
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**

THE OAK POINT PROFESSIONAL CENTER
5070 NORTH HIGHWAY A-1-A, Suite 200
VERO BEACH, FLORIDA 32963
TELEPHONE (772) 231-4440 FACSIMILE (772) 231-4430
Web site: www.verobeachlawyers.com

SHANNON BANITT
PATRICK FARRAH
LISA GALLAGHER
DEBORAH MARTIN-LEE
KEVIN ROLLIN

MICHAEL J. SWAN
Of Counsel

October 2009

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

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.

Miscellaneous

No-Match Rule Rescinded

The Department of Homeland Security (DHS) has issued a final rule rescinding a set of regulations and procedures for employers that receive employee no-match letters from the Social Security Administration. SHRM and the American Council on International Personnel submitted comments stating that rescinding the rule would take away much needed guidance for employers on how to respond to no-match letters and to comply with the employee verification requirements. DHS officials acknowledged that additional guidance would be valuable to employers but were not persuaded employers needed such guidance.

EEOC Seeks Comments on Proposed ADA Amendments Act Rules

The Equal Employment Opportunity Commission is seeking public comment on

proposed revisions to its Americans with Disabilities Act regulations and interpretive guidance in order to implement the ADA Amendments Act as reported in the September 23, 2009 Federal Register, 74 F.R. 48431. The ADA Amendments Act makes important changes to the definition of the term disability by rejecting the holdings in several Supreme Court decisions and portions of EEOC's ADA regulations. EEOC said its proposal includes a non-exhaustive list of examples of major life activities that tracks the ADA Amendments and adds three activities not mentioned, including sitting, reaching and interacting with others. The proposed rule also supplements the Act's examples of major bodily functions by specifying that the hemic, lymphatic, musculoskeletal, special sense organs and skin, genitourinary, and cardiovascular systems are covered.

Written comments on this rulemaking must be submitted on or before November 23, 2009. Written comments should be submitted to Stephen Llewellyn, Executive Officer,

Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Suite 4NW08R, Room 6NE03F, Washington, DC 20507. The Executive Secretariat will accept comments transmitted by FAX machine. The FAX number is (202) 663-4114.

Florida Expanded Rights of Returning National Guard Members

Florida's military affairs law Fla. Statutes §250.482 protects the reemployment rights of National Guard members returning from active duty. The law was amended, effective July 1, 2009, to provide greater protection to National Guard members. It prohibits an employer from discharging a returning member for the one-year period following the date the member returns to work, with certain exceptions. National Guard members, upon the completion of state active duty, are required to notify the employer of their intention to return to work.

Revised Form I-9 Good Until 2012

The U.S. Citizenship and Immigration Services has issued a new Form I-9. All employers should be using this form and discard all versions of the form from 2008 and earlier. You can obtain the form by pasting the following link in your browser: <http://www.uscis.gov/files/form/i-9.pdf> New Employer Handbooks are also available at <http://www.uscis.gov/USCIS/Services%20%26%20Benefits/Immigration%20Forms/m-274.pdf>. Employers do not need to fill out new forms for current employees. All documents

presented during the verification process must be current and unexpired. Remember, employers cannot request specific documents from employees. By law, the employee selects which documents he wants to present as part of the I-9 verification process as long as they comply with the acceptable documents listed.

Disabilities

Sears Agrees to Pay \$6.2 Million in Settlement with EEOC

Sears Roebuck & Company agreed to settle an Americans with Disabilities Act lawsuit filed by the EEOC for \$6.2 million. Sears had an inflexible policy of terminating injured employees who exhausted their workers' compensation leaves rather than seeking to find ways to return them to work. An employee claimed he repeatedly attempted to return to work despite his disability but was never offered a reasonable accommodation. Discovery revealed that hundreds of other employees who were on workers' compensation leave were terminated without Sears seriously considering a reasonable accommodation that would enable them to work or a brief extension of the leave until return was possible. *EEOC v. Sears Roebuck & Co.*, No. 04 C 7282 (N.D. Ill. 2009) With the expansion of the Americans Disabilities Act to cover most medical and physical conditions, employers need to reconsider their policies of terminating employees whose leaves expire.