

MODERN MANAGEMENT

ENFORCEMENT GUIDANCE  
ON PPE ISSUED BY OSHA

On February 10, 2011, the Occupational Safety and Health Administration (“OSHA”) issued the Enforcement Guidance for Personal Protective Equipment in General Industry which provides enforcement personnel with instructions on determining employers’ compliance with OSHA personal protective equipment standard (“PPE”). These standards require employers to provide—at no cost to workers—protective equipment.

**Significant Changes include:**

- Clarifies what type of PPE employers must provide at no cost, when employers must pay for PPE, or for replacement PPE, and when employers are not required to pay for PPE.
- Clarifies the PPE payment requirements for PPE worn off the jobsite, PPE that must remain at the jobsite, and employee-owned PPE.
- Sets forth enforcement policies that reflect court and review commission decisions concerning PPE.
- Provides guidance that allows employers to use PPE constructed in accordance with the most recent national consensus standards.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to assure these conditions for America's working men and women by setting and enforcing standards, as well as providing training, education and assistance.

THE CASE OF THE FACEBOOK FIRING SETTLES

The Case viewed as a test case on employees using social media to post work related comments has settled.

Dawnmarie Souza, an employee of American Medical Response of Connecticut, Inc. (“American Medical”) and a member of the Teamsters Union, was fired after she posted negative comments about her boss on Facebook from her home computer. The posting stemmed from questioning about her work following a customer complaint. Souza was denied union representation during the interview. She later posted on Facebook about the matter. She received positive remarks from co-workers which were followed-up with additional negative remarks by Souza.

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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  
in Shreveport, Louisiana.  
*(Location To Be Announced)*

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

**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:**

Judith Copping  
Lemle & Kelleher, L.L.P.  
504.584.9151, [jcopping@lemle.com](mailto:jcopping@lemle.com)

## THE CASE OF THE FACEBOOK FIRING SETTLES continued

Following her dismissal, a complaint was issued by the National Labor Relations Board ("NLRB") which alleged the firing was illegal because the online posting was "protected concerted activity" under the National Labor Relations Act. In response, American Medical said Souza was discharged "based on multiple, serious complaints about her behavior" and was also being held accountable for negative comments about a coworker posted on Facebook that it believed were not protected activity under federal law.

Additionally, the NLRB alleged American Medical's employee handbook regarding blogging, Internet posting, and communications between employees was overly broad and that employees are allowed, by law, to discuss the terms and conditions of their employment with co-workers and others.

American Medical settled the complaint by agreeing to revamp its rules to ensure they do not restrict workers' rights and agreed to revise its rules and not to discipline or discharge employees for engaging in discussions about wages and other work issues when not on the job. Additionally, American Medical promised that employee requests for union representation will not be denied in the future and that employees will not be threatened with discipline for requesting union representation. A separate, private settlement was reached with Souza.

## INCENTIVES TO PARTICIPATE IN WELLNESS PROGRAMS

A recent survey shows financial incentives are being used to encourage employees to participate and engage in wellness programs. The National Business Group on Health, on behalf of Fidelity, conducted a survey that found an increase in employer-provided incentives, \$430 per employee in 2010 which is up from \$260 in 2009.

While the majority, 88 percent, implemented positive incentives, including cash, gift cards, and additional HSA contributions, 12 percent implemented negative incentives, including reduction in contributions to health plans for non-participating employees.

## OLDER AMERICANS STAYING IN THE WORKFORCE

In 2010, the number of older Americans staying in the workforce hit a 35 year high; roughly 40 percent of Americans age 55 and older were still working. In 1993 the percentage was 29.4 percent.

## 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.

**E. Fredrick Preis, Jr.**, epreis@lemle.com, 504.585.6371

**Eve B. Masinter**, emasinter@lemle.com, 504.584.9173

**Joseph R. Hugg**, jhugg@lemle.com, 504.584.9148

## 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](http://www.lemle.com).

### **Baton Rouge**

One American Place  
301 Main St., Suite 1100  
Baton Rouge, LA 70825  
Phone: 225.387.5068  
Fax: 225.387.4995

### **New Orleans**

Pan-American Life Center  
601 Poydras St., 21st Floor  
New Orleans, LA 70130  
Phone: 504.586.1241  
Fax: 504.584.9142

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