LEHR MIDDLEBROOKS
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Employment Law Bulletin

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Your Workplace Is Our Work®

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EFCA/Union Avoidance Webinar

April 9, 2009; 10:00 – 11:30 a.m. CDT

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Think EFCA Sounds Bad? Just Wait Until You Hear About The "Compromise" Bill

Introduced on March 10, 2009, the Employee Free Choice Act has already spawned "compromise" legislation. The National Labor Relations Modernization Act (NLRMA) (HR1355) was introduced a week after EFCA as a purported "compromise." NLRMA concerns us because it preserves the secret ballot union election, avoiding that "lightening rod" issue in EFCA, but imposes the mandatory arbitration of first contracts and stiffer penalties for unfair labor practices contained in EFCA, and ads a new requirement forcing employers to give unions "equal time" during any lead up to a union election. The latter provision means that employers holding group meetings with employees to provide the company's message about unions would have to invite the union to come on site and use the same amount of company time for their own pro-union meetings with employees. The NLRMA would apply to employers with 20 or more employees.

Keeping the secret ballot election is a "compromise" to EFCA of sorts, but allowing federal arbitrators to set the terms of a first contract—like EFCA—still takes away an employer's right to reject terms and conditions of employment that would be harmful to the business. The NLRMA and EFCA are very similar on this proposal. EFCA proposes that parties negotiate for 90 days before pursuing mediation and the mandatory arbitration process; NLRMA would extend that time period to 120 days. EFCA would make an arbitrator-ordered contract binding for up to two years; NLRMA would make it binding for up to 18 months. In essence, the "compromise" proposed in NLRMA retains the worst EFCA provision for employers: government arbitrators setting contract terms and imposing their will—good, bad or otherwise—on American businesses. We are concerned about both bills, because either would be a tremendous enhancement to union organizing efforts, guaranteeing newly organized employees a contract under terms potentially established by the federal government. Both bills are pending for further consideration in the House Committee on Education and Labor.

Let's look at the overall situation of organized labor in our country now. Their membership has increased during two consecutive years for the first time in decades. Unions have a strong ally in the White House, a former union attorney as the Chair of the National Labor Relations Board, a friend as Secretary of Labor, and an abundance of union-funded foot soldiers in Congress. Regardless of what happens with EFCA or NLRMA, employers now need to begin their internal vulnerability assessments regarding potential union organizing and start training managers and supervisors about unions. This training should include EFCA, how to discuss it, and what is necessary to remain union-free now and forever. Richard Lehr and

Matt Stiles are conducting such programs for employers throughout the country and they will host a timely EFCA and union avoidance webinar on April 9, 2009 from 10 to 11:30 a.m, CDT. To register for the webinar, go to www.LehrMiddlebrooks.com/events.htm. To discuss your union-free strategy, please contact Richard Lehr rlehr@LehrMiddlebrooks.com (205) 323-9260 or Matt Stiles, mstiles@LehrMiddlebrooks.com, (205) 323-9275.

EEOC Charges Reach Record Level

95,402 discrimination charges were filed with the Equal Employment Opportunity Commission in 2008, the most ever. This is an increase of nearly 15% from 2007 (82,792). Although the greatest number of charges involved race discrimination (35.6%), for the second consecutive year retaliation claims were the highest number of all charges filed (34.3%) and category with the greatest increase over those charges filed in 2007 (from 26,663 to 32,690).

Partially due to increased unemployment, age discrimination charges also showed a substantial increase, from 23.2% of all charges filed in 2007 to 25.8% of charges filed in 2008, and a numerical increase from 19,103 to 24,582 in 2008. We expect age discrimination claims to increase in 2009 more than any other protected class. Age-protected employees in today's economic environment are more likely to file an age discrimination claim because employment opportunities are not readily available. We also expect a continuing increase in retaliation claims, as court decisions have extended the boundaries for what may qualify as unlawful "retaliation."

The EEOC reported that 81,081 charges were resolved in 2008 and that the average length of time for processing a charge was 196 days—16 days longer than the maximum amount of time the EEOC's regulations say it should take. We expect even longer delays in EEOC case processing. Each investigator has approximately 300 charges, because the EEOC staffing levels have not kept up with the increasing case load.

In some respects, it may be easier for employers to resolve certain discrimination charges for a nominal amount, as charging parties in today's economy may be more inclined to take virtually any amount of money offered. However, the same does not necessarily apply to the terminated long term, age protected employee. In that situation, the charging party may believe there is no other work available and therefore be more inclined to go "all in" to seek a substantial amount of money. As we have seen so many times before, litigation becomes that individual's job search.

With a trend toward increasing charge filings where over half of them involve termination decisions, employers should be even more careful with termination decisions, particularly of a long-term age-protected employees. The older the employee and the greater the length of service, the less such a termination should be a "close call."

Doctor Takes A Turn For The Nurse;Costs Hospital $15 Million

In one of the highest of the sexual harassment jury verdicts we have seen in several years, a nurse was awarded $15 million on February 18, 2009, in the case of Bianco v. Flushing Hospital Medical Center of New York. The damages included $8 million for past emotional distress, $5.5 million for anticipated future emotional distress, and $1.5 million in punitive damages.

This case is a classic example of an employer who failed to address reported and witnessed harassment. Over a period of several years, a physician subjected a nurse, Bianco, to unwelcome sexual advances, touching and groping. The hospital's medical director witnessed the physician's attempts to kiss the nurse and the nurse's show of disgust, but neither reported the action nor admonished the physician. The physician also followed Bianco as she was making her rounds, and groped her genitals, all of which was witnessed by a charge nurse and not reported. When the nurse filed a written complaint with the hospital, it suspended the physician's privileges, yet he was permitted to return to the hospital periodically.

In responding to the jury's award, Bianco stated that "just having a sexual harassment policy is insignificant, unless the employer has a true commitment to eliminating unwelcomed sexual harassment. If proper training measures had been in place, this might not have

happened to me or countless other people who have had similar experiences." The plaintiff's comments are right on target. When a "producer" or otherwise highly regarded or effective employee engages in behavior that conflicts with the organization's core values employers need to sustain the courage to take appropriate action, including termination.

No FMLA Retaliation Against Pregnant Employee

Although pregnancy qualifies as a serious health condition under the Family and Medical Leave Act, it does not mean that an employee may decide whether or not she is going to work, and when, without a physician's certification. Such was the circumstance in the case of Allen v. Progress Energy, Inc. (M.D. SL, February 20, 2009).

In May 2007, Allen notified her supervisor that she was pregnant. Shortly after this, Allen missed work due to morning sickness and applied for short term disability benefits. Her physician concluded that she was able to work, so she was denied short term disability. She inquired about FMLA leave, and the employer provided her with its FMLA certification form. She did not return the certification, and her employer gave her a deadline to either return to work or provide certification that she could not work. Allen did neither and Progress Energy terminated her employment.

In granting the employer's motion for summary judgment, the court held that Allen did not qualify for FMLA leave because "her submission of medical documentation indicated that she was able to work." The Court concluded that "where an employer properly requests a physician's certification under the FMLA and that certification indicates that the employee is not entitled to FMLA leave, the employer does not violate the FMLA by relying upon that certificate in the absence of some overriding medical evidence."

DOL Provides New COBRA Notices Pursuant To ARRA

On March 19, 2009, the Department of Labor released four new model COBRA notices and 25 frequently asked questions and answers to assist employers in complying with the COBRA subsidy requirements of the American Recovery and Reinvestment Act of 2009 ("ARRA").

ARRA includes a COBRA provision authorizing a 65% federal subsidy (to be advanced by employers) for continuing health care coverage for employees involuntarily separated from employment between September 1, 2008 and December 31, 2009. LMV attorneys Michael L. Thompson and Donna E. Brooks hosted a webinar to review the model notices and the perplexing rules for the COBRA subsidy with LMV friends and clients on March 24, 2009.

The four model notices include two versions of the General Notice, an Alternative Notice, and a Notice in Connection with Extended Election Periods. In its effort to help employers with compliance, DOL bundled the notices in several information packets designed for a particular group of qualified beneficiaries. The packages include (1) summary of ARRA's premium reduction provision (i.e. the subsidy); (2) form for beneficiaries to request the premium reduction; (3) form for plans or issuers who permit qualified beneficiaries to switch coverage options to use to satisfy ARRA's requirement to give notice of this option; (4) form for an individual to notify the plan or issuer of eligibility for other group health plan coverage or Medicare; and (5) COBRA election forms and information.

Plans subject to the COBRA continuation provisions must send the general notice to all qualified beneficiaries who experienced a qualifying event at any time between September 1, 2008 through December 31, 2009, regardless of the type of qualifying event. There are two versions of the General Notice: (1) an abbreviated version for those who experienced such a qualifying event, elected COBRA, and are still on COBRA; and (2) a longer version for those who experienced such a qualifying event but either have not yet been provided an election notice or were provided an election notice on or

after February 17, 2009 that did not include the additional information required by ARRA.

The Alternative Notice must be sent by issuers offering group health plans subject to continuation coverage requirements under state law.

The Notice in Connection with Extended Election Periods must be sent to any assistance eligible individual who had a qualifying event between September 1, 2008 through February 16, 2009, and either did not elect COBRA or who elected it but subsequently discontinued it. This notice must be provided by April 18, 2009.

To download LMV's COBRA webinar materials and view our practical and informative HRCI accredited webinar, go to www.lehrmiddlebrooks.com/events, and to further discuss your COBRA compliance, please contact Mike Thompson, mthompson@lehrmiddlebrooks.com, (205) 323-9278 or Donna Brooks, dbrooks@lehrmiddlebrooks.com, (205) 226-7120.

EEO Tips: Is An Employer Off The Hook If A Charging Party Withdraws The Charge?

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.

Assume the following scenario. An employee of yours files a charge with the EEOC alleging discrimination because of race (Afro-American) with respect to job assignments and promotions. Your firm has a strong policy against such discrimination and promptly investigates the charge and determines that no discrimination took place. You find that in fact the Charging Party was not promoted because he was not the best qualified person for the job. However, your investigation also discloses that no Afro-Americans have been placed in training positions which could provide the requisite experience to qualify for the job in question.

Under these circumstances, you decide to resolve the matter as soon as possible by taking the following measures:

- You immediately offer the Charging Party a training position that would qualify him for a promotion and also offer to adjust his future pay accordingly;

- Additionally, you offer to pay the Charging Party a reasonable sum as back pay and for attorney fees if the Charging Party is represented by one. The sum offered to settle the matter is roughly the "nuisance value" of defending against a lawsuit, a significant amount but still considerably less than the potential litigation costs if you don't settle.

- Finally, you strongly admonish all supervisors that the firm will strictly adhere to its non-discrimination policies in all job assignments to training positions, promotions and other aspects of its personnel policies and practices.

As a primary condition for the settlement you require that the Charging Party withdraw the charge that he had filed with the EEOC. The Charging Party is very happy with this settlement offer and quickly requests in writing that the EEOC withdraw his charge. The EEOC reviews the request and "acknowledges that as far as it is concerned, the Charging Party's individual case has been resolved."

At this point are you, as the Employer, off the hook with the EEOC? Unfortunately, the answer may be "No." It depends on whether the EEOC actually "consents to the withdrawal of the entire charge" or has merely agreed to accept the resolution of the Charging Party's individual claims. The language in Section 1601.10 of the Commission's Procedural Regulation (29 C.F.R 1601. et seq.) pertaining to the withdrawal of a charge is somewhat misleading and has to be read and understood from the Commission's point of view. Section 1601.10 in pertinent part states as follows:

> "A charge filed by or on behalf of a person claiming to be aggrieved may be withdrawn only by the person claiming to be aggrieved and only with the consent of the Commission…. The

> Commission hereby delegates authority to District Directors…to grant consent to a request to withdraw a charge….where the withdrawal of the charge will not defeat the purposes of Title VII or the ADA." (underlining added)

This language gives the Commission wide latitude in consenting or not consenting to the withdrawal of a charge because it depends upon whether in the eyes of the Commission "the withdrawal of the charge would not defeat the purposes of Title VII or the ADA." Unfortunately, it is not always easy for an employer to know whether the withdrawal of any given charge will not defeat the purposes of Title VII. That is a determination that, seemingly, only the Commission can make, one charge at a time based upon its enforcement priorities at the time the withdrawal is requested.

It is clear that the EEOC cannot prevent an employer and an employee from resolving a dispute between themselves. But, as Section 1601.10 suggests, the Commission does not automatically have to accept the withdrawal of an underlying charge just because the Charging Party requests it to. It may thereafter continue to investigate any systemic or class aspects of the charge which would not have been included in the resolution of the Charging Party's individual claims. A recent case, EEOC v. Watkins Motor Lines, Inc. (7th Cir. Jan. 2009) illustrates this point

In the Watkins case, the Charging Party, Lyndon Jackson, and Watkins Motor Lines made an independent settlement of a charge filed by Jackson. Jackson who apparently was qualified, had a criminal record and applied for a position with Watkins, which had a policy of not hiring persons who had been convicted of a violent crime. The facts showed that the policy apparently was justifiable in that Watkins Motor Lines had experienced a number of violent crimes by one employee against another in the past. An important aspect of the settlement with Jackson was that he withdraw the charge that he had filed with the EEOC. The withdrawal was to be timed so that it would be too late for Jackson to file another charge. By this tactic Watkins hoped to preclude any further action by the EEOC since, as it argued before the District Court, the EEOC would have lost all jurisdiction over the charge. The EEOC, while acknowledging the resolution of Jackson's individual claims, refused to allow Jackson to withdraw his charge and issued a subpoena seeking information as to any adverse impact or patterns or practices of systemic racial discrimination.

Watkins Motor Lines sought a dismissal of the EEOC's subpoena and argued that the trial court could not have subject matter jurisdiction because the underlying charge no longer existed or would be untimely because Jackson had requested that it be withdrawn. The Trial Court agreed and reasoned that Watkins settlement with Jackson was the best outcome for Jackson and that since the settlement depended upon the EEOC's dismissal of Jackson's charge, the EEOC should have dismissed it. Under these circumstances the Trial Court further found that EEOC's refusal was arbitrary making it "as if no charge had been filed," and concluding that, therefore, the EEOC is not entitled to investigate a charge that does not exist. Based upon this logic the Trial Court dismissed the EEOC's subpoena.

The Seventh Circuit Court of Appeals unanimously reversed the Trial Court's ruling, finding that the EEOC's jurisdiction was not dependent upon or derived from the Charging Party's claims alone. It held that the EEOC, where it refuses to dismiss a charge, has the power to "substitute itself as the proponent and proceed." When it does so, the Seventh Circuit stated that "it is acting in the public interest." The Seventh Circuit further stated that "Jackson and Watkins Motor Lines are free to resolve their own dispute but may not compromise the interests of other employees and applicants in the process." The Seventh Circuit further clarified the distinction between the EEOC's jurisdiction Under Title VII with respect to a charge and the Court's jurisdiction to adjudicate matters brought to it under other statutes. In this case the EEOC' had issued a subpoena and filed it with the Trial Court for enforcement under both Title VII and 28 U.S.C. 1345, both of which would have given the Trial Court "subject matter jurisdiction."

EEO TIPS:

The foregoing case of EEOC v. Watkins reinforces the proposition that a Charging Party's withdrawal of his or her charge does not necessarily take the employer off the hook. Employers are potentially still at risk unless and until the EEOC indicates that it has completely withdrawn the charge and will take no further action with respect to it. We

suggest that the following steps be taken to ensure that the employer obtains the full release that it is seeking:

1. If the withdrawal of a charging party's underlying charge is to be a part of a settlement agreement, make sure that the request, itself, is comprehensive in seeking a complete withdrawal of all the individual claims raised in the charge but also all potential class claims that may be raised based upon the issues in the charge. Remember that any allegation of "race" or "sex" discrimination can be taken to include other members of that race or sex and therefore may be the basis for an EEOC investigation of class-wide discrimination or adverse impact upon the race or sex named in the charge.

2. Don't rely upon the Charging Party to draft a comprehensive request for withdrawal of an EEOC Charge. Have legal counsel draft the request to make sure that it covers all possible issues and then have the Charging Party sign it and submit it to the EEOC. Remember, however, that only the charging party can request a withdrawal of his or her charge.

3. Read carefully the response from the EEOC as to whether it has consented to the full withdrawal of the charge with no reservations for future investigation of any potential issues. The EEOC's consent to withdraw should clearly state in words to the effect that the EEOC will take no further steps to process the charge." If it merely states that it "acknowledges that the charging party's individual claims have been resolved," that is a clear warning that it intends to look at class issues raised by or related to the charging party's claims of individual harm.

If a request for a complete withdrawal fails, there are a number of other actions that may be taken to resolve an individual charge including:

- A request for a Predetermination Settlement (which upon negotiation with the EEOC could include all issues) and,
- A request for an immediate Right To Sue. (as to which the EEOC will also indicate whether it intends to process the charge further. If it does, the Charging Party and employer may still resolve the Charging Party's individual claims by filing a Settlement Agreement (Consent Decree) with the Court and dismissing the action. The EEOC may still proceed but would need permission of the Court to intervene, or it must file an action of its own, after conciliation and usually at some disadvantage.

These actions, however, should only be taken with the assistance of competent legal counsel because they involve many technicalities, and of course are likely to increase the cost of settlement.

If you have questions or need legal counsel with respect to the withdrawal of charge filed against your firm filed, please contact us at (205) 323-9267.

OSHA Tips: Multiplying Penalties

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.

Ordinarily OSHA's practice is to group multiple instances of violation of a rule into one citation item for penalty purposes. For instance if an inspection revealed fall hazards in three locations of a worksite due to the lack of guard rails, a citation issued would be expected to allege a single violation and penalty for the three instances.

The Occupational Safety and Health Act sets maximum penalty limits for "serious" violations at $7,000 and for "other-than-serious violations" at $70,000. It can, however, get much worse than that. OSHA has for a number of years employed a practice in some cases of charging a separate and discrete violation for each instance where the requirements of a rule or standard were not met. For

example where six recordable injuries were not included on the employer's log, OSHA might allege six violations of its recordkeeping rule with corresponding penalties. Rules governing the agency's use of this multiplier approach are found in policy directive CPL 02-00-080, Handling of Cases to be Proposed for Violation-by-Violation Penalties.

Among other triggers for the Violation-by-Violation Policy (also referred to as Egregious Case Policy), is a finding that the violations are **willful**.

A recent agency press release gave notice of significant violations alleged and a penalty in excess of $1.2 million following an inspection of a chemical distributing company. The case was initiated when OSHA learned that several employees had been hospitalized after being contaminated with an unknown powder. It was later determined that the eight employees admitted to the hospital were exposed to the chemical paranitroaniline (PNA). This is a poison that may cause a reduction in the blood's ability to transport oxygen. PNA is highly toxic and can be fatal if swallowed, inhaled, or absorbed through the skin. In this case all employees exposed showed ill effects but recovered after treatment.

Following the investigation of the above incident OSHA issued citations alleging a number of violations. Included were 21 willful citations which are defined as those committed with intentional disregard of or plain indifference to the requirements of the OSH Act. Further, 20 of these willful citations were cited on a per instance basis. Eight instances (separate violations) were charged for failing to provide the eight exposed employees with the correct personal protective equipment (PPE) for transferring PNA. Four instances were cited for failing to provide training on the use of PPE and on working with hazardous chemicals. Three instances were cited for failing to provide PPE training and training on specific PNA-transfer procedures and five instances of failing to fit-test employees using respirators

Another recently issued citation demonstrates the consequences when multiple instances of an alleged violation are cited separately. OSHA proposed nearly $700,000 in penalties for failing to protect employees from cave-in hazards and five others for failing to keep excavated material away from the edge of the trench.

A number of OSHA's "egregious" cases have been driven by recordkeeping violations. The first of these dates back to 1986 when such deficiencies brought alleged violations with a proposed penalty of 1.3 million dollars.

Wage And Hour Tips: Attendance At Training Meetings

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.

From time to time employers may desire to have employees attend training programs or meetings and may not be sure whether the employee must be paid for this time. The Wage and Hour regulations state that an employee's attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

(1) Attendance is outside of the employee's regular working hours;

(2) Attendance is, in fact, voluntary;

(3) The course, lecture, or meeting is not directly related to the employee's job; and

(4) The employee does not perform any productive work during such attendance.

If a non-exempt employee fails to meet any of the criteria above then the employee must be compensated for these hours. Of course, the employer does not have to provide additional compensation to exempt employees for any time spent attending such training meetings.

Outside the employee's regular working hours - The training meeting must be during hours or days that are not during the employee's regularly scheduled work hours. For example, consider an employee who is scheduled to work from 8 a.m. to 5 p.m. Monday through Friday. In order for the training not to be considered as work time it

would either have to be on Saturday or Sunday or after 5 p.m. and before 8 a.m. Monday through Friday.

Attendance must be voluntary – Where the employer (or someone acting on his behalf) either directly or indirectly indicates that the employee should attend the training, the attendance is not considered voluntary. For example, a vendor tells the employer that he will provide a dinner for the employees at which they will discuss a new product or a proposed marketing method and the employees are encouraged to attend. Thus, the time spent at the dinner would be considered work time.

However, where a state requires individuals to take training as a condition of employment, attendance would be considered voluntary. One example is the childcare worker who must complete a 40 hour class before becoming eligible to work in the child care industry. Conversely, if a state requires the employer to provide training as a condition of the employer's license then attendance at the training would not be considered voluntary. Therefore, this criterion would not be met and the employer would have to consider the training to be work time.

Training must not be directly related to the employee's job – Training that is designed to make the employee more efficient at his job would be considered work time, while training for another job or a new or additional skill would not. Training, even if job related, that is secured at an independent educational institution (i.e. – trade school, college, etc.) that is obtained by the student on his own initiative would not be considered work time. Also, training that is established by the employer for the benefit of employees and corresponds to courses that are offered by independent educational institutions need not be counted as work time. One example is a course in conversational English that an employer makes available to his employees at his facility.

The employee performs no productive work during the training course – Training that is conducted away from the employer's facility usually does not pose a problem, but training conducted at the employer's business can potentially cause a problem. Many times the employee receives the training using the employer's equipment, which could have some benefit to the employer and thereby make the time compensable.

Prior to a nonexempt employee attending a training course, the employer should make sure that attendance meets each of the four criteria listed above. Otherwise he must be prepared to compensate the employee for the time spent attending the training. Employers should also remember that when the training hours are determined to be work time, then this time must be added to the employee's regular work time for overtime purposes.

If you have additional questions or would like to discuss the matter further do not hesitate to give me a call at (205) 323-9272.

2009 Upcoming Events

EFCA/Union-Avoidance Webinar

April 9, 2009; 10:00 to 11:30 a.m. CDT
Register online: www.LehrMiddlebrooks.com/events.htm

EFFECTIVE SUPERVISOR®

Mobile-April 22, 2009
Five Rivers Delta Resource Center

Montgomery-September 16, 2009
Embassy Suites

Birmingham-September 23, 2009
Bruno Conference Center

Huntsville-September 30, 2009
Embassy Suites

Employee Rights Update

Alexander City - April 16, 2009
Russell Medical Center
Mary Shockley – mshockley@russellmedcenter.com

Safety & Security/HR Workshop

Prattville – April 28, 2009
Marriott Montgomery Prattville Hotel & Conference Center at Capitol Hill

Register online at: www.manufacturealabama.org.

Specialty PHARMA Association "Negotiating the Future"

Boston, Massachusetts - May 7, 2009

LMV's Pre-Recorded, Live Webinars

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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 speaking of retaliation, a jury awarded $650,000.00 to an employee of the International Brotherhood of Boilermakers? Witkowski v. International Brotherhood of Boilermakers (W. D. Pa January 29, 2009). The jury concluded that the union retaliated against the employee after the employee filed an age discrimination complaint with the Pennsylvania Human Relations Commission and the National Labor Relations Board. He alleged he was intimidated and harassed by fellow union employees who called him a "sue-ee."

…that the majority of Americans say they now receive "most" of their individual financial products through their employers. MetLife's recent Study of Employee Benefits Trends: Findings from the National Survey of Employers and Employees also found that 41% of employees said their workplace benefits are the foundation of their financial safety nets. For the third year in a row, the study found a significant gap between employer and employee perceptions of how employee benefits contribute to loyalty. Over 69% of employees said the benefits provided to them were an important, contributing factor to their loyalty, while only 41% of employers agreed.

…that 210 employees of the Service Employees International union filed unfair labor practice charges against the SEIU, claiming that the SEIU refused to bargain with their union? These charges were filed on March 12, 2009. The staff members who were targeted for lay-off filed discrimination charges with the EEOC. The 210 employees were represented by the Union of Union Representatives. The SEIU members include organizers, researchers and support staff.

…that from February 1, 2008 through January 31, 2009, 495,800 auto industry jobs were lost? This figure was released by the Labor Department on March 13, 2009. According to DOL, this job loss represents 13% of all private sector jobs that were lost during the same time period, or a total of 3.7 million jobs. The overall private sector job loss during this 12 month period was 3%, but it was 12% in the auto industry. Within that industry, 154,000 jobs related to auto dealerships were lost, compared to 125,600 in manufacturing.

LEHR MIDDLEBROOKS & VREELAND, P.C.

Donna Eich Brooks	205/226-7120
Whitney Brown	205/323-9274
Lyndel L. Erwin (Wage and Hour and Government Contracts Consultant)	205/323-9272
John E. Hall (OSHA Consultant)	205/226-7129
Donald M. Harrison, III	205/323-9276
Jennifer L. Howard	205/323-8219
Richard I. Lehr	205/323-9260
David J. Middlebrooks	205/323-9262
Jerome C. Rose (EEO Consultant)	205/323-9267
Matthew W. Stiles	205/323-9275
Michael L. Thompson	205/323-9278
Albert L. Vreeland, II	205/323-9266
Debra White	205/323-8218