Inside The Beltway

Keeping You Informed

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Critical developments in labor and employment law

By John N. Raudabaugh, former Member, National Labor Relations Board

HAPPY HOLIDAYS…*but*…

Executive Branch/Administration

U.S. Department of Labor — Effective December 13, 2010, Wage and Hour Administration connects employees to private attorneys to sue employers for unpaid wages

On November 19, 2010, Vice President Biden announced an initiative by the DOL's Wage and Hour Division and the American Bar Association to connect workers with private attorneys to pursue claims under the Fair Labor Standards Act and the Family and Medical Leave Act. Effective December 13, 2010, whenever DOL's resources prevent the Wage and Hour Division from resolving a complaint for unpaid wages or leave issues, employees will be directed to the ABA's attorney referral service as part of DOL's "Bridge to Justice" program.
http://www.dol.gov/whd/resources/ABAReferralPolicy.htm

U.S. Department of Labor — Semi-annual regulatory agenda

On December 20, 2010, DOL published its semi-annual regulatory agenda. The Office of Labor-Management Standards postponed its proposed rule regarding consultant-persuader (regarding opposition to union organizing) agreement reporting from November 2010 to July 2011. The Occupational Safety and Health Administration announced rules in final, proposed, and prerule stages concerning beryllium, food flavorings, blood-borne pathogens, exposure to crystalline silica, confined spaces in construction, electrical protective equipment, methylene chloride, and cranes and derricks in construction. The Employee Benefits Security Administration reported the completion of regulations regarding improved fee disclosure for pension plan participants.

Equal Employment Opportunity Commission — ADA and ADEA regulations by year's end

The EEOC announced its semi-annual regulatory agenda on December 20, 2010. Anticipated before year's end is a final rule implementing the Americans with Disabilities Act amendments. By mid-year 2011, the EEOC also anticipates issuing a final rule regarding the "reasonable factors other than age" defense under the Age Discrimination in Employment Act.

National Labor Relations Board — Today's announcement of proposed rulemaking to require posting of NLRA rights

As expected, the NLRB submitted a Notice of Proposed Rulemaking published in the *Federal Register* on December 22, 2010. The proposed rule would require employers to post notices informing their employees of their rights under the National Labor Relations Act. According to the NLRB, "many employees protected by the NLRA are unaware of their rights under the statute." As proposed, the failure to post the Notice of Employee Rights Under the National Labor Relations Act will be an unfair labor practice, the statute of limitations will be tolled for filing unfair labor practice charges and, most critically, the "knowing failure to post the notices [will be] evidence of unlawful motive in unfair labor practices." The union animus or unlawful motive proposal is significant and, undoubtedly, will result in many more findings of illegal employer actions and future, repeat violations, which, in turn, could prompt more injunction proceedings and court orders. Comments on the proposed rule are due within 60 days.
http://www.nlrb.gov/About_Us/news_room/Notice_for_Rulemaking/

National Labor Relations Board — December 20, 2010, announcement of remedies for employers' serious violations during union organizing campaigns

As previously reported, the NLRB's Acting General Counsel announced on September 30, 2010, a new "nip-in-the-bud" initiative to remedy by court injunction unlawful employer discharges because of union organizing at the workplace. The AGC reasoned that unremedied discharges chill other workers from participating in a union campaign. Moreover, if the unlawfully discharged employee is also a union leader, the "remaining employees are deprived of the leadership of active and vocal union supporters. . . . Given all of these consequences, employee resumption of union organizing is unlikely, and the ultimate Board order is ineffective to protect rights guaranteed by the Act."

On December 20, the AGC "beefed-up" his "nip-in-the-bud" initiative to "systematically seek appropriate remedies" including Section 10(j) court injunctions in response to "serious" employer unfair labor practices committed during the course of an *initial* union organizing campaign. Going forward, cases involving threats, solicitation of grievances, promises or grants of benefits, interrogations, and surveillance will be investigated quickly in order to restore the status quo to recreate an atmosphere to enable employee free choice regarding unionization. Remedies in addition to court injunctions for such unfair labor practices will include (1) the public reading of the NLRB notice and cease and desist language by a Company official or "person most responsible," (2) union access to Company bulletin boards to "better thaw the chilling impact of the violations," and (3) providing the union with the employees' names and addresses at a time far in advance of what is required when a union achieves a 30 percent or greater showing of interest and files a petition for election with the NLRB.

For further information on the content of this alert, please contact your Nixon Peabody attorney or:

- John N. Raudabaugh at 202-585-8100 or 212-493-6655

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