

MODERN MANAGEMENT

Volume 1, Issue 6, September, 2007

Modern Management Briefing

Lemle & Kelleher presents *Modern Management Briefing*, a half-day labor and employment law seminar.

Program Summary:

- Dealing with Medical Leaves of Absence
- Avoiding Wage and Hour Trouble
- Employing Workers Under the Immigration Laws
- Reducing Your Risk for Workplace Harassment

Dates—Two Opportunities:

- **Wednesday, Sept. 26, 2007**
8:00 a.m.—12:00 p.m.
- **Thursday, Sept. 27, 2007**
8:00 a.m.—12:00 p.m.

Presenters:

- [E. Fredrick Preis, Jr.](#)
- [Eve B. Masinter](#)
- [David M. Whitaker](#)
- [Louis Colletta, Jr.](#)
- [Marc R. Michaud](#)
- [Kimberly C. Delk](#)
- [Bryce G. Murray](#)
- [Bridget A. Dinvaut](#)

Location:

Lemle & Kelleher, L.L.P.
Pan-American Life Center
601 Poydras Street, 22nd Floor
New Orleans, Louisiana

Fees:

\$15.00 per attendee.

Registration:

Register early, seating is limited. To register for this event, please email jcop-ping@lemle.com.

New Regulations Issued Under Jobs for Veterans Act

The Office of Federal Contract Compliance Programs (OFCCP) finally issued on August 8, 2007, its regulations under the Jobs for Veterans Act which will become effective September 7, 2007. The new regulations essentially raise the monetary threshold of covered federal contractors, expand the definition of veterans and revise the job posting requirements (including how to handle the elimination of America's Job Bank). For those following the progression of these regulations, only minor changes have occurred to the proposed rules released for public comment in January, 2006. The most significant item to note regarding these regulations is that contracts entered into on or after December 1, 2003, or contracts altered, amended or renewed since that date are governed by the new regulations. Further, under the new regulations, contracts entered into after December 1, 2003 have a higher monetary threshold of \$100,000 compared to the previous \$25,000 under the Vietnam Era Veterans' Readjustment Assistance Act. The regulations additionally expand the definition of "veteran" to include not only veterans of the Vietnam Era, but also "Armed Forces Service Medal Veterans" which is defined as "veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded." If you have a federal contract that will subject your company to these new regulations you can contact your Lemle attorney to review your current affirmative action program to ensure it complies with the new standards.

Arbitration Agreements Are Still A Good Thing For Employers— But, Will Congress Eliminate This?

Democratic Senator Russ Feingold and Representative Hank Johnson of Georgia introduced the bill "Arbitration Fairness Act of 2007" to amend the Federal Arbitration Act by making pre-dispute agreements to arbitrate unenforceable. This bill removes the teeth from the FAA that many employers currently take advantage of in requiring employees to agree to mandatory arbitration of any future employment claims. While this bill also seeks to protect consumers from mandatory arbitration agreements found in many purchase agreements such as cellular phone contracts, automobile contracts, etc., its overreaching grasp will nullify the ability of employers to cost-effectively handle employment disputes that would otherwise result in expensive litigation. The bill is in direct opposition to the trend begun in the 1990s to use alternative dispute resolution procedures rather than jury trials to deal with disputes. Supporters of the bill claim that it will benefit employees across the country by stopping strong-arming of employees and consumers into an arbitration proceeding. Further, these supporters contend that the bill will eliminate the alleged biases that have formed in favor of companies by the private arbitration companies in order to keep repeat business of companies accessing their services.

The Proposed "Arbitration Fairness Act of 2007" still has a long way before becoming law that amends the Federal Arbitration Act. Employers need not cease implementing their arbitration agreements because of this bill. The courts continue to routinely uphold arbitration agreements related to employment matters, and even favor arbitration as an alternative to the litigation process. Should you wish to discuss this further, have any questions about your current arbitration agreement or would like to create an arbitration agreement for your workforce, please contact your Lemle attorney.

IRS Issues New Proposed Regulations for Cafeteria Plans

On August 6, 2007, the IRS released proposed regulations under Section 125 of the Internal Revenue Code set to revamp, codify and create official guidance for cafeteria plans. Until these regulations are released in final version and have an effective date (currently estimated to be implemented for plan

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years beginning on or after January 1, 2009), the current guidelines remain the governing word for cafeteria plans. The new proposed regulations eliminate the formerly proposed regulations number Section 1.125-1 and -2, although much of the content of the former are found in the new regulations. The new regulations finally assemble the haphazard guidance currently available through proposed rules, informal guidance and revenue rulings into one repository to reference for governing cafeteria plans. Included in the new regulations are nondiscrimination rules (a first for cafeteria plans), as well as what a plan will be required to have in a written plan document, discussions of qualifying and nonqualifying benefits, automatic elections, optional grace periods, optional elections for new employees, and requirements for substantiation of expenses.

H-2B "Returning Workers" May Be In Jeopardy: Congress Has Yet To Extend Provisions Past September 30, 2007

Two years ago, Congress enacted the "Save Our Small and Seasonal Businesses Act of 2005" which allowed aliens who are eligible for H-2B status to forgo being included under the 66,000 annual numerical cap if the alien had a start date after October 1, 2006 and had previously been approved for an H-2B work start date between October 1, 2003 and September 30, 2006. These workers are classified as "returning workers." Significant attention is being devoted to the fact that the legislation passed by Congress in the Save Our Small Businesses Act has a sunset provision which expires on September 30, 2007. With the final days of August passing, Congress has yet to extend these provisions to beyond September 30, 2007. With the H-1B cap being reached within the first hours of filing, and the H-2B cap likely to have already been reached or near capacity, the returning worker provisions are a major saving grace that may be eliminated by operation of law soon, leaving employers in even a tighter squeeze to find foreign nationals to assist in labor shortages. Employers will be forced to consider alternatives to the H-2B and H-1B visas in the next few months. If you are anticipating a work shortage because of these issues, you can contact your Lemle attorney for assistance in determining if alternative visas may be available for your workers.

Your Lemle & Kelleher Employment

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.

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