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Your Workplace Is Our Work®

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Labor Day 2010: A Bleak Outlook

First celebrated on September 5, 1882, Labor Day, according to the U.S. Department of Labor, "constitutes a yearly national tribute to the contributions workers have made to the strength, prosperity and well-being of our country." Labor Day has also become a time to reflect on the status of work in America and organized labor.

Frankly, Labor Day 2010 offers a bleak picture. There are five job seekers for every job vacancy throughout the United States. The unemployment rate among those 40 or older is the highest it has been in 60 years, and the "under employment" rate is approximately 17%. Those who are entering the workforce find employment difficult to obtain, and are competing with those who lost higher paying jobs and are stepping down the ladder to seek employment. For employers, this heightens the risk of claims based upon failure to hire and also termination, as jobs are so precious.

This is a transformative time for the labor movement. For the first time in our nation's history, more public sector employees are represented by unions (7.9 million) as compared to private sector employees (7.4 million), even though private sector jobs out-number public sector jobs by five to one. Private sector union membership declined in the past year from 7.6% to 7.2%, or approximately 500,000 members. Labor missed an opportunity early in the Obama administration to push for the passage of the Employee Free Choice Act and now such passage is unlikely.

The Change to Win Coalition, that organization of seven unions, six of whom left the AFL-CIO in 2005 – appears to be falling apart. The Laborers International announced they are leaving the CWC to rejoin the AFL-CIO, as UNITE HERE previously announced. This is a move toward consolidating the labor movement into one 16 million member organization, comprised of the AFL-CIO, Change to Win Coalition and National Education Association. This one organization would have increased political clout and workplace influence.

Perhaps the most transformative development within the labor movement is on the organizing front. Unions are moving from the "bad employer, good union" stereotype to unions projecting themselves as a business partner. The following statement last month from UAW President Bob King could have been made by the CEO of any organization: ". . . We have a moral obligation to our customers . . . our first loyalty is ultimately to our customers." The customers King referred to are the employer's customers, not the UAW members. In other words, unions want to portray themselves as advocates for business and industry.

For so many years, employers have evaluated the relationship factor in remaining union-free, and that is still important. However, labor's strategy is to make itself attractive to employees who do not have relationship issues at work, but rather are concerned about the viability of their employer and their job. This challenges employers to evaluate how their culture will sustain a union-free future.

ADA Retaliation For Access Claim

The usual retaliation claim of concern to employers is the one that arises from allegedly protected workplace conduct. However, the case of Ross v. Independent Living Resource Center of Contra Costa County (N.D. Cal., July 21, 2010) involved the termination of an employee based on an ADA access lawsuit he filed against another business.

Ross, a quadriplegic, was employed by the not-for-profit Independent Living Resource Center as a counselor. He was invited to attend a birthday party at a local recreation facility called Sacramento Basketball Town. Ross couldn't get into the party because it was located in an upstairs room, inaccessible to Ross. Ross filed an ADA access lawsuit against Sacramento Basketball Town. The lawsuit, which was widely publicized in the Sacramento area, ultimately forced Basketball Town to close. Upon closing, a Basketball Town spokesman said the non-profit could not afford the costs of defense or the risk associated with losing the case.

Within days of this announcement, the Living Resource Center terminated Ross's employment as part of its cost-cutting measures to address a budget deficit. Ross then sued his former employer.

In permitting the case to go to the jury, the court disregarded the Living Resource Center's reason for terminating Ross, noting that layoffs had occurred prior to the time of Ross's termination, and those layoffs were, in the court's opinion, enough to have addressed its budget deficit. Furthermore, the court stated that apparently the budget deficit did not restrain the Living Resource Center from giving raises to its management staff. Finally, employees at the Living Resource Center commented about the adverse publicity surrounding Ross's lawsuit. One manager stated that "There is just no way ILR could have somebody employed that makes the organization look bad."

Employers have the right to evaluate what employees do away from work in determining whether employment should continue. This includes non-work-related litigation. We enjoy several rights as citizens that our employers may consider whether those activities conflict with employer interests. However, as Ross demonstrates, be sure that the non-work-related employee activity is not one which is protected at the workplace.

State Laws Increasingly Limit Employer Use of Background Checks

Throughout the past year, we have emphasized the increased focus on employer use of background and credit checks. This continues to accelerate, as individuals' credit scores are declining if they have been under-employed or unemployed. This downward spiral continues when an individual in that situation is rejected from employment based on his or her credit history.

The federal Fair Credit Reporting and Disclosure Act does not preclude states from passing legislation with greater restrictions on employers when considering employee/applicant credit and criminal background information.

In August, the governor of Illinois signed into law the Employee Credit Privacy Act, which restricts the use of a credit history for employment, recruitment, termination and compensation decisions. The governor of Massachusetts on August 6th signed into law legislation that restricts the use of felony convictions to 10 years and misdemeanors to five years. The Massachusetts statute also provides that an employer on an employment application may not ask for conviction records, but it may be requested during the course of an interview when an employee is provided a copy of his or her criminal background information. Similar legislation has been enacted in Oregon, Hawaii and Washington. Other states considering legislation to restrict the use of credit and background checks include Connecticut, Maryland, Michigan, Missouri, New Jersey, New York, Ohio, Oklahoma, South Carolina, Vermont and Wisconsin.

Failure To Cooperate: Insubordination, Not Retaliation

A baggage handler for American Airlines was awarded $1,000,000 by an Illinois jury for his claim of retaliatory discharge due to a workers' compensation injury. However, the Seventh Circuit Court of Appeals on August 5, 2010 reversed that decision – easy come, easy go – in Casanova v. American Airlines, Inc.

Casanova worked as a baggage handler for American Airlines at Chicago's O'Hare International Airport. Casanova filed a workers' compensation claim, stating that he injured his arm while lifting a golf bag. American had a third-party administrator responsible for investigating workers' compensation claims. Casanova replied to every question the third-party administrator asked with an answer of "I don't recall" (no doubt practicing for his deposition in litigation). He told the third-party administrator that he had nothing else to offer about his injury – he did not recall.

The court of appeals stated that this case never should have gone to the jury in the first place. In some of the strongest language we have seen in recent years, the court said that "Indeed, it is almost impossible to conceive that any employee who conducted himself in this fashion would not be fired, by American Airlines, or any other employer that wants to maintain the respect and obedience of its workforce."

Whether it is cooperating with an employer's investigation over a work-related injury or following an employer's call-in procedures under the FMLA, an employee's protected activity does not shield the employee from accountability for his or her refusal to follow employer procedures. Employees do not get to write or ignore the workplace rules due to their protected activity.

Workplace Deaths Hit Historic Low; 40% Are Transportation Related

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

The number of workplace fatalities reached a record low in the United States last year, according to preliminary figures released by the Bureau of Labor Statistics. Workplace fatalities declined 16 percent, from 5,214 in 2008 to 4,430 in 2009. This represents the smallest total since the Census of Fatal Occupational Injuries (CFOI) was first conducted in 1992.

The recession played a major role in the decrease. BLS reported that the total hours worked by Americans declined by six percent in 2009. Some industries that have historically accounted for a significant share of workplace deaths, such as construction, experienced even larger declines in hours worked.

Transportation incidents remained the most common cause of workplace deaths, though the number of transportation fatalities fell 21 percent, from 2,130 in 2008 to 1,683 in 2009. Workplace homicides fell by one percent in 2009, to 521. Workplace suicides declined 10% in 2009, to 237. Fatal falls declined 12 percent, from 700 in 2008 to 617 in 2009.

Construction workers incurred the most fatal injuries of any industry in the private sector in 2009, though the number of fatalities in construction declined by 16 percent from 2008.

Per capita, Montana was the most dangerous place to work in the United States in 2009, followed by North Dakota and Wyoming.

Given that approximately 40% of workplace incidents occur from transportation accidents, employers should ensure that their driver safety programs are effective and up to date. Companies should update their policies to address the proliferation of hand-held electronic devices. Rather than using the term "cell phone," the term "electronic device" should be used. In all policies, texting while driving should be banned.

EEO Tips: Objective Employment Actions By Employers Find Support In Recent Decisions By The Eleventh Circuit

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Apparently it was a good month for employers at the Eleventh Circuit Court of Appeals in Atlanta. In two unpublished cases, the court issued favorable decisions in support of the employment actions taken by employers to resolve discrimination charges involving sexual harassment and disparate treatment.

The cases in question were:

- Vivian Garriga v. Novo Nordisk, Inc., No. 09-14232, August 5, 2010 involving an employer's decision to discharge a female sales representative who had violated certain company and industry sales policies even though she had previously alleged sexual harassment and the maintenance of a hostile working environment.

- Denry Brown v. Sears Home Improvement Products, Inc., No. 09-5177, August 9, 2010 involving an employer's decision to place an African-American employee on a performance plan for improvement because he failed to reach an established sales level.

In Garriga, the plaintiff, Vivian Garriga, worked as a sales representative for Novo Nordisk, a Danish manufacturer and distributor of drugs for diabetes, between April 2001 and September 6, 2007, when she was terminated. During most of this period, she was a successful sales representative and earned the praise of her supervisors. In March 2007, Novo Nordisk hired Brian Taylor as the new business manager. Almost from the start, her relationship with Taylor was strained. She objected to his conduct. He made frequent sexual innuendos and engaged in sexual banter at meetings. However, Taylor also gave Garriga some negative reviews of her work. On one occasion when Taylor accompanied Garriga to a meeting with physicians, he "put his arm around" her. Garriga also accused Taylor of leering at her breasts and backside. She asked Taylor to stop and when he didn't, she complained of sexual harassment to a human resources representative. However, after an HR investigation, including interviews with Taylor, Garriga and four others, it was determined that her complaint could not be corroborated. At this point, there had been approximately eight interactions between Garriga and Taylor over a three month period.

Taylor learned of Garriga's complaint on July 22, 2007. Approximately 10 days later, Taylor placed Garriga on a "Coaching Worksheet," a tool used by Novo Nordisk to evaluate employee performance and identify skills that needed improvement. The employee would normally be given 60 days to improve his or her skills. However, Taylor found out the next day that Garriga and another employee, Shannon Duffy, had sponsored a dinner at the private residence of a client physician. Taylor reported to HR that he believed such action to be a violation of the policies of the Pharmaceutical Research and Manufacturers of America. After an investigation, including an independent investigation by the Regional Business Director, Garriga and Duffy were terminated on September 6, 2007 for violating company policy.

Thereafter, Garriga filed suit alleging that she had been subjected to a hostile working environment and retaliated against under Title VII and relevant Florida Statutes. The District Court entered summary judgment on behalf of Novo Nordisk. Garriga appealed.

The Eleventh Circuit, in affirming the judgment of the lower court, found that Garriga failed to show the alleged harassment was "sufficiently severe and pervasive to alter the terms and conditions of employment" based on four factors in the case of Mendoza v. Borden (11th Cir. 1999), namely: (1) the frequency of conduct; (2) the severity of the conduct; (3) whether the conduct was physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interfered with the employee's job performance. The court stated that in this case the alleged misconduct by Taylor occurred on nine days over a period of five months, whereas in Mendoza the misconduct occurred daily over an eleven-month period. Hence, Taylor's conduct did not rise to the level of severity established by the Eleventh Circuit.

This raises the interesting question of whether the Eleventh Circuit by this case has established an eleven-month standard to measure severity with respect to a hostile working environment. At any rate, it would seem to be a very generous ruling in favor of employers.

In Denry Brown, an African-American male, Brown, appealed the district court's order granting summary judgment to Sears on his claims of race discrimination, retaliation and constructive discharge. Brown was employed by Sears in April 2005 as a Project Consultant and was responsible for making in-home sales presentations during pre-set sales appointments known as "leads." He worked on a commission basis.

His district sales manager, Lowell Merkin, assigned leads to the project consultants. Project consultants in turn were expected to maintain a "net closing percentage" which was equal to or greater than a target level set by Sears. In March 2006, an anonymous complaint was filed through the Sears "Ethics Hotline" that Merkin distributed leads in a racially discriminatory manner. The complaint was not filed by Brown. After an internal investigation, including an interview of Brown and others, the allegation of discrimination could not be verified. Nonetheless, in September 2006, Brown filed a complaint alleging discrimination by Sears with the Florida Commission on Human Relations. He alleged that Merkin was assigning leads on a discriminatory basis. More specifically, he alleged that Merkin assigned leads to him of homes with lower average incomes and values than to non-minority project consultants, which in turn lowered his chances of making a sale.

While Brown's complaint was pending, in October 2006, Merkin issued Brown a Performance Plan for Improvement (PPI). The PPI was written by the Metro Sales Manager. The PPI noted that from September 24, 2006 to October 24, 2006, Brown's net closing percentage was 57.7% below the established target. On February 5, 2007, Brown voluntarily resigned his employment with Sears without mentioning discrimination but rather stated that it was because he was dissatisfied with his pay. However, he filed suit on March 7, 2008, alleging race discrimination, retaliation and constructive discharge. The district court granted summary judgment to Sears.

In affirming the judgment of the district court, the Eleventh Circuit found that as a matter of fact sufficient evidence was produced at trial to show that at best there was only an insignificant difference of 0.17% between the average incomes of homes assigned to him and those assigned to non-minorities. Likewise, the Court found that there was only a difference 0.21% at best in the home values on his leads as compared to other project consultants. The Eleventh Circuit held that these small differences were meaningless and immaterial.

As to the retaliation issue, the Eleventh Circuit held that "temporal proximity standing alone" is not enough to establish a finding of retaliation according to Eleventh Circuit precedent set forth in Hulbert v. St. Mary's Health Care System, Inc. Therefore, the mere fact that the PPI was issued shortly after Brown's complaint to the Florida Commission on Human Relations does not in and of itself establish Brown's claim of retaliation.

Finally, in disposing of Brown's constructive discharge claim, the Eleventh Circuit stated that "We have set a high bar for claims of constructive discharge." Such a claim "requires the employee to demonstrate that the work environment and conditions of employment were so unbearable that a reasonable person … would be compelled to resign." Virgo v. Riviera Beach Assn. The court noted that in this case Brown never complained to Sears about discrimination against him or availed himself of their internal procedures to rectify any lead assignments that he believed to be discriminatory. Accordingly, the court concluded that the conditions at Sears, apparently, were not unbearable.

EEO TIP: In each of these cases, the employer had in place an effective harassment policy and/or an effective internal "Ethics Hotline" to report perceived discriminatory conduct. Such systems provide great support for court findings in their favor. All employers should make sure that their policies or systems are up to date.

OSHA Tips: OSHA And Fall Hazards

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.

Falls continue to be one of the most frequent causes of occupational deaths and injuries. Fatal falls in workplaces account for about 15 percent of all such deaths, which places it second only to vehicle accidents. Bureau of Labor Statistics data for the period 1992-2004 disclosed an annual average rate of 300 fatal falls. In 2008, this number was 700 and preliminary results for 2009 indicated there were 617 such cases. As might be expected, most of the fatal falls are from heights, and they occur disproportionately in construction activities. Additionally, BLS data reported an annual average of 299,404 non-fatal falls that resulted in lost workday injuries. While not exclusively, the majority of these involve slips, trips, and falls on the same level. The National Safety Council has estimated that workers' compensation and medical costs associated with employee slip-and-fall incidents are approximately $70 billion per year.

Given the above, it is not surprising that OSHA devotes much attention in their standards and workplace inspections to fall hazards. Geared primarily to the construction industry, most of the OSHA regions have emphasis programs that target fall hazards. Attention given this issue is evidenced by the agency's annual compilation of its most frequently violated standards. For fiscal year 2009, the second most frequently charged violation was for failing in the duty to have a fall protection program in place. It should be noted that the most cited violation was for deficiencies in scaffolds, which would include fall hazard issues. Number seven on this list involved problems with the use of ladders which includes related fall hazards.

Where there have been no standards to address fall hazards, OSHA has made use of the general duty clause of the OSHACT. In fact, one of the most frequently used categories in which this was employed in fiscal year 2009 was to address fall hazards. Examples include the following:

1) An employee was standing on the blades of a forklift or pallet being raised to retrieve material from the storage racks.

2) Employees were walking on a platform atop a tank about 11 feet above ground without fall protection.

3) Employees were standing on the midrail of a scissor lift to reach higher elevations.

4) An employee was on a rusted and corroded catwalk which broke at a weld joint causing him to fall approximately 38 feet to the ground and receive fatal injuries.

Most OSHA fall hazard violations will likely be characterized as serious. Average penalties proposed for these violations rank among the highest. Potential consequences of disregarding fall protection requirements are displayed in an agency press release of February 12, 2010. The release noted that an employer was cited by OSHA for 10 instances of failing to protect workers from falls. The accompanying penalty proposed was $539,000. In this case, a roofer had fallen 40 feet to his death.

To guard against injuries from falls and possible OSHA citations, employers should identify and correct conditions that could result in falls. This includes open-sided floors and platforms or other surfaces that are four feet or more above the lower level. Ladders should be checked periodically to ensure they are safe for use. Slippery conditions in aisles, passageways, and work areas should be promptly eliminated. Stairways should be kept free of debris or clutter. These type conditions will not go unnoticed or un-cited by OSHA.

OSHA published in the Federal Register on May 24, 2010 a notice of proposed rulemaking regarding walking and working surfaces. The revision is intended to require improved protection from tripping, slipping and falling hazards.

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.

It seems that virtually every day I see something about another suit being filed under the Fair Labor Standards Act (FLSA). Not only is there private litigation but also Wage and Hour is continuing to increase its enforcement efforts. If you will remember, in early 2009 when Ms. Hilda Solis was sworn in as Secretary of Labor, she stated there was a “new Sheriff in town.” It appears that she was serious because they've hired 250 new investigators since she took over DOL. Although some of these employees are still undergoing training, many of them are already conducting investigations. Thus, employers can expect to see more investigations as the number of trained investigators increases.

Earlier this month, I had a chance to meet with the Wage and Hour Regional Administrator for the Southeast, who incidentally began his career with Wage and Hour some 39 years ago as an investigator in Jackson, MS. Prior to his appointment in the Atlanta Regional Office, he served as the Birmingham District Director. During our discussions, he indicated they are continuing to hire new investigators and he is considering bringing back more retired investigators to train the new employees. All of this indicates that Wage and Hour is very serious about enforcing the requirements of the FLSA.

There is one FLSA case that is currently before the U. S. Supreme Court. It deals with whether the making of an oral complaint is protected under the anti-retaliation provision of the FLSA. In 2009, the Seventh Circuit Court of Appeals found that Congress intended to require employees submit written complaints to be shielded from retaliation. As this finding is at odds with the finding of six other circuits, the Supreme Court agreed to consider the issue. If the Supreme Court upholds this finding, it could dramatically change how Wage and Hour handles complaints, as the vast majority of complaints they handle are received by telephone. It is expected that the Supreme Court will rule in the case during the upcoming session.

One of the requirements of the "health care" legislation that passed earlier this year concerns break time for nursing mothers. Employers with 50 or more employees are required to provide the mothers unpaid breaks to allow the employee to express breast milk for her nursing child for one year after the child's birth. In addition, the employer must provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers that may be used. While most portions of the legislation do not take effect for some time, this section took effect in March 2010. Additional information regarding this requirement is available on the Wage and Hour web site.

Recently, I ran across a case involving a real estate appraisal firm that had erroneously claimed an exemption for a member of their administrative staff. The employee was paid $1000 per week and regularly worked 60+ hours per week. The U. S. District Court, using the "fixed salary for a fluctuating workweek" pay plan, had awarded the employee almost $25,000 in back wages plus an equal additional amount for the employee's claim under a state statute. Additionally, the court had awarded the employee attorney's fees and costs of more than $95,000. The employee appealed the case to the Seventh Circuit Court of Appeals because she felt that she was entitled to time and one-half rather than the one-half time that is allowed under the fixed salary pay plan. The Seventh Circuit upheld the method used in computing the employee's back wages and also left intact the monetary damages that had been awarded. Cases like this make one realize how important it is to make sure that employees are properly classified.

Last month, the Second Circuit Court of Appeals issued an opinion that could have wide reaching effects in the pharmaceutical industry. The court, overturning a district court, ruled that pharmaceutical sales representatives employed by Navartis did not qualify for either the administrative or outside sales exemptions. There are approximately 2,500 plaintiffs that earn $90,000 – 100,000 per year, which means that the firm may be required to pay a large amount of back wages.

The Fifth Circuit Court of Appeals recently overturned a district court summary judgment in a Family and Medical Leave Act case. An employee, who worked at a hospital, was diagnosed with a serious health condition in June 2006. The employee filed an FMLA claim through the employer's third party FMLA administrator and was granted intermittent FMLA leave nine times between July and December 26, 2006. On December 28, 2006, the employee's mother called the employee's supervisor and informed them the employee could not work because she was hallucinating and disoriented. The employee was then taken to the employer's hospital as a patient. During the time the employee was in the hospital, she was visited by one of her supervisors. Because the patient was incapacitated, her mother obtained a court order authorizing the employee's transfer to a psychiatric facility. After three days, the employee was dismissed from the facility into her mother's care with several medications and instructions to seek treatment at another facility. Her mother informed her supervisor that the employee would be unable to work for an undetermined period. The employer had a policy that required employees seeking FMLA to contact their FMLA administrator within two days of the need for leave. In this instance, the employee waited five days before making the contact for the additional leave. Consequently, the employer terminated the employee for her unapproved absences. The Fifth

Circuit found that, even though the employee did not meet the employer's notice requirements, she had provided sufficient notice and thus was protected by the FMLA.

Consequently, the examples above show that employers need to be very aware of the requirements of the Family and Medical Leave Act, as well as the Fair Labor Standards Act, and make a concerted effort to comply with both. If I can be of assistance regarding either statute, do not hesitate to call me.

2010 Upcoming Events

EFFECTIVE SUPERVISOR®

Montgomery-September 9, 2010
Hampton Inn and Suites

Birmingham-September 22, 2010
Bruno Conference Center

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

Mobile – November 3, 2010
Five Rivers Delta Resource Center

RETAIL SERVICE HOSPITALITY INDUSTRY BRIEFING

Birmingham – September 17, 2010
Vulcan Park

MANUFACTURERS' BRIEFING

Birmingham – November 18, 2010
Vulcan Park

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

Did You Know…

…that according to a Gallup poll conducted during August 5-8, 2010, 52% of all Americans approve of unions, an increase from 48% last year? Last year's approval rating was the lowest in the history of the poll, which began in 1935.

…that an employer's workplace harassment policy that requires more than what is necessary under the law does not create a cause of action if the employer fails to follow that policy? Cross v. Prairie Meadows Race Track and Casino (8th Cir., August 12, 2010). Of course, we do not advise employers to publish policies with the thought that they can decide not to follow them when they prefer not to. However, in this particular case, the court stated that "Employers are free to draft harassment policies that are much more stringent than Title VII, and they should be permitted to do so without fear that they will incur additional liability as a result of their efforts."

…that reference to an employee as "fuzzy," "obsolete," and "lethargic" could be enough to suggest age discrimination as a reason for his termination? Reid v. Google, Inc. (August 5, 2010). Reid claimed that he was terminated at age 54 due to his age. His immediate supervisor and the person who terminated him was 38 years old and used the above phrases to describe his assessment of Reid's performance. Upon termination, the 38-year-old boss and a 34-year-old assumed Reid's duties. The court stated that whether these comments were enough to substantiate that age was a reason for his termination was a question for the jury.

…that a Wage and Hour class action over the automatic deduction for breaks was permitted to proceed against a nursing home chain on August 25th? King v. Heritage, Inc. The employer owns 38 skilled nursing and retirement homes in Illinois. The class action (collective action is the Wage and Hour term) was authorized for employees at all 38 locations. The claim arose based on the employer's policy to automatically dock an employee 30 minutes for a meal period each shift an employee worked. The employees alleged that this docking occurred even when employees worked through their meals

or had their meals interrupted. The claim is on behalf of all hourly personnel, including nurses.

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