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Your Workplace Is Our Work®

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FROM OUR EMPLOYER RIGHTS SEMINAR SERIES:

LMV Webinar: Affirmative Action Update—Staying Up-To-Date On The Changing OFCCP Landscape

December 8, 2009 9:30 a.m.-11:00 a.m.CST

EEOC Charge Filings Remain At High Levels

93,277 discrimination charges were filed during the EEOC's Fiscal Year 2009 (October 1, 2008 - September 30, 2009), compared to 95,402 charges for 2008. The EEOC resolved 85,980 charges, 20.3% on a "merit" basis. The EEOC considers a merit resolution a charge that is resolved through mediation and settlement, and also where the EEOC finds reasonable cause that discrimination occurred, even if that charge is not settled.

The delay in charge processing continues, as the EEOC case backlog as of September 30, 2009 was 85,768 charges -- a 15.9% increase from the 73,951 case backlog a year earlier. Although the EEOC has received a budget increase to hire 125 additional investigators, 22 trial attorneys and 50 staff members, the Commission states that even more hiring is necessary for the EEOC to enforce its statutes aggressively and cut down on the delays.

We expect the additional funding the EEOC has received with criticism from Congress on how long it takes to process charges to lead to a more aggressive EEOC, particularly if a charge alleges Ledbetter Act or ADA violations.

Prepare For ENDA—We Believe It Will Happen

The Employment Non-Discrimination Act ("ENDA") would prohibit discrimination in hiring or employment "on the basis of [an individual's] perceived or actual sexual orientation or gender identity." The proposed legislation defines "gender identity" to mean "appearance or mannerisms, or other gender-related characteristics of an individual with or without regard to the individual's designated sex at birth." Approximately 12 states have enacted similar legislation. According to Senator Harkin (D-Iowa), Chair of the Senate Health, Education, Labor and Pensions Committee, "the harsh reality is that employers in most states in this country can still fire, refuse to hire, or otherwise discriminate against individuals because of their sexual orientation or gender

identity—and, shockingly, they can do so within the law." The proposed legislation follows Title VII's model for coverage and damages. It would apply to those employers of 15 or more employees. The U.S. military, veterans' service groups and religious organizations would be exempt under this bill. The bill also would not require an employer to provide benefits to domestic partners.

Office Of Management And Budget Considers EEOC GINA Rules

The Genetic Information Non-Discrimination Act ("GINA") became effective on November 21, but the EEOC has yet to issue its final rules regarding the Act. The proposed rules are under consideration by the White House Office of Management and Budget.

GINA prohibits the use of applicant or employee genetic information, which includes family medical history, or discrimination based upon such information. The Act also requires that employers take appropriate steps to safeguard the privacy of such information.

Approximately 32 states have similar statutes. Although in some respects GINA echoes some HIPAA prohibitions, there are provisions in the EEOC regulations which will involve employer compliance. At a minimum, employer policy statements and posters should include "genetic information or family medical history" as classes upon which discrimination will not occur. We will update you with a thorough analysis of the EEOC regulations once they become final.

Remember that GINA included important changes regarding what is permissible to ask for in wellness questionnaires and also may require you to update your HIPAA Notice of Privacy Practices. These changes take effect for plan years beginning on or after December 7th.

NLRB Election Numbers Decrease; Union Victories Increase

According to information analyzed by the Bureau of National Affairs, unions won 73.1% of all secret ballot elections held from January 1 through June 30, 2009, an increase from 66.5% a year earlier. There were a total of 588 elections, compared to 813 elections one year earlier. Unions continue to do well in decertification elections, winning 39.1% of those elections during the first six months of 2009 compared to 46.5% in 2008.

AFL-CIO unions won 69.3% of their elections, while Change to Win Coalition unions won 67.7% of elections. The most active unions and their victory rate were Teamsters (70.7%), Service Employees International (75%) and the Machinists (70.1%). These three unions' win rates were substantially higher than at the same time in 2008.

Of particular note is the substantial increase in elections in the services sector, which includes health care. Of 588 elections throughout the six month period, slightly more than half (245) involved health care, where unions won 75.9% of all of those elections. Unions won 78% of all elections in transportations, communications and utilities; 66.7% of all elections in communications, 50.7% of all elections in manufacturing and 50% of all elections in finance, insurance and real estate. This is the first time since 2006 that unions have won more than half of all elections held in manufacturing.

These election statistics do not include the growth of union membership through the processes other than NLRB elections, such as voluntary recognition based upon signed authorization cards. However, these election statistics clearly show that unions are at the "top of their game" in winning NLRB elections. They are more effective in selecting organizing targets and more effective in persuading employees in virtually every industry to "vote yes."

The days of unions organizing primarily by passing out leaflets in front of your facility are long gone. Unions effectively use social media, websites and the internet to reach your employees, such that your organization may have union activity occurring and not even know it. As labor reform legislation looms on the horizon, employers should establish as a priority for 2010 early, effective training of managers and supervisors about today's labor movement, the issues labor pursues at the workplace, employer rights to contribute to a union-free future, and what supervisors and managers can and should do on behalf of their employer. We conduct such training for

employers throughout the country in several industries and would be glad to discuss this with you.

$6.2 Million Age Bias Award Even Under "But For" Test

As you recall, in June 2009, the United States Supreme Court ruled that an individual in an age discrimination case must show that "but for" age, the adverse action would not have occurred. This is a higher standard than required under Title VII and ADA claims. As high as this standard is, two aged plaintiffs were able to meet it for a total of a $6.2 million damage award on November 11, 2009. Marcus v. PQ Corp., E.D. PA.

The two plaintiffs, one age 61 and the other 57, worked in the Company's 56-employee research and development unit. When layoffs occurred in 2006, the average age of those terminated was 62 and the average age of those retained was 45. Furthermore, although 17 of the 56 employees were at least age 55, eight of those 17 were selected for layoff. The oldest employee for every job title was the one selected for layoff.

The Company argued that it considered age-neutral factors in selecting employees for termination. However, the Company's business reasons for its action changed, depending upon which forum heard the case. The Company had one theory for its actions at the EEOC, but then presented a different theory at trial. The jury also heard evidence of prior age discrimination by the same employer.

The jury's award included back pay, front pay and emotional distress. The federal claim was combined with a state law age discrimination claim.

As a general principle, in this economy age discrimination cases are among the most difficult to take to trial, because all jurors have age in common; if they are not age protected, they know they will be at some point. Additionally, jurors know that it will be difficult if not impossible for most plaintiffs alleging age discrimination to find comparable employment. The employer's theory of the case should start before the decision is made to terminate—what is the reason for the termination and how is it business-related—and be consistent through responding to unemployment claims, a discrimination charge and litigation, if that arises.

The Importance Of Settlement Documents

This article was written by Don Harrison, whose practice is concentrated in Workers' Compensation and OSHA matters. Don can be reached at dharrison@lehrmidddlebrooks.com or 205.323.9276.

A recent Alabama workers' compensation case re-emphasizes the importance of settlement documents in all cases, but particularly in workers' compensation cases. Lack of adequate release language in settlement documents can lead to unwanted subsequent issues and lawsuits.

In Jones v. Ruth, (Ala. Civ. App. 2009), the Plaintiff, Willie Jones, was injured on-the-job and subsequently settled his workers' compensation claim with the company. About a month after the workers' compensation settlement, Jones sued a co-employee, Ray Ruth, alleging that Ruth caused Jones' on-the-job-injury by willfully removing a safety device from a machine. Ruth filed a Motion to Dismiss and argued that the release language associated with the workers' compensation settlement barred Jones from maintaining his co-employee lawsuit against Ruth. The trial court agreed with Ruth and granted Ruth's Motion to Dismiss.

On appeal, the Alabama Court of Civil Appeals reversed the trial court's dismissal, and allowed Jones to continue pursuing his co-employee lawsuit against Ruth. The Court of Civil Appeals noted that the release language in the workers' compensation settlement petition did release all claims under the Alabama Workers' Compensation Act. However, the release language did not address co-employee claims. The Court of Civil Appeals held that claims against co-employees are tort claims, rather than workers' compensation claims. As such, the fact that Jones released all claims under the Workers' Compensation Act as part of his workers' compensation settlement did not bar him from pursuing his co-employee claim against Ruth. Accordingly, the Alabama Court of Civil Appeals overturned the dismissal and allowed Jones to continue to pursue his co-employee lawsuit against Ruth.

If the workers' compensation settlement petition Jones signed had included a clear release of co-employee claims, then Jones would have been barred from pursuing his co-employee lawsuit against Ruth.

In addition to the context of co-employee claims, problems can also arise if medical benefits are not adequately addressed in settlement documents. If future medical benefits are to be closed, then that fact needs to be expressly stated in the settlement documents. Even if future medicals are left open pursuant to a settlement agreement, that fact should be explicitly stated to avoid confusion, and to avoid potential claims that could include outrage, fraud, and bad faith. As part of the liberal construction of the Workers' Compensation Act, if the closing of medical benefits is not explicitly set forth in the settlement documents, then the possibility for re-opening medical benefits exists.

EEO Tips: Can EEOC Continue To Investigate After A Charging Party Gets A Right To Sue And Files Suit On The Same Issues?

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The answer to the above question apparently is yes. On November 9, 2009, the U. S. Supreme Court refused to review a decision by the Ninth Circuit Court of Appeals (Federal Express Corp. v. EEOC, 558 F.3d 842, 9th Cir.) upholding the enforcement of an administrative subpoena issued by the EEOC. The EEOC requested computerized files maintained by Federal Express Corp. (Fed Ex) relative to most of the same issues raised in a lawsuit filed by an individual Charging Party approximately five months earlier (Federal Express Corp. v. EEOC, U.S., No 08-1500, cert. Denied 11/9/09).

The facts in this case can be summarized as follows: On November 27, 2004, the Charging Party, Tyrone Merritt, filed a charge with the EEOC on behalf of himself and similarly-situated African American and Latino employees alleging that a Basic Skills Test given by Fed Ex in order be eligible for promotion had a statistically-significant adverse impact on African American and Latino employees. Additionally he alleged that he personally had been denied promotion opportunities, unfairly disciplined, and denied compensation on account of his race.

Since the EEOC had not completed its investigation of his charge within 180 days, Merritt requested and obtained a Right To Sue Notice on October 20, 2005. The EEOC, however, stated in the notice that it would continue to process his charge which is permitted under Section 1601.28(a)(3) of the EEOC's Regulations. Specifically, the regulation in question states in pertinent part:

> (3) Issuance of a notice of right to sue shall terminate further proceeding of any charge not a Commissioner's Charge unless (certain specified officials including District Directors) determines at that time or at a later time that it would effectuate the purpose of [T]itle VII or the ADA to further process the charge.

Merritt, through legal counsel, filed suit on October 26, 2005 and joined his action with a then-pending class action against Fed Ex (Satchell v. Fed. Express Corp., N.D. of Cal.), which action was limited to Fed Ex's western region, an area of approximately 11 western states. This lawsuit, incidentally, was settled some time later.

On or about February 10, 2006, the EEOC decided to continue its investigation of Merritt's charge and issued an Administrative Subpoena requesting information as to any computerized files related to applicants, hiring, promotions, testing, discipline, demotions, employment history and virtually every significant "personnel activity" covering a period from January 1, 2003 to the date of the request. Note the actual files were not requested but only information as to how such files could be accessed by computer if necessary to complete the EEOC's investigation. Obviously this was a request for access to a huge amount of information, and given the fact that Fed Ex had already supplied most of this same information to the EEOC in response to an earlier charge, it was understandable that Fed Ex balked at the EEOC's request under the dismissed Merritt charge.

Accordingly, Fed Ex filed a Petition To Revoke the EEOC's subpoena which the EEOC denied. Thereafter,

the EEOC filed an action in Federal District Court to enforce the subpoena. At the District Court level Fed Ex argued that the EEOC had been divested of its authority to continue an investigation once the charging party initiated (or in this case joined) a private action. The District Court rejected Fed Ex's contention and granted the EEOC's application to continue the investigation. Fed Ex appealed to the Ninth Circuit which upheld the district court's order granting the EEOC's application to enforce its subpoena. Fed Ex then sought certiorari of the issue by the Supreme Court. The question presented to the Supreme Court was as follows:

> If Title VII precludes [the] EEOC from bringing direct action against [an] employer once [an] employee elects to request [a] right to sue notice and files suit on claims alleged in his charge, would it be inconsistent with Title VII to allow EEOC to maintain perpetual jurisdiction to investigate [a] charge?

As stated above, the Supreme Court denied certiorari. However, the Ninth Circuit in some detail (admitting that it was a case of first impression) attempts to answer the question obliquely:

> We consider three issues pertaining to Federal Express Corporation's refusal to comply with an administrative subpoena issued by the EEOC. First we consider whether Fed Ex's compliance with an administrative subpoena in another case …providing the EEOC with the same information…moots this appeal. We hold that it does not. Second we consider, as a matter of first impression, whether the EEOC retains the authority to issue an administrative subpoena …after a charging party has been issued a right-to-sue notice and instituted a private action. We hold that EEOC does. Third and finally, we consider whether the EEOC subpoena in this case, which does not seek direct evidence of discrimination, but instead, seeks general employment files in order to help the EEOC draft future information requests, seeks evidence "relevant" to a charge of systemic discrimination. We hold that it does.

The Ninth Circuit does not in its holding directly address the issue of whether the EEOC can "maintain perpetual jurisdiction" to investigate after a charging party has filed suit. Certainly, the doctrine of laches must apply at some point.

Although the Supreme Court denied certiorari, as stated above, there is no universal agreement among the circuits as to whether the EEOC may investigate "in perpetuity" after a charging party has obtained a right to sue and filed suit on the basis thereof. The Fifth Circuit apparently is the only circuit which holds otherwise. In the case of EEOC v. Hearst Corp., 103 F.3d 462 (5th Cir. 1997), the Fifth Circuit held that "in a case where the charging party has requested and received a right to sue notice and is engaged in a civil action that is based upon the conduct alleged in the charge filed…that charge no longer provides a basis for EEOC investigation." As stated above the Fifth Circuit seems to be alone on this issue.

EEO TIPS: HOW TO HANDLE AN EEOC SUBPOENA

Basically, as the Ninth Circuit said in the case of EEOC v. Goodyear Aerospace Corp., 813 F.2d 1539 (9th Cir., 1987) the EEOC is master of the case (charge) not the charging party. However, there are some tactics that employers can try to satisfy an EEOC Request For Information or Administrative Subpoena. Here are a few:

1. In many cases an EEOC Request For Information or Subpoena will be overly broad in scope. To avoid an enforcement action, try to narrow the scope of the relevant information being provided. For example if the EEOC requests all records pertaining to hiring transactions during the past three years, see if the EEOC will accept all records pertaining to hiring transactions within the six-month period prior to the date the charge was filed. Affected class members must have been eligible to file a charge themselves within the six-month period prior to the filing of the underlying charge.

2. The same would be true if the EEOC requests all records plant-wise pertaining to personnel activities over a two or three year period. In this instance it could be reasonable to submit all records for the period from the department where the charging party worked, not from the entire plant. The only reason the EEOC requests information going years beyond the effective period of the charge (i.e. 6-months prior to the date of charge) is to try to establish a pattern or

practice of operations. However, where there have been only a limited number of charges within a given department, it is arguable that plant-wise information is not relevant.

3. Unless there is some strong, legitimate reason for resisting an EEOC Request for Information or Administrative Subpoena, don't let the issue get to the point where the EEOC feels compelled to issue a subpoena or initiate an enforcement action to obtain it. A strong legitimate reason would be if the records in question do not exist in the form requested. For example the records in question had been destroyed in keeping with a regular records destruction program. (Keep in mind that an employer is required to keep records which are relevant to a charge until the charge is fully resolved. Usually at least one year.)

4. Prior to the issuance of a subpoena, the EEOC generally must exhaust all other reasonable means to cooperate with an employer in getting records concerning an employer's personnel activities. Try to work out a plan which would create the least confusion for the employer. Even in requesting relevant information, the process should not be disruptive.

If your firm needs legal counsel on how to respond to an EEOC Administrative Subpoena, please call this office at (205) 322-9267.

OSHA Tips:
OSHA Training Requirements: Plan for 2010

This article was prepared by John E. Hall, OSHA Consultant for the law firm of Lehr Middlebrooks & Vreeland, P.C. Prior to working with the firm, Mr. Hall was the Area Director, Occupational Safety and Health Administration and worked for 29 years with the Occupational Safety and Health Administration in training and compliance programs, investigations, enforcement actions and setting the agency's priorities. Mr. Hall can be reached at 205.226.7129.

The time is approaching when you may need to make safety-related training plans and projections for the upcoming year. Such training can, according to many advocates, significantly reduce costly injuries and illnesses in the workplace. While there may be some dispute as to the exact return on investment for such training, there is no doubt that it is required by numerous OSHA standards.

There are over 100 specific training requirements found in OSHA's standards. Many of them are very specific in setting out the nature, frequency, scope, etc., of such training while others are more general. For instance, some standards require that an employee allowed by an employer to perform certain tasks must be "certified," "qualified," or "competent" in the performance of that task.

Virtually all of the OSHA standards at the top of the "most frequently violated standards" list each year include a training provision. Not infrequently OSHA press releases announcing issuance of citations with significant monetary penalties include charges of training deficiencies. You may also be sure that a very important question to be answered following a serious work-related accident will involve the victim's relevant training.

Some OSHA training standards call for an annual review or refresher training. For example, the **confined space entry** standard requires that those employees assigned rescue duties practice a permit entry at least once every 12 months. Where an employer has provided **portable fire extinguishers** for employee use, training in their use is required at least annually. Employees with occupational exposure to **bloodborne pathogens** must receive annual refresher training. Employees exposed to noise levels at or above 85 decibels must receive annual training regarding the effects of noise and the means of protection. Employees must receive annual training that is "comprehensive and understandable" when their duties require them to use **respirators**. Most of the chemical-specific health standards, such as those for **asbestos, lead, formaldehyde**, etc., call for annual training.

A number of standards call for employee safety training upon initial assignment to the job and retraining when there is a change in potential exposures. For example the **hazard communication standard** requires further training anytime a new physical or health hazard is introduced to the employee's work area. Refresher training is also required when a **powered industrial truck** operator is noted, by observation or evaluation, to be operating unsafely, or is involved in an accident, or when workplace conditions change that might alter truck operations. Employees required to use **personal protective equipment (PPE)** in their jobs must be

retrained when the employer has reason to believe the employee does not have adequate understanding or skill to properly use the PPE.

Some of OSHA's training requirements call for written documentation and some specify a retention time. For example the **bloodborne pathogens** standard requires a record of training and must be kept for three years. A certification of training must be kept for employees required to use **PPE**, but no time is set for retention. The **lockout/tagout** standard requires a certification of retraining without specifying a retention time. Whether or not OSHA requires a specific training record, it is strongly advised that an employer keep a record of all safety and health training. At the very least it may serve as evidence of an employer's ongoing efforts to comply with standards and promote a safe workplace.

OSHA publication 2254, **"Safety Training Requirements in OSHA Standards and Training Guidelines**," is an excellent source for an employer to assess a worksite's needs and requirements. This document may be viewed, downloaded or ordered by going to the "Publications" topic on OSHA's website at **www.osha.gov**.

Wage and Hour Tips: Current Wage And 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.

As we near the end of another year, most employers will begin planning for 2010. You should be aware that two states will see their minimum wage increase on January 1, 2010:

Connecticut	$8.25
Alaska	$7.75

Two other states, Illinois and Maine, will raise their rates later in 2010. The Illinois rate will increase to $8.25 on July 1, 2010 and Maine will increase its rate to $7.50 on October 1, 2010. The Florida rate is tied to the Consumer Price Index and the rate will be determined later in the year while the Colorado rate, which is also tied to the CPI will decrease from $7.28 to $ 7.24 on January 1, 2010 due to the lower CPI. However, since the FLSA minimum wage is $7.25 per hour most employers will need to pay at least the $7.25 rate.

It has now been more than five years since the Department of Labor, in August 2004, adopted new regulations covering the exemptions provided for executive, administrative, professional and outside sales employees but there continues to be an extensive amount of litigation in this area. Recently I saw where a Federal District Court had certified a collective action brought by information technology workers at Wells Fargo bank. The group of some 3000 workers has until January 2010 to make their decision regarding whether they want to join the litigation.

In previous articles I had mentioned that Wage and Hour was increasing its staff of investigators by 250. I understand that most of the new staff has been hired and are in the process of being trained. One method they have used to get the new staff out making investigations is the rehiring of some investigators that have retired within the past few years. I am aware of this happening in both Alabama and Mississippi.

Earlier this month I read where Wal-Mart received final approval to settle more than 30 separate lawsuits by agreeing to pay as much as $85 million to hourly workers. This is part of the global settlement announced in December 2009 where the firm indicated they would pay up to $640 million to settle pending wage hour suits.

In October, the U.S. Court of Appeals for the Fifth Circuit overturned a district court case and ruled that two workers that performed repair work for Bell South Telecommunications were employees rather than independent contractors. The workers worked for a subcontractor who classified them as independent contractors and as such did not pay them overtime. They were given assignments by Bell South supervisors who also checked their work and were required to work 12-hour days on a schedule of 13 days on and one day off.

They were also compensated by a straight time hourly rate. The Fifth Circuit stated that the workers could not be independent contractors when, as a matter of economic reality, they were dependent on the employer rather than in business for themselves.

Wage and Hour continues with its efforts to enforce the child labor laws very strictly. I recently read where they assessed a $50,000 civil money penalty against a Brooklyn, NY restaurant that had employed a 17-year-old employee to park cars. The minor, who was fatally injured in an accident, was employed contrary to child labor regulations that prohibit a minor under the age of 18 from operating a motor vehicle except in very limited circumstances. I also read this week where Wage and Hour assessed a penalty of $56,000 against a Colorado grain elevator operator due to a minor being fatally injured by falling into some grain and suffocating. As previously mentioned, the state of Alabama also amended its child labor laws this year to increase the employer responsibilities regarding work permits and to provide for the assessment of greater penalties for employing minors illegally. These changes are outlined on the website (http://www.labor.alabama.gov/) for the Alabama Department of Labr.

An Alabama Group Home operator has agreed to pay more than $300,000 in back overtime and penalties due to failure to pay proper overtime. The firm had used a 14-day work period rather than computing overtime after 40 hours in a workweek. More than 100 employees, including cooks, janitors, LPNs and nurses' aides will share in the $295,000 of back wages. The firm was also assessed $23,000 in civil money penalties as the company was found to have committed the same violations in a 2004 investigation of its operations.

A U. S. District Court jury in Birmingham recently found that Tyson's Foods had failed to properly compensate employees in its Blountsville, AL plant for time spent donning and doffing protective gear and awarded damages of $250,000 to the employees. The award was much less than had been recommended by the jury in a previous trial that was determined to be a mistrial.

There continues to be much litigation, both by Wage and Hour and private attorneys, related to whether employees are exempt from the minimum wage and overtime requirements or whether they should be paid overtime when they work more than 40 hours in a workweek. Therefore, employers should conduct regular evaluations of their pay practices to ensure they are correctly classifying all employees. If I can be of assistance you may reach me at (205) 323-9272.

2009 Upcoming Events

LMV WEBINAR: AFFIRMATIVE ACTION FOR THE SAVVY EMPLOYER: STAYING UP-TO-DATE ON THE CHANGING OFCCP LANDSCAPE

December 8, 2009 9:30 a.m.–11:00 a.m. CST

For more information about upcoming Lehr Middlebrooks & Vreeland, P.C. 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 there were 1,776 extended mass lay-offs during the third quarter of 2009? These lay-offs involved at least 50 or more employees for at least 31 or more days. A total of 277,924 employees were affected. This actually is an improvement from the second quarter of 2009, where there were 3,396 such lay-offs affecting 650,679 workers. Twenty-nine percent of all lay-offs in the third quarter occurred in manufacturing, primarily motor vehicles and transportation.

…that an improperly established "double breasted" operation resulted in employer liability for unfunded pension plan contributions? Ironworkers' Local #25 v. Steel Enterprise, Inc. (E.D. MI October 30, 2009)? The term "double breasted" applies to construction companies that have a unionized entity and a non-union entity. The challenge is to be sure that both are truly independent operating entities, otherwise, the employer could end up with one total unionized company. In this case, the court concluded that a company known as Steel Consultants was an alter ego of Steel Enterprise, as both had the same leadership, supervision and ownership. Funds

from both companies were commingled, such that the union was able to show that they were not bona fide, distinct entities.

…that on November 20, 2009, the National Right to Work Legal Defense Foundation sued the U.S. Department of Labor to learn the extent of contact DOL leadership has had with unions? National Right to Work Legal Defense and Education Fund, Inc. v. U.S. Department of Labor (D. DC, November 20, 2009). The suit is pursuant to a Freedom of Information Act request regarding the communications that Labor Secretary Solis and Acting Deputy Labor Solicitor Deborah Greenfield had with unions. In particular, the Defense Fund wants to know the meetings both officials had with unions and gifts they received from unions. According to the Defense Fund, "the Administration's apparent involvement with union officials fatally undermines the integrity of the Department of Labor's rule making and administrative oversight."

…that two bills are pending in Congress that would require employers to provide some form of paid sick leave? One bill (HR2460/S1152) would require employers to provide employees with one hour of paid sick leave for every 30 hours worked. Employees would be able to use that sick leave for their own care or the care of family members. The other bill (HR1723) would provide a family leave insurance fund. Employers would pay a payroll tax into the fund. According to the Congressional Research Service, the effect of these requirements will diminish employee compensation. The report states that economists "theorize that firms will try to finance the added benefit cost by reducing or slowing the growth of other components of compensation."

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