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Employment Law Bulletin

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Labor Loses Legislative Leverage (And Members)

What a four-day period for organized labor! The week began with Scott Brown's election in Massachusetts on Tuesday, January 19, and exit polling with some harsh criticisms for labor unions. The week ended with the data released by the Bureau of Labor Statistics, reporting union membership reached a record low in 2009, to 7.2% of all private sector employees, a decline from 7.6% in 2008 and 7.5% in 2007. Each .1% equals about 120,000 members. In the public sector, union membership showed a slight gain, from 36.8% in 2008 to 37.4% in 2009. Adding insult to injury for labor, President Obama's lengthy State of the Union speech on January 27 discussed several areas where he would like to see Congress take legislative action, but nothing was mentioned about the Employee Free Choice Act. The President used some of his strongest language in the speech when he railed against the Supreme Court's decision last week in *Citizens United*, a case that blows the door open for unions to influence political campaigns with political action committee funding. This had to be even worse news for the unions since the *Citizens United* decision was, arguably, the only good news they've received during the past week. Overall, our view is that labor has lost what was its extraordinary legislative leverage.

Although labor leaders publicly were supportive of the Obama Administration's approach to tackle health care before the Employee Free Choice Act, privately union leaders were seething at the slow pace of progress on EFCA. Labor considered the health care reform debate to be a mere distraction from its agenda. Publicly, labor arrogantly predicted that they would "get health care and EFCA, too". Now, we don't think there is much of an appetite in Congress for any meaningful legislation in either area.

Although we are neither posters nor pundits, here is what we think will develop regarding the legislative process overall and EFCA in particular. There is no real urgency in Congress to do much between now and the November mid-term elections unless the legislation relates to jobs, the deficit, or the war on terror. Candidates in the 2010 elections will seek to distance themselves from the President, Nancy Pelosi and Harry Reid. Advocates of EFCA and health care legislation will at best have to settle for a much more modest legislative initiative, if any.

Of further distress to labor is the uncertainty of confirming to the National Labor Relations Board Craig Becker, Associate General Counsel of the Service Employees International Union. The business community is concerned that Becker will seek to implement provisions of EFCA through the NLRB case-handling and regulatory process, regardless of Congressional approval. His nomination is in trouble. Thus, labor's hope for major labor reform through the Secretary of Labor addressing government contractors, EFCA and the NLRB will achieve only one of those three components–implementation of pro-union executive orders through the Secretary of Labor.

The substantial loss of membership and legislative leverage is a great embarrassment to labor. Labor was so confident with an advocate in the White House and broad legislative support that it would finally see its agenda finally prevail. By delaying EFCA until health care reform was addressed, labor lost its opportunity. This was an extraordinary blunder.

Vulgar And Gender-Specific Language: Harassment Is A Jury Question

The case of Reeves v. C. H. Robinson Worldwide, Inc. (11th Cir., January 20, 2010) involves a sexual harassment complaint by the only woman sales employee in an environment reeking with vulgarity and gender-specific offensive and crude comments. A District Court granted summary judgment for the employer, concluding that as the use of vulgar language about women was not directed toward Reeves, she could not state that she was subjected to sexual harassment. In reversing the District Court, the Court of Appeals stated that "words and conduct that are sufficiently gender-specific and either severe or pervasive may state a claim of a hostile work environment, even if the words are not directed specifically at the plaintiff."

Reeves worked as one of the sales representatives at the company's Birmingham, Alabama location. Reeves had prior experience in the transportation industry and "was no stranger to the coarse language endemic to the transportation industry." The five other sales people were men, all of who frequently used the "f" word with very creative variations. Regarding gender-specific vulgarity, their language included referring to women they spoke with on the phone as a "crack whore" and a "f…ing whore," among other graphic examples. The co-workers also turned on a radio station in the work area where the language on the station was vulgar, including discussions about women's anatomy, breast size and the like.

Reeves complained about this several times internally, to no avail. She resigned and sued.

The Court of Appeals stated, "even gender-specific terms cannot give rise to a cognizable Title VII claim if used in a context that plainly has no reference to gender." The Court gave as an example a sales representative who shouts "son of a bitch" (permissible) compared to referring to someone as a "bitch" or "slut" (impermissible). The Court stated that if the language in the work environment involved "a generally vulgar workplace, whose indiscriminate insults and sexually-laden conversation did not focus on the gender of the victim, we would face a very different case." In other words, in that situation (the "son of a bitch" example), Reeves would not have a claim. However, the Court stated, "a substantial portion of the words and conduct alleged in this case may reasonably be read as gender-specific, derogatory and humiliating, such that a jury 'could find that this gender-derogatory language and conduct exposed Reeves to disadvantageous terms or conditions of employment.'"

Courts have repeatedly stated that the laws prohibiting workplace harassment and discrimination do not require a civility code–vulgar, obnoxious language is not necessarily illegal and would not have been in this case had it not been gender-specific. An employer's greatest challenge is not the avoidance of breaking the law, but how to use the law to assert the employer's rights most effectively. In this case, the overriding question is not

whether the language may be illegal, but rather whether the language is appropriate for the work environment. In our observations, a high tolerance of general vulgarity ("son of a bitch") may also lead to vulgar comments that are gender-specific or based upon race or national origin.

Retaliation Charges Reach Record Level At EEOC

The EEOC just released its charge statistics from fiscal year 1997 through fiscal year 2009. For the first time since Title VII became effective in July 1965, and under all statutes for which the EEOC is responsible (ADA, ADEA, EPA), more charges of retaliation were filed than any other category–33,613 compared to the number two category of race, 33,579. Race and retaliation claims each amounted to 36% of total charges filed. In 1997, race charges amounted to 36.2% of all charges filed, retaliation charges amounted to 22.6%.

The total charges filed during FY 2009–93,277–was the second highest ever, following 95,402 charges during FY 2008. Age discrimination charges were approximately 25% of all charges filed in FY 2009 (24.4%), down slightly from 25.8% during FY 2008. ADA charges were 23% of all filed, compared to 20.4% in FY 2008.

Sex discrimination charges accounted for 30% of all charges filed (29.7% for FY 2008), national origin 11.9% (11.1% FY 2008), and religion 3.6% (3.4% FY 2008). The age charges are based not only on continuing workforce reductions, but also charges alleging failure to hire or re-hire based on age. The increase of ADA charges we attribute to the American's With Disabilities Act amendments, and we expect this percentage to increase once the EEOC issues its final ADA regulations.

Factors employers should consider to reduce the risk of retaliation claims or enhance the opportunity to be successful in defending a claim include:

1. Did the employee engage in protected activity?

2. What was the timing of the adverse action in relationship to the protected activity?

3. Were the decision makers aware of the protected activity?

4. Was the adverse action a consequence of behavior that also existed prior to the alleged protected activity?

5. Are the reasons for the adverse action consistent with how other analogous situations have been handled?

Engaging in protected activity does not insulate the employee from the consequences of his or her attitude, attendance, performance, or behavior, or from employer business decisions, such as workforce restructuring.

Workers' Compensation Corner: An Ounce Of Prevention Is Worth A Pound Of Cure

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.

Ben Franklin's sage advice still rings true today, particularly in the area of workers' compensation. Below are a few tips for preventing job injuries, and for managing on-the-job injuries when they do occur.

Consider Utilizing Free Resources, Such as OSHA's Consultation Program

One free resource to consider is OSHA's On-site Consultation Service. This consultation service is available to small and medium businesses in every state, in one form or another. Alabama's consultation service is called the Safe State Program, affiliated with the University of Alabama's College of Continuing Studies. This program is available to many companies with 500 or fewer employees. The goal of Safe State is to work with employers to reduce accidents, illnesses, and problems with regulatory compliance. Consultants from Safe State will visit a company's facilities, identify potential health and safety problems, and offer suggestions for resolving such problems. Safe State is a free and confidential program. However, a company utilizing Safe State must agree to certain conditions. For example, the company must agree to correct all identified hazards that could result in injury to employees. For more information about Safe State, visit

their web site at: http://alabamasafestate.ua.edu/safe_state_osha.htm.

For a complete listing of OSHA's on-site consultation programs in every state, visit OSHA's web site at: http://www.osha.gov/dcsp/smallbusiness/consult_directory.html.

Establish a Relationship with a Physician

The Workers' Compensation Act is designed as a balancing act, with benefits and limitations for both the employer and the employee. In many states, including Alabama, one of the primary benefits for the employer is the ability to designate the initial authorized treating physician. Companies are well advised to establish a relationship with a local physician, preferably one with experience in occupational medicine and on-the-job injuries. For physician recommendations, check with other companies in your area, or with your insurance carrier or workers' compensation counsel. Remember, in most situations, the goal for all sides is to get the best medical treatment available, as promptly as possible, so that the injured employee is restored to good health and can return to work as soon as possible. The physician should be on board with the company's goals concerning injured employees. A physician who knows and understands your company's expectations and the type of work your employees perform will likely have a greater success at returning your employees to work as soon as possible.

Communicate Your Workers' Compensation Program to New Employees

New employees should be provided with information about your workers' compensation program. It is often advisable to include a clear statement noting that while the employer will pay legitimate claims quickly and fairly, all claims will be investigated promptly and thoroughly. Particularly if your organization has a history of questionable workers' compensation claims, you may want to include information about your state's Workers' Compensation Fraud statute. Alabama's Workers' Compensation Fraud statute is found in Section 13A-11-124 of the Code of Alabama. Under that statute, making a false statement to obtain workers' compensation benefits is a Class C Felony. This statute is not merely lip service. In November of 2009, a Shelby County man was convicted of workers' compensation fraud. A Workers' Compensation Fraud poster is available on the Alabama Department of Industrial Relations' web site at: http://dir.alabama.gov/docs/posters/wc_fraudposter.pdf. This poster may be posted at your work site.

EEO Tips: ADA Developments – Applicants "But For" Test

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.

It may be hard to tell whether the disability community gained or lost ground during the month of January based on the holdings in two unusual cases. On January 11th, the U. S. Court of Appeals for the 11th Circuit in the case of Harrison v Benchmark Electronics Huntsville, Inc. (No. 07-00815, January 11, 2010) seemed to be on the "giving" end by holding that a job applicant may sue an employer under the ADA for going too far in making pre-offer medical inquiries that, arguably, might have been allowable where the applicant tested positive for drug usage. On January 15th, the U. S. Court of Appeals for the 7th Circuit in the case of Serwata v. Rockwell Automotion, Inc. (No. 08-4010, January 15, 2010) was definitely on the "taking" end by holding that ADA plaintiffs could not apply the "mixed motive" concept of discrimination because, unlike Title VII, there was no statutory basis for it under the ADA. These two cases are summarized below.

Harrison v Benchmark Electronics Huntsville, Inc. The plaintiff in Harrison v. Benchmark Electronics Huntsville, Inc. (BEHI) was John Harrison, who in November 2005 was assigned by Aerotek, an employment agency, to work for BEHI as a temporary employee. His job was to repair and test electronic boards. It was an established practice at BEHI to allow supervisors to invite temporary employees to submit an application for full-time employment if the supervisor thought that a temporary employee would meet the company's needs. Harrison's supervisor was Don Anthony, and he invited Harrison to submit an application for employment. Harrison also agreed to take a drug test as a part of the application process. At some point during the application process,

Harrison's drug test showed positive results for the use of barbiturates. According to an employee in BEHI's Human Resource Department, when the positive drug test results were found, Harrison's Supervisor, Don Anthony, was merely instructed to send Harrison back to the HR Department for further questioning by the Medical Review Officer (MRO) without mentioning to Anthony the specific reasons for such a review. However, Anthony, apparently, got the drug test results and questioned Harrison about them. Harrison told Anthony that the drugs were used consistent with a lawful prescription. Additionally, Anthony called the HR Department so that Harrison could talk to the MRO and stayed in the room to listen to his answers. Harrison explained that he had been epileptic since he was two years old and took the drugs consistent with a lawful prescription to control it.

Sometime later, the MRO and the HR Department cleared Harrison for hire, but Anthony advised the HR Department not to prepare an offer letter. He fired Harrison and contacted the employment agency and told them that Harrison was not acceptable because of performance and attitude problems and making threatening remarks to Anthony.

In May 2007 Harrison sued BEHI in the District Court for the Northern District of Alabama alleging a violation of the ADA by engaging in an improper medical inquiry based upon Section 12112(d)(2) and refusing to hire him based on his perceived disability. The trial court granted summary judgment in favor of BEHI holding (1) that even if a private right of action existed under Section 12112(d)(2), Harrison had failed to plead it; and (2) that Harrison could not make out a prima facie case under the statute because Section 12114 allows an employer to make such inquiries where the applicant or employee has tested positive for drugs.

Harrison appealed as to the matter of BEHI's alleged pre-offer medical inquiries. Upon appeal, the Eleventh Circuit stated as a threshold matter, and as a matter of first impression, "We must examine whether, a non-disabled individual, can state a private cause of action for a prohibited medical inquiry in violation of Section 12112(d)(2)." The Eleventh Circuit found that Harrison could. The court stated: "Thus, we now explicitly recognize that a plaintiff has a private right of action under 42 U.S.C. Section 12112(d)(2), irrespective of his disability status." The Court also found that Harrison had adequately pled this issue in his complaint.

Additionally, the Eleventh Circuit found that while Section 12114 excludes from the definition of "medical examination" a test for illegal drug use, that exemption "should not conflict with the right of individuals who take drugs under medical supervision not to disclose their medical condition before a conditional offer of employment has been given." Thus, while an employer may conduct "follow-up questioning in response to a positive drug test …" there are limits." The Court did not state exactly what those limits were but did allude to the EEOC Regulations that any questions that are disability-related would be prohibited under Section 12112(d)(2). The Court surmised that a jury might find the fact that Anthony remained in the room and listened to Harrison's answers while he was forced to disclose the facts concerning his disability to the MRO to be an improper pre-offer medical inquiry. As to the matter of Summary Judgment, the Eleventh Circuit reversed and remanded the case for trial.

EEO TIP: What is a disability-related question? How could BEHI have avoided this result?

<u>How BEHI's problems could have been avoided</u>. BEHI could have avoided the problems in this case by simply making a pre-job offer that was conditioned on satisfactory results of a post-offer medical examination or drug test. After making a conditional job offer and before an individual starts to work, the employer may conduct a medical examination, providing that all candidates who receive a conditional job offer in the same job category are required to take the same examination and/or respond to the same inquiries.

Employers should be aware that virtually all of the questions that are prohibited during the pre-offer stage of employment might lawfully be asked during the post-offer stage where an applicant has tested positive for drug use.

<u>Serwata v. Rockwell Automotion, Inc.</u> In the case of <u>Serwata v Rockwell Automotion Inc.</u> (Rockwell), (7th Cir. January 15, 2010), the plaintiff, Kathleen Serwata, filed suit against Rockwell alleging that the company had violated the Americans With Disabilities Act (ADA) by discharging her because she was regarded as being disabled notwithstanding her ability to perform the essential functions of her job. The critical aspect of this

case was that the jury which heard the case gave a positive, or "yes" answer to two seemingly contradictory questions as to the company's reason for discharging Serwata. In answer to the question as to whether Rockwell had discharged Serwata due to its perception that she was substantially limited in her ability to walk or stand, the jury answered "yes." Likewise in answer to the follow-up question: "Would defendant have discharged plaintiff if it did not believe she was substantially limited in her ability to walk or stand, but everything else remained the same?" The jury also answered "yes."

The trial court interpreted the jury's two positive answers to mean that the company had a "mixed motive," partly lawful and partly unlawful, for discharging Serwata. Accordingly, the trial court adopted the principles laid down by the Supreme Court in the case of Price Waterhouse v Hopkins (109 S. Ct. 1975), which had been tried under Title VII. In Price Waterhouse, the Supreme Court observed, "Title VII [was] meant to condemn even those decisions based on a mixture of legitimate and illegitimate considerations." Moreover, congress in enacting the Civil Rights Act of 1991 specifically codified the mixed motive principles in Section 107(a) of that Act. Thus, the trial court in finding for Serwata, applied the mixed-motive procedures under Title VII to the Rockwell case and awarded the plaintiff declaratory relief, injunctive relief and some attorney's fees. Rockwell objected to the trial court's findings and appealed the mixed-motive aspect of the case to the Seventh Circuit.

Upon appeal, the Seventh Circuit vacated the Judgment of the trial court and remanded the case with instructions to enter judgment in favor of Rockwell. The Seventh Circuit based its holding in the Rockwell case on the U. S. Supreme Court's treatment of the mixed-motive theory in the case of Gross v. FBL Financial Services, Inc., 129 S. Ct. 2343 (2009) which had been filed under the ADEA. The Seventh Circuit reasoned that the Supreme Court established the principle that the mixed-motive framework was expressly incorporated into Title VII both by case law (Price Waterhouse v. Hopkins) and the Civil Rights Act of 1991, but no such express statutory incorporation exists for either the ADEA or the ADA. Consequently "…when another anti-discrimination statute lacks comparable language, a mixed-motive claim will not be viable under that statute."

In doing so the Seventh Circuit, acknowledged that it was in effect overturning even some of its own holdings on prior ADA cases, but, nevertheless, found: "…In the absence of a cross-reference to Title VII's mixed-motive liability language in the ADA itself, a plaintiff complaining of discriminatory discharge under the ADA must show that his or her employer would not have fired him but for his actual or perceived disability; proof of mixed motives will not suffice."

This case clearly represented a "taking" as far as ADA plaintiffs are concerned because it would require much stronger proof of a violation. It remains to be seen whether the liberal language in the Americans With Disabilities Amendments Act of 2008, which became effective on January 1, 2009 and uses the term "on the basis of" instead of "because of," will restore any ground plaintiffs may have lost by the Seventh Circuit's position on mixed-motive cases under the ADA.

Please call this office at (205) 323-9267 if your firm does drug testing and you have questions or need legal counsel on how to frame lawful pre-offer and/or post-offer questions to applicants or employees.

OSHA Tips: OSHA Agenda in 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.

On December 7, 2010 OSHA held a "live Web chat" session to coincide with publication in the Federal register on that date of their semiannual regulatory agenda.

Included in their proposed agenda is action directed at **airborne infectious diseases**. Focus will be on health-care acquired infections such as tuberculosis, severe acute respiratory syndrome (SARS) and influenza. Note is taken of the increase in drug-resistant micro-organisms in healthcare and the fact that most current control efforts are directed at patient rather than worker protection. The agency proposes to publish a Request for Information (RIN) on this topic in March of this year.

The word **ergonomics** again makes its appearance in the OSHA lexicon. OSHA is proposing to revise its regulation on Recording and Reporting Occupational Injuries and Illnesses (Recordkeeping) to restore a column on the OSHA 300 Injury-illness log for employers to check recordings of work-related musculoskeletal disorders (MSDSs). This MSDS column was removed from the OSHA 300 log in 2003. OSHA's short-lived ergonomics program standard was repealed under the Congressional Review Act in 2001. Since then OSHA enforcement in the area has been limited to a few citations under the General Duty Clause in Section 5 (a)(1) of the OSHACT. Some employers are concerned the proposed recording requirement may signal a renewed attempt to issue an ergonomics standard. In response to a question in the "live chat" session Jordan Barab, Acting Assistant Secretary at that time, replied, "this is not a prelude to a broader ergonomics standard.

In October of 2009 OSHA published an Advance Notice of Proposed Rulemaking (ANPR) to address the hazards of **combustible dust**. OSHA noted in an accompanying news release that since 1980, more than 130 workers had been killed and more than 780 had been injured in combustible dust explosions. In 2008 one such explosion resulted in the death of 14 workers at the Imperial Sugar plant in Port Wentworth, Georgia. A National Emphasis Program (NEP) had been implemented by the agency in 2007. Inspections under this program resulted in numerous citations alleging violations of the General Duty Clause. While a number of existing standards, such as housekeeping, electrical, personal protective equipment, etc. addressed combustible hazards, the frequent reliance upon the General Duty Clause suggested the need for a comprehensive standard. Added impetus was given by congressional interest following Imperial Sugar and support for a combustible dust standard coming from the U.S. Chemical Safety and Hazard Investigation Review Board.

Another item on OSHA's latest regulatory agenda is the **Hazard Communication Standard (HCS)**, which is consistently at or near the top of its most often cited violations. The HCS requires chemical manufacturers and importers to evaluate hazards of chemicals they produce or import and prepare labels and material safety data sheets. These labels and data sheets must convey the hazards and necessary protective measures to downstream users of the chemicals. Employers with these hazardous chemicals in their workplace must have a hazard communication program in place that includes labels on containers, material safety data sheets, and a provision for relevant training of employees. Problems with chemical hazard communication arise due to diverse and sometimes conflicting national and international requirements for labeling and data sheets. Inconsistencies between various laws have been substantial enough to require different labels and data sheets for the same product when it is marketed in different nations. In 2003 the United Nations adopted a Globally Harmonized System of Classification and Labeling of Chemicals (GHS). OSHA is considering modifying its HCS to make it consistent with GHS. On 9/30/09 the agency published a Notice of Proposed Rulemaking (NPRM) on this issue. Informal public hearings are scheduled to be held in Washington D.C. on 3/2/10, in Pittsburg on 3/31/10 and in Los Angeles on 4/13/10.

Wage And Hour Tips: Overtime Problems

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.

The following are the most frequent problems for employers regarding overtime compliance:

1. Misclassification of employees as exempt from overtime. If this occurs, the employer may face up to three years of back pay if those formerly exempt classified employees worked overtime.

2. Improper deduction for break/meal time. Breaks to be deducted must be at least 21 minutes and the employee must be free and clear of job duties. If employees take two 15 minute breaks, they cannot be added together and deducted. If an employee's break is interrupted such that the employee performs work, then it is likely that

none of the break time is deductible. Note that federal law does not require breaks, but some state laws do.

3. Employees work 'off the clock.' This violation may subject the employer to double damages and fines. An example is if a manager or department head is told that his/her labor costs are too high, but he/she either does not know what to do or cannot do anything about it. The manager/head may tell employees to punch out and finish their work, which is illegal.

4. Mistakes regarding what constitutes 'hours worked.' For example, training, seminar and orientation time usually count as 'hours worked' for determining whether overtime is owed.

An employer should periodically conduct a wage and hour compliance audit. Are records properly maintained? Are employees properly classified? Is time properly recorded/deducted? The risk with wage and hour violations is that even if the amount seems minimal, such as two hours/week for improperly deducting breaks, multiply by 104 or potentially 156, then double it, and multiply that by the number of employees affected, add interest, attorney fees and possible fines, and it will not take long to be considered 'serious' money.

2010 Upcoming Events

EFFECTIVE SUPERVISOR® - Webinar

Part I – The Laws
February 18, 2010 9:00 - 11:00 a.m. CST

Part II – The Relationships
February 25, 2010 9:00 - 11:00 a.m. CST

Part III – The Leaves
March 4, 2010 9:00 - 11:00 a.m. CST

EFFECTIVE SUPERVISOR® - Live

Muscle Shoals – April 7, 2010
Marriott Shoals

Mobile – April 15, 2010
Fiver Rivers Delta Resource Center

Huntsville – April 21, 2010
U.S. Space and Rocket Center

Montgomery – September 9, 2010
To Be Determined

Birmingham – September 22, 2010
Bruno Conference Center

Huntsville – September 30, 2010
U.S. Space and Rocket Center

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

Did You Know…

…that the U. S. Supreme Court refused to hear a decision that invalidated arbitration agreements that waived class action claims? Athens Disposal Company v. Franco (January 11, 2010). The employee filed suit alleging wage and hour violations that included failure to pay for overtime. The lawsuit was filed as a collective action on behalf of all other employees. The arbitration agreement stated that the employer and employee "forego and waive any right to join or consolidate claims in arbitration with others or to make claims and arbitration as a representative or as a member of a class or in a private attorney general capacity."

…that on January 5, 2010, The Conference Board, a New York-based research group, reported that only 45.3% of all employees are satisfied with their jobs? This is the lowest job satisfaction figure since the survey began in 1987, when 61.1% of those surveyed said they were satisfied with their jobs. Those between ages 25 and 34 had the highest level of job satisfaction (47.2%). Those between ages 45 and 54 had a 46.8% satisfaction rate.

Both age groups had a satisfaction rate of over 60% in 1987. Only 50.8% of those surveyed said they found their work interesting, down from 69.7% in 1987.

…that the AFL-CIO National Labor College on January 14 announced that they would join the Princeton Review to create an on-line learning program for AFL-CIO members and their families? The purpose is to obtain college degrees. According to AFL-CIO President Richard Trumka, "Expanding good jobs is a top priority for the AFL-CIO, and to achieve this, workers' skills and knowledge must match the role of employers and the changing job market. This new on-line education venture demonstrates our strong commitment to playing a significant role in ensuring that quality education for America's workers and their families remains affordable and accessible."

…that on January 21, 2010 the U.S. Supreme Court ruled that employer and union political action committees may not be limited in the amount they contribute to Federal candidates? Citizens United v. FEC. We are not sure the limitations on contributions worked that well on union contributions. For example, the Service Employees International Union (SEIU) PAC contributed approximately $20 million to Federal candidates in the 2008 elections.

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