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Welcome to e-News: From the Labor, Employment and Benefits Group of Robinson & Cole

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U.S. Supreme Court Orders Reinstatement of Truck Driver Who Twice Tested Positive for Marijuana

James Smith's job with Eastern Associated Coal Corporation required him to drive large, heavy vehicles on public highways. Because he performed "safety-sensitive" duties, federal Department of Transportation rules required Smith to undergo random drug testing. Smith failed two of these drug tests. Eastern tried to fire him, but Smith's union went to arbitration. The collective bargaining agreement between the union and Eastern required the company to prove "just cause" for terminating any employee. The arbitrator found that Eastern did not meet this burden and could not fire Smith for failing the drug tests. The arbitrator did condition Smith's reinstatement on his agreement to a 30-day suspension without pay, his participation in a substance abuse program and his consent to submit to drug testing at the company's discretion for five years.

Eastern filed a lawsuit to overturn the arbitrator's award. Eastern argued that the decision violated public policy by allowing employees who test positive for drugs to operate

dangerous machinery. The court disagreed, and Eastern appealed to the U.S. Supreme Court.

In Eastern Associated Coal Corporation v. United Mine Workers of America (11/28/2000), the U.S. Supreme Court found that public policy did not require the court to overturn an arbitration award ordering an employer to reinstate an employee who tested positive for drug use. The Court explained that the award did not contradict public policies favoring random drug testing of employees in safety-sensitive jobs. The arbitrator's decision did not condone Smith's marijuana use. Instead, it punished him by suspending him without pay, requiring him to pay arbitration costs for both Eastern and the union, and demanding that he submit to further substance-abuse treatment and testing.

U.S. Supreme Court To Decide if Benefit Plan Fiduciary Can Sue Beneficiary for Reimbursement of Paid Medical Benefits

The U.S. Supreme Court recently agreed to review whether Reynolds Metals Company, a health benefit plan fiduciary, is entitled to reimbursement from Robert Ellis, an employee and group medical plan participant, for benefits paid to Ellis for medical expenses he incurred. The case is an appeal from the decision of the U.S. Circuit Court of Appeals for the Ninth Circuit in Reynolds Metals Company v. Ellis (2/10/2000) dismissing the employer's claim.

Reynolds Metals paid over $561,000 in medical benefits to Ellis and his health care providers after Ellis was seriously injured in an auto accident. Three years later, Ellis settled a claim against the third parties responsible for the accident and received a settlement payment in excess of the medical benefits paid under the group plan. Reynolds Metal then sued Ellis under the U.S. Employee Retirement Income Security Act seeking payment under the contractual reimbursement provisions of its benefit plan, which required plan participants to reimburse the plan if they receive payment from a third party. The Ninth Circuit refused to expand the scope of ERISA to include claims for reimbursement and dismissed the case.

President Clinton Signs New Legislation To Increase Number of H-1B Visas for Highly Skilled Foreign Temporary Workers

As expected, on October 17, 2000, President Clinton signed new legislation to increase the number of H-1B visas available for highly skilled foreign temporary workers, and to double the fee charged employers using the program to provide funding for training U.S. workers and students. This new legislation also provides relief to those H-1B workers in danger of being required to leave the United States because they have reached the end of their allowable six-year stay in H-1B status before having obtained permanent resident status. For a more detailed summary of how the new legislation will affect foreign nationals and their employers, please visit the Robinson & Cole LLP Immigration Practice Group's website and select the "New Legislation" link on the navigation bar.

Employer Succeeds on Age Discrimination Claim

Philip Schnabel sued his former employer, the Legal Aid Society of Orange County, and Gary Abramson, Legal Aid's chief attorney, alleging that the termination of his employment was based on his age. Abramson hired Schnabel, a lawyer and retired police officer, to fill the position of investigator for Legal Aid. At the time of Schnabel's hire, he was 60 years old and Abramson was 51. Three years later, Abramson recommended the termination of Schnabel's employment and the rehire of Schnabel's predecessor, who had finished law school and who was age 31. The Board approved the recommendation.

In Schnabel v. Abramson (11/8/2000), the U.S. Court of Appeals for the Second Circuit found that Schnabel had established a prima facie case of age discrimination by presenting evidence that he was age 60 when he was fired and that he was replaced by a 31 year-old. Schnabel's discrimination claim ultimately failed, however, because he did not show that the employer's stated reason for discharging him, namely, Schnabel's "outright subordination" and "inept performance," were intended to mask age discrimination.

The Second Circuit also specifically stated that the U.S. Supreme Court's recent decision in Reeves v. Sanderson Plumbing Products, Inc. does not preclude employers from successfully defending against such claims. In Reeves, the U.S. Supreme Court determined that "it is permissible for the trier of fact to infer the ultimate fact of discrimination from the falsity of the employer's explanation," thus lowering the evidentiary burden on plaintiffs in employment discrimination cases. In granting summary judgement for the employer in Schnabel, the Second Circuit gave new hope to employers defending against age discrimination claims. The court further acknowledged that Reeves requires a "case-by-case approach" to deciding whether an employee can prove that the employer engaged in intentional discrimination.

"Boorish, Crass and Offensive Behavior" Does Not Constitute Sexual Harassment

In Garton v. Thomson (10/25/2000), Aletha Garton brought an action against her employer alleging gender discrimination and sexual harassment on the basis of her gender. Garton worked as a maintenance specialist for Thomson Consumer Electronics, Inc. She was the only woman who worked on the day-shift, and the only woman in the maintenance shop. In support of her sexual harassment claim, Garton relied on the following: she heard her co-workers talking about a computer disk with pornographic material that someone brought to work; her co-workers made unspecified derogatory comments about women; she found copies of *Hustler* magazine in the workplace; a male co-worker told her to "f--- off," and when she confronted him, he said "if she couldn't tolerate being talked to like a man, then get the hell out of the department." Garton also claimed that her male co-workers gave her the "silent treatment" after her complaint to the department manager about a swimsuit calendar posted in her work area resulted in the removal of the calendar.

The U.S. District Court for the Southern District of Indiana found that this conduct did not rise to the level of sexual harassment. The court explained that, other than the co-worker's comments, none of the alleged actions were directed at Garton. She also did not claim that any of these incidents physically threatened or intimidated her. As for the swimsuit calendar, the court decided that even though it had "sexual overtones," it was an isolated incident that, again, neither physically threatened nor intimidated Garton.

Trial Court Upholds Jury Instructions on Implied Employment Contract Claim

In Geary v. Wentworth Laboratories, Inc. (11/7/2000), Geary contested a jury verdict for the defendant employer claiming that the trial court's jury instructions on his breach of contract claims were incorrect. When Geary was an employee of Wentworth, he was offered a position with another company. Wentworth's vice president and general manager, Stevens, convinced Geary to stay with the company and offered him a raise. Geary accepted the raise and remained a Wentworth employee. Geary further alleged, however, that Stevens promised him a promotion. When Wentworth did not give him the promised position, Geary claimed that it breached the agreement that he allegedly had with Stevens.

On appeal, Geary claimed that the trial improperly instructed the jury on the authority of Stevens, the vice president and general manager, to bind the company to his alleged promises to Geary. The Connecticut Appellate Court disagreed. Because the jury concluded that Stevens did not promise Geary any promotion, the Court stated that it did not need to address this issue. Geary also argued that, if the jurors had been given an instruction on the doctrine of "partial performance," they could have found Wentworth "partially performed" a contract when it gave Geary the raise. The Appellate Court again disagreed. Partial performance is limited to cases where "essential matters" of the employment contract, such as duration, salary and benefits, are agreed upon. Because the jury found that no definite promise was made regarding Geary's future employment at Wentworth, a jury instruction on partial performance was not necessary.

Plan Amendment Deadline – 2001 or Later

The U.S. Internal Revenue Service has just issued an announcement reminding plan sponsors that they have until the last day of the plan year beginning in 2001 (for most employers, December 31, 2001) to amend their plan to comply with all current laws and regulations. This announcement, no. 2000-99, will be posted soon on the IRS website. These amendments, known as the "GUST" amendments, must be made and submitted to the IRS by that date in order to be able to use that deadline. However, in the announcement, the IRS indicated that, if an employer has adopted, or certifies an intention to adopt, a volume submitter, master or prototype plan, then those sponsors may have more time to adopt their amendments. Generally, sponsors of those types of plans have one year from the date that the IRS approves the volume submitter, master or prototype document.

DOL Issues New Claims Procedures/Rules

The U.S. Department of Labor has issued new regulations governing the time in which decisions must be made with respect to most health care plans. According to the press release, these regulations will greatly accelerate the deadlines for making decisions and apply to all health care plans governed by ERISA. In order to give employers, insurance companies and third party administrators time to comply with these rules, the regulation only applies to claims filed on or after January 1, 2002.

Generally, these rules provide a 15-day deadline for preservice utilization reviews with a 30-day review period thereafter. For urgent care decisions, the deadline is 72 hours after receipt of the claim. With respect to post-service claims, the deadline has been reduced to 30 days. These are significant accelerations of the current deadline rules.

The regulations also contain accelerated procedures for dealing with disability claims and general rules regarding the effect of state insurance laws that regulate claims procedures.

For more information, please contact us

Stephen W. Aronson	Lisa Gizzi	Peter J. Moser
860-275-8281	860-275-8244	617-557-5923

ROBINSON & COLE LLP
Boston - Hartford - Stamford - Greenwich - New York

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