"Your Workplace Is Our Work"®

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LEHR MIDDLEBROOKS & VREELAND, P.C.
LABOR & EMPLOYMENT LAW

Employment Law Bulletin

To Our Clients And Friends:

Unions won 61.5% of all elections held in 2006, according to a recent analysis by the Bureau of National Affairs. **This is the tenth consecutive year the union win rate has increased**. However, the number of elections declined for the third consecutive year, from 2,142 in 2005 to 1,648 in 2006. In 2002, there were 2,723 elections.

Of the major unions, the Teamsters were involved in 425 elections, winning 49.9%. The Service Employees International Union were involved in 166 elections, winning 72.9%. Of the other top ten labor unions, the Food and Commercial Workers won 55.6%, Operating Engineers, 63.9%, International Brotherhood of Electrical Workers, 67.3%, Machinists 70.1%, Steelworkers, 40.8%, Laborers, 63.3%, UAW, 42.9% and the Communication Workers 36.7%.

The number of elections held is significantly lower than the number of petitions for elections that were filed and ultimately withdrawn. There were approximately 3,000 petitions for elections in 2006. From our perspective, organized labor has the most dynamic initiatives we have seen in several years to try to bring in new members. **Unions are moving away from the "good union, evil employer" messaging, to projecting themselves as a resource and partner on issues that concern employees, such as job security in manufacturing and healthcare in all industries**.

Although the Employee Free Choice Act failed to reach the Senate floor for a vote and likely is a dead issue for 2007, it will return in 2008. Those employers that have become complacent about their union-free status may find that they have too much ground to make up to sustain that status. Our recommendations to non-union employers are to review with the workforce the business case to remain union-free and address those issues that would lead employees to have an interest in unions. **Fair treatment alone is no longer enough to remain union-free. Meaningful dialogue and engagement about the issues that concern employees - and should concern the employer - is the number one key to a union-free future**.

BEST OF TIMES, WORST OF TIMES FOR NON-COMPETITION AGREEMENT ENFORCEMENT

In the case of *Chicago Title Insurance Corporation v. Magnuson* (6th Cir. May 21, 2007), a jury had awarded $43,000,000.00 (that's no mistake) as damages for violating a non-competition agreement. This award was vacated by the Sixth Circuit Court of Appeals and remanded for a new trial on the question of damages, only.

The case arose after Magnuson sold his business to Chicago Title and remained an employee of Chicago Title for several years. He subsequently was recruited by a competitor, but had a contract with Chicago Title that said that for a period of five years he would not work for a competitor in the same geographical area as where he worked for Chicago Title. Within a few months after he began work for his new employer, approximately 30 employees from Chicago Title and several of their customers moved with Magnuson. Chicago Title sued to enforce the non-competition agreement, and the jury agreed. In vacating and remanding on the question of damages, the court stated the jury's $32.4 million punitive damage award was excessive and unconstitutional. The court also said that the trial judge misapplied the law in how damages were to be determined.

An employer that does not promptly enforce its rights under a non-compete agreement runs the risk of losing the opportunity to enforce it. This was the outcome the employer experienced in the case of *Static Control Components, Inc. v. Future Graphics, L.L.C.* (M.D. NC, May 11, 2007). The company's product development manager signed a confidentiality and non-compete agreement. The agreement required that he not compete for a one year period after leaving his employment. The employee, McIntosh, was laid off on April 21, 2006. He began working for a competitor on June 19, 2006. SCC learned shortly thereafter of McIntosh's employment with its competitor. However, SCC did not seek to enforce its non-competition agreement until September 1, ten weeks after it became aware that McIntosh was working for a competitor.

The court balanced several factors involving McIntosh, his new employer, and SCC in deciding whether to enjoin McIntosh from working for the competitor. What tipped the balance in favor of denying SCC's request for an injunction was SCC's delay in seeking to enjoin McIntosh. According to the court, SCC could not show that it would suffer irreparable harm by McIntosh's actions, because it waited so long to seek enforcement of its non-competition agreement.

Confidentiality and non-competition agreements are enforceable if they are carefully drafted and the employer acts promptly when it believes the agreement has been violated. There are circumstances where an employee becoming a competitor or working for a competitor can be devastating to a business. Protect the business by requiring confidentiality, non-competition, non-raiding agreements and if your business believes that the agreement has been violated, seek prompt enforcement.

FOUR MONTH REPORTING DELAY – NO VALID HARASSMENT CLAIM

Employees who do not follow a company's harassment policy, such as talking about harassment to peers but not reporting it, and those who delay in ultimately reporting it, do not have a valid sexual harassment claim. *Tiller v. Fluker* (E.D. Ark. May 17, 2007). According to the court, the employer "has a sexual harassment policy and *Tiller* admits she was provided a copy of it." The court also stated that Tiller "failed to take advantage of Riceland's preventive or corrective

opportunities," as she did not report the behavior until four months after it occurred.

Tiller was transferred to supervisor Mike Fluker's department in February 2004. She alleges that he began to sexually harass her shortly thereafter, which she told her co-workers about. However, she did not report the behavior under company policy until July. According to the court, Tiller "unreasonably delayed using Riceland's preventative or corrective processes." Once she reported it, the court also found that she was not cooperative with the company's human resources director, by failing to provide specifics regarding the allegations and quitting shortly thereafter.

RETALIATION AGAINST EMPLOYEE WHO CONTACTS THE EEOC

It can be upsetting and frustrating to an employer when a current employee contacts the EEOC or another regulatory agency. So often, charges or complaints arise from terminated employees, but the dynamic is much more delicate when the charge is filed by a current employee.

In the case of *Depaoli v. Vacation Sales Associates* (4th Cir. June 12, 2007), the appeals court considered a verdict of retaliation where the jury awarded $7.5 million. The court upheld the district court's reduction of that award to $200,000 based on statutory damages caps.

The company sells timeshares in the Virginia Beach, Virginia area. Depaoli began as a sales associate and ultimately progressed to become a sales manager. She applied for the position of Director of In-House Sales, but the president of the company told her that position was being eliminated. Several weeks later a man was hired for that job and Depaoli reported to him. She complained to the president about the man's offensive verbal comments, which she believed were due to her gender and age. When she was not satisfied with the president's response, she contacted the EEOC to review her rights, but did not file a charge. She reported her actions to a vice-president, who notified the president. Shortly thereafter, she was transferred; she then filed a discrimination charge, claiming retaliation. She was ultimately terminated after she declined a demotion.

According to the court of appeals, the timing of the actions against Depaoli and comments from the president, such as "I'm not going to have any lawsuits on my watch" when he was notified of her contacting the EEOC, supported the jury's verdict. Furthermore, the vice-president of the company stated that he hoped she would quit and the demotion is what she deserved for going to the EEOC.

This decision is not a close call in terms of whether there was retaliation for contacting the EEOC and ultimately filing a discrimination charge (Note that contacting the EEOC is protected activity, even if a charge is not filed). Expressions of frustration and disappointment over a current employee's administrative charge or contact with an administrative agency can be used as evidence to suggest retaliatory action. It is easy for us to say, "just ignore it," and carry on, business as usual. However, the matter becomes more complicated when an employee starts talking to his or her peers about the actions the employee took and gossip starts to permeate the workplace. This is one of those areas where we suggest you call us to discuss when you become aware of an employee's protected activity, so that the organization does not set itself up for a retaliation claim.

EEO TIP: EEOC FOCUS ON CAREGIVING RESPONSIBILITY DISCRIMINATION (CRD)

This article was prepared by Jerome C. Rose, EEO Consultant for the Law Firm of LEHR MIDDLEBROOKS & VREELAND, P.C. Prior to his association with the firm, Mr. Rose served for over 22 years as the Regional Attorney for the Birmingham District Office of the U. S. Equal Employment Opportunity Commission (EEOC). As Regional Attorney Mr. Rose was responsible for all litigation by the EEOC in Alabama and Mississippi. Mr. Rose can be reached at (205) 323-9267.

Mainly due to the changing demographics of working mothers in today's labor market, the EEOC has recently spotlighted several subtle forms of discrimination against employees who act as "caregivers" to their aging parents or young children. For example, the EEOC found that in 1970 approximately 43% of women were in the workforce while in 2005 that figure had grown to 59%. Moreover, it found that 68% of African-American women in the workforce had a child or children under the age of 3 years old. Similarly, 58% of white women, 53% of Asian-American women, and 45% of Hispanic women in the workforce had a child or children under the age of 3. **Accordingly, the EEOC deemed it advisable to initiate this campaign in an effort to abate the rising tide of** "**Caregiving Responsibility Discrimination**" (**CRD) or stated more broadly "Family Responsibility Discrimination" (FRD)** in the workplace. Incidentally, for the reasons stated below, males have also been the victims of caregiving or family responsibility discrimination.

If you are inclined to ask whether Congress has recently passed some new law to include "caregivers" as one of the protected classes under Title VII or the ADA, the answer is "No." The EEOC has merely chosen to focus the authority it already has under those statutes to enforce their prohibitions against discrimination on the basis of sex and retaliation.

But how does an employer either wittingly or unwittingly, commit CRD? The most obvious way is to base personnel actions on generalizations and stereotypes of the role of men and women with respect to caregiving. For example, employers may limit the employment opportunities of female employees who have caregiving responsibilities by unlawfully refusing to promote them to higher paying managerial positions, by assigning them to dead-end positions where their absence from work supposedly would have less impact on the business and by making inquiries during the hiring process as to marital status and/or child status. Such actions by an employer are referred to as building a "maternal wall" or even "glass ceiling" to limit a female employee's advancement. On the other hand, a male employee who requests leave for caregiving responsibilities may encounter discrimination because of the popular assumption that females are better caregivers than men.

The EEOC in its **Enforcement Guidance: Unlawful Disparate Treatment of Workers With Caregiving Responsibilities** issued on May 23, 2007 summarizes on page 3 the matter of caregiving stereotypes as follows:

> "Employment decisions based on such stereotypes violate the federal anti-discrimination statutes, even when an employer acts upon such stereotypes unconsciously or reflexively. As the Supreme Court has explained, "We are beyond the day when an employer could evaluate employees by assuming or insisting that they match the stereotype associated with their group. (*Thomas v. Eastman Kodak*, 1st Cir. 1999). Thus, for example, employment decisions based on stereotypes about working mothers are unlawful because " the anti-discrimination laws entitle individuals to be evaluated as individuals rather than as members of groups having certain average characteristics." (*Lust v. Sealy*, 7th Cir. 2004).

EEO TIP: The EEOC's Guidance on CRD applies only to disparate treatment discrimination; it does not apply to disparate impact discrimination. Title VII does not directly prohibit discrimination based solely on parental or other caregiver status. It would not be a violation, for example, if an employer treated both working mothers and working fathers unfavorably (or for that matter, favorably) as compared to workers who are childless. However, it would be a violation under Title VII for an employer to discriminate against working mothers because of their sex.

Caregiving Responsibility Discrimination is prohibited in part by the FMLA, the Pregnancy Discrimination Act (PDA), the Americans with Disabilities Act (ADA) and to some degree the Equal Pay Act (EPA). The Pregnancy Discrimination Act directly prohibits discrimination against females on the basis of sex, since only females can get pregnant. Thus an employer who refuses to promote an expectant mother because of her future caregiving responsibilities to her unborn child would be guilty of CRD. The ADA prohibits discrimination against an employee who "associates" with a person with a disability. In this case an employer who assigns an employee, whether male or female, to a dead-end job because of their caregiving responsibilities to a disabled family member would be guilty of CRD as prohibited by the ADA. The EPA requires equal pay for persons who perform work requiring equal skill, effort and responsibility in the same establishment. Accordingly it would be a violation of the EPA and a form of CRD to pay a female or a male with caregiving responsibilities less than an employee of the opposite sex who has no such responsibilities for work requiring equal skill effort and responsibility in the same establishment.

CRD may take the form of unlawful disparate treatment based upon an employee's sex as discussed above, or it may be manifested as a hostile work environment or **retaliation**. Under a hostile work environment scenario, an employee may be harassed by other employees or the employee's supervisor because of the need to be absent periodically for caregiving purposes. A pregnant female employee, for example, may be subjected to negative remarks about pregnancy in general or about the increased workload that others must bear because of her pregnancy. After pregnancy, the remarks may take the form of negative comments because of the employee's need to be absent periodically for nursing her infant child or for medical appointments for either the child or herself.

A caregiver employee who complains about negative comments, harassment or a hostile working environment because of their caregiving responsibilities may be vulnerable to retaliation by the employer. Such employees often have much difficulty in balancing their work and family responsibilities and an employer may see it as an act of benevolence to change their work schedules, reduce their working hours, or assign them to a less important position. However, the danger to an employer is that any of these actions might be found to be retaliation. Under the Supreme Court's holding in the case of *Burlington Northern & Santa Fe Railway v. White*, (Feb., 2006) the Court stated that "any action which might dissuade a reasonable worker (in this case a working mother) from making or supporting a charge of discrimination" would constitute unlawful retaliation. The court specifically observed that *" A schedule change in an employee's work schedule may make little difference to many workers, but may matter enormously to a young mother with school age children."* Accordingly, the manner in which an employer handles harassment or a hostile work environment can be critically important.

EEO TIP: In determining whether a violation has occurred with respect to Caregiving or Family Responsibilities, the EEOC (depending, of course, upon the case) is likely to analyze the evidence in terms of:

- Whether male as well as female applicants were asked about their marriage status, childcare and/or caregiving responsibilities;
- Whether managers or supervisors or other employees made stereotypical comments or remarks about pregnant workers, working mothers or female caregivers;
- Whether women or other female caregivers were subjected to unfavorable treatment after their pregnancy or caregiving responsibilities were known even though there was no decline in their work performance;
- Whether male workers with caregiving responsibilities were given more favorable treatment than similarly situated females;
- Whether the employer's harassment policies provided a means for adequate relief to employees with caregiving responsibilities in the face of a hostile working environment; and
- Whether the employer took any action that would constitute unlawful retaliation in response to a caregiver's complaints of disparate treatment.

As can be seen from the very limited discussion above, decisions concerning potential Caregiving Responsibility Discrimination (CRD) will require careful consideration by employers. The line between actions which can be justified by business necessity and those which are based on assumptions and stereotypes is often blurred in the decision making process. If you have any questions or would like legal assistance in determining whether your firm is vulnerable to a charge of Caregiving Responsibility Discrimination, please call me at (205) 323-9267.

OSHA TIP: OSHA INSPECTION PLAN

This article was prepared by John E. Hall, OSHA Consultant for the law firm of Lehr Middlebrooks & Vreeland, P.C. Prior to working with the firm, Mr. Hall was the Area Director, Occupational Safety and Health Administration and worked for 29 years with the Occupational Safety and Health Administration in training and compliance programs, investigations, enforcement actions and setting the agency's priorities. Mr. Hall can be reached at (205) 226-7129.

OSHA recently announced its 2007 Targeted Inspection Plan. This will be the primary means of determining which non-construction workplaces with 40 or more employees will be selected for inspection in the coming months. The agency is continuing the "site-specific targeting" approach employed for the past several years. The plan will focus on approximately 4,150 high-hazard sites in its primary list for unannounced, comprehensive inspections. That number is down from the 4,250 sites projected for last year.

States operating their own OSHA programs may adopt this scheduling system but aren't required to do so. They are, however, required to adopt an acceptable core inspection plan.

This year's program (SST-07) stems from OSHA's Data Initiative for 2006, which

surveyed approximately 80,000 employers to obtain their injury and illness numbers for calendar year 2005. The program will initially cover worksites on the primary list that reported **11 or more injuries or illnesses resulting in days away from work, restricted work activity, or job transfer for every 100 full-time employees (known as the "DART" rate).**

The primary list will also include sites based on a **Days Away from Work Injury Illness (DAFWII) rate of 9.0** or higher. Employers not on the primary list who reported DART rates of between 7.0 and 11.0, or DAFWII rates of between 4.0 and 9.0 will be placed on a secondary list for possible inspection. The national incident DART rate in 2005 for private industry was 2.4, while the national incident DAFWII rate was 1.4.

OSHA will inspect nursing homes and personal care facilities, but only the highest 50 percent of these establishments will be included on the primary list for inspections. These inspections will focus primarily on ergonomic hazards related to resident handling; exposure to blood and other potentially infectious materials; exposure to tuberculosis; and slips, trips and falls.
The agency will also randomly select and inspect approximately 100 workplaces (with 100 or more employees) nationwide that reported low injury and illness rates for the purpose of assessing the actual degree of compliance with OSHA requirements. This number is reduced from about 175 such inspections projected last year. These establishments are selected from those industries with DART and DAFWII rates that are higher than the national rate.

Finally, OSHA will include on the primary list some establishments that did not respond to the 2006 data survey.

The effective date of the 2007 Inspection Plan was May 14th and it will continue for one year unless replaced earlier.

Inspections conducted under this plan are generally to be comprehensive **safety** inspections. They may, however, be expanded to include health issues by referrals from the safety inspection or by order of the Area Director.

It should be noted that the above Targeted Inspection Plan is not the sole method employed by OSHA for choosing workplaces for planned or programmed inspections. In addition, OSHA implements both national and local "emphasis" programs to target high-risk hazards and industries. The agency currently has five national emphasis programs (NEPs) which focus on amputations, lead, silica, shipbuilding and trenching/excavating. There are also currently about 140 local emphasis programs. You may identify these for your area by visiting OSHA's website at www.osha.gov.

CURRENT WAGE AND HOUR HIGHLIGHTS – THE REVISED MOTOR CARRIER EXEMPTION

This article was prepared by Lyndel L. Erwin, Wage and Hour Consultant for the law firm of Lehr Middlebrooks & Vreeland, P.C. Mr. Erwin can be reached at (205) 323- 9272. Prior to working with Lehr Middlebrooks & Vreeland, P.C., Mr. Erwin was the Area Director for Alabama and Mississippi for the U. S. Department of Labor, Wage and Hour Division, and worked for 36 years with the Wage and Hour Division on enforcement issues concerning the Fair Labor Standards Act, Service Contract Act, Davis Bacon Act, Family and Medical Leave Act and Walsh-Healey Act.

Previously the overtime provisions of the Fair Labor Standards Act have not applied with respect to any employee to whom the Secretary of Transportation had power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of The Motor Carrier Act of 1935. This exemption was interpreted as applying to any **driver, driver's helper, loader or mechanic** employed by a carrier and whose duties affected the safety of

operation of motor vehicles in the transportation on public highways of passengers or property in interstate or foreign commerce. The Department of Transportation (DOT) had taken the position that once an employee performed any of the named duties that employee came under DOT jurisdiction for the following four months. Thus, many delivery employees were exempt from the overtime provisions of the FLSA.

However, an August 2005 law relating to highway safety and appropriations for the Department of Transportation altered the scope of the "motor carrier exemption" by eliminating the exemption for operators of small vehicles. The Department of Labor issued guidance regarding the change last month. I understand they have begun enforcing the new position as of May 25, 2007 and will notify employees of their private rights to bring a suit under the FLSA for the period since August 2005. There has already been at least one U. S. District Court that upheld the changes in the exemption.

The limitation in the definition of motor carrier arises from Congressional enactment, on August 10, 2005, of the "Motor Carrier Safety Reauthorization Act of 2005", Title IV of the "Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" ("SAFETEA-LU"). This statute addressed numerous issues relating to highway transportation, including federal appropriations. **Within this 750 page legislation is a section amending the definition of a motor private carrier to include only a "commercial motor vehicle."** As the definition of a commercial motor vehicle excludes vehicles having a gross vehicle weight or rating of 10,000 pounds or less, the exemption will no longer apply to employees operating such vehicles, unless they fall within one of the other definitions of a commercial motor vehicle relating to transporting passengers or hazardous materials.

The new definition of a *commercial motor vehicle* is as follows:

A self propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle

a) Has a gross vehicle weight rating or a gross vehicle weight of at least 10,001lbs, whichever is greater;

b) Is designed or used to transport more than eight passengers (including the driver) for compensation;

c) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

d) Is used for transporting material found by the Secretary of Transportation to be hazardous under Section 5103 of this Title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under Section 5103.

This change in the definition of a motor private carrier significantly reduces the number of employees that fall within this overtime exemption as persons driving vehicles with a GVW of 10,000 pounds or less, driving a vehicle designed to transport no more than 8 paying passengers or a vehicle designed to transport 15 or less non paying passengers will no longer qualify for the exemption. This change can affect such persons as couriers who pick-up and deliver small packages, etc.

As DOL has announced a change in its enforcement position, I would encourage you to review your pay policies with respect to your drivers to ensure they meet the requirements for the overtime exemption. If they do not meet the criteria that are enumerated above then you should either limit these employee's hours to 40 in a workweek or pay them overtime when they

work more than 40 hours in a workweek. If I can be of assistance please contact me.

LMV UPCOMING EVENTS

July 24, 2007
Webinar
Wage and Hour
The recent $38 million damages award against Family Dollar stores for inappropriately classifying store managers as exempt from overtime served as a wake up call to employers to self-audit for wage and hour compliance. This briefing will address the most likely problem areas for employer compliance. Covered topics will include: Executive, Administrative, Professional, Computer and Sales Employee Exemptions and the key risk areas for employers, permissible deductions from pay, when is travel time owed, and how do you calculate incentive pay and when is it included in overtime calculations.
Click here to register for this session.

August 21, 2007
Webinar
Diversity and Multi-Culturalism
A tool for progress and profitability in an increasingly diverse business world. This Webinar presents diversity and multiculturalism as part of a business' strategic planning to enhance organizational growth, provide leadership stability and maximize profits.
Click here to register for this session.

August 23, 2007 (Bruno Conference Center, Birmingham, AL)
Banking, Insurance & Finance Industry Update
TBA

For more information about Lehr Middlebrooks & Vreeland, P.C. upcoming events, please visit our website at www.lehrmiddlebrooks.com or contact Maria Derzis at (205) 323-9263 or mderzis@lehrmiddlebrooks.com.

DID YOU KNOW…

…that legislation was introduced on June 12 to permit employers to refuse to hire applicants who are "salts"? Known as the "The Truth In Employment Act of 2007," the bill would amend the National Labor Relations Act to provide that "nothing in this Act shall be construed as requiring an employer to employ any person who seeks or has sought employment with the employer in furtherance of other employment or agency status." The bill was referred to the Committee on Education and Labor. The Senate version was referred to the Committee on Health, Education, Labor and Pensions. Sponsors of the bill state that such legislation "ensures that no company can be forced to hire an individual whose purpose is to cause economic harm to that company." The term "salt" applies to an individual who is a union organizer and seeks employment for the purpose of unionizing that workforce.

…that speaking of retaliation, a federal judge upheld a $105,000 award against the Teamsters for retaliation against a former local union president? *Serrafin v. International Brotherhood of Teamsters Local 722* (N.D. Ill., June 5, 2007). According to the court, Serrafin supported former International Teamster President Ron Carey, who lost in his bid to oust James P. Hoffa. Serrafin was also a member of a group known as Teamsters for a Democratic Union. That group's focus is to reform the International Union. Serrafin sued, alleging that the union disciplined and fined him $9,082.00 in retaliation for exercising free speech rights regarding his concerns about the union

…that the EEOC may issue a right to sue letter prior to holding the charge for 180 days? *Fall v. M&P Corporation* (ED. Mich., May 25, 2007). The EEOC's regulations provide that it has an option to issue a right to sue letter within 180 days after a charge is filed if it is not likely to conclude its investigation within that time period. In this case, Falls' attorney requested a

right to sue notice and received it well before the expiration of the 180-day period. The employer argued that the case should be dismissed because of Falls'failure to complete the administrative process. In upholding the Commission's action, the court stated that "because it is not prohibited by statute, it is reasonable for the EEOC to dispense with waiting for 180 days to pass when it is probable upon review that the EEOC will not complete its investigation in 180 days. To require otherwise leads to unnecessary delay." The aggravation this causes employers is that employers submit a position statement supporting reasons for the action taken, yet the EEOC terminates its investigation without reaching a decision. The Charging Party's attorney then has the opportunity to get a complete copy of the employer's position statement and exhibits, without having to submit a response or provide witnesses. One approach employers should consider is to accelerate the time for submitting a position statement to the EEOC; the earlier it gets to the Commission, the greater the likelihood that the Commission will conclude its investigation within 180 days and therefore not issue a right to sue notice before then.

…that staffing employers provided 2.8 million employees per day during the first quarter of 2007? This information was released by the American Staffing Association on May 29, 2007. The number is slightly less than during the same period last year. Sales for staffing services during the first quarter of 2007 were $17.4 billion, a slight decline from the same time last year. The American Staffing Association's survey covered 10,000 staffing organizations throughout the United States.

…that a California court reduced the amount of damages against the Carpenters due to defamation? *Hughes v. Northern California Carpenters Regional Council* (Cal. Ct. App, May 17, 2007). The union had distributed flyers about a company's manager, alleging that he was exposing himself sexually in the community. The jury awarded $1.25 million in damages, which the appeals court concluded was excessive. It reduced the punitive damages provisions from $1 million to $100,000.

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