



BV-SHRM Newsletter

Chapter #0330

August 2011

Board Officers

President

Stacy Overby, SPHR

President Elect

Retha Blakely, SPHR

VP of Programs

Katherine Kleemann

VP of Membership

Geanna Kincanon, SPHR

Treasurer

Krystal Broussard, PHR

Secretary

Brittany Berryman

Past President

Cheryl Young, SPHR

Committee Chairs

Award Committee

Janelle Ramirez, SPHR

Business Seminar

Sheri Yetter, SPHR

Certification

Liz Galvan PHR, CCP

Diversity

Cheryl Young, SPHR

Legislation

Alexis Alexander, SPHR, JD

Newsletter & PR

Sarah Tobola, SPHR, CEBS

School to Work

Julie Irvin, SPHR

SHRM Foundation

Thom Holt, SPHR

Student Liaison

Diana Dean, SPHR

Website

Bob Hensz, SPHR

HRSW Ambassador

Cheryl Young, SPHR

Monthly Program & Luncheon

TOPIC: ID Theft in the Workplace
(Approved for general HRCI Credit)

WHEN: Thursday, August 4, 2011

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

WHERE: College Station Conference Center

COST:

\$10 BV-SHRM member with RSVP

\$15 BV-SHRM member without RSVP or non-member guest

SPEAKER: Greg Barone

ADDRESS: 1300 George Bush Drive
College Station, TX 77840-3175

Program Details

Identity theft has exploded into a serious national problem. Not only do businesses suffer direct loss due to this crime, but inadequate security and poor business practices may open a company up to liability suits, fines and loss of clientele. A company obviously must take adequate steps to protect the confidential information of its customers. But exactly where and how does ID theft become a concern for HR personnel? While no one can totally prevent identity theft due to the human element of this crime, there are steps that a company can take to minimize risk factors for all of us. Safe information handling practices are the key to keeping identifying information out of the hands of thieves. Congress and many state legislatures have passed legislation aimed at protecting confidential information in the workplace, and additional legislative protections are being proposed all the time. Federal laws regarding protection of customers' and employees' confidential information include the Fair and Accurate Credit Transactions Act (FACT Act) and the Fair Credit Reporting Act (FCRA). Join us to determine the level of risk to which your company may be vulnerable.

Speaker Bio

Greg Barone is an executive director with Pre-Paid Legal and operates a business services firm specializing in employee legal and identity theft protection benefits for employers of all sizes nationwide. Mr. Barone is a Certified Identity Theft Risk Management Specialist with extensive experience and expertise in combating fraud by providing effective education designed to increase awareness and understanding of Identity Theft; of how these crimes occur; providing comprehensive risk management strategies to minimize their associated risks and conducts ongoing workshops on ID Theft in the workplace for groups from 25 - 2500. Mr. Barone is committed to empowering small business clients with educational solutions that protect and grow their businesses, while helping to "level the playing field" for thousands by providing them access to the same quality of legal and consultative advice and expertise typically available only to large corporations.

Inside this Issue:

Monthly Program

President's Piece

BV-SHRM Night at the Bombers

Announcements

Professional Development

Business Seminar - Save the Date

Legal Briefs

Refer-a-Friend



Please RSVP for the monthly luncheon by noon on

Monday, 8/1/11!

rsvpprograms@gmail.com





Member Newsletter



*“A man may fail many times, but he isn’t a failure until he begins to blame somebody else.”
~John Burroughs~*



Make sure you notify us of email changes or changes to your contact information!

Have you recently attended a great presentation or do you have a topic or speaker idea to share with Programs?

Or are YOU willing to share about a HR subject matter at an upcoming meeting?

If so, please contact us with the details.



President’s Piece

Howdy Ya’ll,

I hope you are having a great summer and enjoying some time with family and friends. My biggest challenge right now is trying to stay out of the heat. I also hope you had a great 4th of July. To those that joined us for the Brazos Bomber’s game this past Monday, thank you. I enjoyed getting to meet your families. Congratulations to you all. Recently we were recognized by SHRM as a Membership SuperStar and SHRM Foundation Chapter Champion for 2010. If you haven’t decided to attend the HR Southwest Conference, I hope you decide to go. This year you can earn up to 20.5 credits for those with their certification. Again, if we can assist in any way, please don’t hesitate to contact us. I look forward to seeing you at the luncheon on August 4th!

Be Safe and Stay Cool!
Stacy

BV-SHRM Night with the BV Bombers

We had a nice turnout at the Brazos Valley Bombers game and those who attended had a great time and the weather actually cooperated with us with a nice breeze to keep things relatively cool. Unfortunately our Bombers lost, but they played a good game. Picture to be downloaded and shared next month.



Save the Date – BVSHRM Business Seminar

SAVE THE DATE!

BV-SHRM AND WORKFORCE SOLUTIONS OF BRAZOS VALLEY WILL CO-SPONSOR A FULL-DAY BUSINESS SEMINAR FOR HR PROFESSIONALS

Tuesday, October 4, 2011

This seminar is a great way to stay up to date on HR issues, network with fellow HR Professionals, and earn HRCI recertification credits at a reasonable cost and with little to no travel time.

Stay tuned for more information and registration details.



Member Newsletter



Upcoming Meetings:

August 4
 September 1
 October 6
 November 3
 December 1 – Holiday and Award Program at Hilton Hotel & Conference Center

All meetings are at College Station Conference Center unless otherwise noted.

ANNOUNCEMENTS



Please help us congratulate our most recent certification recipient Diana Dean for recently passing the HRCI certification exam! Your hard work has paid off!

Diana Dean, SPHR

**Welcome
 New Members!**



Lauren Othold, MS
Texas Transportation Institute

Visit us and become a Fan of BV-SHRM on

facebook

Visit us on the Web at www.bv-shrm.org



Back to School Clothing Drive

Many families will find it more difficult to provide school clothing this year. Twin City Mission is collecting the following items and is asking for your help. Simply donate gently used or new items listed below.

Gently used or new for ages 5-12 or Children in grades kindergarten-6th grade
 Uniforms: Including khaki, navy, black pants and collared shirts – all sizes.

**Please drop them off at:
 2505 S. College Ave., Bryan or call 979-822-7511**





Member Newsletter



*"Yesterday is history,
Tomorrow is a mystery.
Today is a gift.
That is why it is called
Present."*

~Anonymous ~

Fun Monthly Observances:

International Clown Week
Elvis Week
Spiderman Day (1)
Hug Your Boss Day (19)
Sandcastle & Sculpture Day (20)
Race Your Mouse Around the Icons Day (28)

If you come across an individual dressed as a clown, Elvis or Spiderman building sandcastles that all of a sudden wants to sell you an investment, you might watch out this is likely a fraud!

Some Actual Useful Observances:

Black Business Month
National Fraud Awareness Month
Ramadan 1-29
National Relaxation Day (15)
Senior Citizen's Day (21)
Women's Equality Day (26)

Professional Development Opportunities Continued

SHRM 2011 Conference Schedule:

Diversity & Inclusion Conference & Exhibition
October 24-26, 2011, Washington DC

To register for SHRM Conferences use below link:

<http://www.shrm.org/Conferences/Pages/default.aspx>

During these economic times SHRM members can take advantage and access sessions on-line for a fraction of the cost to attend.

HR Training Camp – Building HR Champions

**October 30- November 2, 2011,
Fort Worth, TX**



THE HRSOUTHWEST
CONFERENCE™

The HRSouthwest Conference is the largest regional human resources conference in the United States. The Conference offers world-renowned keynote speakers, two and a half days of educational sessions, networking opportunities and exposure to the latest HR products, techniques and services.

SHRM Education Series:

<http://www.shrm.org/EDUCATION/SEMINAR/Pages/default.aspx>

Refer-a-Friend Program

Share BV-SHRM with a friend or co-worker in the HR field by completing the *Refer-a-Friend* form located at the end of the newsletter. Help them achieve professional growth and networking.

AFFILIATE OF
SHRM[™]
SOCIETY FOR HUMAN
RESOURCE MANAGEMENT



Member Newsletter



Legal Briefs

Welcome to Legal Briefs for HR, an update on employment issues sent to over 4800 HR professionals, in-house counsel and business owners all over the U.S. to help them stay in the know about employment issues. Anyone is welcome to join the email group . . . just let me know you'd like to be added to the list and you're in! Back issues are posted at www.munckcarter.com under Media Center/Legal Briefs. Welcome, to new subscribers I met while speaking at meetings of Worldwide Employee Benefits Network and the North Texas Compensation Association. I'll be providing an update on hiring and employment issues at the Texas Workforce Commission's Texas Business Conference in Fort Worth on July 8. For info, go to www.texasworkforce.org/events.html. Hope to see you there!

Here are tips to help you declare your independence from workplace woes:

- 1. Texas Noncompetes Changing (Again)** - Texas employers have been waiting for the Texas Supreme Court to announce its opinion, in a noncompete case it heard in September 2010. In *Marsh & McLennan v. Cook*, the issue was whether an award of stock options to an employee was good consideration that would support his return promise to not compete against his employer unfairly. Consensus among commentators was the answer would be "no" as it's been said for years that you cannot buy a noncompete in Texas, because of the statutory requirement that the covenant be ancillary to an otherwise enforceable agreement. In English, that meant the employer's consideration must "give rise" to the need for a noncompete and mere money was not a protectable interest. So, consideration was pretty much limited to the employer providing the employee with the recipe to the secret sauce, or other confidential information or specialized training that gives the employer its competitive edge. Now, the Court says its explanation of ancillary as "gives rise" in the *Light* decision should be replaced with a watered down version, "is reasonably related to," and that's how it held that the noncompete could be enforced. By awarding stock options, the employer "linked the interests of a key employee with the company's long-term business interests" and the interest being protected was the employer's goodwill. There is a history of the legislature countering judicial pronouncements in this area, but with the current legislative session at an end and the next one set to begin in January 2013, we may have a few years of determining what interests can be protected and whether the proffered consideration is "reasonably related" to that protected interest. Stay tuned!
- 2. Double Your Fun** - When it comes to enforcement of noncompete and confidentiality agreements, an aggrieved business may be entitled to both injunctive relief and damages. It's often said that injunctions are appropriate where there is no available remedy, at law. Based on this premise, the trial court provided a remedy of blue-lining an overbroad geographic limit (to make it reasonable) and granting damages based on the employees' competitive activities against their former employer, but the court denied an injunction, going forward, against those same activities. The Appeals Court explained that damages made the employer whole, as of the trial date, and the requested injunction was appropriate, to prevent future violations. *Litigation Management, Inc. v. Bourgeois* (Ct. App-Cuyahoga County, OH June 2011). Periodically review and update your employment agreements containing post-employment restrictions and keep them reasonable in scope, especially in states which do not blue-line (aka modify) overbroad limits.
- 3. Penny Wise, Pound Foolish?** - The Chicago Transit Authority has agreed to pay \$700,000 to settle a claim by bus drivers who allege they were required to familiarize themselves with their new routes, by driving them off the clock, after a garage was shut down and some drivers were assigned to new garages. The garage closure itself was a cost-cutting measure spurred by budget problems that have become familiar to many local governments. A settlement means the drivers' allegations will not be tested in a court of law for truth or falsity,

however it's not beyond imagination that someone may have thought this was a good idea to ensure uninterrupted, efficient bus service without incurring the extra cost of drivers riding shotgun or otherwise being on the clock while learning new routes. Well-meaning managers may lack the knowledge you have, of the FLSA and analogous state wage and hour law, so train them on the basics and keep your eyes open for ill-informed cost-cutting measures.

4. **Reading (Tea) Leaves** - During an June 6 public hearing, EEOC attorneys continued to warn employers that no-fault automatic termination policies, where there is a disability in play, probably violates the ADAAA. Courts interpreting such policies, especially where the amount of leave an employer provides is generous and if applied neutrally (i.e., to any type of absence regardless of the underlying reason), usually find no ADA discrimination/failure to accommodate nor workers' compensation retaliation. EEOC is on the record stating that a fixed period of leave, even if substantial, fails to satisfy the duty of reasonable accommodation. And they may be emboldened by two mega-settlements arising from automatic termination policies and a lack of an interactive process prior to termination of employment, to the tune of \$6.2 million (Sears) and \$3.2 million (Supervalu Supermarkets). Part of the problem is that a fixed period provides no opportunity for individualized analysis, as required under the ADAAA. The fix? EEOC suggests you rewrite your automatic termination policy to provide for an extension, as a form of reasonable accommodation. Be aware that satisfaction of other laws (e.g., FMLA, workers' comp) and the particulars of your insurance policies (e.g., STD) does not mean that the ADAAA has been satisfied, too. And a robust, documented interactive process is critical to your defense if the matter ends up in litigation.
5. **Trust AND Verify** - Hot on the heels of the U.S. Supreme Court's vindication of Arizona's E-Verify mandate, Congress served up two related bills. The Legal Workers Act (H.R. 2164) would mandate employers' use of a Employment Eligibility Verification System (EEVS) within six months to two years of the bill's enactment, depending upon the size of the business (and likely preempt similar existing or pending mandates in AL, AZ, GA, MS, SC and UT which require employers to use E-Verify). The Immigration Driving Entrepreneurship in America (IDEA) Act (H.R. 2161) would ease visa requirements on skilled foreign graduates who studied STEM (science, technology, engineering, math) in U.S. universities, facilitating their hire by U.S. employers. It also proposes a green card program for entrepreneurs who find venture capital backing and/or who start businesses that create jobs. You can always read full text of federal bills and follow their progress at <http://thomas.loc.gov> by inserting the bill name or number.
6. **ICE Storm** - Immigration and Customs Enforcement (ICE) announced, in mid-June, that it was issuing another 1000 Notices of Inspection to employers, with a focus on those who are involved in national security and public safety. This means agriculture/food, banking/financial services, chemicals, commercial nuclear reactors/materials/waste, dams, defense industrial base, drinking water/water treatment, emergency service, energy, government facilities, information technology, national monuments/icons, postal/shipping, public health care, telecommunications and transportation. You have three days to produce requested documents (e.g., Form I-9s, no-match letters, payroll records) and extensions are possible, if you ask nicely.
7. **Guns Up!** - No, this is not a cheer for my Texas Tech friends (although y'all are a lot of fun). Gov. Perry of Texas signed S.B. 321 into law on June 17, amending section 52 of the Labor Code and limiting employers' ability to keep guns away from the workplace. Effective Sept. 1, 2011, employees who are licensed to "conceal carry" and lawfully possess a firearm and/or ammo may leave such firearm/ammo in his or her locked, privately owned vehicle in the parking lot/garage/area the employer provides for employees. This OK does not extend to employer owned/leased vehicles and employers may still ban firearms/ammo from their "premises." But the "premises" definition (which you find via a cross-reference to sec. 46.035(f)(3) of the Penal Code) means a building or a portion of building and does not include any public or private driveway, street, sidewalk, walkway, parking lot, parking garage or parking area. For full text of the new law, you can check it out at www.capitol.state.tx.us by inserting the bill number.

8. **Whistlin' While You Work** - Final regs for the Dodd-Frank whistleblower rules are out and do contain changes to address businesses' fears that rich bounties being offered by the SEC would gut internal compliance efforts. The regs now make clear that in calculating the amount of an award, the SEC will consider the whistleblower's participation in internal compliance systems as a factor that could increase the amount of an award and interference with internal compliance efforts as a factor that could decrease the amount of an award. Also, an award is conditioned upon the information being "original" and provided voluntarily. The final rule, all 305 pages, is available at www.sec.gov/rules/final/2011/34-64545.pdf. And the discussion about the bounty program is in the June 13 Federal Register at 76 FR 34300.
9. **Fun With FMLA** - No FMLA interference found, where an employee violated her employers work rule that requires employees to remain in the immediate vicinity of their homes when absent and receiving wage replacement benefits, unless they leave the area to receive medical treatment, for necessary activities related to family needs or via written permission from the employee's union (the CWA). Being absent for surgery on October 2 was fine. Going to Cancun from Oct. 16 to 23 was not. *Pellegrino v. CWA* (W.D. Pa. May 2011).
10. **Stated Differently** - Here are some morsels for you multi-state employers:
 1. **Alabama** - Effective April 1, 2012, employers with 25 or more employees will be required to verify employee's authorization to work in the U.S. via E-Verify. Employers with less than 25 employees will have the option to use a telephone system in lieu of E-Verify. Penalties include temporary or permanent suspension of the employer's license to do business in the state. Despite the eyebrow-raising effective date, no, they are not joking.
 2. **Illinois** - Effective June 1, 2011, IL becomes the 22nd state to extend state-level spousal rights to same-gender couples. Both same-gender and different-gender couples may enter into civil unions which will be recognized by the state. The state also recognizes similar legal relationships entered into, in other states.
 3. **Mississippi** - MS is the first state to participate in USCIS' Records and Information from DMV's for E-Verify (RIDE) program. Since most employees present a driver's license when complying with I-9 identity/authorization to work requirements, the RIDE program hopes to cross-check those licenses with state DMV records, to improve the accuracy of the E-Verify database and put a dent in identity theft and document fraud. The plan is to eventually roll RIDE out to all 50 states.
 4. **New Jersey** - Effective Sept. 1, 2011, public sector employees hired after this date will have one year to become residents of New Jersey. Capiche?
 5. **South Carolina** - Effective January 1, 2012, SC's immigration law has been toughened to require employers subject to I-9 requirements to verify every new hire within three days, via E-Verify. Failure to affirm compliance and/or actual violation results in a one-year probation on the first offense and suspension of the employer's license to do business in the state upon a subsequent offense.
11. **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,

Audrey E. Mross	972.628.3661 (direct)
Labor & Employment Attorney	972.628.3616 (fax)
Munck Carter LLP	214.868.3033 (iPhone)
600 Banner Place	amross@munckcarter.com
12770 Coit Road	www.munckcarter.com
Dallas, TX 75251	

REFER A FRIEND!

I would like to refer a friend to BV-SHRM.

Please send information about this organization to:



Name: _____

Address: _____

Phone: _____

Email: _____

Your Name: _____
(Optional)