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Attorneys

Alan G. Ross
Brian K. Brittain*
Evelyn P. Schonberg**
Anthony A. Baucio
Scott Coghlan
Tricia L. Hurst
Ryan T. Neumeyer
Nick A. Nykulak
Carol D. Strassman*

Paralegals

Kendra M. Dixon
Renee Mezera
Lorraine J. Geiger
Arlene M. Golias
Carla E. Kihorany
Elizabeth A. Krusinski
Lori A. Williamson

Firm Administrator
Mary Ann Kuilder

*OSBA Certified Specialist Workers' Compensation
**OSBA Certified Specialist Labor & Employment

EMPLOYMENT: OPPOSITION MOUNTING AGAINST THE OHIO HEALTHY FAMILIES ACT

By Lynn P. Schonberg

In the last newsletter we informed you about the Ohio Healthy Families Act (HFA) that will mandate seven paid sick days annually for all full time employees and a pro-rated amount for part-time employees employed by employers with 25 or more employees. Over the past few months many clients have inquired as to what, if any, efforts are underway to oppose the HFA and what can they do to help defeat the same.

The concerns of our clients are shared by all business owners and managers across the state. For instance, the HFA mandates that leave already in existence at the time of the Act's enactment can neither be reduced nor eliminated. Clients are seeking ways in which to handle the economic burden of this Act now before it is too late. The fact that sick leave can be taken in increments as small as one hour has many employers concerned that employees can leave work an hour early every Friday without any threat of discipline or termination. These concerns only grow when it is learned that sick leave can be used for almost any undocumented medical reason, for not only the employee, but also for his spouse, parent or child.

No one should be surprised that a recently released Quinnipiac University poll found strong support for the HFA. The poll found that 71 percent back the sick-leave requirement while many of the same respondents, 58 percent, believe that Ohio is in economic trouble because state regulations put too much of a financial burden on business. It therefore becomes obvious that Ohioans are in need of education about the

severe economic consequences that will result if this Act is voted into law.

What can we do to help defeat this Act? One idea is to log-on to www.OhioBusinessVotes.org. This website is a collaborative project created by the Ohio Chamber of Commerce in partnership with the U.S. Chamber of Commerce. You will find a host of materials you can use to educate your employees and friends about the disastrous effect this Act will have on Ohio's economy and their jobs.

Another idea is to copy editorials such as the one that appeared on June 8, 2008 in the *Columbus Dispatch*, entitled "Do the Math: Mandates on Business Will Result in Subtraction of Jobs for Ohioans." This can be obtained at www.dispatch.com or through the OhioBusinessVotes website.

Yet another idea is to distribute a list of the host of agencies, partnerships and organizations that have publicly renounced the HFA. These include the Ohio and numerous local Chambers of Commerce, COSE, Greater Cleveland Partnership, Northern Ohio Chapter of Associated Builders & Contractors, and Ohio State Council of the Society of Human Resource Managers.

We will continue to monitor the progress of the Service Employees International Union's (SEIU) and numerous other organizations at collecting the 120,683 signatures needed to place the HEA on November's ballot. In the meantime, please contact Lynn Schonberg with any and all questions or concerns regarding this matter. ■

EMPLOYMENT: UPDATE ON PROPOSED NEW EMPLOYMENT LAWS

By Lynn P. Schonberg

In a prior issue of this newsletter, we reported on two major changes that appear to be on the horizon. We wanted to update you on the status of both of these proposed new laws.

First, the Department of Labor has proposed new regulations that will affect the manner in which all companies with 50 or more employees administer their obligations under the Family and Medical Leave Act (FMLA). Included among these changes are regulations explaining the nuances of the new military family leave law that became effective on January 28, 2008.

As of the publishing of this newsletter, we are still awaiting the Department of Labor's final rules. As soon as these are published, we will be scheduling a Breakfast Briefing to educate our clients who are covered by the FMLA on

the new changes, forms and posters required by the new rules.

The second proposed change that appears to be headed for the November 2008 general ballot is the Ohio Healthy Families Act (HFA) as discussed on the front page of this newsletter. As mentioned previously, this is a law proposed by the union-led Ohio Healthy Families Coalition that will require every business in Ohio employing 25 or more employees to provide seven paid sick days per year.

On May 8, 2008, the Coalition and other organizations began the 90 day process of obtaining 120,683 signatures to place the new sick leave law on the November 2008 general election ballot. Because the Coalition and others previously amassed more than 154,000 signatures to reach this juncture, it is extremely likely that the requisite signatures

will be obtained and that the new law will be placed on the ballot. If indeed it is on the ballot, it is generally assumed that it will be voted into law.

As with the FMLA changes, RBS will be holding a separate Breakfast Briefing to discuss the best manner in which to prepare for this new state government program.

Please visit our website at www.rbslaw.com and register at "Sign-up for Informative Updates" to ensure that you will receive updates and notices of the continuing legal challenges facing employers and notice of our Breakfast Briefings. Furthermore, please do not hesitate to contact Lynn Schonberg with any and all questions or concerns regarding these proposed laws. ■

EMPLOYMENT: E-DISCOVERY RULES HAVE ARRIVED IN OHIO

By Ryan T. Neumeyer

As predicted in my prior article entitled "An Employer's New Obligation for Document Retention and Preservation," Ohio has essentially adopted the Federal Rules of Civil Procedure regarding e-discovery. The changes to the Ohio Rules took effect on July 1, 2008.

The new Ohio Rules will explicitly allow for the discovery of Electronically Stored Information (ESI) and require that an employer that anticipates litigation to preserve and retrieve computer files relevant to the anticipated litigation. As with the Federal Rules, the new Ohio Rules require, among other things, that your attorney become familiar with your company's computer systems, records retention policy and the location of ESI prior to the initial discovery conference.

This means that, in the unfortunate event of litigation, someone with knowledge of your company's computer systems will have to spend time explaining those systems to your attorney at the outset of litigation. This will allow your attorney to determine where relevant ESI is stored, in addition to enabling him to help your company preserve these documents while minimizing the interruption to your regular business operations. Most importantly, your attorney will be able to explain your systems to the court, if need be.

Also, as with the Federal Rules, the Ohio Rules provide a "safe harbor" for those companies that have a document retention policy and inadvertently destroy relevant ESI prior to anticipation of litigation.

Accordingly, it is now absolutely vital that

Ohio companies invest the time and money to develop such a plan. Further, a good document retention policy will not only provide some safety in the event of litigation, but will also save your company money in the long run by increasing efficiency through organization and the ability to retrieve information.

If your company has not already done so, now is a great time to establish a record retention and litigation preservation plan. If you need help in developing these plans, please do not hesitate to contact Ryan Neumeyer or Lynn Schonberg. Ryan and Lynn can also answer all of your questions regarding the new rules pertaining to e-discovery in Ohio. ■

WORKERS' COMPENSATION: SUPREME COURT OF OHIO ADDRESSES ADEQUACY OF WORKERS' COMPENSATION SETTLEMENT AGREEMENTS

By Anthony A. Baucco

The Supreme Court of Ohio, in the *Wise* decision, recently addressed settlement agreements for state-funded workers' compensation claims and clarified what is specifically required for an agreement to be considered valid.

By way of background, the Ohio Revised Code indicates that an application for approval of final settlement, affectionately known as a "C-240" form, must "clearly set forth the circumstances by reason of which the proposed settlement is deemed desirable." The C-240 form even provides a specific section where this information may be provided by the parties. In the *Wise* decision, the Supreme Court of Ohio found that a failure to strictly comply with this mandatory statutory requirement invalidated a settlement agreement.

In this specific case, an unrepresented and mentally retarded injured worker signed a C-240 to settle his rather involved workers' compensation claim for only \$2,000. The section of the C-240 form wherein the parties must set forth the reason for settlement was left completely blank. Regardless, the settlement agreement was subsequently approved. Five years later, through newly retained counsel, the injured worker moved to vacate the settlement agreement based upon the injured worker's lack of representation and competency at the time of signing.

The Industrial Commission argued that the C-240 at issue was valid because it was approved by a staff hearing officer of the Industrial Commission (another statutory requirement) who found that the agreement was not clearly unfair or a gross miscarriage of justice. In response, the Court opined that the Code "mandates the

written enumeration of the circumstances favoring settlement" and that non-compliance is not excused by a staff hearing officer's review and subsequent approval of the agreement. The Court held that "it is indeed impossible for a hearing officer to evaluate whether a settlement is just when there is no reasoning provided that justifies settlement." Accordingly, the Court did not find it necessary to address the injured worker's competency as it was ultimately found that the failure to set forth a reason for settlement acted to legally invalidate the settlement agreement.

This decision in April quickly sent ripples through the Bureau of Workers' Compensation and Industrial Commission of Ohio. After this decision, the Bureau withdrew from all pending but non-finalized settlements where the required language was not included. The required language must now be filed on an Amended Settlement Agreement and Release (C-241) form for an original settlement application to be processed. The Bureau has also indicated that it will no longer process settlements without the required language. Alternatively, the Bureau will send a letter to the interested parties requesting that "a clear statement of the reasons why a settlement is desirable" be provided on a C-241 form. The Industrial Commission of Ohio also updated the Hearing Officer Manual on May 5 in response to the Court's recent decision in *Wise*. Memo 03 specifically addresses the staff hearing officer's responsibility to review settlements and determine whether or not the settlement agreement is a gross miscarriage of justice in light of the *Wise* decision.

As many employers know from experience, an approved settlement agreement will work to finally bring closure to a particularly frustrating workers' compensation claim and hopefully reduce your premium payments as well. Accordingly, it is important to always keep the option of settlement in mind when reviewing your active claims. Of course, an employer should first understand the actuarial implications and potential benefits of settling a particular claim before actually pursuing the same. As always, the workers' compensation attorneys at Ross, Brittain & Schonberg are standing by to answer any and all questions you may have regarding settlements. Furthermore, we can make sure your settlement application conforms to all statutory requirements, ensuring a swift journey through the settlement process. ■



JOIN "TEAM LEGALLY CURED" IN THE 2008 KOMEN NORTHEAST OHIO RACE FOR THE CURE!

This coming September 13, employees, family and friends of RBS, CRM, CMN and HRDU will be banding together to participate in the 15th annual 2008 Komen Northeast Ohio Race for the Cure® in downtown Cleveland. We will be raising money for this worthy cause throughout the coming months. If you are interested in participating in the race or making a donation, please contact Melody at [216] 447-1551.

upcoming
[events]

BREAKFAST BRIEFINGS

Receive updates regarding our 2008 Breakfast Briefings by registering at www.rbslaw.com.

RBS ATTORNEY SPEAKING ENGAGEMENTS

July 24, 2008

Nick Nykulak will be speaking on the topic of “Davis-Bacon Fundamentals and Compliance During Construction Projects” at a seminar in Cleveland for the National Business Institute.

September 23, 2008

Lynn Schonberg will be speaking on the topic of “Leave Laws in Ohio” at a seminar in Cleveland for Sterling Educational.

September 24, 2008

Lynn Schonberg will be speaking on the topic of “Fundamentals of Discrimination Law” at a seminar in Cleveland for the National Business Institute.

For more information, please contact Melody at [216] 447-1551.

ASSOCIATED BUILDERS & CONTRACTORS, INC., NORTHERN OHIO CHAPTER

Business of Your Business Seminar

August 7 at 11:00 AM
ABC Training Facility
Perrysburg, Ohio

Contact Jodi at [419] 423-4151 for more details.

Northern Open Golf Scramble

August 22 at 9:00 AM
Sweetbriar Country Club, Avon Lake, Ohio

Contact Rick at [440] 717-0389 for more details.

You can also visit www.nocabc.com for updates on events and new course offerings.

SAFETY COURSES ARE AVAILABLE ONLINE THROUGH ABC!

Employees can take courses from any computer – at work, at home, or at the library.

This can result in significant savings to companies,
in both time and travel costs!

self-insured [corner]

The Workers' Compensation Resource Network is an association for self-insured employers in Ohio. The purpose of the association is to provide a unique forum, opportunity and resource for the educational benefit of self-insured employers.

The Resource Network dialogues ideas, resources and information with member peers by identifying and addressing issues which

self-insured employers face. This includes engaging in dialogue focused on outcomes that enhance self-insured administration. Some topics thus far covered include the development and maintenance of a transitional work program, ergonomics, the importance of written job descriptions, the economic impact of business failures on self-insured employers, and medically managing claims for self-insured employers.

If you are a self-insured company, consider becoming a member of the Workers' Compensation Resource Network. Members pay no additional cost for two representatives from your company to attend regularly scheduled seminars and meetings.

Call Brian Brittain at (216) 447-1551 for additional information and membership details.