



HR CORNER

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Alabama Legislature Set To Discuss Union-Related Constitutional Amendment

Republican representatives in the Alabama legislature have proposed a new amendment to the Alabama Constitution that would guarantee a secret ballot vote for employees seeking union representation. The proposed bill seeks to add the following language to the Alabama Constitution: "The right of individuals to vote by secret ballot is fundamental. Where state or federal law requires elections for public office or public votes for referenda, or designations or authorizations of employee representation, the right of individuals to vote by secret ballot shall be guaranteed." The House Constitution, Campaigns, and Elections committee provided a favorable report for the bill, and it has been sent for full debate in the House of Representatives. If successful in the legislature, the amendment would require statewide vote prior to implementation. Opponents of the bill believe that it is intended to impede union organization.

Employees Must Follow Notice Procedures to Obtain FMLA Protection

The Seventh Circuit Court of Appeals issued an employer-friendly ruling regarding an employee's request for leave under the Family Medical Leave Act (FMLA). Plaintiff experienced a family medical emergency (where his mother fell into a coma as a result of complications related to her diabetes), and he left work immediately to tend to her. Despite several calls from his supervisor on the day that he left work, plaintiff did not respond or otherwise contact his supervisor until the following morning. When he finally contacted the supervisor, he simply e-mailed his supervisor, stating he would need "the next couple days off" from work to help care for his mother. He did not provide any further information regarding his length of anticipated absence or any further details regarding his need for leave. His supervisor subsequently attempted to contact him (at least twelve times) by phone in an attempt to clarify the request and obtain some additional information regarding his need for leave time. Plaintiff did not respond, but he eventually returned to work nine days after his initial e-mail to his supervisor. His employer immediately fired him for failure to comply with the company's absenteeism policy, which stated that failure to report to work for two consecutive days without notification to a supervisor would result in termination.

Plaintiff filed a lawsuit alleging that the company interfered with his rights to take FMLA leave. The district court granted summary judgment to plaintiff's employer, which the Seventh Circuit Court of Appeals affirmed. In granting judgment to the employer, the court relied on notice requirements as stated in the FMLA regulations. Pursuant to those regulations, an employee is required to provide notice

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of the need for FMLA leave to his employer “as soon as practicable” where the need for such leave is not foreseeable. While the employee does not need to mention FMLA specifically, he must provide sufficient information to place the employer on notice of the potential need for leave and provide some details regarding the leave, including an estimation of the anticipated return date. Subsequently, the burden shifts to the employer to make additional inquiries as to whether the request qualifies for FMLA leave. Similarly, an employee has an obligation to respond to the employer’s requests for additional information.

Clearly, plaintiff-employee did not respond to the employer’s request for additional information, since the employee ignored twelve phone calls and did not respond to his supervisor until he returned to work nine days after initially taking leave. Because the employee failed to follow the regulatory requirements for notice, and because the employee failed to properly notify his supervisors regarding his absences within two days in accordance with standard company policy, the court upheld summary judgment for the employer.

While employers should always be cautious when terminating employees who may have FMLA rights, this case highlights the basic rule that employees are not insulated from all discipline simply because they may qualify for FMLA leave. Employees are still required to follow procedures and rules as prescribed by applicable FMLA regulations and by company policies, and companies may discipline employees, up to and including termination, where employees refuse to comply with such procedures.

The case is Righi v. SMC Corporation, 2011 WL 547364 (7th Cir. 2011).

FEES & BURGESS, P.C. - Calendar of Events

FEES & BURGESS, P.C., is proud to present, and participate in the presentation of, the following upcoming seminars/webinars:

April 14, 2011, Las Vegas, NV (In conjunction with IPC APEX EXPO)

Special Session: Contracting with the Customer: What the EMS Executive Needs to Know

This unique workshop, presented by Jeffrey L. Roth and Allen L. Anderson of Fees & Burgess, P.C., addresses the specific issues EMS companies face while contracting. Participants will be led through the contracting lifecycle between an electronic manufacturing services (EMS) provider and its customer, starting with the initial engagement and signing of a nondisclosure agreement, through the bid process and formal contract negotiation, to resolution of disputes under the applicable contract(s).

If you would like more information on these and additional seminars, please go to www.feesburgess.com.

Seminars

FEES & BURGESS, P.C., is proud to offer Seminars/Webinars on the following topics. If you would like more information on these and additional seminars, please contact us at

Seminars@feesburgess.com

A Recession Era Guide to Collecting on Construction Contracts

Conducting Effective Workplace Investigations

Construction Contracting

Contingent Employees and Labor Outsourcing

Diversity Training

Elements of an Electrical Manufacturing Services Contract

Employment Law Survival Training for Managers

Family Medical Leave Act

Hiring and Firing

Immigration Compliance

Incoterms ® 2010

Indemnity and Limitation of Liability Contract Clauses

International Contracting

Limiting Liability for Sexual Harassment

Managing Gender Identity Issues in the Workplace

Negotiation and Resolution of Federal Contract Claims

Privacy in the Workplace

Reducing Employee Benefits Costs for Alabama Businesses

Reducing Risk in Purchasing Terms and Conditions

Reduction in Workforce Strategies

Retaliation and Whistleblowers

Uniform Commercial Code: Primer to Articles 1, 2, and 2A

Violence in the Workplace

Wage and Hour Issues/Fair Labor Standards Act

Americans with Disabilities Act

Managing Employee Use of Internet and E-mail in the Workplace



SPEAKERS

FEES & BURGESS, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program, contact seminars@feesburgess.com.

NEWSLETTERS

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