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US Supreme Court to Review Several Employment Cases This Term

Employment-related cases continue to occupy an increasing share of many court dockets, and the Supreme Court is apparently no exception. The nation's highest court has already agreed to review a number of employment related cases during its new term which began October 2nd. These cases include: [Eastern Associated Coal Corp. v. United Mine Workers, District 17](#) (unpublished opinion (4th Cir. 1999)) where the plaintiff employer challenges an arbitrator's decision to reinstate a worker to a safety-sensitive position after the worker tested positive for drug use; [Circuit City Stores, Inc. v. Adams](#) (9th Cir. 1999) involving the question of whether the Federal Arbitration Act, which requires the enforcement of valid arbitration agreements, applies to employment contracts; and [University of Alabama v. Garrett](#) (11th Cir. 1999) where a state employee seeks to sue his government employer in federal court under the Americans with Disabilities Act.

NLRB Member Brame Leaves Board, Joins Law Firm

One of the five members of the [National Labor Relations Board](#), J. Robert Brame, has left the Board to join the Washington, D.C. office of a management-side law firm. Brame, a Republican, began his term with the NLRB in November 1997 and was considered a conservative voice on the Board. Although he initially expressed interest in pursuing a second term following the expiration of his first term on August 27, he withdrew his name from consideration following President Clinton's failure to nominate him individually for a second term and following the Senate's subsequent delay in confirming him and other current Board Members.

FMLA's Notice and Designation Regulations Held Invalid

In [Twyman v. Dilks](#) (9/8/2000), the U.S. District Court for the Eastern District of Pennsylvania dismissed a former employee's claim that her termination upon return to work from a 23-week leave of absence violated the Family and Medical Leave Act. The former employee essentially argued that, because her employer failed to formally designate the leave as FMLA leave, as required by federal Department of Labor regulations, she was entitled to an additional 12 weeks of leave upon her return. However, the Court ruled that the regulations were invalid because they were inconsistent with and impermissibly expanded the scope of the FMLA statute. The FMLA created an entitlement to 12 weeks of leave. The court called the regulations "directly inconsistent" because they effectively create an entitlement to an additional twelve weeks of leave whenever the employer fails to prospectively notify the employee that he or she is using FMLA leave.

This decision follows [Ragsdale v. Wolverine Worldwide, Inc.](#) (8th Cir.), reported in our 7/31/2000 e-News issue, and [Dormeyer v. Comerica Bank-III.](#) (7th Cir.), reported in our 8/14/2000 e-News issue. Click on "e-News" in the masthead for access to our archived issues.

ADA Does Not Entitle Disabled Worker to Vacant Position Over More Qualified Candidate

In [EEOC v. Humiston-Keeling, Inc.](#) (9/15/2000) the U.S. Court of Appeals for the Seventh Circuit dismissed an employee's claim that she was not reasonably accommodated under the Americans with Disabilities Act. The U.S. Equal Employment Opportunity Commission argued that the injured employee, working as a warehouse picker, must be reassigned to a vacant clerical position rather than more qualified applicants. However, the court rejected the EEOC's argument, ruling that an employer need not reject superior applicants or award "bonus points" to disabled applicants seeking reassignment. The court held that the employer may offer a job to the best-qualified candidate as long as the employer has a "consistent and honest policy to hire the best applicant for the particular job."

EEOC Issues New Compliance Manual Regarding Employee Benefits

On October 3, 2000, the U.S. Equal Employment Opportunity Commission issued a new [Co Compliance Manual](#) on employee benefits. The manual is intended to provide guidance and instructions for EEOC investigators in analyzing issues that arise with regard to life and health insurance benefits, long-term and short-term disability benefits, severance benefits, pension or other retirement benefits, and early retirement incentives. Although intended as an internal guide for EEOC investigators, the manual provides useful information for employers. The EEOC also issued a helpful [Question and Answer](#) publication.

Immigration Legislation Provides Relief for Alien Workers

President Clinton indicated that he will sign legislation increasing the cap on the annual number of H-1B visas available for highly skilled foreign workers. The legislation, [S. 2045](#), approved by the Senate and the House on October 3, 2000 provides relief to foreign nationals who are in danger of reaching the end of their maximum allowable stay in a temporary status before the government has processed their green card applications and provides foreign workers with greater flexibility with job changes. For additional information on business immigration, please visit [BusinessVisaLink](#).

For more information, please contact us

[Stephen W. Aronson](#)

860-275-8281

[Lisa Gizzi](#)

860-275-8244

[Peter J. Moser](#)

617-557-5923

ROBINSON & COLE LLP

Boston - Hartford - Stamford - Greenwich - New York

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