



HR CORSICANA

Volume 12, Issue 2

February 2011

FEBRUARY 2011 MEETING

Speaker: Glenda Terry, RN

Topic: Experiences of a Non-HR
Professional Having to Administer
HR

Date: Tuesday, February 8, 11:30 a.m. –
1:00pm

Location: [Corsicana/Navarro Chamber
of Commerce](#)



**PLEASE NOTICE – WE WILL MEET AT THE [CORSICANA/NAVARRO
COUNTY CHAMBER OF COMMERCE](#) FOR THE MEETING THIS
MONTH.**

Make sure you respond by e-mail to Tommie.batson@truevalue.com or via www.hrcorsicana.com. You can also call Tommie @ 903-872-8365 Ext 5001 to make your reservations.

2011 UPCOMING SPEAKERS

March	TBD
April	Mike Coffee, How HR is Using Twitter, Facebook & LinkedIn
May	Michael Coelho, Update on 401k and Fiduciary Law Changes
June	TBD
July	TBD
August	TBD
September	TBD
October	TBD
November	TBD

THOUGHT FOR THE MONTH

When the world says, "Give up,"
Hope whispers, "Try it one more time."

~Author Unknown

LEADERSHIP

It Takes Clear Vision to Create a Masterpiece

– By John C. Maxwell

In 1882, construction began on Barcelona's Sagrada Familia. 129 years later, the cathedral remains unfinished! The church has already been named a UNESCO World Heritage site and attracts more than 2 million visitors each year. Yet, officials estimate another 15 years will be needed to complete it. That the project has attracted the interest of donors, architects, and builders for more than a century testifies to the powerful vision of its designer, Antoni Gaudí.

Gaudí's passion for the Sagrada Familia is legendary. He spent the last 12 years of his life working exclusively on the church. He even lived on its premises during his final months. Although obsessed with the project, Gaudí had no illusions that the cathedral would be completed in his lifetime.

"There is no reason to regret that I cannot finish the church. I will grow old but others will come after me. What must always be conserved is the spirit of the work, but its life has to depend on the generations it is handed down to and with whom it lives and is incarnated."

As the man responsible for erecting the Sagrada Familia, Gaudí paid surprisingly little heed to its "life" or actual construction. Instead, he painstakingly sketched drawings and crafted models to clarify the vision behind the cathedral, or its "spirit." In the 85 years that have elapsed since his death, the 3D renderings Gaudí left behind have guided work on the Sagrada Familia. "They contain the entire building's structural DNA," explains Mark Burry, an architect with 30+ years of experience on the project. "You can extract the architectural whole even from fragments. The models are how Gaudí met the architect's challenge: taking a complex, holistic idea and explicating it so others can understand and continue it after your death."

CLARIFYING YOUR VISION

Gaudí spent over a decade fine-tuning his vision, and its clarity has been the driving force behind a project that has spanned three centuries. The renowned Spanish architect understood a fundamental principle of leadership: *what* must precede *how*. Leaders have to define where they're going before they begin to move.

Seeing the Vision Clearly Requires Your Effort

Clear visions only come into focus through sustained effort. For me, the whole process begins with questions I must ask myself. What are my deeply felt concerns? What are my values? What strengths do I have? How have my experiences shaped me? These questions uncover how I am wired and what I hold dear in life.

Once the vision starts to come together in my mind, I share it with the key people in my life. These relationships refine my vision. As the vision crystallizes, I also surround myself with inspirational resources (books, movies, paintings). In the early stages visions must be stoked, and resources stir up the passion behind them.

continued

LEADERSHIP

It Takes Clear Vision to Create a Masterpiece

– By John C. Maxwell

Seeing the Vision Clearly Specifies Your Direction

Why should we make the effort to see the vision clearly? Because vague visions cannot serve as compelling guides. Followers do not rally behind a leader's fuzzy picture of the future. Rather, they are attracted and motivated by leaders who can paint an instantly recognizable portrait of tomorrow.

A leader's vision acts like a transmitted satellite image; the signal strength of the vision diminishes the further away it gets from the source. As your vision spreads throughout the organization, it will fade. Thus, the more people you rely on to support your vision, the clearer it must be. A powerful vision must have sharp enough resolution that even when weakened it remains easily identifiable.

Seeing the Vision Clearly Determines Your Priorities

Every leader has limitations. Limited time, limited resources, and limited energy. As such, nobody can have it all in life. In light of our limitations, we each have to make sacrifices and scale back the scope of our ambitions. Seeing the vision clearly helps us to prioritize which opportunities to bypass and which activities deserve our dedication.

The choices we make either draw us closer to our vision or push us farther away from it. If we're unsure of the vision, then we won't know how to make decisions that carry us in the right direction. Clear vision illuminates the path in front of us as we select which roads to travel down in life.

ABOUT

John C. Maxwell is an internationally respected leadership expert, speaker, and author who has sold more than 18 million books. Dr. Maxwell is the founder of EQUIP, a non-profit organization that has trained more than 5 million leaders in 126 countries worldwide. Each year he speaks to the leaders of diverse organizations, such as Fortune 500 companies, foreign governments, the National Football League, the United States Military Academy at West Point, and the United Nations. A New York Times, Wall Street Journal, and Business Week best-selling author, Maxwell has written three books that have sold more than a million copies: The 21 Irrefutable Laws of Leadership, Developing the Leader Within You, and The 21 Indispensable Qualities of a Leader. His blog can be read at www.JohnMaxwellOnLeadership.com.

"This article is used by permission from Leadership Wired, GiANT Impact's premiere leadership newsletter, available for free subscription at www.giantimpact.com."

LEGISLATIVE UPDATE

The DFW area is hosting the Super Bowl this weekend, so LB4HR salutes the wide world of sports, especially football. Be sure to avoid the agony of defeat by huddling up with your management team and avoiding the following penalties:

1. In the Zone - The U.S. Supreme Court expanded the scope of "persons aggrieved" under Title VII by applying a "zone of interests" test. The ruling allowed a fired employee to proceed with his retaliation claim even though it was his fiancée (they both worked for the same employer) who had filed an EEOC charge. In short, she engaged the protected activity (by filing a charge) but he was the one who suffered the adverse employment action (being fired). He filed a charge claiming retaliation and the EEOC issued a "reasonable cause" finding and a Right to Sue. The male employee's suit was summarily dismissed by the district court and the dismissal affirmed in an *en banc* decision of the appeals court, based on their findings that he had not engaged in protected activity and had no standing to sue under Title VII. The Supremes, however, likened Title VII to other federal statutes which do allow a person who is closely associated with a person engaging in protected activity to file a claim, and found that Congress had intended that broader scope of protection. It also noted that the retaliation prohibition covers a wider range of employer conduct (including acts occurring outside of the workplace, per their 2006 decision in *BNSF Co. v. White*) than the discrimination prohibition. So who's in the "zone?" No firm lines were drawn, but the Court did say that firing a close family member will almost always meet the standard while "a milder reprisal of a mere acquaintance will almost never do so . . ." *Thompson v. North American Stainless* (U.S. Jan. 2011).

2. New Playbook - U.S. Citizenship and Immigration Services ("CIS") issued a revised Handbook for Employers: Instructions for Completing Form I-9 (Employment Eligibility Verification Form) (revision date is 1-5-11). Go to www.uscis.gov/files/form/m-274.pdf for the English version. It's available in Spanish, too. This is a very user-friendly guide which explains the process, has FAQs and displays samples of acceptable forms of identity and work authorization verification. I have one in my library. Do you?

3. Tackled For a Loss - LB4HR #11- 2010 mentioned a proposal by OSHA to amp up the requirements on employers in protecting their employees from noise. Never mind . . . they are now backing off of that proposal and sticking with the current approach of allowing employers to rely on issuance of ear plugs and other protective measures instead of eliminating or minimizing the noise itself.

LEGISLATIVE UPDATE

4. Failed Sneak Attempt - Two of your employees (who signed non-compete agreements) have left and opened up a competing shop. You suspect they communicated via personal email accounts over your systems and, Eureka! you find one of them left his personal email username and password on your work computers. You open his personal email account and find proof that the former employees copied your documents, stole your customers and more. Do you think you've got them nailed to the wall? Would you be surprised to find out that they have a viable claim against you? Such was the case in *Pure Power Boot Camp v. Warrior Fitness Boot Camp* (SDNY 2010) where the former employer was found to have violated the federal Stored Communications Act, with no proof of actual damages (to the former employees) needed for them to make the claim. Although the penalty is \$1000 per unauthorized access, the court aggregated the intrusions down to four, but the evidence of the employees' wrongdoing was excluded for use in the employer's lawsuit against them. Lesson? Employers already know that they must have an electronic communications use policy which puts employees on notice that they have no reasonable expectation of privacy for what goes through the employers' system, but most do not know that this defense does not cover all communications including those done via a personal password-protected account. Before you start trolling for electronic evidence to use against your current or former employees, talk to your counsel about the right way to obtain such evidence.

5. Bad Sports? - Dick's Sporting Goods Inc. agreed to pay \$15 million to settle wage and hour claims filed as a class action in NY plus 22 other states, encompassing around 190,000 current and former employees. The allegations include making employees work through their lunch hour and/or interrupting employees' lunch hour by having them resume duties, without pay. It was also alleged that nonexempt employees worked more than 40 hours in a workweek with no overtime pay at all or an offer to take time off in the following workweek in lieu of receiving overtime. As a gentle reminder, there is no federal law requiring employers to provide time off for lunch or breaks, but many states do have such requirements (TX does not, for now). Further, the FLSA defines what constitutes "hours worked" (which must be paid) and an unpaid lunch break is not *bona fide* unless the employee is completely relieved of all duties. As for overtime, comp time in lieu of overtime is allowed in the public sector but not in the private sector. Multi-state litigation involving thousands of past and present employees can turn a small error into a large and costly one, so review your practices and make sure your managers and supervisors know the applicable rules.

LEGISLATIVE UPDATE

6. On Injured Reserve - A supermarket chain received a painful penalty flag on its treatment of ill/injured employees in the form of a \$3.2 million settlement plus remedial relief. At issue was its policy of requiring employees to be 100% healed before returning to work and effecting terminations in employment instead of exploring possible reasonable accommodations of employees with work restrictions. On top of the cash outlay, the consent decree signed with the EEOC requires [1] training of employees involved in decision-making relating to accommodation of disabilities; [2] hiring of a consultant to rework job descriptions (to reflect actual physical requirements) and advise on possible accommodations; [3] regular reports to the EEOC about accommodation efforts; and [4] revision of communications with employees to scrub out the 100% healed approach and replace with education on the types of accommodations which may be available from the employer. *EEOC v. Jewel-OSCO* (Jan. 2011).

7. (Not So) Free Agency - Once again, a long-term worker who was treated as an independent contractor has been found to be an employee. The worker was a building maintenance service provider for a property management firm for 12 years. After being let go, he filed a claim alleging he worked an average of 66 hours per week and was never paid overtime. As is the case with most exempt or contractor workers, the employer did not keep records of actual hours worked and is left mostly defenseless against such a claim, so summary judgment for the worker was granted. The employee vs. contractor analysis can be hazy, with different tests being used under various federal and state statutes, but here's what this court zoned in on: [1] he was engaged in the core work of the business (as opposed to someone with a unique skill set being brought in to do work that is not integral to the employer's business); [2] he was told what to do, when and where to do it and disciplined when he didn't comply; [3] most of the work was basic janitorial work, not one of the skilled trades (e.g., carpentry, plumbing); [4] there was no opportunity for profit or loss depending upon the quality/quantity of his work, since he was paid a weekly salary (vs. by the project); and [5] the employer withheld taxes for him and he received a Form W-2 (not a Form 1099) at years' end. *Bulaj v. Wilmette Real Estate & Management Co.* (N.D. Ill. Oct. 2010).

8. Half Back - Six U.S. Courts of Appeal have now adopted the half-time approach to calculating backpay for nonexempt employees who were mistakenly classified as exempt under the FLSA. In short, the aggrieved employees are entitled to 50%, not 150% of their "regular rate" for the unpaid overtime hours. The U.S. Department of Labor has consistently followed the half-time formula and the 4th Circuit (MD, NC, SC, VA, and WV) recently joined the 1st, 5th, 6th and 10th circuits in endorsing this approach. *Desmond v. PNGI Charles Town Gaming* (4th Cir. Jan. 2011).

LEGISLATIVE UPDATE

9. **Stated Differently** - Here are some morsels for you multi-state employers:

a. California - Effective January 1, employers with 15+ employees must provide paid time off to employees who are organ donors (30 days) or bone marrow donors (5 days), per year. The employer can require the employee to use earned/accrued paid time off of up to two weeks for organ donation and five days for bone marrow donation. The leave is not concurrent with FMLA/CFRA and does have a job reinstatement right, similar to those statutes.

b. Florida - Florida agencies must now use E-Verify to check employment eligibility of their current workers and prospective hires, per Executive Order No. 11-02. Further, the contractors these agencies do business with will find a provision in their contract requiring them to use E-Verify on all persons employed in FL during the contract's term and all persons, including subcontractors, assigned to work on the contract. The Order was signed by Governor Rick Scott only minutes after being sworn in and is likely to be challenged as it goes farther than what is allowed under current federal law.

c. Kentucky - If passed, HB 193 will ban smoking in all public places and places of employment, with violations punished by fines of up to \$2500 for repeat violators. But don't go too far in riding your workplace of smokers. KY also has a law which protects smokers against employment discrimination.

d. Massachusetts - Last year's attempt at a non-compete statute failed, but it's back in a modified form and pending in the legislature. The new version, if passed, [1] will not apply retroactively; [2] will not impact related restrictive covenants (e.g., nondisclosure, non-solicitation; [3] will codify existing law relating to reasonableness in duration, geographic scope and proscribed activities; and [4] will require that the covenant be written in signed by both parties and provided to the employee at least 7 days before employment begins. If the agreement is presented after employment starts, new consideration will be needed (and continued employment will not suffice).

e. Michigan - Effective December 21, 2010, employers can require their MI-based employees to be paid via direct deposit or a payroll debit card.

f. New York - Thinking of using interns to cut your wage-related costs? Then you might want to peruse an opinion letter recently posted by the New York State Department of Labor, which is posted at www.labor.ny.gov/sites/legal/counsel/pdf/Other/RO-09-0189.pdf.

LEGISLATIVE UPDATE

g. Tennessee - Plaintiffs got a leg up, when the TN Supreme Court decided to abandon the *McDonnell Douglas* burden-shifting analysis in an employment case. An accounting employee alleged that he was fired for refusing to participate in the CFO's alleged illegal activity involving the SEC and related securities laws. The lower court granted the employer's motion for summary judgment as the employee had not reported the alleged illegality and the complaint is an essential element when claiming retaliatory discharge. The appeals court reversed and the Supreme Court agreed that summary judgment for the employer was not appropriate based on remaining fact issues and because reporting is not required where the employee refused to participate in the illegal activity. They went further, saying that the McDonnell Douglas framework is not compatible with TN's jurisprudence on summary judgments. *Gossett v. Tractor Supply Co. Inc.* (Tenn. Jan. 2011).

11. For the Birds - If you like being "tweeted" and want breaking news on employment law changes follow me on Twitter. I'm at @amross.

Until next time,

Audrey E. Mross
Labor & Employment Attorney
Munck Carter LLP
600 Banner Place
12770 Coit Road
Dallas, TX 75251

972.628.3661 (direct)
972.628.3616 (fax)
214.868.3033 (iPhone)
amross@munckcarter.com
www.munckcarter.com



DIVERSITY OBSERVANCES
FEBRUARY 2011

AMERICAN HEART MONTH

In recognition of the important needs in the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963, as amended (77 Stat. 843; 36 U.S.C. 101), has requested that the President issue an annual proclamation designating February as "American Heart Month."

Black History Month

Black History Month was initiated February 12, 1926 by historian Carter G. Woodson. Woodson founded the observances to recognize the achievements and contributions of Black Americans. February was chosen because of the birthdays of Abraham Lincoln (Feb 12) and Frederick Douglass (Feb 14), two men who significantly impacted African-American life. A new theme is selected for Black History every year. This year's theme is "*Carter G. Woodson and the Origins of Multiculturalism*".

Week of February 14 – National Salute to Hospitalized Veterans

Each year the week of February 14 is an opportunity to say thank you to a special group of men and women, more than 98,000 veterans of the U.S. armed services who are cared for every day in Department of Veterans Affairs (VA) medical centers, outpatient clinics, domiciliaries, and nursing homes. Contact your nearest VA Medical Center ([click here to see the directory](#)) and ask for Voluntary Service to discover the wonderful things you, your group or organization can do to salute America's Heroes.

February 14 – Valentine's Day

This date recognizes the possible execution date of one of the two or three early Christian martyr's names Valentine. Legend has it that one of the Valentines secretly performed marriages between young people in opposition to the Roman emperor's law.

February 15 – President's Day

Until 1971, both February 12 and February 22 were observed as federal holidays to honor the birthdays of Abraham Lincoln (Feb. 12) and George Washington (Feb. 22). In 1971 President Richard Nixon proclaimed one single federal holiday, *Presidents' Day*, to be observed on the third Monday of February, honoring all past presidents of the United States of America