

MODERN MANAGEMENT

RECESS APPOINTMENTS FOR NLRB, EEOC

President Obama announced his intent to use his recess appointment power to appoint 15 nominees to administration posts.

NLRB Nominees

For the National Labor Relations Board (“NLRB”), Obama will appoint Craig Becker and Mark Pearce.

- Craig Becker is the associate general counsel for the Service Employees International Union, on the AFL-CIO staff counsel and is a law professor who has written many scholarly articles on labor and employment issues.
- Mark Pearce is a partner with Creighton, Pearce, Johnsen & Giroux in Buffalo, N.Y. and represents unions and employees in discrimination cases.

EEOC Nominees

Included on the list for the EEOC are Jacqueline Berrien to serve as chair, Victoria Lipnic and Chai Feldblum as EEOC commissioners, and P. David Lopez as general counsel.

- Jacqueline Berrien served as the associate director-counsel of the NAACP Legal Defense and Educational Fund.
- Victoria Lipnic is of counsel with Seyfarth Shaw in Washington, D.C. She previously served as assistant secretary of labor for employment standards and as counsel to Republican members of the House Education and Labor Committee.
- Chai Feldblum is a law professor at Georgetown. She served as legislative counsel to the AIDS Project of the American Civil Liberties Union and recently testified before Congress and helped draft language for the ADA Amendments Act and has worked on advancing lesbian, gay, bisexual and transgender rights.
- P. David Lopez has served at the EEOC for 13 years and is currently a supervisory trial attorney with the Phoenix office. Before joining the EEOC, he worked in the Civil Rights Division of the Justice Department.

MEASURES TO IMPROVE E-VERIFY AND COMBAT DISCRIMINATION INTRODUCED

The U.S. Department of Homeland Security's Citizenship and Immigration Services (“CIS”) announced measures designed to strengthen the efficiency and accuracy of the E-Verify system and combat worker discrimination. In March, CIS signed a memorandum of agreement with the U.S. Justice Department's Office of Special Counsel for Unfair Immigration-Related Employment Practices (“OSC”) to streamline the process for addressing potential cases of discrimination and employer misuse of E-Verify. Additionally, CIS has created an information telephone hotline to assist employees and two training videos focusing on procedures, employee rights, and employer responsibilities.

(Continued on page 2)

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MODERN MANAGEMENT BRIEFING SEMINAR
MAY 13, 2010

Lemle & Kelleher, L.L.P. presents *Modern Management Briefing*, a half-day labor and employment law seminar.

WHEN, WHERE, COST TO ATTEND

Thursday, May 13, 2010, 8:30-11:30 a.m.
Lemle & Kelleher, L.L.P.
601 Poydras Street, 21st Floor, New Orleans, LA
\$15.00 per attendee

AGENDA

- 8:30 to 8:45 am—Registration
- 8:45 to 9:00 am—Introduction
- 9:00 to 9:40 am—The New Health Care Environment for America's Businesses
- 9:40 to 10:20 am—Unions Face Off with Employers in the Workplace
- 10:20 to 10:30 am—Break
- 10:30 to 11:10 am—Emerging Employee Relations Issues Resulting from Electronic Communications
- 11:10 to 11:30 am—Q&A Session

PRESENTERS

- E. Fredrick Preis, Jr.
- Eve B. Masinter
- Joseph Hugg

REGISTRATION

To register please contact:
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ON VACATION—UI AND COBRA NOT EXTENDED

The Senate left for a two week spring recess without passing an extension to unemployment insurance benefits, expiring April 5, and subsidies for health care coverage through COBRA, expiring March 28.

Democrats have scheduled a vote when they return in April.

MEASURES TO IMPROVE E-VERIFY *continued*

As reported in previous issues of *Modern Management*, E-Verify is the U.S. Citizenship and Immigration Services' system that organizations with federal contracts would be required to use to determine if their new hires and existing employees were authorized to work in the U.S.

The Obama administration has made cracking down on employers who hire people here illegally a central part of its immigration enforcement policy. Congress gave DHS about \$100 million to spend on E-Verify in its 2010 budget.

DOES FLSA PROTECT THOSE MAKING ORAL COMPLAINTS?

Does the anti-retaliation provision of the Fair Labor Standards Act ("FLSA") cover an employee who made a complaint orally to a supervisor? On March 22, the U.S. Supreme Court agreed to consider this question.

In *Kasten v. Saint-Gobain Performance Plastics Corp.*, Kevin Kasten was fired by Saint-Gobain Performance Plastics Corporation for violating time-clock procedures following four disciplinary notices issued in 2006. Kasten alleged that he made oral complaints from October to December 2006 to a lead operator, a shift supervisor, and a human resources employee about placement of the time clocks and failure to pay workers for donning and doffing of protective gear. Additionally, he said he told a supervisor during a disciplinary meeting that he was considering suing over the issue. Saint-Gobain denied that Kasten made any oral complaints. He filed suit against Saint-Gobain under the anti-retaliation provision of the FLSA.

The U.S. District Court for the Western District of Wisconsin granted summary judgment to Saint-Gobain, finding that Kasten was not protected by the FLSA's anti-retaliation provision because he did not file a written complaint. The U.S. Court of Appeals for the Seventh Circuit agreed. A rehearing was denied. Kasten filed a Cert Petition with the U.S. Supreme Court arguing that the Seventh Circuit's decision conflicted with rulings from six other federal appeals courts that oral complaints are protect under FLSA.

"HIRE" SIGNED BY OBAMA

President Obama signed the Hiring Incentives to Restore Employment ("HIRE") Act into law to help build the ranks of the employed.

HIRE includes:

- Providing a \$13 billion in job creation tax incentives, the law gives private sector employers a Social Security payroll tax exemption for each worker hired in 2010 who has been unemployed for at least 60 days. Employers will receive for each new employee hired and retained for 52 weeks the lesser of a \$1,000 tax credit or 6.2 percent of the wages paid for those 52 weeks.
- Allowing a one-year extension of a small business "expensing" tax break, allowing small businesses to write off up to \$250,000 of certain capital expenditures in lieu of depreciating those costs over time. Without the extension, small businesses would have only been allowed to deduct up to \$125,000 and the rest of the costs would have to be recovered over time through depreciation.
- Extending the current federal aid for highway programs through the end of 2010.

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ABOUT LEMLE & KELLEHER, L.L.P.

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