

MODERN MANAGEMENT

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Minimum Wage Increases on July 24, 2008

Effective July 24, 2008, the federal minimum wage will increase to \$6.55 per hour.

GINA: Genetic Information Nondiscrimination Act

President Bush recently signed the Genetic Information Nondiscrimination Act (GINA) on May 21, 2008. This new law will prohibit discrimination against individuals in both the areas of employment and health care based on their genetic makeup or information. Many people believe this new law is one of the first of its kind for the 21st Century, reflecting those laws last enacted during the Civil Rights era.

GINA provisions in the employment arena include prohibiting employers from discriminating against an individual through hiring, firing, compensation, terms or privileges of employment on the basis of their genetic information or the genetic information of their family member. Under GINA, a family member is defined as the spouse of an individual, a dependent child of the individual (including a child who is born to or placed for adoption with the individual), or a parent, grandparent, or great-grandparent of the individual.

GINA also prohibits employers from collecting or requesting genetic information of an employee or family member of that employee. This provision is followed by a list of exceptions, one of which is whether the employer's request for genetic information is inadvertent. Many labor and employment attorneys as well as representatives of employer groups are worried about these stipulations behind the provisions within GINA.

GINA went through several versions before being passed on May 21. The loopholes and exceptions within the law may lead to employers becoming more vulnerable to discrimination claims. These provisions of GINA will become effective in November 2009, and the provisions pertaining to group health plans will become effective in May 2009.

Firing Union Employees Over Social Security No-Match Letters May Violate "For Cause" Clause of CBA

The Ninth Circuit is mixing it up again in the immigration arena. This time, they are focusing on Social Security "No-Match" letters and an employer's response to receiving no-match letters for 48 employees. In *Aramark Facility Servs v. SEIU, Local 1877*, the Ninth Circuit found that Aramark's termination of 33 employees after the employees did not respond with proof of citizenship (or attempts to seek a social security card confirming their identity) was in violation of the union contract between the employees (represented by SEIU) and Aramark. Specifically, the court upheld the arbitrator's decision that a "no-match" letter with no additional proof is not enough to suffice as "cause" for termination under the collective bargaining agreement between the union and company. Despite the court recognizing that Aramark's actions cannot include ignoring the "no-match" letter, it held that providing employees with a short, three-day duration to return contradicting proof to the "no-match" letter of citizenship was too short of a time period. Further, the court found that the "no-match" letter was not sufficient proof for the burden of proof standard for constructive knowledge of hiring illegal immigrants.

Reminder: Update Employment Poster

Earlier this year, changes were implemented to allow additional leave time for employees to care for an injured or seriously ill returning service member, under the National Defense Authorization Act. By now, employers should have updated their employment posters at every workplace to include the notice regarding these provisions. Should you still need to update your employment posters, a copy of the notice may be printed from the DOL's website at <http://www.dol.gov/esa/whd/fmla/NDAAAmndmnts.pdf>.

Helping Lower Employee's Gas Guzzling May Cost Employers—By: Bryce Murray

As gas prices rise and employers begin to feel the pressures from employees regarding salary increases to compensate for gas surges some employers are changing the way they do business. In recent months, employers have been seen changing work schedules to four days a week, permitting telecommuting, and providing "gas" bonuses in the form of reimbursement for gas, gas gift cards, and other gas related items of monetary value. [Click here](#) to read more.

Age Discrimination: The Burden of Proof is on the Employer

On June 19, the Supreme Court, in a 7-to-1 decision, ruled that employers have the burden of proving a firing or layoff was not based on age. This overturned a decision stemming from a federal appeals court ruling in New York that placed the burden on the employee to prove that they were laid off due to ageism factors. The federal case, *Meacham v. Knolls Atomic Power Laboratory, No. 06-1505*, was brought by employees who had lost their jobs due to cutbacks at a federal research lab in upstate New York. All of the employees who were laid off were at least 40, which is the age at which the federal Age Discrimination in Employment Act begins. The bigger picture in this case is that the Supreme Court, after this ruling, has completed a sweep of 5 cases, all voting in favor of employees' rights in the workplace.

Firing Union Employees Over Social Security No-Match Letters *continued*

Although this opinion is only binding on employers conducting business in the Ninth Circuit (the west coast area of the country), it does impact employers across the country as this opinion will likely be cited by future unions (and plaintiffs) seeking prosecution of terminated employees for "no-match" letters, especially when a "for cause" provision is contained in the CBA. Further, this opinion leaves open the idea that three days for an employee subjected to a "no-match" letter may not be enough time to allow the employee to refute the "no-match" letter allegations. Employers, whether or not the workforce is unionized, should consult their Lemle labor and employment attorneys prior to taking any actions against any employee after receiving a "no-match" letter.

Expansion of the WARN Act

The Worker Adjustment and Retraining Notification Act was created in 1989 by the United States to protect employees by requiring companies laying off 100 or more employees to give 60 days notice before mass layoffs of employees or in the case of a plant closing. Recently, at a May 20 hearing of the Senate Health, Education, Labor and Pensions Committee, legislation was brought before the Senate that would require employers to give 90 days notice for 50 or more employees being laid off. It would also increase penalties for violations of the WARN Act, and ensure that workers would receive information on benefits and services available during their jobless period. Supporters of the expansion claim that companies aren't even following the current policies; therefore, a narrower version of the law is needed to ensure that these companies are informing their employees of mass layoffs. Those against the expansion say that the proposed changes are not what the workers of America need, and that simply expanding the notice of a closing, will not be enough. The expansion to the law has not been acted upon by the Senate Health, Education, Labor and Pensions Committee.

72-Hour Pre-Registration For Visa Travelers

The Department of Homeland Security has issued a statement, in order to enhance security in the United States, stating that citizens from countries that do not require visas must register 72 hours before their departure with the U.S. government. The reason for this comes from Washington's increasing concern of terrorism. This new rule applies to those citizens of the 27 visa waiver program countries, which includes some of Western Europe, Australia, Brunei, Japan, New Zealand and Singapore. The information required to register is the same information citizens coming to the U.S. fill out in the I-94 immigration form. Starting in January 2009, the rule will become permanent, although, citizens coming to the U.S. can start registering in August of this year.

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