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TRIALS. TRANSACTIONS. TECHNOLOGY.

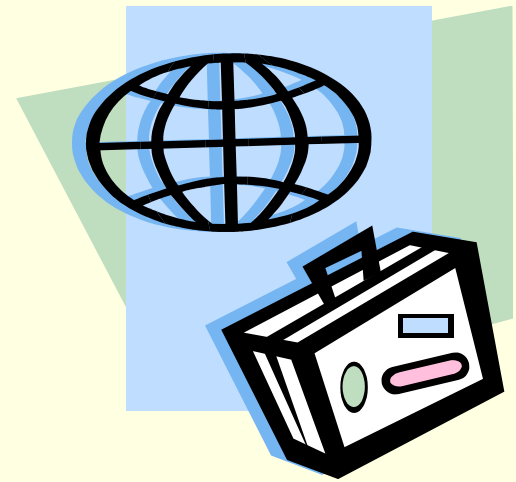
Don't Mess With Texas (Employers)! **A Legal and Legislative Update for 2007**

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Pending Legislation, Issues & Trends

Road Map:

- What's Up in D.C.?
- What's Up in Austin?
- Multi-state Issues
- Other HR Trends



What's Up in D.C.?

- Minimum Wage
 - House bill increases to \$7.25/ hour over 2 yrs; passed by vote of 315-116
 - Senate pending – may be tied to tax breaks for small business
- Most of the action has been at the state and local level
- www.dol.gov/esa/minwage/america.htm
- www.livingwagecampaign.org



What's Up in D.C.?



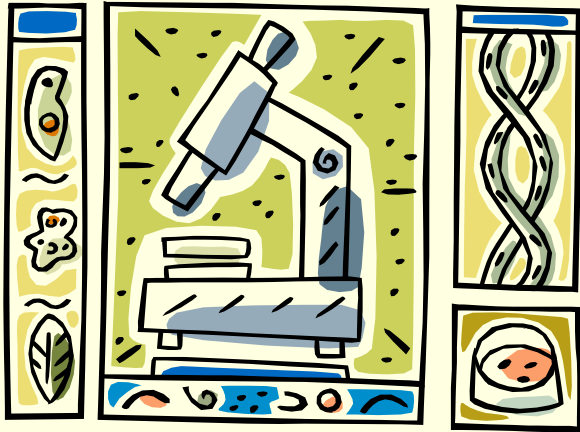
- Immigration
 - House putting “final touches” on its bill
 - Senate says its bill will include border protection, legalization of immigrants, a temporary guest-worker program and employer sanctions
 - Sen. Majority Leader Harry Reid says bill will be on the floor before August recess

What's Up in D.C.?

- Mandated Paid Sick Days
 - S 910 & HR 1542 introduced 3-15-07
 - “Healthy Families Act”
 - Applies to employees of 15+
 - 7 days/yr PTO for employees working 30 hrs/wk+
 - Prorated for part-time employees if avg 20 hrs/wk or at least 1000 hrs/yr



What's Up in D.C.?



- Genetic Discrimination
- HR 493 would prohibit employers or health insurers from discriminating against individuals based on genetic information
- Concerns
 - Duplicates ADA/State laws
 - Scope of definitions

What's Up in D.C.?

- “Free Choice Act” (HR 800)
- Sec’y of DOL, Elaine Chao, spoke at SHRM Legislative Conference on March 13
- NLRB certification of union based on signed authorization cards by majority of workers
- “effectively takes away a workers’ freedom to vote in a private-ballot election” which is a fundamental right that should not be negotiated or legislated away
- Also provides for mediation if no initial CBA after 90 days of bargaining; if fails, goes to arbitration panel after 30 days for an imposed settlement; term is 2 years or new CBA, whichever occurs first
- Treble back-pay awards & penalties up to \$20,000 for er ULPs
- Bush says will veto, if passed

What's Up in D.C.?

■ Resources

- www.thomas.loc.gov to see full text & status of federal bills
- www.shrm.org to use HRVoice, if SHRM member
- www.senate.gov to reach Senator
- www.house.gov to reach Representative



Other Federal Law Concerns

- Retaliation standard, eff. 6-22-06
- New Standard Form 100 (aka EEO-1)
 - Do use the new form
 - Don't have to resurvey ees on race/ethnicity for this year's report
 - Accept self-designation even if you disagree
- Chairman of the FCC says ban on cell phone use in planes will remain, eff. 3-22-07
- EEOC exhaustion requirement
- Pending – mandatory certification of new hires
 - Plastic ID “smart” card
 - Central database (e.g., Basic Pilot)
 - SHRM requesting use in lieu of Form I-9

What's Up in Austin?

- Minimum Wage (SB 95, 980; HB 49, 193, 236, 262, 327, 451, 936)
- Initial increases, eff. 9-1-07, ranging from \$5.85 to \$6.65/hour
- Increase, eff. 9-1-08, ranging from \$7.15 to \$7.65/hour
- Most adjust annually thereafter, using index



What's Up in Austin?



- Day Laborers (HB 456)
 - Pay prevailing wage
 - 1.5x OT after 8 hrs/day and/or 1st 8 hrs of 7th consecutive day
 - 2x OT after 12 hrs/day and/or after 8 hrs worked during 7th consecutive day
 - Pay daily if <1 week worked
 - Pay for travel that is integral & indispensable part of principal activity performed by the ee
 - No check cashing fees
 - 15 min paid break for 4 hrs worked
 - 30 min paid meal for 6 hrs worked
 - Er provides transport back to pick-up point (but may charge \$1.50 each way)

What's Up in Austin?

- Deductions
 - Garnishments (HJR 67)
 - Add “restitution for criminal judgment” to list of allowed garnishments
 - Charitable Donations (HB 3254)
 - Written OK required
 - No discrimination against ee who declines to participate in er’s campaign



What's Up in Austin?



■ Guns

- No more DPS disclosure of right to carry upon request (SB 122, HB 991)
- No more right to ban guns from workplace parking areas (SB 534, 739; HB 220, 511, 992, 1037)
- “Castle” bill signed March 27, 2007
- www.packing.org

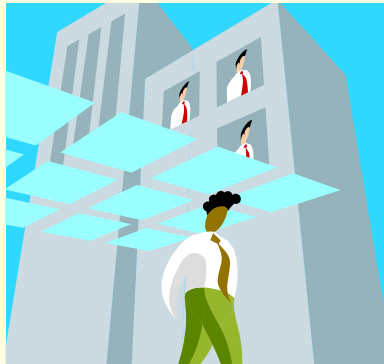
What's Up In Austin?

- HB 1298 - Adding “gender identity or expression” to list of hate crimes
- HB 247, 307, 900 - Discrimination Based on Sexual Orientation or Gender Identity prohibited in
 - Insurance
 - Employment
 - Housing
 - Schools



What's Up in Austin?

- Other Discrimination
 - HB 2527 - Schools
 - HB 3743 - Ee who leaves work to participate in an ordered general public evacuation (so long as ee returns to work within 5 days after the order expires)



What's Up in Austin?

- Health Insurance Coverage of
 - Anorexia/Bulimia
 - Contraceptive drugs and devices
 - Reconstructive surgery post-mastectomy
 - Tests for early detection of cardiovascular disease
 - Home defibrillators



What's Up in Austin?



- Misc. Health Issues
 - SB 1001 - Providing ee health insurance as condition of State contract
 - SB 1637 & HB 3366 - Dep't of Insurance financial assistance to small ers
 - HB 1297 - Wellness program for State ees
 - SB 368 - Banning smoking in all public places, work places & some outdoor events
 - <http://txshsord.coe.uh.edu/createRports.aspx>

What's Up in Austin?

- Individual Rights
 - HB 1154 - No interference with or restriction of right to breast feed
 - HB 416 - Retail establishment must provide immediate restroom access to person w/ certified medical condition
 - HB 283 - Due process for ees accused of abuse or neglect of disabled person



What's Up in Austin?



- Employer Obligations
 - HB 3966 - Security measures for retail location w/ one person on duty
 - HB 754 - Wage continuation for 1st day of jury duty
 - HB 2517 - May not bully or harass an ee, interfere with rights, or retaliate
 - SB 981 - Post election notices
 - HB 784 - Provide discharged school ee w/ written description of pre-lawsuit administrative remedy

What's Up in Austin?

- Cellphones & Driving
 - Banned unless hands-free or car stopped
 - Banned in school zones
- Inattentive Driving – double amount of fine if ticketed and was
 - Reading, writing
 - Engaged in personal grooming
 - Consuming food/drink
 - Interacting w/ pet or passenger
 - Using personal communications device
 - Other unsafe activity



See www.cellular-news.com/car_bans/ for U.S. and int'l car phone bans

What's Up in Austin?



- Data Security
- Personal information in public records
- SB 223 - Notice of breach law expanded to public sector & must notify AG of each breach
- HB 59 - Omnibus bill
 - No biometric IDs
 - Privacy of SSNs
 - Rules for collection, storage and destruction of PI kept by state/local governments

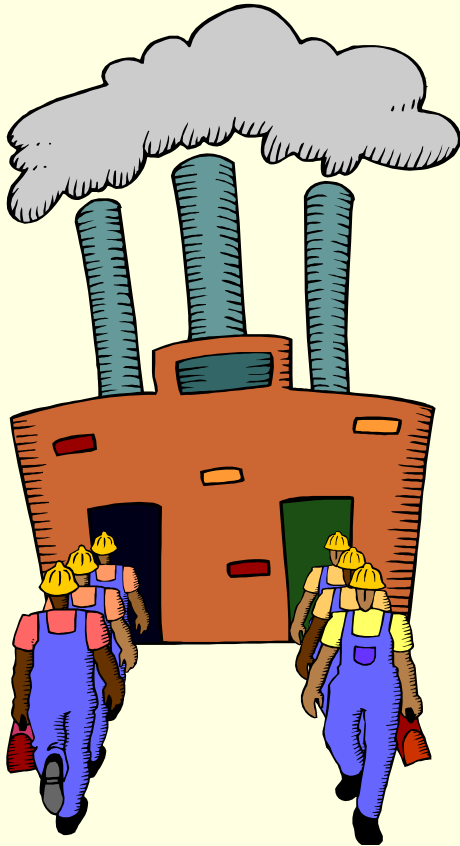
What's Up in Austin?

■ Immigration

- Fee on money sent abroad
- Requiring CDL applicant read/speak English
- Requiring prof'l license applicant be auth'd to work in U.S.
- Gov't contractors must use federal work authorization verification program
- No Texas Enterprise Fund grant to undocumented worker
- BUT “we don't have the authority”; federal law pre-empts



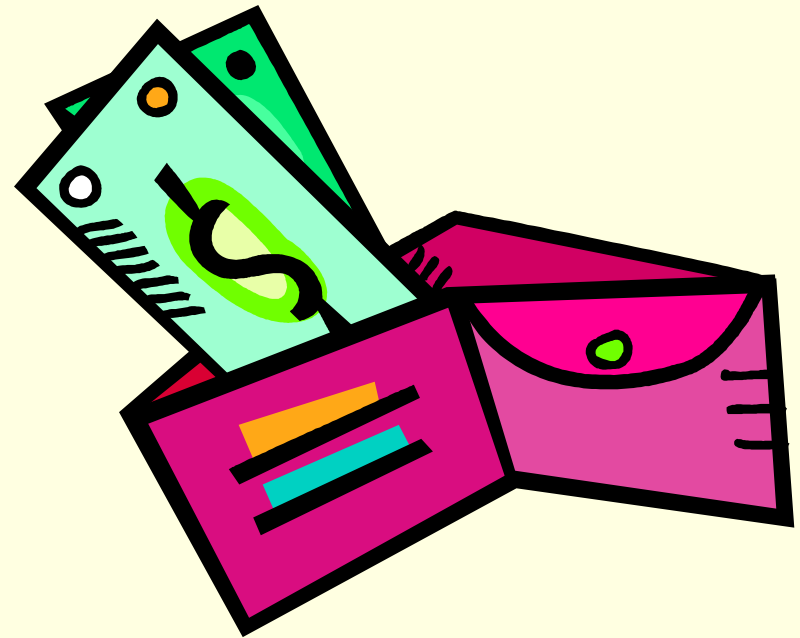
What's Up in Austin?



- Leaves of Absence
 - SB 641 & HB 2059- Family violence
 - HB 1392 - School officials
 - Special ed
 - SB 996 & HB 3037 – State FMLA (plus)
 - School activities
 - Child Care officials and activities
 - HB 1004 - Treatment of workers' comp injury
 - HB 1205 - Volunteer responder
 - New posters

What's Up in Austin?

- Unemployment Comp
 - UI for victim of family violence, but . . .
 - UI for new parent, but
 - No er chargeback for UI to ee who left to care for terminally ill spouse
 - Er might be liable for mistakenly paid UI, if er failed to provide adequate info to TWC



What's Up in Austin?



- Workers' Comp
 - HB 2430 - Up to 5% discount on premiums if using compliant substance abuse testing program
 - HB 34 - No payments for referrals
 - HB 2423 - Nonsubscribers provide work injury data to Commissioner
 - HB 2519 - Transition-to-work benefits

What's Up in Austin?

■ Resources

- www.capitol.state.tx.us
for text & status of bills
in Austin
- www.txbiz.org for
Texas Association of
Business



Noncompetes in Texas

- Required - Reasonable in scope and ancillary to an otherwise enforceable agreement at the time the agreement was made
- Old View – Er must provide consideration that gives rise to the need for a noncompete (e.g., trade secrets, special training) at the same time that ee signs the noncompete
 - Concern – At will ee can be fired at any time, so the er's promise is illusory
- New View – Effective 10-20-06, noncompete becomes enforceable when er provides the consideration

Best Practices from Texas Employer



- Fluor, Inc.
- Based in Irving, TX
- Honored with EEOC's 2006 Freedom to Compete award for its mentoring circles program
- One exec/mentor and 5-7 mentees regularly meet to learn more about the Company and each other
- At press, 24 active circles w/ 210 ees in Houston



Multi-State Issue – Data Security

- “A business shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect and safeguard from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business.” TEX BUS & COM CODE ANN sec. 48.102(a).
- AR and NV have similar statutes



Data Security Laws – Federal Proposal

- Data Accountability and Trust Act (HR 4127)
- Personal Data Privacy and Security Act (S 1789)
 - Both require establishment of data security plan, ee training, regular testing of the plan, due diligence in selecting and supervising 3rd parties who have access to the data, notice to individuals upon breach of system
 - Proposed penalties of up to \$5000/day if no plan, up to \$50,000 max, plus injunctive relief



Multi-State Issue - Data Disposal

- FACT Act Disposal Rule, eff. 6-1-05
 - Businesses subject to FCRA must take “reasonable measures” to protect “personal identifiers” from disclosure in connection with disposal of such identifiers
 - Article available at www.tsc-shrm.org; click on Publications, HR Matters, Summer 2005 (page 22)
- Texas H.B. 698, eff. 9-1-05
 - Prior to disposing of records containing “personal identifying information” of customers, business must make the info unreadable or undecipherable via shredding, erasing or other means.
 - Civil penalty of up to \$500 per record, for violations



Multi-State Issue - Use of SSNs

- CA – Eff. 7-1-02
 - No posting or public display of SSNs
 - No printing of SSNs on ID card needed to access products or services; may include ee ID badges/cards
 - No requirement to transmit SSN over Internet unless secure connection and encrypted data
 - No requirement to use SSN to access website unless used in conjunction with password or unique ID
 - No printing of SSN on docs mailed to ees unless inclusion of SSN required by law (e.g., paystubs); emp apps OK
 - Rules n/a if grandfather clause applies
 - Rule supersedes all local rules and regs, to ensure uniform application



Use of SSNs (cont'd)

- PA – Eff. Last week of Dec. 2005
 - Enacted in response to missing laptop in 8-05 that contained PI on 30,000 patients at VA hospitals in PA
 - Limitations are similar to CA version
- MI – Eff. 1-1-06
 - May not use 4+ consecutive digits of ees' SSN on ID badges, membership cards, permits, licenses or on outside of package or envelope that is sent to the ee
 - Penalty is fine of up to \$1000 and/or up to 93 days in jail



Use of SSNs (cont'd)

- NY – Eff. Jan. 1, 2008
- Prohibitions
 - “intentionally communicate” an individual’s SSN to the public
 - Print SSN on any card used to access products, services or benefits
 - Require transmission of SSN over the Internet unless secure connection OR encryption
 - Require use of one’s SSN as a password to access website unless used in conjunction w/ 2nd password
 - Print SSN on materials to be mailed unless o-wise required by law (then, SSN can’t be visible from outside of envelope)
- Penalties



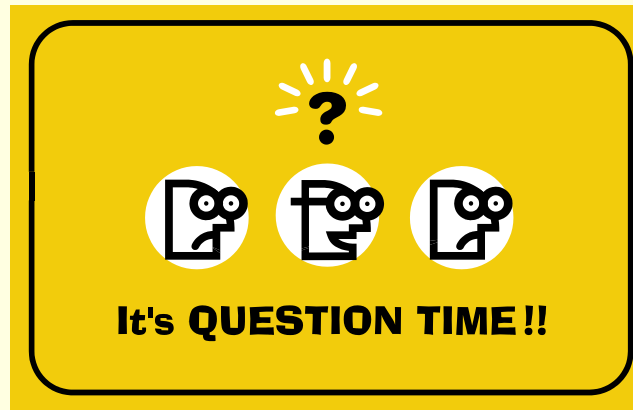
Multi-State Issue – Notice of Security Breach

- 35 states plus PR, VI and NYC have notice of security breach laws
- IN and OK apply to public sector only
- Newest – AZ & MI (12-06); NH, UT and VT (1-07)
- Pending in '07 – AK, MA, MS, SC and WY
- Typical essential elements of each
 - Define the protected data
 - When is notice required?
 - What form of notice?
 - Who is entitled to receive notice?
 - How quickly should it be received?



Other HR Trends

- Not-so-independent contractors
 - New laws covering ees and contractors
 - States following NJ's example
- Business contracts conditioned on proof of HR processes
 - AAP
 - Diversity (numbers, training)
- Enforcement of immigration laws, using RICO and Trafficking Victims Protection Act



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