

MODERN MANAGEMENT

IMMIGRATION REFORM

On Thursday, June 28, 2007, the U.S. Senate failed to invoke cloture on S. 1639, causing the opportunity to move forward with immigration reform this summer unlikely. Despite this, employers are still confronted daily on finding or retaining workers for certain jobs and navigating immigration laws to get H-1B and H-2B workers or others employed. Further, the Department of Homeland Security is increasing its workplace enforcement of companies hiring or retaining illegal immigrants. Some errors that expose an employer to liability are incomplete I-9 forms, incorrectly completing the I-9 forms, and failing to complete the I-9 forms within the required time. These simple errors can cause an employer to have "constructive knowledge" that illegal foreign nationals may be on the payroll. Whether or not immigration reform ever becomes a reality, immigration is becoming one of the hottest topics in employment law these days. With the H-1B visas quickly being depleted this year, and some negative H-2B court decisions occurring, if you need assistance with existing immigration matters, want to integrate immigrant workers into your workplace, or believe that your workplace's practices are susceptible to a violation of immigration law, Lemle & Kelleher can help. Contact your Lemle attorney for further assistance.

ALITO SPEAKS FOR THE COURT: TIMELINESS UNDER TITLE VII

On May 29, 2007, the United States Supreme Court in a 5-4 decision favorable to employers authored by Justice Alito (*Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 127 S.Ct. 2162), determined that a plaintiff challenging a pay discrepancy under Title VII of the Civil Rights Act of 1964 must file a timely charge with the EEOC as to each discrete act of discrimination -- within 180 days (or 300 days depending on the State) from each alleged discriminatory act leading to the pay discrepancy-- not the date of the effect of the decision. Rejecting the plaintiff's "paycheck accrual rule", the Court held: "Because the later effects of past discrimination do not restart the clock for filing an EEOC charge, Ledbetter's claim is untimely."

The plaintiff, Lilly Ledbetter, worked at a Goodyear plant as a salaried employee from 1979 until 1998. During most of that time, salaried employees at the plant were granted or denied raises based on their performance evaluations. Ledbetter contacted the EEOC about potential sex harassment regarding the pay system. In March 1998, Ledbetter responded to a questionnaire sent to her by the EEOC and submitted it to the Commission. In July 1998, she filed a formal EEOC Charge against Goodyear. After taking early retirement in November 1998, Ledbetter filed suit under Title VII along with other claims. A federal district court allowed her Title VII pay discrimination claim to proceed to trial.

At trial, the evidence demonstrated that Goodyear was paying Ledbetter significantly less than any of her male counterparts, and the jury awarded back pay and damages. On appeal, Goodyear argued that Ledbetter's pay discrimination claim had not been filed timely as to all pay decisions prior to September 26, 1997--180 days before the filing of her Charge Questionnaire. Relying on precedent, the Court held that the EEOC charging period is triggered when a specific unlawful practice takes place. The Court said that a new violation does not occur, and a new charging period does not commence, when later nondiscriminatory acts occur that continue adverse effects resulting from the past discrimination. The Court found that Ledbetter should have filed an EEOC charge within 180 days after each allegedly discriminatory pay decision was made and communicated to her. "She did not do so, and the paychecks that were issued to her during the 180 days prior to the filing of her EEOC charge do not provide a basis for overcoming that prior failure." The Court determined that Ledbetter's claim was fully formed and present when each discriminatory employment action was taken against her, which is the point when she could have and should have filed her claim and then sued.

The Court reinforced its prior holdings that when an employee alleges "serial violations," i.e., a series of actionable wrongs, a timely EEOC charge must be filed as to each discrete alleged violation.

This was a significant decision for employers because it means that an employee who is supposedly wronged cannot sit on their rights without pursuing a claim. Unfortunately, legislation has been introduced in Congress to overturn this decision.

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MINIMUM WAGE

Remember on July 24, 2007, the federal minimum wage will increase from the current \$5.15 to \$5.85. Employers should resolve the issues that this increase may cause at the workplace prior to its implementation in three weeks. Some issues already arising relate to tipped employees, wage garnishments, posting requirements, overtime calculations, and fluctuating work week employees. If you have any questions regarding the implementation of the new minimum wage, please contact your Lemle & Kelleher Labor & Employment attorney.

Lemle & Kelleher News

[Goodman, Masinter, Preis and Waguespack Named in Chambers USA: America's Leading Business Lawyer](#)

Lemle & Kelleher, L.L.P. is pleased to announce that four of its attorneys have been selected for inclusion in Chambers USA: America's Leading Business Lawyers for Louisiana. Alan H. Goodman and David F. Waguespack were recognized for their activity in the bankruptcy arena and E. Fredrick Preis, Jr. and Eve B. Masinter were recognized for their Labor and Employment work.

Other News from the firm:

- [Norris Joins Lemle & Kelleher, L.L.P.](#)
- [Dow Edwards Selected as Member of New Orleans Regional Leadership Institute](#)
- [Murray Elected to LSBA Labor and Employment Law Section Council](#)
- [Preis Named Fellow of Louisiana Bar Foundation](#)
- [Lemle & Kelleher Attorney Michael Donald Moves to Houston Office](#)
- [Murray to Co-Chair Leadership Jefferson](#)

HIPAA

Some of the most protected documents concerning employees are their medical records. Many businesses have been caught off guard after failing to update their policies and procedures properly pursuant to the last round of amendments and changes to Health Insurance Portability and Accountability Act ("HIPAA") (the most significant law concerning worker medical records). One of this summer's tasks for every employer should be to ensure that their policies and procedures are in compliance with HIPAA regulations. If you have questions, or need assistance in performing an audit of your HIPAA policies to certify they are conforming, please get in touch with your Lemle attorney for help from the Firm.

Your Lemle & Kelleher Employment Lawyer's Contact Information

E. Fredrick Preis, Jr., epreis@lemle.com, (504) 585-6371
Eve B. Masinter, emasinter@lemle.com, (504) 584-9173
David R. Taggart, dtaggart@lemle.com, 318-934-4014
David M. Whitaker, dwhitaker@lemle.com, 504-584-9404
Louis Colletta, Jr., lcolletta@lemle.com, 504-584-9149
Marc R. Michaud, mmichaud@lemle.com, (504) 585-6386
Kimberly C. Delk, kdelk@lemle.com, 504-584-9149
Bryce G. Murray, bmurray@lemle.com, 504-585-6359
Bridget A. Dinvaut, bdivvaut@lemle.com, (504) 586-1241

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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