



BV-SHRM Newsletter

Chapter #0330

November 2011

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Monthly Program & Luncheon

TOPIC: Legislative Update for 2011 and 2012

WHEN: Thursday, November 3, 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: Robert Nichols

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

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Legislative Updates: Updates on labor and employment laws for 2011 and upcoming changes for 2012

Speaker Bio

Robert Nichols is partner at Bracewell & Giuliani LLP in Houston and represents employers in litigation, administrative actions and arbitrations concerning alleged discrimination, retaliation, harassment, wrongful discharge, and other concerns related to employment.

Mr. Nichols also provides day-to-day legal advice to employers with respect to all aspects of the employment relationship.

Mr. Nichols has practiced exclusively labor and employment law for 21 years and has been board certified in labor and employment law by the Texas Board of Legal Specialization for 16 years.

AFFILIATE OF
SHRM
SOCIETY FOR HUMAN
RESOURCE MANAGEMENT



Please RSVP for the monthly luncheon by 10:00 on
Monday, October 31, 2011!
rsvpprograms@gmail.com





Member Newsletter



"You are what you do, nit what you say you'll do."
~Carl Jung~



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

Greetings All,

Well it is finally starting to feel a little bit like Fall. I am definitely enjoying the cooler temperatures and a little rain that has come with it. First, a big thank you to Sheri Yetter and the others that helped plan and orchestrate the Business Seminar at the beginning of the month. The speaker's and the information they provided was extremely appropriate for what we do on a daily basis. HR Southwest is only a couple weeks away and we have a nice size contingent going to represent the Brazos Valley. To each of you, thank you for the support you provide to our students from the Texas A&M University Student SHRM Chapter. Many of us our providing mentoring and we as a chapter are sponsoring three students to attend HR Southwest. What an opportunity for these young HR professionals and their development. If you desire to volunteer as either an elected BV-SHRM board member or in an appointed position, or would like more information, please talk to one of the board members for more information. We are always looking for great volunteers? Don't forget the annual Holiday Luncheon scheduled for December 1st. We always have a great collection of silent auction items and good food. We will also induct the 2012 BV-SHRM board.

Well until next time or the luncheon, have a great week!

Stacy

BV-SHRM Member Roster

The most recent BV-SHRM Membership roster with information as of early October has been posted on the www.bv-shrm.org website. Please take the opportunity to review the list to ensure your information is accurate. If an update is needed, please email bvshrm@gmail.com.

This roster is made available to members as a means to foster collaboration and networking amongst our members. It should not be shared with individuals outside the organization or used for any form of solicitation.

You will find the roster under the Member Info tab and the new password is: MrHS-V8-1011



Member Newsletter



Upcoming Meetings:

November 3
December 1 – Holiday
and Award Program at
Hilton Hotel &
Conference Center

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

*“Courage is the power
to let go of the
familiar.”
~Raymond Lindquist ~*

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Student Chapter Update

The student chapter continues to be very active. The mentor program saw another increase in interested mentees with a total of 28 this semester! Please see the announcements section for a listing of all the terrific individuals who have committed to being a mentor for this semester. Thanks for your contributions to these individuals success in the HR Profession.

More News from the Student Chapter:

On November 11th, our chapter will be involved in Habitat for Humanity. We are also sending out a care package to our troops in Afghanistan to recognize their hard work and devotion. Also, thank you mentors for your involvement in the program. Our mentees are thankful for your guidance and support to become successful HR professionals.

~Elyse Yapp, Student Chapter Liaison

2012 Board – Are YOU Ready to Serve???

Don't miss out on being able to help guide the Chapter to bigger and better things in the year to come by serving on the Board! I thought this article is worth repeating again this month. If interesting in joining the Board, please contact Stacy prior to the November luncheon.

Serving on the Board of BV-SHRM is a great way to gain valuable experience and contribute to chapter goals. We are looking for new people to volunteer to fill roles on the Board. Are you the next person to make a difference in BV-SHRM's history?

Top 10 Reasons to Serve on the Board

10. Develop closer relationships with fellow Board Members (could even be a #1 reason).
9. Free lunch while attending Board meetings.
8. It will look good on your resume.
7. A more politically way to say #8 - build your reputation and credentials in the HR field.
6. Enhance personal skills and have some fun all at the same time.
5. Most of the work is already done for you - great volunteer resources available via SHRM
4. Develop stronger connections within the community.
3. You can obtain yearly HRCI recertification credits just by being on the Board.
2. Your contributions help in the overall advancement of the HR Profession.
1. Ability to shape the activities of BV-SHRM and make a difference in the organization.

Please consider being more than just a member - be an ACTIVE member. Help contribute to the success of BV-SHRM by joining the Board or serving on a committee. We look forward to another fantastic year and hope you will decide to join the leadership team. Contact a current Board member if you have questions.



Member Newsletter



Fun Monthly Observances:

- Peanut Butter Lovers Month
- Dear Santa Week
- Use Your Common Sense Day (4)
- Sandwich Day (3)
- Loosen up, Lighten Up Day (14)

It does not take much common sense to know your letter to Santa asking for nothing but Peanut Butter sandwiches might not be taken seriously. In that case, loosen up and lighten up a bit you might just get coal.

Some Actual Useful Observances:

- Election Day 8
- Veterans Day 11
- America Recycles Day 15
- Celebrate Your Unique Talent Day 24
- National Day of Listening 27
- Computer Security Day (30)
- Military Family Appreciation Month
- National Family Caregivers Month
- Native American Heritage Month
- World Kindness Week
- World Communication Week
- Fraud Awareness Week

Business Seminar Recap

The 2011 BV-SHRM Business Seminar, held on October 4th, turned out to be a great event with three speakers who each brought something different to the table. Audrey Mross (see her Legal Briefs in this newsletter) spoke on what to and what not to include in an employee handbook and gave real life examples of the legal ramifications of handbook content. Dr. Wesson gave a very interesting presentation about 'engaging' employees at the time of hire and Mick Normington actually made economic data about the Texas workforce entertaining.

I have received positive feedback from many participants and the speakers themselves. This is a great way for BV-SHRM to serve the community, especially in tough economic times, by offering low-cost, local professional development programs related to Human Resource issues

Thank you to all of the BV-SHRM members and Workforce Solutions of Brazos Valley for your support and assistance leading up to and on the day of the 2011 Business Seminar!

Special thanks to the following up assisted and contributed to the success of the program: Diana Dean, Geanna Kincannon, Krystal Broussard, Crystal Chaapel, Retha Blakely, Bob Hensz, Liz Galvan, Stacy Overby and Joseph Bienski.

Business Seminar Chair,
Sheri Yetter

Certification

PHR/SPHR/GPHR Deadlines and Fees

2011 Exam Application Submission Dates

	Testing Date	*Late Applications Accepted
PHR/SPHR	Dec. 1, 2011- Jan. 31, 2012	Oct. 8 - Nov. 11, 2011
GPHR	Dec. 1-31, 2011	Oct. 8 - Nov. 11, 2011

*A US \$75.00 nonrefundable late fee is applied to all applications submitted during this time.

Final Registration deadline Approaching!

To apply online please visit this link: http://hrci.org/apply_online/.

If you are planning to sit for the exam and would like to become part of an informal study group, please send your information to Liz Galvan, Certification Chair at lgalvan1984@gmail.com.





Member Newsletter



ANNOUNCEMENTS

MENTOR PROGRAM

Over the past years, the TAMU Student SHRM Chapter and BV-SHRM have built a great partnership and one program has flourished – the mentor program. This year we had 28 students paired with mentors. Thanks to the following fantastic, wonderful individuals for giving of their time to help make a difference in these young people’s careers. YOU are what really helps make this program successful!!!

Stacy Overby

Sarah Tobola

Chantale Deuel

Melissa Green

Janelle Ramirez

Windelan Johnson

Tami Overby

Lee Felder

Thom Holt

Bill Dixon

Katie Mathis

Jennifer Humphris

DeAnna White

Ann Perez

Kevin Karli

Cheryl Young

Julie Irvin

Liz Galvan

Thanks for volunteering!

**Welcome
New Members!**

*Marybeth Murphy
St. Joseph*

*Tami Overby
Texas A&M University*

*Timothy Rocka
Bryan ISD*

*James Ross
Lynntech, Inc*



Save the Date

BV-SHRM will hold the annual holiday luncheon celebration and award ceremony on Thursday, December 1st at the Hilton in College Station.

We will be recognizing current Board members, installing the 2012 Board members and giving out the attendance and referral awards. In addition, we will be honoring the Building Value with HR Excellence Award recipient.

We will also have great door prizes and a fundraiser with great goodies for the SHRM Foundation and really yummy food. Please make sure to join us and bring non-perishable food items for the food drive.



Dec 1st

Legal Briefs

Welcome to Legal Briefs for HR, an update on employment issues sent to over 5000 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 who attended speeches given at Self Opportunity's Meeting of the Minds and a business seminar sponsored by the Brazos Valley SHRM chapter and Workforce Solutions of Brazos Valley.

Here are some tricks and treats in store for employers:

1. **No Need to Post . . . Yet** – The National Labor Relations Board (NLRB) has delayed the deadline for posting a new employee rights poster, from November 14 to January 31, 2012. The Board's announcement says the reason is to provide more time for employer education about the requirement. Others say it has more to do with several pending lawsuits that question the legality of the posting requirement. Stay tuned.
2. **All Together Now** – The U.S. Dep't of Labor (DOL), the Internal Revenue Service (IRS) and eleven state agencies in CT, MD, MA, MN, MO, UT and WA entered into a Memorandum of Understanding (MOU) to pool their resources in order to ferret out employers who misclassify workers as independent contractors rather than employees. The announcement was light on details as to how they will achieve the desired result of ensuring that workers get minimum wage, overtime, unemployment comp and workers comp benefits while the government gets a more reliable income stream from taxes.
3. **Wolf in Sheep's Clothing?** – On September 21, IRS announced its Voluntary Classification Settlement Program (VCSP) which allows eligible employers who misclassified workers as independent contractors to enjoy a sort of amnesty for their prior mistake, by simply reclassifying the affected class of workers, treating them as employees going forward and paying 10% of the taxes owed for the most recent tax year. Sounds simple, but consider [1] how will you define the affected "class" of employees; [2] the amnesty applies to IRS liability but provides no shield against related claims from other federal and state agencies; [3] you just admitted to an error that will be of interest to those other agencies; and [4] per the MOU mentioned above, a lot of these agencies are now working closely together and sharing information, upping the likelihood that one or more of them will come a callin'. For details, see Announcement 2011-64 and/or IR-2011-95 at www.irs.gov.
4. **More Misclassification Misery** – California Governor Brown is expected to sign Senate Bill 459 any day, triggering a costly penalty to any person who willfully misclassifies a worker as an independent contractor. The underlined language is troubling since it appears that not just the employer but individuals, such as managers or HR staff with responsibility for classifications, could be found personally liable for the civil penalty of between \$5000 and \$15,000 per misclassification (sweetened to the \$10,000 to \$25,000 range, per violation, if a pattern or practice of violations is found). Also troubling is the broad definition of a "willful misclassification" as "avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor."
5. **Cell-abration** – The IRS provided many employers with a sigh of relief via September 14 guidance on the tax treatment of employer-provided cellphones. The nagging question has been whether employees needed to keep detailed records of business vs personal use of their Company-issued phones, in order to satisfy the record keeping requirements for nontaxable fringe benefits. The new guidance explains that the phones are excludable from the employee's income as a working condition fringe benefit when provided primarily for noncompensatory business reasons, such as when the phone is provided [1] because of the employer's need to contact the employee at all times for work-related emergencies; [2] the employer requires that the employee be available to speak to clients at times when the employee is away from the office; and [3] the employee needs to speak with clients located in other time zones at times outside the employee's normal work day. Reasons

that won't fly are if the phone is a "perk" of the job, such as to attract and retain employees, to promote morale or good will or as a type of added compensation. See IRS Notice 2011-72 for full text of the guidance, at www.irs.gov.

6. **The Greta Garbo Accommodation** – "I want to be alone." That was the requested accommodation of an employee with post-heart surgery severe depression, under the Americans With Disabilities Act (ADA). Specifically, he asked that he be allowed to work from home for two months and have "no direct person to person contact and definitely none with [my] previous co-workers" in particular his two supervisors. The court held the request was not reasonable. No bossectomy for you! *Thelig v. United Tech Corporation, Pratt & Whitney Division* (2nd Cir. 3-11).
7. **Protect Your Good Name** – A new domain (.xxx) is coming to Internet for use by the adult entertainment industry and if you don't want your organization's name to be tied to that genre, you need to step quickly to block use of your registered marks. Opt-out applications are being accepted from non-members of the Adult Sponsored Community from Sept. 7 to Oct. 28 and the new .xxx marks will be available on a first-come, first-served basis on December 6. If you don't mind your company's name being followed by an "XXX" and taking the user to an, ahem, adult site then never mind.
8. **Spam Blocker** – Here is an interesting use of the Computer Fraud and Abuse Act (CFAA) which has been mentioned in prior editions of LB4HR. In this case, a peeved labor union, LIUNA, encouraged its members to inundate an employer's email and voicemail with thousands of messages relating to recently discharged employees. The employer sued under the CFAA, which prohibits knowing transmission of a program, information, code or command which as a result of such conduct intentionally causes damage, without authorization, to a protected computer. The lower court said "no violation" but the appeals court said both damages and intent were established. The company was damaged because the tsunami of messages gridlocked their communications capacity resulting in "diminished ability" and the intent to damage the company was clear in the union's call to arms, even if it was unaware of the consequences of its act. *Pulte Homes v. Laborers Int'l Union of North America* (6th Cir. Aug. 2011).
9. **Stated Differently** – Here are some hot topics for you multi-state employers:
 1. **California** – Employers may force use of employees' PTO for end-of-year shutdowns, such as for retooling manufacturing facilities, but only if affected employees were given the greater of 90 days or a fiscal quarter of advance notice. If the requisite notice is not given timely, employers can allow the use of PTO during shutdowns but cannot force it.
 2. **Colorado** – An appeals court sided with an employer who fired an employee and protested the employee's eligibility for unemployment comp benefits, where the reason for discharge was a positive drug test for marijuana during working hours. The employee countered that he was approved for "medical marijuana" and that such use was protected by state law. The lower court agreed with the former employee, but the appeals court sided with the employer noting that the state law protects individuals from criminal prosecution for marijuana possession and use but does not preclude them from being denied unemployment benefits based on a separation from employment for testing positive for marijuana in violation of the employer's drug policy. *Beinor v. Industrial Claim Appeals Office* (Colo. Ct. App. Aug. 2011).
 3. **Delaware** – The Delaware Workplace Fraud Act already imposes penalties on employers who misclassify workers as contractors in the construction services industry. Two bills are pending to [1] expand the scope to all employers in the state and make individual business owners jointly and severally liable for violations (HB 221); and [2] to allow the Delaware DOL to publish a list of violators (HB 222).
 4. **Illinois** – Effective August 26, 2011, IL amended its Human Rights Act to add pregnancy, childbirth or related medical conditions as protected categories under this nondiscrimination in employment law.
 5. **Seattle, Washington** – The City Council mandated paid sick leave for employers of five or more employees, beginning Sept. 1, 2012. There are three tiers of accrual rates, tied to the size of the business, with provisions for carry-over of unused days and caps. Employees are eligible to accrue upon hire but may not use accrued days until after 180 days on the job. There is no cash-out upon termination of employment.

Sick leave can be used for personal illness, illness of a family member or time off related to domestic violence. Other cities with paid sick leave mandates are San Francisco, Washington DC and Milwaukee, WI. Denver voters will decide on a similar initiative, this November.

10. **For the Birds** – If you like being tweeted and want breaking news on employment law changes (and the occasional random cheer for K-State since it’s football season . . . welcome to the Big 12, TCU! J), 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: _____

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Your Name: _____
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