

MODERN MANAGEMENT

RESPECT Could Change How Workplaces View Supervisors And Union Organization

Democratic members of Congress, led by Representative Christopher Dodd, and with the support of unions nationwide, proposed new legislation seeking to amend the National Labor Relations Act ("NLRA"). The bill, titled Re-Empowerment of Skilled and Professional Employees and Construction Tradeworkers Act ("RESPECT"), would narrow the Act's definition of "supervisor," causing many supervisors that are currently barred from the inclusion in bargaining units to become eligible to join unions.

Section 2(11) of the NLRA states that: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

In the recent progeny of cases, *Oakwood Healthcare*, *Crest Healthcare*, and *Croft Metals*, the National Labor Relations Board ("the Board") construed the section broadly. In those cases, the Board addressed the issue of certain nurses being classified as supervisors under the Act. In particular, the Board focused on the meaning of "assign," one of the specific supervisory tasks listed in Section 2(11), and concluded that the duty to assign includes any decision-making or recommendations that "affect ... place, time, or overall tasks." Thus, after *Oakwood*, an employee who influences another employee's place of work, time of work, or tasks to be completed may be deemed a supervisor under the Act. As such, these decisions created a labor environment where, essentially, nurses who direct the tasks of others could now be considered supervisors under the statute.

RESPECT seeks to overrule the *Oakwood* progeny and eliminate the term "assign" from the Act, as well as remove the key language "responsibly to direct" other employees. It further requires that an employee being classified as a supervisor under the Act must perform at least one of the remaining listed supervisory tasks for a majority of the employee's work time. RESPECT will change the Act in a way that will disregard decades of Board precedent. Many supervisors who previously were excluded as individuals who could unionize under the Act will now be open-game for unions. Under these amendments, supervisors that are now considered to act on behalf of, and for the benefit of, the employer will now be deemed employees that are subject to organizational activities and union representation.

RESPECT is a dangerous amendment to the NLRA. Should this legislation pass the availability to classify supervisory employees as supervisors will be significantly jeopardized.

Volume 1, Issue 3, June, 2007

Lemle & Kelleher News

Masinter Appointed Chair of IADC's Employment Law Committee—[Eve B. Masinter](#) has been appointed Chair of the International Association of Defense Counsel's Employment Law Committee. Eve has been active with the IADC's Employment Law Committee for nearly 5 years. [Click here](#) to read more.

Daniels and Masinter to Present at IADC Annual Meeting—[Timothy F. Daniels](#) and [Eve B. Masinter](#) will speak at the International Association of Defense Counsel's 2007 Annual Meeting at the Fairmont Southampton in Bermuda on July 7-12, 2007. [Click here](#) to read more.

Preis Quoted in New Orleans CityBusiness—[E. Fredrick Preis, Jr.](#) was quoted in two articles appearing in the May 21, 2007 issue of New Orleans CityBusiness. [Click here](#) to read more.

Edwards Inducted as Life Member of The American Law Institute—[Ernest L. Edwards, Jr.](#) was appointed a life member of the American Law Institute. [Click here](#) to read more.

Bradley Appointed to Board of Directors of the New Orleans Katrina Memorial Corporation—[C. William Bradley, Jr.](#) is serving on the Board of Directors of the [New Orleans Katrina Memorial Corporation](#). [Click here](#) to read more.

An Outline of the Bipartisan Immigration Bill Tentatively Agreed to by the Bush Administration

Recently, a bipartisan group of Senators reached a backroom agreement with the Bush Administration regarding comprehensive immigration reform. The border security and immigration reform will surely be the discussion of many topics over the next few months. The proposed Bill includes the following highlights:

- Emphasis on Border Security and Enforcement
- Revamping a New System For I-9s
- Temporary Worker Program
- Illegal Immigrant Amnesty
- Citizenship Under the Z-Visa
- Assimilation
- Merit-Based System
- Nuclear Families
- Backlog for Family Admittance

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, 504-584-9147
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, bdinvaut@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.

Lemle & Kelleher, L.L.P. Areas of Practice

[Admiralty & Maritime Law](#)

[Antitrust Law](#)

[Appellate Practice](#)

[Bankruptcy & Loan Restructuring](#)

[Business Litigation](#)

[Casualty Litigation](#)

[Class Actions & Complex Litigation](#)

[Construction Law](#)

[Corporate Criminal Law](#)

[Corporate, Commercial Lending & Real Estate](#)

[Energy, Oil & Gas, and Public Utility Law](#)

[Environmental Law](#)

[Health Care Liability Law](#)

[Insurance Coverage Issues](#)

[Intellectual Property](#)

[Labor & Employment Law](#)

[Oil & Gas Drilling, Completion and Workover](#)

[Contractor Operations](#)

[Products Liability](#)

[Professional Liability](#)

[Securities Litigation](#)

[Tax Law](#)

[Toxic Torts](#)

[Transportation Law](#)

[Trusts, Probate & Estate Planning](#)

To remove your name from our mailing list, please [click here](#).

This electronic newsletter is provided to clients and friends of Lemle & Kelleher, L.L.P. The information described is general in nature, and may not apply to your specific situation. Legal advice should be sought before taking action based on the information discussed. Applicable State Bar or Attorney Regulations May Require This Be Labeled as "Advertising." Except as otherwise noted, areas of practice are not certified by the Texas Board of Legal Specialization or other applicable State Bar or regulatory authority.