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Special Report for HR Professionals

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www.hrwebstore.com newsletter@management-advantage.com 925-671-0404

INSIDE THIS ISSUE

COLLECTIVE BARGAINING WINS OVER AGE DISCRIMINATION LAWSUITS

The United States Supreme Court has ruled in a 5 to 4 decision that "a provision in a collective-bargaining agreement that clearly and unmistakably requires union members to arbitrate *(Age Discrimination in Employment Act) ADEA* claims is enforceable as a matter of federal law."

The case is *14 Penn Plaza LLC v. Pyett*. Under the *National Labor Relations Act* the Service Employees International Union, Local 32BJ is the exclusive bargaining representative of employees within the building-services industry in New York City. That includes building cleaners, porters, and doorpersons. "The Union has exclusive authority to bargain on behalf of its members over their 'rates of pay, wages, hours of employment, or other conditions of employment.'" The Union engages in industry-wide collective bargaining with the Realty Advisory Board on Labor Relations, Inc. (RAB), a multiemployer bargaining association for the New York City real-estate industry.

Temco Service Industries, Inc. (Temco) employed security guards and reassigned them to jobs as porters and cleaners. The incumbents asked the Union to file grievances claiming the company was discriminating based on age. "The Union requested arbitration under the collective-bargaining agreement, but after the initial hearing, withdrew the age discrimination claims on the ground that its consent to the new security contract precluded it from objecting to the [company's] reassignments as discriminatory."

The employees then filed a complaint of age discrimination with the Equal Employment Opportunity Commission (EEOC) and received a Right-to-Sue letter. The Federal District Court denied the employer's request that the case be required to follow arbitration procedures. The Second Circuit Court of Appeals agreed saying that *Alexander v. Gardner-Denver Co.,* (415 U.S. 36) forbids enforcement of collective-bargaining provisions requiring arbitration of *ADEA* claims.

Go to ADEA on Page 2

***ADEA* Continued from Page 1**

The Court's opinion said, "Examination of the two federal statutes at issue here, the *ADEA* and the *National Labor Relations Act (NLRA)*, yields a straightforward answer to the question presented. The Union and the [Realty Advisory Board] RAB, negotiating on behalf of 14 Penn Plaza, collectively bargained in good faith and agreed that employment-related discrimination claims, including ADEA claims, would be resolved in arbitration. This freely negotiated contractual term easily qualifies as a 'condition of employment' subject to mandatory bargaining under the *NLRA*."

The Court also said the reference to *Gardner-Denver* did not apply in this circumstance.

"A provision in a collective-bargaining agreement that clearly and unmistakably requires union members to arbitrate ADEA claims is enforceable as a matter of federal law."

So, because the Union chose not to pursue the arbitration, the avenue of complaint was closed and no complaint could be processed within the EEOC channel.

Justice Thomas wrote the opinion of the Court and was joined by Justices Scalia, Kennedy, Alito, and Chief Justice Roberts. Justice Stevens filed a dissenting opinion. Another dissenting opinion was filed by Justice Souter which was joined by Justices Stevens, Ginsburg and Breyer.

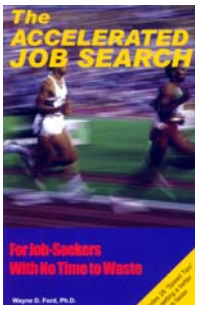
Of course, HR professionals should consult with their legal counsel before deciding how to handle such issues. It may be easier to write responses to EEOC charge notices in the future, however.

E-VERIFY REQUIREMENT FOR FEDERAL CONTRACTORS POSTPONED AGAIN

The effective date of the **final rule requiring certain federal contractors and subcontractors to use E-Verify has been delayed until June 30, 2009**. The rule will only affect federal contractors who are awarded a new contract after May 21st that includes the Federal Acquisition Regulation (FAR) E-Verify clause (73 FR 67704). Federal contractors may **NOT** use E-Verify to verify current employees until the rule becomes effective and they are awarded a contract that includes the FAR E-Verify Clause.

The new rule implements Executive Order 12989, as amended by President George W. Bush on June 6, 2008, directing federal agencies to require that federal contractors agree to electronically verify the employment eligibility of their employees. This new rule requires federal contractors to agree, through language inserted into their federal contracts, to use E-Verify to confirm the employment eligibility of all persons hired during a contract term, and to confirm the employment eligibility of federal contractors' current employees who perform contract services for the federal government within the United States.

THE ACCELERATED JOB SEARCH



Any employer that is laying off workers should put this book into the "kit" of materials provided during the separation process. It will help former employees find work more quickly than working without this aid.

Any worker who finds himself or herself out of a job, will benefit greatly by reading and following the advice offered by Dr. Wayne Ford.

For Job Seekers With No Time to Waste

http://www.management-advantage.com/products/jobsearch.htm

EMPLOYEES RETURNING FROM MILITARY SERVICE

According to the 2008 Annual Report of the ESGR (Employer Support of the Guard and Reserve) there are 1.3 million National Guard and Reserve members who make up almost one-half of the U.S. military. Nine percent are self-employed, and 26 percent are employed by small businesses.

We've pointed you to this resource in the past and it's worthwhile to take another look.

ESGR offers employers support with the following tools:

- Free USERA[1] training for employers
- Ombudsman program
- Informational posters
- Military leave absence forms
- Sample letters
- Service policies
- Helpful tips for employees who are called to duty.

You can contact ESGR by phone at 800-336-4590 or on the Internet at

http://www.esgr.org/

[1] USERA is the *Uniformed Services Employment and Reemployment Rights Act of 1994*. This federal law establishes rights and responsibilities for members of the National Guard and Reserve and their civilian employers. It affects employment, reemployment and retention when employees are called to service.

[SOURCE: MyBUSINESS, April/May 2009, NFIB, PO Box 305041, Nashville, TN 37230, www.mybusinessmag.com]

OSHA SENDS LETTERS TO HIGH-RATE EMPLOYERS

The Occupational Safety and Health Administration has notified more than 13,500 employers nationwide that their injury and illness rates are considerably higher than the national average.

A letter sent this month to those employers explained that the notification was a proactive step to encourage employers to take action now to reduce these rates and improve safety and health conditions in their workplaces.

The employers are those whose establishments are covered by Federal OSHA and reported the highest "Days Away from work, Restricted work or job Transfer injury and illness" (DART) rate to OSHA in a survey of 2007 injury and illness data. For every 100 full-time workers, the 13,500 employers had 5.0 or more injuries or illnesses which resulted in days away from work, restricted work or job transfer. The national average is 2.1.

For a copy of the notification letter go to http://www.osha.gov/as/opa/foia/letter09.html

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The Management Advantage, Inc.
PO Box 3708
Walnut Creek, CA 94598
925-671-0404

www.hrwebstore.com
Editor: William H. Truesdell, SPHR
billt@management-advantage.com