ROSSWAY MOORE & TAYLOR

ATTORNEYS AND COUNSELORS AT LAW

JOHN E. MOORE, III*
BRADLEY W. ROSSWAY
HELEN E. SCOTT
JAMES A. TAYLOR, III*
THOMAS W. TIERNEY**

*also admitted in
The District of Columbia
**also admitted in California

THE OAK POINT PROFESSIONAL CENTER
5070 NORTH HIGHWAY A-1-A, Suite 200
VERO BEACH, FLORIDA 32963
TELEPHONE (772) 231-4440 FACSIMILE (772) 231-5155
Web site: www.verobeachlawyers.com

SHANNON BANITT
LOUIS LUPIN
DEBORAH MARTIN-LEE
VENKATA PATURI

MICHAEL J. SWAN
Of Counsel

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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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New Legislation

Genetic Information Non-Discrimination Act

President Bush signed legislation on May 21, 2008 that outlaws genetic discrimination in the workplace but the legislation will not take effect for 18 months. The Act prohibits discrimination on the basis of genetic information in hiring, compensation, and other personnel decisions, and limits the use of genetic information by health insurers.

Proposed Legislation

Ledbetter Fair Pay Act

The Lilly Ledbetter Fair Pay Act (H.R. 2831), named for the plaintiff in a case decided against her by the U.S. Supreme Court, fell four votes short of the 60 votes needed to proceed with Floor debate in the U.S. Senate. In its place, Republican Senator George Voinovich introduced the Fair Pay Act on April 30, 2008 which would amend Title VII of the Civil Rights Act to clarify that a discriminatory pay decision or other practice occurs on the date on which the aggrieved person knew or should have known that s/he was affected by the employer's decision or practice. It would be up to a judge to interpret when the individual knew or should have known. Senator Voinovich's aide said S. 2945 seeks a middle ground between a bill that could conceivably allow claims decades after an incident occurred and the Supreme Court's ruling which required the filing clock to start when the employer made the discriminatory pay decision, regardless of whether the employee knew at that time.

Paid Family Leave Insurance Act Proposed

Legislation has been introduced in the House and Senate that would pay workers a percentage of their salary for up to 12 weeks while they care for a new child or sick family member, recover from an illness,

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or deal with an emergency caused by a military deployment. If passed, H.R. 5873 and S. 1681 would provide eligible workers with 12 weeks of paid leave during a 12-month period. The bill defines family member as a child, parent, spouse, domestic partner, sibling, grandchild, or grandparent who has a serious medical condition. The bill would establish an insurance trust fund to pay for the benefits that would be administered by the states or Social Security Administration. Employers and employees would contribute 0.2% of the employee's pay unless the employer has fewer than 20 employees and then the contribution would be 0.1% of the employee's pay. Benefits would be tiered progressively so that an employee earning less than $30,000 would receive close to full pay, middle income workers ($30,000 to $60,000) would receive 55% and higher paid workers would receive 40% to 45% to a cap of approximately $800 per week. In addition, employees would be able to use any paid time off accrued at the employer. Eligibility requires payment into the trust fund for at least six months and working for the employer at least part time for six months. Health insurance would continue uninterrupted.

Discrimination

Interracial Marriage Discrimination is Discrimination Based on Race

A White employee alleged that his employer discharged him because he married a Black woman. The employer defended that the decision had nothing to do with the employee's marriage and that Title VII does not protect the employee because he was not discharged "because of" his race. The court held that an employee discharged because of an interracial marriage has, by definition, been discriminated against because of *his* race. *Holcomb v. Iona College,* 2008 U.S. App. LEXIS 6897 (2d Cir. 2008); *see also, Parr v. Woodmen of World Life Ins. Co.,* 791 F.2d 888 (11th Cir. 1986)

Disability

Court Ruled Third Extension to Leave Not a Reasonable Accommodation

A diabetic employee requested an extension to her medical leave due to complications from her condition. The employee could not establish that this extension would resolve the complications and it was possible that she would need additional time off. The employer determined that it could not reasonably accommodate the employee and discharged her because her attendance had been so erratic. The employee missed 40 of the 77 days prior to the discharge. The court said that while a medical leave may have been a reasonable accommodation in some circumstances, the employee did not show that the additional time off would have enabled her to return to work on a consistent basis. The court ruled that the employee failed to state a *prima facie* case under the Americans with Disabilities Act. *Brannon v. Luco Mop Co.,* 521 F.3d 843 (8th Cir. 2008)

No ADA Claim for Demoted Employee

An employee had an automobile accident and sustained injuries requiring her to be of work. During her leave she was demoted. The employee sued the employer under the Americans with Disabilities Act. The court found that the employee was not disabled within the meaning of the ADA because her injuries did not substantially limit a major life activity. *Maclin v. SBC Ameritech,* 520 F.3d 781 (7th Cir. 2008)

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