

# HRFOCUS

## Outgoing President's Message

Wow! What a quick year this has been! It seems like yesterday that I took the reins as president of TMHRA. The gavel was "passed" at the 2007 Employment Law Conference in Dallas, with my tenure officially taking place at the TML Annual Conference, which was also in Dallas. From then on, it seemed like a whirlwind. February saw our TxPelra/Civil Service Conference in Galveston, where, after driving down in a torrential rain, I promptly came down with the flu and left the Board meeting, of which I remember little. I did spend the night, then lucky me...I got to drive back to Allen the next day and haul myself to the doctor.

May's Mid-Year Conference was in South Padre Island (what is this with the coast all year?), where my room was the hospitality suite. I had no idea people could sing karaoke at the top of their lungs at 2:00 a.m. During the TMRS presentation, poor Eric Henry was speaking at the front of the room, while a mouse was causing havoc in the back of the room. Cost of the registration, \$150...the looks on faces at that moment, priceless.

I traveled to Austin twice for Nuts and Bolts. We actually had enough people wanting to go that we scheduled a second workshop. Great program with great speakers – what more would you want?

Finally, our highly anticipated Employment Law Seminar was scheduled for September 11-12 in League City. To allow people to travel, we were attempting to make a best guess on where Hurricane Ike was going to make landfall. Initially, it appeared the storm was heading farther down the coast and would pretty much miss us, so we made the decision to hold the seminar. Besides, who else would laugh at a storm in order to have an adventure? The Board members were all in League City on Wednesday for orientation and our regular Board meeting. Those members who did not cancel all gathered at the hotel, and of course the buzz was that the storm had decided to come in our direction. Several groups went to the Kemah Boardwalk for dinner, and then we went back to our rooms to watch hurricane news.

The next morning, the hotel informed us that they were closing at 11:00 a.m. The shuttles had been pressed into service for nursing home and hospital evacuation, so we rallied our members, who volunteered to either drive folks to the airport or even to other portions of the state. What an awesome group of people you all are!!! What an adventure! I'm thinking the coast didn't like me too much.

We planned to "pass the gavel" in a dignified manner. Unfortunately, it felt more like we were throwing plaques at our board and yelling thanks as we were leaving. So please bear with me as I try to find the words to thank them appropriately.

It is not often that you have such a wonderful group of people to work with, yet such is the case with the TMHRA Board of Trustees. In fact, I would have to say our entire organization is that way, because each new person who joins the Board comes in with the same amount of enthusiasm and "can do" spirit as the ones who have gone before. It seems like we just get stronger and stronger each year.

## TMHRA Newsletter Fall 2008

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Your gateway to information about the Texas municipal human resources professional activities throughout the State of Texas. This newsletter is brought to you by TMHRA.



Many thanks to Bonita Hall, our extraordinary vice president, who kept me grounded. She is going to make a wonderful president, and I look forward to her leadership this next year. Don Byrne served as our secretary/treasurer, and he has done an outstanding job in that role. I will truly miss the volume of e-mails we sent back and forth between the three of us and Lonnie.

Our great trustees included Debbie Maynor, Janie Mehrens, Gayle Sims, Tadd Phillips, Richard Hodapp, and Martha Butz, who were very diligent in each of their roles, resulting in sold-out conferences, a big upswing in sponsorship dollars, great newsletters, ideas for handling legislative issues, and the recruitment of new members.

Lauren Safranek served us well as our TML Board representative, and George Mones was our past president. As I said last year, George left very big shoes to fill. Although not on the Board, Jim Parrish was our TxPelra/NPelra representative and also served as our TMRS Board liaison. He has worked hard to make our voice heard in Austin. I appreciate his help.

All in all, we had a great year, with spirited discussions and lots of ideas. This year saw the beginnings of a partnership with Texas Prima, which looks to expand in the future. TxPelra now has a Web site that in the future will provide vital Texas information to our members, and we will be working more closely with TML on the TML Salary Survey, in order to make it more viable for Texas cities to use.

I also would like to thank Lonnie Parent-Smith and Betty Bartley (both from TML) for their hard work and assistance. Lonnie is the reason that we have been able to hold costs down on conferences and room rates over the years. She works very hard in helping us plan all conferences and is a vital resource in our board meetings. Betty has been a great help as well with her assistance in our conferences.

Thanks to all of you for your support of TMHRA and your professionalism. That level of professionalism shined in League City as you willingly volunteered to assist people in getting either to the airport or back home. As I look at other professional organizations, I don't think that one of them stands up to ours. I have been extremely proud to serve you this year.

#### **Laura Morrow**

Director of Human Resources  
City of Allen

## Incoming President's Message

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Howdy! Buenos Dias! Hola! Bon jour! Ciao! Hello! I wanted to begin my first letter to the membership with a hearty salutation and by saying how much I am looking forward to this year. I want to thank Laura Morrow for her leadership and the other 2007-2008 TMHRA Board members for their stewardship this year. They are a great group of people who, even with their otherwise busy schedules, worked diligently for the Texas Municipal Human Resources Association.

We ended the year with bang, bluster, and a lot of wind down in League City. First I want to say that our thoughts are with our colleagues whose cities and/or families were affected by Hurricane Ike. Many thanks to those who made it to League City, and kudos to all who assisted when the hotel shut us down. We have some stories to share on the experience. Know that the registrations have been refunded, and the Board has decided to hold another employment law session, so mark your calendar and plan to attend.

This is the time to elect a new President of the United States to lead our country for the next four years. Regardless of your affiliation, do take advantage of your precious right and cast a ballot for the candidate(s) of your choice.

I look forward to meeting new members, catching up with current members, and fellowshiping with everyone. We plan an energy-filled year of thought-provoking programs and events that will provide outstanding professional development and networking opportunities to all. If the events surrounding the employment law conference are any indication, this year should be an exciting ride. Let's all get on board and make this year one for the record books.

#### **Bonita Hall, MPA, IPMA-CP**

Director of Human Resources  
City of Cleburne

# UPCOMING EVENTS

## Employment Law Seminar Hilton Bella Harbor December 4-5, 2008

REGISTER  
NOW!!!

### PROGRAM INFORMATION

The primary focus of the seminar will be to discuss and review the current employment issues facing municipal governments, including recent changes to federal and state laws.

The presenters include **Matthew R. Scott**, Attorney, Bell Nunnally & Martin, LLP, who will kick off the seminar with a presentation on preparing for a reduction in force. He is followed by **Lowell Denton**, Partner, Denton, Navarra, Rocha and Bernal, P.C., who will provide information on increasing unionization efforts. Immediately after lunch, representatives from the Texas Public Employee Labor Relations Association (**TXPELRA**) and the Texas Public Risk Management Association (**TXPRIMA**) will review programs and services. To wind down the afternoon, **Sheila Gladstone**, Attorney, Lloyd Gosselink Rochelle & Townsend, P.C., will give an update on recent court rulings that are impacting FMLA; and **Julie Ross**, Partner, Lynn, Pham and Ross, LLP, will discuss preparing effective separation agreements.

**Betty Lynn**, Partner, Lynn Pham and Ross, LLP, will kick off Friday with a presentation on the ever popular update on legal developments in Texas and the nation. To conclude the seminar, **Cristina Ruiz Blanton**, Attorney, Bovey & Bojorquez, will discuss legal aspects of flexible work schedules.

This seminar is designed to provide human resource professionals, managers, and supervisors with the tools necessary to maintain workplaces that are in compliance. It will also heighten your awareness of legal issues surrounding the workplace and how you can avoid costly mistakes.

Space is limited, so register online today! For further details or to register for this outstanding program, go to [www.tml.org](http://www.tml.org) and click on "Conferences/Education."

If you have questions, you may contact TML staff at 512-231-7400 or [tmhra@tml.org](mailto:tmhra@tml.org).

**NPELRA Academy I:**  
The Foundation of Labor Relations  
Marriott Las Colinas, Irving  
February 3, 2009

**TxPelra Workshop**  
Marriott Las Colinas, Irving  
February 4, 2009

**Civil Service Workshop**  
Marriott Las Colinas, Irving  
February 5-6, 2009

**Nuts and Bolts of HR in the Public Sector:**  
Discovering the Fundamentals  
Texas Municipal Center  
April 3, 2009

**NPELRA Academy III: The Negotiations Process**  
Hyatt Regency, San Antonio  
April 5, 2009  
For further information, visit [www.npelra.org](http://www.npelra.org).

**Mid-Year Conference**  
Riding the River to Success  
Holiday Inn Riverwalk, San Antonio  
June 3-5, 2009

MARK  
YOUR  
CALENDARS  
NOW!!!

## THANKS FOR YOUR NEWSLETTER INPUT FOR 2007-2008!!!

This is my last newsletter as the committee chair, so I just want to express my appreciation to all of you who provided articles, summaries of conferences, and other input for your newsletter!

*Thanks!*

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## NEWSLETTER INPUT NEEDED

This is YOUR newsletter, and we want to ensure it provides you with a valuable source of information from TMHRA. If you have any ideas, articles, or information you would like to see included in future newsletters, please submit them to the Newsletter Committee.

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## INTRODUCING... New Members to TMHRA

By Janie Mehrens



TMHRA will provide you with opportunities to participate in planning educational sessions and all the other activities sponsored by our organization. As a member, you will also have access to TMHRA E-Solutions – a great way to get advice or feedback from your colleagues.

The following human resource professionals have chosen to join our great organization, and the Board has unanimously approved their applications. Our newest members (September-October) are:

*Tammy Ard, HR Coordinator, Town of Trophy Club*  
*Nan Brush, City Secretary, City of Bangs*  
*Melanie Caballero, Director of Human Resources, Mid-South Synergy*  
*Chuck Canfield, Managing Partner, Strategic Processes*  
*Valda DeWitt, Human Resources Bureau Chief, Houston Department Health and Human Services*  
*Sandra Duran, Director of Human Resources, City of Kyle*  
*Juan Gonzalez, Director of Human Resources, City of McAllen*  
*Linda Hammond, Human Resources Coordinator, City of Livingston*  
*Janice Jessen, Human Resources Manager, New Braunfels Utilities*  
*Jacqueline Lee, Director of Human Resources, City of Glenn Heights*  
*Bonnie Newman, HR Technician, City of Longview*  
*Daniel Perez, Human Resources Director, City of Eagle Pass*  
*Henrietta Roberts, Human Resources Director, City of Forest Hill*  
*Sherry L. Roberts, Office Manager/Accountant, City of White Oak*  
*Cat Schlueter, Human Resources Manager, City of Azle*  
*Rick Tisch, Consultant, Hilb, Rogel, & Hubbs*  
*Phyllis Turner, Sr. HR Analyst, City of Longview*  
*Toni Vanderburg, Administration Manager, City of Horseshoe Bay*  
*Neil Welch, Vice President, Hilb, Rogel, & Hubbs*  
*Carmen Williams, Director of Personnel, City of Lake Jackson*  
*Lynette Willms, Human Resources Administrator, City of Horseshoe Bay*  
*Trudy Whitfield, Human Resources, City of Live Oak*

We appreciate your interest in helping TMHRA remain a tremendous professional resource throughout the State of Texas.

*Welcome to the TMHRA team!*

## TMHRA SPONSORS

TMHRA is grateful for the continued support of our sponsors. The sponsorships allow us to keep all events reasonably priced and affordable for all members. Thank you to the following sponsors for their support and contributions throughout the year:

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## TMHRA E-Solutions

TMHRA E-Solutions is a list serve for members to use when you have questions or issues on which you would like to receive advice or feedback from your colleagues. TMHRA E-Solutions is a wonderful way to exchange information and learn what others are doing. If you are interested in joining E-Solutions, please contact Lonnie Parent-Smith at 512-231-7452 or lparent@tml.org, Petrena Barnes at pbarnes@tml.org, or call 512-231-7400.

*Remember that posts to the e-solutions list are the opinions of the individuals making the post, not TMHRA.*

## TMHRA Employment Law Seminar, League City, September 11-12

The Programs Committee, chaired by Martha Butz, had put together an exciting program for this seminar. Unfortunately, due to Hurricane Ike, the seminar was canceled. Those who registered have received a full refund. If you have any questions, please contact TMHRA at 512-231-7400.

## Federal Legislative Update

Congress ended this session on September 26. There are several HR issues pending that could be voted on in the short time left before Congress adjourns until January 2009. Here are a few things to keep an eye on:

**ADA Amendments Act** – The House passed legislation in July, and it was passed by the Senate unanimously on September 11, 2008. The bill must now go back to the House to consider the changes made in the Senate. The ADA Amendments Act overturns what some believe to be erroneous Supreme Court decisions that have eroded the protections for people with disabilities under the ADA, restoring original Congressional intent.

According to the SHRM Government Affairs Department analysis, the ADA Amendments Act:

*“Clarifies the current requirement that impairment must substantially limit a major life activity, such as work, to be considered a disability.*

*Prohibits consideration of mitigating measures in determining whether a person has a disability, with the exception of ordinary eyeglasses and contact lenses.*

*Expands the definition of disability.*

*Retains the current law standard that the burden of proof remains with the employee for showing that he or she is a qualified employee with a disability.”*

Read the full text of HR 3195 at <http://www.aapddc.org/News/adainthe/downloads/hr3195.pdf>.

**E-Verify Extension** – The House passed legislation in July to extend the pilot employment verification system known as E-Verify until 2013; the current E-Verify program expires in November 2008.

**Mental Health Parity** – In August 2008, legislation passed the House and Senate that would prohibit health care plans from imposing treatment or financial requirements for mental health care or substance use benefits, if they do not maintain similar limits on medical and surgical benefits.

## Texas Legislative Update

Just a few more months before the Texas Legislature gets started for the 81<sup>st</sup> Regular Session. January 13, 2009, marks the first day for filing bills that may impact our municipalities! TMHRA and TML provide legislative updates, but if you'd like to keep your eye on legislation, the State of Texas provides a Web page to help you monitor the various bills that may impact your city. Here are just a few things you can do via the Web page to help you keep up with the latest happenings in Austin:

### Bill Lists

Create a list of bills that you would like to watch. Each time you run the list, the bill information is updated.

### Alerts

Enter bills on the alert list, be notified of committee and calendar postings, receive a list of bills referred to a specific committee, and set your alert preferences.

### RSS Feeds

Learn how to view legislative-related feeds through your favorite news aggregator.

To set up an account, go to <http://www.legis.state.tx.us/>. Then go to “MY TLO” to set up your account. Set up your account today!

If you think the presidential candidates are into “change,” check out what’s impacting you in the wild world of labor and employment law:

1. **Rocket Man** – Contrary to the persistent myth that it’s not possible to have an enforceable noncompete in Texas, a recent court of appeals case in Dallas provides a good refresher on how it can be done. The employer who sought an injunction against his former employee lost because (1) the noncompete was signed years after the employee was hired; (2) the agreement containing the noncompete said the consideration provided by the employer was letting the employee keep his job (which, by the way, was flying around at shows with a rocket pack on his back); and (3) the employer failed to provide the kind of consideration (e.g., access to new trade secrets) that would’ve been proper and supported the noncompete. The fact that the employee had been privy to all kinds of cool proprietary information before he signed the noncompete didn’t help the employer, because that was not new consideration at the time the noncompete was signed. *Powerhouse Productions v. Scott* (Ct. App – Dallas 8-8-08) Lesson? You can have enforceable noncompetes in Texas, even when imposed “midstream” on an existing employee, but you must cite to and actually give new and the right kind of consideration, and the post-employment restrictions on the employee must be reasonable in scope. Form agreements are a sorry substitute for assessing each case on its merits, so take the time to do it right!
2. **California Dreamin’** – Want to impose and enforce a noncompete in California? You’re dreaming, dudes and dudettes! The California Supreme Court affirmed what we already knew from reading the statute . . . “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void,” with narrow exceptions for agreements entered into as part of the sale or dissolution of a business. The Court went a step further and also found that requiring a former employee to get a release of an invalid agreement is unlawful interference with the employee’s rights. *Edwards v. Arthur Andersen LLP* (Cal. 8-7-08).
3. **Fair WARNING** – Another state has enacted a plant closing notice requirement that is more stringent than the federal standard. Unlike the federal Worker Adjustment and Retraining Notice Act, which requires 60 days notice to affected employees and certain state/local government officials, the New York version calls for 90 days. If the tough economy has you contemplating reductions in staff and/or shuttering facilities, you must look into the applicability of federal, state, and even local notice requirements. For a copy of the enacted bill, go to <http://public.leginfo.state.ny.us/menuf.cgi> and put S08212 in the bill number box.
4. **Search Me** – Looking for a way to shore up your “no expectation of privacy” disclaimer on employees’ computer use? Where an employee had to read a privacy disclaimer and click on the words “I agree” as a condition to logging on to the system each day, a court recently held that the employee had no reasonable expectation of privacy and it was okay for his employer to search his office computer. The disclaimer stated that the computer could be monitored, read, copied, or disclosed, and users had no expectation of privacy. *United States v. Mosby* (E.D. Va. 7-25-08). Be aware, however, that some states’ laws require much more detailed notice of monitoring before employers can snoop.
5. **E-Verify in Your Future?** – Yes, if Congress has its way. Two bills were introduced to change the currently voluntary system (which checks employee eligibility to work in the U.S.) into a mandatory system. H.R. 6789 would apply to large employers (more than 250 employees) one year after the bill becomes law. Those with 100 to 250 employees would have two years to start using E-Verify on all existing employees and new hires. Those with 30 to 99 employees would have three years, and everyone else would have four years to comply. The bill also beefs up fines for noncompliance from the current range of \$250 to \$5,000 to a proposed range of \$2,500 to \$40,000. The other bill (H.R. 6782) allows six years to phase in all employers. You can always read the full text and check the status of pending bills at <http://thomas.loc.gov>. As an aside, E-Verify is to expire for lack of funding in two months, but a five-year extension has been approved by the House. The plan is to extend the life of the program in order to provide some breathing room to fix it.
6. **They Punted (Again)** – This month, the OFCCP issued amended interim guidance on the issue of which race/ethnic categories to use when federal government contractors prepare their affirmative action plans (AAPs). First, a little history. Until 2007, the same five categories (that is, White, Black, Hispanic, Asian/Pacific Islander, and American Indian/Alaskan Native) were used on annual EEO-1 reports and AAPs. Beginning with the 2007 EEO-1 report, the Asian/Pacific Islander group was changed to two groups, Asian and Native Hawaiian and Other Pacific Islanders. Also a new group, Two or More Races, was added. Employers who prepared both types of reports wondered if they should stick with the old or ring in the new when preparing AAPs, starting in 2007. The OFCCP issued initial guidance to say they were thinking about syncing their race/ethnic categories with ones used on the EEO-1. The amended guidance says they are still thinking about it . . . but it’s okay for employers to use either set. Maybe there’s a charm?
7. **Heads Up, Payroll People** – A new law in Iowa (effective 7-1-08) prohibits employers from mailing paychecks to employees unless they have the employee’s written consent to do so. This restriction does not apply to paycheck information provided in tandem with a direct deposit of funds. Also, employers are liable for any overdraft fees incurred by their workers if wages are not paid on or before regularly scheduled paydays. A copy of the enrolled bill is at <http://www.legis.state.ia.us/GA/82GA/Session.2/Affected/08enrol1.htm> (scroll down to SF 2222).
8. **Nice Try** – You’ll be relieved to hear that registration as a sex offender in the State of Texas is not a protected disability under the Americans with Disabilities Act. *Vlasek v. Wal-Mart Stores, Inc.* (S.D. Tex. 7-22-08). This was one of several claims made by a female manager after her status as a registered sex offender

was discovered and her employment ended. Her argument that local managers knew and told her it wouldn't affect her job did not support a wrongful discharge claim, since she was employed at-will and local management did not have the authority to change that status. Some states (for example, Indiana) have laws that specifically authorize discharge from employment of certain types of sex offenders whose jobs involve contact with children. A few take-aways are (1) make sure your at-will disclaimers are strong; (2) the authority to negate at-will status should be granted to very few; and (3) periodically retrain your managers to understand their role in upholding at-will status and not creating unfortunate oral or implied contracts.

9. **Dumbo Deletions** – Employees who left to form a new company after deleting customer lists and other proprietary information on their former employer's computers are wishing they weren't so tidy (or mean). Their motion to dismiss the employer's Computer Fraud and Abuse Act (CFAA) claim against them was dismissed. The CFAA prohibits "knowingly causing the transmission of a program, information code, or command, and as a result of such conduct, intentionally causing damage without authorization, to a protected computer." Courts differ on whether there is a CFAA violation when the employee was authorized to access the information as part of his or her job. Some say "no foul," while others say such authorization ends as soon as the employee's interests become adverse to the employer's (for example, hatching a new, competing business). This court held that deleting the data brought it within the ambit of legal precedent (the Citrin case, discussed in LB4HR #3-2006) that sided with the latter point of view. *Alliance International Inc. v. Todd* (E.D.N.C. 7-22-08).
10. **Military Matters** – H.R. 6225, if passed, will change language in the Uniformed Services Employment and Reemployment Rights Act (USERRA) to require (rather than merely allow) courts to grant injunctive relief, given the proper circumstances, to aggrieved military personnel. The bill would also extend the life of the Service members' Civil Relief Act (SCRA), which allows deployed military personnel to suspend or end service contracts, without penalty, and requires creditors to reduce interest rates.

Until next time!



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## *Quotes from employee appraisal reports!*

Since my last report, he has reached rock bottom and has started to dig.

His staff would follow him anywhere, but only out of morbid curiosity.

Works well when under constant supervision and cornered like a rat in a trap.

He would be out of his depth in a puddle.

This young lady has delusions of adequacy.

He sets low personal standards and then consistently fails to achieve them.

This associate should go far - and the sooner she starts the better.

This employee is depriving a village somewhere of an idiot.

## *Murphy's Words of Wisdom*

No matter what goes wrong, there is always somebody who knew it would!

You can do anything except light a paper match on a marshmallow under water!

The secret of success is sincerity...once you can fake that, you've got it made!



Texas Municipal  
**Human Resources**  
Association

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