

## MODERN MANAGEMENT

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### NO DECISION AUTHORITY BY NLRB

On June 17, the United States Supreme Court ruled 5-4 that the National Labor Relations Board (“NLRB”) had no authority to issue decisions in unfair labor practice and representation cases while a two-member vacancy existed.

The NLRB operated with two vacancies from January 2008 until late March 2010. During the 27-month period, nearly 600 rulings were issued. There are currently 5 other cases pending before the Supreme Court and over 70 cases pending in the federal appeals courts challenging the validity of a two-member ruling. It is not immediately clear what will happen regarding the rulings. Most parties have complied with the decisions.

### FMLA UPDATE

#### *DOMESTIC PARTNERS INCLUDED IN FMLA*

The U.S. Department of Labor (“DOL”) recently issued a clarification of the Family Medical Leave Act (“FMLA”) giving family leave rights to people who assume the role of caring for a child regardless of the legal or biological relationship, including domestic partners. This is a victory for nontraditional families.

#### *SPEECH, BEHAVIOR PROBLEMS NOT COVERED BY FMLA*

A decision out of the United States District Court for the Middle District of North Carolina found that the United Parcel Service Inc. was not in violation of the Family and Medical Leave Act (“FMLA”) by refusing to allow a part-time shift employee to take leave to continue her son’s speech therapy at home during summer vacation. The Court found that the child’s speech and behavioral problems did not qualify as a “serious health condition” under the FMLA.

The four-year-old son had been diagnosed with a form of speech impairment and attended a full-time day care program that included publicly funded speech therapy sessions twice a week with take home instructions for language exercises, which were done after work. The day care program closed for two months during the summer at which time the child went to another facility. The son did not qualify for the extended school year program which would include speech therapy during the summer.

The employee filed for FMLA in order to continue the therapy at home and was denied. She asked for reconsideration. The FMLA application was denied after reconsideration and the employee was notified that she had three business days to return to work. Upon failure to return, her employment was terminated. She later filed suit.

The 1993 law allows covered workers to take up to 12 weeks of unpaid leave during any 12-month period to give birth to and care for a newborn child; to adopt a child or assume care for a foster child; to care for a spouse, child, or parent with a serious health condition; or to take medical leave because of a serious health condition.

## UPDATES FROM ICE

### ***NEW WEB INTERFACE LAUNCHED FOR E-VERIFY***

The Department of Homeland Security's Citizenship and Immigration Services ("ICE") launched a redesigned E-Verify web interface for employers. The web interface will provide employers with streamlined access and an expanded support section. It is required that current E-Verify users complete a 20 minute E-Verify tutorial outlining the key changes to the interface. As reported in previous issues of *Modern Management*, E-Verify is ICE's 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.

### ***STRATEGIC PLAN THROUGH 2014***

The Department of Homeland Security's Citizenship and Immigration Services ("ICE") has unveiled its strategic plan for fiscal years 2010 through 2014, outlining priorities regarding preventing terrorism, securing the border, and administering the nation's immigration laws.

## CHILD LABOR FINES INCREASED

On June 15, the U.S. Department of Labor ("DOL") announced fines for employers that illegally employ child workers would be raised. The DOL has issued a tougher penalty structure for employer's illegally employing children:

- Ages 12 to 13 - \$6,000 per violation (up from \$900)
- Under 12 – at least \$8,000 per violation (up from \$900)

Penalties for illegally employing workers under age 14 could be raised to \$11,000 under specified conditions.

## LEMLE & KELLEHER LABOR AND EMPLOYMENT ATTORNEYS

The labor and employment attorneys in our firm have a national and international practice representing union and non-union companies in almost every industry. From hotels to manufacturing to health care, retailing to restaurants, to financial institutions, trucking companies to warehouses to nursing homes, and many others, our labor attorneys have developed strong experience and hands-on knowledge of how business really works.

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