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NLRB Votes In Favor of Modified Ambush Election Rules

Over 65,000 written comments were received by the NLRB in response to its proposed ambush election rules, which would result in holding elections as quickly as ten days after the filing of a petition. The Board had open hearings for two days in July to hear comments from business and labor about the proposed rules. In our July issue of the Employment Law Bulletin, we predicted that while the Board would be very hospitable and act like it truly cared about concerns expressed by the business community, it would move forward with establishing the rules in the manner they were proposed.

In an effort to issue the final rule before the Board has only two members and therefore would be unable to do so, Board Chair Mark Pearce held a vote among the three Board members–himself, Craig Becker and Brian Hayes–yesterday, November 30, 2011, to approve a scaled-back version of the original ambush election rules. (Becker's term expires at the end of December. Hayes, a Republican and former Senate staffer, has aggressively and publicly opposed the Board's notice posting rule and these proposed rules.)

As a result of yesterday's 2-1 vote in favor of changing the Board's election rules, some but not all of the rules in the original proposal are now slated for a final vote, some time before Becker's term expires and after the final rules are circulated to all three Board members.

Yesterday's vote represented at least a brief retreat from the original rules, which would have resulted in union elections being held as quickly as ten days after the filing of a petition. Instead, the new rules narrow the scope of pre-election hearings, virtually eliminate pre-election appeals, and strike down the current rule providing that a vote cannot be held sooner than 25 days after the Board's Regional Director issues a Direction of Election.

Although the final rule is a significant step back from forcing a union vote within ten days of a petition, it certainly opens the door for Regional Directors to schedule union votes much sooner after the petition is filed. Indeed, the clear intent of the rule is to encourage elections within the first 25 days after the filing of a petition, much sooner than the current average of 38 days between the filing of a petition and a union vote.

Member Hayes has spoken out against the Board's attempt to implement these rules without a clear quorum and has even hinted that he may resign prior to the final approval of these rules, which would prevent a two member Board from implementing what's left of the ambush rules.

As we have stated previously, we expect ambush election rules–in some form–to become effective, whether it's a result of this Board's action or actions by the Board after new appointees are seated. Either way, whatever action this Board takes is likely to be challenged in court.

EEOC Charges Reach Record High

Ninety nine thousand nine hundred forty-seven (99,947) discrimination charges were filed with the EEOC during fiscal year 2011, the highest number ever. The prior high was 99,922 charges during fiscal year 2010.

The EEOC resolved 112,499 charges during fiscal year 2011, its highest level ever. The EEOC reduced its current inventory of charges to 78,136.

The EEOC obtained $364.6 million in monetary benefits for charging parties during fiscal year 2011, the highest amount ever. This amount was obtained on behalf of 19,570 individuals through EEOC administrative enforcement activities, mediations, settlements, conciliations, and withdrawals with benefits.

During fiscal year 2011, the EEOC's mediation program obtained a record 9,831 settlements, a 5,000 increase from fiscal year 2010. Approximately $170 million in monetary benefits was obtained through the EEOC mediation process. This substantially exceeded the prior record of $141 million during fiscal year 2010.

According to the EEOC's Performance and Accountability Report, the EEOC currently has 580 systemic investigations involving 2,067 chargers, including 47 commissioner's chargers. During fiscal year 2011, 235 systemic investigations were completed, resulting in 96 reasonable cause findings. Thirty-five (35) cases were settled and $9.6 million was collected on behalf of the affected class members.

The EEOC filed 261 lawsuits during fiscal year 2011, a slight increase from 2010 but far short of the record number 438 filed in 1999. One hundred seventy seven (177) of the lawsuits alleged individual harm, 61 alleged multiple victims and 23 alleged systemic lawsuits (affecting 20 or more employees).

The EEOC resolved 277 lawsuits during fiscal year 2011, obtaining $90.9 million in monetary relief. This is an increase from 2010, where 287 lawsuits were resolved and $85.1 million in monetary benefits was obtained. As of now, the EEOC reports that it has 443 cases on its active docket, 116 of which involve more than one but fewer that twenty parties, and 63 of those cases involve systemic allegations (20 or more individuals).

We expect that over 100,000 charges will be filed during fiscal year 2012, and the litigation of employment claims will continue to increase. During the past 11 years, the year with the highest number of federal employment discrimination claims filed was 2001 with 21,157 lawsuits. That number gradually declined to 13,209 in 2008, but has since risen to 14,543. We expect that upward trend to continue.

A Bad Haircut: Protected Activity?

The National Labor Relations Board is becoming the appellate court for employees dissatisfied with decisions made by HR or others in the company. If it's not a claim of discrimination, look for more individuals to bring their claims to the NLRB.

Although social media policies have received great focus concerning employee rights under the National Labor Relations Act, the recent case of *NLRB v. White Oak Manor, Inc.* (4th Cir. October 28, 2011) illustrates the broad scope of NLRA coverage regarding basic decisions employers make daily.

This case involved an employee who worked at a long-term care facility. She got a "terrible haircut" and was embarrassed. Therefore, she started wearing a baseball cap to work. She did this for about a week or so, without any manager commenting. However, about a week later, a supervisor told her that company policy prohibited the

wearing of a hat indoors and, unless she took off her hat, she would be sent home. Preferring to stay at home as opposed to working until the terrible haircut grew out, the employee went home.

She then showed up at a company Halloween party, wearing a baseball cap of a racecar driver and taking pictures of other employee Halloween costumes that included wearing a hat. The supervisor again asked her to remove her hat and gave her a written warning for insubordination.

The employee subsequently talked to other employees about the "no hats" policy and what she claimed was its inconsistent enforcement. Two of her fellow employees permitted her to photograph them wearing hats at work, resulting in further discipline. The employee filed a charge with the National Labor Relations Board, and the court upheld the Board's decision that the employer's actions violated the employee's rights to engage in concerted activity.

The employer argued that her conduct was not because of any protected, concerted activity, but because of her personal concern about her haircut. The court said: "That an employee's self-interest catalyzed her decision to complain about working conditions does not inexorably bar a determination that her actions were protected and concerted. Motives are often not monolithic, and an employee may seek both to mitigate a problematic policy affecting her and to improve the lot of her coworkers." Thus, although the employee's actions started because of her terrible haircut, they morphed into protected activity – concern about their employer inconsistently enforcing its "no hats" policy.

EEO Tips: Five Useful Tactics Employers Can Use in Disposing of EEOC Charges in the Coming Year

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It is not unusual for an employer to believe that it has done nothing wrong when an EEOC charge is received. The truth is that in a large number of instances employers are correct. In the past ten years, EEOC charge statistics show that the agency has found "no reasonable cause" on between 55% to 64% of the charges filed with it for processing. However, according to preliminary EEOC reports, the agency broke a number of records in Fiscal Year 2011 (which ended on September 30th) in processing its caseload of charges, including a record number of charges resolved (approximately 112,500), and a record of over $360 million in monetary benefits obtained on behalf of approximately 20,000 charging parties or affected class members for approximately $18,000 each.

In my judgment, all of this record setting by the EEOC in FY 2011 probably meant that some employers were "taking it on the chin." That is, unless of course the EEOC found "no reasonable cause" on a higher than normal percentage of charges. Unfortunately, that specific kind of data was not in the preliminary report; thus, we don't know the details of how the EEOC achieved such record results. We do know that the EEOC hired additional investigators, attorneys, and staff members early in FY 2011, which probably accounts for most of the additional resolutions. The point here is that even if your firm has successfully disposed of all of its charges for less than the average payout indicated above, this still may be a good time to consider some useful tactics available to employers in order to ensure that your firm doesn't end up contributing to a record breaking EEOC statistic during FY 2012.

Incidentally, none of the tactics being suggested here is really new. The problem is that some of them are either not well known or not used at all. They can be summarized as follows:

1. Requesting mediation. This must be done as soon as possible after receiving notice and a copy of a charge. Usually, it may be a win/win procedure for all of the parties involved including the EEOC.

2. "Controlling the EEOC's Investigation" by careful, complete position statements and responses to requests for information. Providing the right information not just a minimal response may shift

the burden of proof back to the EEOC and the charging party.

3. Requesting a "fact-finding conference" as soon as possible after submitting a position statement may help sift out the emotional misperceptions and non-factual debris that usually clutter the allegations in a given charge.

4. Requesting a "pre-determination settlement conference" if indicated by what your own internal investigation and the EEOC's evidence shows as to potential, ultimate liability.

5. Engaging in "pro-active conciliation" with the clear understanding that conciliation is a give-and-take process and that "full relief" does not necessarily require monetary relief in the form of back pay.

Let's take a closer look at each of these.

Accepting or Requesting Mediation.

Mediation is generally fair, efficient and free. Resolution of the charge usually takes less than 90 days. The EEOC's mediators are required to act as neutral third parties who have no bias as to the outcome of the process. The entire cost is paid by the EEOC. The mediation proceedings are confidential and if they fail, the charge is simply returned to the EEOC's regular investigative process and nothing said or done during mediation is included in the file. On the other hand any settlement agreement reached during mediation does not constitute an admission of any wrongdoing or violation of any law by the employer. Mediation avoids a protracted investigation including the submission of cumbersome, time-consuming documentation of personnel transactions and of course it avoids costly litigation.

The problem is that the EEOC does not offer mediation for every charge. Charges alleging large, class-wide violations, systemic violations and those alleging unsettled legal issues such as an interpretation of ADAAA coverage for a given disability will probably not be offered to the parties to mediate. On the other hand, for example, charges involving a hiring decision, promotions or whether the employer's offer of an accommodation for an employee's disability was reasonable could well be a proper charge for mediation. The point here is that it doesn't hurt to ask for mediation if it is not immediately offered by the EEOC.

A quick resolution of a charge may be just as beneficial to the charging party as to an employer if the EEOC could be convinced to facilitate the settlement through mediation. The request should be made as soon as possible after receipt of the charge to avoid its being included in the regular administrative process.

Controlling the EEOC's Investigation.

An EEOC charge in effect places a burden upon the respondent to prove that the respondent "did not violate the law." A proper response to an EEOC charge shifts that burden back to the EEOC and the charging party to prove that the law was broken. It is in this sense that a respondent can control the EEOC's Investigation.

In order to do this a respondent must provide, not just minimal information to support the employer's position, but the right information. In most cases this means giving the EEOC sufficient information to undermine or dismiss the charge. This requires a careful internal investigation in order to obtain all of the facts. Thus, if necessary a respondent must give itself sufficient time to obtain the facts by requesting an extension of time from the EEOC's investigator. Usually it is granted because with a heavy caseload, EEOC's investigators need more time too, but don't count on it. Always explain why the extra time is needed, for example, to obtain records from numerous out of town sources. Several other steps should also be taken as follows: (1) verify the validity of the charge; make sure that it is timely and that the EEOC has jurisdiction; (2) provide a comprehensive, factual response to each allegation. Frame the response in keeping with the legal burden of proof for each issue or allegation. Include supporting documentary evidence whenever possible. Generally, it is prudent to consult legal counsel if you have questions as any of these steps.

Requesting A Fact Finding Conference:

The operative term here is "requesting" because the EEOC is not automatically going to ask every respondent to participate in a fact finding conference. Usually most of the fact finding is done by way of charging party statements, witness affidavits, employer position

statements and requests for information. Often the investigator follows up by telephone if he or she has any additional questions. However, the EEOC is authorized by Section 1601.15 (c) of its Procedural Regulations to hold a "fact-finding conference with the parties…to define the issues, to determine which elements are undisputed, to resolve those Issues that can be resolved and to ascertain whether there is a basis for a negotiated settlement of the charge." Thus, in my judgment a fact-finding conference should be a windfall for respondents. Perhaps, not with every charge, but with any charge where the issues are illusive or where the facts are not clear but strongly contested on both sides. Hence, we suggest that employers take the initiative and request a fact-finding conference to clarify the issues and pertinent facts. This request should be made at the time the respondent submits its position statement.

Fact-finding conferences are much more formal than a series of telephone conversations. They are similar to mediation except the Investigator is not a mediator. His or her purpose will be try to resolve as many conflicting issues and facts as possible with a view toward settling the charge. Such conferences should be attended by (1) an officer of the company with the power to settle the charge. Legal counsel may also attend but is limited in speaking as a advocate in the session; (2) the charging party or parties and legal counsel who also are limited to speak as an advocate directly in the session; and (3) the EEOC Investigator. If the parties can agree on terms of a settlement, the charge may be resolved at that time. If not, the employer can certainly leave with a better knowledge of how to defend the charge in question in the event that a lawsuit is filed either by the charging party or the EEOC.

Requesting a "Predetermination Settlement".

Section 1601.20 (a) of the Commission's Regulations provides that "Prior to the issuance of a determination as to reasonable cause the Commission may encourage the parties to settle the charge on terms that are mutually agreeable." Given this clear provision, it is surprising that more employers do not request a predetermination settlement. Of course, much depends on the facts in the case, but we suspect that in the great majority of cases it's at least worth talking about. Again, this is one of those measures where the EEOC investigator may not suggest it, but a predetermination settlement at this point could be very beneficial to an employer because under the provisions of Section 1601.20(a) if the Commission concurs with the agreement worked out by the parties, the Commission is obligated to sign as an accommodation party and thus agree not to process the charge any further. Almost always, a settlement at this point would normally be for much less than any amount that the EEOC and the charging party might request during the conciliation process after a cause finding.

Engaging in "Pro-active Conciliation"

First of all, employers should understand that conciliation is a give-and-take process and that the finding of reasonable cause is not tantamount to a finding on the merits by a court of competent jurisdiction. Nor, is it necessarily a finding based upon a preponderance of the evidence (the Commission is basically looking for "reasonable cause"). Hence, there is room to negotiate conciliation terms based upon the available facts and evidence, most of which were supplied by the employer. In our judgment this gives the employer a slight advantage as to how the evidence should be assessed in terms of applicable law. Secondly, the employer, statutorily, is only obligated to "make the charging party whole." This does not necessarily mean that monetary relief is the only way to accomplish this obligation. For example where the charging party has suffered no actual loss of pay, but has challenged a policy or practice that could adversely impact future benefits, there would be no current loss for which the charging party could be made whole. Of course there may be class issues involved where some of the affected class members are entitled to relief if their claims would be timely. The important point is that there are many ways to be pro-active in negotiating a conciliation agreement in order to determine the proper relief. They include making appropriate demands as to proof of compensatory damages, limiting the amount of monetary relief for the charging party and any alleged unidentified affected class members, and requesting a written copy of the EEOC's computations of back pay and/or other relief. The foregoing only scratch the surface as there are many other pro-active tactics which may be used by employers to take the initiative and force the EEOC to respond during the course of conciliation. Legal counsel should be consulted in order to make sure that the appropriate tactics apply to the charge in question.

Please call this firm at (205) 323-9267 if you have questions or need legal counsel as to how to apply any or all of the above tactics to your pending charges

OSHA Tips: 2011 Inspection Targets

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 September 9, 2011, OSHA released its inspection plan for targeting workplaces to receive on-site inspections. Known as site specific targeting ("SST"), this system has been employed by the agency since 1999. Prior to its adoption, OSHA site visits were driven by reports of accidents, employee complaints and random selection of worksites in industries with high injury and illness rates. This random selection of worksites for general schedule inspections gave no assurance that OSHA was going to sites having the most injuries and illnesses or wide-spread exposure to hazards.

The SST approach allows the agency to schedule inspections at specific worksites with high self-reported injury and illness rates. It is the principal means of determining which non-construction workplaces may be selected for inspection in the coming months. The agency will focus on about 3700 high-hazard worksites included on their primary list.

The SST-11 list was derived from OSHA's Data Initiative for 2010, which surveyed approximately 80,000 employers to obtain their injury and illness numbers for the last completed calendar year of 2009. Included on the 2011 primary inspection list are manufacturing establishments with a Days Away, Restricted, or transferred (DART) rate above 7.0 or Days Away from Work Injury and Illness (DAFWII) rate at or above 5.0. Non-manufacturing establishments included are those with a DART rate at or above 15.0, or a DAFII rate above 14.0.

Also included in the above lists are a random number of establishments that failed to timely provide rate information response to OSHA's 2010 data survey. OSHA has added non-responders to discourage employers from not responding to the data initiative in order to avoid an inspection.

In releasing the inspection plan SST-11, Assistant Secretary Michaels said, "By focusing our inspection resources on employers in high hazard industries who endanger their employees, we can prevent injuries and illnesses and save lives. Through the SST program, we examine all major aspects of these operations to determine the effectiveness of their safety and health efforts."

This year's SST program includes two significant changes. Last year's 2010 program included only establishments in the selected industries having 40 or more employees. The pool was expanded this year to include those having 20 or more employees. Smaller worksites should therefore be prepared this year to receive an unannounced inspection visit from OSHA. The second change in the 2011 program provides for an evaluation study to measure the SST program's impact upon future compliance with OSHA standards.

The agency will continue to employ other means to target their planned inspections, as noted in the press release announcing the 2011 SST. They identify 14 current national emphasis programs directed toward high-risk hazards and industries. These include inspections related to the following: amputations, lead, crystalline silica, shipbreaking, trenching/excavations, petroleum refinery process safety management, process safety management covered chemical facilities, hexavalent chromium, diacetyl, recordkeeping, federal agencies, air traffic control tower monitoring, primary metals and combustible dust.

Wage and Hour Tips: Current Wage and Hour Highlights

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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.

I normally write about wage and hour issues related to the Fair Labor Standards Act or issues related to the application of the Family and Medical Leave Act. However, recently I have had several inquiries from employers that are either bidding or performing on government contracts. There are two main statutes that can affect the wages required for employees working on either construction or service contracts that are either totally or partially funded by the federal government. The acts involved are the Davis-Bacon and Related Acts that apply to construction contracts and the McNamara-O'Hara Service Contracts Act that apply to persons performing services (such as janitorial service, food service and grounds maintenance) at federal facilities. Many contracts that are funded by the 2009 stimulus legislation also fall under these wage requirements. Wage and Hour has reported they initiated some 1150 Davis-Bacon investigations of contracts using stimulus funds during the past year.

Contracts coming under either statute normally require the payment of the prevailing wage to employees. Wage and Hour issues wage determinations ("WD") (on a county basis) setting forth the wages that are required under each statute. The wage determination will list the various jobs to be performed and the rate required for each classification. In addition to the base wage, the WD may also specify certain fringe benefits that must be furnished to the employee. In the case of determinations that are issued for Davis-Bacon construction projects fringe benefits may not be required if they are not found to be prevailing in an area or the fringes may be required for some crafts and not for others. However, for contracts subject to the Service Contracts Act, the WD will always contain a requirement for fringe benefits and for WDs issued after June 2011, the minimum fringe required will be at least $3.59 per hour. The fringe benefits, which are in addition to the base hourly rate, must be provided in the form of bona fide benefits (such as health insurance, life insurance or retirement benefits) or paid in cash to the employee.

Shortly after becoming president, President Barack Obama issued an executive order, reinstated a policy that was originally initiated by President Clinton and rescinded by President Bush, dealing with the "Nondisplacement of Qualified Workers Under Service Contracts". The order requires contractors (including subcontractors) under a contract that succeeds a contract for performance of the same or similar services at the same location offer the predecessor contractor's employees a right of first refusal of employment under the contract. On August 29, Wage and Hour published its final rule implementing the Executive Order. While the Rule will not take effect until the Federal Acquisition Regulatory Council (FAR Council) issues regulations, contractors should start preparations for the Rule's implementation.

Key requirements of the Rule include:

- Covered successor contractors and subcontractors must offer employment on a "first right of refusal" basis to service employees employed under the predecessor contract whose employment would otherwise be terminated at the end of the contract;

- The offer of employment must be for positions for which the employees "are qualified"; Employees generally are presumed to be qualified for any position they held under the predecessor contract.

- Predecessor contractors and subcontractors must provide a list of service employees to the contracting agency at least 30 days prior to the contract completion date;

- Successor contractors and subcontractors must notify the predecessor employer's service employees that the contract or subcontract they were working on has been awarded to a new contractor or subcontractor; and

- Aggrieved employees of the predecessor contractor or subcontractor can file a complaint with the contracting agency or directly with the DOL's Wage and Hour Division.

Violations of the Rule can result in an order to hire predecessor employees; payment of lost wages; withholding of contract funds for unpaid wages and debarment for up to three years from future government contracts.

Another area where employers can run into problems is where they submit a bid on a project without knowing what rates are required by the wage determination. I recently talked to an employer who had been solicited by the Postal Service to submit a proposal to handle weather related cleaning (specifically removal of snow from parking lots) at several locations. The request for proposal did not contain a wage determination but when the firm was awarded the contract and when they received it to sign, it contained a WD. While the wage rates that were required were less than what employees were being paid, the employer had not factored in the fringe benefit requirements of $3.59 per hour. Fortunately, this employer learned of this requirement prior to signing the contract and could modify the contract amount. Apparently, the Postal Service has a practice of not informing the prospective bidders of the WD requirements until they send the contract to be signed.

Employers should also be aware of the necessity of ensuring that employees are correctly classified based on their job duties. Under the Service Contracts Act, the Department of Labor has issued a Directory of Service Contract Occupations that is available at the Wage and Hour web site:

http://www.dol.gov/whd/regs/compliance/wage/SCADirV5/SCADirectVers5.pdf.

This directory contains a written job description for each classification found on a wage determination. Whereas, under the Davis-Bacon Act, there is not a standard resource that lists the duties of a particular classification and the correct classification of an employee is based on "area practice." Therefore, the duties that may be performed by an employee can vary based on location where the work is being performed. Consequently, correctly classifying an employee under the Davis-Bacon Act can be more difficult that under the Service Contracts Act.

Finally, it is possible that an employee has duties that are found in more than one classification. For example, an employee working on a food service contract may spend a portion of the day cooking and the remainder washing dishes. Typically, the cooking would require a higher rate of pay than the dish washing. If an employer wishes to pay the employee at the lower dish washing rate for the time he spends in those duties, the employer must maintain records showing the time the employee spent working in each classification. Otherwise, the employee would be classified as a cook and be entitled to the higher rate for all hours worked.

Employers who presently have contracts that are subject to either the Davis-Bacon Act or the Service Contracts Act should closely monitor their pay practices for those employees working on the contract(s) in order to make sure they do not run afoul of either statute. If you are preparing to bid on these types of contracts, you should closely review the pay requirements prior to submitting your bids. If I can be of assistance, do not hesitate to give me a call.

As reported last month, the minimum wage in several states will increase on January 1, 2012. In addition to those states I mentioned last month, Vermont has announced their minimum wage will increase to $8.46 per hour. Thus, tipped employees in Vermont must be paid a cash wage of $4.10 per hour, while employers may claim a tip credit of $4.36 per hour for tipped employees.

Did You Know…

…that according to a recent survey, 68% of young adults (ages 18-34) have said that their ability to make ends meet is becoming more difficult in the past four years and only 20% have said that it has improved? The survey was conducted by Lake Research Partners and Bellweather Research & Consulting. Their survey also stated that women ages 18-34 are less optimistic than men about their opportunities for the future. Fifty-five percent (55%) of young women adults surveyed characterized their financial situation as fair to poor, compared to 48% of young men. Seventy-three percent (73%) of men are employed, compared to 62% of women. Furthermore, young women college graduates are more likely to have student loan debt compared to young men college graduates.

…that 17.4% of Americans over age 65 are working? This increased from 10.8% in 1985, 12.1% in 1995, and 15.1% in 2005, according to Edward P. Glaeser, a Harvard Professor of Economics. He also stated that "nearly 40% of 55 to 64-year-old Americans don't have

retirement accounts… a nation that prefers spending to saving is going to find it difficult to enjoy a comfortable retirement. Many older people keep working, or at least continue to look for work, because they feel they can't afford not to."

…that negotiated wage increases for 2011 averaged 1.7% in the first year, down from 2% in 2010? Manufacturing contracts averaged a 2.9% first year increase (compared to 2.1% in 2010); the lowest amount was 1% for state and local government employees (down from 1.3% in 2010).

…that the Social Security Administration announced a 3.6% benefits increase for 2012? This amount will be applied to approximately 55,000,000 Social Security beneficiaries and an additional 8,000,000 supplemental security income recipients. It is the first cost of living adjustment in three years. The average benefit will increase by $43.00 per month to $1,229. Also, the maximum amount of earnings subject to social security for 2012 will increase from $106,800 to $110,100.

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