

kwwlaborlaw. communicator

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

Supreme Court Endorses Arbitration of Statutory Discrimination Claims



By Keith L. Pryatel

In a ruling that strengthens the use of arbitration as an effective means to resolve employment-related disputes in lieu of the judicial system, the United States Supreme Court recently ruled that a union can collectively bargain to have its members' claims of employment discrimination decided exclusively before an arbitrator, rather than a jury (*Penn Plaza LLC v. Pyett*). The highly fractured 5-4 ruling means that unionized employers can now collectively bargain their way out of having to defend employment discrimination claims in the court system. Claims instead can be funneled to the arbitration process set forth in their collective bargaining agreement, thereby saving the costs associated with litigation defense and avoiding the risk of runaway juries.

Unionized employers can now collectively bargain their way out of having to defend employment discrimination claims in the court system.

In the case before the Supreme Court, a union had agreed in its collective bargaining agreement with a multi-employer realty association that the "sole and exclusive remedy" for the contract's anti-discrimination clause was through the arbitration mechanism contained in the labor agreement. When the employer forcibly assigned a number of employees to less desirable positions, those workers grieved, alleging violation of the seniority clause of the collective bargaining agreement, as well as the contract's ban on workplace discrimination on account of age. Just prior to arbitration, however, the employees withdrew their age discrimination claims; went forward with the seniority-based claims (and lost); and filed separate charges of age discrimination with the Equal Employment Opportunity Commission.

Eventually, the employees filed suit in federal court, and the employer moved to compel arbitration of the federal age discrimination claims, and dismissal of the court action. Both a federal trial court and the Second Circuit Court of Appeals rejected the employer's request to force arbitration of the claims, ruling that a prior Supreme Court decision (*Alexander v. Gardner-Denver*) had already held that unions may not bargain away the private, anti-discrimination rights of its members. In its decision,

the United States Supreme Court reversed both of the lower courts, and succinctly held: "A collective bargaining agreement that clearly and unmistakably requires union members to arbitrate [age discrimination] claims is enforceable as a matter of federal law."

The Supreme Court reasoned that: "Judicial nullification of contractual concessions... is contrary to what the Court has recognized as one of the fundamental policies of the National Labor Relations Act – freedom of contract." Accordingly, unless Congress itself has banned the resolution of federal age discrimination claims through a private or collectively bargained arbitration process, then the contract to do so must be enforced as a matter of federal law. The Court ruled that the union in the case before it did not waive the employee's substantive right to be free from employment discrimination, only the forum in which such claims would be examined and decided.

The Court noted that a number of its earlier decisions did seem to reflect that a union could not permissibly waive employment discrimination rights (*Gardner-Denver*), or rights under the federal Fair Labor Standards Act (*Barrentine v. Arkansas-Best Freight*). However, the Court noted that those decisions were issued during an era that was openly adverse to the concept of private arbitration. Since those rulings, the Court has issued a string of rulings correcting the misconception that arbitration is an unsuitable forum for resolving statutory claims relating to employment, whether they arise under Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act, or even the Fair Labor Standards Act. Since a union is itself subject to age discrimination liability, if it knowingly refuses to process a grievance for age-related reasons it may be sued for violating its statutory duty of fair representation. Additionally, employees always can file administrative charges with either the National Labor Relations Board or the Equal Employment Opportunity Commission in spite of a contractual arbitration provision. For these reasons, the Court held that the worker's right of vindication would not be jeopardized through its holding.

Continued on page 2

Contents	Page
Supreme Court Endorses Arbitration of Statutory Discrimination Claims	1
Group Health Plans Need Changes and We Don't Have Much Time!	2
Supreme Court Confirms No Retaliation for Participation in Internal Investigations	4
Workers' Compensation Notes	5
Employers May Enforce Call-In Policies for Unforseen FMLA Days	5
Unleashed Residency Requirements and Roped-In Arbitrated Age Bias Claims	6
OSHA Issues Final Per-Employee Citation Rule	6
DOL Issues FLSA-Clarifying Opinions	7
Federal Healthy Families Act Legislative Update	8

It is important to recognize that the Court's decision was premised on the undeniable fact that the labor contract before it "clearly and unmistakably" subjected union members' claims of employment discrimination to the arbitration provision of their labor contract. In collective bargaining negotiations, employers may be hard-pressed to get unions to agree that their members' statutory rights should be subject to the grievance/arbitration procedure that already protects union members from "unjust" terminations. Successfully negotiating such

clauses into a labor agreement, however, has significant economic ramifications for employers. First, the cost and expense of arbitrating a claim is significantly less than litigating that same claim in a judicial forum. Second, employers will altogether avoid runaway juries and the millions of dollars that are often at risk within the court system. When mapping out one's "wish list" for labor negotiations, funneling employment claims exclusively through the already-existing grievance procedure should take on heightened status.

Group Health Plans Need Changes and We Don't Have Much Time!



By **Kenneth M. Haneline**

1. New COBRA Rules and Notice Requirements.

As part of the economic stimulus package, the American Recovery and Reinvestment Act includes temporary assistance for COBRA beneficiaries who have been involuntarily terminated from employment from September 1, 2008 through December 31, 2009. Eligible individuals pay only 35% of the regular COBRA premium for up to nine (9) months. The employer recovers the 65% balance of the COBRA premiums for the same period from its payroll taxes through a reduction on its Internal Revenue Service (IRS) Form 941. By April 18th, employers must notify eligible individuals about the availability of the subsidized COBRA premiums. The U.S. Department of Labor has released some model notices for employers' use.

Individuals who lost coverage on or after September 1, 2008 because of an involuntary termination of employment and did not elect COBRA continuation coverage are entitled to make a prospective election from the Act's March 1, 2009 effective date. In addition, similar individuals who elected but subsequently dropped the coverage are also entitled to a prospective election of COBRA premium assistance under the Act.

Individuals with adjusted gross income exceeding \$145,000 (\$290,000 for joint filers) are not eligible for the COBRA premium assistance. The COBRA premium assistance begins to phase out for individuals with adjusted gross income of \$125,000 (\$250,000 for joint filers). The IRS will recover the excess COBRA premium assistance from these individuals' income tax returns. These individuals can also contact the employer and request that the COBRA premium assistance not be applied to them.

The employer's IRS Form 941 has already been adjusted for the employer to recover its 65% COBRA premium assistance. In addition, the IRS will be providing guidance later this year for the employer to report the amount of premium assistance received and the social security numbers of individuals who received the COBRA premium assistance. Finally, the Act provides that individuals who are denied COBRA premium assistance may appeal the employer's decision to the U.S. Department of Labor (to the U.S. Department of Health and Human Services for public employers).

Although COBRA applies to employers with 20 or more employees, the Act's premium assistance also applies to fully insured group health plans for employers with less than 20 employees.

Although COBRA applies to employers with 20 or more employees, the Act's premium assistance also applies to fully insured group health plans for employers with less than 20 employees. The premium assistance lasts for less than nine (9) months if the individual becomes "eligible" for coverage under another group health plan. An individual is required to notify the employer of such other group health plan eligibility or be subject to a 110% penalty of the subsidy amount received. In order for the employer to recover the 65% balance of the COBRA premium, the individual has to be paying at least 35% of the regular COBRA premium. In other words, if the individual is receiving COBRA at a cost of only 20% of the regular COBRA premium amount because of a severance package, the employer is not entitled to collect the 65% COBRA assistance.

2. Federal Medicaid Changes for Children Health Coverage.

On February 4, President Obama signed into law the Children's Health Insurance Program Reauthorization Act of 2009, which updated the State Children's Health Insurance Program (SCHIP), which is part of Medicaid. Now, instead of providing health coverage directly to qualified families, this new SCHIP law allows a state to subsidize employer-provided group health plan coverage. Employer group health plans that are excluded from this subsidy include high-deductible health plans, health flexible spending accounts, and plans for which the employer does not cover at least 40 percent of the cost.

Continued on page 3

The new law allows the state to make subsidy payments directly to the employee or to the employer. An employer, however, may elect to “opt out” of being paid directly by the state – which will be highly attractive to employers. When the employer opts out of being paid directly by the state, the state will pay the family being subsidized.

The new SCHIP law also establishes new special enrollment rights for employees and their dependents upon either (1) termination of Medicaid or SCHIP coverage resulting from loss of eligibility; or (2) becoming eligible for premium assistance in the employer’s group health plan under a Medicaid or SCHIP program. In order to be entitled to the special enrollment right, the employee must request coverage within 60 days of coverage termination or the date the parent or child is determined to be eligible for assistance. Employers will recognize that this SCHIP special enrollment right is longer than the standard 30 day election period.

We recommend that employers take a close look at amending their group health plan and cafeteria plan documents to accommodate the new SCHIP special enrollment rights and coordination of benefit rules for SCHIP secondary supplemental coverage. Sometime in the next year, employer group health plans will have to provide notice to employees about the premium assistance opportunities available under state law. However, these notices will not be required to be distributed until the Department of Health & Human Services issues model forms, which are expected within the year. The new law also establishes penalties of \$100 per day per participant or beneficiary for failure to provide the required notices and disclosures.

3. HIPAA Rules Tightened.

The American Recovery and Reinvestment Act also tightens up HIPAA’s Privacy provisions for “business associates” that work with covered entities. Business associates generally include third party administrators, accountants and auditors, legal counsel and consultants. Until now, business associates that worked for covered entities were bound to HIPAA’s Privacy and Security rules by way of a “business associate agreement” between the covered entity and the business associate.

Under the new law, and effective February 17, 2010, business associates will be directly subject to the HIPAA Privacy and Security rules. In addition, business associates will be subject to the civil and criminal penalties and enforcement proceedings for HIPAA Privacy and Security



violations, to the same extent as covered entities. Any organization that provides electronic data transmission services to a covered entity (or another business associate of the covered entity) will be deemed to be a business associate under the new rules.

Effective thirty days after new HIPAA guidance is issued, covered entities and business associates (we believe) will be required to provide notice to an individual affected by a breach of “unsecured” protected health information and annually submit a log of any such Privacy and Security breaches to the U.S. Health and Human Services. The new HIPAA guidance is expected before the Fall of 2009.

Until now, covered entities were not required to account for protected health information used for purposes of treatment, payment or health care operations (TPO). Under the new law, covered entities that use protected health information for TPO through an electronic health record will be required to provide individuals with an accounting of such disclosures. With regard to records held on January 1, 2009, the new accounting rule is effective January 1, 2014. For records acquired after January 1, 2009, the new accounting rule is effective January 1, 2011.

Finally, individuals who pay for medical services in full from their own pocket may request that their medical service provider not disclose any related protected health information to his/her group health plan.

Please let us know if we can be of any assistance with any of these changes.



Supreme Court Confirms No Retaliation for Participation in Internal Investigations

By Thomas Evan Green



The Supreme Court of the United States recently confirmed a rule that many employers likely had already been following – employers may not retaliate against employees

who participate in internal harassment investigations. (*Crawford v. Metropolitan Government of Nashville & Davidson County*). Notably, the Supreme Court's decision reversed a decision of the United States Court of Appeals for the Sixth Circuit, which decides federal court appeals in Ohio and other Midwestern states.

In *Crawford*, a human resources officer of the Metropolitan Government of Nashville & Davidson County (the "City") began an investigation of "rumors" of harassment by one of the City's supervisors. During the City's investigation, it asked Crawford "whether she had witnessed inappropriate behavior on the part of" the supervisor. In response, Crawford described several instances of alleged sexually harassing behavior. Two other employees also reported harassment by the supervisor.

that the plaintiff could not satisfy the "opposition" clause of the Civil Rights Act of 1964. That clause makes it unlawful "for an employer to discriminate against any of his employees because [the employee] has opposed any practice made an unlawful employment practice. . . ." The trial court held that because Crawford had not "instigated or initiated any complaint" with the City, but had "merely answered questions by investigators in an already pending internal investigation, initiated by someone else," she could not satisfy the opposition clause. The Court of Appeals for the Sixth Circuit agreed with the trial court, holding that the opposition clause "demands active, consistent 'opposing' activities. . . ." Because the Sixth Circuit's rule conflicted with decisions promulgated by other federal courts of appeals, the Supreme Court accepted this case and issued a definitive ruling.

In concluding that an employee answering questions as part of an internal harassment investigation is protected against retaliation, the Supreme Court relied upon the EEOC's guidelines, which provide that "[w]hen an employee communicates to her employer a belief that the employer has engaged in. . . a form of employment discrimination, that communication" virtually always "constitutes the employee's *opposition* to the activity." Additionally, the Supreme Court pointed out that the Sixth Circuit's contrary ruling could lead to inconsistent results:

There is. . . no reason to doubt that a person can "oppose" by responding to someone else's question just as surely as by provoking the discussion, and nothing in the statute requires a freakish rule protecting an employee who reports discrimination on her own initiative but not one who reports the same discrimination in the same words when her boss asks a question.

The Supreme Court's decision, which was unanimous, should drive home the point to employers that it is not only important to promptly investigate harassment complaints and take appropriate remedial action, it is equally or more important that the employer protect the complaining parties and all other employees who participate in the investigation from retaliation.

It is not only important to promptly investigate harassment complaints and take appropriate remedial action, it is equally or more important that the employer protect the complaining parties and all other employees who participate in the investigation from retaliation.

Thereafter, Metro fired Crawford, offering "embezzlement" as the reason for discharge. Crawford filed a charge of retaliation with the Equal Employment Opportunity Commission, and later filed suit in federal court.

The trial court dismissed Crawford's claims on a motion for summary judgment, indicating, among other things,

Workers' Compensation Notes



By Lisa A. Fike

On March 20, 2009 the BWC Board of Directors approved the BWC's comprehensive rate reform plan. The intent of the plan is to set the rates more equitably and accurately between group and non-group rated employers. The plan's effective date is July 1, 2009 for all private-sector employers.

This plan includes the following:

- Base rates for non-group employers are projected to decline by an average of 25.3%.
- A credibility table change for group rated employers from 85% to 77% for maximum credibility limit. This will increase a group-rated employer's premium by an average of 9.6%.
- There is a break-even factor for group-rated employers that keep rate levels at the targeted 9.6% change. This prevents group rated employers from receiving the base rate reductions intended for non-group employers.



- Employers with an individual experience modifier (EM) of 1.01 or greater will be eligible for a 100% EM cap. The cap will provide that an employer cannot pay more than 100% of the previous year's premiums in the following year. This is particularly beneficial to those employers who were in group and then are not group eligible the next year.
- Group-rated employers cannot stack other discounts associated with other BWC programs except those associated with the deductible program.

The Board has also approved a new deductible program. Under this program, an employer agrees to pay a portion of the claim costs under a certain deductible amount in exchange for a premium discount. The program will

begin with five deductible levels ranging from \$500 to \$10,000 per claim. This program will be available to employers beginning July 1, 2009.

The Board has also approved a new kind of group – group retrospective rating. Group

retrospective rating is a voluntary performance based incentive program. BWC-certified sponsors create groups of employers who practice effective workplace safety and claims management to achieve lower premiums than they could as individuals.

Employers May Enforce Call-In Policies for Unforeseen FMLA Days



By John W. McKenzie

The Department of Labor's (DOL) revised FMLA Regulations removed (effective January 16, 2009) what had come to be called the "two day rule" – where an employee had two business days

to notify his/her employer of the need for FMLA leave. (29 C.F.R. §825.302(a)) The current regulation (29 C.F.R. § 825.302(b)) now states that where an employee cannot provide 30 days advance notice, "it should be practicable for the employee to provide notice of the need for leave either the same day or the next business day" after becoming aware of the need for leave. Seemingly, this applies to the need for what might be an extended FMLA leave as well as intermittent FMLA leave.

On May 5, 2009, the DOL issued an Opinion Letter [FMLA2009-1-A, actually dated 1.6.09] that definitively rescinds the two-day rule and finds that, in light of the revised regulation, employers can enforce reasonable absentee call-in policies and procedures. The DOL recognized that call-in procedures are "routinely

enforced in the workplace and are critical to an employer's ability to ensure appropriate staffing levels." Preamble, 73 Fed. Reg. 68006.

Notably, however, the employer's policy must be established, explicit, reasonable and consistently applied to employees, whether absent for an FMLA-qualifying reason or otherwise. The May 5 Opinion Letter notes that the adequacy of the timing of an employee's notice of need for FMLA leave is dependent on the "individual

While employers may enforce reasonable call-in policies, they also must consider whether an employee practically was able to provide notice consistent with the employer's policy.

facts and circumstances." While employers may enforce reasonable call-in policies, they also must consider whether an employee practically was able to provide notice consistent with the employer's policy. So, unless circumstances prevent an employee from providing notice consistent with an employer's policy/procedure, an employer may deny the day(s) as FMLA and enforce its usual and customary attendance/call-in provisions, including any discipline.

Unleashed Residency Requirements and Roped-In Arbitrated Age Bias Claims



By Lisa A. Kainec

The Supreme Court of Ohio in early June issued two important cases that change the landscape of Ohio employment law in two significant respects. For public employers, the Court upheld as constitutional a 2006 state law barring a political subdivision from requiring employees to reside within the boundaries of the political subdivision. *Lima v. State*, Slip Opinion No. 2009-Ohio-2597. For all Ohio employers, the Court held that when an employee's claim of age discrimination has been arbitrated and the discharge found to be for just cause, the employee is barred from pursuing an action under state law for age discrimination. *Meyer v. UPS*, Slip Opinion No. 2009-Ohio 2463.

While many employers may review these legal developments and ask "so what?" they are significant in

these respects. First, the Court in *Lima* interpreted the state legislature's authority under Article 34 of the Ohio Constitution as incredibly broad in passing legislation that "provides for the comfort and general welfare of employees." Once legislation is determined to have been passed under Article 34 authority, local governments cannot take any action contrary to the legislation. Where such broad Article 34 authority may lead in the future will be worth watching, as the door may be open to significant usurpation of local "home rule" authority from local governmental bodies.

Second, the Court also made clear in *Meyer* that Ohio age discrimination law is more limited than other claims of unlawful discrimination, and further defined the parameters of those limitations. Thus, Ohio employers with grievance procedures and other alternative dispute resolution procedures potentially can limit their exposure to state age discrimination claims by ensuring that such claims are subject to binding arbitration over the issue of whether the employer had just cause to discharge the employee.

OSHA Issues Final Per-Employee Citation Rule



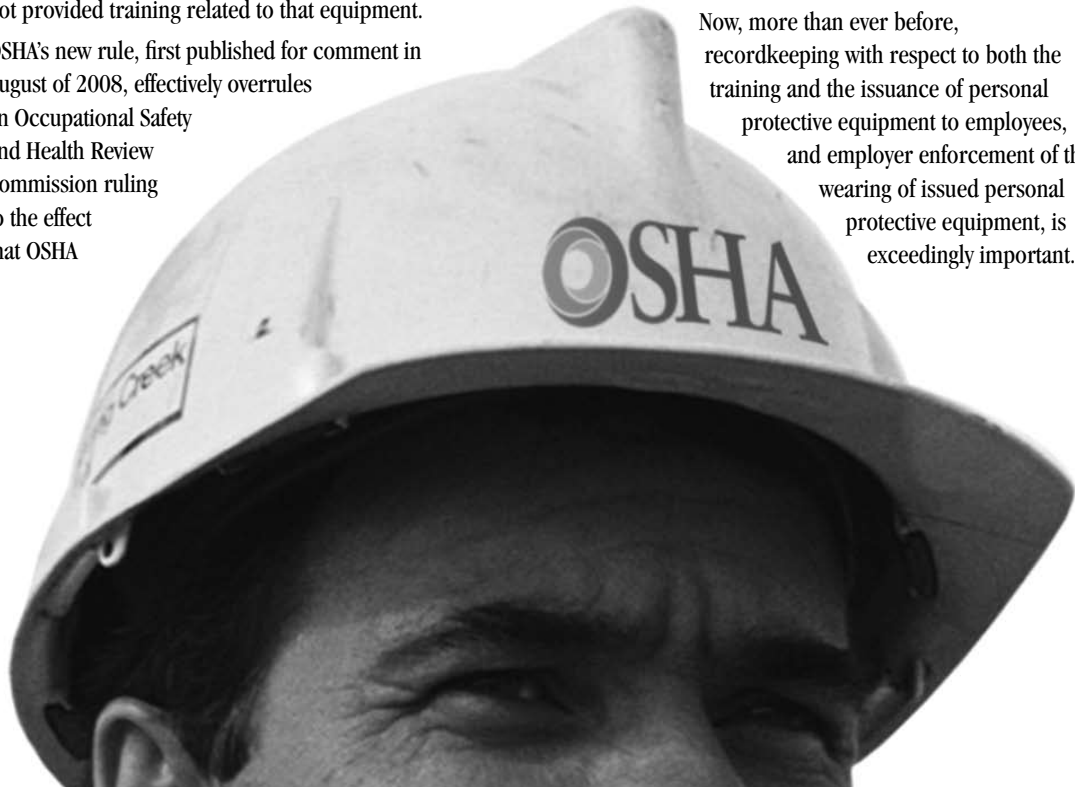
By Keith L. Pryatel

On December 12, 2008, the Occupational Safety and Health Administration issued a new rule requiring employers to provide personal protective equipment to every covered employee, and provide for the possibility of monetary fines on a per-employee basis for each and every employee not provided the requisite personal protective equipment ("PPE"), or not provided training related to that equipment.

OSHA's new rule, first published for comment in August of 2008, effectively overrules an Occupational Safety and Health Review Commission ruling to the effect that OSHA

was without legal authority to issue monetary fines on a per-employee basis for personal protective equipment violations. The particular case that was decided by the Review Commission involved respirators, but OSHA's final rule not only lists respirators as being a type of PPE subject to the new administrative rule, but also "... other types of PPE." In effect, OSHA now views each and every employee who has not been trained in the proper use and need to wear PPE, and being provided the appropriate PPE, as "... a separate discreet act for which each employee exposed to the hazard" represents a separate OSHA violation, for which separate monetary fines and penalties can be imposed.

Now, more than ever before, recordkeeping with respect to both the training and the issuance of personal protective equipment to employees, and employer enforcement of the wearing of issued personal protective equipment, is exceedingly important.



DOL Issues FLSA-Clarifying Opinions



By *Keith L. Pryatel*

In a series of opinion letters issued on the cusp of President Obama assuming the Whitehouse, the U.S. Department of Labor issued two opinion letters clarifying an employer's overtime obligations under the Fair Labor Standards Act.

In the first opinion letter, the DOL examined the continued exempt status for retail Store Managers who were in training for eventual promotion to Area Sales Managers positions. In the case before it, high-performing retail Store Managers were selected to participate in a seven-week training program for potential promotion to Area Sales Managers positions. During their training, when shadowed by an Area Sales Manager, however, the Store Managers for substantial periods performed non-exempt type duties, such as reviewing retail store paperwork, investigating inventory shortages and generally attending sales meetings. Towards the tail end of the seven-week training period, however, the Store Managers assumed tasks and duties that were more FLSA-exempt in nature, such as suggesting improvements to stores, approving payroll and analyzing sales figures. Throughout the entire training period, the Store Manager's salary level was maintained.

At issue was a Department of Labor regulation that specifically states that the FLSA "exemptions do not apply to employees training for employment in an executive...capacity who are not actually performing the duties of an executive...employee." In its letter opinion, however, the Department of Labor held: "The fact that, during at least some of the weeks of training, the Store Managers do not perform significant amounts of exempt work, in and of itself, does not cause the Store Managers to lose their exempt status because the primary duty test for executives need not be met each and every workweek in all cases." Citing to the DOL's recent revisions to governing FLSA regulations in 2004, the DOL rejected the suggestion that to continue overtime exempt status one needs to perform exempt duties within a workweek-by-workweek basis. Instead: "These employees who we are to assume have been employed as bona fide exempt Store Managers for years remained exempt during the seven weeks of management training because their primary duty continues to be that of exempt Store Manager." Thus, "...the exemption is not lost during the training period."

In its second issued opinion letter, the DOL determined that a one-time \$1,000 bonus issued by an employer in recognition of the "high stress level" of an employee's duties could be excluded from the "regular rate of pay" used to determine one's overtime rate under the Fair Labor Standards Act. Traditionally under the FLSA, all payments received by an employee are used to determine that worker's regular rate of pay, and therefore their hourly rate of pay in any given workweek. Bonus payments that are made pursuant to a prior contract, agreement, or promise are specifically listed in DOL regulations as a type of payment not excluded from the regular rate of pay. In the matter before it, the city employer had entered into a memorandum of understanding with its union to pay the \$1,000 "stress" bonus.



A one-time \$1,000 bonus issued by an employer in recognition of the "high stress level" of an employee's duties could be excluded from the "regular rate of pay" used to determine one's overtime rate.

Nevertheless, the DOL ruled that the bonuses were truly "discretionary," since the city retained the discretion both as to the fact of payment and the amount of payment of the bonus in spite of the memorandum of understanding with its union. The DOL recognized that the city had approached its union and entered into its memorandum of understanding only after deciding to issue the bonus, and that the memorandum merely confirmed and recorded the employer's discretionary decision-making. Therefore, said the DOL, the bonus was properly excluded from the regular rate of pay received by non-exempt emergency communication operators, and thus did not have to be factored in to determine their overtime rates of pay.

Unpublished DOL opinion letters prove to be a valuable source in interpreting and applying the often complicated Fair Labor Standards Act. Frequently, nuances and gaps in the FLSA are addressed by these private opinion letters and it thus behooves employers to check with legal counsel about issues that are not clearly defined within the FLSA statute or its implementing regulations.

Federal Healthy Families Act Legislative Update



By Dean E. Westman

The bill setting forth the proposed federal Healthy Families Act legislation currently is pending in the House of Representatives and known as H.R. 2460. A companion bill in the Senate

– S. 1152 – was introduced by Senator Kennedy on May 21, 2009.

The pending House bill was referred to three separate House Committees upon filing. The Subcommittee on Workforce Protections of the House Education and Labor Committee was scheduled to conduct a hearing on the bill on June 11.

If passed in their present form, H.R. 2460 and S. 1152 would require the Secretary of Labor to prescribe implementing regulations not later than 180 days after the date of the statute's enactment. The effective date of the new law as proposed would be six months after the date on which the Secretary of Labor issues the implementing regulations.

Anticipating that there will be significant comment and controversy over the Secretary of Labor's proposed regulations, it is likely to take the entire 180 day period for the regulations to be finalized. If the new law becomes effective six months after the regulations are finalized, it very likely would be a year before the law would take effect.

The pending legislation does not currently include the provision that was in the Healthy Families Act that would have prohibited employers from reducing any of their existing leave policies.

Of course the proposed legislation could undergo significant change before being enacted by Congress, including changes in its effective date. Also important to note at this juncture is that the pending legislation does not currently include the provision that was in the Healthy Families Act considered by the previous (110th) Congress that would have prohibited employers from reducing any of their existing leave policies in order to comply with the new law. Whether such a provision will be added to either of the pending bills is just one detail of this developing legislation, which we will continue to closely monitor.



The *wwwlaborlaw.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. 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. Readers always should consult with an attorney about specific legal matters. Copyright 2009 by Kastner Westman & Wilkins, LLC, 3480 West Market Street, Suite 300, Akron, Ohio, 44333.

wwwlaborlawcommunicator