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Re: Potential Employee Issues in 2009

Dear Valued Client:

As a result of recent legislation and judicial decisions your business may be impacted this year and in future years. The major changes are in the areas of wage discrimination, sexual and gender discrimination, and union organization. *Remember, though, the vast majority of employee claims fail and small employers (generally less than 15 employees) and those whose business does not affect interstate commerce are not subject to federal law.¹*

Wage Discrimination

As a result of consistent lobbying after multiple courts rejected her claim of unfair, gender-based wage discrimination a persistent elderly *and retired* southern lady was able to obtain the highest possible level of legal help, viz., federal legislation. That legislation, the *Lilly Ledbetter Fair Pay Act*, allows proof of wage discrimination to be used in lawsuits brought after employment termination if proof of the discrimination could not be obtained during the employment period.

Sexual and Gender Discrimination

In the case of *Crawford v. Metropolitan Government of Nashville*, the United States Supreme Court ruled that Title VII of the Civil Rights Act of 1964 and its "anti-retaliation" clause applied to require a terminated employee to be reinstated to the position she had lost after she testified in a company interview that a supervisor had committed acts of sexual harassment against she and other employees.

The proposed federal Employment Non-Discrimination Act would prohibit employers from refusing to hire or promote employees based upon their sexual orientation or their gender identity.

¹ Nonetheless, it is wise to follow the lead of federal law as much as possible because most states, including Minnesota, model their own employment protection statutes after it.

Union Organization

The proposed federal Employee Free Choice Act (EFCA), actually first introduced a few years ago, would do away with secret ballot elections, modify the method initial contracts are negotiated by requiring mandatory arbitration, and would impose stiffer fines against employers if it is determined that the employer violated employees' rights during union organizing or initial contract negotiation. Especially now in our depressed economy and the disproportionate effect it has had on wage employees, it is likely union organizing will be viewed generally with favor by courts presented with complaints by union organizers.

Despite the Supreme Court *Crawford* case, the enacted Lilly Ledbetter Fair Pay Act, and the proposed legislation relating to union organizing and sexual/gender hiring or promotion discrimination, there were literally countless cases at both state and federal levels which denied employee claims of unfair employment practices. Particularly difficult claims for employees are sexual harassment claims. Close behind them in terms of difficulty of proof are wrongful termination claims based upon violation of the various federal and state family medical leave and age discrimination laws.

If you would like more information about any of the topics discussed above or would like to discuss your company's own workplace policies, please call me.

Thank you.

Very truly yours,

MJM LAW, LLC

Michael J. McNamara

MJM/smh

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This newsletter is not intended to provide legal advice on specific subjects but rather to provide news and analysis of legal issues and developments. You should always consult with legal counsel before taking action on any matter described in this newsletter.