# EMPLOYMENT LAW BRIEFING

## WINTER 2007

**Digital Damage:** Employers are facing a new kind of on-the-job injury claim, attributable to the proliferation of personal digital assistants ("PDAs") in the workplace. Excessive or improper use of PDAs can lead to a condition known as "Blackberry Thumb;" consisting of numbness, tingling, swelling and tendonitis affecting digits, hands and wrists. The risk of injuries, and the resulting Workers' Compensation claims, can be reduced by training employees to hold and operate the devices correctly and encouraging employees to avoid uninterrupted use for prolonged periods.

**Reporting Pay:** Outside of a provision in a collective bargaining agreement, an employment contract or handbook, there is no requirement to pay employees, other than minors, for reporting to work when no work is available – such as in a closure due to inclement weather.

**Check Your Handbook:** A December decision, by the Oregon Court of Appeals, emphasized the importance of carefully crafted handbook language. In ***Madson v. Oregon Conference of Seventh-Day Adventists***, two employees sought payment of unused, accrued sick leave, upon separation. The trial court noted that the handbook did not expressly provide for payment of sick leave at termination and granted summary judgment for the Employer. The appellate court, after looking at the entire handbook, ruled that the sick leave policy was ambiguous and sent the issue back to be decided by a jury. Employee handbooks may be treated as *contracts* – subject to interpretation by third parties. It is essential for individual policy statements to reflect an Employer's intent and to be consistent with other handbook provisions. Handbooks should also be periodically reviewed to ensure compliance with evolving employment regulations. Please let us know if we can assist in the preparation or review of a policy statement or with a legal review of your handbook.

**Noncompete Agreements:** Have you hired and trained an employee, who built relationships with your customers, became familiar with your operations, and then quit to take a job with one of your competitors? A covenant not to compete incorporated into an employment contract, or a stand-alone noncompete agreement, may prevent this situation. In order to be enforceable, the agreement must include ***reasonable*** geographic and time restrictions. What is reasonable will depend on the facts of each case. It is generally preferable to enter into noncompete agreements before an employee begins active work. Use of these agreements may become more limited in Oregon. A bill has been introduced in the legislature (HB 2257) which would make noncompete agreements unenforceable when employees have been included in a layoff.

**Wage Claims Rising:** We recommend periodic review of your pay practices for compliance with wage and hour regulations. The costs of noncompliance can be high. As an example, a salaried employee, who is not exempt from mandatory overtime, can claim unpaid overtime for at least two years. In addition, the Employer would be liable for attorney fees and a penalty in an amount equal to the unpaid wages. The Wage and Hour Division of the U.S. Department of Labor reported a 30% increase in wage collections for the five year period ending in 2006.

Please contact our office if you have questions about the material in this newsletter, or other employment law compliance concerns.

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