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Beware Of Age Discrimination Failure To Rehire Claim

The number of age discrimination charges filed nationally increased by a record number last year. The overwhelming majority of those charges involved decisions arising out of workforce reductions or individual termination decisions. If the latest reports are true, and the recession has bottomed out, then the unemployment rate should begin to decrease. Still, as hiring picks up, a new challenge for employers is the potential risk of an age discrimination claim from an employee who was laid off and not rehired. In the case of Owens v. Wellmont, Inc. the court addressed this precise issue (6th Cir. August 18, 2009).

Charlotte Owens was 54 years old and worked as a physical therapy technician when Wellmont terminate her employment as part of a workforce reduction. Owens worked for the company for about 30 years. The management group reviewed Owens and her five colleagues, and decided to terminate the employment of just two of them. Owens and the other terminated employee were rated the lowest of the six by their management reviewers; the two employees rated the highest were both over 50 years old.

Approximately five months after she was terminated, Owens saw that Wellmont posted an opening for her former position. When she inquired about the opening, Wellmont reclassified the position. Subsequent to the reclassification, Wellmont again opened the position and did not notify Owens of the vacancy. When Owens became aware of the vacancy, she sued, alleging that Wellmont failed to rehire her because of her age. The individual hired by Wellmont was 34 years old. The company argued that Owens was not considered an applicant because she never formally applied.

The court said, "[A]lthough Owens may not have formally applied for the September [position], it seems clear that, under the circumstances, a formal application was not required. Owens did more than make a generalized expression of interest in working for Wellmont—moreover, the record supports an inference that Wellmont had offered Owens' position in the past without a formal application." Owens did not have sufficient proof that age was a basis for the initial layoff decision. However, the court concluded that there was sufficient evidence for a jury to decide whether she was not rehired because of her age.

Some employers erroneously believe that severance agreements as an outcome of workforce reductions insulate employers from claims of failure to rehire. Such releases may not necessarily apply to facts arising in the future, such as an individual returning to work. The releases cover all claims or potential claims based upon facts arising prior and up to the date the release becomes effective. Regardless of whether employees signed a severance agreement and general release, be sure that your organization's hiring practices consider the age discrimination implications of how former employees may be treated.

Prospects Brighten For EFCA Compromise

September began with reports of frustration within the labor movement over President Obama's lack of action in support of the Employee Free Choice Act. September ended with the President's public statement of support for EFCA and a confident, enthusiastic labor movement anticipating significant labor legislation, even if it is not the original version of EFCA.

Why the enthusiasm? On Wednesday, September 9, Senator Tom Harkin (D-Iowa) was named as the Chairman of the Senate Health, Education, Labor and Pensions Committee, replacing the late Senator Edward Kennedy, who died on August 25. Senator Harkin is unmatched by any colleague in the Senate in his support for organized labor. He is one Senator who seeks no compromise on EFCA—he wants to go full throttle to get it to the floor as proposed, including the most controversial provision referred to as "card check." According to Harkin, "This [EFCA] has stuck in my craw for a long time, and I am not going to give up on it. I can take on this Committee with optimism and determination to get a health care bill through and to make sure that we get EFCA through as soon as possible. This session of Congress we are going to get EFCA passed—maybe before Christmas."

Senator Arlen Specter (formerly R, now D-PA) is in a hotly contested fight for the Democratic nomination for his Senate seat. His opponent is a strong supporter of EFCA, which has put Senator Specter in a bind that has led him to push for a compromise on EFCA. Here's the Senator's bind: he needs labor's support to win the nomination, but he opposed the card check provision of EFCA. Therefore, Senator Specter is pursuing a compromise bill with labor that he can bring to the Senate for a vote. What are some of the compromises that the Senator is proposing? First, maintain the provision in EFCA of mandatory arbitration of contract terms, but perhaps do so in "baseball" arbitration, where the employer and union submit their last and best offer and the arbitrators choose one or the other, but not pieces of each. Furthermore, Senator Specter is pursuing the prohibition of employer captive speeches during organizing campaigns and also pursuing legislation that would give unions the right of access to the workforce on employer property. Senator Specter also supports shortening the time period for voting in a union election, from the current minimum of 42 days to a period of five to ten days. Under Specter's plan, there would be one week between the time a petition is filed and an election is held, during which the employer could not have captive meetings and the union would have access to the employer's premises. Specter's plan provides that a first contract could be determined by federal arbitrators who rather than setting its terms, would choose either the union's or the employer's final offer.

As we have stated before, the mandatory arbitration provision is the most threatening provision of EFCA to business, not the card signing provision. This is what the mandatory arbitration provision will do: unions will tell employees that they have a nice, fancy handbook that says a whole lot of things, including a statement that it is "not a contract" and that employees are "terminable at will." Unions will say that only with the union can employees get "just cause" for discipline and discharge and in fact have a bona fide employment contract. Furthermore, unions will say that as a non-union

employee, employees are vulnerable to employer unilateral discontinuation of benefit plans and unilateral pay changes. With a contract, those changes could not occur.

If this overall type of compromise legislation is passed, which is likely at this point, employers will have to re-evaluate policies and philosophies that have existed for many years. For example, should employers proactively provide "just cause" as a standard for certain disciplinary or discharge decisions?

Changes Afoot At AFL-CIO

September was a good month for labor, including the change of leadership and the dynamics occurring at the AFL-CIO. On September 15, long-term, Secretary-Treasurer Rich Trumka, former President of the United Mine Workers, became the AFL-CIO President as John Sweeney retired. Trumka selected as his Secretary-Treasurer Liz Schuler, the youngest Secretary-Treasurer in the history of the federation, and Arlene Holt-Baker, an African American, as the organization's Executive Vice-President. Why do we comment on race and age? Because Rich Trumka did. Trumka said the AFL-CIO needs to "reconfigure ourselves to respond to the needs of a new generation of working Americans." The movement must reach young workers, according to Trumka. For example, "fighting to make college affordable may not be a traditional union issue, but, if we care about the economic security of young workers, it has to become one." Trumka also stated that the AFL-CIO plans to reach the younger workers through social networking, such as Facebook and blogging. In addition, Trumka said the AFL-CIO must do a better job of addressing racial discrimination and bigotry. "That's why, after the Employee Free Choice Act becomes law, our first priority has to be launching a drive to organize this country's five million poverty wage African American workers and other minority workers and the women the labor movement left behind," said Trumka.

EEOC Proposed Regulations To Implement ADA Amendments

Pursuant to the ADA Amendments Act of 2008, the EEOC is issuing proposed regulations to further the Congressional intent expressed in that law. The EEOC stated that its regulations "will shift the focus of the courts away from further narrowing the definition of disability and put it back where Congress intended when the ADA was inacted in 1990." The following are examples of the EEOC's proposed regulations:

- No longer will an impairment have to show that it severely restricts a major life activity. Rather, "an impairment need not prevent, or significantly or severely restrict, the individual in performing a major life activity to be "substantially limiting." "All of these tests of substantial limitation were deemed by Congress to be too demanding."

- The EEOC adds several additional major life activities, in addition to sitting, reaching and interacting with others, which were specifically mentioned in the ADA Amendments. The EEOC's regulations would include "major bodily functions." According to the EEOC, "The purpose of adding major bodily functions to the list of major life activities is to make it easier to find that individuals with certain types of impairments have a disability."

- Conditions that have periodic flair-ups or episodes qualify as a disability if they would be disabling when the condition is active. The EEOC gives as examples epilepsy, multiple sclerosis, hypertension, asthma, diabetes, major depression and bipolar disorder. This also includes an individual who has cancer in remission.

- The regulations will also narrow the definition of whether a person is limited in the major life activity of working. Rather than the prior definition of a broad range of jobs that would have to be limiting, the regulations will propose that a limitation in the major life activity of working occurs where the impairment "substantially limits an individual's ability to perform, or to meet with qualifications for a type of work."

So far we have not seen a significant spike in ADA charges (perhaps plaintiffs' lawyers are too busy filing other claims). However, we expect that as an outcome of the ADA amendments and EEOC regulations, employers when analyzing "serious health condition" under the Family and Medical Leave Act will also conclude that more serious health conditions qualify as disabilities

under the ADA, when under the prior ADA that would not be the case.

Proper Age Discrimination Standard Showing Effects

As the number of age discrimination charges and lawsuits increases substantially this year, the U.S. Supreme Court recently made it more difficult for age plaintiffs to stay in court with its decision in Gross v. FBL Financial Services, Inc.. In Gross, the Court said that unlike Title VII, where circumstantial evidence may be used to prove discrimination, age discrimination plaintiffs must show that "but for" their age, the adverse action would not have occurred. This is a difficult standard to meet and one that should lower an employer's risk in age cases. A recent example of the application of this standard occurred on September 4 in the case of Geiger v. Tower Automotive (6th Cir.).

The plaintiff was 56 years old and a long-term employee when he was one of 15 employees laid off. As a result of the layoff, the workforce declined from 21 employees to six employees. The basis of his age claim was that his duties were absorbed in part by a 33 year-old employee and other, younger employees absorbed his other duties. However, the court stated that "because Geiger had failed to provide additional evidence that he was terminated or not hired on account of his age, as required by the heightened standard for workforce reduction cases, we find that Geiger has not established a *prima facie* case of age discrimination." The court added that even under the prior "circumstantial evidence" analysis, Geiger would have been unsuccessful because he failed to show that the workforce reduction was a pre-text for discriminating against Geiger based on his age.

Employer's Use Of Credit Reports In Hiring And Firing Decisions: A Possible Change In The Law

In most states, employers may consider credit scores in decisions to hire and fire. But a bill recently introduced in Congress would change that. The "Equal Employment for All Act" (H.R. 3149) would prohibit employers from using information contained in credit reports in hiring/firing decisions. Rep. Steve Cohen (D-TN) introduced the bill July 9, 2009, and it was referred to the House Committee on Financial Services that same day. In our view, this Act isn't likely to gain traction anytime soon, but we will continue to monitor the issue.

In the meantime, employers should be mindful of the current requirements of the Fair Credit Reporting Act (FCRA). Employers must obtain the consent of job applicants before running credit checks. Before an applicant is rejected based on a credit report, the employer must make a pre-adverse action disclosure that includes a copy of the credit report and a summary of consumer rights under the FCRA. If an applicant is rejected on the basis of a credit report, the employer must provide the employee with an adverse action notice.

The Federal Trade Commission maintains a web site with additional information on employer use of credit reports.

That web site is:
http://www.ftc.gov/bcp/edu/pubs/business/credit/bus08.shtm

EEO Tips: EEOC Increases Disability Lawsuits Since Passage Of The ADA Amendments Act of 2008

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The President signed the ADA Amendments Act of 2008 ("ADAAA") on September 25, 2008. It became effective on January 1, 2009. The purpose of the ADAAA was to reject the holdings of the U. S. Supreme Court in several cases, as well as, certain interpretations of some critical terms under the ADA by the EEOC, and to "make it easier for an individual to establish that he or she has a disability within the meaning of the ADA. "

Under the ADAAA, the EEOC must conform its existing regulations related to the terms "disability" and "substantially limits" to the broadened meanings intended by Act. After several contentious efforts to reach agreement (beginning back in Dec. 2008), the EEOC, finally, on September 16, 2009, gave final approval for its "Notice of Proposed Rulemaking" pertaining to the required revisions and published them in the Federal Register on September 21, 2009. The process is not over. The EEOC will be seeking comments from the general public during the next 90 days, and, possibly, there still may be changes at the close of this final period.

In the meantime the EEOC has been actively filing a significant number of lawsuits alleging violations of the ADA. Since January 1, the EEOC has filed at least 29 lawsuits involving ADA issues. Twenty of the lawsuits have been filed within the last 90 days. Here, for example, is a cross-section of the types of issues being raised by the EEOC in ADA lawsuits filed within the last month:

- EEOC v. United Parcel Service, filed on 8/28/09, in the U.S. District Court for the Northern District of Illinois, alleging a violation of the ADA by refusing to extend medical leave as a reasonable accommodation for a class of employees with various disabilities.

- EEOC v. Dura Automotive, Inc., filed on 9/14/09 in the U.S. District Court for the Middle District of Tennessee, alleging a violation of the ADA by conducting blanket drug tests of all of its production employees, including testing for lawfully prescribed drugs, and by requiring those who tested positive to disclose the medical conditions for which they were taking prescription medicine.

- EEOC v. Starbucks, filed on 9/3/09 in the U.S. District Court for the Eastern District of Arkansas, alleging a violation of the ADA by refusing to hire an applicant for a barista position because of his multiple sclerosis.

- EEOC v. Silgan Containers Manufacturing Corp., filed on 9/08/09 in the U.S. District Court for Wisconsin, alleging a violation of the ADA by denying a promotion and refusing to provide a reasonable accommodation to an employee who had three fingers missing on his left hand and by requiring applicants to undergo a medical examination before it makes conditional job offers.

- EEOC v. Supervalu, Inc., and Jewel-OSCO, filed on 9/11/09, in the U.S. District Court for the Northern District of Illinois alleging a violation of the ADA by refusing to allow qualified employees with disabilities who were on authorized disability leave to return to work if they have any work restrictions, and for terminating those who reached the one-year mark on leave. The EEOC further charged that the employer refused to allow qualified employees with a disability to be assigned to temporary light duty jobs unless they were injured on the job.

Additionally, since January 1, the EEOC has resolved by consent decree or other settlement 16 cases involving ADA issues and collected over $2 million in back pay or other damages. Most notably, the EEOC settled its ADA case against United Airlines (EEOC v. United Airlines, N. D. of California) in March 2009, and collected $850,000 on behalf of affected class members. EEOC had alleged that United's policy of not allowing employees who were on light or limited duty to work overtime had an adverse impact on employees with disabilities.

It may only be a coincidence that the EEOC, has become more active in pursuing ADA cases since the effective date of the ADAAA, but there has been a definite uptick in EEOC litigation activity on all fronts. For example in 2008 the EEOC filed only 47 cases during the whole year. By comparison the EEOC has filed 20 ADA lawsuits within the last 90 days, a little less than half the number filed during the whole of FY 2008.

EEO TIPS:

Given the avowed purpose of the ADAAA to make it easier to file a disability claim, it is inevitable that the present rate of filing charges under the ADA will increase. Here are a few tips to (1) summarize the main provisions of the ADAAA to make you aware of its scope, and (2) to suggest some approaches to handling potential disability problems before they begin.

First a brief summary of the major changes included in the ADAAA that differ from the original ADA.

- **As to the term "disability"**: The ADAAA expands the definition to make clear that an impairment that is in remission or may only be episodic is nonetheless a disability under the act if it would substantially limit a major life activity when active.

- **As to the term "substantially limits"**: The ADAAA rejects the EEOC's definition of this term as being an impairment which "severely restricts" an individual from doing activities that are normally done by most people, **but does not provide a new definition in its place.** Thus, the only guidance is that the term "substantially limits" must be construed to mean something that is more lenient than that which "severely restricts." (Expect some problems from this provision.)

- **As to Mitigating Measures**: Under the ADAAA, mitigating measures or devices (except ordinary eye glasses or contact lenses) such as prosthetics, hearing aids, or mobility devices that allow an individual to improve performance or correct physical defects may not be taken into consideration in determining whether an individual has a disability.

- **As to Major Life Activities**: Since the original ADA did not include a listing of examples of "major life activities," the ADAAA incorporates the "general" activities listed in the EEOC's regulations and expands them to include "Major Bodily Functions." For example, major life activities listed by the EEOC include but are not limited to eating, sleeping, walking, reading, concentrating, thinking and working. The ADAAA adds a non-exhaustive list of "Major Bodily Functions" including such functions as the immune system, normal cell growth, bowel, bladder and reproductive functions.

- **As to "being regarded as"**: This term is more leniently construed under the ADAAA. The employee need only show that the employer perceived him or her as having a mental or physical impairment instead of having to prove that the employer regarded him or her as being substantially limited in a major life activity. The difference at first would seem to be small, but it is easier for a plaintiff to prove the former. However, a transitory or minor impairment (one lasting 6 months or less) would not qualify under this prong.

Secondly, the following are some general tips on how to approach real or potential disability issues in this new era of leniency under the ADA.

- Make a careful analysis, using qualified specialists where necessary, of the requests for accommodation whether from applicants or regular employees.

- After the request is made, try to create an atmosphere where there can be "interactive employee involvement" and "proactive employer participation" in finding a reasonable accommodation.

- You may have to offer an accommodation to a greater number of employees than in the past. However, as before, an employer still does not have to provide an accommodation that causes undue hardship.

Finally, at this point do not be misled. Even though the EEOC has not finalized its regulations pertaining to the ADAAA, the provisions of the Act, itself, are in force and may be applied by an applicant or employee against an employer. If you have questions about any of the issues raised in this article or need legal assistance in resolving an ADA problem, please feel free to call this office at (205) 322-9267.

OSHA Tips: OSHA And Workplace Substance Abuse

John E. Hall, OSHA Consultant for the law firm of Lehr Middlebrooks & Vreeland, P.C, prepared this article. 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 week of October 19-25 has been designated as "Drug-Free Work Week" for this year. Drug-Free Work Week is an initiative begun by the U. S. Department of Labor, in conjunction with other federal partners, to raise the awareness about the impact of drug and alcohol use on workplaces.

A thesis of this campaign is to promote the idea that working **drug free works** to make workplaces safer while increasing productivity and reducing costs. The drug-free

campaign notes that studies show how substance-abusing employees are more likely to:

- Change jobs frequently;
- Be late to or absent from work;
- Be involved in a workplace accident; and
- File a worker's compensation claim.

There has been some encouraging news in overall drug use trends. From 1988 to 2008 the percentage of American workers testing positive for drug use has reportedly fallen from 13.5% to less than 4%. The 2008 National Survey of Drug Use and Health (NSDUH) found cocaine use down slightly from 2006, the non-medical use of prescription drugs somewhat lower, and the number of methamphetamine users down by around 50% from 2006. There remains, however, a significant challenge for the workplace and society as a whole.

The NSDUH data show that the current rate of illicit drug use by persons 12 or over in the United States remained at 8% in the 2008 survey, the same as in 2007. Consumption of alcohol by those 12 and over was virtually the same in 2008 as in 2007. Just over one half, 52.6%, of this age group reported being current drinkers of alcohol. The survey found that in 2008, 23.3% of the survey population engaged in binge drinking, which is defined as having five or more drinks on the same occasion at least once in the 30 days prior to the survey. Heavy drinking, which they define as binge drinking on at least 5 days in the past thirty days, was reported by 6.9% of the surveyed group.

This and other surveys show that society's drug and alcohol usage patterns are reflected in our workplaces. The rate of illicit drug users for full time employees was 8% and for part-time workers it was 10.2%. Of the 17.8 million current illicit drug users aged 18 or older 72.7% were employed full or part-time. With respect to alcohol, 63% of alcohol users eighteen or over were employed full or part-time. Most binge drinkers or heavy alcohol users were employed in 2008. Among the 55.9 million adult binge drinkers, 44.6 million were employed either full or part-time and among 16.8 million heavy drinkers, 13.1 million were employed.

There is no OSHA standard that requires employers to have a program addressing drug or alcohol issues in the workplace. In some circumstances however, the general duty clause, Section 5(a)(1) of OSHA, may be referenced to cite an employer for hazards attributable to substance abuse on the job. Such citations may be issued under the following circumstances: (1) the employer failed to keep its workplace free of a hazard, (2) the hazard was recognized by the employer or generally known in the employer's industry, (3) the hazard was causing or was likely to cause serious physical harm and, (4) there existed a feasible means to eliminate or materially reduce the hazard. In one such case the employer was cited when an employee was found to have been operating a powered industrial truck around a worksite while intoxicated. The citation stated that among other means, one possible correction would be to develop, implement, and enforce an alcohol and drug prevention program with employee testing, daily observation, and monitoring of employees for signs of possible intoxication.

Through interpretation letters, alliances, citations and participation in the Drug-Free Workplace initiative, OSHA has demonstrated support for workplace drug and alcohol programs to include reasonable drug testing.

Wage And Hour Tips: Deductions From Employee Pay

Lyndel L. Erwin, Wage and Hour Consultant for the law firm of Lehr Middlebrooks & Vreeland, P.C., prepared this article. 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.

Fair Labor Standards Act issues continue to be very much in the news. In a report, "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities" released on September 1, many areas were identified where employees are not being paid correctly. The report, published by the University of Illinois at Chicago, was a result of interviews with 4000 workers in low wage industries in New York, Los Angeles and Chicago. Among the findings reported was that more than

one-fourth of the employees were paid less than the minimum wage and that over three-fourths of the employees had worked overtime in the previous week and were not paid time and one-half. One of the areas where employers can get into trouble is making improper deductions from an employee's pay. Thus, I thought I should provide you with information regarding what type of deductions can be made legally from an employee's pay.

Employees must receive at least the minimum wage free and clear of any deductions except those required by law or payments to a third party that are directed by the employee. The employer cannot make the prohibited deductions and the employer **cannot require or allow** the employee to pay the money in cash apart from the payroll system.

Examples of deductions that can be made:

- Deductions for taxes or tax liens.
- Deductions for employee portion of health insurance premiums.
- Employer's actual cost of meals and/or housing furnished to the employee.
- Loan payments to third parties that are directed by the employee.
- An employee payment to savings plans such as 401k, U. S. Savings Bonds, IRAs, etc.
- Court-ordered child support or other garnishments provided they comply with the Consumer Credit Protection Act.

Examples of deductions that cannot be made if they reduce the employee below the minimum wage:

- Cost of uniforms that are required by the employer or the nature of the job.
- Cash register, inventory shortages, and also tipped employees cannot be required to pay the check of customers who walk out without paying their bills.
- Cost of licenses.
- Any portion of tips received by employees other than pursuant to a tip-pooling plan.
- Tools or equipment necessary to perform the job.
- Employer required physical examinations.
- Cost of tuition for employer required training.
- Cost of damages to employer equipment such as wrecking employer's vehicle.
- Disciplinary deductions. Employees being paid on a salary basis may not be deducted if they work any part of a week, except for exempt employees, who may be docked for "major safety infractions".

If an employee receives more than the minimum wage, in non-overtime weeks the employer may reduce the employee to the minimum wage. For example an employee who is paid $8.00 per hour may be deducted $.75 per hour for up to the actual hours worked in a week the employee does not work more than 40 hours. Also, Wage & Hour takes the position that no deductions may be made in overtime weeks unless there is a prior agreement with the employee. Consequently, employers might want to consider having a written employment agreement allowing for such deductions in overtime weeks.

The Act provides that Wage & Hour may assess, in addition to requiring the payment of back wages, a civil money penalty of up to $1100 per employee for repeated and/or willful violations of the minimum wage provisions of the Fair Labor Standards Act. Thus, employers should be very careful to ensure that any deductions are permissible prior to making such deductions. Virtually every week I see reports where employers have been required to pay large sums of back-wages to employees because they have failed to comply with the Fair Labor Standards Act.

Consequently, employers need to be very aware of the requirements of the Fair Labor Standards Act and make a concerted effort to comply with it. If I can be of assistance do not hesitate to call me.

2009 Upcoming Events

LMV WEBINAR: And You Thought Talking In The Breakroom Was A Problem—Social Media Invades The Workplace…..……..…..October 15, 2009

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 according to a survey of job seekers age 55 or older, 70% said they will have to continue to work or return to work because their retirement income will be insufficient? The survey, entitled "Overlooked and Under Served: The Crisis Facing America's Oldest Workers," stated that 53% of those aged 55 to 65 plan to work during the next five years. Forty-five percent of those between 66 and 75 also said they plan to work during the next five years, and even 32% of those aged 76 and older said they also would work during the next five years.

…that OSHA announced on September 4 that it will target nursing homes and manufacturing facilities as part of its Site-Specific Targeting (SST) program? This is based upon a study of industries and facilities with illness and injury rates higher than the national average. According to OSHA, "these inspections examine all aspects of a workplace's operations, and the effectiveness of its safety and health efforts." The SST program emphasizes to employers the importance of safe working conditions for workers.

…that the Ledbetter Law may apply to pension accrual discrimination claims? So ruled the court in the case of Tomlinson v. El Paso Corporation (D. Colo, August 28, 2009). The court ruled that the Lily Ledbetter Act provides that each pay period establishes a time within which to file a charge claiming that a compensation decision or practice was discriminatory. In this case, the court stated that the law does not apply to the amount of pension payments, but it applies to the rate at which pension account values accrued before they were paid out. The instant case involved allegations that the pension accrual discriminated against employees based on their age.

…that an Iron Workers Local was ordered to pay almost $300,000 for coercing employers to refrain from doing business with non-union employers? In American Steel Erectors, Inc., v. the Local Union 7, (D. Mass, September 1, 2009), the judge wrote that "Local 7 uses threats, vandalism, the stripping of employees, and illegal picketing…to pressure and induce [steel] fabricators, developers, owners and general contractors into breaching contracts with the Steel Erector Plaintiffs and replacing them with unionized [contractors]."

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