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Weekly Employment Brief

January 28, 2002

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Unnecessary Military Joy Ride Still Protected Activity Under Uniformed Services Employment and Reemployment Rights Act

Is an unexcused absence for taking a joy ride on a hot air balloon protected activity? It is if the ride was related to military service. An employer is liable for terminating an individual's employment based on his or her participation in the uniformed services. In *Leisek v. Brightwood Corporation,* the 9th Circuit held that an employer was liable for terminating an employee based on unexcused absences arising from his participation in a recruiting and promotional hot air balloon tour for the National Guard. Even though the individual engaged in certain portions of the tour without orders from the National Guard, the Court found that the Uniformed Services Employment and Reemployment Rights Act of 1994 protected the employee because the company was unable to demonstrate that it would have terminated the individual's employment even if he had not been a guard member. Given today's political climate, employers should proceed with extreme caution when deciding to terminate service members.

Employer Saved By Workers' Compensation: California Court Holds Workers' Compensation To Off-Duty Employee

An off-duty employee rushes to handle an emergency on the shop floor and is injured in the attempt —Should she be allowed to sue in court? No, because the California workers' compensation statute covers injuries suffered by employees even if they occur during off-duty hours, provided that the injury occurs based on an action taken in furtherance of the employer's business. In *Wright v. Beverly Fabrics, Inc.,* an employee appeared at the store on her day off to sign a condolence card. During her time in the store, the employee noticed a shelf collapsing, at which time she and two on-duty employees positioned themselves to support the shelf and prevent damage to the goods or injury to the customers. The off-duty employee experienced pain down her back, and filed suit against the store alleging negligence. The California Court found that workers' compensation was the sole remedy because the employee was injured within the course of employment, even though the injury occurred outside normal working hours. This case demonstrates the practical nature of Workers' Compensation Insurance in providing employers with protection from workplace injuries.

Watch Your Minor Employees Or The State Will

Be careful when employing minors. The new administrator of the Labor Department's Wage and Hour Division has announced that she will continue to strictly monitor requirements concerning the employment of children. These requirements include, among other things, that companies utilize non-oppressive labor conditions, permit employees under 17 years of age to drive only during daylight hours, and prepare reports of certain injuries incurred to employees under 18 years of age in the course of certain business. The administrator's focus should remind employers that child laborers have a different set of applicable rules that employers must follow.

Supreme Court To Rule On Continuing Violation Doctrine

The Supreme Court recently heard arguments in *National Railroad Passenger Corp. v. Morgan,* regarding the application of the continuing violation doctrine to employment discrimination claims. Under this doctrine, an employee may file a charge for discrimination even if some of the allegations fall outside the statute of limitations. The employee may file this charge if the allegations continue through a time period within the statute of limitations. In *Morgan,* the employee faced continuous racial harassment from his supervisors, beginning almost immediately after his hiring and continuing through the filing of his charge with the EEOC. He filed internal complaints and met with his congressional representative, but did not file the EEOC charge until approximately five years after the start of the harassment, thus exceeding the 300-day time limitation. If the Supreme Court rules in favor of the employee, it will provide employees with a broader spectrum of time from which they may assert claims of discrimination. Stay tuned for the Court's ruling.