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## ***LEGAL AND LEGISLATIVE UPDATE***

*The following is provided as a complimentary service to the firm's clients. It is designed to assist the reader in keeping informed of selected developments in employment law. It is not intended to be nor is it a treatment of all new developments in the field of labor and employment law. Applicability to a particular situation depends upon an investigation of the specific facts and more exhaustive study of the applicable laws than can be provided in this format. This summary is not intended to be a substitute for legal advice.*

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### *Proposed Legislation*

#### **Employee "Free Choice" Act H.R. 800**

The Employee "Free Choice" Act was defeated in the Senate on June 26 in a procedural motion that prevented it from being further considered at this time. Among other things, this legislation would have eliminated employees' rights to a private ballot election to decide whether they wanted to be represented by a union. Organized labor does not intend to let this issue rest. This is their number one issue and will be introduced again in the future.

### *New Legislation*

#### **Fair Minimum Wage Act of 2007**

The Federal minimum wage is set to increase from \$5.15 to \$5.85 on July 24, 2007. It will

increase another 70-cents on July 24, 2008 and July 24, 2009. State minimum wage laws trump Federal minimum wage laws so this increase will only apply to states that do not have higher minimum wage laws. The Federal increase does not change the \$2.13 per hour minimum that employers must pay to tipped workers.

### *Settlements*

#### **Michigan Company to Pay \$500,000 in EEOC Class Action Suit**

Michigan Seamless Tube has agreed to pay \$500,000 to settle a race discrimination class action suit brought by the Equal Employment Opportunity Commission on behalf of 52 former employees. The company purchased the assets of another company and refused to hire Black former employees of the predecessor company, according to the

lawsuit. The EEOC alleged that many of the White employees hired had significantly less experience than Black former employees. Michigan Seamless denied any wrongdoing. *EEOC v. Michigan Seamless Tube*, 2:05-CV-73719 (E.D. Mich. Consent decree filed 6/5/07)

### **Investment Bank & Brokerage Pays \$46 Million to Settle Gender Bias Suit**

Morgan Stanley's global wealth management group has set aside \$46 million to pay discrimination claims brought by 2700 female claimants. The suit alleged that Morgan Stanley steered lucrative accounts to male brokers and offered more promotions to men. Morgan Stanley agreed to make significant efforts to distribute accounts fairly when a broker leaves or is promoted. They also agreed to hire a diversity monitor, promote more women, and offer more training programs to women.

### **Sprint Nextel Paid \$57 Million to Settle Age Discrimination Case**

A class action lawsuit filed in 2003 claimed that Sprint Corporation disproportionately targeted employees 40 and over by moving them to positions that were later eliminated as part of a downsizing. 1697 former employees who were laid off will receive settlements.

### *Disabilities*

### **Driver Not Substantially Limited**

A county truck driver had heart surgery and was off of work for a considerable length of time. When he exhausted all of his leave and did not return to work, he was terminated by the county. He filed a lawsuit alleging violations of the Americans with Disabilities Act. The court held that the truck driver could not show that he was disabled under the Act because he could not prove he was substantially limited in performing a wide range

of jobs. Although the driver had a doctor's certificate establishing he could not work as a truck driver, the former employee presented no evidence of his vocational training, the geographical area where he could work, or the number and types of jobs available that he could do. The court said, "the inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working." *Zwygart v. Board of County Commissioners of Jefferson County, Kansas*, 19 AD Cases 330 (10<sup>th</sup> Cir. 4/24/07)

### **No Disability Discrimination Found**

An employee with Type I diabetes asked for an accommodation to allow him to work a straight eight-hour shift rather than a rotating shift. The employee could perform all of the duties of the job but on the recommendation of his doctor, he requested and his employer approved a temporary 60-day accommodation. The employer refused to make the accommodation permanent, claiming the ability to work a rotating schedule was an essential function of the job. The Eighth Circuit Court of appeals agreed finding that allowing the employee to work a straight day shift would have placed a heavier burden on other employees at the facility. An accommodation that would cause other employees to work harder, longer, or be deprived of opportunities cannot be mandated. *Rehrs v. The Iams Company*, No. 06-1609 (8<sup>th</sup> Cir. 2007)

### **EEOC Guidance on Caregivers**

The EEOC has issued guidance on bias against caregivers. EEOC emphasized that the guidance does not create a new protected category of employees with family responsibilities. Rather it makes clear that disparate treatment of employees who need to care for children, parents, or disabled family members can amount to unlawful discrimination under existing Title VII

prohibitions of sex or race bias or under the Americans with Disabilities Act. An employer may also have specific obligations toward caregivers under other federal statutes, such as the Family & Medical Leave Act as well as state laws.

## *Family Medical Leave*

### **Employee's Failure to Complete Notice Paperwork Nixed His FMLA Claim**

An employee who took leave to care for her son failed or refused to fill out the company's notice form documenting the seriousness of the son's medical condition. When she was terminated for excessive absences, she brought a claim under the Family & Medical Leave Act. She alleged that the employer had sufficient notice because it had approved two prior FMLA leaves for her to care for her son's asthma. The court did not buy this argument stating that the Act does not require employers to be clairvoyant about employees' absences. The employee's decision not to fill out FMLA forms deprived the company of the information it needed to make an informed determination of her eligibility for the leave. *Greenwell v. State Farm Automobile Insurance Company*, 12 WH Cases2d 963 (5<sup>th</sup> Cir. 5/10/07)

## *Discrimination*

### **Goodyear Prevails in Pay Disparity Claim**

The U.S. Supreme Court ruled that Title VII claimants must timely challenge pay decisions and cannot rely on a continuing violations theory to stretch the reporting period. Lilly Ledbetter worked for Goodyear from 1979 until she retired in 1998. She filed an EEOC charge before she retired alleging gender discrimination. She alleged that in years past, the company lowered her performance evaluations because she was a woman and thus she received lower merit pay increases. She said that the lower evaluations resulted in continuing lower pay increases which perpetually reduced her compensation

because of her gender. Writing for the Court, Justice Alito held that the time for filing a charge with the EEOC begins when the discriminatory act occurs. This rule applies to any discrete act of discrimination including decisions related to pay. Ledbetter alleged she did not know of the pay disparity at the time it occurred. So she could not file a claim within the 180/300 day time period. Because Ledbetter did not allege that Goodyear made any intentionally discriminatory decisions within the charge filing time period, her pay claims were time barred. *Ledbetter v. Goodyear Tire & Rubber Co.*, No. 05-1074 (2007) The Democratic majority in Congress is vowing to introduce legislation to reverse the Supreme Court's decision in this case.

## *Wage & Hour*

### **Domestic Service Employees Not Entitled to Overtime**

A domestic worker who provides companionship services to elderly and infirmed men and women claimed that her employer failed to pay her the minimum wages and overtime under the Fair Labor Standards Act. The Second Circuit Court of Appeals agreed disregarding the Department of Labor's advisory on the subject. The appellate court found that the domestic services employment exemption from overtime was not intended to cover employees who were not paid by the people they cared for but were instead paid by an agency. The Supreme Court disagreed stating that there was nothing in the statute suggesting that Congress intended to make the exemption contingent on who paid the worker. *Long Island Care at Home, Ltd. et al. v. Coke*, No. 06-593 (2007)