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NEUTRAL NEWS YOU CAN USE

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"The importance of employment to the everyday life and long-term health of the nation is too often given short shrift. A recent report, "The 2009 MetLife Study of the American Dream, found, not surprisingly, that 'work is the linch-pin holding the dream together' for most Americans." Bob Herbert, New York Times, 4/28/09

►**MEDIATION – How Companies Select Mediators and Arbitrators -** At the annual meeting of the ABA Dispute Resolution Section in-house counsel from Swiss Re, General Electric, and Schering-Plough agreed that they rely mostly on ad hoc referrals when selecting mediators. What qualities do they look for? Substantive knowledge of the applicable law, emotional intelligence, and the mediator's ability to administer the process. Overall, they expressed a preference for mediation over arbitration to control costs, achieve certainty, and avoid litigation.

►**ARBITRATION – U.S. Supreme Court in *14 Penn Plaza v. Pyett* holds clear and unmistakable collective bargaining agreement to arbitrate statutory employment discrimination claims is enforceable.** This strong endorsement of the arbitration process in a 5-4 opinion by Justice Thomas rejects "overt hostility" to the arbitration process as "litter," and describes as "misconceptions" any question regarding arbitrators' competence to decide factual and legal questions arising under employment discrimination statutes.

►**INVESTIGATIONS – U.S. Supreme Court in *Crawford v. Metropolitan Government of Nashville* strongly endorses "internal investigations" as employer tool in preventing and responding to employment discrimination complaints.** The Court held that an employee who answers questions in an internal investigation is protected against retaliation under Title VII. Justice Souter disagreed with those who said this interpretation of the "opposition" clause would deter employers from conducting internal investigations, stating: "The argument is unconvincing, for we think it underestimates the incentive to enquire that follows from our decisions in [*Burlington* and *Faragher*] . . . Employers are thus subject to a strong inducement to ferret out and put a stop to any discriminatory activity in their operations as a way to break the circuit of imputed liability."

►**TRAINING – EEOC issues new guidelines on Work/Family Balance & Caregiver Responsibilities,** http://www.eeoc.gov/policy/docs/caregiver-best-practices.html. Number one on the EEOC's policy statement is the need for employers to "Be aware of, and train managers about, the legal obligations that may impact decisions about treatment of workers with caregiving responsibilities." With the increase in labor and employment litigation expected in the coming months and years, basic training for managers with boots-on-the-ground remains a best practice even in difficult economic times.

Ruth Raisfeld provides alternative dispute resolution services including mediation, arbitration, workplace investigations and training. She can be contacted through her website at www.rdradr.com or at rdradr@optonline.net or 914.722.6006. This newsletter is for informational and promotional purposes and does not constitute legal advice or establish an attorney-client relationship. If you wish to unsubscribe to this newsletter, please contact Ruth. ATTORNEY ADVERTISING