



# BV-SHRM NEWSLETTER

CHAPTER NO. 0330 ♦ NOVEMBER 2014

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## MONTHLY PROGRAM & LUNCHEON

**TOPIC:** Worker's Compensation

**WHEN:** November 6, 2014

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

**WHERE:** Hilton Garden Inn  
3081 University Dr. (east side of Highway 6, across from Veteran's Park)

**COST:** \$12/ BV-SHRM member  
\$15/ non-members  
*Note: The guest price is now \$15*

**SPEAKER:** John Garza

**RSVP:** Please **RSVP by noon, Friday, October 31** to  
[rsvpprograms@gmail.com](mailto:rsvpprograms@gmail.com).

**MENU:** Chicken fried chicken, gravy, mashed potatoes, green beans, salad, rolls, tea and water

## PROGRAM DETAILS

### Worker's Compensation

This session will provide an overview of the Texas Workers' Compensation. Session information will include the following topics: system participant roles and responsibilities; TDI-DWC functions and services; explanation of medical and income benefits along with the importance of employee return to work after a workplace injury.

## SPEAKERS BIO

### John Garza

John Garza has been with the Texas Department of Insurance, Division of Workers' Compensation since 1991. He is the Field Operations' Southern Region Administrator. John previously held positions as the Director of Region III, Director of Program Quality Services, San Antonio Field Office Manager, San Angelo Field Office Manager / Benefit Review Officer and the Midland Field Office Claim Services Officer. John is a graduate of the American Technological University and holds a Bachelor of Science degree.

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# Upcoming Events

## MARK YOUR CALENDARS

### 2014 Red, White & You, Veteran's Hiring Event

November 13, 2014

Center for Regional Services

3991 E 29<sup>th</sup> Street, Bryan

### Chamber After Hours

November 20, 2014, 5:30-7:00 p.m.

St. Joseph

**WORKFORCE  
READINESS EVENT!**



## DIVERSITY MATTERS

### Diversity Dates for November:

- 1 All Saints' Day (Protestant, Anglican & Catholic)
- 2 All Souls' Day (USA) / Dia de los Muertos (Mexico)
- 11 Veterans Day (USA)
- 12 Birth of Bahá'u'lláh (Bahá'í)
- 16 International Day of Tolerance
- 20 Transgender Day of Remembrance
- 23 Feast of Christ the King (Catholic)
- 24 Martyrdom of Guru Tegh Bahadur (Sikhi)
- 26 Day of the Covenant (Bahá'í)
- 30 Dec 24 Advent (Christian. Catholic)

Are you  ? BV-SHRM is.

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

**LinkedIn**

Visit us and become a Fan of BV-SHRM on

**facebook**



Please notify Krystal Broussard of any changes to your contact information.

[krystal@bovymix.com](mailto:krystal@bovymix.com)



Be on the lookout for the above logo!

It will be a featured symbol this year as we expand the marketing of our chapter!

### 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.



## PRESIDENT'S PIECE

Howdy!

It's fall y'all! My favorite time of year...football, cooler temperatures, holidays, family, HR Southwest (if you missed it this year please make sure and save the date for October 25-28, 2015) and it also means the BV-SHRM year is coming to an end.

As we round out this year, it is time, again, for us to nominate our Building Value with HR Excellence Award nominees. We look forward to awarding one valued member of the HR community with this distinction every year at our December holiday luncheon and award banquet. If you are unsure if your supervisor received the nomination packet or if one of your employees needs to be nominated, please contact Retha Youell at [ryouell@cstx.gov](mailto:ryouell@cstx.gov). Nominations are due the end of October.

Additionally, a reminder that we want you for leadership roles in BV-SHRM! If you are interested in becoming a part of the BV-SHRM Board, please reach out to Retha today at [ryouell@cstx.gov](mailto:ryouell@cstx.gov).

Please do not forget to RSVP for the November meeting by Friday, October 31 so that we can accommodate the Hilton Garden Inn's catering timeline.

Again, I look forward to seeing you November 6 back at the Hilton Garden Inn for our monthly meeting. Happy Halloween!

Sincerely,

Katherine

## BV-SHRM BENEFIT



John Greer gave an entertaining and informative session on the future of HR. The link to the video was a wonderful snapshot of HR's evolution over the years.

Come join us! You never know what you'll learn!



# MEMBER NEWSLETTER

## LEGAL BRIEFS

Welcome to Legal Briefs for HR, an update on employment issues sent to over 5000 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 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."

Welcome to new subscribers who attended my legal roundtables on wage and hour law at HR Southwest!

Grab a pumpkin spice latte, get comfy, and put some knowledge in your noggin:

- 1. It's All in the Numbers** - The U.S. Department of Labor, Wage and Hour Division skipped a year but has finally released enforcement statistics. This is a good read, to understand where the problems lie and which of them the agency seems to be focused on. Check it out at <http://www.dol.gov/whd/statistics/>. You will not be surprised to see that FLSA claims far outpace FMLA claims. The number of minimum wage claims is slightly larger than the number of overtime claims, but the latter resulted in back wages of \$130,703,222, more than triple the pay-out for minimum wage claims. If you are thinking of self-examination, this would be a good place to start.
- 2. More Number Crunching** - The IRS released guidance to assist employers in determining which employees are full-time for purposes of Affordable Care Act coverage, where the measurement period applicable to the employee has changed. It also addresses which measurement period to use where there is more than one, such as during mergers and acquisitions. Check it out at <http://www.irs.gov/pub/irs-drop/n-14-49.pdf>.
- 3. Wait For It** - The Supreme Court heard arguments this past Wednesday in *Integrity Staffing Solutions v. Busk*, a case which asks whether the time employees spend going through mandatory security checkpoints at work is "hours worked" and should be with pay. The work was done in an Amazon warehouse by workers from Integrity Staffing Solutions. They claimed they had to wait up to 25 minutes before leaving work each day, to ensure that they had not stolen property from the warehouse. Existing law under the FLSA says nonexempt workers are to be paid for a "continuous workday" that begins and ends with the initial and terminal "principal activity" or activity that is "integral and indispensable" to a principal activity. The workers prevailed in the 9<sup>th</sup> Circuit, but the employer appealed to the U.S. Supreme Court. To no one's surprise, the U.S. Chamber, the National Association of Manufacturers and other pro-business organizations submitted *amicus briefs* in support of Integrity's view that the security checks are not a principal activity and should not be with pay. More surprising were briefs submitted by the Departments of Justice and Labor, in support of Integrity's position. The current administration is pushing for higher minimum wages, broader eligibility for overtime and less use of FLSA exemptions, but it also has thousands of federal workers in situations similar to that at issue, who will have to be paid more if Integrity loses. Strange bedfellows, eh?
- 4. Heads' Up, Federal Contractors** -
  - 1.** The final rule implementing Executive Order 13658 was released last week. It raises the minimum wage to \$10.10 per hour for certain covered contractors, as defined in the reg. You can read it at [http://op.bna.com/dlrcases.nsf/id/qcii-9pgmq5/\\$File/Final%20Rule%20on%20Federal%20Contractors'%20Minimum%20Wage.pdf](http://op.bna.com/dlrcases.nsf/id/qcii-9pgmq5/$File/Final%20Rule%20on%20Federal%20Contractors'%20Minimum%20Wage.pdf). Get yourself a cup of coffee first . . . it's 338 pages long! OK, I will have mercy on you and also provide a link to the five-page Fact Sheet, which can be found at <http://www.dol.gov/whd/flsa/eo13658/fr-factsheet.pdf>. Pay close attention to which contracts are covered, which ones are excluded from coverage, which employees must be paid the new rate, which employees can be excluded under the "ancillary work" definition, and which deductions are a no-no because they would reduce the employee's pay below the new minimum.

2. Say good-bye to your VETS-100 and VETS-100A report and hello to VETS-4212, for use starting with your September 2015 report. The final rule implementing the new reporting requirement can be found at <https://www.federalregister.gov/articles/2014/09/25/2014-22818/annual-report-from-federal-contractors>.
5. **That's Sick, Part Two** - Last month, I wrote about a lawsuit filed against an employer by the EEOC, alleging that the employer's wellness program violates the Americans With Disabilities Act (ADA). This is an issue the agency has been poised to address for years, and now is apparently the time make a statement by filing a second lawsuit against a different employer. In the second case, the employer had a wellness program which required employees to submit to a health risk assessment, including biometric testing, and those who were not tested became subject to cancellation of their medical insurance or a requirement to pay the full premiums. Employees who were tested paid only 25% of their premiums, with the employer paying the rest. Dale Arnold did not take the test because he was on medical leave for heart failure, so his insurance was cancelled by the employer. The EEOC is suing and claims the employer engaged in disability discrimination and the wellness program amounts to improper medical inquiries, which were not job-related or consistent with business necessity. The EEOC's attorney explains that truly voluntary wellness plans are fine, but employers can't compel participation in medical exams or make medical inquiries that are not job-related, by canceling coverage or imposing enormous penalties such as shifting 100% of the premium onto the employee who chooses not to participate. *EEOC v. Flambeau, Inc.* (W.D. Wisc. Oct. 2014).
6. **Who Knew?** - The U.S. Supreme Court will have the last word in determining whether an employer violates Title VII when it refuses to hire or fires an individual based on a religious observance, such as a certain type of dress, but the individual did not expressly give notice of or ask for an accommodation related to dress. The story begins with a young woman wearing a black hijab (head scarf) while being interviewed for a retail job at Abercrombie & Fitch. She did not get the job and the EEOC sued the employer, on her behalf. The lower court granted summary judgment for the EEOC, finding religious discrimination. The appeals court reversed, noting that an applicant or employee "should not be able to impose liability on the employer for failing to accommodate his or her religious practice on the ground that the employer should have guessed, surmised or figured out from the surrounding circumstances, that the practice was based upon his or her religion and that the plaintiff needed accommodation." *EEOC v. Abercrombie & Fitch* (10<sup>th</sup> Cir. Sept. 2013). This position of the 10<sup>th</sup> Circuit is at odds with the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup> Circuits, so the Supremes have accepted *cert* and will lay down the law.
7. **Let Your People Go . . . to Vote** - An excess of political ads is a sure sign that an election day is nearing. Depending upon what state(s) your employees work in, they probably have a statutory right to take off to vote and may be entitled to pay continuation for the absence. I found this handy chart which summarizes the rule and lists the citation to the applicable law, for each state. <http://www.findlaw.com/voting-rights-law.html>. It's dated 2012, so it's possible that the law may have changed so be sure to use the provided citation to check and see if this is current. In Texas, the polls are open from 7 a.m. to 7 p.m. and your employees have a right to paid time off if they do not have two consecutive nonworking hours while the polls are open. Some employers make sure employees do have those two consecutive nonworking hours on election day, by adjusting the start time to 9 a.m. or quittin' time to 5 p.m.
8. **Trashed** - Effective January 1, 2015, USCIS will begin purging the E-Verify records of employers that are ten years old or more. This is being done under a requirement of the National Archives and Records Administration. In advance of this first purge (and the annual purges which will follow), USCIS is giving employers a chance to download a "Historical Records Report" to capture those old E-Verify reports before they go "poof." For more info, go to <http://www.uscis.gov/e-verify/about-program/whats-new> and scroll down to E-Verify Record Disposal for a Fact Sheet and Downloading Instructions.
9. **Handy Book** - It's here! Yours truly and a team of attorneys have completed revisions to the Texas Employment Law Handbook, 2014-15 edition. The book is available on-line and as a soft-bound book by calling 1.800.856.6721 or going to [www.txbiz.org](http://www.txbiz.org). The book published jointly by the Texas Association of Business and by Texas SHRM. SHRM (either the national membership or a local chapter membership qualifies) and TAB members enjoy a discounted rate of \$199 while nonmembers pay \$299.

10. **Stated Differently** - Here are some hot topics for you multi-state employers:

1. **California** - Two courts (one in MI applying CA law) have confirmed that CA's Section 16600, which prohibits post-employment noncompete provisions except in very narrow circumstances, does not prohibit anti-raiding provisions applied to former employees. In the first case, the post-employment restriction was found enforceable as to two former employees, and their new employer was found liable for tortious interference. *MSC Software Corp. v. Altair Engineering Inc.* (D. Mich. April 2014). In the second case, it was also found that covenants preventing employees from "soliciting, inducing, recruiting or encouraging" former co-workers to quit are acceptable, while broader "no hire" covenants would violate Section 16600 and would not be enforced. *Kindt v. Trango Systems, Inc.* (Cal. Ct. App. Oct. 2014).
2. **California** - Effective January 1, 2015, employers with 50 or more employees must augment their mandatory sexual harassment training with a discussion on bullying. The additional content must address prevention of abusive conduct, which is defined in the statute as "conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive and unrelated to the employer's legitimate business interests. [I]t may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance."
3. **Colorado** - A medical marijuana case has percolated up to the CO Supreme Court, with an employee who was fired after testing positive for marijuana claiming the discharge violates the state's lawful off-duty activities law. The plaintiff, Brandon Coats, lost at the trial and appellate levels where each court noted that marijuana remains illegal under federal law so the lawful off-duty activities law does not apply. Many states that have OK'd medical marijuana are watching this case, as often their law specifically authorizes employers to enforce their substance abuse policies, even where the user claimed to have a prescription for medical marijuana. Stay tuned.
4. **Connecticut** - The state's Attorney General has fired off a letter to Apple, asking for a meeting to discuss privacy concerns tied to the new Apple Watch. While he's all for technology that encourages and facilitates good personal health, he wants to know what data is being collected, where it is being stored, and whether it is being shared with third parties. This same AG met with reps of Google, to discuss privacy concerns tied to Google Glass.
5. **Delaware** - Effective January 1, 2015, commercial entities must take reasonable steps to destroy records containing a consumer's personally identifiable information (PII) when disposing of such records. PII is defined as the individual's first name or first initial coupled with the last name, along with at least one the following - SSN, passport number, driver's license or State ID card number, insurance policy number, financial services account number, bank account number, credit card number, debit card number, tax or payroll information or confidential health care information. A consumer who incurs actual damages due to the commercial entity's violation of the law can sue for actual damages, with some entities being exempted from suit. Also effective January 1, 2015, and not subject to the exceptions applicable to the law just discussed, employees of a company who incur actual damages due to his or her employer's violation of the law may bring suit for treble damages.
6. **New York City** - 80% of the New York City Council's Committee on Civil Rights is sponsoring a bill which, if passed, will prohibit employers from basing employment decisions on the consumer credit history of the job applicant or employee.
7. **Ohio** - Effective January 1, 2014, the minimum wage will increase from \$7.95 per hour to \$8.10 per hour. The minimum wage for tipped employees will increase from \$3.98 per hour to \$4.05 per hour, plus tips. Ohio's minimum wage is tied to Consumer Price Index and is reset annually.

11. **For the Birds** - If you like being tweeted and want breaking news on employment law changes (and the occasional random cheer for K-State . . . OU, we're coming after you!), follow me on Twitter. I'm at @amross.

Until next time,

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