



HR CORNER

FEES & BURGESS, P.C.



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Equal Employment Opportunity Commission Meeting Discusses Employer Use of Arrest and Conviction Records

The Equal Employment Opportunity Commission (EEOC) has continued its review of employer use of conviction and arrest records through a public meeting held on July 26, 2011. The EEOC previously issued written guidelines regarding an employer's use of such records in making hiring decisions, and the EEOC used this recent meeting to discuss current best practices in the area. The EEOC maintains concerns about the use of such records in hiring decisions as it may create a disparate impact on certain minority groups, and it may make rehabilitation considerably more difficult for individuals with criminal records.

Because of the EEOC's continued focus on the use of such arrest and conviction records, employers should review their current policies regarding use of these items. If an employer maintains strict rules about hiring individuals with such records, employers may unintentionally discriminate against certain minority groups. This is a hot topic for the EEOC, and one that is likely to receive strict scrutiny by the agency where charges of discrimination are filed by disappointed applicants. Ideally, employers should seek to individually consider the criminal history of specific applicants in light of the particular needs of the job at issue.

Consolidated Omnibus Budget Reconciliation Act Notification Requirements Discussed by Federal Appeals Court

The 11th Circuit Court of Appeals, which governs Alabama, recently reviewed an employee's lawsuit arising out of his former employer's failure to provide him notice of his rights to continue his employer-provided health insurance after termination of his employment under the Consolidated Omnibus Budget Reconciliation Act (COBRA). In accordance with COBRA, employers must provide notice to employees, who leave employment with the company, regarding their right to continue receiving health insurance benefits for a certain period of time after separation from the company. Failure by the employee to follow COBRA procedures and pay the applicable premiums in a timely manner will lead to cancellation of such medical insurance.

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Consolidated Omnibus Budget Reconciliation Act Notification Requirements

Discussed by Federal Appeals Court, *continued from page 1*

COBRA maintains strict deadlines by which employers must provide such notice to employees who leave the company. Specifically, an employer must notify their plan administrator of the employee's termination within 14 days, after which the administrator has 14 days to provide notice to the employee of their rights and obligations under COBRA. When an employer fails to provide this notice within the 44-day time period, the employee may sue to recover damages that result from termination of the health insurance coverage.

In this recent case, defendant-employer attempted to defend against the suit by stating that the plaintiff-employee did not file a lawsuit within the applicable statute of limitations. Under COBRA, the statute of limitations is one year; however, the parties in the suit disagreed as to when the limitations period began to run. The court determined that the period ran from the date that the employee knew, or should have known, that the employer failed to provide him the applicable notice. In the case at issue, plaintiff was terminated on March 19, 2007, and the 44-day time period in which to provide notice ended on May 2, 2007. Plaintiff did not discover that he failed to receive the applicable notice until he spoke with an attorney on March 20, 2008. The court held that the one-year period began to run on March 20, 2008, even though the deadline to notify was in May of 2007.

This opinion provides former employees with broad rights to sue under COBRA. As such, employers should take great care to ensure that employees receive COBRA notices in a timely manner. If they do not, liability for failure to provide such notice may extend for long periods of time, despite a relatively short limitations period. Note that COBRA allows for a penalty of up to \$100 per day from the date of the notification failure in addition to any other penalties that the court may deem appropriate.

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:

Service Contract Act

September 22, 2011

Jackson Conference Center Research Park; Huntsville, Alabama

At Solvability's 5th annual Rocket City GovCon Conference, Jeff Roth, of Fees & Burgess, P.C., will be presenting a special session on the Service Contract Act and Contract Disputes Act of 1978. This session will focus on Service Contract Act applicability; general requirements; wage and fringe benefit payment requirements; recordkeeping and notice requirements; and problems and penalties, as well as the federal government contracting disputes resolution process flowing from the Contract Disputes Act of 1978.

To register, or for more information, please click [here](#) to visit Solvability's website.

FEES & BURGESS, P.C. - Calendar of Events, *continued from page 2*

Post Federal Court Decision Update on the Alabama Immigration Law October 4, 2011

11:00 a.m. – 12:15 p.m.

On June 9, 2011, Alabama Governor Robert Bentley signed into law the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (HB 56). This Act is one of the most controversial ever enacted in the state and has been challenged by various religious and civil rights groups, as well as multiple foreign countries. On August 29, 2011, United States District Judge Sharon Blackburn entered an injunction temporarily stopping the Act from going into effect until September 29, 2011, in order to give the court more time to consider the lawsuits and their constitutional challenges of the Act. The memorandum and opinion of the court are due to be issued no later than September 28, 2011.

Join us for our one hour and 15 minute webinar to discuss the court's opinion, which provisions of the law survived legal challenges, and which provisions remain enjoined. Find out what practical impact Judge Blackburn's ruling will have on Alabama employers, municipalities, and other public institutions subject to the law.

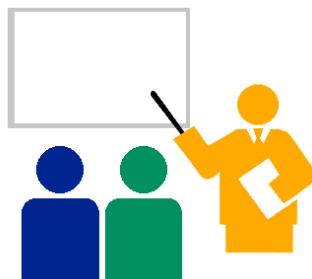
Employment Law Survival Training for Managers: 10 Key Areas of Legal and Practical Knowledge October 19, 2011

Fees & Burgess, P.C.

This day-long program, presented by Jeffrey Roth, Leah Green, and Ryan Blount, is a must for training managers and supervisors to recognize and deal with challenging employee issues that arise daily in the workplace. Attendees will learn key aspects of critical issues and how to work with existing company policies to address and resolve them.

The key areas covered in the program will include the employment relationship; company policies and handbooks; equal employment; medical issues in the workplace, and other key areas. This highly interactive program includes discussion of real-life scenarios encountered by supervisors, and how, and how not, to respond to each scenario or crisis. This program is designed to help managers and supervisors from small and large businesses recognize high risk situations and minimize, or eliminate, those risks.

To register, or for more information on these, and other upcoming events, please e-mail us at seminars@feesburgess.com, or visit us online at www.feesburgess.com.



EDUCATIONAL OPPORTUNITIES

During these rough economic times, it is important to get the most for your money. The lawyers of Fees & Burgess, P.C., combined, have many years experience working in various fields, as both in-house and private counsel, representing a diverse clientele. Our attorneys have extensive experience in many areas of law, including employment law; intellectual property; supply chain management; mergers and acquisitions; contract negotiation; dispute resolution; and various other fields.

This wide field of knowledge provides our attorneys with the insight and know-how to be able to provide quality training on various topics. Our programs can be customized to fit any business need while keeping the costs of our training competitive, without sacrificing quality.

Topics that Fees & Burgess, P.C., can provide training on include, but are not limited to:

A Recession Era Guide to Collecting on Construction Contracts	Managing Gender Identity Issues in the Workplace
Conducting Effective Workplace Investigations	Negotiation and Resolution of Federal Contract Claims
Construction Contracting	Privacy in the Workplace
Contingent Employees and Labor Outsourcing	Reducing Employee Benefits Costs for Alabama Businesses
Diversity Training	Reducing Risk in Purchasing Terms and Conditions
Elements of an Electrical Manufacturing Services Contract	Reduction in Workforce Strategies
Employment Law Survival Training for Managers	Retaliation and Whistleblowers
Family Medical Leave Act	Uniform Commercial Code: Primer to Articles 1, 2, and 2A
Hiring and Firing	Violence in the Workplace
Immigration Compliance	Wage and Hour Issues/Fair Labor Standards Act
Incoterms [®] 2010	Americans with Disabilities Act
Indemnity and Limitation of Liability Contract Clauses	Managing Employee Use of Internet and E-mail in the Workplace
International Contracting	Ethics, Business Conduct and Compliance in Government Contracting
Limiting Liability for Sexual Harassment	

For more information on these and other programs, please visit us online at www.feesburgess.com; contact us by e-mail at seminars@feesburgess.com; or by phone at (256) 536-0095.



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

FEES & BURGESS, P.C., also publishes *F&B Quarterly Bytes*, focusing on multiple practice areas; and *F&B SCM Memo*, focusing on the supply chain management industry. To receive any of these newsletters, please e-mail newsletters@feesburgess.com with your contact information.

To remove your name from our mailing list, please e-mail newsletters@feesburgess.com.

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“No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.”

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