

MODERN MANAGEMENT

THE SUPREME COURT TO HEAR SEVEN  
LABOR & EMPLOYMENT CASES

Starting in October 2010, the Supreme Court will hear seven labor and employment cases that could have a significant impact on employers.

**USERRA Case—“Cat’s Paw” Theory**—An Army reservist alleged that his termination was due to membership in the military, a violation of the *Uniformed Services Employment and Reemployment Rights Act* (“USERRA”). The “cat’s paw” theory is used to assign liability to an employer in a case where a biased employee influences the decision maker. This decision could have a far reaching impact on anti-discrimination statutes, including Title VII and ADEA. (*Staub v. Proctor Hospital*)

**Medical Residents –Are They Students or Employees?**—Are medical residents, who receive a stipend from hospitals and schools, employees of the hospitals or students of the medical schools? The IRS says they are employees who do not qualify for the “student exception” to the Federal Insurance Contribution Act (“FICA”). The district court and appellate courts disagreed. The Supreme Court decision could affect over 8,000 residency programs. (*Mayo Foundation for Medical Education and Research v. United States*)

**Likely Harm Standard**—Is a showing of “likely harm” by the participants/beneficiaries of an ERISA plan sufficient to recover benefits based on an inconsistency between the Summary Plan Description (“SPD”) and the plan document itself? The Court receives this case following the endorsement of the lower courts of a “likely harm” standard. Under the standard, none of the members of the plaintiff class were required to show reliance on the SPD or prejudice resulting from SPD plan inconsistencies. (*Cigna Corporation v. Amara*)

**Constitutional Rights to Informational Privacy**—What is the scope of federal contract employees’ constitutional rights to informational privacy? In 2005, the Department of Commerce extended the standard background check - National Agency Check with Inquiries (“NACI”) - to all federal contract employees seeking long-term access to federal facilities. Caltech Employees sued NASA, Caltech, and others, seeking to bar the implementation of the NACI. The employees work at NASA’s Jet Propulsion Laboratory, but are employed by Caltech and are considered federal contract employees. This decision could have important implications for federal, and possibly state and local government contractors. (*NASA v. Nelson*)

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SEMINAR INVITATION

Lemle & Kelleher, L.L.P. presents

MODERN MANAGEMENT  
SEMINAR

Friday, November 5, 2010  
8:30 am—12:00 pm

Embassy Suites Baton Rouge  
4914 Constitution Avenue  
Capital Board Room  
Baton Rouge, LA

Cost:

- \$25.00 per attendee

Topics:

- The New Health Care Environment for America's Businesses
- Unions Face Off with Employers in the Workplace
- Emerging Employee Relations Issues Resulting from Electronic Communications

Presenters:

- Louisiana Chemical Association
  - Dan Borné
- Lemle & Kelleher, L.L.P.
  - E. Fredrick Preis, Jr.
  - Eve B. Masinter
  - Joseph Hugg

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## THE SUPREME COURT *continued*

**Retaliation Protection for Third Party**—Is a third party closely associated with an employee engaging in protected activity covered by Title VII of the Civil Rights Act of 1964 which forbids employer retaliation? The Court will review the case of an employee who was terminated after his fiancé, also an employee, filed an EEOC charge against the employer. (*Thompson v. North American Stainless*)

**Retaliation Protection for Oral Complaints**—Does the anti-retaliation provision of the Fair Labor Standards Act (“FLSA”) protect an employee who complains of suspected FLSA violations orally, rather than in writing? The Court will hear this case involving the termination of an employee who orally complained to human resource personnel that the placement of a time clock resulted in employees not being compensated for time spent donning and doffing required protective gear—which is contrary to FLSA. (*Kasten v. Saint-Gobain Performance Plastics Corp.*)

**Legal Arizona Workers Act vs. Federal Immigration Law**—Does federal immigration law preempt the Legal Arizona Workers Act imposing sanctions on employers who hire unauthorized aliens and mandates the use of E-Verify, which is voluntary under federal law? The Court’s decision in this matter will effect several states. In 2009, twelve states implemented similar laws. (*Chamber of Commerce of the United States v. Candelaria*)

## THE SCHOOL BELL HAS RUNG – TIME TO CUT HOURS FOR STUDENT WORKERS

Now that school is back in session it is time to adjust the hours of your young workers. The Fair Labor Standards Act (“FLSA”) limits the hours that children are permitted to work.

Workers ages 14- and 15-year-olds are permitted to work in certain retail, service, and gasoline service station jobs. They cannot work during school hours, and cannot work before 7:00 a.m. or after 7:00 p.m. during the school year. Additionally, their hours are limited: they cannot work more than 3 hours on a school day or more than 18 hours in a school week, or more than 8 hours on a non-school day or more than 40 hours in a non-school week. There are no work hour limitations for 16- and 17-year-olds.

## 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. Our labor attorneys have developed strong experience and hands-on knowledge of how business really works.

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## 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).

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