

## MODERN MANAGEMENT

### EFCA ON HOLD?

The debate over health care reform and the vacancy of Senator Kennedy's seat may push the Employee Free Choice Act off of the agenda for the rest of 2009. If passed, EFCA would amend the National Labor Relations Act to establish a procedure whereby the National Labor Relations Board ("NLRB") would certify a union as the bargaining representative of employees if a majority of employees of the unit signs valid union authorization cards without secret ballot election. The EFCA in its current form also provides for government arbitration of a collective bargaining agreement in the event that the employer and the union are unable to negotiate a contract.

### RIGHT TO JOIN AND FORM UNIONS

On August 3, 2009 the Department of Labor issued a proposed regulation to implement Executive Order 13496, signed by President Obama in January, requiring non-exempt Federal contractors and sub-contractors to post notices informing their employees of their rights under the Federal Labor laws and the National Labor Relations Act ("NLRA") to join and form unions. The proposed regulation does not apply to public sector employers or employers covered by the Railway Labor Act.

### EMPLOYMENT NON-DISCRIMINATION ACT

In the fall of 2009, Congress will begin hearings on the first major civil rights act protecting gays and transsexuals. The Employment Non-Discrimination Act ("ENDA"), if passed, prohibits workplace discrimination based on sexual orientation or gender identity. This includes hiring, firing and wage decisions. Religious organizations, the military and businesses with less than 15 workers would be exempt. Hearings on the measure are expected to be held in the fall. ENDA was pushed in 2007, but lacked backing. The 2009 effort is different because President Obama has gone on record supporting ENDA, the bill now includes gender identity, and it has key supporters in the Senate.

Several national conservative groups that oppose ENDA acknowledge that the bill has enough support to clear the House and face a close battle in the Senate. Nearly 50 percent of the states already have laws prohibiting workplace discrimination on the basis of sexual orientation.

Volume 3, Issue 9, September 2009

### SEMINAR INVITATION

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

**Thursday, September 24, 2009**  
**8:00—11:30 a.m.**

**Lemle & Kelleher, L.L.P.**  
**Pan-American Life Center**  
**601 Poydras Street, 21st Floor**  
**New Orleans, Louisiana 70130**

#### Cost:

- \$15.00 per attendee

#### Topics:

- Preparing for the New Washington Agenda
- Unions Make a Come-Back
- Avoiding Claims for Violation of Workplace Privacy
- Basics of Complying with Employment Discrimination Laws

#### Lemle & Kelleher Presenters:

- E. Fredrick Preis, Jr.
- Eve B. Masinter
- David M. Whitaker
- Bryce G. Murray

#### To register please contact:

Judith Copping  
Director of Marketing  
Lemle & Kelleher, L.L.P.  
504.584.9151  
jcopping@lemle.com

## UPDATE ON NO-MATCH

The Department of Homeland Security's Immigration and Customs Enforcement has published a proposed rule in the Federal Register (74 Fed. Reg. 41,801) to withdraw the "no-match" rule.

## GUNS AT WORK

On August 15<sup>th</sup> the Louisiana legislation prohibiting businesses from banning firearms from their property went into effect. As reported in the August 2008 issue of *Modern Management*, Louisiana Governor Bobby Jindal signed into law Senate Bill 51 (Act 684), allowing persons who lawfully possess a firearm to transport and store the firearm in a locked, privately-owned vehicle in any parking lot, parking garage, or other designated parking area. This law also prohibits employers from banning employees from possessing a firearm in this manner. However, the employer is allowed to require, through their employee policy manual, that anyone bringing a firearm to the parking garage of a worksite must lock the firearm in their privately-owned motor vehicle and hidden from plain view, or within a locked case or container within the vehicle. Employers cannot be held liable in a civil action for any damages occurring from a firearm in the workplace because the law does not allow employees to bring the firearm into the workplace.

## CDC RECOMMENDS PLANNING FOR FLU SEASON

The Centers for Disease control is recommending employers proactively plan for flu season.

### Actions Employers Should Take Now:

- Review or establish a flexible influenza pandemic plan and involve your employees in developing and reviewing your plan;
- Conduct a focused discussion or exercise using your plan, to find out ahead of time whether the plan has gaps or problems that need to be corrected before flu season;
- Have an understanding of your organization's normal seasonal absenteeism rates and know how to monitor your personnel for any unusual increases in absenteeism through the fall and winter;
- Engage state and local health departments to confirm channels of communication and methods for dissemination of local outbreak information;
- Allow sick workers to stay home without fear of losing their jobs;
- Develop other flexible leave policies to allow workers to stay home to care for sick family members or for children if schools dismiss students or child care programs close;
- Share your influenza pandemic plan with employees and explain what human resources policies, workplace and leave flexibilities, and pay and benefits will be available to them; and
- Share best practices with other businesses in your communities (especially those in your supply chain), chambers of commerce, and associations to improve community response efforts.

## LEMLE & KELLEHER LABOR AND EMPLOYMENT ATTORNEYS

**E. Fredrick Preis, Jr.**, epreis@lemle.com, 504.585.6371  
**Eve B. Masinter**, emasinter@lemle.com, 504.584.9173  
**David M. Whitaker**, dwhitaker@lemle.com, 504.584.9404  
**Louis Colletta, Jr.**, lcolletta@lemle.com, 504.584.9147  
**Bryce G. Murray**, bmurray@lemle.com, 504.585.6359  
**Bridget A. Dinvaut**, bdivaut@lemle.com, 504.586.1241

## ABOUT LEMLE & KELLEHER, L.L.P.

With offices in Louisiana and Texas, 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).

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