

MODERN MANAGEMENT

Volume 2, Issue 1, January 2008

HR Professionals Get Ready—FMLA Expands to Include Leave for Military Families

Workplace leave benefits for employees with family members in the Armed Services passed the House, received Senate approval and awaits President Bush's signature. The National Defense Authorization Act (H.R. 1585) will expand the Family and Medical Leave Act (FMLA) to include employees caring for an injured serviceman or woman or have a loved one called to active duty service.

Once signed into law, FMLA-eligible employees will be entitled to the following types of leave:

Active Duty Leave—Twelve weeks of FMLA leave to a spouse, son, daughter or parent on active duty or having been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

Caregiver Leave—Twenty-six weeks of FMLA leave during a single 12-month period for a spouse, son, daughter, parent, or nearest blood relative caring for a recovering service member (a member of the Armed Forces who suffered an injury or illness while on active duty that may render the person unable to perform the duties of the member's office, grade, rank or rating).

Under both, employees can use the leave on an incremental basis or in the smallest increment that the employer's payroll system tracks.

For more information on this, please contact your Lemle & Kelleher attorney.

EEOC Outlines 'Best Practices' to Prevent Job Discrimination

In response to the increase in employment testing, the EEOC issued an extensive fact sheet on the application of federal anti-discrimination laws to employer tests and other selection procedures to screen applicants for hire and employees for promotion.

The fact sheet describes common types of employer administered tests and selection procedures used in the 21st century workplace, including cognitive tests, personality tests, medical examinations, credit checks, and criminal background checks.

In response to an increase in charges of job discrimination filed with the EEOC raising issues of employment testing and exclusions based on criminal background checks, credit reports, and other screening tools, the EEOC has formulated best practices for testing and selection for employers:

- Employers should administer tests and other selection procedures without regard to race, color, national origin, sex, religion, age (40 or older), or disability.
- Employers should ensure that employment tests and other selection procedures are properly validated for the positions and purposes for which they are used. The test or selection procedure must be job-related and its results appropriate for the employer's purpose. While a test vendor's documentation supporting the validity of a test may be helpful, the employer is still responsible for ensuring that its tests are valid under UGESP.

Preis Recognized by Louisiana Super Lawyers 2008



E. Fredrick Preis, Jr. was one of 15 Lemle & Kelleher attorneys recognized by Louisiana Super Lawyers 2008. Preis was noted for his practice in the area of Labor & Employment Law.

Delay, Again, for "No Match"

On October 10, a federal district court issued a preliminary injunction to stop the Department of Homeland Security from implementing the "no match" law, which goes against the Bush Administration's agenda on strictly enforcing immigration. However, on Friday, December 14, the district court permitted a request by the Department of Homeland Security to stay a lawsuit which challenged the "no-match" rules until March 28, 2008. This will give the DHS enough time to explore more rules to address the apprehensions of the court.

Foreign Recruiters Get into the Act

The Trafficking Victims Protection Act (H.R. 3887) was approved by the House of Representatives by a 405 to 2 vote. This Act will hold employers and foreign labor recruiters solely responsible for the immigrant workers employed for jobs in the United States. The approval of this Act was facilitated because of the House labor committee's previous investigation into the exploitation of immigrant workers by foreign recruiters. Stipulations to the Act include the recruiter providing clear disclosure of the terms of employment to the immigrant worker in their national language, which should include location of employment, compensation, requirements expected, and commissions paid. The Act also prohibits high fees paid by the immigrant worker to the employer, which can lead to bankruptcy and other financial disability.

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- If a selection procedure screens out a protected group, the employer should determine whether there is an equally effective alternative selection procedure that has less adverse impact and, if so, adopt the alternative procedure. For example, if the selection procedure is a test, the employer should determine whether another test would predict job performance but not disproportionately exclude the protected group.
- To ensure that a test or selection procedure remains predictive of success in a job, employers should keep abreast of changes in job requirements and should update the test specifications or selection procedures accordingly.
- Employers should ensure that tests and selection procedures are not adopted casually by managers who know little about these processes. A test or selection procedure can be an effective management tool, but no test or selection procedure should be implemented without an understanding of its effectiveness and limitations for the organization, its appropriateness for a specific job, and whether it can be appropriately administered and scored.

Additional information about the EEOC is available on its web site at www.eeoc.gov/policy/docs/factemployment_procedures.html.

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About Lemle & Kelleher, L.L.P.

Lemle & Kelleher is one of the oldest major law firms in Louisiana, tracing its origins to the late 19th century when New Orleans was experiencing a boom as the shipping and commercial center of the South. Building on that genesis, we have diversified and expanded our capabilities for more than 100 years to meet the growing needs of our clients regionally and nationally. Today, Lemle & Kelleher offers responsive, innovative, and experienced legal representation covering a broad range of practice areas. For more information please visit www.lemle.com.

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