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Weekly Employment Brief

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Arbitration Agreements Can't Stop The EEOC

Arbitration agreements cannot stop the EEOC from suing employers for discrimination. According the U.S. Supreme Court in *EEOC v. Waffle House, Inc.,* private arbitration agreements do not prevent the Equal Opportunity Commission (EEOC), the federal agency charged with enforcing Title VII of the Civil Rights Act of 1964, from suing employers in court on behalf of employees otherwise bound by those arbitration agreements. The Court stated that despite the federal law's preference for arbitration, once a charge is filed with the EEOC, the commission "is in command of the process" and it is not bound by private arbitration agreements to which it was not a party. The EEOC has the authority to pursue money damage claims and other relief on behalf of the employee regardless of the forum that the employer and the employee have chosen to resolve their disputes.

Get Out Your Wallets to Pay Increased Minimum Wage

Employers, get out your wallets. As of January 2002, California's minimum wage jumped $0.50 from $6.25 to $6.75 per hour. The rise in minimum wage not only affects non-exempt employees, but also has an impact on salaried exempt employees because the minimum salary each month for most exempt executive, administrative and professional employees is two times the California minimum wage. Because of California's wage hike, the minimum salary level for exempt employees is now $2,340 per month.

Long Workweeks Can Be An Essential Function Of An Engineer's Job So As Not to Require Reduced Hours As An Accommodation

Long workweeks can be an essential function of an engineer's job, according to a Washington state court. Rejecting a former employee's request for reduced hours as an accommodation because of his disability, the court held that lengthy workweeks -- ranging from 60 hours to 80 hours -- are an essential part of a Microsoft systems engineer's job. Microsoft was able to demonstrate that the structure of the position does not lend itself to a regular, 40-hour week, and that the company was therefore not required to accommodate the former employee with reduced hours after he was diagnosed with Hepatitis C. Employers are nonetheless reminded that even if a requested accommodation is unreasonable, employers must still engage in an interactive process with disabled employees to try and find another alternative. Further, California's employers should take caution that this case was not decided under California more stringent disability law. Therefore, employers should not unduly rely on this case to justify a refusal to accommodate a disabled employee's request for reduced hours.

Less Bureaucracy?

The Office of Federal Contract Compliance Programs (OFCCP) appears ready to relieve covered federal contractors and subcontractors of some of its current burdensome affirmative action planning requirements. According to OFCCP's Director Charles James, the Labor Department will soon offer large federal contractors the opportunity to file Affirmative Action Plans reporting employment data along "functional" lines of managerial control, rather than for every one of the employer's distinct physical establishments. OFCCP is also evaluating its controversial pay Equal Opportunity Survey to determine whether, or in what form, the Survey should continue. Director James has further suggested that OFCCP is likely to conduct "slightly" fewer contract Compliance Reviews in FY 2002 than the over 4,000 Compliance Reviews the agency conducted in FY 2001.