

# kwwlaborlaw. communicator

3480 West Market Street • Suite 300 • Akron, Ohio 44333 • Phone: (330) 867-9998 • FAX: (330) 867-3786 • E-mail: kww@kwwlaborlaw.com

## Sixth Circuit Adopts New Review Standard



By Harley M. Kastner

The Sixth Circuit Court of Appeals has adopted a new standard governing judicial review of arbitrators' interpretations of collective bargaining agreements.

In early 2007, the Sixth Circuit abandoned the old test it for many years used to determine whether an arbitrator exceeded his or her authority in resolving collective bargaining disputes. *Michigan Family Resources, Inc. v. Service Employees Int'l Union Local 517M*. The new standard further restricts the circumstances under which arbitrators can be overturned.

The old standard of review permitted federal courts to overturn decisions of arbitrators where the

arbitrator's award: (1) conflicted with express terms of the collective bargaining agreement; (2) imposed additional requirements that were not expressly provided in the agreement; (3) was without rational support or could not be rationally derived from the terms of the agreement; or (4) was based on general considerations of fairness and equity instead of the precise terms of the agreement. The court reasoned that this four-part analysis was no longer tenable in light of two recent United States Supreme Court opinions which stressed the "very limited" role of federal courts in reviewing labor-arbitration decisions.

The Sixth Circuit's new rule prevents federal courts from reviewing labor-arbitration decisions where the arbitrator was "even arguably construing or applying the contract." The Court further explained that so long as the arbitrator was not so "ignorant of the contract's plain language" as to make implausible

any contention that the arbitrator was construing the contract," the award would stand. This is so even if the arbitrator made "serious, improvident or silly" errors in resolving the dispute.

This new standard seems to be in tune with recent U.S. Supreme Court decisions; however, the Court's application of the new rule to the facts of the *Michigan Family Resources* case likely will cause concern for both union and employer representatives alike. In upholding the arbitrator's decision, the Court noted that if it had interpreted the contract applying relevant contract law, it would have reached a different outcome. Moreover, the Court noted that the arbitrator "made a legal error, perhaps even a serious legal error." Yet, the Court nevertheless upheld the award, reasoning that the language of the contract was ambiguous, and therefore the arbitrator was free to interpret that language however he wanted.

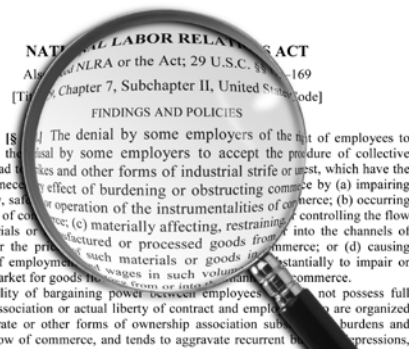
***Employers should be very cautious in drafting clear language into labor contracts because if the language is even "arguably" equivocal, then the arbitrator has tremendous discretion in interpreting that language.***

The dissenters agreed that, in light of the recent Supreme Court decisions, the old four-prong test used to review labor arbitrators' decisions was no longer tenable. The dissent also agreed that the new standard of "even arguably construing or applying the contract" was appropriate. However, the dissenting judges did not agree with how the majority applied the new rule to the specific facts of the case. In essence, the arbitrator had reasoned that a seemingly unambiguous provision of a collective bargaining agreement can "become ambiguous" in light of prior actions of the employer.

The dissent argued that arbitrators should only have authority to construe or apply *inherently* ambiguous provisions of collective bargaining agreements.

*Continued on page 2*

Contents	Page
Sixth Circuit Adopts New Review Standard .....	1
Workplace Safety Developments ..	2
Federal and State Agency Developments .....	4
Ignorance is Bliss? .....	5
What? HIPAA Privacy Again? .....	6
Post-Waiver Age and Breach of Contract Claims Barred .....	7
Pressure Builds to Reduce Group Rating Discounts .....	8



The premise of the dissent's analysis is that in order for language to *become* ambiguous, it must have been "unambiguous to begin with." Since arbitrators have no authority to interpret unambiguous contract terms, the arbitrator exceeded his authority in the underlying decision. The dissenters believe that the arbitrator's award should have been vacated and remanded for the arbitrator to either clarify his decision or to re-arbitrate the case.

So, what does all this mean? There are two practical significances of this case. First, employers must be very careful in choosing who will arbitrate your labor disputes. Second, employers should be very cautious in drafting clear language into labor contracts because if the language is even "arguably" equivocal, then the

arbitrator has tremendous discretion in interpreting that language. If a labor contract is silent on a particular issue, it is possible that the arbitrator will then find the contract to be ambiguous.

Lastly, it is important to note that there is a way to curb erroneous and unreasonable, but yet non-reviewable decisions of arbitrators. A labor contract may specify what powers an arbitrator has in resolving labor disputes. Most labor contracts give the arbitrator full authority to interpret the contract's language. By adding restrictive terms to a labor contract restricting the arbitrator authority to interpret the contract *pursuant to all applicable law*, an arbitrator's decision later may be reviewable in court where the arbitrator has made a legal error in his or her opinion and award.

## Workplace Safety Developments



By Keith L. Pryatel

### Ohio Supreme Court Limits Availability of Workers' Compensation

In a decision that could have far-reaching effects, the Supreme Court of Ohio recently ruled that Ohio employers may petition the Industrial Commission to cut off an employee's workers' compensation benefits where that individual is terminated for repeated, willful violation of safety rules. (*State ex. rel. Gross v. Indus. Comm'n. of Ohio*).

During Gross' hiring orientation, he signed a form acknowledging receipt of an employee handbook that included "Safety Tips." One of those "Safety Tips," was a warning to "never boil water in a cooker to clean it." The handbook also forewarned workers that if they violated safety guidelines, they could be disciplined up to and including termination.

As a result of those injuries, Gross was awarded temporary total disability compensation when he applied for workers' compensation benefits. The company investigated and determined that Gross had intentionally violated corporate safety practices, and thus terminated him. The company then made application to the Industrial Commission to terminate Gross' workers' compensation benefits under the argument that his workplace misconduct was tantamount to job abandonment. The Industrial Commission agreed, but a Franklin County Court of Appeals later reversed that decision. The Supreme Court of Ohio reinstated the cessation of Gross' workers' compensation.

The Supreme Court reasoned: "Gross was not fired because of absenteeism or any work rule or policy related thereto. He was fired because he directly and deliberately disobeyed repeated written and verbal instructions not to boil water in the pressurized deep fryer and injuries followed." According to the Court, "Gross *willfully* ignored repeated warnings not to engage in the proscribed conduct," thereby eliminating any argument by Gross that his actions were simply negligent, thus entitling him to workers' compensation payments.

*Gross v. Indus. Comm'n.* is significant in that for the first time Ohio law equates repeated, willful violations of safety rules with job abandonment. Employers are wise to consult with counsel before pursuing the remedies now available under *Gross* because the Supreme Court's decision depended heavily upon the particularized facts and circumstances of the case before it.

### Defenses for "Intentional Tort" Lawsuits Clarified

In a decision that may have future implications for Ohio employers, the West Virginia Supreme Court of Appeals recently held that where an employer fails to comply with mandatory duties to assess its workplace for hazards, that employer is barred from later arguing that it did not "know" of a workplace hazard when defending an intentional tort lawsuit (*Ryan v. Clonch Industries, Inc.*).

*Continued on page 3*

***The Supreme Court of Ohio recently ruled that Ohio employers may petition the Industrial Commission to cut off an employee's workers' compensation benefits where that individual is terminated for repeated, willful violation of safety rules.***

One of the franchise supervisors testified that on one occasion he stopped Gross from placing water into the cooker to clean it, and explained in detail that such was against the company's safety policy. Later, a co-worker observed Gross again placing water into the cooker, and informed him to "stop." Gross disregarded this co-worker's instructions, and later opened the lid to the cooker which contained boiling water under pressure, and severely burned himself and two co-workers.

wlabornlaw.com Communicator

West Virginia, like Ohio, allows employees to sue employers for workplace injuries that are otherwise covered by workers' compensation if the injured worker can demonstrate "deliberate intent" to harm them. Joe Ryan was struck in the left eye by a piece of metal banding while trying to cut that material into strips with a pair of tin snips. After his injury, Ryan not only reaped West Virginia workers' compensation benefits, but also filed an intentional tort claim and alleged that Clonch Industries violated a specific OSHA regulation requiring the use of personal protective equipment.



That OSHA regulation, 29 C.F.R. § 1910.132, also requires employers to undertake a hazard assessment survey to determine when personal protective equipment is required, and the precise nature of that equipment. In Ryan's intentional tort lawsuit, Clonch Industries admitted that it did not perform the hazard assessment survey required by the OSHA regulation. As a penalty for its failure to do so, the West Virginia Supreme Court of Appeals ruled that Clonch Industries could not argue in Ryan's intentional tort lawsuit that it did not "know" of a hazardous condition – one of the elements needed to establish that an intentional tort had been committed.

It is highly likely that the plaintiff's bar soon will attempt to make an identical argument under Ohio's intentional tort exception to workers' compensation exclusivity. If an Ohio court chooses to side with the West Virginia Supreme Court of Appeals, employers will be left virtually defenseless to any intentional tort suit. Therefore, it is recommended that employers, at least annually, conduct a comprehensive safety audit of their work premises, including determining compliance with all relevant OSHA and Ohio Division of Safety and Hygiene regulations. Such annual safety audits can be arranged either through Ohio's Division of Safety and Hygiene, or independent safety consultants that can be referred out of our office.

**OSHA Injury/Illness Posting**

Employers are reminded that from February 1 until April 30, they are required to post in a conspicuous place a summary of their 2006 injury/illness records (Form 300A). Some industries in retail, service, finance and the real estate sectors are exempt, as are employers having 10 or fewer workers in certain industry groups. Even if there were zero recordable injury or illnesses throughout 2006, the 300A form must still be posted, with zeros placed in the total lines of the document.

OSHA's Form 300A (Rev. 01/2004)

**Summary of Work-Related Injuries and Illnesses**

Year 20\_\_



U.S. Department of Labor  
Occupational Safety and Health Administration  
Form approved OMB no. 1218-0176

All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0."

Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR Part 1904.35, in OSHA's recordkeeping rule, for further details on the access provisions for these forms.

**Number of Cases**

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
(G) _____	(H) _____	(I) _____	(J) _____

**Number of Days**

Total number of days away from work	Total number of days of job transfer or restriction
(K) _____	(L) _____

**Injury and Illness Types**

Total number of . . . (M)	(1) Injuries	(2) Skin disorders	(3) Respiratory conditions	(4) Poisonings	(5) Hearing loss	(6) All other illnesses
_____	_____	_____	_____	_____	_____	_____

Post this Summary page from February 1 to April 30 of the year following the year covered by the form.

Public reporting burden for this collection of information is estimated to average 50 minutes per response, including time to review the instructions, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any other aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistical Analysis, Room N-3614, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed forms to this office.

**Establishment information**

Your establishment name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Industry description (e.g., *Manufacture of motor truck trailers*) \_\_\_\_\_

Standard Industrial Classification (SIC), if known (e.g., 3715) \_\_\_\_\_

OR

North American Industrial Classification (NAICS), if known (e.g., 336212) \_\_\_\_\_

**Employment information** (If you don't have these figures, see the Worksheet on the back of this page to estimate.)

Annual average number of employees \_\_\_\_\_

Total hours worked by all employees last year \_\_\_\_\_

**Sign here**

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

\_\_\_\_\_  
Company executive Title  
( ) - / /  
Phone Date

## Federal and State Agency Developments



By Lisa A. Kainec

### The Employee Free Choice Act

Most employers probably have heard of the push in Congress for new legislation that would streamline the ability of employees to organize into unions.

The proposed legislation would eliminate the long standing secret ballot election process for employees to unionize. Instead, under this "Employee Free Choice Act" as it is called, a majority of employees signing valid union authorization cards would result in certification of the union's representation of the employee group. On March 1, 2007, the U.S. House of Representatives passed the new law, by a vote of 241-185. The law now heads to the Senate. President Bush is expected to veto the law if it ultimately arrives at his desk.

***Under this "Employee Free Choice Act" as it is called, a majority of employees signing valid union authorization cards would result in certification of the union's representation of the employee group.***

The new Act would amend the National Labor Relations Act and require the National Labor Relations Board to certify a bargaining representative if a majority of the proposed bargaining unit employees have validly designated the union as their authorized representative. The law also sets forth special procedural requirements for reaching initial collective bargaining agreements once a union is certified as the bargaining representative. If an employer and union bargaining for their first contract do not reach agreement within 90 days, the law would allow either party to refer the dispute to the Federal Mediation and Conciliation Service for mediation. If after 30 days, mediation is unsuccessful in resolving the dispute, the law calls for mandatory binding arbitration. The results of the arbitration would be binding for two years subject to being extended by agreement of the parties.

The Act also seeks to create new priority unfair labor practice claims against employers for alleged violations during union organizing

campaigns or negotiations for a first contract. The law would impose fines up to \$20,000 per violation against employers who violate employee rights during the organization or first contract negotiations. It also creates a treble back pay recovery for an employee who is discharged or discriminated against during organizing or first contract negotiations. The Act also would expand mandatory NLRB injunction actions against employers for actions believed to significantly interfere with employee rights during union organizing or negotiations for an initial contract.

### Proposed Changes by OCRC to Ohio Pregnancy Regulations

On January 19, 2007, the Ohio Civil Rights Commission proposed changes to its rules governing sex discrimination and specifically pregnancy, childbirth and related medical conditions, codified at Ohio Administrative Code Section 4112-5-05(G). Specifically, the Commission has proposed to eliminate a large portion of its existing regulations regarding maternity and childbearing leave. New language would require that leave policies, including accrual of seniority and benefits, "be applied to disability due to pregnancy and childbirth on the same terms and conditions as they are applied to other temporary leaves of absence of the same classification under such employment policies." The new regulations also would prohibit a policy that has a "disparate impact on employees of one sex and is not justified by business necessity."

This revision will bring Ohio law in line with the federal law requirements under Title VII and the Pregnancy Discrimination Act. The Commission held a public hearing in February and the proposed rule changes now will proceed to legislative committee review. Absent a rejection by the Ohio General Assembly, the new rules most likely will go into effect in April 2007. We will continue to monitor these legal developments for future updates to our readers.

**The Employee Free Choice Act**



## Ignorance is Bliss?



By John W. McKenzie

**N**ope. Ignorance will land you at trial. In *Erpenbeck v. Premier Golf Management, Inc.*, a federal court in Ohio recently rejected an employer's defense and argument that it could not have committed

intentional age discrimination because it "did not know" the employee's age when it terminated his employment. Most employers are well-versed on the EEO laws and non-discrimination in hiring such that they properly do not give consideration to a candidate's age. What about at termination? While an employer legitimately might not give consideration to an employee's age when rendering a business decision impacting employment, the *Erpenbeck* court found that any such defense to an age discrimination claim is "self-serving."

The problem with such a defense is somewhat obvious – post hire, an employer certainly has access to personnel/benefits documentation setting forth an employee's age. According to the court in *Erpenbeck*, because this defense "implicates the troublesome area of an employee's inability to prove what was in the employer's mind... [the] better practice thus dictates allowing the trier of fact to make this credibility determination." In other words, there will be no summary judgment dismissal for the employer, but a date with a judge or jury.

While this particular decision may not be surprising, the case raises other important issues faced when terminating an age-protected (40 or over) employee. First, what has been communicated as the legitimate, non-discriminatory reason for the termination? Be straight with the employee

being dismissed and do not sugar coat your legitimate rationale, or worse, offer varied explanations for the termination. In *Erpenbeck*, the employee was told that the organization was doing away with his position, but the position remained. Thereafter, the employer argued that the employee was let go as a cost savings measure given the employee's high salary. Such inconsistencies – i.e. questions of fact – will buy an employer a trial.

---

***Be straight with the employee being dismissed and do not sugar coat your legitimate rationale, or worse, offer varied explanations for the termination.***

---

Second, when considering a "replacement" and/or the reallocation of the employee's duties (where the employee is terminated for misconduct or performance), remember that "younger" is relative. In order for an employee to prove a *prima facie* case of indirect age discrimination, he must demonstrate that he was replaced by a "substantially younger" worker or treated differently than similarly situated younger workers. Notably, and many employers are unaware of this, the "younger" worker need not be under age 40. A *prima facie* case (and age discrimination) can be demonstrated even where the replacement (or retained) employee is over age 40. Federal courts look to the particular circumstances of each case to determine whether a replacement is substantially younger.

As evidenced by the *Erpenbeck* case, ignorance is no excuse. Where undertaking a termination or reduction-in-force, it is important to be cognizant of any affected employee's age and to proceed with advice of counsel.

## What? HIPAA Privacy Again?



By *Kenneth M. Haneline*

### HIPAA Privacy Notice Obligations

The privacy rules established under the Health Insurance Portability and Accountability Act's ("HIPAA") regulations require that health plans provide participants with a notice of a group health plan's privacy practices ("Privacy Notice"). A Privacy Notice has to be provided to each new participant in the plan at the time of enrollment. In addition, the Privacy Notice must be redistributed within 60 days of a material revision to the Notice. Finally, information on how to obtain a copy of a health plan's Privacy Notice must be distributed to participants no less than once every three years.

---

*The privacy rules established under the Health Insurance Portability and Accountability Act's ("HIPAA") regulations require that health plans provide participants with a notice of a group health plan's privacy practices ("Privacy Notice").*

---

Small health plans, defined as a plan with annual receipts of less than \$5 million, had to send out an initial Privacy Notice on or before April 14, 2004. Now, three years later, small health plans need to send plan participants information on how to obtain a copy of the plan's Privacy Notice or, alternatively, a copy of the plan's Privacy Notice no later than April 14, 2007. Employers sponsoring fully-insured health plans that do not have access to protected health information ("PHI") do not need to send a Privacy Notice to participants. However, the plan's insurance carrier is still required to send a Privacy Notice.

### HIPAA Security Guidance

Health and Human Services ("HHS") recently issued guidance on the application of HIPAA's privacy and security regulations to PHI and electronic PHI regardless of its location. Specifically, any electronic PHI that is carried offsite, accessed offsite, or downloaded offsite poses a risk of inappropriate access, loss, interception, or corruption. The HHS' guidance offers practical suggestions for reducing risk.

The HHS guidance was prompted after several highly publicized reports of recent security incidents involving the theft or loss of laptops and other portable devices and electronic storage media. The devices that are of particular concern include laptops, home-based computers, personal digital assistants, smart phones, USB flash drives, e-mail, public workstations, and public wireless access points.



HHS warns that, in general, covered entities (including health plans) "should be extremely cautious about allowing the offsite use of, or access to" electronic PHI. Group health plans, which are covered entities under the rules, should allow offsite use or access of PHI only when it is "clearly determined necessary" and only if "great rigor has been taken to ensure that policies, procedures and workforce training have been effectively deployed."

The HHS guidance emphasizes the importance of workforce training that specifically addresses risks associated with remote access to electronic PHI and includes clear instructions for accessing, storing, and transmitting electronic PHI. HHS suggests policies that prohibit leaving devices or media in unattended cars and policies that prohibit transmission of electronic PHI over open networks or downloading electronic PHI to public computers. The guidance also reminds us that the covered entity's HIPAA sanctions policy should be addressing inappropriate handling of electronic PHI, including mitigation procedures and the disciplinary consequences of noncompliance with the entity's HIPAA policies.

If you need any assistance with your HIPAA privacy and security policies concerning PHI, please let us know.

## Post-Waiver Age and Breach of Contract Claims Barred



By Dean E. Westman

In an unusual declaratory judgment action brought by The Kellogg Company (“Kellogg”) against one of its former vice presidents who had signed a Separation Agreement and Release of Claims, the Sixth Circuit

affirmed the lower court’s ruling in favor of Kellogg, concluding that the release documents signed by the former employee precluded any age discrimination and breach of contract claims allegedly arising after the Separation Agreement had been signed.

Jatinder Sabhlok was hired by Kellogg in 1997. At the time he was hired, he had twenty-two years of experience with major food and beverage manufacturers and retailers. During his first four years of employment with Kellogg, Sabhlok received three promotions and was named Vice President of the International Research and Development Group. In September of 2001, Kellogg restructured Sabhlok’s group, moving more than twenty employees to other positions and eliminating several positions, including Sabhlok’s. He was 55 years old at the time his job was eliminated.

In exchange for an enhanced severance package, Sabhlok signed a Separation Agreement and Release of Claims Form on November 13, 2001. However, Sabhlok was asked by Kellogg to extend his employment for a one-year period to assist with certain projects. Thus, he continued to work for Kellogg until September 30, 2002. Upon the final conclusion of Sabhlok’s employment in September of 2002, he signed an Amendment of Separation Agreement and Release of Claims Form, which included a broad non-compete clause and provided for an additional six weeks of severance pay and a prorated bonus for the year 2002.

Early in 2004, Sabhlok, through an attorney, sent a letter to Kellogg threatening to sue for breach of contract and age discrimination. Rather than waiting to be sued, Kellogg filed a declaratory judgment action on September 8, 2004 contending that the release documents signed by Sabhlok precluded any such claims from being filed. Sabhlok, in turn, filed a counterclaim against Kellogg contending that the Separation Agreement and Amendment did not preclude claims for breach of contract or age discrimination that arose *after* the date Sabhlok signed the original Separation Agreement. The District Court considered the parties’ cross motions for summary judgment and concluded that Kellogg’s motion should be granted and Sabhlok’s denied. Both parties filed appeals from the District Court’s decision.

The Sixth Circuit affirmed the District Court’s rulings in all respects. Although noting that these cases depend entirely upon the specific set of facts presented, the Sixth Circuit rejected Sabhlok’s argument that Kellogg had

breached an alleged oral promise to rehire him into a permanent position following the job elimination. It also rejected his claim of age discrimination, which was based on the theory that younger individuals were hired into positions not offered to him.

Reiterating the rationale relied upon by the District Court, the Sixth Circuit pointed out that Sabhlok had given up his right to sue for age discrimination related to his termination, and acknowledged that Kellogg had no obligation to rehire him when he signed the original Separation Agreement. Having done so, Sabhlok could not resurrect an age discrimination claim by alleging that Kellogg had somehow failed to rehire him after the job elimination, stating: “Here, the failure to ‘rehire’ Sabhlok into a permanent position during the period between the notice of his termination and his last day at work did not arise separately from the decision to terminate his employment rather than offering him a different permanent position.”

---

***This case points out the need for careful consideration and drafting of release documents in connection with a job elimination, particularly where the individual in question will continue to be employed for a specified retention period following the formal elimination of his or her job.***

---

The Court also concluded that Sabhlok’s breach of oral contract claim was similarly precluded by the clear text of the Separation Agreement, which provided that Kellogg was “not obligated to offer employment to [Sabhlok] now or in the future.” Both the Separation Agreement and the Amendment also contained a provision stating that these documents constituted the entire agreement between the parties and superseded any oral agreements relating to Sabhlok’s employment with Kellogg and his termination. The net effect of these integration clauses made the written agreements a final expression of the parties’ intent and precluded subsequent claims by Sabhlok that oral promises of rehire, made during the one-year retention period, had been breached by Kellogg.

This case points out the need for careful consideration and drafting of release documents in connection with a job elimination, particularly where the individual in question will continue to be employed for a specified retention period following the formal elimination of his or her job. A general release, perhaps one that was used previously in connection with another separation, may not afford the necessary protection from future claims. Because the documents prepared by Kellogg and signed by Sabhlok were carefully drafted, the release provisions contained therein withstood the legal scrutiny of both the District Court and the Sixth Circuit Court of Appeals.

## Pressure Builds to Reduce Group Rating Discounts



By Bruce H. Fahey

As noted in several recent media articles, pressure is growing to restrict and reduce the level of savings provided to eligible employers by Ohio's workers' compensation group rating program. The pressure is building from employers who either cannot qualify for a group or who once did and then incurred a costly claim which made them ineligible to continue in a group rating plan. Premium costs soar when this occurs.

It is not known what impact, if any, such pressure will have on the maximum discount which will be available for employers in the future. Political forces are aligned on both sides of this issue. However, this potential for change means prudent employers should consider planning now in the event their savings are reduced or eliminated. Additional steps also are wise.



First, all employers – whether in a group or not – should re-emphasize safety programs and program enforcement. Second, all employers should utilize the best possible claims investigation and claims management techniques when a claim occurs. Third, wage continuation, light or modified duty and other cost-reduction techniques are extremely important for group rating eligibility and should be implemented or continued. Finally, aggressive claim defense and settlement also are essential steps to remaining eligible for a group rating plan and the premium savings the plan provides. Other human resource and labor relations issues must also be integrated into these techniques, tailored to each unique workplace.

Questions concerning employer eligibility or ineligibility for a group rating premium reduction plan should be addressed to your third party administration and defense counsel.

kwwlaborlaw.com  
communicator

The *kwwlaborlaw.communicator* is published by the law firm of Kastner Westman & Wilkins, LLC as a service to its clients. The information contained in the newsletter is neither designed nor intended to be relied upon as specific legal advice to any individual or organization and is not a solicitation to provide legal services. Past issues of the newsletter are archived at the law firm's website [www.kwwlaborlaw.com](http://www.kwwlaborlaw.com). Under the CAN-SPAM Act of 2003, this newsletter could be considered an advertisement. You may elect to not receive future newsletters by sending a letter in writing to Kastner Westman & Wilkins, LLC attention Lisa Kainec or send an email to [lkainec@kwwlaborlaw.com](mailto:lkainec@kwwlaborlaw.com). Readers always should consult with an attorney about specific legal matters. Copyright 2007 by Kastner Westman & Wilkins, LLC, 3480 West Market Street, Suite 300, Akron, Ohio, 44333.