

HRFOCUS

PRESIDENT'S MESSAGE

Flowers are blooming, pools are getting ready to open, and allergies are terrible – yep, must be spring! Our employees have been on “baby duck watch.” We have a new group of baby ducklings that swim in our little pool outside city hall. They are so cute, and our facilities folks built little ramps so they can get in and out of the water.

TMHRA recently conducted the annual Nuts and Bolts Conference, which was so successful we are having another session. Program Chair Martha Butz, along with her committee, did an outstanding job! The speakers were excellent, and everyone seemed to enjoy the day. Kudos to Lonnie and Betty for taking care of all of us!

Our Mid-Year Conference was a huge success! The speakers and topics were timely, and all of the sessions were well attended. Thanks again to our Program Committee, who worked very hard on this program. We built lots of sand castles, and at least **some** of us had fun in the sun! Several folks sang karaoke until the wee hours of the morning! The crowd was pretty small by then, but the noise level was still the same! Great troopers that they were, they even showed up for the Friday morning session! I was so proud!

Changes to the TMHRA Constitution overwhelmingly passed. A summary of the changes is listed below.

IPMA-HR – Since we are no longer a chapter of IPMA-HR, we have deleted any and all references to chapter membership with IPMA-HR.

Article III: Membership – We have broadened the definition of Active Member to include all human resource staff wishing to join TMHRA. The Board has had to research positions over the years to determine who should be active or associate. In addition, as part of grooming up-and-coming directors and managers, human resource personnel should be allowed to participate wholly in their professional organization.

Terms of Officers (Section 5.4 (a)) – The “passing of the torch” has happened during the annual business meeting, at the Texas Municipal League Annual Conference. Sometimes the conference is in October and sometimes in November. The date will change to October 1, except that the term of office of the Departmental Director (TML Board Representative) shall commence upon the adjournment of the Texas Municipal League Annual Conference. This was done so that any future Board serves the same amount of time.

Nomination of Officers (Section 6.1) – The Board of Trustees asked to broaden the criteria regarding the TML Board Representative to include individuals who have been on the Board before and are active members in good standing. Currently we can only select from the two presidents who have served in the prior two years. As job circumstances change, this will allow the Nominating Chair to have a greater selection of candidates.

Election of Officers (Section 6.2) – These changes reflect the terms of officers beginning on October 1 (except that the term of office of the Departmental Director [TML Board Representative] shall commence upon the adjournment of the Texas Municipal League Annual Conference), by moving the date of ballots to the conference in September. We also are changing the wording to reflect either mailing or e-mailing ballots out.

Other Officers (Section 10.2) – The requested change was for a secretary/treasurer to have one year of experience as a trustee rather than two. This will allow more flexibility in nominations.

Employment Law will be held at South Shore Harbor in League City, so hope to see you all there!

TMHRA Newsletter Spring 2008

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Texas Municipal
Human Resources
Association

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.



UPCOMING EVENTS

Employment Law Seminar
South Shore Harbour, League City
September 11-12, 2008

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

NPELRA Academy III: The Negotiations
Process
Hyatt Regency, San Antonio
April 5, 2009

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

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

**MARK YOUR
CALENDARS NOW!!!**



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.

2007-2008 Newsletter Committee Chair

Debbie L. Maynor
Human Resources Director
City of Killeen
P.O. Box 1329
Killeen, TX 76540-1329
254-501-7834 phone
254-501-7780 fax
dmaynor@ci.killeen.tx.us

CONFERENCE HIGHLIGHTS

Nuts and Bolts of HR in the Public Sector: Discovering the Fundamentals *April 4, 2008*

This year's Nuts and Bolts was informative yet entertaining. The speakers were excellent this year due to the subject matter and informative material; additionally, most of them were just plain entertaining. Everyone who attended learned something...from the entry level human resource employee to the director of human resources.

The conference started with Hadassah Schloss, the cost rules administrator for the Office of the Attorney General, Open Records Division in Austin. Ms. Schloss is a pro at open records, and it shows. She is very straight-forward, explains examples in laymen's terms, and is very entertaining.

We discussed:

- Facts, Fiction, Reality of Open Records
- Texas State Library will come and train groups of 50 or more on record retention for free.
- Don't ask "Why?" or "What do you need this information for?" However, you can ask the requestor to be more "exact" in asking for the documentation requested.

The second speaker was Sheila Gladstone, attorney at law with Lloyd Gosselink Rochelle and Townsend, P.C. Ms. Gladstone had various hot topic issues that ranged from USSERA to the Texas Whistleblower Law. Sheila was a good sport while taking questions while attempting to eat her lunch. The crowd could not get enough of her.

She discussed:

Federal statutes, both public and private

- Age discrimination in the Employment Act
- Americans with Disabilities Act
- Affirmative action
- Rehabilitation Act
- Family and Medical Leave Act
- Fair Labor Standards Act
- USSERA (Military Duty) *Hot Topic*
- HIPPA
- Differences in private/public sector
- How to perceive whistleblowers, elements of whistleblower claims, and Constitutional claims

After lunch, our speaker was Katherine B. Ray, SPHR, who discussed Elements of a Sound Compensation Plan. Katherine is also an expert at compensation; her subject matter was very informative to an entry level human resource person, as well as long-term human resource professionals.

She discussed:

- A. Industry standards for compensation programs as they relate to the cities
The need to stay competitive (it is definitely worth the cost to pay to keep good people)

- B. Establish your pay philosophy/strategy
With whom do you compete?
What are you going to do about internal equity?
How to get from where you are to where you want to be.

The next speaker was Tracy Calloway, a breath of fresh air. Her high energy and real life examples of hire do's and don'ts made for an entertaining afternoon. Ms. Calloway gave us a lot of food for thought while keeping the room engaged in laughter. She discussed Successful Interviewing and Selection Techniques.

She engaged us with:

- A. Right Hire vs. Wrong Hire
- B. Before interview starts
Define your needs
Cast a wide net
Get to a short list
- C. Access the candidate STAR
Situation, Task: Toddler fell into pool at park
Action: What did you do?
Result: What was the result of your action?

Last but not least we were engaged by Joseph L. Parks, an attorney for Bell, Nunnally and Martin LLP in Dallas. Mr. Parks is a 22-year veteran of the Plano Police Department who retired as a Lieutenant; in 2004 he was accepted to the State Bar of Texas. Joseph's speech was very informative, as well as entertaining, with excerpts from his adorable little daughter in his Power Point presentation. His topic of discussion was Blamed, Claimed or Framed: Conducting Effective Internal Investigations. He discussed:

- Employment discrimination/harassment cases
- Why the investigation is so important
- A proper investigation will be prompt, thorough, and impartial
- Conducting the interview
- Accuser, accused, witness
- Credibility issues, demeanor, consistency and logic of story, corroborating evidence, circumstantial evidence.

This year's Nuts and Bolts was so successful, they added a repeat event scheduled for June 20, which has also sold out.

TMHRA Mid-Year Conference
Building Sandcastles to Stand the Test of Time

**Sheraton South Padre Island Beach Hotel and
Condominiums**
310 Padre Boulevard
South Padre Island, Texas
May 21-23, 2008

The TMHRA Mid-Year Conference hosted 169 registrants in South Padre Island, the longest undeveloped barrier island in the world. The sandy beaches, met by the warm and gentle

waters of the Gulf of Mexico, were the perfect location for *Building Sandcastles to Stand the Test of Time*, the theme of this year's conference. Laura Morrow, TMHRA president, kicked off the conference on Wednesday, bringing greetings as our "Beach Master."

Bryan Dodge of Dodge Development, Inc., lead a high energy, interactive session to give us effective ways for *Building the Foundation for Your Castle: "Building a Better You."* Bryan is renowned for his outstanding ability to motivate his audiences to develop their talents and abilities. He instills confidence about enhancing human potential and personal greatness by taking responsibility for 'you' first. The three key areas he focused on: (1) having your best year ever; (2) creating consistent upward growth in your life; (3) learning the power of personal energy and where it comes from. He left us with a challenge to remember that "goals are a responsibility, not an option." If you missed this enthralling session, be sure to ask one of the attendees to share the extremely useful "tool" he provided us to ward off those "bad seeds" that may distract us from achieving goals! Listen to Bryan on WBAP 820 in Dallas 5:00-6:00 p.m. CST. Recommended reading to continue to build a better you: *Tuesdays with Morrie*, by Mitch Albom, and *The Richest Man in Babylon*, by George S. Clayson.

Matt Weatherly, president of Public Sector Personnel Consultants, opened the next session, *Sandcastle Team-Building: Compensation Strategies for Rewarding Performance*. A discussion of strategies used in various municipalities to compensate employees who excel in performance was provided by panel participants Tadd Phillips, director of human resources, City of San Angelo; and Melinda Galler, human resources director, City of Lewisville. They shared insights on the advantages and disadvantages of using pay to reward employees for outstanding performance. One of the key strategies they shared for implementing a performance based compensation plan is to realize that there is no one way to handle pay for performance; plans must be designed based on your organization and what will be most effective and affordable for your municipality.

Greg Anderson, associate executive director of the North Texas Municipal Alliance (NTMA), Strategic Government Resource, Inc., opened our second day of sessions with *Tropical Depression: Dealing with Negaholics*.

Negaholism, a 21st century epidemic, is adversely affecting workplace morale, teamwork, and productivity. Greg identified ways to identify the negaholics around us as a first step in combating those behaviors. He provided useful strategies to assist us in effectively managing these "bad seeds" in the workplace. This includes identifying

the type of negaholic you may be dealing with and engaging in deliberate activities to turn the negative behaviors into a positive outcome.

In our next session, *Erecting the Towers: Affordable Retiree Benefit Alternatives*, we discussed one of the workplace topics that may bring out those "negaholics" in your organizations! Chapter 175 of the Local Government Code requires entities with a population that exceeds 25,000 to provide retirees the right to purchase continued medical coverage; some cities pay a portion of the retiree medical insurance premiums. However, the increasing costs of providing medical coverage to retirees, and the indirect cost of including retirees in our plans identified by GASB 45, has created financial challenges for many municipalities. Cheryl Dunlop, director of administrative services, City of Rockwall, opened this discussion by providing an overview of the current state of retiree benefits across the nation. Identifying ways to make retiree benefits affordable is a challenge not only for municipalities, but also for all business entities interested in providing this benefit for their retiring employees.

Darrel Wells, director of risk management, City of Odessa, followed Cheryl's presentation with a plan to reduce retiree health care costs, as well as overall health care costs, for the organization. In addition to recommending employer health care clinics as a means of providing cost effective health care, Darryl recommended methods for disease management and employer managed health plans as the alternatives for controlling healthcare costs.

Shannon Morgan, account executive with Holmes Murphy, provided information on the benefits of implementing wellness programs. Metabolic syndrome, one of the causes of increasing health care costs, is a combination of medical disorders that increase the risk of developing cardiovascular disease and diabetes. Metabolic syndrome risk impacts not only the cost of health insurance, but can also increase the cost of other insurance – such as disability, life, and workers compensation. Shannon discussed ways to improve the health of active employees, beginning with identifying the specific types of wellness programs to improve employee health and putting those programs in place.

In the next session, Eric Henry, executive director of the Texas Municipal Retirement System (TMRS), gave us an update on the latest developments at TMRS. This session was titled *Fortifying the Castle: Texas Municipal Retirement System (TMRS) Update*. During the 2009 state legislative session, TMRS will bring forward legislation that is critical to keeping the plan healthy. He also discussed the impact of continuing or reducing future COLA's for retirees; not only will this impact retirement annuities, but will also impact the unfunded liabilities in the plan.

The recent review of funding for TMRS has many cities facing contributions that may be challenging to their budgets. *Raising the Drawbridge: How Cities Are Dealing with TMRS Contribution Increases* was a panel discussion lead by Jim Parrish, director of human resources, City of Amarillo, and the TMHRA representative on the TMRS shareholder committee. Panel members George Mones, director of human resources, City of Mesquite; and Erin Rinehart, director of workforce services, City of Carrollton, discussed the impact the upcoming contribution rates will have on retirement annuities and some ways their cities are considering for handling their increased contribution rates. George urged us to see this as “a time for human resources to shine with city council!” He suggested that by working together with our CFO’s, we can educate our city council about the changes, as well as encourage an appreciation of the value of human resources professionals to the organization!

Friday morning started with a TMHRA business meeting. Laura Morrow, TMHRA president, opened the meeting, giving kudos to Lonne Parent-Smith, CMP, for the great job she does in putting the conference together, and to Martha Butz and the Program Committee for the fabulous program we had for this conference. Bonita Hall, TMHRA vice president, reviewed the proposed ballot for the 2008-2009 election. The ballots will be mailed to the membership this summer, and the results will be announced at the Employment Law Seminar in September. Don Byrne, secretary/treasurer, gave the financial report and discussed the upcoming TMHRA events. Laura reviewed the constitutional changes. The ballots have since been received by TML, and the changes to the constitution have been approved. Thanks to all of you who submitted your votes!

Manning the Turret: Legal Update – State and National was our final session. Bettye Lynn, Partner, Lynn Pham & Ross, LLP, Ft. Worth, wrapped up the conference with an update on the emerging employment law issues to keep on our radars during the current federal session and upcoming state legislative sessions. The final regulations on the Family Medical Leave Expansion Act are still pending, but if you have a situation where you may have questions, the Department of Labor can provide assistance.



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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INTRODUCING...New Members to TMHRA



WELCOME, NEW MEMBERS

Your involvement in TMHRA is critical to the success of the organization. As a member of TMHRA, you will find opportunities to participate in planning educational sessions and all the other activities sponsored by our organization.

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

Diana Allen, Human Resources Administrator, City of Decatur

Rhonda Amos, HR Assistant, City of Wylie

Jami Billings, Assistant City Secretary, City of Goliad

Judi Conger, Human Resources Generalist, City of Bridgeport

Jim Dockery, Assistant City Manager/CFO, City of Wichita Falls

Sandra Garcia, Personnel Director, City of Rio Grande

Janet M. Goad, Director of Human Resources, City of Seagoville

Ronnie Grooms, Fire Chief, Paris Fire Department

Pat Hardy, Senior Account Executive, Employee Wellness USA/HealthCheck USA

Cynthia Kirk, Risk Manager, City of Bryan

Lydia Lopez, City Secretary, City of Hewitt

Carolyn J. Nivens, SPHR, Interim Director of Human Resources, City of Keller

Melissa Novicke, Human Resources Coordinator, City of Richmond

Jana Onstead, HR Specialist, City of Highland Village

Ada Owens, City Secretary/HR Director, City of Aransas Pass

Bill Philbert, Director of Human Resources and Risk Manager, City of Deer Park

Christi Sanders, Human Resources Manager, City of Stephenville

Megan Siegmund, Director of Human Resources, City of Giddings

Angela Smith, HR/Payroll Manager, City of Cleveland

Eric Smith, Principal Owner, Smith & Associates Consulting

Kathryn Usrey, VP Sales, Smith & Associates Consulting

Beth A. Walls, Director of HR/City Secretary, City of Levelland

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

Welcome aboard!

TMHRA E-Solutions (Benefit to Members Only)

Last year, TMHRA developed a list serve for members. If you have questions or issues on which you would like to receive advice or feedback from your colleagues, this is a service that you will find beneficial. Are you looking for solutions? Do you want to stay connected? The TMHRA E-Solutions is a great resource. The purposes of this service are to:

- Provide quality service to our membership.
- Provide a forum by which TMHRA members can discuss daily human resources issues.
- Promote professional development.
- Promote high ethical standards.
- Encourage colleague support.

Guidelines

E-Solutions is a wonderful way to exchange information and learn what others are doing. However, like many things on the Web, a list serve can be abused. To help prevent abuse or inappropriate postings, the following guidelines have been established:

- Posts to this list are the opinions of the individuals making the post, not TMHRA.
- Do not forward any information gathered from this list unless you have received permission from the author(s). This includes referrals to vendors.
- Be careful about attachments that may contain viruses.
- Stay on topic. Replies to a question posted to the group should benefit the entire group—and will be seen by the entire group. If you want your reply to be seen by only one person, e-mail that person directly.
- Always fill in the subject line. This information helps readers find specific messages.
- Do not post a file over 500kb. Provide a link to the file or allow members to request it individually.
- Please refrain from soliciting through this service.

How to Join

E-solutions is a group managed through Yahoo. This group is limited to TMHRA members, is password protected, and is by invitation only. To receive an invitation, members of TMHRA should contact Lonne Parent-Smith at 512-231-7452 or lparent@tml.org, Petrena Barnes at pbarnes@tml.org, or call 512-231-7400 and ask for one of us.

Technical Issues

One shortcoming of the Yahoo list serve is that it does not archive or store attachments to e-mailed replies. There are several ways to avoid losing the information contained in e-mailed replies with attachments:

- When replying to a request for information, rather than attach a file to the e-mail, cut and paste the information into the body of the return e-mail.

- Provide a link to the information requested or your contact information, so that if others wish to access the information, there is a method to do so.
- End-users can choose to have a copy of all replies to a subject on the list serve sent directly to an e-mail address. You will receive a copy of posts made to the page rather than reading the responses posted on the group page. End-users will receive a copy of any attachments, so the end-users can then organize and archive the replies according to their own preferences.

If you have questions or technical difficulties, please contact Lonnie Parent-Smith at 512-231-7452 or lparent@tml.org, Petrena Barnes at pbarnes@tml.org, or call 512-231-7400 and ask for one of us. *Remember this group is limited to TMHRA members, is password protected, and is by invitation only.*

To Promote Healthy Behavior, 'Carrots' vs. 'Sticks'?

By Joanne Sammer

As employers increasingly turn to **consumer-driven health plans** to better control health care costs, they are making key decisions about how to influence employee health behaviors. Among the most important: Whether to use carrots (positive incentives) or sticks (punitive measures)—or a mix of both—to convince employees to change their ways in order to improve their health. "I think there is some confusion when defining what is a carrot and what is a stick," says Michele Becker, vice president in the health and benefits practice of Aon Consulting in New York. "In many cases, it all comes down to how you communicate it." For instance:

- **A true carrot** is giving a reward for doing something, such as depositing a certain amount of money into a health savings account (HSA) when employees fill out a health risk assessment.
- **A true stick** is a penalty or other adverse consequence, such as higher health insurance premiums for smokers.

However, a company imposing a \$20 health insurance premium increase on smokers can simply turn that stick into a carrot by framing the change as a \$20 discount for nonsmokers.

Which approach a company takes should depend on the culture of the organization and the exact message the company wants to communicate to employees. "Carrots can work well if a company has a wellness culture and good communication about these issues," says Becker. "However, depending on how fed up they are, some companies may not want to sugarcoat the issue and use a stick to bring employees' attention to the severity of the health care cost issue." *Reprinted with permission from the Society of Human Resource Managers.*

Fudge! Sugar! Watch Your #*?/@%! Language

By Kathy Gurchiek

Sticks and stones may break your bones, but swear words can get you canned.

A survey of more than 2,000 executives released April 28, 2008, found that 36 percent of U.S. bosses have issued a formal warning and 6 percent have fired a worker for swearing on the job.

Cussin' topped the list of most punishable offenses. Slightly more than 81 percent of senior execs find working alongside a foul-mouthed employee unacceptable, according to a survey conducted by TheLadders.com, an online provider of senior talent in the \$100,000-plus range. Nearly all (98.7 percent) believe there is such a thing as office etiquette, and close to 70 percent say they would fire an employee for bad office manners. Eighty-two percent have issued an official warning for such offenses as personal calls, loud talking, or revealing clothing.

Among managers who have fired employees for office etiquette infractions, the five most common offenses were:

- **Bad language**, 38.4 percent.
- Excessive **workplace gossip**, cited by 36.5 percent.
- **Drinking on the job**, 35.2 percent.
- Leaving the office without telling anyone, 33.6 percent.
- **Too many personal calls**, 28 percent.

However, allowing regular use of profanity builds staff unity, according to an academic study released in a 2007 issue of the *Leadership and Organization Development Journal*. "Employees use swearing on a continuous basis, but not necessarily in a negative, abusive manner" to relieve stress or "to reflect solidarity and enhance group cohesiveness," said Yehuda Baruch, professor of management at the University of East Anglia (UEA). UEA's alums include *Atonement* author Ian McEwan.

Baruch and co-researcher and student Stuart Jenkins studied swearing in the workplace with the aim of challenging leadership styles and to suggest ideas for management best practices. Jenkins gathered data by working as a temporary staffer in a British mail-order operation that employed 14 workers equally divided between office and warehouse environments. They also used six focus groups—four in the southern United States and two in England—of full- and part-time workers. Students comprised most of the 10 to 20 people in each focus group.

Swearing tends to stop completely, they found, "in situations of unbearably high stress."

"In high-stress workplaces where swearing is permitted, this can be a valuable signal. As long as the employees are swearing, they may not be happy, but they are coping," they point out. However, abusive and offensive swearing should be eliminated where it generates—not relieves—stress, they emphasized. Repeatedly swearing, making threats and verbal abuse "can lead to depression, stress, reduced morale, absenteeism, retention problems, reduced productivity [and can] damage the image of the organization," they write. Most swearing they studied was reported by workers at the lower end of the organizational hierarchy and occurred in staff areas or after customers had left; it did not occur in front of or within close proximity to customers.

Before employers consult the Illinois-based **Cuss Control Academy**, however, TheLadders.com survey found there are far worse offenses in employees' eyes, including eating someone else's food from the workplace fridge (97.8 percent), **bad hygiene** (95.6 percent), bad habits (88.2 percent) and drinking on the job (85.7 percent). In a nod to environmentally conscious behavior, 82 percent cited wasting paper as objectionable behavior. Other annoyances workers cited: cooking smelly food in the office microwave (74 percent) and **sneaking peaks at hand-held devices during meetings** (63.5 percent). *Reprinted with permission from the Society of Human Resource Managers. Kathy Gurchiek is associate editor for HR News. She can be reached at kgurchiek@shrm.org*

Update on FMLA provisions extended to include military family members

The President signed into law H.R. 4986, the National Defense Authorization Act for FY 2008 (NDAA). Among other things, section 585 of the NDAA amends the Family and Medical Leave Act of 1993 (FMLA) to permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of leave to care for a "member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness." Review the specific regulations of this new law at <http://www.dol.gov/esa/whd/fmla/fmlaAmended.htm>.

The Department of Labor's Wage and Hour Division published a Notice of Proposed Rulemaking under the Family and Medical Leave Act. Interested parties were allowed to submit comments by 12:00 midnight, April 11, 2008. The effective date was in February when the law was signed; however, the Department of Labor has announced that they are working on revising the regulations and will provide guidance on compliance

requirements via their Web site at www.dol.gov. Meanwhile, employers are advised to use the regulations and to provide the time off for employees who are in situations where they qualify for the time off.

Public Sector employers outpace private sector in hiring new workers

According to *USA Today* (April, 29, 2008), federal, state, and local governments are hiring new workers at the fastest pace in six years, helping offset job losses in the private sector.

Governments added 76,800 jobs in the first three months of 2008, according to reports from the Bureau of Labor Statistics. Employees in private sector have not fared as well; private companies collectively shed 286,000 workers in the first three months of 2008.

However, according to economist Kenneth Brown, the continued hiring in public sector has nothing to do with the good government or economic policy. Kenneth Brown, research director at the Rio Grande Foundation in Albuquerque, says, "It has everything to do with government being slow to react to economic change."

The Commerce Department reports that state and local governments have run deficits for the last nine months. In spite of the lack of revenue growth in tax collections, governments continue to spend.

According to *USA Today*, here is some of what's happening that impacts Texas:

- The federal government increased its workforce by 13,800 in the first three months of 2008.
- Local governments added 47,000 and states 16,000.
- The Rochester, N.Y., school system added 289 teachers, while the school population shrank by 1,300 students. It's part of a state-funded effort to reduce class size. New York City is adding 1,300 teachers. Florida and Texas are also hiring to reduce class size.
- The Texas City of Weatherford (pop. 25,000) added an assistant city manager, nine firefighters, three police officers, and extra crews for roads and parks. "We have serious infrastructure issues that we need to get a handle on," says City Manager Jennifer Fadden.

Some states may cut hiring to save money. Governors have announced hiring freezes in California, Delaware, Louisiana, Massachusetts, New Hampshire, New Jersey, and New York, but the actions seldom trim total employment. As we begin the third quarter of the fiscal year and hear more about the economic downturn, we may begin to see changes in the hiring practices in public sector.

Welcome to Legal Briefs for HR! This update on issues that matter to employers is provided to human resource professionals, in-house counsel, business owners, and others who can benefit from receiving monthly updates on new laws, court cases, helpful Web sites, and more. Anyone is welcome to join . . . just e-mail Aubrey Moss to be added to (or removed from) the group.

*Here's the latest:
So let's spring into what's new:*

1. Cost of Misunderstanding - A Minnesota food processor and its staffing agency took a \$1.3-million hit arising from claims that Hispanic individuals were denied employment for not meeting English proficiency standards that were not necessary for the job. In addition to the monetary settlement, the consent decree requires the employer to set up a diversity committee, review all jobs to determine whether or not English proficiency is a legitimate job requirement for each, and repay employees for the cost of English classes. The staffing agency must review its tests and no longer disclose test results to clients who are apt to use them to deny employment based on race or national origin. *EEOC v. Faribault Foods Inc.* and *EEOC v. The Work Connection* (D. Minn.3-08).

2. Peekaboo - The federal Electronic Communications Privacy Act (ECPA) places limits on what info an employer can access without violating an employee's privacy, even when the system is company property and the employer has a legitimate business reason (e.g., protect trade secrets) to snoop. One employer learned that it did not violate the ECPA when it examined the hard-drive of a former employee's company-issued laptop, because it only accessed saved e-mails and not new ones that were awaiting delivery. *Hilderman v. Enea Teksci Inc.* (S.D. Cal. 3-08). This case is a good reminder that, even though your brilliant IT folks can access your employees' unopened e-mails, that does not mean they should do so. IT staff are often unaware of the limitations of the ECPA, so be sure that HR and legal staff are involved before it's time to go snooping.

3. Association Matters - Most HR practitioners know that a plaintiff can state a claim under the Americans with Disabilities Act, where employment discrimination is suffered due to the person's own disability, as well as his or her "association" with a disabled individual. What is less well known is that three (now, four) federal Circuit Courts of Appeal recognize "association discrimination" as a viable claim under Title VII, too. The latest case involves an Iona College basketball coach who claimed he was discharged, in part, due to his marriage to a woman of a different race. Although the Second Circuit had never ruled on the issue, it now held that "an employer may violate Title VII if it takes action against an employee because of the employee's association with a person of another race" and noted that the Fifth, Sixth, and Eleventh Circuits already hold that same view. *Holcomb v. Iona College* (2nd Cir. 4-08). The Court rejected a narrow reading of Title VII and explained that where an employee suffers an adverse action because his or her employer disapproves of interracial association, the employee has suffered discrimination because of the employee's own race. Not sure which

Circuit your operations/employees are in? Go to www.uscourts.gov/images/CircuitMap.pdf for a color-coded map.

4. "Me Too," says Massachusetts - Last month, LB4HR noted a number of states that were cracking down on employer misclassification of employees as independent contractors. The latest to jump on the bandwagon is Massachusetts, where the governor has established a multi-agency task force to propose legal changes to improve enforcement.

5. E-Verify/No Match Update - Here's the latest in the States vs. Feds tug-o-war over dealing with immigration:

a. The Department of Homeland Security issued a new rule relating to SSA "no match" letters, to try to address the concerns of the court, which issued an injunction, preventing implementation and enforcement of the earlier rule, which was issued in August 2007; the new proposal is posted at www.dhs.gov/xlibrary/assets/press_nomatch-snpdm.pdf.

b. H.R. 4088, if passed, would require employers to use E-Verify with all hires within four years.

c. Two Congressmen are asking their colleagues to nix H.R. 4088 because the SSA "simply cannot handle the massive new workload."

d. The governor of Rhode Island issued an executive order that requires executive branch employers and contractors with the state to use E-Verify with all hires.

e. The governor of Utah signed a new law that requires public employers and contractors to use E-Verify or another status verification system on all hires, effective 7-1-09.

f. The governor of Mississippi signed a new law that requires employers to use E-Verify using a staggered approach. Public employers and contractors and private employers with 250+ employees must begin verification by 7-1-08. Employers with 100 or more have until 7-1-09; those with 30 or more can wait until 7-1-10; and all employers must be verifying, effective 7-1-11. In light of E-Verify's database errors, the governor urged the legislature to come up with "other reliable verification systems."

6. Don't Be Faked Out - The Texas AG brought the hammer down on a Houston-based company that sold "international driver's licenses" for \$225 and claimed the documents are "authorized under the 1st amendment of the U.S. Constitution" and would enable purchasers to legally buy, insure, and drive motor vehicles. True international driver's licenses are sold in the U.S. for \$15 by only two authorized entities (American Automobile Association and American Automobile Touring Alliance) and are only good when used by U.S. citizens who want to drive in foreign countries that, like the U.S., are parties to the 1949 International Convention on Road Traffic (ICRT) treaty. ICRT licenses issued to U.S. citizens are not valid in this country, and non-citizens must acquire ICRT licenses in their home countries. For more info, go to <http://www.oag.state.tx.us/>.

7. Trash Talk - As mentioned in earlier editions of LB4HR, the AG went after Texas businesses that disclosed their employees' and/or customers' personal information (e.g., name, address, SSN, phone #, credit card info, medications, prescribing physician) by tossing documents containing such info into trash bins that were accessible to passersby who cared to dumpster-dive. In reaching a settlement, one of the defendants will pay a \$315,000.00 fine AND must overhaul its information security programs AND implement a new employee training program that includes a review of the new security program, applicable state law, and an explanation of the cost of identify theft to businesses and individuals AND designate a compliance officer AND set up a system to take employee's anonymous complaints AND post workplace signs explaining proper record storage and disposal procedures AND conduct random checks of at least 3 percent of its stores every 6 months AND submit sworn compliance statements to the AG for 5 years. As is often the case, the dollar amount of the settlement is a pittance compared to the cost of required compliance measures. Lesson learned? Check out your trash and make sure it does not contain legible personal info. Burn it. Shred it. Get it?

8. They Punted - The EEOC announced on March 25 that it will no longer try to modify the Uniform Guidelines on Employee Selection Procedures (UGESP) definition of an "electronic applicant." The first shoe dropped back in October 2005, when the OFCCP published its definition of an Internet applicant (which applies only to certain federal contractors). Employers waited and wondered if the EEOC would adopt the same definition or come up with a different version . . . which would cause compliance woes for employers subject to investigation and enforcement actions by both agencies. After a long series of 3-month extensions, awaiting the EEOC's definition, employers now learn there won't be one. If you're interested, the EEOC is welcoming your comments, by 5-27-08, via the eRulemaking Portal at <http://www.regulations.gov/>.

9. They Paid - An employer paid a military reservist almost \$34,000 in double damages under USERRA, plus another \$50,000 in punitive damages under state law, for refusing to pay money that was owed under company policy (but not USERRA). Why? The federal military leave law, USERRA, requires reinstatement (with certain exceptions) to prior employment when an employee returns to work after U.S. military service. It does not require any pay continuation or supplementation during the absence, but does not prevent employers from offering extra pay. In this case, an employee enlisted in the Army Reserves and was absent from work for six months, due to active duty training. Upon returning to work, he was charged with attendance "points" for the absence. In a meeting of the parties, the "points" were removed and the HR manager conceded that he should've received "pay coordination" (i.e., the difference between his civilian and military pay) under company policy. More than \$16,000 was direct deposited to his account, but four days later it was withdrawn by the employer, allegedly based on counsel's advice that there was no duty to offer "pay coordination." True, but the company's written policy and the HR manager's verbal promise said otherwise. Fast forward to trial, where the Court found [1] the employer violated USERRA; [2] the

employee was owed twice the amount of "pay coordination" due to an award of liquidated damages; and [3] there was also a state law breach of contract, plus unlawful conversion (when the money was withdrawn) that supported \$50,000 in punitive damages. The damage awards were upheld on appeal, on a finding that the employer "knew of or showed reckless disregard for its obligation to pay the differential." Strongest evidence the employer knew it was on the hook for the money? The fact that the employer agreed to pay and actually deposited the funds. *Koehler v. PepsiAmericas Inc.* (6th Cir. 3-08).

10. They Present - Yours truly will present four Webinars on behalf of the Bureau of National Affairs (BNA). Mark your calendar for June 19 (Web site Wonderland: HR Resources on the Internet) and July 24 (Babes in Tech-Toy Land). All Webinars are from 1 to 2:30 CT and there is a fee (payable to BNA, not me, in case you were curious). For more info and/or to register, go to <http://www.bna.com/> and click on "All BNA Events" and then the date of the desired Webinar(s).

11. They Rock! - Big thanks to those who made a donation to help send kids with muscular dystrophy to Camp John Marc this summer! I'm still short of my \$1000 pledge, so if you'd like to help out, please go to www.geocities.com/legalleaders/index.htm, click on the Hot Hundred button, and then on my name. This will take you to a secure page, where you can make a donation by credit card or provide instructions to send a check, if you prefer that method. Any amount would be greatly appreciated by me and the kids!



Audrey E. Mross, Labor & Employment Attorney, Munck Butrus Carter P.C., Dallas, TX 7525 1www.munckbutrus.com, (direct) 972.628.3616 (fax) 214.868.3033 (cell)

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TMRS KEEPS MEMBER CITIES APPRISED OF CHANGES

Since he began as TMRS' executive director, Eric Henry has been traveling the state, talking to city officials, and spreading the word that TMRS, celebrating its 60th anniversary this year, is undergoing some changes.

Henry's message addresses three key areas:

1. Changing the actuarial funding method from Unit Credit to Projected Unit Credit to provide advance funding of annually repeating benefits.
2. Adopting a closed 30-year amortization period instead of the 25-year open period to improve cities' funded ratios over time.
3. Changing investment policy and strategy to diversify investments and improve investment returns.

TMRS' total membership is more than 820 municipalities, each with a separately funded plan chosen by its city council from a menu of options. Each city plan is customized for the city's needs, and therefore the city can control its retirement funding costs and the benefits it wishes to provide employees.

Actuarial Method and Rates

TMRS has changed its actuarial methodology to provide advance funding for the annually repeating Updated Service Credit (USC) and cost-of-living adjustments (COLAs) that many cities have adopted. Cities with annually repeating benefits will see significantly higher annual contributions to advance-fund those benefits. Cities that have not adopted annually repeating COLAs will see relatively little change in their contribution rate. To help answer questions, TMRS recently hired a staff actuary, Leslee Hardy, to assist cities in determining the plan benefit options and associated costs that will best fit their funding objectives.

Amortization Periods

Beginning in 2009, most cities will begin to use a 30-year closed amortization period to calculate annual contribution rates. The Board decided this change was necessary because the closed period provides contributions determined as a level percentage of payroll over a fixed period of time and reduces the unfunded actuarial liability on a set schedule. Cities that experience a contribution increase greater than 0.5 percent due to the change in actuarial assumptions will automatically have their amortization period extended to 30 years and will be allowed an eight-year phase-in period of the contribution rate increase (12.5 percent of the increase required each year).

Investment Policy

TMRS has been and continues to be soundly funded but is taking steps to help its member cities pre-fund more of their retirement liabilities. For many years, the market has well supported TMRS' focus on bond investments, but outlook for future returns has led TMRS to make adjustments that are expected to provide better returns. TMRS recently revised its investment policy to diversify its investments. Diversification into equities will total 12 percent by the end of 2008, and (if legislation passes) investment diversification will continue into 2009.

Ramped Up Communications

The outreach and communications efforts have increased to accommodate these changes. Last fall, TMRS focused its Annual Training Seminar on funding issues. The System began sending e-bulletins (eight by the end of March 2008) and letters to cities starting in August 2007. The Travel Team staff has increased from four to six, and the System now offers "Regional Funding Workshops," where cities may run comparative numbers through an actuarial cost-projection tool to see what the change in their annual contribution rate would be under different plan options.

Dealing with the media is another growing component in TMRS communications. The System now offers a Communications Packet for cities (includes general information about TMRS for staff meetings, and "sound bites" for dealing with questions and concerns from members, retirees, and the media). Anytime a system even a solidly funded one like TMRS undergoes change, people and the press are curious. To counteract misinformation in the media, TMRS has addressed inaccuracies wherever they occur, such as the inaccurate use of "shortfall" by a major daily newspaper. The consistent message is: "The system is sound, but we need to make changes to ensure continued future soundness."

On the Web, TMRS' mailings have all been posted for reference, and there is a "Breaking News for Cities" button to keep member cities informed about new developments. TMRS is also working to revamp and retool its Web site, and a new look will be unveiled later this year.

On the Horizon

Official city rate letters (with actual, not projected, rates) were sent in May. The 2008 TMRS Annual Training Seminar will be in Corpus Christi, September 2-4. This seminar will focus on training in TMRS benefits administration. We are planning an event early in 2009 that will focus on plan design and funding. TMRS is putting together its package for the next session of the Texas Legislature. More information will be available after the March Board meeting. In the meantime, TMRS welcomes input from cities, employee associations, and individual members on any legislative issues. Contact Eddie Solis, the TMRS government relations director, at 800-924-8677, or e-mail esolis@tmrs.com.

City Mailings

8/10/07 - Sample Letter with Historical Data and Explanation
9/7/07 - Estimated Effects of Actuarial Changes
11/20/07 - Sample Rate Projection Letter (general projections)
2/1/08 - Sample Projected Rate Letters (customized according to whether repeating benefits are offered)

2008 Regional Funding Workshops

Held in February: McAllen, Victoria
Planned: Richardson, Austin, Amarillo, Odessa

PRESIDENT

Laura Morrow, SPHR, IPMA-CP
Director of Human Resources
City of Allen
305 Century Pkwy
Allen, TX 75013
214-509-4677 phone
214-509-4683 fax
lmorrow@cityofallen.org

VICE PRESIDENT

Bonita Hall, MPA, IPMA-CP
Director of Human Resources
City of Cleburne
Cleburne, Texas 76033
817-645-0917 phone
817-556-8803 fax
bhall@cleburne.net

SECRETARY/TREASURER

Don Byrne, PHR, IPMA-CP
Director of Human Resources
City of Odessa
P.O. Box 13194
Odessa, TX 79768-3194
432-335-4158 phone
432-335-3269 fax
dbyrne@ci.odessa.tx.us

TRUSTEE

Martha Butz
Program Chair
Director of Human Resources
City of Highland Village
1000 Highland Village Rd
Highland Village, TX 75077-6744
972-899-5087 phone
972-996-2178 fax
mbutz@highlandvillage.org

TRUSTEE

Richard Hodapp
Technology Chair
Assistant HR Director
City of Fort Worth
1000 Throckmorton St
Forth Worth, TX 76102-6312
392-871-7770 phone
392-871-8869 fax
richard.hodapp@fortworthgov.org

TRUSTEE

Debbie L. Maynor
Newsletter Chair
Human Resources Director
City of Killeen
P.O. Box 1329
Killeen, TX 76540-1329
254-501-7834 phone
254-501-7780 fax
dmaynor@ci.killeen.tx.us

TRUSTEE

Jane Mehrens
New Member Chair
Director of Personnel
City of Brenham
P.O. Box 1059
Brenham, TX 77834-1059
979-337-7511 phone
979-337-7517 fax
jmehrens@ci.brenham.tx.us

TRUSTEE

Tadd Phillips
Sponsorship Chair
Director of Human Resources
City of San Angelo
P.O. Box 1751
San Angelo, TX 76902-1751
325-481-2727 phone
325-657-4335 fax
Email: tadd.phillips@sanangelotexas.us

TRUSTEE

Gayle A. Sims
TML Salary Survey Chair
Director of Human Resources
City of Waxahachie
P.O. Box 757
Waxahachie, TX 75168-0757
972-937-7330 phone
972-937-5518 fax
gsims@waxahachie.com

PAST PRESIDENT

George Mones, SPHR, IPMA-CP
Director of Human Resources
City of Mesquite
P.O. Box 850137
Mesquite, TX 75185
972-216-6410 phone
972-216-6334 fax
gmones@ci.mesquite.tx.us

TML BOARD REPRESENTATIVE

Lauren Safranek
Director of Human Resources
City of Frisco
6101 Frisco Square Blvd.
Frisco, TX 75034
972-292-5210 phone
972-292-5229 fax
lsafranek@ci.frisco.tx.us

