employees spent being screened by security and putting on/taking off "generic protective gear" such as glasses, boots and helmets is not compensable. While those activities may be "indispensable" to nuclear plant safety and security (and required by federal law), they are not "integral" to the employees' principal activities, which means the time spent performing those acts can be excluded from pay as preliminary/postliminary acts under the Portal to Portal Act. The court went on to say that even if the acts were "integral" the *de minimis* exception may also apply. *Gorman v. The Consolidated Edison Corp.* (2nd Cir. 5-30-07).
8. **Here's to your Health (Plan)!** – Everyone's watching Massachusetts, which passed a law on 4-12-06 aiming to have health insurance coverage of 100% of its citizens. The program, called Health Care Reform, requires individuals to have coverage by 7-1-07 and offers a range of plans, from no-cost for those below the federal poverty level, to partially subsidized, to low-cost plans for the working uninsured. Employers with HMOs that don't offer insurance must pay the State \$295 per employee, per year. For more info on how it works, go to www.mahealthconnector.org. And stay tuned to see if any other states jump on the idea.
9. **Spamalot** – No, not the Monty Python play. I'm talking about the surge of emails at the end of virtually every state legislative session, incorrectly reporting laws that are about to take effect. That would be a good trick, since the laws at issue were not enacted. This time, the "hot" issues in Texas are guns in workplace parking lots and driving while using hand-held cell phones. The bill that would've forced employers to allow employees to bring guns on their premises so long as the firearms remained in the employee's car (or a locked cabinet provided by the employer) did not pass (although a similar measure did pass in Kansas . . . heads up, Toto). In most states, including Texas, you may still ban (or allow) folks who are licensed to carry to have their guns in your

workplace, your parking lot, or both. And while driving distracted is not a good idea, several bills prohibiting use of hand-held phones while driving (or only while driving in school zones) did not pass either. See the Texas Dep't of Public Safety website at www.txdps.state.tx.us for an official disclaimer of the "new" laws.

10. **Win for EEOC and Employers** – Back in the summer of 2003, the EEOC proposed a new rule that would protect ers from ADEA lawsuits if they altered, reduced or eliminated an er-sponsored retiree health benefit when the covered retiree became eligible for Medicare or a state-sponsored retiree health benefit program. The thinking was that ers might not offer retiree health benefits at all, if changes to the plans put them at risk for age discrimination lawsuits. Up jumped AARP and an injunction stopped implementation of the proposed rule. In 2005, the Pennsylvania judge reversed her own ruling (deciding that the rule did not violate the ADEA and that the EEOC had the authority to promulgate the rule) but she left the injunction in place until the 3rd Circuit could rule. Now, the 3rd Circuit has upheld the exemption from prosecution and lifted the injunction. *AARP v. EEOC* (3rd Cir. 6-4-07) and the EEOC should be issuing a final rule soon. Monitor www.eeoc.gov for further news.
11. **The Power of Rain** – The Dallas/Fort Worth area has received a generous soaking from Mother Nature over the past two months . . . we have exceeded the annual average rainfall mark and have another six months to go. Some folks' backyards are eroding and potholes are multiplying, but there are benefits. Cooling and watering bills are lower and, just maybe, use of "sick days" to play golf or go fishing is down, too?

Until next time,

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Fall Membership Drive

BVHRMA will kick off its Fall Membership Drive at the August Meeting on Thursday, August 2, 2007. This year's theme for the membership drive is "Build the Reputation." Throughout its history, BVHRMA has had much to offer its membership and the community. It continues to offer these benefits through its regular monthly meetings and the relations that are developed among members. Members are strengthened, encouraged, and challenged in their development as Human Resources professionals. Through the community service events that are held throughout year, such as resume reviews and food drives, we are reminded why we do what we do.

All members are challenged to contact other Human Resources professionals they know and tell them about BVHRMA. A brief tour of HR professionals at our local job fairs quickly reveals that there are many HR professionals in our community that do not know about BVHRMA and the support and benefits membership can provide. Membership is available to individuals who are engaged in the practice of human resource management or those who have responsibility for the human resource function in a small business or organization. Additional membership information and our membership application are available at www.bvhrma.org.

The membership drive will run from August through the end of November. The member that has the most new members referred will be presented with a free BVHRMA membership for 2008 at the December meeting. Additionally, there will be drawings at each monthly meeting during the membership drive for a free monthly meeting certificate.

So, get out there in the Brazos Valley! Leave no rock unturned while looking for those HR professionals who are not apart of BVHRMA. Tell them why you value our association. Build the Reputation.

SHRM Upcoming Events...

HR Southwest 2007

October 23-26, 2007 | Fort Worth Convention Center | Fort Worth, Texas

Strategic HR Conference

October 10-12, 2007

Tampa Marriott Waterside Hotel & Marina | Tampa, Florida

Workplace Diversity Conference & Exposition

October 18-20, 2007

Philadelphia, PA

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

SEPTEMBER 6	Bob Cartwright Intelligent Compensation, LLC Compensation
OCTOBER 4	TBD
NOVEMBER 1	Dr. Elizabeth Umphress Assistant Professor Mays School of Business Diversity and Ethics
DECEMBER 6	Holiday Social