



Recent Developments In Employment Law

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U.S. SUPREME COURT RULES ON ENFORCEABILITY OF EMPLOYMENT ARBITRATION PROVISIONS

The United States Supreme Court ruled that employment agreements which provide that all employment disputes will be resolved by arbitration can be enforceable in a 5-4 decision in *Circuit City Stores, Inc. v. Adams* (March 21, 2001).

At the time he was hired, the employee signed an employment application which included a paragraph in which he agreed to settle all claims concerning his employment exclusively by arbitration. Two years later, he filed an employment discrimination suit against his employer. The employer sought to enforce the arbitration agreement and to have the employee's claims resolved by arbitration. The supreme court ruled that most employment agreements requiring arbitration are enforceable, except for agreements involving certain transportation workers.

This decision is consistent with the Michigan Court of Appeals' ruling in *Rembert v. Ryan's Family Steak Houses*. For more information, see our Spring 1999 issue, "Michigan Court of Appeals Rules That Employers May Contract with Employees to Arbitrate Statutory Civil Rights Claims."

Other court decisions have required that arbitration agreements meet minimum fairness requirements. The court in *Circuit City* was not asked to, and did not, provide any guidance on fairness requirements. The *Rembert* court explained that the following provisions were necessary (but would not necessarily be sufficient) to assure fairness: clear notice of waiver of a judicial forum; the right to counsel; reasonable

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discovery; a fair hearing; a neutral arbitrator; the right to appeal; and written opinions to facilitate appeal.

Now that *Circuit City* and *Rembert* establish the enforceability of arbitration agreements for employment claims, employers can decide whether to adopt them. Since the decision must be made in light of each employer's unique business requirements, we recommend that you contact legal counsel such as John Cashen of our Oakland County office, Kathleen Lieder of our Northern Michigan office, Karen Piper of our Detroit office, or Stephen Postema of our Ann Arbor office.

NEW REGULATIONS REDUCE THE MINIMUM REQUIRED DISTRIBUTIONS FROM PENSION PLANS AND IRA'S

Newly issued IRS regulations governing minimum required distributions at age 70-½ from tax qualified plans and IRAs substantially reduce the amount of required distributions to most individuals. The regulations are effective January 1, 2002, but according to the IRS, plans and individuals may use the new rules to calculate their distributions for 2001 at their option.

The regulations provide that minimum distributions are generally calculated using a new special table for life expectancy which takes into account only the age of the pension plan participant or IRA owner. The only exception to the use of this special table occurs when a participant or IRA owner names his or her spouse as death beneficiary and the spouse is younger by more than ten years. In that case the minimum distribution is calculated by using their joint life expectancy under the current practice which produces a smaller required distribution.

It can be generally expected that distributees who are subject to the exception will be required to take no greater distributions than are currently required, while every other

distributee's minimum distribution will be reduced substantially.

IRA owners may use the new rule in calculating their 2001 distributions regardless of a contrary provision in their IRA documents. Pension plans which wish to avail their participants of the new rules for 2001 must adopt a model amendment issued by the IRS.

Call Jim Buschmann of our Detroit office if you want a copy of the new life expectancy table or you are interested in making the model amendment to your pension plan.

IRS ISSUES REGULATIONS GOVERNING MID-YEAR CAFETERIA PLAN ELECTION CHANGES

The IRS has issued regulations governing permitted mid-year election changes by participants in cafeteria plans. These regulations establish the exclusive circumstances under which cafeteria plan administrators may permit participants to revoke an election and make a new election during a plan year.

Note that cafeteria plans need not permit any mid-year election changes. Consequently, employers who wish to provide participants in their cafeteria plans with the greatest latitude to change elections must revise their plan documents to incorporate all of the circumstances enumerated in the regulations.

The following is a description of the categories of circumstances which will permit mid-year changes to cafeteria plan elections:

- A. Special Enrollment Rights.** A participant may change a cafeteria plan election corresponding to an exercise of the special enrollment rights granted by "HIPPA," which requires that employee health plans provide special enrollment periods for employees and their dependents (i) who declined coverage

because they had COBRA coverage from another employer; (ii) who had regular coverage from another employer and that coverage terminated or that employer's contributions terminated; and (iii) who acquire new dependents through marriage, childbirth or adoption.

- B. Change In Status.** A participant may change cafeteria plan elections if the participant experiences the following "change in status events": 1) Marriage, death of spouse, divorce, legal separation, and annulment. 2) Events which change the number of dependents. 3) Certain events which change the employment status of the participant, spouse or dependents. 4) Events which cause a dependent to cease to be eligible for health benefits. 5) Change in place of residence. 6) If the cafeteria plan provides adoption assistance benefits, the commencement or termination of adoption proceedings. 7) An employee, spouse or dependent becomes entitled to COBRA benefits.

A cafeteria plan election may be changed if a "change in status event" results in a gain or loss of eligibility by the employee, or his or her spouse or dependents, in an employer provided benefit plan and the change in election must be consistent with the change in status event.

- C. Qualified Medical Child Support Orders.** An employee may change a cafeteria plan election to add coverage and contributions for a child if a valid order of a domestic relations court requires the employee to provide coverage under the employer's plan.
- D. Entitlement to Medicare or Medicaid.** If an employee, spouse or dependent becomes eligible for Medicare or

Medicaid, the employee may change a cafeteria plan election to reduce or eliminate health coverage for that individual, and conversely may elect or increase coverage for an individual who becomes ineligible after having been covered by Medicare or Medicaid.

- E. Cost or Coverage Changes.** Changes in cost or coverage of welfare plans justify a corresponding cafeteria plan election change, except for health care flexible spending account elections.

For a detailed description of the cost or coverage changes which will allow participants to make mid-year cafeteria plan election changes, please see Jim Buschmann's article on the "Newsletters and Articles" page of our web site at <http://www.bodmanlongley.com>.

GOOD NEWS! ERGONOMICS STANDARD RESCINDED

In our last issue, we alerted you to the OSHA Ergonomics Standard which was set to take effect on October 15, 2001. On March 20, President Bush signed a joint resolution of Congress which rescinded the Standard. The joint resolution of Congress requires that if new ergonomics regulations are proposed in the future, those regulations cannot be similar to the rescinded ones.

Labor Secretary Elaine Chao has stated that she is interested in a comprehensive approach to ergonomics which might involve issuing new regulations. So, there may be new ergonomics regulations some time in the future.

We will keep you posted.

NEW OFCCP REGULATIONS FOR AFFIRMATIVE ACTION PLANS

Executive Order 11246 requires that all federal government contractors develop a written affirmative action plan (AAP) with a

workforce analysis concerning minorities and women each year if they have at least 100 employees. If the contractor is a financial institution, an AAP must be developed once the contractor has 50 or more employees.

On November 13, 2000, new affirmative action plan regulations were published for Executive Order 11246. Contractors must comply with these new regulations as they develop their next annual AAP. These new regulations streamline several aspects of affirmative action plan requirements; however, the regulations also authorize the OFCCP to use the Equal Opportunity Survey as a new enforcement tool. This Survey not only imposes substantial reporting burdens on employers, but is also being used to select contractors for compliance reviews. 41 CFR 60-2.18.

While these new regulations provide some relief to employers by streamlining the narrative parts and by reducing the analysis from eight factors to two, the requirement that nearly half of all contractors must prepare and file an Equal Opportunity Survey each year creates a significant new burden.

**SAVE THE DATE – SCHEDULE
ANNOUNCED FOR ANNUAL
EMPLOYMENT LAW SEMINAR**

**Bodman, Longley & Dahling
LLP's Annual Employment Law Update
will be held this year on the following
dates:**

**Wednesday, October 3 – Dearborn
Thursday, October 4 – East Lansing
Friday, October 5 – Northern Michigan**

All persons on our employment law mailing list will receive invitations by mail. Later in the summer, updates and registration information will be available on our web site at www.bodmanlongley.com.

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We are distributing this RECENT DEVELOPMENTS IN EMPLOYMENT LAW to our clients and friends. This newsletter is intended to provide a concise overview of some recent legal developments which may affect employment practices. The matters discussed are intended to provide general information only and are not intended to provide legal advice. Specific action should be taken only after obtaining competent legal advice.

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