



## BVHRMA Newsletter

December 2009

Chapter #0330



### Articles

➔ Monthly Program and Luncheon

➔ Mark Your Calendar!

➔ Events & Diversity Calendar

➔ Legal Briefs

## Monthly Program & Luncheon

**TOPIC:** Annual Holiday Program and Food Drive

**WHEN:** Thursday, December 3, 2009

**TIME:** Lunch served from 11:30AM to noon;  
Program from noon to 1:00PM

**WHERE:** Hilton College Station & Conference Center,  
801 University Drive East, College Station,  
Texas 77840

**COST:** \$10/member & first time guest  
\$15/non-RSVP guest

**PROGRAM:** This is our Annual Holiday Program and Luncheon. Please bring canned goods for our Food Drive. We will also have a silent auction (proceeds to go to the SHRM Foundation). In addition, we will conduct the installation of officers for 2010.

**PLEASE BRING:** Cash or your checkbook in case you'd like to bid on something during the silent auction.

Non-perishable food, items with intact, un-opened, consumer or commercial packaging, and *food within the expiration date on the packages*.



### ITEMS MOST REQUESTED FOR FOOD DRIVE:

Canned vegetables	Pasta and sauce
Canned or dried Beans	Rice
Healthy cereals	Peanut butter
Baby food	Baby Formula
Canned meats like tuna, stew and chili	

**MENU:** Seasoned Flank Steak - London Broil Marinated and Topped with a Sautéed Mushroom Demi-glace, garden salad, fresh baked bread, dessert, coffee, and iced tea. (Subject to Change)

If Attending: [rsvpprograms@gmail.com](mailto:rsvpprograms@gmail.com) by noon on Wednesday, November 25, 2009. Please reply by the deadline to ensure that the appropriate number of meals are ordered. \*\*The RSVP date is very important, please be sure to respond on time! ☺



## BVHRMA 2010 Monthly Programs & Luncheons

**BVHRMA Monthly Programs & Luncheons are held the first Thursday of every month** (\*unless otherwise noted) at the College Station Conference Center (\*\*unless otherwise noted) 1300 George Bush Drive College Station, TX 77840. Networking & lunch begins at 11:30AM.; program begins at 12 noon; close by 1:00PM

Topic	Speaker	Date
Joint program with BVASTD TBD by BVASTD	TBD by BVASTD	*January 7, 2010 **GSC
Joint program with BVASTD Right-Brain Project Management	B. Michael Aucoin, D. Engr., PE, PMP Leading Edge Management, LLC	February 4, 2010 **Location TBD
⊙ National Labor Relations Act and Avoiding Unionization	Dennis Dyszelski President Professional Consulting Services	March 4, 2010
⊙ How To Evaluate an EAP	Jeff Christie, LCSW, CEAP Global Manager of the Halliburton Employee Assistance Program	April 1, 2010
Addressing Conduct and Performance Issues under the ADA	Jacque Brennan Attorney DBTAC Southwest ADA Center	May 6, 2010
⊙ Immigration Compliance Hot Buttons for HR	Robert F. Loughran Partner Foster Quan, LLP	June 3, 2010
TBD	TBD	July 1, 2010
⊙ Avoiding Common Pitfalls In The Administration Of Incentive Plans	Anthony J. Eppert Attorney Winstead	August 5, 2010
⊙ What Employers Need to Know About Background Checks	Mike Coffey Imperative Information Group	September 2, 2010
Coaching for Performance	Brian McMullin Gabbard Company	October 7, 2010
TBD	TBD	November 4, 2010
Annual Holiday Luncheon & Food Drive		December 2, 2010 **TBD

⊙ These programs have been submitted to the Human Resource Certification Institute (HRCI) for pre-approval for recertification credit (1-hour general credit). ✱ These programs have been pre-approved for recertification credit (1-hour general credit) by the Human Resource Certification Institute (HRCI).

\*\*\*For 2010 Programs, please RSVP to Katherine Kleemann at [rsvpprograms@gmail.com](mailto:rsvpprograms@gmail.com) or [katherinekleemann@sherion.com](mailto:katherinekleemann@sherion.com)

What's coming up? ~ Other events you *don't* want to miss!!

2010 Texas State Council Global HR Conference  
"Global HR - Survival of the Fittest"  
Thursday, January 14, 2010  
DoubleTree Hotel - Houston Intercontinental Airport  
Registration is Now Open!  
<http://www.tscglobalconference.org/>

Texas Higher Education  
Human Resources Association  
**2010 Winter Conference**  
**January 24-26, 2010 - Austin, TX**

*"HR in the Fast Lane: Stay in the Race!"*

### **Registration**

Registration is \$150 if received by December 21st.  
After December 21st, registration will be \$175.

[Click here to register!](#)

**NOTE: You will need to set up a new registration account as no registration accounts from previous years are saved.**

*The Cancellation Policy is as follows: 100% refund if cancellation of registration is received by December 21, 2009; 50% refund if received between December 22, 2009 and January 4, 2010; and 25% refund if received after January 4, 2010.*

**Registration site courtesy of PeopleAdmin.**

## **DECEMBER** DIVERSITY DATES

- 1-World AIDS Day
- 6 - St. Nicholas Day (International)
- 7 - Pearl Harbor Day (United States)
- 8 - Bodhi Day - Buddha's Enlightenment (Buddhist)
- 12 - Hanukkah (Jewish)
- 12 - Virgin of Guadalupe (Mexico)
- 13 - Santa Lucia Day (Sweden)
- 25 - Christmas (Christian, Roman Catholic, International)
- 26 - Boxing Day (Canada, United Kingdom)
- 26 - Kwanzaa (African-American - Dec. 26, 2009 - Jan 1, 2010)
- 31 - New Year's Eve (United States, International)

## HR CORNER....It's Legal Briefs Time!!!

Welcome to Legal Briefs for HR, an update on employment issues sent to over 4200 HR professionals, in-house counsel and business owners to help them stay in the know about employment issues.

Here's what's up:

1. **That's Sick** - A rep from CA introduced a bill in Congress on Nov. 3 to mandate up to five days of sick leave be paid to employees, if their employer (defined as having 15+ employees) sent them home or advised them to go home or stay at home because the employee has a contagious illness, like the H1N1 flu bug. Employees who decide, on their own, to stay home would not be eligible for the mandated pay. The bill would also prohibit employers from firing, disciplining or retaliating against an employee for staying home due to illness. Hearings are set for the week of Nov. 16 and, if passed, could take effect within 15 days of signing. Stay tuned.
2. **That's Sick, Part 2** - The EEOC is adding it's take on H1N1, by posting "Pandemic Preparedness in the Workplace and the ADA" on its website at [www.eeoc.gov/facts/pandemic\\_flu.html](http://www.eeoc.gov/facts/pandemic_flu.html). In the guidance, the agency explains how disability-related inquiries and exams, excluding certain persons from the workplace and failing to reasonably accommodate certain individuals may run afoul of the ADA. The guidance includes an "ADA-Compliant Pre-Pandemic Employee Survey" that is being allowed, as part of an employer's advance planning to deal with the potential for increased absenteeism due to employee or employees' family members' illness.
3. **Rewrite Your FMLA Policy (Again)** - The ink is barely dry from adding two new types of FMLA leave, for family members of military personnel who are providing care or helping with an exigent circumstance, and now those provisions are out-of-date. The National Defense Authorization Act of 2010 (H.R. 2647) expanded the scope of exigency leave to include time off to assist a member of the regular Armed Forces who is deployed to a foreign country. The former version gave up to 12 weeks off to the spouse, son, daughter or parent of a service member who was in the Guard or Reserve who had been called up. The caregiver leave had provided up to 26 weeks of time off to various family members to care for a Guard/Reserve/Armed Forces member who whose illness or injury was incurred while on active duty. Now, the scope is expanded to include veterans undergoing treatment, recuperation or therapy for an illness or injury that occurred any time during the five years prior to the date of medical treatment. The leave now also covers a service member who has aggravation of a pre-existing injury.
4. **This is Not a Text** - President Obama signed an Executive Order on Oct. 1, telling federal employees they better not text while driving on official business or while using government equipment. And heads' up federal contractors, because the agency you're servicing is being told to encourage you to do the same, if you happen to be

driving on government business. The definition of texting is broad, to include e-mailing, reading or writing messages, and receiving or sending other electronic data communications from a handheld or other electronic device, including for navigation purposes.

5. **When MySpace is Really My Space** – Social networking sites put a lot of info, both flattering and not, into a public forum. Employers know this and often cruise sites as part of vetting an applicant for hire or perhaps an employee who's up for promotion. The relative ease with which one can read another's postings (or rants) lulls many into thinking it's all good, but a recent case provides a reminder that these "tech toys" can get employers into real trouble. Two waiters are fired after their employer reads their private MySpace page, which included sexual banter aimed at management and customers. Violation of harassment policy, right? Perhaps, but the larger concern is that the managers may have coerced the password out of the funny dudes' co-worker, in order to access a private MySpace account which included an invitation-only chat. In so doing, the court agreed with the plaintiffs that the managers had violated the federal Stored Communications Act and the NJ Wiretapping and Electronic Surveillance Control Act and more. The jurors found the managers act malicious, which entitled plaintiffs to both compensatory and punitive damages. *Pietrylo v. Hillstone Restaurant Group* (D. N.J. 9-09). Lesson? Just because you have a talented IT person and/or can charm a password out of an employee, don't forget that private means private when accessing others' private pages. Just because you can does not mean that you should.
  
6. **That Chat May Cost Ya** – A CA District Court ruled that Kelly Services temps sent to Kelly's customers/prospective employers must be paid for the time spent interviewing, but not the time traveling to/from the interview nor the post-interview debriefing with Kelly Services. The judge pointed to the amount of control being exerted by Kelly Services in editing and sending resumes, arranging interviews, negotiating the wage/salary and accepting any offers of employment on behalf of the temp, in finding the interviews to be compensable work time under CA wage and hour law. *Sullivan v. Kelly Services Inc.* (N.D. Cal. 10-09).
  
7. **Heads' Up, HealthCare** –
  1. **Workers Comp** – Health care workers who become ill after being in proximity to H1N1 sufferers, as part of their job duties, will likely be successful in seeking workers' comp coverage of their occupational illness. Not so much for workers in other industries, where a co-worker may be ill, but their job puts them in no greater risk than the general population of contracting H1N1 or other communicable bugs.
  2. **Overtime** – Add NY to the list of states that nix mandatory overtime for nurses, except in emergency situations. "Health care providers" with RNs and/or LPNs in NY should take a peek at New York Labor Law sec. 167 and become familiar with its requirements. Per the American Nurses Association website, as of 7-7-09, 13 states (CT, IL, MD, MN, NJ, NH, NY, OR, PA, RI, TX, WA and WV) have statutory

restrictions and two (CA and MO) have restrictions in their regulations addressing the issue of mandatory overtime.

8. **The Other Shoe Drops** - More than ten year ago, the EEOC secured a \$9.85 million settlement from Astra USA Inc. in a case alleging widespread sexual harassment by senior managers involving 80 employees. The president was discharged in 1996 for his role in the harassment and attempted cover-up of the abuse, plus serious financial wrongdoing. If the prez thought that was the end of it, he was wrong. Astra Zeneca PLC, which now owns Astra, was recently judged to be entitled to collect \$6.8 million from the deposed prez under New York's "faithless servant" doctrine, which "requires the disloyal employee to forfeit his compensation, even if he otherwise performed valuable services for the principal." The total represented all of his salary and bonuses for 1991 through 1996. *Astra USA Inc. v. Bildman* ( Mass. 10-09).
9. **Post It** - Changes to the ADA and the addition of GINA mean that your current "EEO is the Law" poster is probably no longer compliant. There are two ways the fix the problem . . . either print off the new supplement poster and add alongside your EEOC version (Sept. 2002) or OFCCP version (Aug. 2008) of "EEO is the Law" poster, or take down the old version and post the new version (Nov. 2009). Both the supplement and the new version can be printed off at [www.eeoc.gov/posterform.html](http://www.eeoc.gov/posterform.html) or you can go to that same site and act on the directions for ordering multiple copies for each of your establishments, which will be sent via snail mail.
10. **Tears for Sears** - The EEOC notched its largest ADA settlement ever, \$6.2 million against Sears, Roebuck and Co., over an alleged practice of denying reasonable accommodation requests that would allow employees to return to work and/or not allowing brief extensions of leave when the one-year leaves exhausted. The three-year consent decree includes an injunction against violation of the ADA and retaliation, requires preparation of a new workers' comp leave policy, reports to the EEOC, training of Sears employees and a notice posted at all Sears locations. The decision does not rule that the policy was unlawful and courts often find that neutral automatic termination policies that apply to all types of absence (not just those that involve an injury or illness), when applied consistently, do not constitute disability discrimination or workers' comp retaliation. However, changes to the ADA which took effect in January are shifting the focus to the "interactive process" where the possibility of accommodation is discussed. If you are effecting automatic terminations of employment without an ADA review, think again. And you might want to look at a NJ case which denied an employer's summary judgment motion even though the plaintiff employee had not fully cooperated with the return to work and ADA review procedure. The court held that a fact issue remained as to whether the plaintiff or the employer were to blame for the ineffective interactive process, but seemed to hint when it said perhaps the employer had caused the problem by forcing the employee to choose between the employer's process or no interaction at all and "aborting the search for an accommodation when the plaintiff did not play by [its] rules" and firing her. *Decree v. UPS, Inc.* (D.N.J. 9-09).

11. **Enlighten Me** - Internal office and cubicle dwellers are going to love this one. If an employee brings a note from her psychologist that says placement in a room with no exterior light is most likely the cause of her depression (due to seasonal affective disorder or "SAD"), you might want to consider letting her see the light. In partially reversing summary judgment, the 7<sup>th</sup> Circuit Court of Appeals said the employer was obligated to provide this medically necessary accommodation unless it would pose undue hardship. With the option to switch rooms with someone else or move to a vacant room with windows, the Court felt a jury could reasonably find "little hardship" in doing so. *Ekstrand v. School Dist. of Somerset* (7<sup>th</sup> Cir. 10-09).
  
12. **For the Birds** - If you like being "tweeted" and want breaking news on employment law changes, follow me on Twitter. I'm at @amross.

Until next time,

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If you plan to attend the  
December Program and Luncheon,  
please RSVP to Liz at  
[RSVPprograms@gmail.com](mailto:RSVPprograms@gmail.com)  
Please RSVP by 12:00 noon on  
**Wednesday, November 25, 2009**

*\*\*\*See everyone at the BVHRMA December  
Program at the College Station Hilton on  
Thursday, December 3<sup>rd</sup> at 11:30!!\*\*\**