

MODERN MANAGEMENT

2010 NLRB ELECTIONS
BY THE NUMBERS

Increases

The National Labor Relations Board saw a substantial increase in the number of resolved representation elections for the year 2010—a total of 1,666 (up from 1,321 in 2009). Additionally, the number of elections won by unions increased as well to 1,125 (up from 908 in 2009). Keeping with the trend of increases, the number of workers eligible to vote in 2010 was 108,312, up from 72,902 in 2009 and unions organized 70,333 workers in 2010, an increase from 50,131 in 2009.

Decreases

The percentage of wins by unions had a slight decrease from 68.7 percent in 2009 to 67.6 percent in 2010. Also, union win rates in decertification elections decline once again in 2010 (unions prevailed in 93 of 239 resolved decertification elections - 38.9 percent, down from 104 of 255 decertification elections, or 40.8 percent in 2009). This is the second consecutive year that the number of decertification elections and the union win rate declined.

LEGAL ARIZONA WORKERS ACT
UPHELD BY SUPREME COURT

On May 25, 2011, the United States Supreme Court upheld the Legal Arizona Workers Act which requires all employers in the state to use E-Verify to screen out illegal aliens and gives the State the ability to revoke the business licenses of employers who knowingly hire illegal aliens.

In the majority opinion, Chief Justice John Roberts said “the state’s licensing provisions fall squarely within the federal statute’s savings clause and that the Arizona regulation does not otherwise conflict with federal law.” Additionally, the Court found that the requirement to use E-Verify was “entirely consistent with the law.”

It is expected that other states, including the thirteen that allied themselves with Arizona, will enact similar laws.

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SAVE THE DATE
FALL 2011 SEMINARS

Mark you calendars!

Upcoming Lemle & Kelleher *Modern Management Briefing*, a half-day labor and employment law seminar, are scheduled on Thursday, September 15, 2011 in New Orleans and Wednesday, October 26, 2011 in Baton Rouge.

LABOR CASES TURNED
DOWN BY SUPREME COURT

On May 16, 2011, the United States Supreme Court denied review of two labor and employment law cases.

In **Fink v. Richmond**, out of the Fourth Circuit, the question posed to the Court was “If a disability prevents an employee from performing the essential functions of his or her current position, does the ADA require that the employer, as a reasonable accommodation, reassign or transfer the employee to a vacant, equivalent position for which she is qualified and can fully perform without further accommodation, even when the employer has a neutral vacancy policy?” This case arose after a public school teacher, who was disabled under the Americans with Disabilities Act, failed to show that the accommodations offered were not reasonable and sufficient.

LABOR CASES TURNED DOWN BY SUPREME COURT, continued

Hixson v. Steinberg, out of the Third Circuit, stemmed from a denial of a benefits claim by a widow under the Black Lung Benefits Act. The question submitted to the Court was “Can the Third Circuit deny benefits under the Black Lung Benefits Act regulations by augmenting the causation requirements within said regulations, given that (i) the claimant is conceded to have pneumoconiosis, (ii) the regulatory definition of pneumoconiosis does not mention the possibility of de minimis pneumoconiosis, (iii) the causation regulations of the Black Lung Act cross-reference the regulatory definition of pneumoconiosis, (iv) both provisions use the same or substantially similar language in their definitions, (v) both regulations are clear by their plain language, and (vi) the Black Lung Benefits Act is a remedial statute?”

LESS EMPLOYER CONTRIBUTION TO HEALTH CARE COSTS

As health care coverage expenses climb, more and more employers are paying less. A May 11, 2011, report released by the Milliman Medical Index revealed that in 2011 employers paid 58.7 percent of the cost of health care coverage. This is down from 62.5 percent in 2006. This is based on the cost of health care for a typical family of four covered by a preferred provider organization. The study showed a 7.3 percent overall cost increase for coverage (from \$18,074 in 2010 to \$19,393 in 2011). Since 2002, costs have doubled (\$9,235 in 2002).

REDEFINING FULL-TIME EMPLOYMENT

In order to accommodate the “pay-or-play” provision in the 2010 health care law, the United States Treasury Department and Internal Revenue Service are preparing a more “flexible” guidance for defining the full-time employee.

The proposed approach would not be based on month-by-month, it would allow employers to base full-time status on a period as long as a year. As it stands now, the language in the health care law would lead to employees fluctuating in-and-out of full-time status. A request went out on May 3, 2011, for public comments on the definition of a “full-time employee.” Comments are due by June 17, 2011

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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