

HR and Legal Alerts and Updates for Employers

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Medical Leaves of Absences

- Workers' Compensation Leaves
 - Coolidge v. Riverdale Local School District
 - On October 22, 1998, Cheryl Coolidge, a contract teacher, was assaulted and seriously injured by one of her students
 - Filed a claim for workers' compensation and was awarded temporary total compensation (TT)



Medical Leaves of Absences

- Workers' Compensation Leaves
 - Coolidge v. Riverdale Local School District
 - Exhausted her assault leave (2 months)
 - Exhausted accumulated sick leave (4 months)
 - Exhausted uncompensated leave (12 months)



Medical Leaves of Absences

- Workers' Compensation Leaves
 - Coolidge v. Riverdale Local School District
 - On September 21, 2000, 23 months later, Cheryl terminated based on exhausting all available leave and failing to perform the duties of her contract



Medical Leaves of Absences

- Workers' Compensation Leaves
 - Coolidge v. Riverdale Local School District
 - Cheryl sued and alleged that her discharge was wrongful because she was receiving TT benefits and her leave of absence should have been extended



Medical Leaves of Absences

- Workers' Compensation Leaves
 - Coolidge v. Riverdale Local School District
 - The Court held that an employee who is receiving TT benefits may not be discharged on the basis of absenteeism or inability to work, when the absence or inability is directly related to an allowed condition



Medical Leaves of Absences

- Workers' Compensation Leaves
 - Coolidge v. Riverdale Local School District
 - An employee on TT may not be discharged for:
 - Failing to complete forms required for LOA;
 - Failing to notify employer as to length of LOA where employer on notice of TT



Medical Leaves of Absences

- Workers' Compensation Leaves
 - Coolidge v. Riverdale Local School District
 - Employees who exhaust their leave periods and are still on TT should be placed on COBRA and put on a leave until they are able to return to work or their TT ends, whichever occurs earlier



Medical Leaves of Absences

- Workers' Compensation Leaves
 - Coolidge v. Riverdale Local School District
 - Unresolved Issues
 - Retroactive effect?
 - Can a FMLA leave period be applied to TT?
 - Is there no limit to a leave?
 - Is it a violation of other laws to treat those on TT better than others?



Medical Leaves of Absences

- EEOC Regulations On LOAs
 - Policies that have a definite length for a leave of absence have been held to constitute a per se violation of the ADA
 - Edit policies to be flexible, while at the same time prohibiting indefinite leaves
 - "In most cases . . ."



Medical Leaves of Absences

- Create LOA Program
 - Determine which laws apply to your company
 - FMLA or not?
 - Remember Ohio's Pregnancy Discrimination regulations
 - The Coolidge ruling must be acknowledged
 - Do not apply a uniform LOA program to facilities outside of Ohio and vice-versa



Medical Leaves of Absences

- Create LOA Program
 - Draft and implement policies and procedures to ensure that all leave required by law is provided to employees



Medical Leaves of Absences

- Create LOA Program
 - Develop and implement a procedure to track all absences for medical reasons and for determining whether they are “protected” absences under federal and state law
 - ADA log
 - FMLA log
 - Pregnancy log



Medical Leaves of Absences

- Create LOA Program
 - Develop policies that require periodic submission of medical information
 - Execute form requiring employee to periodically submit medical information - - be reasonable
 - Execute release forms so doctors can communicate to employer, where appropriate and agreed to by employee



Medical Leaves of Absences

- Create LOA Program
 - Develop policy that requires return-to-work certificate after certain duration



Medical Leaves of Absences

- Create LOA Program
 - Develop reasonable accommodation or temporary work program to permit employees to return to work in lighter duty positions
 - Create limits on time and positions
 - Be careful of ADA concerns



Medical Leaves of Absences

- Create LOA Program
 - Develop reasonable accommodation and temporary work/light duty program
 - Understand and communicate the difference to employees and supervisors
 - Be very careful to distinguish between a reasonable accommodation (unlimited) and a TWP (limited)



Medical Leaves of Absences

- Create LOA Program
 - Request employees to acknowledge that they have requested leave and that no reasonable accommodations exist that would enable them to perform the essential functions of their positions



Medical Leaves of Absences

- Create LOA Program
 - Terminate employees who exhaust all leave periods, are not on TT and who will need additional **indefinite** leave periods



Medical Leaves of Absences

- Create LOA Program
 - Train managers and supervisors on triggering points for leaves



Medical Leaves of Absences

- Create LOA Program
 - Take each leave on a case-by-case basis - - individualized assessment



Public Policy Torts

- Ohio recognizes actions for wrongful discharge that may not violate a specific statute, but nonetheless are against public policy
- Used by discharged employees who were employees-at-will and do not have a statutory cause of action



Public Policy Torts

- Public policy torts must meet 4 elements:
 - A clear public policy exists in the law;
 - Employee's discharge must jeopardize the public policy;
 - The dismissal was motivated by conduct related to the public policy; and
 - Absence of overriding legitimate business justification for the discharge



Public Policy Torts

- Examples of public policy torts:
 - May sue an employer with less than 4 employees for sexual harassment
 - Retaliation for workplace safety complaints
 - Reporting supervisor's stealing of marijuana
 - Consulting an attorney



Public Policy Torts

- Examples of no public policy torts:
 - Discharge for falsifying time cards
 - Denial of leave where FMLA is not applicable
 - First amendment suit against private employer
 - Discharge based on political affiliation
 - Overtime claim filed by exempt employee



The Sarbanes-Oxley Act

- New legislation that protects employees who expose activities which may cause broad public harm
 - Reaction to the Enron situation



The Sarbanes-Oxley Act

- Applies to employees of all publicly traded companies
- Prohibits discrimination in any manner against an employee who engages in protected whistle-blowing activity



The Sarbanes-Oxley Act

- Protected whistle-blowing activity:
 - Providing information, causing information to be provided or otherwise assisting in an investigation regarding conduct that employee reasonably believes is a violation of any law



The Sarbanes-Oxley Act

- Lawyers as Whistleblowers
 - Attorneys must report evidence of material violations of securities law, breach of fiduciary duty or similar violations



The Sarbanes-Oxley Act

- Will this Act create a new public policy tort for employees in Ohio who are employed by non-publicly traded companies?



Affirmative Action

- Law school admission program says diversity is important goal to be accomplished in educational environment
- To accomplish this, look at pool of applicants and give "plus" to applicants with diverse backgrounds



Affirmative Action

- Undergraduate school accomplishes this goal by giving specific points based on characteristics. Points awarded for:
 - Michigan residency
 - Whether parents attended U of M
 - Members of underrepresented minority groups



Affirmative Action

- Supreme Court decides:
 - Cultural diversity is a compelling state interest
 - Achieving cultural diversity allows school to consider race and ethnic background
 - May not give specific weight to racial background
 - May not use specific racial targets or quotas



Affirmative Action

- How do Affirmative Action Rulings affect your business?
 - Importance of cultural diversity may be placed upon private businesses
 - If your company has AA plan or AA obligations, review plan for compliance



Affirmative Action

- Review your hiring practices to ensure opportunity for a diverse applicant pool
 - Advertise in minority targeted publications
 - Avoid word of mouth recruiting
 - Participate in job fairs



Arbitration

- Employers may require arbitration of employment related claims
 - Bars employee from pursuing claims in court
 - Agreement must be written and signed by employee in consideration for something



Arbitration

- Pros of arbitration agreements
 - Cost-savings
 - Prompt resolution
 - Elimination of Juries
 - Lawyer experienced in employment matters resolves case



Arbitration

- Cons of arbitration agreements
 - Easier for employees to file claim
 - No attorney needed
 - Some internal administration required
 - Fees not covered by Employment Practices Liability Insurance



Arbitration

- Arbitration Agreements will be upheld if they include these employee protections
 - Full range of remedies available
 - Company pays for arbitrator, but is selected by mutual agreement
 - Depositions and exchange of documents permitted
 - Follow procedures of arbitration agencies (AAA, FMCS)



What to Expect in 2004?

- Overtime Regulations
 - Significant changes proposed by DOL
 - DOL studying public comments on proposed changes while Congress debates barring the changes



What to Expect in 2004?

- Overtime Regulations – Salary Test
 - Increased from \$155 per week to \$425 per week (approximately \$22,000 per year)



What to Expect in 2004?

- Overtime Regulations – Executive Exemption
 - Primary duty of the management of the enterprise or a recognized department or subdivision
 - Customarily and regularly directs the work of two or more other employees
 - Has authority to hire or fire



What to Expect in 2004?

- Overtime Regulations – Administrative Employees
 - Primary duty of performing non-manual work directly related to management policies or business operations of the employer
 - Eliminates requirement of discretion and independent judgment
 - Must perform "substantial work" or work requiring high level of training



What to Expect in 2004?

- Overtime Regulations – Learned Professionals
 - Primary duty of performing work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study or equivalent work experience
 - Eliminates requirement of discretion and judgment



What to Expect in 2004?

- Overtime Regulations – Outside Sales Employees
 - Proposal eliminates current requirement of no more than 20% of hours worked in non-exempt duties
 - May be exempt if performs sales regularly away from place of business



What to Expect in 2004?

- Overtime Regulations
 - Regulations expected to become effective in Summer 2004 unless Congress acts
 - If new regulations become effective employers will need to complete comprehensive review of status of all employees to determine exemption



What to Expect in 2004?

- Revised COBRA Regulations – Initial General Notice
 - Advising new employees of health care continuation rights upon a qualifying event
 - 90 days from date of employment to issue notice
 - May be included in SPD
 - One notice to all beneficiaries



What to Expect in 2004?

- COBRA Regulations – Qualified Beneficiary Notice
 - Employee or beneficiary must give notice of qualifying event within 60 days (divorce, separation, independent child)
 - If no notice within 60 days, employee or beneficiary loses continuation rights



What to Expect in 2004?

- COBRA Regulations – Plan Administrator Notice
 - 14 days from qualifying event to notify beneficiary or employee of rights
 - Notice must be sent if denied continuation coverage
 - DOL provides model notice
