

MISTAKE OF THE MONTH - - Promises, Promises

Off-hand promises of job security to employees can generate “promissory estoppel” claims.

EMPLOYERS AND CORPORATE GOVERNANCE

Department of Labor weighs in on the WorldCom ERISA litigation.

OTHER EMPLOYMENT LAW HEADLINES

Is A Mold-Free Office A Reasonable Accommodation?

It is a question of fact and thus up to the jury in this case.

At-Home Work Not A Reasonable Accommodation Where Physical Presence Is Essential Function

A two-part analysis: where a job’s essential functions require physical presence in the workplace, a request to work at home is per se unreasonable, but where physical presence in the workplace is not essential, then each case must be looked at individually.

Overtime Beefs Do Not A RICO Claim Make

The Court’s opening line says it all: “This case involves an effort to transform a California state law wage and hour claim into a federal RICO claim”.

Denial Of Lateral Transfer Was An “Adverse Employment Action”

Denial of lateral transfer with same pay and benefits, but which would have brought increased responsibilities, is a legitimate basis for discrimination claim.

Request For ADA Accommodation Is Protected Activity

Employee with ADD was not disabled, but the mere act of requesting an accommodation is protected activity; thus a claim of retaliation for making such a request can be maintained.

No Religious Discrimination Claim For Employee Fired For Posting Scripture

Depending on your perspective, no good deed goes unpunished, or diversity run amok.

After-Acquired Evidence Of Daily Drug Use Does Not Bar Discrimination Claim

Evidence that plaintiff manager got high with other managers and employees at work was enough to discredit Employer’s claim that plaintiff would have been fired had employer known of such conduct.

WAGE & HOUR/FMLA DEVELOPMENTS

Not Reducing Billable Hour Requirement During FMLA Leave Creates Claim

Be aware that productivity standards may have to be modified if an employee is out on a protected leave.

Summers Off To Care For Child With ADD Not Covered By FMLA

Son's ADD not a "serious health condition" justifying FMLA leave over summer school vacation.

Emotional Distress Damages Available In FLSA Retaliation Claims

Court rules that FLSA statutory scheme contemplates compensation in full for any retaliation employees suffer from reporting grievances, and thus implicitly includes compensation for demonstrable emotional injuries as well as economic ones.

Employees Working In Antarctica Not Entitled To Overtime

Just in case you were wondering.

LEGISLATIVE AND REGULATORY ACTIONS OF NOTE

New Hours-Of-Service Rules For Truckers In Effect

Federal authorities will focus on education rather than enforcement for the first 60 days.

Senate Passes Pension Funding Relief Bill

Relief package supported by a broad base of employers and unions.

OSHA Seeks Guidance On "Piercing Corporate Veil"

Even OSHA's administrative law judges have split on this issue.

NIOSH Plans To Study Women's Depression In The Workplace

Depression accounts for more lost work days than other health diagnoses and its workplace costs rival those for heart disease.

Budget Bill Passed, But Revised Overtime Regulations Still Will Be Attacked

Budget bill finally passes, but plenty of controversy is still on the horizon.

U.S. Chamber Of Commerce Releases Results Of Latest Benefit Survey

Employee benefit costs have risen to 42.3% of payroll costs for the calendar year 2002, from 39% in 2001.

ON THE EMPLOYEE BENEFITS FRONT

Supreme Court Remand Finally Decided

After a remand, the 9th Circuit reverses itself.

Continuing Violation Theory Fails To Salvage ERISA Section 510 Claim

Original denial of benefits was a discrete act so “continuing violation” theory did not apply.

ON THE LABOR FRONT

Parking Lot Handbilling By Non-Employees Barred

Even in California, nonemployee union organizers have no right of access to free-standing store.

Employee Access, However, Is A Different Story

Employees, however, have a right to picket and handbill in front of their Employer’s store at a shopping plaza.

Board Finds Unlawful Impasse On Permissive Subjects Of Bargaining

A duration clause cannot extend all terms and provisions of contract pending negotiations, according to the Board.