



11th Circuit Discusses Arbitration in Collective Bargaining Agreements

In a recent holding, the Eleventh Circuit Court of Appeals (11th Circuit) held that an employer is not required to arbitrate a dispute pursuant to a collective bargaining agreement (CBA) with a union absent express language in the terms of the CBA.

Jim Walter Resources, Inc. (JWRI), brought suit against a union representing JWRI employees alleging the union's violations of the parties' CBA. The union argued that such dispute should be governed by arbitration and not by the court system. JWRI disagreed, arguing that there were no provisions in the CBA mandating arbitration for employer-union issues.

While the district court held in favor of the union, the 11th Circuit disagreed, and it overturned the district court's decision. The 11th Circuit analyzed various provisions of the CBA to determine whether any language either "explicitly [] or implicitly provide[d]" for arbitration. In Article XXVII, the CBA stated that disputes should be settled through the "machinery" of the contract and "without recourse to the courts."

However, this article did not specifically mention arbitration. A separate provision in Article XXIII of the CBA discussed grievance procedures, including arbitration, but this provision was expressly limited to issues between the employees and JWRI. As such, the 11th Circuit held that, because there was no specific provision requiring arbitration between the employer and the union, no such arbitration was required and the employer's chosen forum in the federal court system was appropriate.

This holding indicates the strict analysis to be provided in interpreting a CBA's alleged arbitration requirements. Despite language that encouraged arbitration, the 11th Circuit refused to require arbitration without express language related to JWRI.

Jim Walter Resources, Inc. v. United Mine Workers of America, 2011 WL 6032699 (11th Cir. 2011)

National Labor Relations Board Poster Deadline Postponed

On August 30, 2011, the National Labor Relations Board (NLRB) published its final rule regarding a required posting for employers that describes employees' rights under the National Labor Relations Act (NLRA). While the rule was originally scheduled to become effective in November of 2011, the effective date has been postponed until April 30, 2012. The NLRB requires that the poster be sized 11X17 inches, and it must be posted in a "conspicuous" location. If a significant portion of an employer's workforce, defined as more than 20%, "is not proficient in English and speaks a language other than English," the employer must post the poster in the employees' language. (The NLRB has translated posters available on its website.)

The new poster, including various translations of the poster, is available here: <https://www.nlrb.gov/poster>.

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:

2012 FMLA Master Class

Date: January 25, 2012

Location: Birmingham Marriott; Birmingham, Alabama

This all-day event, scheduled for January 25, 2012, at the Birmingham Marriott in Birmingham, Alabama, is sponsored by M. Lee Smith Publishing and will be presented by Jeffrey Roth, Allen Anderson, and Leah Green of Fees & Burgess, P.C. This program is designed to help human resource professionals become even more proficient in FMLA administration and learn the latest compliance tactics.

Several specific areas of discussion will be covered, including recent FMLA developments; serious health conditions; collecting medical information; military family leave; meeting notification deadlines, curbing abuse, and preventing claims; advanced FMLA issues; coordinating FMLA with ADA, worker's compensation, and state family leave laws; and what may be happening next.

Registration for the event will begin at 7:30 a.m. and will include a continental breakfast. The program will begin at 8:30 a.m. and end at 4:30 p.m.

This program has been approved for 6.25 (General) recertification credit hours toward PHR, SPHR, and GPHR recertification through the HR Certification Institute. This program has also been approved for 6.25 hours of CLE.

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

An Introduction to E-Verify for Alabama Employers

When: February 8, 2012

Where: Fees & Burgess, P.C., and Webinar - Huntsville, Alabama

Under Alabama's new immigration law, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (HB 56), all employers in Alabama that have contracts with or receive grants or incentives from Alabama state, county, or city governments or agencies that are located in the state of Alabama will have to enroll in the federal government's E-Verify program no later than January 1, 2012.

All other employers in the state of Alabama will have to enroll in E-Verify no later than April 1, 2012.

Join us for a lunch and learn, either at our office or online, to discuss E-Verify, the federal and state requirements for using E-Verify, and the rules and responsibility for using E-Verify. The cost of this lunch and learn will be \$49.00, and will include lunch from the Honey Baked Ham Company for attendees, and \$49.00 for each remote listening site.

Downsizing and Reductions in Force: Minimizing Risks and Defending Business Decisions

When: March 13, 2012 11:30-12:45

Where: Fees & Burgess, P.C. - Huntsville, Alabama

It is never too late to prepare for and plan a strategy for reduction of risk in a downsizing environment. Even if your company has suffered significant reductions in force in the current economic downturn, start planning now to do it right the next time.

Join us for a lunch and learn, presented by Jeff Roth and Leah Green, to discuss downsizing and reductions in force, with a focus on:

- Proper downsizing decisions
- Employee selection
- Reviewing and defending decisions
- Areas of enhanced risk
- WARN Act requirements
- Pending legislation regarding employee entitlements
- Issues associated with reductions in hours worked
- Severance policies
- Releases
- Practical implementation

The cost for attendees will be \$49, including lunch from the Honey Baked Ham Company. Each attendee will also receive a matrix to assist in completing a WARN Act analysis and performing related calculations using the definitions provided in the statute.

To register, or 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

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Michael L. Fees

mfees@feesburgess.com

C. Gregory Burgess

gburgess@feesburgess.com

Allen L. Anderson

anderson@feesburgess.com

Jeffrey L. Roth

jroth@feesburgess.com

Stacy L. Moon

smoon@feesburgess.com

FEES & BURGESS, P.C.

213 Green Street

Huntsville, Alabama 35801

Telephone (256) 536-0095

Facsimile (256) 536-4440

www.feesburgess.com

Leah M. Green

lgreen@feesburgess.com

Ryan G. Blount

rblount@feesburgess.com

Lauren A. Smith

lsmith@feesburgess.com

Allison B. Chandler

achandler@feesburgess.com

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