



# BV-SHRM NEWSLETTER

CHAPTER NO. 0330 ♦ MAY 2016

*May's Program and Luncheon proudly sponsored by:*

**ANCO**



**ANCO**  
INSURANCE  
*Since 1873*

*Anco Insurance is a full-service independent agency, founded in 1873 in Bryan. Through our network of major insurance companies, Anco provides coverage for your auto, homeowners, business, farm & ranch and life/health/benefits needs. Anco Insurance is dedicated to finding solutions to your insurance questions and providing outstanding customer service.*

**For more information:**

**Anco Insurance**  
1111 Briarcrest Drive  
Bryan, Texas 77802  
(979) 776-2626  
(800) 749-1733  
[service@anco.com](mailto:service@anco.com)  
[www.anco.com](http://www.anco.com)

## MONTHLY PROGRAM & LUNCHEON

**TOPIC:** Department of Labor's Proposed FLSA Rules

**WHEN:** May 5, 2016

**TIME:** 11:30: Lunch, Networking, & Announcements  
12:00 Program

**WHERE:** Phillips Event Center  
1929 County Club Dr., Bryan, TX

**COST:** \$15/ BV-SHRM member  
\$20/ non-members or non-RSVP

**SPEAKER:** Charles H. Wilson, Vice Chair, Office Managing Partner

**RSVP:** Please **RSVP by noon, Friday, April 26, 2016** to  
[rsvpprograms@gmail.com](mailto:rsvpprograms@gmail.com).

**MENU:** Rosemary chicken with Chef's choice of starch & vegetables, water, iced tea and coffee.

## PROGRAM DETAILS

### Department of Labor's Proposed FLSA Rules:

Charles H. Wilson will discuss the Department of Labor's newly proposed Fair Labor Standard Act rules that would amend the white collar exemptions and effectively disqualify nearly five million workers from being overtime exempt. Through sample case studies, the focus of our discussion will be on how HR departments can get ready for key components of the DOL's proposed new overtime regulations.

## SPEAKERS BIO

Charles H. Wilson, who is board certified in Labor and Employment Law by the Texas Board of Legal Specialization and the Vice Chair, Office Managing Partner of the Houston office of Cozen O'Connor, represents employers in complex litigation and trials arising from claims of wage and hour violations, employee raiding, race discrimination, racial profiling, retaliation (including whistle blowing), harassment, and disability discrimination. Charles earned his undergraduate degree from the University of Connecticut in 1993 and his law degree from Texas Southern University-Thurgood Marshall School of Law in 1996.

Would your organization like to be featured here?

Contact Gari Jones about sponsorship opportunities at [gnjones@ag.tamu.edu](mailto:gnjones@ag.tamu.edu)

Please notify [lgalvan1984@gmail.com](mailto:lgalvan1984@gmail.com) to request copies of speaker presentation.



Visit us and become a Fan of BV-SHRM on

**facebook**

---

**May's Program and Luncheon proudly sponsored by: ANCO Insurance**

---

HR professionals everywhere struggle with the new challenges created by the Affordable Care Act. Anco Insurance has solutions that help with all the complexities ranging from 1095 forms, employer reporting, employee notifications and overall ACA compliance. Anco has 5 locations throughout Texas, including our home office on Briarcrest Drive in Bryan. Through our network of major insurance companies, Anco provides coverage for your auto, homeowners, business, farm & ranch and life/health/benefits needs. Anco Insurance is a full-service independent agency, founded in 1873 in Bryan. Anco Insurance is dedicated to finding solutions to your insurance questions and providing outstanding customer service.

---

## Upcoming Events

### DIVERSITY MATTERS

#### Diversity Dates for MAY

**Did you know?** May is Asian-American & Pacific Islander Heritage Month/Jewish American Heritage Month/ Older Americans Month/Mental Health Awareness Month  
15: Rama Navami (Hindu)

3 – Lailat al Miraj (Islamic)

5 – Holocaust Remembrance Day; Cinco De Mayo; National Day of Prayer

8 – Mother's Day

8-14 – National Women's Health Week

15 – Buddha Day; Pentecost (Christian)

17 – Anniversary of Brown vs. Board of Education of Topeka decision

21 – Armed Forces Day

30 – Memorial Day

## ***Board Officers***

### President

Lisa Villalobos, SHRM-CP, PHR

### President Elect

Kristi Soria

### VP of Programs

Liz Galvan, SHRM-CP, PHR

### VP of Membership

Candi Nelson

### Treasurer

Krystal Broussard, SHRM-CP, PHR

### Secretary

Kimberly Williamson

### Past President

Reth Youell, SHRM-SCP, SPHR

## ***Directors & Chairs***

### Certification Director

Alyssa Wisnoski

### College Relations Director

Tami Overby

### Diversity Director

Faren Franklin

### Government Affairs Director

Kathy Schroeder

### SHRM Foundation Director

Thom Holt, SHRM-SCP, SPHR

### Workforce Readiness Director

Stacy Overby, SHRM-SCP, SPHR

### Hospitality Chair

Wanda Boyd, SHRM-CP, PHR

### HRSW Ambassador Chair

Reth Youell, SHRM-SCP, SPHR

### Newsletter Chair

LaTasha Phillips

### Business Seminar Chair

Jessica Lennerton

### Social Engagement Chair

Jennifer Cabezas, SHRM-CP, PHR

### Website Chair

Bob Hensz, SHRM-SCP, SPHR

### Recertification Chair

Michelle Merritt, SHRM-CP, PHR

### Sponsor Chair

Gari Jones, SHRM-CP, PHR

### Publicity Chair

Lauren Pearce, SHRM-CP, PHR



Are you  ? BV-SHRM is.

# Linked

BV-SHRM has created a LinkedIn account and we encourage members to connect with us through this social media.

# President's Piece

May 2016

President's Piece

I hope you have had a wonderful spring and are looking forward to the summer. I'm looking forward to proms, graduations, and summer vacations!

Please **save September 13, 2016** for our Business Seminar to be held at Phillips Event Center. We have already confirmed Tom Marrs (communication speaker from last year) and Chris Antone (HRSW Speaker's Hall of Fame who will share a legal update). We look forward to adding more speakers as we move forward.

The seminar will be followed by a **Happy Hour at Phillips** so even if you can't spend the day with us, we hope you can join us for food, friends, and fun!

Consider attending one of the major conference events done by SHRM or our Texas Chapters such as the Gulf Coast Symposium (Houston, May), the SHRM National Conference (Washington, DC, June) or HR Southwest (Ft. Worth, October).

Also, if you're not currently a member of National SHRM, please consider it. Many of our National members say that the value you can get just from access to the website is much better than paying your attorney! Find out more at [www.shrm.org](http://www.shrm.org) and click on "Membership." With your National Membership, you get a discount on your local dues.

Again, thank you for all you do for your employees and your organizations.

Lisa Villalobos  
President, BV-SHRM

## Share Your Ideas

The Board always welcomes your comments and suggestions. See an interesting article online or have a process that could benefit other members? Share it with your BV-SHRM Chapter.





[SHRM 2016 Annual Conference & Exposition](#)

June 19-22 | Washington, D.C.

[Register](#) | [Housing & Travel](#) | [Sessions](#)



## Maintain Your Valuable Certification

Attending [#SHRM16](#) is a great way to stay ahead of HR trends AND earn recertification credits for your **SHRM-CP**, **SHRM-SCP** or other general HR credentials!

## SHRM ANNUAL CONFERENCE & EXPOSITION

June 19-22, 2016

Washington, D.C. | Convention Center



*Mark Your Calendars*



**TEXAS**  
**SHRM**  

---

**TEXAS STATE COUNCIL**

April 14, 2016

**TEXAS ASSOCIATION OF BUSINESS /TEXAS  
SHRM**

**EMPLOYMENT RELATIONS SYMPOSIUM  
2016**

**Wednesday, July 20, 2016 6:00 PM -  
Friday, July 22, 2016 12:00 Noon**

La Cantera Hill Country Resort  
16641 La Cantera Parkway  
San Antonio, TX 78256

Texas Association of Business and Texas SHRM bring you the annual Employment Relations Symposium located at the La Cantera Hill Country Resort San Antonio. The program focuses on the latest in laws and policies for the HR professional and is presented by experts in HR law.

This is event the premier learning experience for HR professionals in the state of Texas. Enjoy the exciting surroundings of the San Antonio Hill Country experience as you earn continuing education and connect with peers from across the state.

[Click here to learn more about the conference and to register.](#)

**B** **usiness After Hours**  
May 19, 2016  
The Physicians' Centre

**Gulf Coast Symposium**  
May 11-13, 2016  
Houston, TX  
<http://www.hrhouston.org/page/512>

**N** **ational SHRM Conference**  
June 19-22, 2016  
Washington, DC  
[annual.shrm.org](http://annual.shrm.org)

# HR Southwest

October 16-19, 2016

Fort Worth, TX

[www.hrsouthwest.com](http://www.hrsouthwest.com)

Registration opens in the spring

Use Chapter 0330 when registering



THE  
**HR SOUTHWEST**  
CONFERENCE™



10.16.16 - 10.19.16

FORT WORTH CONVENTION CENTER

## THE STATE OF TEXAS SHRM CONFERENCE PREVIEW

### ABOUT THE CONFERENCE

The HRSouthwest Conference (“HRSWC”) is the premier regional human resources conference— a true don’t-miss event, providing more than 100 educational sessions from thought-leading speakers, numerous networking events and an exciting Marketplace of more than 200 HR solution and service providers. Through unparalleled offerings and opportunities, HRSWC provides human resource professionals with practical knowledge and best practices to make a positive and significant impact to their team’s and organization’s results. And we’ve been doing it for 75 years! Special events are planned for this year to celebrate this major milestone.



### WHY SHOULD YOU BE THERE?

The HRSouthwest Conference is the must-attend event for human resource professionals from all disciplines. Attendees from across the complete spectrum of industries and organizations participate in this premier educational opportunity. HRSWC has something for every HR stakeholder in your organization:

10.16.16 - 10.19.16

FORT WORTH CONVENTION CENTER

- HR Generalists
- Training & Development
- Recruitment & Retention
- HR Consultants

### ATTENDEE OVERVIEW



10.16.16 - 10.19.16

FORT WORTH CONVENTION CENTER

- Compensation & Benefits
- Risk Management
- Administrators
- And Many More!

10.16.16 - 10.19.16

FORT WORTH CONVENTION CENTER

- Nearly 1,700 attendees representing more than 1,000 different companies
- 34 U.S. states and seven countries represented
- 92% from Texas; 65% from Dallas/Fort Worth area

## EARN

- Up to 17 SHRM PDCs and 17 HRCI Recertification Credit Hours (pending approval)
- Plus up to 8 additional credits with Pre-Conference Workshops (separate registration required)

10.16.16 - 10.19.16

FORT WORTH CONVENTION CENTER

The HRSouthwest Conference | 5001 LBJ Fwy., Ste. 800 | Dallas, TX 75244

[www.hrsouthwest.com](http://www.hrsouthwest.com)

10.16.16 - 10.19.16

FORT WORTH CONVENTION CENTER

THE STATE OF TEXAS SHRM CONFERENCE

## PREVIEW

## ABOUT THE CONFERENCE

The HRSouthwest Conference (“HRSWC”) is the premier regional human resources conference - a true don’t-miss event, providing more than 100 educational sessions from thought-leading speakers, numerous networking events and an exciting Marketplace of more than 200 HR solution and service providers. Through unparalleled offerings and opportunities, HRSWC provides human resource professionals with practical knowledge and best practices to make a positive and significant impact to their team’s and organization’s results. And we’ve been doing it for 75 years! Special events are planned for this year to celebrate this major milestone.



## WHY SHOULD YOU BE THERE?

The HRSouthwest Conference is the must-attend event for human resource professionals from all disciplines. Attendees from across the complete spectrum of industries and organizations participate in this premier educational opportunity. HRSWC has something for every HR stakeholder in your organization:

10.16.16 - 10.19.16

FORT WORTH CONVENTION CENTER

- HR Generalists
- Training & Development
- Recruitment & Retention
- HR Consultants

## ATTENDEE OVERVIEW

10.16.16 - 10.19.16

FORT WORTH CONVENTION CENTER

- Compensation & Benefits
- Risk Management
- Administrators
- And Many More!

10.16.16 - 10.19.16

FORT WORTH CONVENTION CENTER

- Nearly 1,700 attendees representing more than 1,000 different companies
- 34 U.S. states and seven countries represented
- 92% from Texas; 65% from Dallas/Fort Worth area

## EARN

- Up to 17 SHRM PDCs and 17 HRCI Recertification Credit Hours (pending approval)
- Plus up to 8 additional credits with Pre-Conference Workshops (separate registration required)

10.16.16 - 10.19.16

FORT WORTH CONVENTION CENTER

### What do attendees say?

*“All of the sessions I attended were absolutely amazing. Every speaker was engaging and the topics were current. Information shared was applicable to my current position, and after each session, I found myself more energized about my job. I have attended many conferences over the years and HRSWC is the first one that I have attended where every session and speaker relayed information that I can use daily.”*

*“Hands down the best conference I have ever attended in my over 15 years of being an HR professional! The best variety of knowledge-based sessions with facilitators who exude energy and knowledge in their field of expertise.”*

*“Thank you for an amazing experience! This was my first visit and I was significantly impressed. The content of the sessions were both thought provoking and invigorating. I left the conference reenergized, filled with more purpose and excitement to continue to love what I do as an HR professional!”*

*“I have attended HRSWC the past four years and my experience gets better each and every time. Because HRSWC is so valuable to me, I no longer attend any other conferences. I return to my office each year with more knowledge, information and contacts than I would ever think possible.”*

# Legal Briefs for HR

Welcome to Legal Briefs for HR, an update on employment issues sent to over 6000 individual HR professionals, in-house counsel and business owners plus HR and legal professional organizations (who have been given permission to republish content via their newsletters and websites), to help them stay in the know about employment issues. Anyone is welcome to join the email group . . . just let me know via reply email you'd like to be added to the list and you're in! Back issues are posted at [www.munckwilson.com](http://www.munckwilson.com) under Media Center/Legal Briefs and you can also join the group by clicking on "Subscribe."

Your mama did not raise a fool . . . read and learn:

- Beauty and the Beast** - So what can employers learn from the staggering multi-million jury verdicts recently awarded to Erin Andrews and Hulk Hogan? For starters, these jurors were clearly offended by the type of invasion of privacy visited upon both plaintiffs. Although disclosure of surreptitious naked videos involving employees is rare (but not unknown), other types of privacy can be just as important and command serious damages when breached. Are you aware of the legal and practical lines that should not be crossed? Do you realize that telling your employees "you have no reasonable expectation of privacy" is a good start but not a complete defense? Here are just a few of the privacy protections that you should consider before creating policy/procedure and taking corrective action for perceived misconduct:
  1. State constitutions and statutes which contain an express or implied right to privacy
  2. Common law remedies for various forms of invasion of privacy, such as intrusion upon seclusion
  3. Federal laws, such as the Electronic Communications Privacy Act, which limit your ability to access certain electronic messages . . . even on your own systems
  4. Federal (and some states') law that severely limit an employer's ability to use lie detector tests in employment
  5. Federal and state laws that restrict whether, in what way and how you use the results of job applicant and employee drug tests
  6. State wiretap laws which may require dual, rather than single, consent to monitoring
  7. State laws that mandate notice to employees of electronic monitoring, including GPS on company-issued vehicles and phones
  8. State laws that prohibit mandated disclosure of job applicants' and employees' protected social media accounts
  9. State laws that make employees' lawful after-hours and off-premises conduct none of your business
- Eye Spy** - One benefit of the Erin Andrews trial is the revelation that anyone can purchase a simple device to reverse a door's peephole and look in, from the outside. Heads' up travelers who value their privacy . . . you might want to block that hole in your hotel door! Duct tape? Wad of chewing gum? Tiny message card that says, um, get your jollies elsewhere, creep?
- I-9 Makeover Nearly Complete** - USCIS posted its proposed changes to Form I-9 on March 28 and is providing a 30-day comment period. This is on the heels of the prior 60-day comment period that commenced on November 24, 2015. You can read the proposal and submit your pithy comments, if any, at <https://www.federalregister.gov/articles/2016/03/28/2016-06883/agency-information-collection-activities-employment-eligibility-verification-form-i-9-revision-of-a>. Oh, it also says you can continue using the present Form I-9, which expired on March 31, until the new one is released. I know that was keeping you up at night.

4. **HR Headaches** – Employment-related statutes prohibit certain types of conduct and normally identify the “employer” as the one who will be liable if the law is violated. The FLSA and FMLA definitions of “employer” are distinct from the ones used under Title VII, ADEA and ADA, by specifying that the employer is “any person who acts, directly or indirectly, in the interest of the employer to any of its employees.” So you should not be surprised to read that, once again, an HR Director has been found personally liable for an FMLA violation. *Graziado v. Culinary Institute of America* (2<sup>nd</sup> Cir. March 2016) While the HR Director’s boss had “ultimate termination authority” the Court noted that this authority had been delegated. Specifically, the HR Director had reviewed the FMLA paperwork and determined if it was complete, controlled the conditions under which the employee could return to work from leave and sent nearly every communication relating to the decision process. This level of control over the matter was deemed sufficient to support individual liability.
5. **Heads’ Up, HR** – Your friends at the IRS issued a March 1 alert to payroll and human resources professionals to make you aware of a surge in a particular type of phishing scam. You may receive an email purporting to be from your CEO or other company executive, asking for employees’ personal identity information such as copies of the Form W-2 (which contains the employee’s SSN). Other versions of the scam ask for a list of employee names, DOB, home address, salary and SSN. The emails are “spoofs” which appear to actually come from a person within the organization, but don’t be fooled. Instead, march your wise self down the hall and verify before compiling and sending this info to anyone. The IRS’s alert can be found at <https://www.irs.gov/uac/Newsroom/IRS-Alerts-Payroll-and-HR-Professionals-to-Phishing-Scheme-Involving-W2s>.
6. **Not Persuaded** – As expected, the U.S. Department of Labor’s final version of the “persuader rule” guts the advice exemption by requiring employers to disclose the hiring of consultants, including attorneys, who provide oral or written recommendations relating to union elections. The prior version of the rule required disclosure only if the consultant had direct contact with employees. See [http://www.dol.gov/olms/regs/compliance/ecr\\_finalrule.htm](http://www.dol.gov/olms/regs/compliance/ecr_finalrule.htm) for a copy of the rule and related info (including a particularly curious comparison of labor consultants to the Wizard of Oz . . . as a native Kansan, I think their analogy is as inept as the Tin Man without his oil can). A lawsuit has been filed in AR to block implementation of the rule, by the National Ass’n of Manufacturers and other business groups. The plaintiffs claim the final rule is unconstitutional, violates the Administrative Procedures Act and the Labor Management Reporting and Disclosure Act and cannot be harmonized with attorney/client privilege. See [http://online.wsj.com/public/resources/documents/2016\\_0330\\_persuader.pdf.pdf](http://online.wsj.com/public/resources/documents/2016_0330_persuader.pdf.pdf) for a copy of the lawsuit.
7. **More Handbook Hiccups** – It’s not hard for the NLRB to find an employee handbook it does not like. The agency has been on a tear, nixing common sense pronouncements on collegial behavior on the premise that some employee might interpret the policy to mean that he or she cannot complain about work-related issues, which is a protected right under the NLRA. The most recent case, involving Chipotle, is interesting because the employer had already fixed the offending policy, but that did not matter because supervisors were still applying the old version. What was in the old version?
  1. A social media policy that banned “disparaging, false, misleading, harassing or discriminatory statements about or relating to Chipotle, our employees, suppliers, customers, competition or investors” . . . the fired employee had posted Tweets on being required to work on snow days and working for low wages & had been “asked” by the company to remove those Tweets; the ALJ noted that employers may not ban posts that are merely false or misleading . . . it must be shown that a malicious motive was at work
  2. A social media policy that said “If you aren’t careful and don’t use your head, your online activity can also damage Chipotle or spread incomplete, confidential or inaccurate information” . . . the ALJ said that the undefined use of “confidential” was too vague and could mislead employees about their Section 7 rights
  3. An ethical communication policy that banned exaggeration, guesswork and derogatory characterization of people and their motives

4. A ban in improper use of the company's name or trademarks . . . without explaining what would be "improper"

An easy lesson on this one is to couple any newly-released guidance with supervisory training or similar clear messaging to ensure that your fix is implemented and the unfortunate old policy is gone, gone, gone.

8. **EEO Oh No** - It did not take Congress long to push back on the EEOC's plan to gather pay info along with the usual race/gender data via its annual EEO-1 reporting exercise. The EEOC Reform Act (S.B. 2693), if passed, would require the EEOC to do a better job of establishing the cost to employers by applying the new rule, on a test basis, to federal employers only. After gathering the data from this test run, the EEOC would be required to calculate the number of hours needed by agency staff to analyze the data and the number of staff and hours that were diverted from processing charges of discrimination. The study would be published and reported to Congress as an annual exercise. Only after the first annual report and the development of plan that explains how the data would be used, could the EEOC seek OMB's OK to extend the requirement to private sector employers.
9. **DOL Dissed** - The Protecting Workplace Advancement and Opportunity Act (S. 2707 & H.R. 4773), if passed, will slam the brakes on pending changes to the FLSA's white collar exemptions and require detailed study of its effects before it can be unleashed on employers. The bill states that the U.S. Department of Labor (DOL) failed to evaluate the economic impact of doubling the minimum salary needed to preserve several FLSA exemptions or the effect of automatic annual increases to that number. The bill identifies nonprofit, public sector and small business as being particularly vulnerable to what the DOL has proposed. The bill also addresses the concern that unilateral changes to various duties tests could drop on employers at any time, by requiring a notice-and-comment period prior to any change to those duties tests. DOL sent the revised regs to the OMB on March 15 in a transparent attempt at a quick launch of the revised reg, to avoid nullification via the Congressional Review Act at a point in time when a White House veto of Congressional action might not be a sure thing.
10. **Peek-A-Boo Noncompetes** - In a 36-page report issued on March 31, the U.S. Treasury Department suggests that noncompete agreements can be used for societal good, but many are not, and the solution is to [1] make them more transparent when offered (so that employee really understands what he or she is getting into); [2] "encourage" employers to stop using overbroad noncompetes which are not enforceable (but may have the desired effect because the employee does not know any better); and [3] require that employers provide consideration (read: real money) to employees signing noncompetes, so that employers are incentivized to reduce the number of noncompetes they require. It's an interesting read, at <https://www.treasury.gov/resource-center/economic-policy/Documents/UST%20Non-competes%20Report.pdf>. Could this be a step toward federal policy which preempts the crazy quilt of state laws which currently regulate enforceability of noncompetes? Hmmm.
11. **Out of Joint** - In response to the NLRB's pronouncement of joint employer status between two distinct business entities in *Browning-Ferris Industries*, not to mention the DOL's stated opinion on this issue, five states have amended their business franchise laws to specify that a franchisee is a sole employer of the employees it provides pay/benefits to unless the franchise agreement (between franchisor and franchisee) expressly states an intent to enter into a joint employer arrangement. Michigan is the most recent state to take this action (on March 22), joining LA, TN, TX and WI.
12. **Expensive Lesson from a Laptop** - North Memorial Health Care of MN ("NMHC") shared sensitive personal health information (PHI) with a contractor. The contractor's employee had this info, in unencrypted form, on a password-protected laptop. The laptop was stolen from the employee's locked car, putting the PHI of 9947 individuals in the wind. NMHC properly reports the breach. The contractor settles with the MN attorney general for \$2.5 million for violations of HIPAA and state laws. NMHC pays the U.S. Department of Health and Human Services \$1.55 million (for its failure to have a business associate agreement with contractor and

failure to conduct electronic PHI risk analysis) and agrees to a comprehensive corrective action plan to add the missing policies, procedures and employee training relating to protection of PHI.

13. **Look Before You Leap** - Individuals with pending USCIS permanent residency applications who want to change positions or jobs, hold your horses and check out the March 18 final version of guidance on how to do it properly at [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/Final\\_Same\\_or\\_Similar\\_Policy\\_Final\\_Memorandum\\_3-18-16.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/Final_Same_or_Similar_Policy_Final_Memorandum_3-18-16.pdf).
14. **Labor and Employment Law Conference** - If you are looking for a solid update that caters to both lawyers and to HR professionals, check out the University of Texas School of Law Labor and Employment Law Conference, to be held in Austin on May 3 and 4. For more info and to register, go to <https://utcle.org/conferences/EL16>.
15. **Stated Differently** - Here are some hot topics for you multi-state employers:
  1. **California** - Time to update your state law notices! The Pregnancy Disability Leave and Family Rights Act have been amended, so the existing notices have been revised. See the agency website at [http://www.dfeh.ca.gov/Publications\\_Publications.htm](http://www.dfeh.ca.gov/Publications_Publications.htm). These changes take effect April 1.
  2. **California** - On March 31, the legislature OK'd a bill which will raise the state minimum wage to \$15/hour over the next six years. Governor Brown said he would sign it on Monday, April 4. The current state minimum wage is \$10/hour and will jump to \$10.50/hour on January 1, 2017. The next raise would be to \$11/hour on January 1, 2018 and then add \$1/hour each January 1 until 2022. Businesses with fewer than 26 employees are given an extra year to comply.
  3. **California (Pasadena)** - Effective July 1, employers of 26+ employees must pay at least a minimum wage of \$10.50/hour to all employees who work within the city limits and at least two hours per week. The rate will rise to \$12.00/hour on July 1, 2017 and go to \$13.25/hour on July 1, 2018. The same rates apply to employers of fewer than 26 employees, but add one year to each of the effective dates.
  4. **Idaho** - Enforcing a noncompete against certain folks is getting easier. A bill signed by the governor on March 31 provides, in part, that a rebuttable presumption of irreparable harm is established where a key employee or key independent contractor breaches a noncompete agreement or covenant. To rebut, the person must show that he or she has no ability to adversely impact the employer's legitimate business interests. "Key employee or key independent contractor" is one who is among the highest paid 5% of the employer's employees and contractors. For full text, see <http://legislature.idaho.gov/legislation/2016/H0487.pdf>.
  5. **Mississippi** - A MS Supreme Court decision allows an employee to sue his employer for wrongful discharge after being fired for having a gun in his locked car on the employer's premises. *Swindol v. Aurora Flight Services Corp.* (Miss. March 2016). MS is one of several states which allow employers to ban guns in their buildings and company cars, but not in employees' locked vehicles while parked on the employer's premises. The lower court dismissed the lawsuit and Swindol appealed. The 5<sup>th</sup> Circuit asked the MS Supreme Court to opine on the tension between the gun law and employment at-will. The Supreme Court noted that the gun law did provide immunity to employers from civil suit arising from the transportation, storage, possession or use of a firearm covered by the law but concluded that the immunity was intended to protect employers from liability arising from the actions of an employee or third party (e.g., workplace violence) but not from the employer's own failure to comply with the law. This case created the third exception to the employment at-will doctrine in MS.
  6. **North Carolina** - On March 23, legislators called a special session and passed the Public Facilities Privacy and Security Act (H.B. 2) which blocks local governments from passing civil rights laws and wage and hour

laws that are more generous than the state's version. The measure was designed to negate a Charlotte city ordinance which prohibits discrimination based upon LGBT status and allows transgender individuals to use the restroom of their choice. The Charlotte ordinance was to take effect April 1. The state law, which applies to schools and public agencies, requires that individuals use the restroom consistent with the gender noted on their birth certificate. Commentators noted that the broad reach of the language negates common law causes of action in employment discrimination cases and several corporations (e.g., Dow Chemical, Biogen, Inc.) have expressed their disapproval of the legislature's action. The NC governor signed the bill into law late on March 23 and a lawsuit was filed on March 28 in an attempt to block the law as being unconstitutional, on both equal protection and privacy grounds. Stay tuned.

7. **Tennessee** - An employer's provision of 3000 hours of supervised real estate appraisal work, enabling an employee to obtain a real estate appraiser's license, was not sufficient to support a post-employment noncompete restriction. *Davis v. Johnstone Group, Inc.* (TN Ct. App. March 2016). At trial, the Court found that the employer had provided neither specialized training nor confidential information which could've been proper consideration for the post-employment restrictions. It also noted that the employee took no confidential client info or business records, there was no "secret" method of appraising used by the employer and the appraisal training provided was not unique.
  8. **Utah** - Effective May 10, 2016, UT prohibits post-employment restrictive covenants that last more than one year from the date employment ends. A longer restriction is deemed void. This includes agreements that the employee will not compete with his or her employer in providing products, processes or services that are similar to those the employer provides. The prohibition does not apply to other types of post-employment restrictions such as nondisclosure and nonsolicitation agreements.
  9. **Wisconsin** - The state has repealed a state law prohibiting, among other things, possession of a switchblade knife and moves knives under the state's Concealed Carry Law (2011), which allows carrying of concealed weapons with a state-issued license. As with guns, property and business owners can choose whether to permit concealed weapons on their premises. If your policy and/or signage on this issue was limited to guns, you may want to revise it to include covered knives.
16. **For the Birds** - If you like being tweeted and want breaking news on employment law changes (and the occasional random cheer for K-State), follow me on Twitter. I'm at @amross.

Until next time,

Audrey E. Mross  
Labor & Employment Attorney  
Munck Wilson Mandala LLP  
600 Banner Place  
12770 Coit Road  
Dallas, TX 75251

972.628.3661 (direct)  
972.628.3616 (fax)  
214.868.3033 (iPhone)  
[amross@munckwilson.com](mailto:amross@munckwilson.com)  
[www.munckwilson.com](http://www.munckwilson.com)

Legal Briefs for HR ("LB4HR") is provided to alert recipients to new developments in the law and with the understanding that it is guidance and not a legal or professional opinion on specific facts or matters. For answers to your specific questions, please consult with counsel. If you wish to be added to the group or to modify your current contact



information, go to [www.munckwilson.com](http://www.munckwilson.com) and click on Media Center and then Subscribe, or send your contact info directly to the author. If you wish to be removed from the group, reply and put "Remove" in the subject line.

If you wish to post, reprint or send LB4HR for the benefit of your organization, please contact the author for permission. Upon approval, nonprofit entities may post, reprint or send LB4HR to their members for no fee. For-profit entities may be charged a nominal fee. LB4HR is copyrighted work product and may not be posted, reprinted or sent without permission, however, individual subscribers are welcome to forward LB4HR to individuals or within their place of employment without seeking permission, so long as the author's complete contact information is included.

Subscribers are encouraged to notify their Internet Service Provider (ISP) that [amross@munckwilson.com](mailto:amross@munckwilson.com) is a trusted source, in order to receive an uninterrupted subscription to LB4HR. Due to the size of the email group and occasional use of sensitive words, LB4HR can be perceived as spam or inappropriate email and deleted or diverted by your ISP's filter.



# REFER A FRIEND!

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

Please send information about this organization to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_