Bugbee & Conkle, LLP

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Pro union decisions expected from the NLRB

On March 27, 2010 President Obama announced he will appoint Craig Becker and Mark Pearce to the National Labor Relations Board (“NLRB”).

With these appointments, pro-union will hold a 3-to-1 majority on the NLRB, and employers should be prepared for pro-union changes in decisions by the NLRB. In many aspects, the NLRB has the power to significantly increase union power and leverage without intervention by Congress, and at least Mr. Becker is on record as favoring such an approach by the NLRB.

For example, the NLRB might, without congressional input, put into place many, if not all, aspects of the Employee Free Choice Act (EFCA). As last introduced in the Congress, the EFCA would change the currently existing election procedure and require the NLRB to certify a union as the bargaining representative without an election if a majority of employees have signed cards. This would nullify an employers’ current ability to decide whether to use only a card-check process or to insist on a secret-ballot election among employees in a particular bargaining unit.

The proposed EFCA legislation would also establish stricter penalties for employers who violate provisions of the NLRA when workers seek to form a union, and set in place new mediation and arbitration procedures for disputes relating to collective bargaining agreements.

The EFCA, and much more, could result from a new, aggressive, pro-union majority at the National Labor Relations Board.

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Ohio Supreme Court upholds Intentional tort statute

On March 24, 2010, in two separate opinions, the Ohio Supreme Court upheld the constitutionality of Ohio Revised Code § 2745.01 – which requires an injured worker in an intentional tort case to prove the employer acted with a deliberate intent to cause an employee to suffer an injury, disease, a condition, or death.

The Court, in *Kaminski v. Metal & Wire Products Co.*, and in *Stetter v. R.J. Corman Derailment Services* held the challenged statute does not violate Section 34 or 35 of Article II of the Ohio Constitution.

Ohio employers, prior to these decisions, faced the very real possibility of being held liable for both workers' compensation benefits and additional damages. However, the Court's decisions should now result in fewer intentional tort lawsuits. In addition, these decisions affirm the balance in Ohio by restricting lawsuits as the means to remedy industrial injuries. Instead, and as intended in Ohio, injured employees have the right to pursue a workers' compensation claim, but not a separate claim for unrestricted damages.

WILL YOUR HANDBOOK BE USED AGAINST YOU?

In *Bates v. Airborne Express, Inc.,* Ohio's Second District Court of Appeals held the employer's lack of definition or description of what would constitute "proper medical documentation" in its written policies, entitled the fired employee to receive unemployment benefits, since the employer failed to meet its burden of proving that the fired employee failed to offer "proper medical documentation" of her absences.

This case highlights the importance of having well written policies, handbooks and of reviewing and updating them on a regular basis.

For more information concerning the NLRB, intentional tort law or handbook/policy revisions, please contact a member of our Labor and Employment law practice group at (419) 244-6788:

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