

# HRFOCUS

## PRESIDENT'S MESSAGE



As I write this article, people across the country are exercising their right to vote in the Super Tuesday primaries. This Presidential election promises to be exciting, and human resources departments across the country will be watching to see who is elected. If we have a Democrat elected for the highest office in the land, it is highly possible that we will see federal public safety collective bargaining sooner rather than later. This bill was folded into the Farm Bill, but it did not pass during 2007. However, it will be brought up again in the future.

If you have not been involved in the Texas Public Employer Labor Relations Association (TxPelra), I encourage you to do so. Currently, this group is led by Jim Parrish of Amarillo, who has encouraged us over the years to become more involved because labor relations will grow more important in our lives. We all need to be better informed on labor relations issues, especially those revolving around police officers and firefighters, so I challenge you to become more knowledgeable regarding this important topic.

The TMHRA Board has been busy getting ready for this year, and it promises to be exciting! We have several committees, and I hope you will take the time to become more involved with TMHRA this year. Listed below are the committees with their chairs for the 2007-2008 year. Please do not hesitate to contact any of the Board members to let them know of your interest in committee participation. We look forward to serving you this year!

### COMMITTEE

- Newsletter
- TML Salary Survey Programs
- Sponsorships
- Technology
- New Member
- TxPelra/Civil Service
- Legislative

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## TMHRA Newsletter Winter 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.



## UPCOMING EVENTS

### Nuts and Bolts of HR in the Public Sector: Discovering the Fundamentals

April 4, 2008

Texas Municipal Center  
1821 Rutherford Lane  
First Floor Conference Room  
Austin

The Nuts and Bolts Seminar, presented by the Texas Municipal Human Resources Association (TMHRA), will feature speakers from various specialty areas of human resources management. This seminar has a practical format in the interest of human resources professionals who are relatively new to the field or interested in a refresher on particular subjects. The sessions are geared toward a sharing of information by the speakers and will encourage interaction through questions from the seminar attendees. The goal of this seminar is to provide a variety of practical information that the attendees will be able to take back to their respective organizations and use as reference tools in the implementation and maintenance of successful human resources programs.

For further details or to register for this outstanding program, click on Nuts and Bolts of HR.

### Mid-Year Conference Sheraton South Padre May 21-23, 2008

## MARK YOUR CALENDARS NOW!



## 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 (November-February) are:

- 
- Janice Alamia, Assistant City Secretary/Human Resources, City of Hollywood Park*
- Vickie Bennett, Director of Human Resources, City of Lubbock*
- Karen Blakey, City Secretary, City of Krum*
- Crystal Caldera, HR Officer, City of Leon Valley*
- Alyssa Cumpton, Executive Assistant/HR, City of Heath*
- Krysten Jeter, Deputy City Secretary, City of Dalworthington Gardens*
- Marigny Lanier, Attorney, Maris & Lanier, P.C.*
- Griselda Martinez, Human Resources Director, City of Weslaco*
- Amy McGlothlin, HR Analyst, City of Hutto*
- Lorraine Moreno, Member Development Specialist, Texas Municipal Retirement System*
- Irene Nicks, HR Coordinator, City of Livingston*
- Shirley Parmer, City Secretary, City of Chandler*
- Robin Sanford, Accountant, City of Buda*
- Kathy Shields, HR Director, City of Farmers Branch*
- Barbara Slay, HR Specialist, City of Killeen*
- Tammy Burnett, HR Generalist, City of Wichita Falls*
- Linda Byers, HR Director, City of Vernon*
- Marissa Cash, Accounts Payable/HR Coordinator, City of Springtown*
- Toni Milam, City Secretary, City of Buda*
- Yoland Moran, Finance Director/Grans Admin., City of Taft*
- Richard Ruiz, Compensation Specialist, City of Arlington*
- Karen Farris, Personnel Generalist, City of Jersey Village*
- Heather Weger, HR Manager, City of La Porte*
- Passion Hayes, Human Resources Consultant, City of Addison*
- 

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)

Do you have questions or issues about which you would like to receive advice or feedback from your colleagues? Are you looking for solutions? Do you want to stay connected? TMHRA has a new list serve for its members. This service is available to all TMHRA members. The purposes of this service are to:

1. Provide quality service to our membership.
2. Provide a forum by which TMHRA members can discuss daily human resources issues.
3. Promote professional development.
4. Promote high ethical standards.
5. 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:

1. Posts to this list are the opinions of the individuals making the post, not TMHRA.
2. Do not forward any information gathered from this list unless you have received permission from the author(s). This includes referrals to vendors.
3. Be careful about attachments that may contain viruses.
4. 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.
5. Always fill in the subject line. This information helps readers find specific messages.
6. Do not post a file over 500kb. Provide a link to the file or allow members to request it individually.
7. 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](mailto:lparent@tml.org), Petrena Barnes at [pbarnes@tml.org](mailto: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 that are attached to e-mailed replies. There are several ways to avoid losing the information contained in e-mailed replies with attachments:

1. 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.
2. 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 Lonne Parent-Smith at 512-231-7452 or [lparent@tml.org](mailto:lparent@tml.org), Petrena Barnes at [pbarnes@tml.org](mailto:pbarnes@tml.org), or call 512-231-7400 and ask for one of us. As a reminder, this group is limited to TMHRA members, is password protected, and is by invitation only.

## ARTICLES OF INTEREST aka NEWS YOU SHOULD BE AWARE OF

### President Bush signs H.R. 4986 – extends FMLA to military family members

The National Defense Authorization Act (H.R. 4986), which President Bush just signed into law, includes a provision that allows the families of service members 12 weeks of leave for a spouse, son, daughter, or parent of a person who is on active duty or has been notified of an impending call. The new act will also provide up to 26 weeks of leave during a single 12-month period so that an employee may care for a spouse, son, daughter, parent, or next of kin who suffered injury or illness in the line of duty. The effective date has not been announced yet; 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](http://www.dol.gov).

### 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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Welcome to Legal Briefs for Human Resources! 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:

**1. Get REAL** – The U.S. Department of Homeland Security (DHS) issued its final rule setting security standards for state-issued drivers' licenses and other ID cards, to combat the twin troubles of terrorism and identity theft. By December 31, 2009 (or May 20, 2011, if an extension is granted), states should upgrade (1) the issued credential; (2) the verification process before a credential issues; and (3) the security of their systems for producing and issuing credentials, as detailed in the 284-page final rule. For a quicker summary of the requirements, go to [www.dhs.gov](http://www.dhs.gov) and click on the press release and Questions & Answers. The REAL ID program is not a mandate, but unless you've got one (or can produce a valid passport), you can't board a commercial aircraft or enter a federal facility, starting in 2014.

**2. Supremes' Greatest Hits?** – All eyes are on the Supreme Court after it agreed to consider whether the Americans with Disabilities Act (ADA) requires an employer to provide a disabled worker reassignment to a vacant position preferred by the worker, when that worker is not the best qualified candidate for the job. A worker sustained an arm/hand injury that left her unable to fill orders in a grocery. She asked to be reassigned to a vacant router job, with equivalent pay, but was told she could apply and compete with others who were interested in the job. She was not picked, but did take a maintenance job with lower pay. At trial, she agreed that she was not the best qualified candidate for the router job but argued that the ADA requires preferential treatment of a disabled individual in order to effect an accommodation. The trial court granted summary judgment for the employer and the circuit court affirmed, saying "[T]he ADA is not an affirmative action statute" and does not require reassignment where it "would violate a legitimate nondiscriminatory policy of the employer to hire the most qualified candidate." We'll see if the Supremes agree. *Huber v. Wal-Mart Stores Inc.* (cert. granted 12-7-07).

**3. What's Your Definition of "Soon"?** – In June 2007, the Third Circuit ruled that the EEOC had the authority to create an exemption from ADEA (age discrimination) claims to protect employers who alter, reduce, or eliminate retiree health benefits when the covered retiree becomes eligible for Medicare or a similar state-sponsored plan. The EEOC had tried to implement the new rule in the summer of 2003, but AARP got an injunction. After the court issued its decision and dissolved the injunction, employers withheld champagne toasts waiting for the EEOC, which was expected to reissue the final rule soon. It did, on December 26. Go to

[www.eeoc.gov](http://www.eeoc.gov) for a press release and a copy of the new regulation. Go ahead, clink your glasses—the wait is over!

**4. Contractor Conundrum** – It's your worst nightmare. The "contractor" who worked for your organization for years dies, and the IRS comes after his estate for failure to pay nearly \$100,000 in taxes. The family has no money, so they sue your company, claiming he was really an employee and you should've been withholding and remitting taxes to the IRS (and paying overtime and offering him employee benefits, too). In this case, the court denied the family's claim, relying on several key facts: (1) the decedent's tax filings proclaimed he was a self-employed computer consultant; (2) while working for the defendant, he sought work from other companies; and (3) the work performed by the decedent was not integral to the product/service offered by the defendant employer (for example, they were in the business of providing health insurance coverage, not computer programming or system design). While the test(s) for employee vs. contractor status can vary, depending upon the jurisdiction and the statute(s) at issue, the observations made by this court tend to show up again and again. As always, the terms of a written agreement are not determinative. Just because both parties want an independent contractor relationship and say so, in writing, it ain't necessarily so. Structure these arrangements carefully. *Estate of Anthony J. Suskovich v. Anthem Health Plans of Virginia, Inc.* (S.D. Ind. 12-10-07).

**5. It's Not Your Imagination** – The U.S. Department of Labor has stepped up enforcement activity, and their EOY numbers prove it. The 341,624 workers who received backpay during fiscal year 2007 represents the second largest number since 1993, and the amount collected, \$220,613,703.00, is the largest amount for a single year. Per the 12-28-07 press release, the U.S. Department of Labor collected \$1.25 billion for nearly two million workers since fiscal year 2000.

**6. They're Not the Boy Scouts** – In this case, BSA stands for Business Software Alliance, and they are on a mission to identify and stop illegal software copying, distribution, and use. A November 2007 Associated Press article explained that BSA is "the main copyright-enforcement watchdog for such companies as Microsoft Corp., Adobe Systems Inc., and Symantec Corp.," and their favorite target seems to be small businesses that lack the "technological, organizational, and legal resources to avoid a run-in." Just check out their Web site ([www.bsa.org](http://www.bsa.org)), which has a "Report Piracy" link that offers up to \$1 million to those who turn in others for unlicensed software violations. Not sure if you're in the clear? Click on their "Tools and Resources" link for help. "Be Prepared" is a good motto!

**7. Fun With FMLA** – How important is giving employees prompt written notice that their FMLA allotment is being reduced during an absence? If the lack of notice causes "actual prejudice" to the worker, there is interference with FMLA rights, and damages are available. Where a worker had a series of FMLA-qualifying absences that exhausted her FMLA allotment, and upon return from knee surgery she was reassigned to a new job that meant loss of a

company car and no more overtime, there was actual prejudice. She successfully argued that had she known she was about to use up all job-protected leave, she could've deferred elective knee surgery into the next FMLA 12-month period and been entitled to reinstatement to her former job. The court agreed, and the Fifth Circuit did, too. The devil is in the details, so keep those records up-to-date and send out Form WH-381 within two business days. *Downey v. Strain* (5<sup>th</sup> Cir. 12-12-07).

**8. More Fun with FMLA** – There's a snag with the bill (H.R. 1585) that would expand FMLA to mandate 12 weeks of leave to the family members of U.S. military service personnel who are called to active duty (to see them off) and 26 weeks of leave to care for them if/when they return home injured. The bill went to President Bush for signature on December 19, but on December 28 he announced that he would veto, due to concerns with an unrelated provision in the bill which allows lawsuits against the Iraqi government. The bill had enough support in Congress to override a veto (2/3 majority in each chamber). Stay tuned!

**9. Coming Soon** – Yours truly will present four webinars on behalf of the Bureau of National Affairs (BNA). Mark your calendar for April 24 (Achieving Diversity Without Buying a Lawsuit), May 1 (Don't Mess with Texas [Employers]: A Legal and Legislative Update), 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 CST.



Until next time,  
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## No Extra Points for Civil Service Examinees

Section 143.025 of the Local Government Code (a) (Vernon Supp. 2007) allows that “[a]n additional five points shall be added to the examination grade of an applicant who served in the United States armed forces, received an honorable discharge, and made a passing grade on the examination.” *Id.* § 143.025(f).

In one Texas municipality, the civil service commission sought to add to this rule by adopting a local rule to allow applicants who were city residents to receive an additional five (5) points on the examination.

In a recent ruling, the attorney general ruled that this action by the local civil service commission was not in compliance; a commission may not adopt a rule that awards additional points to applicants on the basis of residency within the municipality. You can read the details of the ruling at <http://www.oag.state.tx.us/opinions/op50abbott/ga-0586.htm>.

Want to keep abreast of recent court cases related to human resources in Texas? Just visit the Texas City Attorneys Web site ([www.texascityattorneys.org](http://www.texascityattorneys.org)). When on this Web site, click on “Newsletter,” and you will find that recent court cases are published in each monthly newsletter. The cases below come from the November 2007 newsletter.

**Note: Included cases are from the period beginning on the 10th of August through the 10th of the current month.**

**Employment:** *City of Comanche v. Michelle Florence*, No. 11-06-00285-CV **Whistleblower: Montgomery County v. David Park, No. 05-1023 (Tex. Nov. 30, 2007).** In this case, the Supreme Court of Texas held that simply removing unpaid duties from an employee does not constitute an actionable, adverse personnel action under the Texas Whistleblower Act. The county removed certain unpaid duties from a sheriff’s deputy for alleged political reasons. The deputy brought a whistleblower claim, and the Court was tasked with determining whether the county’s actions constituted an “adverse personnel action.” The Court, holding for the county, adopted the test from the United States Supreme Court, which holds that the action must be likely to “dissuade a reasonable, similarly situated worker from making a report under the Act.”

**Collective Bargaining:** *Elisa Graves v. City of Galveston*, No. 14-07-00163-CV (Tex. App.—Houston (14th) December 11, 2007). This case is an appeal from a summary judgment by the trial court in favor of the city, where the trial court held that the termination of a police officer’s employment was lawful. The police officer appealed the ruling, arguing that the city failed to follow and apply provisions of Texas Government Code Chapter 614 when terminating her employment. The city successfully argued at the trial court

that the chapter did not apply, as the city met both prongs of the test for exemption from the statute: (1) the city and police officers had a collective bargaining agreement; and (2) the agreement contains provisions relating to the discipline of a police officer as a result of a complaint against the officer. The police officer, in her appeal, argued that the provisions did not apply to her due to her probationary status. The court disagreed, holding that although the agreement did not contain language explicitly outlining disciplinary procedures, it did contain language referring to the Civil Service Act as a guideline. The court of appeals affirmed the judgment of the trial court.

## Due Process/Probationary Employees

On December 10, 2007, the Supreme Court denied review of *Sciolino v. City of Newport News*, 480 F.3d 642 (4th Cir. 2007). IPMA-HR joined the International Municipal Lawyers Association (IMLA) in asking the Supreme Court to review the case. The Fourth Circuit ruled that a government employer must grant a name clearing hearing to a probationary employee who is discharged where the employer includes in the employee’s personnel file information that describes a basis for the discharge: despite no evidence that a third party has ever accessed that information. This ruling could make it very difficult for government employers to accurately document the reasons for the termination of a probationary employee.

## Public Pension Legislation

Last year, legislation was enacted allowing public safety officers to use up to \$3,000 of retiree benefits to pay for health care/long-term care insurance premiums. Efforts are now underway to have that provision expanded to all public employees, although passage remains an uphill battle. In July 2006, Sen. Chuck Grassley (R-IA) and Sen. Max Baucus (D-MT) asked the Government Accountability Office (GAO) to study the funding status of public pension plans, citing concern that many such plans are poorly funded and have no back-up source for guaranteed benefit payments, as private pension plans have. IPMA-HR, in conjunction with the Public Pension Network (PPN), has written to the GAO offering assistance in conducting the study. In addition, IPMA-HR, in conjunction with the PPN, submitted testimony to the House Education and Workforce Subcommittee on Employer-Employee Relations at the August 30 field hearing on the health of public pension and retiree health benefit plans.

Reprinted from IPMA January 2008 *HR News Bulletin*.

## Slowing Economy Appears to Have Little Impact on Public Sector Hiring

IPMA-HR members were asked about their hiring plans for 2008, and most indicated that they expect to hire for new positions. Seventy-three percent of members indicated they plan to hire for new positions, and only 27 percent said they did not.

Despite the news reports of a slowing economy, these numbers are similar to those reported by IPMA-HR members in past years.

Below are the percentages of respondents who indicated they planned to hire for new positions in past years:

- 2007 – 75 percent of respondents indicated they plan to hire for new positions
- 2006 – 68 percent of respondents indicated they plan to hire for new positions
- 2005 – 75 percent of respondents indicated they plan to hire for new positions

Of those who expect to be hiring, the number represents a fairly small part of the workforce. Thirty-six percent of respondents said the new positions would represent less than one percent of their total workforce, nearly 30 percent said the new positions would represent between one and three percent of the workforce, and eight percent said the number of new positions would represent between three and five percent of the workforce.

However, some respondents indicated that they would be hiring for a significant number of positions. Nearly seven percent of respondents said they were hiring for between five and ten percent of the workforce, and just over three percent of respondents said it would represent more than ten percent of the workforce.

As in the past, the number-one area for hiring is public safety, with 45 percent of respondents indicating they planned to hire in this area; in 2007, that number was 50 percent; in 2006, it was 41 percent; and in 2005, it was 31 percent.

Following public safety, and following the patterns of past years, other areas of hiring included public works (30 percent) and finance/management (non-HR) at 24 percent. Parks and recreation was nearly 17 percent, and HR was 15 percent. These percentages add up to more than 100 because agencies expect to be hiring in more than one area.

Again, despite the economy, only 12 percent of respondents expect to be conducting layoffs during 2008. This is a number similar to past years.

- 2007 – 12 percent indicated they would be conducting layoffs
- 2006 – 16 percent indicated they would be conducting layoffs
- 2005 – 18 percent indicated they would be conducting layoffs

The number of layoffs represents a small proportion of the workforce, with most respondents (11 percent) indicating the number of anticipated layoffs will represent less than one percent of the workforce.

For those with vacancies, most respondents (26 percent) indicated that those vacancies represent less than one percent of the workforce, and many (20 percent) indicated that the number of vacancies represent between two and three percent of the workforce. Thirty-one percent of respondents with

vacancies indicated they are deliberately holding them open due to budgetary reasons. This number is also similar to past years.

- 2007 – 32 percent are holding the positions open due to budgetary reasons
- 2006 – 39 percent are holding the positions open due to budgetary reasons
- 2005 – Data not available

The 2008 Hiring Outlook Survey was conducted between January 7 and 14, 2008, and 548 individuals responded to the survey.

Article from *SHRM News*, January 2008

### **Official: Passport, Identity Cards Moving U.S. to National ID**

A top State Department official says U.S. requirements for identity credentials and for passport cards are part of a “long-term process” toward creating a national identity card.

State Department Deputy Assistant Secretary for Operations Steve Rodriguez made a presentation before the department’s Overseas Schools Advisory Council on Jan. 18, 2008, focusing on the agency’s efforts to keep up with the demand for passports. During the presentation, he discussed the department’s testing of “passport cards,” which would be used for frequent cross-border trips to Canada or Mexico. “It [the passport card] is part of a long-term process where we end up with personal identification cards for everyone in the United States,” he said.

Rodriguez’s assertion that federal regulations creating passport cards, and requiring secure identity cards, are actually a prelude to a national identity card contradicts Bush Administration statements that those efforts are not the first steps toward such a credential.

Such a database would be essential to house the information collected for a national identity card, and critics of Real ID—which sets national standards for drivers’ licenses and identification cards—have charged that the data collection associated with Real ID could be the start of a national identity card. Homeland Security Secretary Michael Chertoff’s response is that DHS “is not going to have a national database” to support a national identity card.

Reprinted with permission from the *Society of Human Resource Managers*.

### **HR Issues in Congress for 2008**

Although the Texas Legislature is not in session this year, there are still several human resources issues awaiting action by the United States Congress. Here are a few of the proposals that are on the table for discussions and possible action this year:

**Military Family Leave** – A Federal job-protected leave benefit for military family members was part of the National Defense Authorization Act for Fiscal Year 2008 (H.R. 1585). However, President Bush vetoed the defense bill, citing concerns with an unrelated provision of the measure. So military family leave is now awaiting reconsideration by Congress when it returns to work later this month.

**Paid Sick Leave** – There are several proposals pending in Congress to expand sick leave coverage. The most notable is the Healthy Families Act, which would provide a paid sick leave guarantee for a minimum of seven days per year to all employees at companies with 15 or more employees.

**Employment Verification** – The U.S. Department of Homeland Security's employment verification system, known as *E-Verify*, will expire in November 2008. One of the proposals in Congress, known as the "SAVE Act," would make *E-Verify* mandatory for all U.S. employers by

the end of 2012. There is growing support on Capitol Hill to impose some form of mandatory verification of citizenship program for all employers. Keep your eye on this one!

#### **TMRS UPDATE 12/14/2007**

At its December meeting, the TMRS Board approved changes to the actuarial cost method and amortization period. In addition, they adopted the results of the actuarial experience study (including a 7 percent investment income assumption) and set an eight-year phase-in of contribution rates. For more details, see Breaking News for Cities.



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