

Human Resources Report

HR executives are facing many challenges during this recession, including the potential for employment-related lawsuits.

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THE CURRENT ECONOMIC CLIMATE IS ASKING more of HR executives, with massive layoffs, wage/hiring freezes, salary reductions and steep declines in 401 (k) values. Given this situation, which is expected to continue in the near future, *COMMERCE* presents this special report on HR news/updates plus how law firms are advising their clients about staffing issues during these challenging times.

Question #1: *What is the latest news about HR rules, regulations or laws that should concern New Jersey businesses?*

Anderson Kill & Olick: The Lilly Ledbetter Fair Pay Act of 2009 creates substantial potential pay discrimination liability for New Jersey employers. It effectively overturns a Supreme Court decision that the 300-day statute of limitations for filing a federal pay discrimination claim began to run from the time of the initial pay decision, resulting in relatively few successful employee claims. Instead, each paycheck will now begin a new period for alleging unlawful pay disparity based upon sex, race, age, religion or disability. As a result, New Jersey employers face a geometric increase in potential liability for salary discrimination. (Bennett Pine, Chair of the firm's Employment & Labor Group)

Gibbons PC: There have been many substantive changes to the employment law landscape over the last 6 months and more are expected in the coming months. The Family and Medical Leave Act has been substantially revised with new and amended regulations. The

Americans with Disabilities Act Amendments Act of 2008 was signed into law on Sept. 25, 2008, and took effect Jan. 1, 2009. Employers need to be aware of these changes and they need to update all of their policies to be consistent with these changes. (Christine A. Amalfe, Esq., Chair of the Employment Law Department)

Jackson Lewis LLP: On the heels of a global economic downturn, federal legislation that makes it easier for employees to bring pay discrimination claims, revamped disability and leave laws, and heightened pressure from regulators will increase the need for employers to educate managers and human resources professionals about the organization's legal responsibilities. (Richard Schey, Esq., Partner)

McElroy Deutsch Mulvaney & Carpenter: The Ledbetter Act permits an employee to challenge compensation decisions made many years before, even though the employer no longer has the evidence to defend those claims. Also, retaliation claims have increased, i.e., where an employee claims retaliation for complaining about discrimination or engaging in whistleblower activities under CEPA. (Francis X. Dee, Esq., Partner)

Question #2: *What HR-related advice do you have for New Jersey companies or executives in 2009 and beyond?*

Cole Schotz Forman Leonard: The dire economic crisis in which we find ourselves may motivate already savvy employees to pursue claims against their employers. My advice to New Jersey employers in 2009 and

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beyond is to conduct a self-audit of all human resources policies and procedures. Considering the myriad of employee-friendly laws currently being passed and amended, including New Jersey's paid family leave law, the FMLA, ADA and COBRA, conducting a complete review of employment practices is necessary "insurance" for any employer. (Randi W. Kochman, Esq., Member)

Entwistle & Cappucci: Employers must exercise caution when cutting work schedules to avoid layoffs. Furloughs could cost the company more than they save by requiring retroactive overtime payments to exempt workers whose status has been inadvertently shifted to nonexempt. To avoid this and other minefields, employers must stay current on the law and consult with counsel early and often. (Alix R. Rubin, Esq., Partner, Employment Litigation and Counseling Group)

Littler Mendelson: Without mincing words, given the current political and economic state of affairs both at the federal level and in New Jersey, employers and executives must be prepared for a transition to a new work day. Due to the aggressive legislative initiatives of the 111th Congress and the Obama Administration (as well as New Jersey's ongoing commitment to maintain a very employee-friendly landscape), companies must become much more proactive in addressing workplace issues and compliance standards. Employers should: (1) focus on assessing wage/hour practices (i.e., conduct legal compliance audits regarding proper non-exempt versus exempt classifications, assess independent contractor status issues, and evaluate pay practices); (2) direct attention to ensuring compliance with the federal and state family and/or medical leave laws (including the new NJ paid leave standards and the new interpretations of federal FMLA); (3) commence training and awareness for human resources personnel and supervisors regarding such potentially dramatic legislation as the Employee Free Choice Act, family/medical leave expansion laws, and workforce reduction procedures; and (4) ensure compliance with the employment and benefits law impact of the American Recovery and Reinvestment Act (i.e., as relates to unemployment and COBRA). (Tedd Kochman, Shareholder)

McCarter & English: Master new developments in discrimination law, the FMLA, wage-hour litigation, the



Managing workforce issues cannot be properly addressed without advice from employment law experts who are up-to-date on the key issues.

Equal Pay Act, COBRA, and retaliation litigation. Pay close attention to the proposed Employee Free Choice Act and the need on short notice to be able to respond to significantly increased union organizing activity. Partner with experienced counsel. (Richard Voigt, Partner-Labor & Employment Law)

McElroy Deutsch Mulvaney & Carpenter: New Jersey employers should conduct routine, thorough audits of HR policies and procedures. As government agencies focus on class actions, the patterns and practices of employers face sharper scrutiny. No longer is it sufficient to avoid isolated incidents; policies and procedures must be not only lawful, but proactive. (Cora MacLean, Esq., Associate)

UNITEMP Temporary Personnel: Establish acceptable criteria for temporary positions and put it in writing. Give a copy to any temporary agencies that you work with and have the service send you the temps that meet your criteria. This will save the usual time required for resume reviews and interviews that should be reserved for fulltime hires. (Ted Kissel, CSP, TSC, CTS, CPC, President-CEO) ■