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Your Workplace Is Our Work®

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Act Now to Comply with New Mental Health Parity Law

After more than ten years of proposed federal legislation and debate, mental health parity became a reality on October 3, 2008 when President Bush signed the Emergency Economic Stabilization Act of 2008. The mental health parity provision within this legislation received little attention nationally, due to the overwhelming financial issues and election campaign. Known as the Mental Health Parity and Addiction Equity Act of 2008, the provisions of the new law are as follows:

- The law does not require that any specific mental health condition be included as part of an employer's health plan benefit. However, where an employer's plan offers mental health and substance abuse coverage, there must be "parity" with other medical coverage offered.

- The Departments of Health and Human Services, Labor and Treasury are expected to issue regulations pursuant to the new law. However, the "parity" that will be required includes deductibles, out-of-pocket expenses, treatment limitations and co-pays. Parity also means that if out-of-network medical benefits are offered, similar benefits must be available for mental health and substance abuse.

- The law does not supersede any state law requiring parity or where state laws require ordered medical and/or mental health coverage.

- The effective date of the statute is January 1, 2009. However, the effective date of employer compliance is the first plan year that begins one year after the effective date, thus no earlier than January 1, 2010. If an employer violates the law, employees and/or their beneficiaries have the right to bring a civil action. Furthermore, the IRS may impose a $100.00 per day tax for each beneficiary denied parity under the law.

We will continue to update our readers regarding the regulatory developments of this law and what employers need to do to comply.

For further questions, you may contact Matt Stiles at mstiles@lehrmiddlebrooks.com.

In Loco Parentis, Common Law Marriage: No FMLA Limit on "Family Members"?

The dynamics of family life in our country today result in more questions and employer concerns about who is considered a parent, child, or spouse for coverage under the Family and Medical Leave Act. For example, in the case of *Martin v. Brevard County Public Schools* (11th Cir. September 30, 2008), a grandfather was able to pursue his FMLA violation and retaliation claim because he provided facts which may establish that he was "in loco parentis" for the care of his granddaughter.

Martin worked from year to year on a contract basis as a payroll supervisor. In late 2003, Martin's daughter gave birth to a daughter. Martin provided his daughter, a single parent, and granddaughter with financial support, a home, and paid for their utilities and food. When Martin's daughter was notified that she would be called up for military duty in April 2004, Martin applied for family and medical leave. The employer granted the leave, but only through the termination of Martin's contract, which was May 31, 2004.

Martin took the leave and his daughter was not called to military service. However, Martin's contract was terminated as of June 1, 2004, allegedly due to performance deficiencies. Martin sued for a violation of the FMLA and for retaliation due to his FMLA-related absences. Remember that under the FMLA, a parent has up to twelve months from the birth of a child to take FMLA leave to care for the newborn.

The employer successfully argued to the District Court that although it granted family and medical leave to Martin, Martin was not a "parent" as defined under the FMLA. In reversing the District Court's Summary Judgment for the employer, the Court of Appeals stated that "we cannot say as a matter of law that Martin stood in loco parentis to [his granddaughter]; nor can we say that he did not. Martin has presented sufficient evidence to create a genuine issue of material fact…" for a jury to decide.

Questions of a common law marriage arise when an employee claims that a significant other is his or her common law spouse. It is the employee's burden to prove the existence of a common law marriage; it is a difficult burden. For example, the employee and significant other must hold themselves out to the public as married, intend to become married, and prove the existence of joint accounts and financial obligations. Most states do not recognize common law marriage.

E-mail Does it Again—Age Discrimination Evidence

In another example of an employer with a self-inflicted wound, a court ruled that a 62 year-old employee with 27 years of service may take her age discrimination case to trial primarily due to the trail of evidence through e-mail communications. *Parks v. Lebhar-Fridman, Inc.* (S.D. NY October 2, 2008).

The company publishes several magazines related to the beauty industry. Parks was an editor of one of those magazines, without discipline or counseling regarding her job performance. Parks got older at a time when the company wanted its staff to project youth and beauty to its readership that no doubt desired to achieve the same.

The e-mail trail began with a senior manager's e-mail to HR to "set in motion" the process to terminate the plaintiff. Further e-mail exchanges stated that the plaintiff's termination would be due to "a performance issue" and comments from another that he "sensed" that the plaintiff was not performing an acceptable quality of work. The e-mail trail ultimately led to the desired end: terminating the plaintiff, and stating that her job was eliminated due to a reorganization. The problem with using a reorganization as a basis for a termination is that often the work does not disappear, it is just sent to other people. Such was the situation here, where the plaintiff's job responsibilities were shifted to a 23 year-old employee and then shortly thereafter, to a 33 year-old employee. The e-mail exchanges also suggested that the 23 year-old employee would be an appropriate replacement for Parks, the 62 year-old employee with 27 years of service.

In addition to the e-mail evidence, Parks showed that in the three year period prior to her termination, only women ages 23 through 33 were hired to fill positions similar to hers. In essence, she claims that the employer's plan

was to employ young and attractive women because that was how it wanted to project itself to its readers.

We all understand and appreciate the efficiency and immediacy of e-mail. One virtue of " snail mail" was that it required more time to evaluate, revise and finalize before sending, whereas too many in today's business environment treat e-mail as quick, confidential conversation. If you are the recipient of an e-mail which in your opinion is inconsistent with your organization's policies, be proactive to address the inappropriate communications. Furthermore, be careful with e-mail: it is documentation.

Driving is Important, but Not an ADA Major Life Activity

We reply on driving, such that handing over the car keys in life is a traumatic event. However, even in the state Wyoming, it is not a major life activity under the Americans With Disabilities Act, according to the Court in *Kellogg v. Energy Safety Services, Inc.* (10th Cir. October 15, 2008). Olind was a safety inspection contractor in the oil industry. Kellog's job required that she drive a company vehicle to various oil fields throughout Wyoming, providing consultation services to Olin's clients. After losing consciousness at home, Kellog was diagnosed with epilepsy. Ultimately, she was cleared to return to work, but her physician stated that she was unable to drive due to her condition. The employer stated that she could not return to work until she provided a full release to perform her job, which she never did and, therefore, was terminated.

The trial judge instructed the jury that driving was a major life activity and the jury awarded her approximately $165,000.00 The judge's reasoning was that "that in Wyoming, where public transportation is virtually non-existent, distances between towns is measure by hours of driving, economic conditions often require residents to seek employment outside of their local community, and long winter conditions significantly limit foot or bicycle travel…driving is a major life activity."

In reversing this aspect of the jury's verdict, the Court of Appeals concluded that the lower court gave an erroneous instruction to the jury by concluding that driving was a major life activity. The Court of Appeals pointed to the EEOC's identification of "major life activities", which does not include driving. Even though the EEOC's list is not exhaustive, the Court stated that driving is not as significant as the major life activities on the EEOC's list, including walking, speaking, seeing and caring for one's self; the major life activities defined by the EEOC "are all profoundly more important in and of themselves than is driving."

The Court recognized that not driving may have an impact on a major life activity such as working or caring for one's self. However, "a plaintiff should not be permitted to bypass having to prove substantial limitations in these major life activities by providing only evidence that she cannot drive."

Note the Court's comment that the only evidence that she provided of an impairment of a major life activity was that she could not drive. If her inability to drive were combined with a recognized major life activity, then the employer would be obligated to consider reasonable accommodation. However, the narrowness of the plaintiff's limitation (no driving) did not require the employer to engage in a reasonable accommodation analysis.

Defense Base Act

Employers operating outside of the country under contracts with the United States government should be mindful of the Defense Base Act. Passed in 1941 with significant amendments in 1942 and 1953, the DBA is in effect a workers' compensation statute. The DBA extends the provisions of the Longshore and Harbor Workers' Compensation Act (the "Longshore Act") to include certain civilian employees working outside of the United States in furtherance of American foreign policy. This federal law requires all U.S. government contractors and subcontractors to secure workers' compensation insurance for their employees working outside of the United States.

The number of DBA claims has skyrocketed in recent years, from 430 claims in 2002, to 11,887 claims in 2007. The spike in claims corresponds with the buildup of private contractors in war zones. For example, as of July

2007, the number of civilian employees (both American and foreign) working in Iraq under U.S. contracts exceeded the number of U.S. troops by a count of 180,000 to 160,000. Contrast those figures with the Vietnam War, where civilian contract employees accounted for less than two percent of the forces.

The Department of Labor administers the DBA. Like other workers' compensation acts, the DBA is a balancing act, providing benefits to injured employees without regard to fault, while precluding certain employee claims against employers, such as claims for negligence and wantonness. Courts have held that the DBA is to be "liberally construed" in conformance with its purpose.

In light of the expansion of suits under this Act, let's highlight a couple of important points for the overseas government contractor to consider. First, the DBA's reach extends to foreign employees as well as American employees. That is to say, injured workers—whether American or foreign—may be entitled to workers' compensation benefits under the DBA, if the employer is operating outside of the United States pursuant to a contract with the federal government.

Second, under the judicially created "Zone of Special Danger" doctrine, employers face a broad definition of what constitutes a work-related, compensable injury. Under this doctrine, all that is required for a DBA claim to be found compensable is that the "obligations or conditions of employment create [a] 'zone of special danger' out of which the injury arose." Under this causation standard, compensability has been found in unconventional situations, including the following fact patterns: an employee who drowned while swimming in a forbidden channel while attempting to rescue a stranger; a defense base employee in South Korea who drowned while boating on a lake 30 miles from the job site; an employee on San Salvador Island who was killed in a jeep accident while returning to a base after imbibing at a local bar (even though the jeep was forbidden for personal use); an employee in West Germany who died from asphyxiation as part of autoerotic activity (on the grounds that the activity was due to "attendant loneliness" from separation from his spouse and family); an employee who slipped on ice and injured his leg before he left the U.S. (on the grounds that he was in the process of traveling abroad pursuant to a government contract); and an employee in Egypt who died of heart disease (on the grounds that job-related stress contributed to the progression of the heart disease).

In part due to its interwoven relationship with the Longshore Act and other statutes, the DBA can be a complex field to navigate. You can find more information at the Department of Labor's website at: http://www.dol.gov/esa/owcp/dlhwc/ExplainingDBA.pdf or feel free to contact Don Harrison in our office at (205) 323-9276 or dharrison@lehrmiddlebrooks.com. In next month's edition of the ELB, we will take a look at a related statute, the War Hazards Compensation Act.

EEO Tips: How to Avoid Being Tabbed as a "Joint Employer"

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 states of Alabama and Mississippi. Mr. Rose can be reached at 205.323.9267.

Under current case law a Charging Party may have an employment relationship with more than one employer at the same time. This would be so where the operations of two or more employers become so integrated that they can be considered to be a single employer (or an "Integrated Enterprise") with respect to the Charging Party. An example could be found in the case of *Baker v. Stuart Broadcasting Company, et al*, where the 8th Circuit overruled the District Court's dismissal of a Charging Party's complaint for lack of subject matter jurisdiction and found that the broadcasting companies' management and ownership operations were so closely interrelated that the companies could be consolidated as (Joint) "employers" for jurisdictional purposes under Title VII.

Similarly, in the case of *EEOC and Margaret Hasselman v Sage Realty, Monahan Commercial Cleaners and Monahan Building Maintenance, Inc.* the Court found that although the companies involved were independently owned and operated under a contractual relationship, one of the companies, namely, Sage Realty, exercised almost complete control over the terms and conditions of employment of the employees of the other two entities.

Accordingly the Court found that the companies had been operated as a joint employer.

Recently the EEOC obtained a settlement of $1.65 million dollars by way of four consent decrees against four independent contractors in the case of *EEOC v. Conectiv Energy, et al* (E.D. Pa.; May, 2008). The four contractor firms namely: Conectiv Energy, the general contractor, and Bogan Inc. / Hake Group, A.C. Dellovade Inc., and Steel Suppliers Erectors Inc.; were considered by the EEOC to be a joint employer with respect to the maintenance of a hostile work environment on the "Bethlehem Project." The four black workers, who will share in the settlement, allegedly had been subjected to various types of harassment, including racial slurs and nooses hanging from cross beams. The various consent decrees include a provision that their agreement to thereto is not an admission of any violation of Title VII.

The important point is that in the event that a charge of discrimination is filed under Title VII, the ADA or the ADEA a parent and its subsidiary, a contractor or subcontractor, or even a franchiser could be held to be a "Joint Employer" depending upon the interrelatedness of their actual operations.

In the past the EEOC and the courts have used four general factors (adopted from the NLRB) to measure the degree of interrelatedness that would make two or more entities a joint employer as follows:

1. The degree of interrelatedness with respect to operations. For example, the degree to which two entities share management services such as check writing, related payrolls, personnel policies, business licenses, the services of managers or supervisors, sharing the use of office space or operating the two entities as a single unit.

2. The degree to which the businesses share common management. For example where there is strong evidence that the same persons make day-to-day decisions for both entities, or where the entities have common officers, or boards of directors which establish policy and supervise the operations of both entities.

3. The degree to which there is centralized control over labor or personnel policies and practices. For example where the entities have a centralized source of authority for developing and implementing personnel policies and practices, or where one entity maintains the personnel records, screens, tests and maintains job applications for both entities. Also the degree to which the same person (e.g. a Chief Executive Officer or President) makes the employment decisions for both entities.

4. The degree of common ownership or financial control over the entities in question. For example, where the same person or persons own or control both entities or where the same persons serve as officers or directors in both of the entities. Or where one of the entities owns a majority or all of the shares in the other entity.

EEOC TIP:

None of the four general factors is absolutely compelling in deciding whether two given entities are necessarily a "joint employer." That determination must depend upon the facts in any given case. In some cases separate entities have been found to be a joint employer where some of the factors are not present at all. According to the EEOC's Guidance, the critical factors for its purposes in determining whether two entities should be considered to be a joint employer are:

- Whether there is a close interrelationship of operations
- Whether there is common management; and
- Whether there is centralized control of labor relations.

Thus, it is our suggestion to pay that careful attention to these factors in entering into any contractual relationship with another independent firm or with a subsidiary of your own firm to avoid potential liability as a joint employer.

If you have questions or need legal counsel on this issue please call this office at (205) 323-9267.

OSHA Tips: OSHA and Housekeeping Standards

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.

I once asked an OSHA compliance officer, upon his return from an inspection, how it looked. His reply was, "I'm not sure. It would take a week of cleaning to be able to see problems due to all of the trash." I don't know how this employer fared but suspect that he was rewarded with a multi-item citation. Cluttering a facility with debris and materials is certainly not a recommended tactic to avoid OSHA citations. Poor housekeeping is very likely to be perceived as a symptom of other safety problems. Conversely, a clean, order-looking workplace gives a favorable impression to anyone, including an OSHA compliance officer.

Some might think that housekeeping relates only to aesthetics. On the contrary, data gives strong evidence that eliminating housekeeping hazards can significantly reduce costly injuries.

Falls are one of the major causes of serious injury and death on the job. Causing or contributing to many fall accidents are housekeeping deficiencies. The 2007 Liberty Mutual Workplace Safety Index lists falls on the same level (65% of total fall injuries) as the second leading cause of all workplace injuries in 2005. Further, the National Safety Council estimates that worker's compensation and medical costs associated with employee "slip and fall" accidents is approximately $70 billion per year.

Examples of common causes of injuries attributable to poor housekeeping include: slips on wet or greasy surfaces; striking against projecting material or objects; tripping on loose items on floors or stairways such as cables, hoses, scrap material, etc.; objects falling from overhead; projecting nails and sharp edges.

Earlier this year OSHA issued a citation with a proposed penalty of $5,062,500 following an investigation of a workplace explosion that caused fourteen deaths. One of the alleged violations cited was for a housekeeping deficiency, the failure to control the build-up of combustible dust. While not of this magnitude, it is not uncommon to find OSHA citing housekeeping problems in conjunction with other violations in accident cases involving substantial penalties.

OSHA standards contain a number of references to housekeeping and are found in the General Industry Standards (1910), Construction Standards (1926), and Maritime Standards (1915,1917 and 1918).

The primary housekeeping standard for general industry is as follows:

29CFR1910.22 This section applies to all permanent places of employment, except where domestic, mining, or agricultural work only is performed. Measures for the control of toxic material are considered to be outside the scope of the section.

> (a) Housekeeping. (1) All places of employment, passageways, storerooms, and service rooms shall be kept clean and orderly and in a sanitary condition. (2) The floor of every workroom shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places should be provided where practicable. (3) To facilitate cleaning, every floor, working space, and passageway shall be kept free from protruding nails, splinters, holes, or loose boards.

The frequently cited housekeeping standard for construction activities is found at 29CFR1926.25. This standard calls for removing debris, combustible scrap, etc. from work areas.

Other OSHA rules including various health standards such as those addressing asbestos, lead and inorganic arsenic have requirements for housekeeping actions.

Helpful information may be found on OSHA's website at www.osha.gov under Safety and Health Topics, Walking and Working Surfaces.

Wage and Hour Tips: Current Wage Hour Highlights

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.

Wage Hour litigation under both the Family and Medical Leave Act (FMLA) and the Fair Labor Standards Act (FLSA) continues to be very much on the "front burner" when it comes to employment issues. A recent report shows that almost 7,000 Fair Labor Standards Act cases were filed in federal courts during 2007. Additional cases were also filed in state courts, thus making it imperative that employers continually look at their employment and pay practices to ensure that they are complying with the FLSA. As you know, the FLSA provides that an employee can recover any unpaid wages for the previous two years (three years in the case of willful violations). In addition, the courts may award the employee liquidated damages in an amount equal to the unpaid wages plus the employee's attorney fees. While the initial complaint may be filed by only one employee, many times a court will certify the case as a "collective action" and thereby allowing other similarly situated employees to become a part of the litigation. Listed below are several cases where employers have been found to have violated the FLSA and were required to pay substantial amounts of back wages.

A New York hospital was required by a U. S. Circuit Court of Appeals to pay overtime to a "contract worker" who was assigned to the hospital by three different temp agencies. The employee worked through the various agencies that gave her assignments to the hospital. The employee never worked more than 40 hours in a workweek for any individual agency but in many weeks her total time worked at hospital exceeded 40 hours. The court found that she was jointly employed by the temp agencies and the hospital and since her total hours exceeded 40 in the workweek she was entitled to overtime compensation. The court also awarded the employee the employee liquidated damages and attorney fees.

Another Circuit Court of Appeals found that an Assistant Manager of a Family Dollar store had not been paid correctly because the employer has altered the time records submitted by the employees in the store. For example, the altered company records showed the employee clocking out before the store closed even though she was required to perform certain duties that took an additional one-half hour after the store closed.

A California firm recently paid $7.7 million to settle overtime claims brought by technical and security workers that had been misclassified as exempt employees. The suit was originally brought by seven employees that were found by the court to be due $112,000. However, the final resolution required the employer to pay back wages to over 200 employees plus the employer paid almost $2 million in attorney fees to those representing the employees.

A Minnesota based distributor of industrial and construction supplies has agreed to pay $10 million in back wages to assistant managers in its stores located in three states. The firm had considered the assistant managers to be exempt from the overtime requirements of the FLSA. The misapplication of exemptions is an area that causes many employers to violate the Act.

A New York City based grocery chain has been found to have improperly paid it co-managers and department managers. The court stated that the firm had "clearly sought to treat workers as 'hourly' for some purposes (i.e. docking them for hours not worked during a workweek) but 'salaried" for other purposes (i.e. not paying them overtime for hours over worked in excess of the 40 hour workweek)." The claims amount to an estimated $25 million. Both managers and central office employees admitted to eliminating overtime by editing the time records.

Not all cases that are brought end up in a favorable verdict to the employees, as evidenced by a recent case

brought against Sara Lee Corporation at two of its Bryan Foods pork processing plants in Mississippi. The employees had filed suit alleging they should be paid for the time spent "donning and doffing" protective gear, including such items as hard hats, gloves, white coats and safety boots. The court, following the position set forth in a 2007 Wage and Hour opinion letter, found that these items were clothing and thus the time spent was not a "principle activity" that would start the workday. The further found that the firm was insulated from liability based on the "good faith" following of a Wage and Hour Administrator formal opinion letter.

In a case regarding FMLA leave, the U. S. 7th Circuit Court of Appeals found for the employer where the employee had not reached the 1250 hour threshold needed to be covered. In this case, a U. S. Postal service employee had worked, based on employer time records, 1248.8 hours during the 12 months prior to her unscheduled absence. The Court held that the employee was not entitled to leave as she had not reached the minimum of 1250 hours.

An employer that failed to select a "leave year" under the FMLA was found to have violated the Act when it fired an employee. The employee had a serious health condition that caused her to miss work in December of 2004 and in early 2005. The employee had notified the employer that she would be returning to work on March 25, 2005 but the firm terminated her on March 18, 2005 The firm had contended that its fiscal year should be used to determine the employee's eligibility for leave, however, the employer had not communicated this to its employees. The Court found that the employers failure to make an "open" announcement of its method of accounting allowed the employee to use a method that would be most beneficial to the employee. The employee choose the calendar year which provided the employee with 12 additional weeks of FMLA leave in 2005. This case shows why it is important for the employer to select a leave year for FMLA purposes and communicate it to the employees.

If you have additional questions do not hesitate to give me a call at (205) 323-9272.

2008 Upcoming Events

AFFIRMATIVE ACTION UPDATES

Birmingham – December 9, 2008
Bruno Conference Center

Huntsville – December 11, 2008
Holiday Inn Express

WAGE AND HOUR REVIEW

Birmingham – December 10, 2008
Vulcan Park

For more information about Lehr Middlebrooks & Vreeland, P.C. upcoming events, please visit our website at www.lehrmiddlebrooks.com or contact Edi Heavner at 205.323.9263 or eheavner@lehrmiddlebrooks.com.

Did You Know…

…that 31 union mergers occurred between 1995 and 2007, continuing a 50 year trend? Since the American Federation of Labor merged with the Congress of Industrial Organizations in 1956, there have been a total of 118 union mergers. The number of mergers actually has declined each year, due in part to the overall reduction in the number of unions. Thus, while fewer mergers may occur in the future, they are likely to become more significant, such as the merger we believe will occur between the United Steelworkers and the United Auto Workers.

…that the U.S. Supreme Court will hear six labor and employment cases during its 2008-2009 term? The cases include a retaliation case arising after an employee cooperated with an employer's internal harassment investigation, a pregnancy leave case and whether the arbitration provisions of a collective bargaining agreement preclude a lawsuit under the Age Discrimination in Employment Act. There is no predictable number of labor and employment cases the Supreme Court hears each term. For example, in the 2001-2002 term, the Court heard 14 such cases, but they heard no labor and employment cases in the 1999-2000 term.

…that in an effort to preserve jobs, the UAW took an almost $5.00 an hour pay cut? This is based upon negotiations between UAW Local 2488 with Mitsubishi Motors of North America, Inc. The union agreed to the reduction of pay by $1.67 an hour for production employees and $1.71 per hour for maintenance employees, plus suspending the $3.08 per hour cost of living allowance. In exchange for these concessions, the company agreed that during the life of the contract, there will be no involuntary layoffs. According to UAW President Ron Gettlefinger, "the bargaining team delivered an agreement that will protect jobs and provide four years of stability for our members and our communities." The contract also raised the deductibles for family coverage and the amount an employee must pay for out-of-pocket medical expenses.

…that effective July 1, 2009, "direct patient caregivers" in Pennsylvania may not be required to work overtime? Known as the Prohibition on Excessive Overtime in Health Care Act, this legislation was signed by the Governor on October 9, 2008. The primary proponent legislation was the Services Employees International Union. In essence, the law required that there are only limited circumstances where an employee may be required to work extra hours or longer than a pre-determined shift. One of the exceptions to the law is if another employee calls in sick and an employer is unable to cover for that shift.

…that according to the U.S. Department of Labor, unemployment rose in 47 states and the District of Columbia during September? The national unemployment rate for September 2008 is 6.1%, an increase of 30.8% from September 2007. Rhode Island has the highest unemployment rate at 8.8%, followed by Michigan (8.7%), Mississippi (7.8%), California (7.7%) and Nevada (7.3%). Unemployment rates declined in Arkansas, Oklahoma, and West Virginia. Overall, the states with the lowest unemployment rates are Wyoming (3.35%), Nebraska (3.5%), Utah (3.5%), North Dakota (3.6%) and Oklahoma (3.8%).

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