

MODERN MANAGEMENT

SEMINAR INVITATION
SHREVEPORT, LOUISIANA

Lemle & Kelleher, L.L.P.,
Gulf States Association of Homes and Services for the Aging,
Louisiana Bankers Association,
Louisiana Casino Association,
Louisiana Hospital Association, and
Louisiana Hotel & Lodging Association

present a half-day labor and employment law seminar

Thursday, April 28, 2011
8:30 a.m.—12:00 p.m.

Horseshoe Casino & Hotel
711 Horseshoe Blvd., Bossier City, Louisiana

Cost Per Attendee:

- \$20.00 for members of any of the sponsoring Associations
- \$30.00 for non-members

Topics:

- Harassment Goes Cyberspace
- GINA—The Law and Its Impact on ADA
- Preparing for Renewed Union Organizing as Recent Labor Board Decisions Encourage Organized Labor

Presenters:

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

To register please contact:

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SAVE THE DATE:
MODERN MANAGEMENT BRIEFING SEMINAR

Mark your calendar! The next Lemle & Kelleher *Modern Management Briefing*, a half-day labor and employment law seminar, is scheduled on Thursday, May 12, 2011 in New Orleans, Louisiana.

Volume 5, Issue 4, April 2011

FINAL REGULATIONS
IMPLEMENTING
ADAAA ISSUED

On March 25, 2011, the Equal Employment Opportunity Commission (“EEOC”) issued the final regulations and guidance on implementing the ADA Amendments Act of 2008 (“ADAAA”). The intent of the regulations is to simplify the determination of a disability and ease the process for establishing protection by the ADAAA.

The ADAAA:

- Prohibits the consideration of measures that reduce or mitigate the impact of impairment—such as medication, prosthetics and assistive technology—in determining whether an individual has a disability under the law.
- Covers workers whose employers discriminate against them based on a perception that the worker is impaired, regardless of whether the worker has a disability.
- Clarifies that the law provides broad coverage to protect anyone who faces discrimination on the basis of a disability.

The bill overturned *Sutton v. United Air Lines*, 527 U.S. 184, 9 AD Cases 673 (1999), *Murphy v. United Parcel Service Inc.*, 527 U.S. 516, 9 AD Cases 691 (1999), and *Albertson's Inc. v. Kirkingburg*, 527 U.S. 555, 9 AD Cases 694 (1999). The ADAAA regulations are available on the EEOC website – www.eeoc.gov/laws/statutes/adaaa_info.cfm.

ORAL COMPLAINTS COVERED BY FLSA RETALIATION PROVISION SAYS SUPREME COURT

On March 22, 2011, the U.S. Supreme Court ("Court") held that oral complaints are covered by the Fair Labor Standards Act's ("FLSA") retaliation provision protecting employees who file an FLSA complaint.

Kasten v. Saint Gobain Performance Plastics Corp.

Kevin Kasten, a Saint Gobain Plastics Performance Corporation ("Saint Gobain") employee, orally complained to his supervisors and the HR department about the location of the time clock. The location was between where work-related protective gear was put on and where the work was being performed. Employees did not receive credit for the time spent putting on and taking off work gear, a violation of the FLSA's donning and doffing provisions. Kasten was terminated a short time after the complaint. He alleged that his termination was due to the oral complaint and this was in violation of the FLSA's anti-retaliation provision. In defense, Saint Gobain presented the argument that the anti-retaliation provision requires the employee to submit something in writing before the FLSA protections are invoked. In a 6-2 decision, the Court disagreed with Saint Gobain's argument, holding that the filing of a complaint can include an oral complaint and will invoke the FLSA's protections as long as the complaint is "sufficiently clear and detailed for a reasonable employer to understand it, in light of both content and context, as an assertion of rights protected by the statute and a call for their protection."

STARTUP BILL INTRODUCED FOR IMMIGRANT ENTREPRENEURS

On March 14, 2011, a bill that would establish a two-year employment-based visa for immigrant entrepreneurs was reintroduced. The bill is an expansion of the StartUp Visa Act introduced in 2010 and targets those who have received significant investment capital to establish a business in the United States. The business must create at least three new jobs. It enlarges the pool of eligible immigrants to include H-1B visa holders and those residing outside of the country with a market presence in the United States.

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. Our labor attorneys have developed strong experience and hands-on knowledge of how business really works.

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ABOUT LEMLE & KELLEHER, L.L.P.

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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