



# December 2006 Newsletter



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## EEO-1 REPORTING.... NOVEMBER 2, 2006

"I'm from the government and I'm here to help." And help he did when Joe Bontke, Outreach Manager and Ombudsman with the US Equal Employment Opportunity Commission's Houston District Office, addressed the November 2, 2006 meeting of the Brazos Valley Human Resource Management Association. He reviewed the basics of the EEO-1 Employer Information Report with humor and clear details.

Mr. Bontke addressed what employers are covered and what recordkeeping requirements they must follow. This was made all the more important to know and beware of when he brought out that less than 50% of all covered employers file the required EEO-1.

Of concern to those in attendance were the revisions that have been made to the EEO-1 report, which take effect with the 2007 EEO-1 survey. Mr. Bontke reviewed why the form was revised and what those revisions were. The primary changes that have been made were to:

- Split the "Officials and Managers" into two subdivisions.
- Move the Business and Financial occupations to the "Professionals" category.
- Revise the race / ethnicity categories. These categories differ from the current form in the following ways:
  - Hispanic or Latino ethnicity trumps all other race / ethnicity selections
  - "Asian or Pacific Islander" has been split into two categories
  - A new category, "Two or more races" has been added to afford employees the opportunity to identify with more than one race.

Employers are required to allow employees, if possible, to use self-identification to identify their race / ethnicity. It is suggested that implementation of these new categories begin immediately with all new hires. And the EEOC encourages, but does not require, employers to resurvey their current employees for this information.

*-Windelan Johnson*

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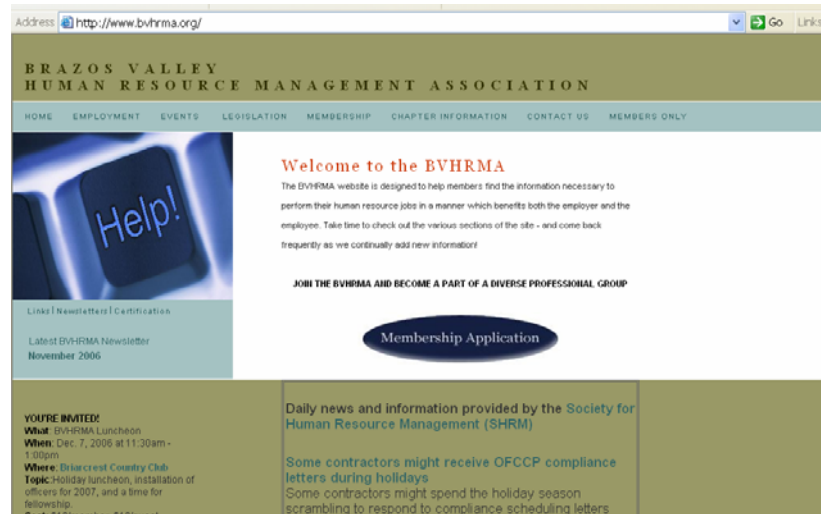
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Brazos Valley HRMA is an affiliate of SHRM (Society for Human Resource Management). For more information about HR employment, résumés for individuals seeking a career in HR, and to find helpful links to other HR relevant web sites, go to [www.bvhrma.org](http://www.bvhrma.org).

## BVHRMA Website has New Look

The Brazos Valley Human Resource Management Association is proud to announce their website has been updated and improved. On this website, [www.bvhrma.org](http://www.bvhrma.org), you will find daily news updates from the Society for Human Resource Management (SHRM), information about the next association meeting, archives of past newsletters, and other information of note. A new feature to the website is the members only page. This page will provide members with

access to a variety of information. Currently available is the membership list of BVHRMA. If you are interested in accessing this list you will need to email Julie Huval at [j-huval@tamu.edu](mailto:j-huval@tamu.edu) for the password. Additionally if any member has suggestions for the website please contact Julie. Thank you to Julie for her hard work on the website.



## Your Foundation at Work: Fueling the Talent Engine

In 2005, the Foundation introduced a new DVD entitled Fueling the Talent Engine: Finding and Keeping High Performers. This case study of Yahoo Inc. demonstrates strategic HR in action. Through a series of interviews with senior Yahoo executives, the video explains how Yahoo's talent management strategy builds competitive advantage for the organization. The DVD includes a bonus discussion guide and a PowerPoint presentation on the organization. This is an ideal resource for professional

development, chapter programming and academic settings. Subtitles are included in Spanish, Japanese and Chinese. The DVD is available from the SHRMStore. This educational product was made possible by your generous donations to the SHRM Foundation.

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

# WELCOME New Members!

## **Erica Hinson**

Administrative Assistant  
Richard S. Smith &  
Associates

## **Tamra Young**

Senior Placement Coordinator  
Human Resource Connection

## ***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 posted on the Munck Butrus law firm website ([www.munckbutrus.com](http://www.munckbutrus.com)) under E-Newsletter.

A warm welcome to new subscribers I had the pleasure of addressing via a SHRM webcast on Oct. 10, the Dallas CEBS chapter on Oct. 12, the HR Southwest conference on Oct. 19, the Heart of Texas professional and student SHRM chapters in Waco on Oct. 19 and the Financial Institutions Legal Counsel Network on Nov. 9. I look forward to upcoming speeches for the Williamson County HRMA on Nov. 17 and the North Texas SHRM chapter on Nov. 28. Hope to see you there!

Here's the latest:

1. **Post-Election Tea Leaves Reading** – The votes have been counted and a shift of power has begun, in the U.S. Congress and at the state level. The margin of shift is slim, so both parties will need to work in a bipartisan way, if they hope to accomplish anything (which, it appears, voters are demanding). Here are some hot topics and how they make shake out, starting next year:

a. **Minimum Wage** – An increase in the federal minimum wage (which has been \$5.15/hour since 1997) in the neighborhood of \$2/hour implemented over a 2 or 3 year period is likely. Passage may be conditioned on tax incentives for small business owners, to blunt the effect. The change is nearly moot, however, given the wave of state and local law increases in the minimum wage over the past few years. 21 states and D.C. had rates that exceed the federal standard before election day and six more states voted in new minimum wage laws this week.

b. **Paid Time Off** – Look for mandated paid sick days, either tied to FMLA or as a stand-alone bill.

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# Upcoming Seminars & Conferences

**Employment Law & Legislative Conference**  
**March 12-14, 2007**  
**Capital Hilton | Washington, D.C.**

Join us for unique educational sessions focusing on the most compelling employment law, compliance and legislative issues facing today's workplace. Take advantage of this rare opportunity to visit the congressional office of your senators and/or representatives.

<http://www.shrm.org/conferences/leg/>

**SHRM Global Forum® Annual Conference & Exposition**

**March 19-21, 2007**

**Hyatt Century Plaza | Los Angeles, California**

Acquire the knowledge, resources and professional network that you and your organization need to respond to the changing global workplace environment. Join and network with hundreds of other HR professionals from around the world for strategic discussions, workshops and presentations about global HR practices and issues.

<http://www.shrm.org/conferences/global/>

# BVHRMA Chapter Meetings & Events

**Happy Holidays!!!!**

Come join us to mingle & socialize at the Holiday Lunch! There will be festivities and food for all BVHRMA members & guests, along with a special program to welcome in 2007! Please bring a food item for the Food for Families Food Drive & be prepared to participate in a Silent Auction & Door Prizes!

**Where: Briarcrest Country Club**

**When: Thursday, December 7, 2006 at 11:30 a.m. - 1:00 p.m.**

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c. Employment Verification and Penalties – As part of the immigration debate, employers will likely be provided (and forced to use) a mandatory verification system on all new hires. The penalties for hiring unauthorized workers will likely increase, as will enforcement actions against employers.

d. Déjà vu – Look for previously unsuccessful bills to reappear and have a better chance this time – sexual orientation as a new Title VII category, prohibition of genetic discrimination in employment (in addition to recourse currently available under the ADA and/or state law), and mandates for businesses/employers to improve their data security measures to thwart identity thieves.

e. Health care – All eyes are on the Massachusetts experiment (see Legal Briefs for HR #3 – 2006) which requires every citizen to have medical insurance by July 2007 and forces employers to kick in \$295 per head/per year to State coffers, if it does not offer medical insurance to its employees. If it works, it could be coming to a state near you!

### 2. Texas Talk on Noncompetes

– Finally, we have an interpretation of the Texas statute on noncompetes that reflects how business is actually done. The Texas Business & Commerce Code, sec. 15.50 – 15.52, as interpreted by the Texas Supreme Court in the *Light* decision (1994), implied that for a noncompete to be enforceable the exchange of promises between employee and employer had to occur almost simultaneously. In other words, in addition to the noncompete covenant being reasonable in scope and ancillary to an otherwise enforceable agreement, the employer had to provide the trade secrets or specialized training (that created the need for a noncompete) at the same time that the at-will employee signed the agreement containing the noncompete. In the real world, that often happens weeks or even months after the employee signs new hire paperwork. On October 20, the Court addressed this issue and held that the noncompete could become enforceable when the employer follows through on its stated promise to provide the secrets or training, and did not fail simply because the

exchange did not occur at the time the agreement was signed. *Alex Sheshunoff Management Services v. Kenneth Johnson and Strunk & Associates* (Tex. 10-20-06).

3. **Brotherly Love** – A Philly, PA jury awarded \$78.47 million to 170,000 or so Wal-Mart workers for alleged off-the-clock work and missed breaks. \$76 million of the award was tied to the missed breaks (rest, not meal) which the employer argued the employees did of their own volition. Wal-Mart has since installed technology on cash registers that will lock an employee out of the machine and force him or her to take a break before resuming duties.

4. **411 on EEO-1** – EEOC is giving employers some flexibility on how and when to use the new version of the Standard Form 100 (aka EEO-1 report). Yes, there is a new form and subject employers are to begin using it in 2007. Yes, employers must begin using the two new job categories (i.e., exec/senior managers and mid/first level managers) in 2007. No, employers do not have to use the new race/ethnic categories in 2007 (but can if they want to). The reason for the grace period is to allow employers more time to resurvey current employees, to see if their race/ethnic category has changed. So, you can start collecting gender and race/ethnic data using the new categories on your new hires now. Or you can wait until after the 2007 report is filed, resurvey all employees and begin using the categories in hiring paperwork at that time. Keep in mind, workers are often willing to provide personal data upon hire (“Oh joy, I have a new job!”) and may be resistant to completing the voluntary questionnaire later (“Now what do you want of me?”). The EEOC says the preferred method is to ask the employee for the info. Only if/when he or she refuses to complete your questionnaire can the employer make their best guess, based on observation. And you are not allowed to change the employee’s race/ethnic designation provided to you, even if you believe it is incorrect.

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5. **Tax Man** – The SSA announced that the maximum amount of earnings subject to social security tax in 2007 will be \$97,500. It was \$94,200 in 2006. The tax rate of 6.2% (12.4% for the self-employed) will not change, nor will the Medicare tax rate of 1.45%. This makes the total FICA rate 7.65% (15.3% for the self-employed). The IRS announced that the limit on 401(k), 403(b) and 457(b) (2) elective deferrals will increase from \$15,000 in 2006 to 15,500 in 2007. The 401(k) and 403(b) “catch up” contribution limit will remain at \$5000 in 2007.

6. **Shut Up and Drive** – Add CA to the list of states that prohibit use of cell phones while driving, unless the equipment is hands-free, or unless one of the exceptions (e.g., calling the police, certain commercial vehicles) applies. A violation will earn you a \$50 fine. The new law will take effect 7-1-08. For a great website that lists all of the U.S. state and international laws that apply to cell phones in vehicles, check out [www.cellular-news.com/car\\_bans/](http://www.cellular-news.com/car_bans/).

7. **Second Chance?** – Several major cities, including Boston, Chicago and San Francisco, have new policies designed to limit (but not totally eliminate) use of a job applicant's prior conviction to deny employment. So far, the rules only apply to city jobs and (in Boston) to vendors who contract with the city. The idea behind the policy is that the creation of employment opportunities for ex-cons who are struggling to find work will help deter them from resuming their old ways. As Mayor Richard Daley of Chicago said “[It] won't be easy, but it's the right thing to do . . . we cannot ask private employers to consider hiring former prisoners unless the City practices what it preaches.” The Boston ordinance, which took effect 7-1-06, requires the City and its vendors to determine an applicant's qualifications before a criminal check is done. Once the conviction is revealed, the hirer must consider the age and seriousness of the crime as well as how the applicant has conducted him or herself since then. There is also an appeals process, if employment is denied. A Dallas Councilman has discussed proposing such a rule for the City of Dallas, as well.

8. **I Didn't Mean To** – An insurance company that told departing employees during a massive company restructuring they could not be rehired for one year said it didn't mean to discriminate, but will be forced to trial on allegations that the policy had a disparate impact on workers based on age. Had a disparate impact analysis been done on the 100 or so departing employees, the employer would've seen that more than 90% of the affected group were age 40 or older. *EEOC v. Allstate Insur. Co.* (E.D. Mo. 10-19-06).

9. **I Thought I Did** – An employer owes a former employee eight months of backpay, even though she performed no work during that time, because it failed to notify the INS when the H-1B visa holder was let go and therefore failed to effect a “bona fide termination.” Notice of termination to the employee is not enough to end the employer's obligation to pay wages to the H-1B worker, per the Dep't of Labor Administrative Review Board. *Amtel Group of Fla. Inc. v. Yongmahapakorn* (DOB ARB 9-29-06).

10. **Thanks, Governor** – Once again, your SHRM Texas State Council was successful in securing a proclamation from Gov. Rick Perry of Texas, declaring October “Human Resources Awareness Month.” It reads, in part, “I encourage all Texans to recognize the important role that human resources professionals play in fostering workplace excellence, and in promoting progress and prosperity throughout the Lone Star State.” A color copy of the proclamation is posted at [www.tsc-shrm.org](http://www.tsc-shrm.org). Special thanks to **Bob Cartwright** and **Virda Rhem** for their efforts on behalf of the TSC in this initiative!

Until next time,

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