"Your Workplace Is Our Work"®

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Inside this Issue

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

Employment Law Bulletin

To Our Clients And Friends:

We are proud to report that the 2006 edition of Chambers USA's Guide to America's Business Lawyers has accorded LMV the highest rating for Labor and Employment Law. According to the Chambers report, LMV is "one of the finest labor crews in the southern USA." Chambers adds that "With a reputation that extends beyond the state, the group has a nationwide presence and an impressive client list." Chambers also recognized for individual accolades Richard I. Lehr, David J. Middlebrooks and Albert L. Vreeland. The full Chambers report is available on our website at www.lehrmiddlebrooks.com.

We know that we are "terminable at will" by our clients. We enjoy what we do and strive daily to exceed expectations. We greatly appreciate the recognition accorded to us by Chambers, which is one of the world's leading attorney-review publications.

SUPREME COURT EXPANDS RETALIATION THEORIES

On Thursday, June 22, 2006, a unanimous United States Supreme Court broadened the rights of employees to bring retaliation claims with its decision in the case of *Burlington Northern & Santa Fe Railway Co. v. White*. The employee, Sheila White, was the only woman who worked in the right-of-way maintenance department of the company's Tennessee railroad yards. She complained to her employer that she was subjected to inappropriate remarks based upon gender. She was then re-assigned to work as a laborer, which required less skill than her previous job as a forklift operator. Subsequently, she was suspended for insubordination. She claimed that she

was retaliated against for speaking up about the gender-based behavior toward her. Prior to this case, the standard in some circuit courts for proving "retaliation" under Title VII required the individual to show he or she had been the recipient of an "ultimate" employment decision, such as a termination or demotion. The Sixth Circuit Court of Appeals agreed with White that she had been retaliated against.

According to the U.S. Supreme Court, **"Title VII depends for its enforcement upon the cooperation of employees who are willing to file complaints and act as witnesses. Interpreting the anti-retaliation provision to provide broad protection from retaliation helps assure the cooperation upon which accomplishment of the act's primary objective depends."** The Supreme Court's decision, written by Justice Breyer, added that retaliation does not include "petty slights, minor annoyances, and simple lack of good manners." **The Court added that retaliation claims need to be examined in their context. It gave as an example a change of work schedule, which may not be retaliatory in some cases, but may be to a young mother with school age children.** The Supreme Court gave as another example a failure to invite an employee to lunch. In one context, that is a minor slight, but if the lunches are in conjunction with training, then that could have the effect of chilling or deterring employees from bringing complaints and would be actionable.

Approximately 30% of employment discrimination charges include allegations of retaliation. Retaliation claims extend beyond Title VII, and include retaliatory discharge for filing a workers' compensation claim and retaliation for exercising rights under the FMLA, Fair Labor Standards Act, the Occupational Safety and Health Act, and other federal and state statutes. Employers should include "no retaliation" provisions in their workplace harassment and discrimination policies, with the same reporting and investigation processes available for retaliation allegations as for claims of discrimination and harassment.

JURY DELIVERS $61 MILLION DAMAGES AWARD AGAINST FEDERAL EXPRESS

In one of the highest awards we have ever seen for workplace discrimination and harassment, on June 2nd, a California jury awarded $61 million to two Lebanese-American FedEx drivers. *Issa v. Roadway Package Systems*, (Cal. Super Ct.) The award also included damages against their immediate manager. The jury's award was more than double than what their attorney asked the jury to award.

There were several factual and strategic issues that contributed to this incredible award. Factually, the two individuals were repeatedly harassed with comments such as "camel jockeys," and the main perpetrator was their manager. They reported the behavior, but no disciplinary action was taken against the manager. Strategically, at trial the same law firm represented FedEx and the manager, until the jury concluded that FedEx was liable for the manager's actions. At that point, FedEx changed law firms and the manager hired a different attorney; both actions were to no avail. According to the plaintiffs' attorney, "Even as late as the punitive damages phase, [the manager] was still employed by FedEx, and, up to that point, not disciplined for his actions." Representatives from FedEx testified that the manager had been removed from his management position, but that he was still working there, and that no decision had been made to fire him." **With the same lawyers representing FedEx and the manager at the liability phase, the message to the jury was that FedEx supported the manager's behavior.**

There is an interesting twist to this case that should alert employers regarding the use of independent contractors. In 2000, the California Fair Employment and Housing Act was amended to cover and protect independent contractors from unlawful harassment by their contracting employer, in this case FedEx. The reasoning behind California's decision to extend

this protection to independent contractors was the increased employer classification of employees as independent contractors to avoid benefits and tax obligations. **The "lessons learned" from this case are several for employers to consider:**

- Employers do not get to pick and choose which managers or employees to discipline for violating discrimination or harassment policies. **In this case, the individuals reported the behavior – thus, the policy worked up that point. However, once the behavior is reported, the employer is required to thoroughly investigate and take prompt, remedial action.**

- **The higher the employee's level of responsibility, the greater the accountability** for employee's behavior that conflicts with harassment or discrimination principles.

- **Employers should review with independent contractors or temporary employees organization policies concerning workplace harassment and discrimination, including how violations should be reported** (to their primary employer but also to representatives of the contracting employer). Some employers erroneously believe that reviewing company policies with independent contractors or temporary employees can be used as evidence that they are the organization's employees. That is untrue. The key question in determinating whether an individual is an employee (in the independent contractor situation) or co-employee (in a temporary employee situation) is the employer's right to direct and control the actions of the individual.

DOL ISSUES SALARY DEDUCTION GUIDANCE

A common pay system that many employers use is "fixed salary for fluctuating workweek," which for reasons we have never been able to figure out, is sometimes referred to as "Chinese overtime." Under this pay system, an employee receives the same salary each workweek, regardless of the number of hours the employee works up to 40. If the employee works 15 minutes in the week, the employee receives the entire salary. However, if the employee works over 40 hours in the week, the employer gets to average the salary over all hours worked and owes "half-time" instead of time and a half overtime. This is a pay system that applies to non-exempt employees, only.

A question arises frequently under this pay system regarding if and when an employer may make deductions from an employee's salary. According to a Wage and Hour opinion letter issued on May 25, 2006, an employer may not deduct full day absences from an employee under this pay system if it is due to sickness and the employee has exhausted sick leave. **DOL stated that "It is the long standing position of the Wage and Hour Division that an employer utilizing the fluctuating workweek method of payment may not make deductions from an employee's salary for absences occurring by the employee. However, an employer may take a disciplinary deduction from an employee's salary for willful absences or tardiness or for infractions of major work rules, provided that the deductions do not cut into the required minimum wage or overtime compensation."** DOL also stated that if an employer improperly made deductions "frequently or constantly," not only would the employer owe the employee for those improper deductions, but the employer would be at risk of DOL nullifying the employer's use of the pay system and require back pay based upon time and a half overtime calculations.

PROTECTED, CONCERTED ACTIVITY IN THE NON-UNION SETTING

An employee organizing strike among others is usually viewed as activity limited to a setting at a unionized location and in the context of collective bargaining negotiations. However, in the case of *Sunrise Senior Living, Inc. v. NLRB* (4th Cir. May 31, 2006), the court concluded that in a non-union setting, an employee's effort to organize a strike is considered protected, concerted activity under the NLRA. The employer in this case was required to reinstate the employee with back pay.

The case involved an aide who worked at one of the company's 370 nursing home facilities. The aides' job responsibilities were to assist residents with using the toilet, bathing, and dressing. The executive director also told one of the aides that she would have to assist another resident with changing a resident's colostomy bag. That aide organized a petition, signed by 23 others, protesting the manner in which the facility's managers and residents' families talked to them. An aide who worked as a lead person suggested a strike. The employer terminated the individual organizing the strike activity.

According to the court, in supporting the decision to order reinstatement and back pay for the terminated aide, **"These activities are ordinarily [protected] concerted activities … because they constitute exercises of statutory rights such as 'self organization' and 'mutual protection'. In contrast, an employee's circulation of a petition to remove a supervisor for personal reasons is not considered activity protected by the statute."**

If an employee's actions are in concert with other employees and concern wages, hours and conditions of employment, they are protected in the private sector workplace regardless of whether it is unionized or union free. Where an employee publicly raises issues of personal concern to the employee and not on behalf of other employees, then the conduct is unprotected activity. Furthermore, if the employee raises a protective concern in an inappropriate manner, such as referring to managers as "idiots" or "morons," then the employee's activity will no longer be considered protected.

EEO TIP: WRAP-UP COMMENTS ON DIVERSITY AND AN UPDATE ON PUBLIC SECTOR CASE DEVELOPMENTS

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 the State of Alabama and Mississippi. Mr. Rose can be reached at (205) 323-9267.

Some Final Comments On Diversity

As a threshold matter, given all of the current disputes about border security and restrictive immigration laws, it should be clearly understood that the suggestions made in this column over the last two months as to a "modern diversity program" are totally unrelated to any illegal immigration issues. Our suggestions assume that the workers or employees in question will be either U.S. citizens or possibly fully "documented" workers. We trust that there has been no confusion on this point.

In the April and May issues of the *Employment Law Bulletin* we outlined the components of an "Enlightened Concept of Diversity" and what it means to "Value Diversity." To wrap up this topic we suggest some basic steps that should be taken to actually implement a modern diversity program:

- First, there must be a strong, unequivocal commitment by top management, from the Board of Directors on down, to the goals of diversity. The Board must be sold not only on the need for diversity, but also the wisdom of having a diversity

program from the standpoint of corporate goals and objectives. In turn, the Chief Executive Officer and other members of top management, middle management and down through the ranks must also be committed to the same objectives.

- Secondly, there must be an identification of the company's present consumer base and a projection of its future consumer base if its diversity program is fully implemented. This becomes the basis for a strategic plan which links diversity to operational goals and objectives.

- Thirdly, there must be an honest, forthright assessment of corporate needs with respect to diversity. That is, an identification at all levels of deficiencies in the existing staff based upon the company's strategic plans for diversity. The assessment should cover deficiencies in management, marketing, production, sales, and support areas where applicable. However, the emphasis here should not be on mere numbers but on quality people in terms of ability and/or qualifications regardless of race, sex or ethnicity to do the job effectively.

- Fourth, the assessment should determine whether the deficiencies can be corrected by transfers or promotions from within or whether recruitment is necessary from the outside. If the deficiencies can be corrected from within, a mentoring program should be implemented to groom the most promising candidates regardless of race, sex, or ethnicity for the positions in question. In other words the company should not be looking to see who is presently doing the job, but who can do it best. If outside recruitment is necessary, the same criteria in terms of qualifications of course should be used.

- Finally, the diversity plan should be implemented based upon the company's needs and findings as indicated in its various objective assessments. The plan should not be a static achievement. It should be a flexible, ongoing program which keeps pace with the changing needs of the business or organization.

The foregoing only provides some of the important elementary considerations upon which to build a modern diversity plan which truly "values" diversity. However, the details of implementing such a plan, for even a small business entity, requires professional, legal assistance to avoid numerous legal pitfalls in selecting the right employee for the job in question, such as selection procedures which appear to favor one sex or ethnic group over another, or in which a mentoring plan tends to favor younger rather than older employees to maintain business stability in the future. We can assist you in navigating these perilous, legal waters and in planning and implementing a diversity plan which meets your firm's specific needs. Please call us at (205) 323-9267 if you would like to learn more about our legal services in this or other areas of employment law.

Case Law Update For Public Sector Employers: Recent Supreme Court Holding.

On January 26th of this year, LMV held a seminar on *Disciplining Public Sector Employees in Alabama.* One of the topics specifically addressed in that seminar was "**Free Speech Considerations In Public Employment**." In substance under then-existing case law (*Connick v. Meyers,* S. Ct. 1983) it had generally been held that public employers could not abridge the right of public employees to engage in free speech under the First Amendment if the speech addressed or involved "a matter of public concern." In this connection it had also been held that "inappropriate" or even "controversial" speech was also protected so long as at the same time, it addressed a matter of public concern (*Rankin v. McPherson,* S.Ct. 1987).

However, on May 30, 2006 in a 5 to 4 decision in the case of *Garcetti v. Ceballos*, the Supreme Court retreated from its previous position and

ruled that public employees are not protected by the First Amendment from disciplinary or corrective action by their employers when they make "inappropriate" statements as part of their official duties. In this case, the plaintiff was a Deputy District Attorney for the Los Angeles County District Attorney's Office who testified on behalf of the defense in a case apparently because he could not persuade his superiors to vacate a search warrant which he believed was based upon certain critical inaccuracies. Following his testimony at a hearing on the search warrant, the warrant was upheld by the trial court. Thereafter, the Plaintiff alleged that he was retaliated against by being reassigned, transferred to another courthouse, and denied a promotion. In holding for the Los Angeles County District Attorney's Office, the Supreme Court reasoned that while the First Amendment protects the right of a public employee to speak as a citizen on matters of public concern, the expressions of the Plaintiff in this case were not made as a citizen, but rather were made in his official capacity as a member of the staff of the District Attorney's Office. Accordingly, his speech was not protected from corrective action by his employer. Thus, for public employers the Supreme Court's holding in this case apparently narrows the scope and methodology that can by used by public employees in their official capacities to make complaints about matters of public concern.

LMV includes the representation of public employers in its employment law practice. Please call our office at (205) 323-9267 if you have any questions.

OSHA TIP: 2006 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.

The Occupational Safety and Health Administration announced its 2006 version of the Site-Specific Targeting Plan in a May 31st news release. Except for construction inspections which are not conducted pursuant to the SST inspection plan, it describes the manner in which OSHA selects sites to be targeted for discretionary inspections. This plan, employed since 1999, uses the actual injury/illness experience reported by employers to allow OSHA to direct inspection resources to worksites indicating the most problems. The current plan is based upon OSHA's Data Initiative for 2005, which surveyed approximately 80,000 employers to attain their injury and illness numbers for calendar year 2004. This inspection plan must be followed in all Federal OSHA jurisdictions. Those states operating their own OSHA programs are not required to adopt this plan. They are, however, required to adopt an acceptable inspection scheduling system (a core inspection plan).

This year's targeted inspection program will cover about 4250 individual worksites on the primary list. This will include those reporting 12 or more injuries or illnesses that involved days away from work, restricted work activity, or job transfer for every 100 full-time workers. This is known as the DART rate. The primary list will also include sites based upon a "Days Away from Work Injury Illness" (DAFWII) rate of 9 or higher. This means they had 9 or more cases recorded that involved days away from work per 100 full-time employees. Employers not on the primary list who reported DART rates of between 7.0 and 12.0, or DAFWII rates of between 5.0 and 9.0, will be placed on a secondary list for possible inspection. The national incident DART rate in 2004 for private industry was 2.5, while the national incident DAFWII rate was 1.4.

OSHA will again inspect nursing homes and personal care facilities, but only those establishments with the top 50% of these ratings will be included on the primary inspection list. These inspections will focus

mainly on ergonomic hazards related to resident handling; exposure to blood and other potentially infectious materials; exposure to tuberculosis; and slips, trips, and falls. Federal OSHA will also randomly select for inspection about 175 workplaces that reported low injury and illness rates for the purpose of reviewing the actual degree of compliance with OSHA requirements. These sites are selected from industries with above the national incident DART and DAFWII rates.

Finally, the agency will include on the primary list some establishments that did not respond to the 2005 data survey.

Inspections conducted under this plan will be comprehensive safety inspections except for those of nursing homes and personal care facilities which will be mainly focused as discussed earlier. Health inspections which are generally conducted by industrial hygienists will be limited to (1) focused inspections of the referenced nursing/personal care sites, (2) referrals from compliance officers who observe potential health hazards and (3) inspections ordered by the Area Director based on prior experience or current knowledge concerning a particular establishment or the industry of which it is a part.

Complete details of the inspection plan may be found in OSHA Directive Number 06-01 (CPL 02) found on the OSHA website www.osha.gov.

FMLA DEVELOPMENTS

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.

Normally, I write about FLSA issues, but this month I have decided to give you an update on several recent Family and Medical Leave Act (FMLA) issues. In 2002, the U. S. Supreme Court invalidated a portion of the FMLA regulations relating to how much leave an employee is entitled to take. Since that time DOL has been promising to revise the regulations to make them reflect the Court's decision. Now, four years after the fact, DOL has published a notice that they will issue a proposed rule dealing with this decision as well as other judicial decisions in June 2006.

1. The Sixth Circuit ruled in favor of the employer. The employee had informed the employer that she had been diagnosed as having "anxiety and stress at work." After a dispute over her medical certification, she was terminated for failing to provide proper medical certification. The employee then went to a psychiatrist who diagnosed her with "major depression" and said that she could not return to work for about 12 weeks. The employee began seeing another psychiatrist who stated she could not return to work for 15 months. The court found that, since she was not able to return to work at the conclusion of 12 weeks, she had no FMLA claim.

2. A Texas employee claimed that he had a medical condition that "sent him to the bathroom on an urgent, unpredictable schedule" and therefore was protected by the FMLA. The Fifth Circuit ruled that "although he made a novel claim that he needed FMLA leave to cover his bathroom breaks, he did not meet the serious health condition requirements of the Act."

3. A Whirlpool Corp. employee who feigned a knee injury from yard work in order to take a vacation to Las Vegas was not entitled to FMLA leave. The employee had requested vacation on certain dates to coincide with the vacation dates of his fiancée but was denied those dates. In

2002, he gave his supervisor a doctor's note claiming a knee injury from yard work and was granted two weeks of disability leave to run concurrently with FMLA leave. The following year (2003), the employee requested vacation during the same period as his fiancée but again did not receive approval for the leave. The employee again presented a doctor's note claiming the same injury. Although the company approved his disability leave, his supervisor noticed that his disability dates were the same as his rejected vacation dates and the similarities to his 2002 requests. The company then hired a private investigator that video taped the employee working in his yard for 48 minutes one of the days while on disability leave. When the employee returned from leave, he was terminated and admitted vacationing in Las Vegas while on the disability leave. The court held that the employer could terminate the employee for misusing his disability leave without violating the FMLA

4. In another case, the Fifth Circuit ruled that an employee was entitled to FMLA leave even though the employee worked a location where the employer did not have 50 employees with 75 miles of the location. An employee of ITC Deltacom in Baton Rouge, LA requested FMLA leave to undergo surgery for a serious medical condition. The company granted the employee's request and informed her she had the right to take up to 12 weeks of leave in a 12-month period. While the employee was on leave, the firm discovered that the employee was ineligible for the leave, as they did not have 50 employees within 75 miles of her worksite. The court stated that the employer may not assert a non-coverage defense as the employee had relied upon the company's approval of the leave.

There has also been a significant FLSA case in Alabama recently. DOL announced that Compass Bank, headquartered in Birmingham, has agreed to pay over $1 million in back wages to some 3000 employees. An investigation by DOL found the bank did not pay these employees for certain hours spent in balancing accounts, preparing required paperwork, attending meetings and calling customers. The extra hours resulted in the employees working more than 40 hours in a workweek.

Employers who have paid back wages under the supervision of DOL should be aware that Wage Hour has recently released a list of some 7600 names of employees that were found to be due wages that have not been located. The Interfaith Justice Fund of Chicago had sued DOL over DOL's refusal to release the list under the Freedom of Information Act. As a result, DOL agreed to release the list and also announced that it has created a searchable database where anyone can check to see if they are due back wages. Web address: cslxwep1.dol-esa.gov/emploc

Employers need to be very diligent in their efforts to comply with both the FMLA and FLSA. If I can be of assistance please do not hesitate to call me.

"RUBBER STAMP" DECISION TAKES A BAD BOUNCE

The case of the *EEOC v. BCI Coca-Cola Bottling Company* (10th Cir. June 7, 2006) eliminated an employer's defense that a decision-maker could not have discriminated based upon race because he did not know the race of the individual whose termination he approved. The court reversed a district court decision holding that if the decision-maker was unaware of the race of the plaintiff, the company could not be held responsible for race discrimination.

In reversing the district court, **the court of appeals supported the "rubber stamp" theory of liability. Under that theory, "a plaintiff must establish more than mere "influence" or "input" in the decision-making process [by the biased subordinate]. Rather, the issue is whether the biased subordinate's discriminatory reports, recommendation, or other actions caused the adverse employment action.**

The plaintiff worked at the company's Albuquerque location where only 2% of 200 employees were Black; 60% were Hispanic. The plaintiff's supervisors were Hispanic and White. The HR representative who was required to approve termination decisions was located 450 miles away. The employee was terminated for insubordination when he did not come to work as requested on weekends, but it turned out that he called in sick and was taken to an urgent care medical center.

Those who recommended the termination, according to the court, knew not only that the employee was sick and not insubordinate, but also his race, and the decision-maker "rubber stamped" their recommendation for termination. In such an instance, ruled the court, **"Many companies separate the decision making function from the investigation and reporting function, and racial bias can taint any of those functions. [B]cause a plaintiff must demonstrate that the actions of the biased subordinate caused the employment action, an employer can avoid liability by conducting an independent investigation of the allegations against the employee. In that event, the employer has taken care not to rely exclusively on the say-so of the biased subordinate, and the causal link is defeated. Indeed … simply asking an employee for his version of events may defeat the inference that an employment decision was racially discriminatory … employers therefore have a powerful incentive to hear both sides of the story before taking an adverse employment action toward a member of a protected class."** The court provides appropriate advice to employers – the ultimate decision-maker in a termination decision should be sure that he or she has reasonably investigated a recommendation to terminate, so that not only is the outcome a "fair" decision, but also one that could avoid a claim of a "rubber stamp" process.

DID YOU KNOW…

…that the Department of Homeland Security will soon issue rules regarding "no match" social security letters? According to Homeland Security, the proposed rule will provide that if the employee cannot verify work authorization through either some other documentation or a corrected social security number, and the employer does not terminate the employee, "DHS may find that the employer had constructive knowledge that the employee was an unauthorized alien and therefore, by continuing to employee the alien, violated [immigration statutes]." According to DHS, an employer would have up to 90 days to verify an employee's status once the employer receives the "no match" letter.

…that on May 31 the National Labor Relations Board vacated decisions by an administrative law judge because the judge's opinions were verbatim language from briefs? The decision involved administrative law judge Howard Edelman in seven different cases. According to the board, "The impression given is that Judge Edelman simply adopted by rote, the views of the General Counsel and failed to conduct an independent analysis of the cases' underlying facts and legal issues. In order to dispel this impression of partiality, we will remand the cases to the chief ALJ for assignment to a different ALJ."

…that according to the Bureau of National Affairs, first year wage increases thus far in 2006 increased slightly from 2005? The average increase for 2006 is 3.1% compared to 2.9% a year ago. Manufacturing agreements

resulted in an increase of 2.1%, a slight decline from 2.2% in 2005, non-manufacturing (excluding construction) averaged a 3.8% increase for 2006, compared to 3.1 percent for 2005. When adding lump sum payments into first year increases, the average for the year-to-date in 2006 was 3.4%, the same as in 2005.

…that according to the Bureau of Labor Statistics, the "working poor" comprise 5.6% of the US labor force? This is according to a BLS report issued on June 9 for the 2004 calendar year. According to BLS, that is an increase from 5.3% of the labor force in 2003, and the total number of "working poor" is 7.8 million. The "working poor" is defined as those who are age 16 or older who worked for more than half a year and whose income fell below the poverty threshold. The poverty threshold for a family of four for 2004 was $19,300.07. 10.6% of the Black and Hispanic labor force are among the working poor, compared to 4.9% of Whites and 4.4% of Asians. BLS also stated that younger employees are more likely to be among the working poor.

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