



FENWICK & WEST LLP

Weekly Employment Brief

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Rainbow Coalition sends Minority Employment Survey to Silicon Valley Employers

As part of a corporate campaign in Silicon Valley, the Rainbow Coalition has purchased a share in many major Silicon Valley corporations and recently sent these companies a Survey of Minority Employment and Procurement. The survey requests detailed information about a company's use of minority and women-owned business services, hiring and promotion of minorities and women, and racial and gender composition of the board of directors. Ostensibly the data is being collected for a "Digital Inclusion" report that will "recognize achievements and identify areas of improvement for each company." Asked the consequence if a company does not return a completed survey, a Coalition representative responded that the fact will be well publicized.

Employer's Unauthorized Access of Employee's Private Website was Invasion of Privacy

In an interesting invasion of privacy case, *Konop v. Hawaiian Airlines, Inc.*, an airline pilot set up a personal web site to protest his employer's efforts to obtain concessions regarding wages and work rules from the union. He controlled access to the site by requiring visitors to use a password that he provided to co-workers but not to management. A company vice president allegedly obtained a password from another pilot and used this pilot's name to gain access to the site. The plaintiff was later suspended purportedly in retaliation for protesting the proposed labor concessions. The Ninth Circuit Court of Appeals held that the employer, by the actions of its officer, may have violated the employee's right of privacy, the federal wiretap statute, the Stored Communications

Act, and the Railway Labor Act, and remanded the matter for trial.

Followup: Union Election cancelled at Etown.com

The previously reported union election scheduled for January 12 at Etown.com was placed on indefinite hold because the union, a unit of the Communications Workers of America, filed an NLRB unfair labor practice charge alleging that management unlawfully interfered with the employees' right to organize by threatening closure of the company if the union succeeded. Although the union's motive for filing the charge was not expressed, normally unions do not file such charges to block an election unless the union believes that it will lose. In contrast to Etown, the International Brotherhood of Electrical Workers recently organized a small, five-employee collective bargaining unit of production and development technicians at OTVnet, a San Diego-based web business. It does not appear that OTVnet seriously challenged the organizing effort.

Union Membership Declines to Record Low

In a significant indicator of the continued downward trend for unions, the federal Bureau of Labor Statistics reported that union membership fell to a record low of 13.5% of the work force in 2000. This is the lowest level since data collection began in 1983. Unions' share of private sector workers fell to a record low of 9% from 9.5% the year before. The declines come despite unions having committed substantial efforts and resources into organizing.

New OSHA Ergonomic Standards take effect

On January 16, new OSHA ergonomic standards took effect that govern musculoskeletal disorder hazards that may result in injuries and illnesses such as carpal tunnel syndrome. The rule contains work restriction protection language that requires employers to provide injured employees with pay while recovering from a covered injury, either away from work or in a light-duty job, until the employee is able to return to work, a health care professional determines that an employee can never return to work, or 90 calendar days have passed.

Reminder to post Cal/OSHA Summary of Injuries

As a reminder to all California employers with 11 or more employees, (with certain exceptions) Cal/OSHA requires such employers to maintain a Log and Summary of Occupational Injuries and Illness (Cal/OSHA Form 200) and to annually post the Summary on February 1 and keep it posted until March 1, even if there were no injuries to record.

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