



HR CORNER

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E-Verify Deadline April 1, 2012

In accordance with the highly publicized Alabama immigration law, H.B. 56, it will become mandatory for all Alabama employers to utilize the E-Verify system to check the employment eligibility of all new hires as of April 1, 2012. All Alabama employers should ensure that they are enrolled and prepared to begin verification checks as of that date, if you are not already doing so.

We have received many questions from smaller employers regarding the basic steps needed for compliance with this provision. For a step-by-step guide to implementing E-Verify, please visit our website [here](#).

Federal Appeals Court Allows Pre-Eligibility FMLA Claim

In a recent decision, the Eleventh Circuit Court of Appeals (11th Circuit) upheld a claim under the Family Medical Leave Act (FMLA) filed by an individual that was not eligible for FMLA leave at the time of the wrongdoing at issue in the matter.

Kathryn Pereda began employment with Brookdale Senior Living Communities in October of 2008. The following June, she notified Brookdale that she would need FMLA leave for the birth of her child, starting in November of 2009. After she provided Brookdale with this notice, Pereda alleged that Brookdale began to harass her and assign her unattainable performance goals. In addition, she alleged issues related to leave for doctor's visits and other mistreatment. Brookdale eventually terminated her in September of 2009. On the date of her termination, Pereda had only been employed with Brookdale for approximately 10 months. As such, she had not reached the 12-month eligibility requirement that would trigger her rights to FMLA leave.

Pereda subsequently filed suit against Brookdale alleging that Brookdale interfered with her FMLA rights, and that it retaliated against her for attempting to exercise those rights. Brookdale argued that, since Pereda was not eligible for FMLA at the time of her termination, the court should dismiss her claims. While the trial court agreed with Brookdale and dismissed Pereda's claims, on appeal, the 11th Circuit overturned the district court's decision and allowed Pereda's claims to proceed.

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The 11th Circuit cited the FMLA requirement to notify an employer in advance of the need for any foreseeable leave, such as leave for the birth of a child. Because Pereda was simply following proper FMLA procedures, it would be “illogical” and contrary to the intent of the FMLA to deny her protections under the statute while at the same time requiring her to expose her need for such leave. The Court also noted that if it denied her claims, it would create a loophole for employers to terminate individuals before they reached their eligibility date.

This case is a good reminder to employees regarding the breadth of FMLA protections. Even if an employee is not eligible for FMLA, yet, they may still be protected for attempts to exercise their rights under the law. While an employer could certainly deny FMLA leave if requested prior to their eligibility date, employers should be cautious not to take any adverse actions or otherwise interfere with the employee’s right to take FMLA once they become eligible.

Pereda v. Brookdale Senior Living Communities, Inc., 2012 WL 43271 (11th Cir. 2012)

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:

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; and 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 this 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.

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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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