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Employment Law Bulletin

MAY 2011
VOLUME 19, ISSUE 5

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Inside this issue:

FROM OUR EMPLOYER RIGHTS SEMINAR SERIES:

The Effective Supervisor

Birmingham ....September 15, 2011
Huntsville.................September 29, 2011

Michael G. Green II Joins LMV

We are pleased and proud to announce the association of Michael G. Green II with our team of labor and employment attorneys. Prior to attending law school, Mike distinguished himself as a Lieutenant in the United States Navy, serving on two destroyers and at a squadron as an instructor. For his service, he received numerous medals and commendations, including the Navy and Marine Corps Commendation and Achievement Medals, the Armed Forces Expeditionary and National Defense Service Medals, and the Global War on Terrorism Service Medal. Mike was ranked among the top junior officers at his various commands by his commanding officers.

An undergraduate from the University of Notre Dame, Mike graduated with honors from the Florida State University College of Law, where he was an editor of the Florida State Law Review. Following a federal clerkship, he was an associate with a law firm where his practice focused on employment law and commercial and complex litigation.

Mike’s association with Lehr Middlebrooks & Vreeland will enhance our commitment to provide you with the highest quality of prompt and creative labor, employment and benefits support.

$10.6 Million Sexual Harassment Award

If there ever was an example of “better to learn from the mistakes of others” than to make your own, surely that was the case in Ingraham v. UBS Financial Services, Inc., where a Missouri jury awarded $10.6 million for the sexual harassment of a client services associate. In essence, the jury concluded that UBS failed to properly and thoroughly investigate the sexual harassment complaints and then retaliated against the plaintiff, Carla Ingraham, for making the complaints.

Ingraham was employed as a client services associate. This is an administrative position providing support to the firm’s brokers. Ingraham worked for UBS from 1986 through 2009.

A client services associate’s compensation in part depends upon receiving a share of commissions earned by brokers supported by the associate. Ingraham alleged that in 2003 she began working for a broker, Jay DeGoler, who subjected her to conversations about his sex life, made sexual comments about her and other women, asked her questions about her sex life and sexual preferences, and made comments about his genitals and her breasts in the presence of others. After she filed her internal complaint about the behavior, DeGoler fired her, though she remained employed supporting other brokers.

UBS conducted an investigation, which involved speaking with individuals who were "drinking buddies" of DeGoler. They stated that Ingraham was a willing participant in discussions, the discussions occurred after work, and she also went drinking with those brokers to whom she reported. However, these allegations were not reviewed with Ingraham. Rather, UBS told her that her allegations were not corroborated. She was asked to sign a counseling statement about drinking with brokers and, after she was terminated, UBS wrote on the U-5 form it submitted to the Financial Industry Regulatory Authority that she was fired for "lying" about human resources matters. As her attorney stated, "We put the policies, culture and environment of UBS on trial in this case. If you look at all of the rules of the road concerning what a firm is supposed to do when it comes to the employer's responsibility to maintain an atmosphere free of harassment, UBS violated every one of those."

At what point during this process could UBS have handled it differently to avoid this outcome? Perhaps the most significant mistake is that it did not follow up with Ingraham after other brokers commented about her behavior. If UBS had followed up with her, perhaps she would have provided the names of witnesses or information to contradict what the others reported. However, by not conducting a thorough investigation and ultimately concluding that Ingraham was "lying," UBS made a $10.6 million mistake.

Union Elections Increase; Membership Still Down

According to the Bureau of National Affairs, private sector union membership is at 6.9%, down from 7.2% one year ago. However, there are signals that perhaps the decline in unionization is over; 2010 was a strong year for unions using the NLRB election process (that's an ironic outcome, considering unions wanted the Employee Free Choice Act to avoid NLRB elections). There were a total of 1,666 NLRB-conducted elections in 2010, an increase from 1,321 elections in 2009. Unions won 67.6% (1,126) of those elections, compared to 68.7% in 2009. A total of 70,333 new workers became union-represented, an increase from 50,131 in 2009.

The Teamsters had the most elections, 431, nearly a third of all elections, and they won 58.2% of those elections. The Service Employees International Union had 157 elections and won 106 (67.5%). Also highly successful were the Laborer's International, winning 84.8% of all elections, the Machinists (73% win rate), Steelworkers (70.2%), SEIU (67.5%), Operating Engineers (67.5%), and the UAW (57.7%).

By industry, unions had their greatest success in construction, with an 80.9% win rate. They won 70% of all elections in health care services and 55% of all elections in manufacturing.

As part of its revitalization effort, the UAW has adopted a "southern strategy" to unionize non-union auto industry manufacturers and suppliers throughout the south. The UAW also announced the creation of the Global Organizing Institute. This is a combination of retirees, union members and interns to create consumer pressure to support corporate neutrality toward unions.

Employee Tweets Not Protected, Advises NLRB

The implications of social media on employee Section 7 rights under the National Labor Relations Act will continue to evolve. For example, in the case of Lee Enters, Inc. d/b/a Arizona Daily Star (May 10, 2011), the NLRB Division of Advice determined that an employee's tweets were unrelated to protected, concerted activity. Therefore, the employer's termination of the employee did not violate the National Labor Relations Act.

The employee, a reporter, began using Twitter at the newspaper's request. The company set up the Twitter account and provided links from the Twitter account to the newspaper's website. In one tweet, the employee stated that the newspaper's copy editors were "the most witty and creative people in the world. Or at least they think they are." The employee was counseled against airing in the public grievances or negative comments about fellow employees or the newspaper.

Shortly thereafter, in tweeting about crime in the Tucson area, the employee wrote "What?!?!? No overnight homicide? WTF? You're slacking Tucson." A week later, a reporter for a local television station posted that a drug smuggler tried to "peddle his way" into the U.S. The newspaper employee responded to this by tweeting "Um, I believe that's PEDAL. Stupid TV people." The TV station sent an e-mail to the newspaper, criticizing the reporter's lack of professionalism. Shortly thereafter, the employee was terminated for disregarding warnings "to refrain from using derogatory comments in any social media forums that may damage the good-will of the company."

Even if the employer had an overly broad social media rule, the Division of Advice stated that the individual "was terminated for posting inappropriate and unprofessional tweets, after having been warned not to do so, i.e. for engaging in misconduct. Firing the employee under such circumstances did not violate the NLRA because the misconduct at issue did not involve legally protected activity."

Employer Benefits Representations May Be Binding, Rules U.S. Supreme Court

The United States Supreme Court on May 16, 2011 in the case of Amara v. CIGNA expanded and limited employee rights in the event an employer misstates benefits employees would receive. The case arose after CIGNA changed its pension plan in 1998 and told employees verbally and in writing that the changes were "an overall improvement in retirement benefits." However, the changes resulted in freezing benefits available to older, long-term employees and thus, the changes were not an overall improvement for those employees. According to the Supreme Court, employees may seek damages for the benefits the employer led them to believe they had.

When CIGNA changed the pension plan in 1998, it converted the existing benefits for employees to a "hypothetical" "opening account balance" under the new plan. The problem was that the conversion number under the new plan was not 100% of the value under the old plan. In some cases, the value was half. The lower court ruled that CIGNA's concealment of the true effect of its pension change deprived employees of the opportunity to take action, such as leaving CIGNA for a company with a better pension plan or raising an issue with CIGNA about the plan change.

CIGNA argued and the Supreme Court agreed that the lower court could not fashion a remedy that was not provided in the plan. However, the Supreme Court stated that a lower court could order a trustee to amend the plan to conform to the terms that were distributed to employees.

How did the Supreme Court's decision limit employee rights? The Court stated that if an employer makes a copy of the complete plan available to employees, an employee may not pursue a claim of reliance on a plan summary that is inconsistent with the terms of the plan document. Thus, employers who make the full plan available to employees are protected if there are inconsistencies between written descriptions of the plan and the actual plan document. Of course, the best practice is to avoid the inconsistency, so that employee expectations are in line with the plan.

Are You Ready for Some Football? An Update on the NFL Lockout

This article was prepared by Matthew J. Cannova and Michael G. Green II, labor and employment attorneys for the law firm of Lehr Middlebrooks & Vreeland, P.C. Matthew can be reached at 205.323.9279 and Michael can be reached at 205.323.9277.

The NFL's regular season kickoff game is scheduled for September 8, 2011, but the likelihood that games will be played that day is still up for *collective bargaining*. Current negotiations and the various lawsuits between NFL players and owners have made little progress toward guaranteeing its fans any NFL games this season, much less a September 8th kickoff.

The NFL represents over a $9 Billion industry in addition to the hundreds of millions of dollars that it generates for the local economies of team cities. The detrimental domino effect of the cancellation of any games, much less that of an entire season (or seasons), extends from the players and owners all the way to the vendors, merchandisers, restaurants, public facilities, tax revenues and the fans.

The NFL and the NFL Players Association (NFLPA), the collective bargaining agent for NFL players, entered into the recently expired collective bargaining agreement (CBA) in 2006. The NFL owners opted out of the agreement in 2008. On March 12, 2011, after a week-long extension aimed at reaching a new agreement, the pro football world came to a screeching halt: the CBA expired, the NFLPA voluntarily decertified as the collective bargaining agent for NFL players and the NFL owners declared a lockout.

Shortly thereafter, a group of players filed an antitrust lawsuit against the league, alleging the lockout constituted an illegal group boycott and price-fixing agreement in violation of the Sherman Antitrust Act. NFL owners responded by filing an unfair labor practice charge with the NLRB, alleging that the NFLPA refused to bargain in good faith because it planned to decertify and sue the NFL under antitrust laws.

The players' claims are aimed at the legality of the lockout, the NFL draft, the salary cap, and free agent restrictions, including the "franchise tag." The League stands by its position that the 2006 CBA did not "adequately recognize the costs of generating revenue"—of which players receive nearly 60%—such as significant and growing amounts spent on stadium construction and operations and improvements to respond to the interests and demands of the fans.

The most recent developments began in late April in the aforementioned antitrust lawsuit, when a federal district judge in Minnesota enjoined the lockout, which the owners immediately appealed. The Eighth Circuit Court of Appeals granted a permanent stay of that order, thereby reinstating the lockout. A full appeal is scheduled for June 3, 2011, but all signs point to another victory for the owners and the lockout continuing until the players agree to return to the bargaining table.

There are currently four different legal actions spanning three different federal courts and two offices of the National Labor Relations Board. While the lockout is pending, players currently under contract will not receive compensation or health insurance benefits and may not play, practice, workout, or enter team facilities (except for charitable events).

It is still very uncertain whether we'll see the New Orleans Saints and Green Bay Packers kickoff on September 8th, but one thing is for sure: Yes, Hank. We are ready for some football.

EEO Tips: EEOC Launches Major Campaign Against "Human Labor Trafficking"

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.

At a meeting held on January 19, 2011, the U.S. Equal Employment Opportunity Commission heard testimony from experts and representatives of various federal agencies involved in the enforcement of federal laws which prohibit human labor trafficking. The purpose of the meeting was to ascertain the best way for the Commission to coordinate its own enforcement activities under Title VII with those under the various related civil and criminal laws which are enforced by the other agencies. According to the Commission, the employment discrimination laws which it enforces, particularly those which prohibit discrimination on the basis of race, national origin and/or sexual harassment, are an integral part of the national fight against human labor trafficking. Ambassador Luis CdeBaca, senior advisor to the Secretary at the Department of State stated that he sees "…the EEOC's participation in federal interagency efforts to combat trafficking as a new frontier of the U.S. approach to tackling this crime and seeking justice for the victims." In this connection, the National Underground Railroad Freedom Center in Cincinnati, Ohio, estimates that 600,000 to 800,000 people are trafficked internationally, and as many as 17,600 people are trafficked in the United States.

<u>What is human labor trafficking?</u> The Trafficking and Violence Protection Act of 2000, defines the "Severe Forms of Trafficking in Persons" as:

(a) sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

The Act provides for both criminal and civil penalties. Various portions are enforced by the Department of Justice, the Department of State, and the Department of Labor. While the EEOC has no direct enforcement responsibilities under the Trafficking and Violence Protection Act of 2000, it has related enforcement responsibilities under Title VII and the other acts which it enforces. Since its hearing in January, the EEOC, apparently, has been busy preparing to launch a major assault of its own on employers and/or labor broker organizations who allegedly have been engaged in unlawful human labor trafficking operations. On April 20, 2011, the EEOC filed three of its largest ever lawsuits involving allegations of human labor trafficking in the agricultural industry. Those cases can be summarized as follows:

In the case of EEOC vs. Global Horizons Inc. dba Global Horizons Manpower, Inc., Captain Cook Coffee Company, Ltd. which was filed on April 20, 2011 in the U.S. District Court for the District of Hawaii, and likewise in the case of EEOC vs. Global Horizons, Inc., dba Global Horizons Manpower Inc., Green Acre Farms, Inc. which was filed on April 20, 2011 in the U.S. District Court for the Eastern District of Washington, the EEOC alleged that the employers engaged in a pattern or practice of national origin and race discrimination, harassment, and retaliation when it trafficked over 200 Thai male workers to farms in Hawaii and Washington where they were subjected to severe abuse. More specifically, the complaint alleges, among other things, that the Thai workers were forced to live in dilapidated housing, forbidden from leaving the premises, screamed at by supervisors, threatened with physical assault and isolated from other workers. The EEOC alleged that such conduct constituted retaliation, national origin and race discrimination in violation of Title VII.

In the case of EEOC vs. Signal International, LLC, filed on April 20, 2011 in the U.S. District Court for the Southern District of Mississippi, the EEOC alleged that the employer subjected a class of approximately 500 Indian employees to abuse and a hostile working environment, including disparate, discriminatory treatment with respect to terms and conditions of employment based on national origin and/or race (Asian). The EEOC's Birmingham District, which filed the lawsuit, asserted that the employer required the Indian employees to live in modular trailers called "man camps," enclosed by fences, and under other intolerable conditions and for which the employer charged $30 per day. According to the EEOC, the Indian employees had been recruited to work as welders, pipefitters, and ship fitters in Mississippi and Texas under the federal H2B Guest Worker Program.

Of course, it is easy enough for the Commission to make such bold accusations, but it may be very difficult to prove all of them. The Commission recognized this fact and acknowledged that there were a number of critical obstacles to overcome in bringing a lawsuit involving human labor trafficking. Some of these were as follows:

1. A short time-frame for filing a charge. The Commission must abide by the 180-day (or 300-day depending on the state) limitation period for the filing a charge. Unless potential charging parties are made aware of their specific rights under federal anti-discrimination statutes (which is unlikely) in the early stages of their employment, they probably will not file a charge on a timely basis for any perceived abuse unless, of course, there are continuing violations.

2. Language barriers. Because of language barriers and usually a paucity of interpreters of the language spoken by the workers in question, it will usually be difficult for potential charging parties to lodge complaints about any discriminatory terms and conditions of employment.

3. Intimidation factors: Many of the potential victims of unlawful labor trafficking are so desirous of working and earning a good living for their families that they are inclined to overlook discriminatory treatment or are too intimidated to challenge or report it to outside authorities.

4. Need for specialized training of Investigators. The EEOC recognized that it must provide specialized

training to its Investigators and Charge Intake personnel in order for them to ask the right questions of charging parties whose charges involve discriminatory treatment on the basis of national origin, race or sexual harassment against a class of workers. For example, as one speaker on January 19, 2011 stated to the Commission, "what first presents itself as sexual harassment may reveal, through skillful interviewing, a situation of coerced labor."

EEO TIPS: Trafficking in human labor is a serious offense. Such activities are subject to investigation and prosecution by at least four federal agencies including the Justice Department, the Wage and Hour Division of the Department of Labor, the Department of State and the EEOC. Thus, aside from the criminal sanctions that may result, an employer may also be faced with huge monetary damages. Recently, for example, in the case of EEOC vs. Trans Bay Steel which was filed on behalf of 48 highly skilled Thai welders, contracted under H2B visas, the EEOC obtained over $1 million in monetary relief on behalf of the workers. The EEOC alleged that the employer and/or its agents, Kota Manpower and Hi-Cap Enterprises, had brought the workers over to this country and at one point confiscated their passports, restricted their movements and forced some of them to work without pay.

However, there is also something very un-American about the practice. EEOC Commissioner Lipnic put it this way: "Human trafficking is certainly an unconscionable crime. Apart from the physical and mental abuse suffered by its victims, the crime is one that should be particularly appalling to all of us as Americans in that it uses the promise of a better life in America to lure individuals, often with little or no education, to this country into a life of forced servitude."

If you have any questions about human labor trafficking, please feel free to call this office at (205) 323-9267.

OSHA Tips: OSHA Interpretation Letters

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.

OSHA's website at www.osha.gov includes the agency's responses to hundreds of questions regarding OSHA standards. These letters of interpretation can be very useful in helping to understand how OSHA might enforce a particular standard. Following are examples of a number of such letters posted in the most recent months.

A question was posed in one case as to whether OSHA would adopt newer standards regarding accident prevention signs and physical hazard marking adopted by the American National Standards Institute. OSHA replied that, while such revisions were not on the agency's agenda at this time, they would be considered in the future as priorities and resources permit.

A second question posed had been whether OSHA would incorporate/adopt the above revisions by a letter of interpretation until the Code of Federal Regulations (CFR) could be changed. The agency's reply to this also speaks to the role of interpretation letters. It stated that, "OSHA cannot adopt new consensus standards via letters of interpretations. Adopting new consensus standards can only be done through rulemaking, which is a resource intensive process. Interpretation letters explain existing OSHA requirements and they apply to particular circumstances, but they cannot create additional employer obligations."

A letter dated September 30, 2010 asks the following: "When air monitoring for hexavalent chromium is required every six months by standard 1910.1026(d)(2)(iii) for exposures above the action limit, or when monitoring is required quarterly by 1910.1026(d)(2)(iv) for exposures above the permissible exposure limit, and the job frequency is lower than the frequency of the required monitoring, are employers required to 'stage' jobs to meet the exposure monitoring requirements?" OSHA's answer is "No." The employer is not required to stage jobs to meet the requirement of sampling every six months or quarterly. However, exposure monitoring should be conducted as soon as the job occurs after the applicable scheduled monitoring requirements.

One questioner asked why the definitions for combustible liquids and flammable liquids were different under OSHA's construction and general industry standards. The answer given by OSHA was as follows: "The definitions addressing the two standards are different because the definitions were adopted from different sources. The definitions in the general industry standard originated in a national consensus standard, NFPA 30-1969, while the definitions in the construction standard were adopted from established federal standards under the Construction Safety Act." They went on to note that since the two sources defined the terms differently, the definitions were not consistent.

In answer to a follow-up question, OSHA stated that these definitions are being addressed in the pending Hazard Communication rulemaking in which they will be proposing new definitions to correspond with the Globally Harmonized System of Classification.

OSHA was asked which employers might be subject to a citation on a construction site having subcontractors and a general contractor where electrical cords that violated OSHA standards were in use. The response was that under both the Act and multiemployer citation policy, any employer exposing its own employees to such a hazard could be cited. Additionally, where an employer's own employees are not so exposed, that employer might still be cited should it be found to qualify as a "creating," "correcting," or "controlling" employer.

Wage and Hour Tips: Deductions from an Employee's Pay

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.

Let's start with the basics: employees must receive at least the minimum wage free and clear of any deductions except (1) those required by law or (2) payments to a third party that are directed by the employee. Not only can the employer not make prohibited deductions, the employer **cannot require or allow** the employee to pay money in cash apart from the payroll system. So let's look at what deductions are permissible, impermissible, and exceptions to the rules.

Examples of deductions that can be made:

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

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

- Cost of uniforms required by the employer or the nature of the job.
- Cash register and inventory shortages, and tipped employees cannot be required to pay the check of customers who walk out without paying their bills.
- Cost of licenses.
- Any portion of tips received by employees other than through a tip pooling plan.
- Tools or equipment necessary to perform the job.
- Employer-required physical examinations.
- Cost of tuition for employer-required training.
- Cost of damages to employer equipment, such as those resulting from wrecking an employer's vehicle.
- Disciplinary deductions. Employees being paid on a salary basis may not be docked pay if they work any part of week, except that exempt employees may be docked for "major safety infractions."
- Deductions also may not be made from the guaranteed salary of an exempt employee. However, deductions may be made from bonuses that may be due the employee. For example, a manager at a convenience store gets a quarterly bonus based on the sales of the store and it is determined that he/she

failed to make a cash deposit. This amount may be deducted from the bonus but may not be deducted from the manager's salary.

The number of hours an employee works in a workweek also affects when their pay can be reduced. If an employee receives more than the minimum wage, in non-overtime weeks, the employer may reduce the employee to the minimum wage. For example, an employee who is paid $9.00 per hour may be docked $1.75 per hour for up to the actual hours worked in a week, presuming the employee does not work more than 40 hours. Wage and Hour does take the position that no deductions may be made in overtime weeks unless there is a prior agreement with the employee. Thus, employers might want to consider having a written employment agreement allowing for such deductions in overtime weeks. Even if there is a prior agreement with the employee, the deduction in the example above would be limited to $70.00 (40 X 1.75) in an overtime week.

The Act provides that Wage and Hour may assess, in addition to requiring the payment of back wages, a civil money penalty of up to $1100 per employee for repeated and/or willful violations of the Fair Labor Standards Act. Recently, I am finding that this is done with a greater frequency. Therefore, employers should be very careful to ensure that any deductions are permissible prior to making such deductions.

Note for employers operating in the state of Florida: Effective June 1, 2011, the state minimum wage will be $7.31 per hour. A few years ago, the citizens of Florida voted to tie their minimum wage to the cost of living with the wage to be adjusted each year. Because the Consumer Price Index went down last year, the state agency that administers the law reduced the state minimum wage. However, a State Court of Appeals found that such a reduction was prohibited by the Florida constitution and ordered an immediate re-computation of the wage. Thus, the increase was ordered. Also, Florida employers must remain mindful that, while under the Fair Labor Standards Act tipped employees may be paid $2.13 per hour with a tip credit of $5.12 per hour, the Florida law limits the tip credit to $4.29 per hour, which requires the employer to pay a cash wage of $3.02 per hour. Employers should remember that they must be able to show that the employee received sufficient tips to bring them up to the minimum wage or they must increase the cash wage to the employee.

If I can be of assistance, do not hesitate to contact me.

2011 Upcoming Events

EFFECTIVE SUPERVISOR®

Birmingham – September 15, 2011
Bruno's Conference Center, St. Vincent's

Huntsville – September 29, 2011
U.S. Space & Rocket Center

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 the EEOC was ordered to pay half of an employer's costs to produce documents requested by the EEOC? EEOC v. Kronos, Inc. (W.D. Pa., May 3, 2011). Kronos is a testing company that provides hiring assessments to Kroger. The EEOC issued a broad subpoena which Kronos estimates will cost $75,000 to comply with. The Court determined that the EEOC as the party seeking the information should pay 50% of the costs of producing it.

…that OFCCP is proposing to revise affirmative action requirements for veterans? Currently, contractors with 50 or more employees and contracts of more than $100,000 must develop a written affirmative action plan. However, OFCCP is contemplating broadening the scope of affirmative action requirements for veterans. The regulations would give specifics about steps employers should take to recruit veterans, list job vacancies, require annual review of affirmative action plan progress and expand OFCCP's rights to review employer data and compliance. The OFCCP stated that, "First and foremost, the proposed changes will connect job-seeking veterans with contractors looking to hire." The OFCCP would require employers to set targets for the hiring of veterans, based upon data showing the availability of veterans in the relevant geographical area.

…that Indiana enacted legislation to limit teacher bargaining rights? Signed on April 20, 2011 by Governor Mitch Daniels, Indiana now limits collective bargaining to salary and wage related items (no benefits), and limits the duration of a bargaining agreement to two years. The legislation also provides that a teacher who files a frivolous claim of unfair treatment will be required to pay the school district's costs and defense fees for responding to the claim.

…that the U.S. Supreme Court upheld the enforceability of provisions in mandatory arbitration agreements that require claims to be litigated individually and not on a class basis? AT&T Mobility, LLC v. Concepcion (April 27, 2011). Although the case involves consumer rights, its implications apply to employment. Concepcion purchased cellular telephones from AT&T Mobility where AT&T literature stated that the purchase was without charge. However, Concepcion was charged $30.00 in sales tax and filed a class action in southern California, claiming that AT&T Mobility could not under California law assert that the service was for free but charge an additional $30.00. Concepcion signed a mandatory agreement which required him to arbitrate any dispute and stated that any customer would not be "a plaintiff or class member in any purported class or representative proceeding." The U.S. Supreme Court, in a 5-4 decision, stated that "requiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the Federal Arbitration Act." Thus, an employee who signed an agreement to arbitrate employment claims would have to bring such a claim as an individual and not as a plaintiff or class member in a class action.

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