July 2007

LABOR & EMPLOYMENT LAW WATCH

TABLE OF CONTENTS

EMPLOYMENT LAW UPDATE

Supreme Court Issues Controversial Decision Requiring Prompt Filing of Pay Discrimination Claims 1

Increase in Federal Minimum Wage "Old News" for Pennsylvania Employers – But Beware Conflicting State Law Requirements 2

Recent Third Circuit Decision Permits Coordination of Retiree Health Benefits with Medicare 3

Supreme Court Brings Harkness UC Saga to a Happy Ending for Employers 4

EEOC Issues Guidance Outlining Job Rights of Employees with Caregiving Responsibilities 5

May Health Plans Condition Spousal Coverage on the Husband and Wife Living Together? 6

Court Reverses Itself: FMLA Rights Can Now Be Waived 7

Hiring Law Update: Race Discrimination and Criminal History Requirements 7

UC Update: I Didn't Fire You – I Just Told You to Look for Another Job 8

Immigration Filing Fees Increased Effective July 30, 2007 9

WORKERS' COMPENSATION LAW UPDATE

New NTCP Form 9

EMPLOYMENT LAW UPDATE:

Supreme Court Issues Controversial Decision Requiring Prompt Filing of Pay Discrimination Claims

by Jeffrey D. Litts, Esquire

If an employer unlawfully pays a woman less than a man for the same work due to her gender, when does the statute of limitations for filing a discrimination claim begin to run? On the date the initial pay decision was made – or with the issuance of each paycheck. In *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, (May 29, 2007), the U.S. Supreme Court ruled that the employer's initial unlawful decision in setting an employee's pay, as opposed to the subsequent issuance of paychecks, constitutes the "unlawful discrimination practice" that triggers the Title VII statute of limitations.

The petitioner, Lilly Ledbetter, worked as a supervisor for Goodyear Tire & Rubber for 19 years. She filed a sex discrimination charge with the EEOC claiming that she received poor evaluations in the past because of her sex and, as a result, her salary did not increase as much as it would have if she had been evaluated fairly. Ledbetter's claim eventually went to trial, and a jury ruled in her favor awarding her backpay and damages. On appeal, Goodyear argued that Ledbetter's pay discrimination claim was untimely to the extent it relied upon pay decisions made more than 180 days before the filing of her EEOC charge, and that no discriminatory acts relating to her pay occurred after that filing date. The Eleventh Circuit Court of Appeals reversed the jury's verdict, and held that a pay discrimination claim under Title VII cannot rely on discriminatory events that occurred prior to the 180-day statutory filing period.

In a 5-4 decision, the Supreme Court affirmed the Eleventh Circuit's decision. Writing for the majority, Justice Alito distinguished between past discriminatory acts (the past pay decisions) and the present effects of those acts (the amount of more recent paychecks). The Court held that "current effects alone cannot breathe life into prior, uncharged discrimination." Instead, the court ruled that Ledbetter was required to challenge the intentionally discriminatory pay decisions within 180 days of each of those decisions. The Court further reasoned that if it adopted the filing rule advocated by *Ledbetter*, "a single discriminatory pay decision made 20 years ago [that] continued to affect an employee's pay today" may result in litigation "even if the employee had full knowledge of all the circumstances relating to the 20-year-old decision at the time it was made."

The *Ledbetter* decision is an extremely important decision for employers defending themselves against equal pay and disparate impact discrimination claims under Title VII. *Ledbetter* reaffirms that employees must promptly pursue relief from "discrete acts" of alleged discrimination under Title VII. The decision will also assist employers in limiting the amount of damages employees seek in such suits. However, an attempt is underway in Congress to "undo" the impact of the *Ledbetter* decision. We will keep you informed of further developments on this issue.

Increase in Federal Minimum Wage "Old News" for Pennsylvania Employers - But Beware Conflicting State Law Requirements

by Eric N. Athey, Esquire

President Bush recently signed legislation to increase the federal minimum wage from $5.15 to $5.85 effective July 24, 2007. The minimum wage will increase on that same date in the two subsequent years to $6.55 and $7.25 respectively. It has been ten years since the federal minimum wage was last increased. Big news? Not for Pennsylvania employers. In July 2006, the Pennsylvania legislature beat the feds to the punch and increased the state minimum wage to $6.65 - well above the 2007 federal minimum. The minimum wage under state law increases again to $7.15 on July 1, 2007 and to $7.25 on July 24, 2009, so employers covered by the Pennsylvania Minimum Wage Act will be required to pay more than the federal minimum until July 24, 2009 at which time the state and federal minimums both reach $7.25 per hour.

The difference in the minimum wage rate is not the only current distinction between state and federal wage laws. For example, the minimum cash wage for "tipped employees" is $2.13 per hour under federal law - but $2.83 under state law. Likewise, although both laws permit employers to pay sub-minimum "training wage" rates to new hires who are under 20 years of age, the state law again requires a higher minimum ($5.85 effective July 24, 2007 vs. $4.25 under federal law). Similarly, there remain several key differences in state and federal child labor requirements. Updated posters detailing employee rights under both laws are now available online at www.wagehour.dol.gov and http://www.dli.state.pa.us (click "Labor Law Compliance").

Although the increase in the federal minimum wage is largely "old news" for Pennsylvania employers, the distinctions between federal and state wage laws often present themselves as costly surprises. If you employ anyone near the state minimum wage rate ($7.15 effective July 1, 2007) we would highly recommend a self-audit to ensure compliance with all state and federal wage and hour laws.

Recent Third Circuit Decision Permits Coordination of Retiree Health Benefits with Medicare

by Eric N. Athey, Esquire

Some cases seem to go on forever. This is one of them. However, the case of *AARP v. EEOC* may have finally come to a happy end for employers on June 4, 2007 with the issuance of a precedential decision by the U.S. Court of Appeals for the Third Circuit. The issue presented in the *AARP* case was whether employers violate the Age Discrimination in Employment Act (ADEA) by offering lesser health benefits to retirees upon their becoming eligible for Medicare. Employers who offer retiree health benefits often provide a "Medigap" plan of lesser value to retirees upon their becoming eligible for Medicare. The rationale of this arrangement is that a retiree, upon qualifying for Medicare, is no longer solely dependent upon the employer-provided plan for coverage and a Medigap plan, in combination with Medicare, provides comparable total coverage.

The *AARP v. EEOC* saga started back in 2000 when the Third Circuit issued its decision in *Erie County Retirees Ass'n v. County of Erie*. In the *Erie County* case, the court held that, since Medicare eligibility is age dependent, the ADEA did not permit reduction or termination of retiree health benefits upon Medicare eligibility unless the employer met the "equal benefit or equal cost" defense. In other words, an employer could only offer different benefits to Medicare-eligible retirees than those offered to younger retirees if it could show that the overall post-Medicare benefit was equal, or that the cost of providing the benefit was equal.

Interestingly, the EEOC was initially supportive of the Third Circuit's decision in the *Erie County* case. However, upon further reflection, the Commission realized that most private sector employers are not compelled by law to offer any retiree benefits. By applying the ADEA to retiree coverage, the Third Circuit had potentially made it much more expensive for employers to provide retiree benefits - and one likely result was that fewer employers would continue to do so. With this in mind, the EEOC did an about face and began working on regulations that would permit employers to do precisely what the Third Circuit said they could not do under the ADEA.

The EEOC issued proposed regulations in July 2003 which contained an exemption from the ADEA for "employee benefit plans for retired participants that are altered, reduced or eliminated when the participant is eligible for Medicare..." The American Association of Retired Persons (AARP) filed suit in the U.S. District Court for the Eastern District Court of Pennsylvania in February 2005 challenging those regulations under ADEA.

The AARP initially succeeded in blocking the EEOC's implementation of its "Medicare exemption" regulations when the Eastern District ruled that they were contrary to the Third Circuit's decision in the *Erie County* case. However, the Court vacated its decision and upheld the regulation when the U.S. Supreme Court held in another case that a prior court decision could bar a subsequent agency interpretation only if the court decision "unambiguously forecloses the agency's interpretation..." The AARP therefore appealed the Court's reversal of itself. Confused yet? Thankfully, the Third Circuit's recent decision ties it all together quite nicely.

In its June 4, 2007 decision, the Third Circuit held that Section 9 of the ADEA expressly grants the EEOC authority to provide narrow exemptions from the prohibitions of the ADEA "as necessary and proper in the public interest." The Third Circuit noted that the EEOC Medicare exemption was issued in

response to its finding that the number of employers offering retiree coverage was decreasing, in part, due to employer concerns about ADEA compliance. This response, the court found, was consistent with the Commission's authority under Section 9. Accordingly, the Third Circuit upheld the EEOC's proposed regulations - even though those regulations are largely inconsistent with its prior decision in the *Erie County* case.

The new EEOC regulations note that plan coverage coordination provisions which alter, reduce or eliminate retiree coverage when a participant is eligible for Medicare or for benefits under a State health benefit plan are "exempt from all prohibitions of the [ADEA]." It took seven years, but employers who offer retiree coverage are now back to where they were in 2000, prior to the *Erie County* decision. In this case, a return to the "good old days" is truly good news for employers.

Supreme Court Brings Harkness UC Saga to a Happy Ending for Employers

by John S. Lawler, Esquire

After several years of uncertainty relating to whether non-legal representatives could represent employers in unemployment compensation hearings, the Supreme Court of Pennsylvania finally handed down its decision in *Harkness v. Unemployment Compensation Board of Review,* concluding that non-attorney representatives ***may represent*** employers in unemployment compensation hearings.

We have discussed the *Harkness* saga in previous issues of the Law Watch as it made its way through the court system. Prior to the recent Supreme Court ruling, the Commonwealth Court's now infamous *Harkness* decision held that non-attorney "tax representatives" could not represent corporations at unemployment hearings. In June of 2005, Governor Rendell signed a bill which attempted to reverse the *Harkness* decision and provide, by statute, that it *was* proper for non-legal representatives to represent parties before unemployment compensation proceedings. This statute, however, was under attack in separate litigation as an unconstitutional infringement on the power of the Supreme Court to regulate the practice of law.

Fortunately, the recent Supreme Court decision effectively concludes the proverbial *Harkness* see-saw. The Supreme Court ruled in favor of permitting non-legal advisors to represent parties given the (1) informal nature of unemployment compensation hearings; (2) minimal amounts in controversy; and (3) the need to keep proceedings speedy and at low cost. The Court recognized that the practice of law is regulated primarily for the public's protection. However, the Court concluded: "While the public interest is certainly served by the protection of the public, it is also achieved by not burdening the public by too broad a definition of the practice of law, resulting in the over regulation of the public's affairs."

EEOC Issues Guidance Outlining Job Rights of Employees with Caregiving Responsibilities

by Amy G. Macinanti, Esquire

On May 23, 2007, the Equal Employment Opportunity Commission ("EEOC") issued Enforcement Guidance entitled "Unlawful Disparate Treatment of Workers with Caregiving Responsibilities." Despite its title, the Enforcement Guidance does not create a new protected category of "caregivers" (i.e. employees who have family responsibilities to care for a child, elderly parent or disabled family member). However, the EEOC Guidance makes it clear that discrimination against caregiver employees would be unlawful

to the extent that the discrimination is based on stereotyping of a protected category under Title VII, the Pregnancy Discrimination Act or the Americans with Disabilities Act.

Gender-Based Discrimination. The EEOC's Enforcement Guidance begins by stating that women now make up 1/2 of the workforce. Women also have disproportionately greater responsibilities than men as family caregivers whether it is child care, elder care or caring for a disabled family member. A prohibited female employee caregiver "stereotype" is that female employees are more devoted to their caregiving responsibilities at home than they are to their job responsibilities at work. On the other hand, the EEOC also found that men are spending triple the amount of time performing caregiving duties today than they did 40 years ago. Nonetheless, the male caregiver employee "stereotype" continues to be that males are secondary caregivers who do not require flexible schedules, or leaves of absence, or part-time schedules. As a result of these stereotypes, women often hit what the EEOC refers to as the "maternal wall" – the inability to advance in their job, career, or chosen profession because of the employer's stereotypical perception of women as less devoted to work. Alternatively, men have been denied requests for leave or other benefits because of the employer's stereotypical perception that men are not caregivers.

According to the EEOC's Guidance, a caregiver employee may demonstrate gender-based stereotype discrimination by presenting comparative evidence (showing that caregivers of one gender are treated more favorably than the other gender under the employer's policy or practice) or through direct evidence (e.g. employer comments such as "no man who wants to advance in this company would take child rearing leave").

Disability-Based Discrimination. Claims involving discrimination against caregivers may also arise under the Americans with Disabilities Act ("ADA"). The ADA has a provision which prohibits discrimination based on association with an individual with a disability. Under this provision, it is unlawful for an employer to refuse to hire or otherwise take adverse action against an individual because that individual is associated with another individual with a disability. According to the EEOC Guidance, a disability-based caregiver stereotype is that the employee will be unreliable and will take too much time off because he or she is needed to care for an individual with a disability. Adverse actions taken on the basis of such stereotypes, if not substantiated, are grounds for liability under the ADA.

Analysis and Recommendation. The EEOC's Enforcement Guidance attempts to address the real conflicts employees have in balancing work and family life. While the EEOC Guidance does not create a new protected category of caregiver, it does highlight the legal issues that may arise from the stereotyping of caregivers. However, it is important to remember that nothing in the law or this Enforcement Guidance prohibits an employer from making employment decisions based on performance, operational needs or any other legitimate non-discriminatory reason simply because the affected employee also happens to be a "caregiver."

From a purely legal perspective, the EEOC Enforcement Guidance is not "law", nor is it binding on any court. It is merely "guidance" for EEOC investigators as well as employers subject to the federal EEO laws. Nevertheless, EEOC Enforcement Guidance is persuasive authority which may be relied upon by courts when deciding a case. For this reason, employers should consider the Guidance when drafting and administering policies which may

impact caregivers (e.g. policies governing hiring, leaves of absence and flex-time).

May Health Plans Condition Spousal Coverage on the Husband and Wife Living Together?

by Eric N. Athey, Esquire

In *Falcone v. Teamsters Health and Welfare Fund* (May 31, 2007), the U.S. District Court for the Eastern District of Pennsylvania considered whether it is lawful for a health plan to terminate a spouse's coverage under the plan when she is "separated" from the covered employee. Ms. Falcone obtained a protection from abuse order from her spouse and moved out of their home. When she contacted the plan administrator to provide her new address, she was told that their separation was a "qualifying event" which warranted termination of coverage. The plan defined the term "separated" as "living separate and apart." Her coverage was terminated and she was issued a COBRA election notice.

Rather than filing an internal appeal under the terms of the plan, Ms. Falcone proceeded directly to federal court. As a preliminary issue, the court considered whether it could hear her case since she had failed to exhaust her right to appeal to the plan's appeal committee. The court noted that if she was contesting the interpretation of the plan's provisions, then she was required to exhaust her internal appeal rights before proceeding to court. On the other hand, if she was claiming a violation of ERISA, then she could maintain her suit in federal court without having filed an internal appeal. The court concluded that she was properly in court because she was not "arguing that the Fund misapplied or misinterpreted the terms of the Plan." To the contrary, she was arguing that the terms of the plan were themselves in violation of ERISA. The court also noted that an ERISA plaintiff may proceed straight to court without exhausting internal appeals if she can show that an internal appeal would be futile. The court held that this exception to the exhaustion requirement further supported Ms. Falcone's right to bring her claim in federal court.

Having decided that Ms. Falcone was permitted to file suit in federal court, the court then turned to the merits of the case. Ms. Falcone argued that the plan could not lawfully terminate her coverage merely because she separated from her husband. She claimed that COBRA does not consider a separation to be a "qualifying event" and, therefore, a plan should not be permitted to terminate coverage on this basis. The court rejected her argument, noting that "plan sponsors...have wide discretion when fashioning benefit plans... [and]...nothing in ERISA prevents an employer-provided health and welfare benefits plan from terminating a beneficiary spouse before the spouse is divorced." Since Ms. Falcone could not point to any provision in ERISA that the plan had violated, the court dismissed her claim.

Court Reverses Itself: FMLA Rights Can Now Be Waived

by Eric N. Athey, Esquire

One of the more troubling court decisions from 2006 was *Dougherty v. Teva Pharmaceuticals USA, Inc.* In *Teva*, the U.S. District Court for the Eastern District of Pennsylvania concluded that employee rights under the Family and Medical Leave Act (FMLA) could not be waived in a private settlement. The *Teva* decision was based largely on a decision issued by the U.S. Court of Appeals for the Fourth Circuit which reached the same result. Subsequent to the issuance of the *Teva* decision, the Fourth Circuit vacated its decision. The employer in the *Teva* case filed a motion for reconsideration and, in a decision dated April 9, 2007, the Eastern District also did an about face and vacated its prior decision,

concluding that FMLA rights may be waived in private agreements.

The new decision in *Teva* provides some assurance to employers that seek to privately settle FMLA disputes or include FMLA waivers in severance agreements. However, the possibility remains that the U.S. Court of Appeals for the Third Circuit could reach a different conclusion on the issue. We will continue to report on further developments on this issue.

Hiring Law Update: Race Discrimination and Criminal History Requirements

by Eric N. Athey, Esquire

In these days of heightened sensitivity to issues of violence and theft, many employers are requiring applicants to undergo a criminal history check as a condition of hire. No one would challenge an employer's right to reject an applicant who has an extensive (and recent) history of violent crimes or other offenses that affect his suitability for the job. However, "zero tolerance" policies (i.e. rejecting applicants with any prior conviction) have periodically come under attack under EEO laws as having an adverse impact on African-Americans and other minorities. Such a challenge was recently considered by the U.S. Court of Appeals for the Third Circuit in *El v. SEPTA* (March 19, 2007).

In the *El* case, a newly hired African-American bus driver was terminated after his employer learned that he had a 40-year old conviction for second-degree murder. The conviction related to an incident that occurred when he was 15-years old and he had no other record of violent crimes. Mr. El sued SEPTA for race discrimination.

In considering Mr. El's discrimination claim, the Third Circuit analyzed whether the employer's policy prohibiting the hiring of anyone with a prior conviction for a violent crime was permitted under the "business necessity" defense that has been recognized by the U.S. Supreme Court (i.e. whether there was a "manifest relationship" between the policy and job performance). The Third Circuit noted that few courts had been called upon to consider the legality of such a "bright line" hiring rule.

Mr. El argued that bright line rules such as that applied by SEPTA were per se unlawful because Title VII "requires that each applicant's circumstances be considered individually without reference" to such rules. The court disagreed and noted that a bright line rule would be lawful if it "can distinguish between individual applicants that do and do not pose an unacceptable level of risk..." Thus, the court concluded, the legality of the rule depended on whether it truly weeded out applicants who posed an unacceptable threat.

In reviewing the evidence before it, the court noted that SEPTA submitted three expert reports - all of which relied upon U.S. Department of Justice data showing a high rate of recidivism among convicts within three years after their release from prison. However, the data said nothing about risks posed by individuals with 40-year old convictions. Indeed, one of SEPTA's witnesses noted that an individual with a prior violent conviction is less likely to commit a future crime with every year that he remains crime free. Despite the relative lack of direct evidence to show that Mr. El posed an unreasonable risk the court observed, "Had El produced evidence rebutting SEPTA's experts, this would be a different case." However, given the lack of evidence showing that the policy was not consistent with business necessity (i.e. reasonably effective in disqualifying high risk applicants), the court was compelled to dismiss El's claim. In other words, the court upheld the policy in this

particular case, but intimated that it could be successfully challenged.

UC Update: I Didn't Fire You – I Just Told You to Look for Another Job

By John S. Lawler, Esquire

Under Pennsylvania law, if an employer terminates an employee for poor work performance, the employee will be usually be entitled to unemployment compensation benefits. On the other hand, if an employee voluntarily quits her job, she is not eligible for benefits. Combining these scenarios, what happens if an employee leaves after her employer tells her she should start looking for other work because it's not working out? The Commonwealth Court of Pennsylvania recently considered this issue in the case of *Cipriani & Werner, P.C. v. UCBR*.

In *Cipriani*, an attorney complained to his firm's office manager that his secretary was having trouble completing her assignments. That same day, the secretary approached the office manager to complain about her workload. The office manager responded that it would be in the secretary's best interest to start looking for another job. The secretary ultimately walked out of the building and never returned. The office manager subsequently wrote her a letter, explaining that her employment was not terminated and asking her to contact the office. The secretary applied for unemployment benefits and, at the referee's hearing, testified that she was essentially terminated and that the follow up letter was just "a ploy to deny me benefits."

The Unemployment Compensation Board of Review granted benefits, finding that "Although the office manager did not use the words 'fired' or 'discharged'. . . the language used by the office manager possessed the "immediacy and finality of a firing." Because the claimant walked out of the meeting, the office manager never had the opportunity to say that the claimant was not fired and that she could stay until she found another new job. As a result, there was nothing said to rebut the "finality" that the office manager's words conveyed.

The Commonwealth Court affirmed the Board of Review, awarding the claimant benefits. The Court held that, "The employer need not actually use terms such as 'fired' or 'discharged.' If an employer's language contains both the immediacy and finality of a firing, the employee will be found to have been discharged." Thus, telling an employee that she should look for another job, without more, carries with it the immediacy and finality of a discharge. The Court's opinion was premised on the fact that the office manager was not clear during the discussion that the claimant's employment was not being terminated.

To the extent a company wishes to suggest that an employee start looking for another job, it is imperative to actually convey to the employee during the discussion that he/she is *not* being terminated. Of course, in many cases, employers will find that it's simply too awkward or risky to continue employing an individual who has been told to find another job. In such cases, many employers simply find it preferable to "cut the cord" and allow the individual to collect benefits.

Immigration Filing Fees Increased Effective July 30, 2007

by Eric N. Athey, Esquire

Many of the filing fees required by U.S. Citizenship and Immigration Services (USCIS) will be increased on July 30, 2007. USCIS has published a comprehensive list of the new fees on-line at http://www.uscis.gov/files/nativedocuments/FinalUSCISFeeSchedule052907.pdf. A number of the increases are quite

substantial. For example, the cost for filing an I-129 (Petition for Nonimmigrant Worker) will be increased from $190 to $320. The filing fee for the I-140 (Immigrant Petition for Alien Worker) will increase from $195 to $475 and the fee for the I-765 (Application for Employment Authorization) will increase from $180 to $340. The increased fees apply to forms filed on or after July 30, 2007.

WORKERS' COMPENSATION UPDATE:

New NTCP Form Required Effective August 28, 2007

by Paul D. Clouser, Esquire

Effective August 28, 2007, employers, carriers and TPAs will be required to use a new LIBC-501 form, entitled Notice of Temporary Compensation Payable. The new form, along with instructions for its use, are available online at www.dli.state.pa.us, under the "forms" tab. The old LIBC-501 will not be accepted for filing after August 28.

The new form addresses the objections raised by employers to the unsatisfactory choice of forms for acceptance of "medical only" claims for no lost time injuries of relatively short duration. Employers may now "temporarily" acknowledge a "no lost time" medical only injury, for a period of up to 90 days. Thereafter (but within the 90-day window), if the employer decides to deny the claim, a Notice Stopping Temporary Compensation Payable ("NSTCP") and a Notice of Compensation Denial ("NCD") must still be issued. If not, the medical only NTCP will "convert" and a permanent medical only NCP status will exist, with respect to the subject injury.

Despite the flexibility provided by this new option, employers must be very careful to assess each situation carefully and to be cognizant of recent decisions that have awarded penalties and unreasonable contest counsel fees for the alleged improper use of Bureau forms in administering claims.

For example, the Commonwealth Court in *Jordan v. WCAB*, (Pa. Cmwlth. 2007) affirmed the imposition of penalties and unreasonable contest counsel fees, where the employer issued a NTCP form, but later issued a NSTCP and a block 6 denial, denying that the employee had suffered any "compensable lost time," since salary continuation payments were made during the employee's 2-month absence from work. As such, the employee, who went on to suffer a second and longer period of disability, was unnecessarily forced to litigate a Claim Petition and to establish all elements of his case - - including the very existence of a work-related injury, that was not even in dispute. A 50% penalty and a $8,525 counsel fee were assessed against the employer.

This result could have perhaps been avoided, through the use of an Agreement for Compensation, or by issuing a Notice of Compensation Payable (NCP) followed by either a Supplemental Agreement or a Notification of Suspension, suspending the payment of indemnity benefits.

The fact that a new form is available does not mean that it should be used by employers in all situations. A Notice of Compensation Denial ("NCD"), form LIBC-496, should still be used if there are serious doubts about the legitimacy of the claim or length of disability. Likewise, the Temporary Notice of Compensation Payable ("TNCP"), form LIBC-501, will continue to have advantages in situations where some amount of lost time (in excess of the waiting period) is expected, but modified duty work is readily available. Other

situations might call for use of the Agreement for Compensation, form LIBC-336, allowing the employer to both open and close a claim in one step. However, in cases where the legitimacy of the injury is not in question and the injury may require at least several physician visits, but the severity of the injury and the nature of the work are such that the employee should not lose time from work, the new medical only NTCP form should work nicely.

As always, employers are required to file the Employer's Report of Occupational Injury or Disease, form LIBC-344, within or fifteen (15) days of the injury, for injuries resulting in disability lasting more than a day, shift, or turn of work. The new NTCP form, if used, must be filed within twenty (21) days from the date the employee (or his medical provider) provides notification of an injury. Finally, even in "medical only" cases, the employer should remember to obtain a written acknowledgment from the claimant of receipt of the list of panel doctors the employer will pay for, at the time of injury. The written acknowledgment must be obtained even in situations where there is already an acknowledgment form in the personnel file, dating back to the time of hire or safety training.

If you have further questions or concerns regarding proper use of the Bureau forms, please do not hesitate to contact Paul Clouser.

™ ™ ™ ™ ™ ™ ™ ™ ™ ™

If you have any questions regarding any labor or employment law matter, including the issues discussed in this newsletter, please do not hesitate to contact us at (717) 392-1100, or e-mail us at the following addresses:

KEGEL KELIN ALMY & GRIMM LLP
Labor and Employment Practice Group
(717) 392-1100

Eric N. Athey, Chair………………athey@kkaglaw.com

Paul D. Clouser………………….clouser@kkaglaw.com

Howard L. Kelin…………………...kelin@kkaglaw.com

Amy G. Macinanti…………….macinanti@kkaglaw.com

Jeffrey D. Litts………………………litts@kkaglaw.com

John S. Lawler………………...…..lawler@kkaglaw.com

© 2006 Kegel Kelin Almy & Grimm LLP. All Rights Reserved.
All Rights Reserved. These materials may not be reproduced in any way without the written permission of Kegel Kelin Almy & Grimm LLP.
This publication is designed to provide general information on the topics presented. If legal or other professional advice is required, the services of a professional should be sought.