

Special Edition

Economic Meltdown = Work Place

As the global economy spirals into a recession and employee layoffs become a common place, business executives, human resource professionals and risk managers of trucking companies will be facing significant challenges this year. When you factor in the new worker friendly administration, and with employee confidence in the job market at an all time low, be prepared to face a legal tsunami. The reality of our society is that workers, who lose their job, fearing for their financial security, are more likely to sue if they are unable to find another position. It's not right – but it's going to happen.

Employee reductions make the headlines on a daily basis and they're going to continue leaving 7% - 10% of our society fearing for their financial future.

In a tight job market, damages and lawsuits rise, as employers are unable to argue that the awards should be "off set" by interim earnings at subsequent jobs. All these factors have created an environment for an increase in employment related litigation. Trucking companies particularly, need to "batten down the hatches" for the foreseeable future to avoid work place exposures to litigation.

To complicate matters, the election of 2008 has eluded to potential changes in the "landscape" of labor and employment law for corporate America. There will be changes that will impact labor and employment law in a profound manner.

Equally as important, the "gate keeper" of those laws, which is the Executive Branch of the Government – including administrative agencies that interpret, adjudicate and enforce the laws, as well as the expected changes within the civil justice system and the federal judiciary – will influence risk management and defense strategies against liability exposures under new and existing labor and employment laws.

For example, 2009 ushers in the Americans with Disability Act amendments Act of 2008. It changes the goal post on the playing field for ADA litigation and makes the statute more decidedly pro-plaintiff.

In fact, many believe the statutes ADA and ADA Amendments Act – should, instead, stand for assume (the employee has a) Disability (and) Ask About Accommodating (it). I would not be surprised, in the first 100 days of the new presidency; you will see changes in many acts as follows:

1. The Equal Remedies Act – many believe that the statutory caps on liability for compensatory punitive damages will be lifted. This proposal would change employment discrimination litigation dramatically, as every case would become a "let's roll the dice for a big award" claim. Plaintiff's trial lawyers will increase settlement value expectations and seven figure verdicts, most likely, will become more prevalent.
2. The Employee Free Choice Act – this act is likely to become one of the first bills signed in the law under the new administration.

The EFCA will eliminate an employee's ability to vote on a Union through a secret ballot, require Union's and employers binding arbitration if they can not reach a collective bargaining agreement in a timely manner, and triple penalties on employers engaging in unfair labor practices.

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You can expect expansion of protections to be pushed by the new administration for workers, and more obligations to be imposed on employers under the Family Medical and Leave Act, as well as augmentation of whistle blower protections under the Sarbanes – Oxley Act. If this isn't enough to make you sick, a series of paycheck fairness laws called the **Ledbetter Fair Pay Act, the Pay Check Fairness Act and the Fair Pay Act, will negatively impact employer liability.**

The Ledbetter legislation amends the statutes of limitations for paid discrimination claims to make it easier for workers to assert lawsuits. This will negate the Supreme Court's ruling in 2007. In Ledbetter vs. Goodyear Tire and Rubber Company, in which the court said a title VII Paid Discrimination Claim, must be filed within 300 days from the alleged discriminating paid decision.

The ruling also states that pay set, originally at the time of hiring, which is perpetuated over time in terms of lower pay, can not be challenged in a lawsuit.

Liability will also be expanded under the Equal Pay Act to allow for compensatory punitive damages, and to narrow an employer's defense to such claims.

The Employee Non Discrimination Act would add sexual orientation as a protected class. Then you have the Arbitration Fairness Act which would amend the Federal Arbitration Act by invalidating most work place arbitration programs that require employees to arbitrate rather than litigate. **The list goes on and on.**

Here we are in an economy that is extremely volatile;

- AIG Insurance Company almost collapsed.
- Major financial institutions have collapsed.
- Major stock brokerage houses collapsed.
- The housing industry collapsed.
- The economy collapsed.
- Unemployment is on the rise, and;

We have the largest trade deficit in US history, and to stimulate the economy – Washington in their infinite wisdom is going to open up employers to more litigation so that the “little guy” that loses his job, can go after the person that support the economy and that's how the economy is going to survive? – Give me a break!

When you put things in perspective, our value systems have changed since the “good old days”. In the good old days;

- An employee was happy to have a job.
- He/she was happy to put food on the table.
- He/she was happy to have a paid vacation and benefits.

In the good old days, if an owner of a small business was successful, he was “patted” on the back for;

- His sweat.
- His determination, and;
- His risk.

Today, a company that's successful is penalized for such acts. The economy is in the toilet and business is an all time low; financial systems have collapsed, and government is encouraging employers to hire people in a down economy – how do you expect them to support their business with legislation like this?

You might think that I'm exaggerating, but start paying attention to the laws that are pending in Congress and the changes they want to be made, and then you'll understand why I keep driving home how important alternatives are in this marketplace.

A small to medium size trucking company that's been in business for 25 – 50 years can not survive a large lawsuit. They're hanging on by a thread, having a difficult time cash flowing, and then you have a disgruntled employee that doesn't have anything better to do with their life then blame the employer for their financial dilemma. **A targeted employer and the employees that he employs, become unemployed because the law has changed?** Only in Congress, can something like this happen.

(Excerpts taken from The National Underwriter)

QUOTE OF THE WEEK: “If you really want to do something, you will find a way; if you don't, you will find an excuse.”