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Compliance Workshop—Fall 2006

Managing ADA, FMLA & Medical Attendance Issues Presented by The Seminar Group

FMLA/OFLA: Use and Abuse

How to effectively manage this law in the workplace; responding to the leave request; bonding leave and gender neutrality; job restoration and other back-end issues; benefits continuation; emerging legal issues
Guest Speakers: Peter R. Scruggs and Lynda Hartzell, Esq.—Tonkin Torp, LLP

Other speakers will address:

Americans With Disabilities Act
Managing Attendance Under Leave Laws
Medical Marijuana and Other Drugs

DATE & TIME:

Friday, October 20, 2006
9:30am to 4:30pm

LOCATION:

World Trade Center, Portland, Oregon

COST:

Single Registration: \$495
Two or more: \$470

How To Register

Call: (206)463-4400

Online: www.TheSeminarGroup.net

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RISK MANAGEMENT

Workplace Emergency Planning

It is human nature to be reactive. We usually begin to think about workplace emergencies after we hear about incidents that other employers experience. Workplace emergencies can happen at any time. Because it's hard to think clearly during an emergency, it's important to begin planning our response for emergency that might take place.

The best way to begin emergency planning is to determine what emergencies could affect your workplace, who will lead and make decisions during an emergency, and what procedures will ensure that employees respond appropriately. These elements are the foundation of a workplace emergency plan.

Oregon OSHA requires most employers to have emergency plans. Those that have more than 10 employees must have written plans. Those that have 10 or fewer employees don't have to put their plans in writing, but they must ensure that their employees know what procedures to follow to protect themselves in an emergency.

Developing an emergency plan includes involving employees in the planning process, identifying emergencies that could affect your workplace, establishing an emergency chain of command,

and developing emergency-response policy and procedures.

Involve employees

The most important and crucial element of emergency planning is getting employees involved in the planning process. When employees

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(including management) participate, they'll take the planning process more seriously. From the start, they should be aware that the purpose of the plan is to ensure their safety.

Identify emergencies

Identify external incidents (outside your workplace) that could threaten employees or the public and any incident within your workplace that could cause an emergency. Examples include earthquake, explosion, fire, hazardous-substance release, medical, weather-related event and threat of violence. Electrical, heating and cooling, and telecommunication-system failures can also disrupt workplace activities and contribute to emergencies. Determine what effect each could have on your workplace?

(Con't on next page)

CLAIM REVIEW

Race Bias Suit to Move Toward Trial, Appeals Court Rules

The Denver-based U.S. Court of Appeals for the 10th Circuit has reversed a New Mexico lower court's dismissal of a race discrimination lawsuit brought by the Equal Employment Opportunity Commission (EEOC) against BCI Coca-Cola Bottling Company of Los Angeles (BCI) – which owns Phoenix Coca-Cola Bottling Company and Coca-Cola Bottling Company of Albuquerque.

In its litigation, the EEOC charges BCI with committing race discrimination against Stephen Peters, an African American employee of Coca-Cola Bottling Company of Albuquerque, when it fired him for not working his scheduled day off, even though he had called in sick and provided medical documentation. The federal district court in Albuquerque had

previously dismissed the case on a summary judgment ruling.

In its decision, the 10th Circuit Court of Appeals ruled that EEOC may proceed to trial on the race discrimination claim, filed under Title VII of the 1964 Civil Rights Act. The court found that a jury might reasonably conclude that Peters' termination was based on his race because there was evidence that one of his supervisors, Cesar Grado, treated African Americans more harshly than other employees. EEOC asserts that Grado made racial remarks toward African Americans.

In its opinion, the court observed that, "In making the decision to terminate...the human resources

(Continued on page 2)

Workplace Emergency Planning (con't)

Establish a chain of command

A chain of command establishes one individual with overall responsibility for managing an emergency and others responsible for carrying out specific emergency-response tasks. A chain of command establishes who's in charge and ensures that everyone in the chain responds to emergencies in an organized way.

The emergency scene commander should be an employee who has experience managing others, assessing complex events, and making effective decisions under difficult circumstances.

Develop policy and procedures

Create a written policy that states the purpose of the plan and emphasizes that you're committed to ensuring the safety of employees and others at your workplace during an emergency.

Establish written procedures for accomplishing special tasks. Emergency procedures are important because they tell employees exactly what to do to ensure their safety during an emergency.

① More information on emergency action plans available at (http://www.osha.org/subjects/emergency_action_plan.html).

When is Overnight Travel Compensable?

Overnight travel is whenever travel keeps an employee away from the home community overnight. The key to compensable travel time is "normal work hours". On overnight trips, all the time a non-exempt employee spends traveling during normal work hours must be compensated – even on weekends.

If an employee normally works Monday through Friday from 8:00 a.m. to 5:00 p.m., these working hours apply to Saturday and Sunday while traveling. An employer is not legally obligated to compensate for travel time that falls outside of the employee's regular work hours, except when the employee is required to drive.

Example: Peter works 8:00 a.m. to 5:00 p.m., Monday through Friday. You require him to visit a customer worksite in Atlanta, Georgia. Peter travels by plane on Wednesday, from 10:00 a.m. to 4:00 p.m. The employer must pay for these six hours of travel time, since they cut across Peter's normal work hours. Peter returns home by plane on Saturday, traveling from 2:00 p.m. to 8:00 p.m. The employer must pay for the three hours between 2:00 and 5:00 p.m., the travel time which cuts across Peter's normal work hours.

What if Peter returns home on a Friday night "red-eye" flight from midnight to 5:00 a.m.? Since Peter is traveling as a passenger outside of normal work hours, the employer does not need pay for any of the travel time.

What if Peter is required to pick up a rental car and drive an additional five hours to reach a remote worksite? In this case, you must pay for 10 hours of travel time – the five hours of air travel which cut across Peter's normal work hours, plus the five hours of car travel which fall outside of Peter's normal work hours, since he is required to drive during that time.

Coordination between employees, supervisors and payroll prior to scheduled travel can help ensure proper documentation takes place to avoid unintended non-compliance.

EEOC Publication Addresses Employment Rights of People with Hearing Loss

The U.S. Equal Employment Opportunity Commission (EEOC), recently announced the issuance of a new question-and-answer (Q&A) fact sheet on the application of the Americans with Disabilities Act (ADA) to job applicants and employees who are deaf or who have hearing impairments.

The new Q&A publication includes many real-life examples that illustrate the kinds of jobs that people with hearing loss successfully perform and the wide range of accommodations available.

Topics addressed in the document include: when a hearing loss is a disability under the ADA; when an employer may ask an applicant or employee about a hearing impairment and what it should do if an applicant voluntarily discloses the impairment; what type of reasonable accommodation an applicant or employee with a hearing disability may need; and what an employer should do if it has safety concerns about an applicant or employee with a hearing impairment.

According to published reports, between 2000 and 2004, estimates of the number of people in the United States with a self-described "hearing difficulty" ranged from 28.6 million to 31.5 million. A "hearing difficulty" can refer to the effects of many different hearing impairments of varying degrees. The number of individuals with hearing difficulty is expected to rise rapidly by the year 2010 when the baby-boomer generation reaches age 65. As compared to other age groups, the percentage of individuals with hearing difficulty is greatest among those individuals age 65 and above.

① More information on hearing disabilities available online at (<http://www.eeoc.gov/facts/deafness.html>).

Race Bias Suit to Move Toward Trial, Appeals Court Rules (con't)

not only knew Mr. Peters' race but allegedly had a history of treating black employees unfavorably and making disparaging racial remarks in the workplace."

The court further noted, "[h]olding employers accountable for the actions of biased subordinates also advances the purposes of Title VII." Additionally, the court pointed out that in a similar situation, a non-African American employee was neither fired nor disciplined by Grado after failing to show up for work as directed – as well as not calling in and not responding to repeated pages.

In its lawsuit, the EEOC seeks appropriate back wages and prejudgment interest. The Commission also seeks to provide appropriate affirmative relief necessary to eradicate the effects of Phoenix Coca-Cola Bottling Company and Coca-Cola Bottling Company of Albuquerque's unlawful employment practices including, but not limited to, front pay in lieu of reinstatement and compensation for past and future pecuniary and non-pecuniary losses. Further, the EEOC seeks injunctive relief and any other curative relief to prevent any continuation of the alleged discriminatory practices.