

REASON PREVAILS...

The. Best. Job. In. The. World. The Sheraton-Four Points Hotel chain has created a new position of “Chief Beer Officer” to head the chain’s beer program and write beer-related blogs for the hotel website. Qualifications included being at least age 21, loving beer, and “a thirst-hand [get it?] knowledge of this glorious libation.” The advertisement resulted in more than 6,000 applications from beer-lovers in 31 countries.

Employer need not hire candidate who turned up nose at job, court affirms. An African-American car salesman who was specifically recruited for a general manager position but rejected the proposed salary was not discriminated against when the company that owned the dealership failed to hire him, said the U.S. Court of Appeals for the Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota). A friend of the plaintiff had told the president of the company that the plaintiff was “offended” by the salary. The president, who in turn said he was “offended” by the plaintiff’s reaction, did not pursue the offer further. The court, affirming judgment for the company as a matter of law, noted that “it almost defies reason” that the plaintiff would have been recruited only so that he could be discriminated against.



AND REASON FLAILS...

Long-oppressed MSU Spartans, trust babies breathe sigh of relief. The city of Lansing, Michigan, which obviously has more than enough time on its hands, has enacted an ordinance prohibiting discrimination in employment based on “irrelevant characteristics,” defined as “any status or condition that is unrelated to a person’s ability to perform safely and competently specific duties of a particular job or profession or to qualify for promotion.” Among the stranger “irrelevant characteristics” listed in the ordinance are “student status” and “source of income.”

OK, now, who’s suing the parents? The parents of a 16-year-old girl have sued the Brunswick County, North Carolina, school system for failing to protect their daughter from a romance with a 40-year-old track coach. The school system responded that it monitored a “mentoring relationship” between the two but found no evidence of a romance until the coach resigned from his position and married the girl . . . whose parents (aka “the plaintiffs”) gave legal permission – albeit “reluctantly” – to their underage daughter to marry the coach.

“Profane and violent” held to depend on your point of view. An employee who had a “profane and violent outburst” at work that might have been due to her bipolar disorder was protected from discharge, according to the U.S. Court of Appeals for the Ninth Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and Northern Mariana Islands), which was applying the Washington State disability rights law. In the rest of the world, the disabling condition is protected but not misconduct that results from same.

This is a publication of Constangy, Brooks & Smith, LLC. The information contained in this newsletter is not intended to be, nor does it constitute, legal advice. The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience. No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. Certification as a Labor and Employment Specialist is not currently available in Tennessee.

ATLANTA, GA (404) 525-8622	ASHEVILLE, NC (828) 277-5137	AUSTIN, TX (512) 382-8800	BIRMINGHAM, AL (205) 252-9321	COLUMBIA, SC (803) 256-3200	FAIRFAX, VA (571) 522-6100	JACKSONVILLE, FL (904) 356-8900	KANSAS CITY, MO (816) 472-6400	LAKELAND, FL (863) 682-0916	MACON, GA (478) 750-8600	NASHVILLE, TN (615) 320-5200	TAMPA, FL (813) 223-7166	WINSTON-SALEM, NC (336) 721-1001
-------------------------------	---------------------------------	------------------------------	----------------------------------	--------------------------------	-------------------------------	------------------------------------	-----------------------------------	--------------------------------	-----------------------------	---------------------------------	-----------------------------	-------------------------------------

CONSTANGY, BROOKS & SMITH, LLC
 230 PEACHTREE STREET, NW SUITE 2400
 ATLANTA, GEORGIA 30303
 TELEPHONE: (404) 525-8622
 FACSIMILE: (404) 525-6955
 WWW.CONSTANGY.COM

THINK BIG, BUT START SMALL: Helpful Tips for Implementing a Workplace Diversity Initiative *Candice S. Wooten*

FALL 2007

Features:

- 1 Think Big, But Start Small
- 2 Got Diversity? Call Us!
- 2 Calling All In-House Counsel
- 3 When Diversity Initiatives Attack!
- 5 New Regulations Pave The Way For Employee Wellness Programs
- 7 Eeeeeek!!! Political Agenda for Employers Could Be a Nightmare in '08
- 7 Timberland Legal Department Wins Work-Life Award

Departments:

- 2 From the Editor's Desk
- 2 Quarterly Pulse
- 4 Getting To Know Us
- 5 Quarterly Quiz
- 8 Reason Prevails... And Reason Flails

In corporate board rooms and human resources departments across the country, employers are contemplating the benefits of creating and implementing various diversity initiatives in their workplaces. From diversity training to employee affinity groups, from Women's History Month celebrations to management and leadership training for diverse employees, programs are being rolled out by employers in response to employee and consumer demand, and pressure from competitors.

Although the surge in such programming speaks volumes about employers' increasing awareness, many programs are being implemented haphazardly and could ultimately create more problems than they address. How can an employer put into place successful diversity initiatives that meet the needs of the workforce and customers without running afoul of state and federal laws? Here are six simple-but-critical tips.

No. 1: Set goals. Really. Sad, but true. Before you can implement any diversity program, you must first decide why you want it in the first place. Are you interested in increasing cultural awareness in your workforce? Are you responding to a complaint of discrimination or harassment? Are you working to improve employee relations? Are you responding to customer demands? Are you simply hoping to improve company loyalty? First examine the motivation behind your push to implement diversity programming, and then set goals designed to accomplish those purposes. Those who fail to plan, plan to fail—make sure you don't doom your diversity initiative before it starts.

No. 2: Make those goals realistic. The phrase "shoot for the moon" is inspirational, but employers implementing diversity programs should keep at least one foot on the ground. For example, making employees more aware of cultural differences in

communication styles may be a very achievable and laudable goal. Eliminating all racist and sexist attitudes in the workplace after two workshops . . . laudable, but probably not achievable.

Realistic goals allow an employer to reasonably assess its programming needs, marshal its resources, and create programs and initiatives that address the needs of the workplace. Perhaps more importantly, a little realism prevents employees from becoming disillusioned because the employer failed to achieve its lofty goals.

No. 3: Know your audience. Diversity programs are not "one size fits all," and must be tailored to fit the needs of a particular group of employees. If they don't, they will be ineffective. As part of goal setting, an employer should take a look at its workforce, and understand the "audience" for its workplace diversity initiative. Catholic employees may not respond favorably to a pig pickin' on a Friday in Lent, and Jewish employees may not respond favorably to a pig pickin' at all. Employers have to tailor their diversity programs to their audiences so that they will reach as many employees as possible with the message of diversity and inclusion.

No. 4: Diversity is for everyone, not just the "diverse." Oftentimes, in our haste to address an issue of concern to our employees, we fail to assess how the proposed diversity initiative will be received by those outside the "target" audience. Diversity programs should be about education and unification – not alienation. If you're celebrating Black History Month, for example, you should examine ways to give all of your employees a chance to participate. If you have an affinity group dedicated to issues of a particular group, you will have to plan how to allow the group members to have free and frank discussion while leaving membership open to all employees. It's impossible

(continued on page 3)

from the
**EDITOR'S
DESK**

"100% RECOVERED" MAY MEAN 100% TROUBLE

Some employers require that employees be "100 percent recovered" as a condition to returning to work after a disability leave or workers' compensation injury.

A federal judge in Pittsburgh recently certified a nationwide class of more than 36,000 employees in a lawsuit alleging that such a policy (in this case, allegedly, an unwritten one) violated the Americans with Disabilities Act.

What exactly is the problem with a "100% recovered" policy?

The ADA reasonable accommodation obligation requires that employers accommodate employees in the performance of "essential" and "marginal" job functions. If an essential function cannot be accommodated, then the employer may consider alternatives, such as transfer to a different job, a reduced work schedule, medical leave, or (ultimately, and only as a last resort) termination. If a "marginal" function cannot be accommodated, the employer is required to forgo it. (That is, the employer might have to assign the marginal function to another employee or dispense with it altogether.)

The problem with a "100% recovered" policy then becomes clear. Essentially, an employer with such a policy is refusing to make reasonable accommodations, which is a violation of the ADA.

So, employers who don't want to be the targets of ADA lawsuits should allow employees to return to work with restrictions, provided that the restrictions can be accommodated, do not prevent performance of an essential function, and do not affect the safety or health of the employee or co-workers. Even if the restriction might have an impact on safety or health (also known as a "direct threat"), the employer has the obligation to explore reasonable accommodations that would eliminate or reduce the direct threat.

The reasonable accommodation obligation is here to stay.

Robin Shea, Editor

**We'd love to hear
your feedback.**

**If you have any
comments or
suggestions, please
feel free to contact**

**Robin Shea at our
Winston-Salem office.**

rshea@constangy.com

ph) 336-721-1001

fx) 336-748-9112

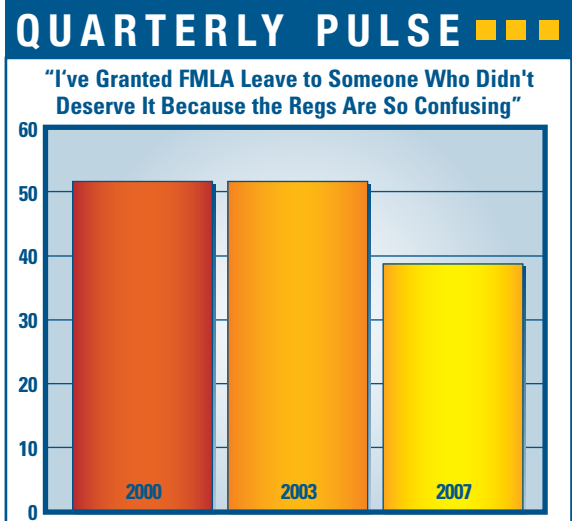
**to subscribe to this
newsletter, email
newsletters@constangy.
com**

GOT DIVERSITY? CALL US!

Constangy is a top provider of legal services to employers on the full range of employment-related issues, and has recently established a **Workplace Diversity Initiatives Practice Group** to provide both legal and practical guidance to employers on workplace diversity issues. This group will offer training and consultation to employers but will also keep you up to date on legal developments in this often volatile and rapidly changing area. For more information, contact **Randy Loftis** or **Candice Wooten** at 336-721-1001.

CALLING ALL IN-HOUSE COUNSEL!

The Association of Corporate Counsel will hold its annual meeting this October in Chicago. If you plan to attend, please join us for our fifth annual dinner for clients and other friends. Contact Victoria Whitaker for more information. vwhitaker@constangy.com or 404-230-6730.



SOURCE: "FMLA and Its Impact on Organizations," Society for Human Resources Management 2007

THINK BIG (continued from page 1)

to please everyone, and it's a bad idea to water down a diversity initiative, but it is wise to do what you can to avoid making some employees feel left out of your initiative.

No. 5: Just being "diverse" isn't enough.

Employers have been known to select someone "diverse" to relay the company's diversity message, with little attention paid to that individual's qualifications in the area of diversity programming and counseling. Although a "diverse" individual may have useful life experiences and perspectives, that is not enough. Nor is it wise to use someone who may be interested in diversity issues but who lacks "people" skills or effective communication skills. An employer should search for an individual who is current on diversity issues, who is an effective communicator and problem solver, who has a record of providing diversity counseling and guidance, and who understands the employer's business and workforce. And because diversity

issues are often sensitive and emotional in nature, it helps to have an individual who can laugh at herself, and can resolve issues in creative and innovative ways.

No. 6: Never forget that diversity is a process.

Many employers assume that implementing a few diversity programs will address every societal ill in their workplace. It will be less frustrating if you visualize planting a garden rather than waving a magician's wand. Go slowly, and keep in mind the unique needs of your organization and its workforce. As your diversity initiative develops, you will see a flowering in the quality of your programs, and will ultimately reap the harvest of a successful diversity program through an increasingly diverse and culturally aware workforce.

Candice S. Wooten (Winston-Salem, NC) practices in the areas of litigation prevention and defense, is a certified mediator, and is co-chair of Constangy's Workplace Diversity Initiatives Practice Group.

"Diversity programs should be about education and unification — not alienation."

WHEN DIVERSITY INITIATIVES ATTACK!

If you don't believe that a poorly-done diversity program can cause a raft of problems for an employer, here are a few true-life horror stories to prove it:

* During a diversity program, a supervisor told the group that she'd had to overcome an initial negative reaction to one of her employees, who was very overweight. *The overweight employee was in attendance.* She was later terminated, and used the statement as evidence of her supervisor's discriminatory intent.

* An employer required all employees to "affirm" the lifestyle of lesbian-gay-bisexual-transgendered employees as part of its diversity initiative. A Christian employee believed that the lifestyle was sinful, although he had agreed to treat his co-workers non-discriminatorily and with respect. He was fired for refusing to sign the affirmation. A federal court found that the employee had been a victim of religious discrimination.

* The hyper-confrontational manner of a "boot-camp style" diversity trainer alienated virtually all of the white males in his class.

Many courts have found that statements made during diversity training programs or in relation to diversity initiatives may be used against the employer. Recently, in *Sino v. McDonald's Corp.*, a federal court in Illinois allowed a discrimination case to go to trial based on the fact that the employer had affinity groups that were open only to African-American employees.

Skilled diversity programmers are aware of the fine line between effective diversity programs, on the one hand, and discrimination against the "non-diverse," on the other. They have the legal savvy, knowledge of the employer's non-discrimination and no-harassment policies, and decorum necessary to stay on the right side of the line. They're also respectful of all individuals and able to facilitate diversity training exercises without alienating or being hurtful toward anyone.

Carefully select the individuals designated to design your organization's diversity programming, as well as those tasked with disseminating your message. Cutting corners in this area could have drastic consequences in the long term.

CANDICE WOOTEN

GETTING TO KNOW US

FRED RICHARDSON (*Atlanta, GA, labor relations; employment litigation prevention and defense*) received both his bachelor's degree in American Studies, and his law degree, from the University of Alabama. Before joining Constangy, Fred was a Field Attorney for the National Labor Relations Board, and he now handles defense of unfair labor practice charges, union campaigns, contract negotiations, and arbitrations. Fred and his wife have three grown children and one grandchild.



WRIGHT MITCHELL (*Atlanta, GA, labor and employment litigation prevention and defense*) received his bachelor's degree from the University of South Carolina, where he played varsity football. He then went to Argentina to study Spanish before obtaining his law degree from Emory University. While in law school,

Wright was a member of the Moot Court Society and was President of the Phi Delta Phi legal fraternity. He is on the boards of the Atlanta Preservation Center and the Georgia Trust. He has also been appointed to Governor Sonny Perdue's Executive Fine Arts Committee and is a member of the Buckhead Heritage Society. Wright currently serves as a Special Assistant Attorney General to the State of Georgia, defending the state against claims brought under the Georgia Tort Claims Act. Wright enjoys running, reading, and playing squash. He and his wife, Antonia, have a son and a newborn daughter.



MARY DOHNER SMITH (*Nashville, TN, wage and hour; employment litigation prevention and defense*) received her bachelor's degree in political science and history from the University of Wisconsin-Whitewater and her law degree from Marquette University. Before attending law school, Mary worked

in Human Resources in both unionized and non-unionized

environments. Mary is a member of the National Association of Women Business Owners, the Middle Tennessee Society for Human Resources Management, the Stones River Society for Human Resources Management, and the Veterans of Foreign Wars Ladies' Auxiliary. Mary volunteers with the Employer Support of the Guard and Reserve, and with her church. When she is not practicing law, Mary enjoys boating, scuba diving, playing golf, reading, or traveling with her husband, Travis, and their one-year-old son.



TOBY DYKES (*Birmingham, AL, employment litigation prevention and defense*) received his bachelor's degree in English, with a minor in political science, from Bates College and his law degree, *cum laude*, from Cumberland School of Law, where he was a member of the Order of the Coif, the ABA National Trial Team,

and the American Journal of Trial Advocacy. Toby is an avid tennis player and a patron of the Birmingham Museum of Art. When he is not practicing law or engaged in community activities, Toby enjoys playing golf, reading, and spending time with his wife, Melanie, and their two children.



LORI MANS (*Jacksonville, FL, labor relations; employment litigation prevention and defense*) received two bachelors' degrees, *cum laude*, from the University of North Florida. She earned her law degree, *magna cum laude*, from the University of Florida and was a teaching assistant in Appellate Advocacy, and Legal

Research and Writing. Lori was also on the board of the *Florida Journal Of Law And Public Policy*, which awarded her the Barbara W. Makar Writing Award. Lori currently serves on the Board of the Jacksonville Chapters of the Federal Bar Association and the Society for Human Resource Management. Lori enjoys camping, running, reading, and Gator football.

NEW REGULATIONS PAVE THE WAY FOR EMPLOYEE WELLNESS PROGRAMS

M. Brian Magargle

If your group health plan offers a wellness program, or if your company is considering implementing a wellness program, you must be familiar with the recent Final Regulations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), which apply in plan years beginning on or after July 1, 2007 (or on January 1, 2008, for calendar-year plans). These Final Regulations replace the Proposed Regulations that were issued in 2001 and apply to all group health plans that have a wellness program component. The Final Regulations were issued by the United States Department of Labor, Employee Benefits Security Administration, on December 13, 2006.

The Wellness Craze

As most employers know by now, wellness programs are hot. Wal-Mart has decided to go nationwide with a "pilot" voluntary wellness program that began in Denver, Indianapolis, and Tampa, and received a warm reception from employees. Under the Wal-Mart program, employees can choose from several personal sustainability goals related to diet, smoking, and exercise. The program is expected to be available to all Wal-Mart employees by the end of this year. A recent survey of 464 employers by the International Foundation of Employee Benefit Plans found that 62 percent of employers offered some form of wellness program, and 15 percent intended to do so in the near future.

But the wellness craze is not just another fad. Physicians have long emphasized the superiority of prevention (or "health") over curing illness. And now there are numbers to back up that traditional wisdom. One employer, We Energies, figured that it could save between \$1.80 and \$2.38 in medical, drug, and workers' compensation costs for each dollar invested in its wellness program. And according to Employee Benefit News, third-party administrators for self-insured plans are discussing wellness programs with clients as a cost-reduction mechanism in addition to provider discounts. As an example, it was projected that each investment of \$500 in a maintenance tool for diabetic employees could save a plan sponsor up to \$5,000 in future expenses for a diabetic who does not regularly monitor his condition.

Too Good to Be True?

Another bit of traditional wisdom is that if something sounds too good to be true, it probably is. Indeed, there are some legal snares that employers implementing wellness programs need to be aware of. But they are not particularly burdensome, and the new HIPAA regulations provide some welcome clarification.

The Americans with Disabilities Act

The ADA sharply curtails an employer's right to require "medical examinations" of current employees, and any question that is calculated to elicit information that could reveal the existence of a disability constitutes a "medical examination." However, there is an exception for information gathered pursuant to a voluntary wellness program. So, as long as the program is truly voluntary, there should not be a problem under the ADA with gathering information necessary to administer the program.

From an ADA standpoint, employers should not coerce employees to join the wellness program, nor should they "pressure" employees to join, or use participation or non-participation as a basis for employment decisions. Any information gathered should be treated as confidential. In addition, it is also wise from an ADA standpoint to reward efforts but not results. For example, an employee who is morbidly obese but diligently works out every day to the best of her ability should be treated as favorably as her co-worker who runs marathons and has no health issues.

HIPAA

More frightening than the ADA is the specter of HIPAA privacy rules, but the new regulations dovetail nicely with the ADA restrictions. HIPAA contains several requirements applicable to group health plans, including privacy and security rules. Another aspect of HIPAA deals with nondiscrimination rules. Generally speaking, HIPAA prohibits a group health plan from discriminating against any individual based on a health-status-related factor.

The Final Regulations provide that a group health plan may not establish rules for eligibility or benefits



QUARTERLY QUIZ

Zelda begins missing a lot of work because she is taking care of her elderly mother. Her supervisor, Chlorine, fires Zelda for poor attendance. As Zelda is cleaning out her desk, Chlorine comes by to help her pack. Chlorine says, "Zelda, I just want you to know that this is not personal. You've been a very valued employee, and you're welcome to come back after your mother dies. Maybe it won't be too much longer. Anyway, we need you at work on a regular basis, and I'm sure you can understand our position. Stay in touch, m'kay?"

Zelda sues the company under the Americans with Disabilities Act, the Family and Medical Leave Act, and for sex discrimination under Title VII because family-unfriendly policies have a disparate impact on women, who bear primary caretaking responsibility in their households. Who wins?

(answer on page 6)

(continued on page 6)



ANSWER

(from Quarterly Quiz, page 5)

Probably not Zelda (unfortunately). Although Zelda has a most insensitive supervisor, she probably does not have a legal claim against the company. She has no ADA claim because there is no indication that her mother is disabled. Even if she were, the ADA would offer no protection to Zelda for missing work. The ADA “associational” protections do not require reasonable accommodation.

Zelda also doesn’t have an FMLA claim (assuming she’d met the 12 months/1250-hour requirement and had leave available) because there is no indication that her mother has a serious health condition. Merely being “elderly” is not a serious health condition. However, Zelda might be entitled to time off under the FMLA if her mother became sick or needed medical treatment.

The sex discrimination theory is creative but another non-starter. A “family-unfriendly” attendance policy may (or may not) affect female employees more than male employees, but it is generally not held to be discriminatory as long as the employer applies the policy uniformly.

How about intentional infliction of emotional distress based on Chlorine’s insensitive remarks? Most courts would say that her remarks, while rude and insensitive, are not so “extreme and outrageous” as to give rise to such a claim.

WELLNESS *(continued from page 5)*

based on a health factor, such as health status, medical condition, claims experience, medical history, disability, or similar issues. Simply put, any differential treatment of an individual based on a health factor is prohibited. This is generally consistent with ADA requirements.

Because wellness programs focus on the health and medical condition of certain employees, in theory they could violate the nondiscrimination rules of HIPAA. The Department of Labor, however, has explained that wellness programs will not violate the nondiscrimination rules if (1) they are not based on a health factor, or (2) they are based on a health factor but meet certain regulatory requirements.

Certain types of wellness programs are not based on a specific health factor and therefore are permissible under the Final Regulations:

- A program that reimburses all or part of the costs for membership in a fitness center.
- A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes.
- A program that encourages preventive care through the waiver of the copayment or deductible requirement under a group health plan for the costs of, for example, prenatal care or well-baby visits.
- A program that reimburses employees for the costs of smoking cessation programs without regard to whether the employee quits smoking.
- A program that provides a reward to employees for attending a monthly health education seminar.

These programs do not base eligibility for a reward on satisfying a health-related standard but merely require some form of voluntary participation or education about health issues.

Can You Ever Reward Results?

The quick answer is yes. A wellness program can reward good results (on a limited basis) if it satisfies five general requirements set forth in the new regulations:

- The reward for the wellness program must not exceed 20 percent of the cost of the applicable

level of coverage under the plan (employee-only, family, etc.).

- The program must be designed to promote health or prevent disease. In other words, the program must have a reasonable chance of improving the health of or preventing disease in participating individuals and must not be overly burdensome.
- The program must give individuals eligible for the program the opportunity to qualify for the reward under the program at least once a year; for example, during open enrollment.
- The reward under the program must be available to all similarly situated individuals. A reasonable alternative standard for obtaining the reward must be available to those with a health factor that makes it unreasonably difficult or medically inadvisable to satisfy or attempt to satisfy the otherwise applicable standard. For an alternative standard to be “reasonable,” it must be able to be satisfied without regard to any health factor.
- The plan must disclose in all plan materials describing the terms of the program the availability of the reasonable alternative standard for obtaining the reward.

Employers have great flexibility in designing what health issues a wellness program will target and what the reward will be. Common programs focus on lowering blood pressure, lowering body mass index, and smoking cessation. Rewards can range from reduced premiums to cash rewards or other prizes. As long as your wellness program can meet the five factors above, it can cover a number of issues and change periodically to meet the needs of your workforce.

Wellness programs present an excellent opportunity to promote the health and well-being of your employees as well as to help contain health coverage costs which increase every year. Whether the program is a simple educational tool or a more complex monitoring regimen, it will send a positive message to employees, management, shareholders, and the public about the value your organization places on its people.

Brian Magargle (Columbia, SC) practices in the areas of employee benefits and ERISA, and in employment litigation prevention and defense.

EEEEEEK!!! POLITICAL AGENDA FOR EMPLOYERS COULD BE A NIGHTMARE IN '08 *Robin E. Shea*

To get an idea of what employers may be facing in the event of a Democratic victory in 2008, it is interesting to look at some of the bills that are in the hopper or have already been introduced by Democrats and a few Republicans during the past few months. Most of the bills have already been defeated or are not expected to survive, but that could change dramatically after next year's elections.

The following is a mere foretaste:

ADA Restoration Act. This bill seeks to overrule Supreme Court decisions that had limited the definition of "disability" for ADA purposes. A subtle language shift arguably eliminates the requirement that the plaintiff be an "individual with a disability." *Sponsors: Sensenbrenner (R-Wis.) and Hoyer (D-Md.) in the House, and Harkin (D-Iowa) in the Senate.*

Family and Medical Leave Expansion Act. This legislation would provide at least six weeks' income replacement (per 12-month period) to new parents, lower the coverage threshold from 50 to 25 employees, and allow FMLA leave for domestic violence and children's academic activity. *Sponsor: Maloney (D-N.Y.).*

Family Leave Insurance Act. This legislation would create a federal insurance fund that would provide eight weeks' pay for employees who take time off for reasons that would be covered under the FMLA. *Sponsors: Dodd (D-Conn.) and Stevens (R-Alaska).*

Healthy Families Act. This would require employers to provide seven paid sick days for the employees or to allow the employees to care for sick family members. Part-time employees would receive pro-rated coverage. The bill broadly defines a family member as anyone "whose close association with the employee is the equivalent of a family relationship." *Sponsors: Kennedy (D-Mass.), DeLauro (D-Conn.).*

Honest Leadership and Accountability in Contracting Act. This bill would bar employers from federal contracts if they have a pattern of non-compliance with tax, labor and employment, environmental, antitrust, and consumer protection laws. *Sponsor: Dorgan (D-N.D.).*

Safe Nursing and Patient Care Act. This bill would prohibit health care employers from requiring nurses to work overtime unless there is

a declared emergency and would impose penalties of up to \$10,000 per violation. *Sponsors: Kennedy (D-Mass.), Kerry (D-Mass.).*

Employee Free Choice Act. This passed the House in 2007 but failed in the Senate; however, it is expected to rear its head again in 2008 or 2009. This bill would have required employers to recognize unions based on a majority of authorization cards without an election. *Sponsors: Miller (D-Ca.), Kennedy (D-Mass.).*

RESPECT Act. This bill would narrow the NLRB definition of "supervisor," requiring that the employee spend the majority of his time in a supervisory capacity. It would also remove the words "assign" and "responsibly to direct" from the definition. The effect would be to expand the number of employees who would be eligible to join unions. *Sponsors: Dodd (D-Conn.), Andrews (D-N.J.), and Young (R-Alask.).*

Fair Pay Act. This is a "comparable worth" bill. *Sponsor: Harkin (D-Iowa).*

Lilly Ledbetter Fair Pay Act. This bill, named for the unsuccessful plaintiff in *Ledbetter v. Goodyear Tire & Rubber Corp.*, would provide that the statute of limitations in pay discrimination cases under Title VII, the Age Discrimination in Employment Act, and the Americans with Disabilities and Rehabilitation acts, is refreshed each time an employee receives a paycheck that reflects a discriminatory decision, no matter how old that decision may be. *Sponsor: Miller (D-Ca.).*

Paycheck Fairness Act. This bill would limit defenses to claims brought under the Equal Pay Act; provide for compensatory and punitive damages; make it easier for claims to proceed as class actions; authorize the U.S. Department of Labor with developing guidelines for employers to use in setting compensation; make it a violation of the Fair Labor Standards Act to prohibit employees from discussing pay information; restore the EO Survey that was recently abandoned by the Office of Federal Contract Compliance Programs; and force the OFCCP to use discredited statistical methods. *Sponsors: Clinton (D-N.Y.), DeLauro (D-Conn.).*

Robin Shea (Winston-Salem, NC) practices in the areas of litigation prevention and defense, wage and hour, and affirmative action.

TIMBERLAND LEGAL DEPARTMENT WINS WORK-LIFE AWARD

Constangy is pleased to announce that the recipient of its second annual Corporate Counsel Department Work-Life Balance Award is the legal department of The Timberland Company. Timberland was a unanimous choice for the award, which is designed to recognize an outstanding in-house legal department that is committed to work-life balance. The selections are made by a panel of outside judges.

Timberland, based in Stratham, New Hampshire, makes and sells boots, shoes, clothes, and outdoor recreational gear. The company encourages its employees to be involved in their communities and has a strong commitment to preservation of the environment.

As the 2007 honoree, the Timberland legal department will receive a crystal trophy and a \$1,000 donation in its name to the nonprofit organization of its choice.

Congratulations, Timberland Legal Department!

