

# EMPLOYMENT LAW BRIEFING

May 13, 2005

**Introducing EMPLOYMENT LAW BRIEFING:** In response to requests from our clients, Whitford Law Offices LLC will periodically publish this newsletter to alert Employers to regulatory changes, court decisions and "best practice" tips to assist in meeting legal compliance obligations and limiting exposure to employment practices liability.

**USERRA Amendments:** Late last year, the Uniformed Services Employment and Re-Employment Rights Act ("USERRA") of 1994, was amended. Under USERRA, all Employers are required to provide elective continuation of employer-sponsored health insurance coverage to employees serving in the armed forces. The amendment extended the maximum coverage period from 18 to 24 months.

The amendment also added a notice requirement, which can be satisfied by displaying a poster developed by the Department of Labor. Copies of the poster may be downloaded from the Department's website at: <http://www.dol.gov/vets/programs/userra/poster.pdf> or call our office and we will be happy to e-mail a copy.

**Age Protections Expanded:** In *Smith v. City of Jacksonville, Mississippi*, the US Supreme Court held last month that the Age Discrimination in Employment Act ("ADEA") also prohibits unintentional, or "disparate impact," discrimination against employees on the basis of age. It will no longer be necessary to prove intentional discrimination by showing Employer hostility toward older workers. Otherwise neutral policies or practices which are more harmful to employees aged 40 and older may now be a violation of the ADEA *unless* the different treatment of older workers is based upon "reasonable" business considerations apart from age. This decision is expected to prompt a sharp increase in age claims. On a practical level, Employers will need to reevaluate handbook policies, compensation and benefit programs and approaches to layoffs or other workforce reductions in the context of the expanded scope of the ADEA.

**Final Wage Payments:** Oregon Employers failing to timely pay departing employees all **earned** compensation create an unnecessary exposure to liability. In addition to unpaid wages, Employers may be required to pay attorney fees and "penalty wages" of up to 30 times the employee's daily compensation. The deadline for payment of final wages depends upon the nature of the separation from employment. For a voluntary quit, with notice of 48 hours or more, final wages are due upon separation. For a discharge, final wages are due by the end of the next business day. For a voluntary quit with less than a 48 hour notice, final wages are due on the next regularly scheduled payday or within 5 business days, whichever occurs first. Common problems include failure to timely pay **earned** compensation for vacation, "PTO," commissions and bonuses. It is critical to ensure that policy language for such benefit programs reflects the Employer's intent. Please call our office if you have questions regarding payment of final wages.

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

If you prefer to receive future copies of **Employment Law Briefing** by FAX or e-mail, or if you would like to be removed from our contact list, please let us know. Thank you. 



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