

NEUTRAL NEWS YOU CAN USE

Fall 2009

In its editorial, “Reviving Civil Rights,” (9/2/09), The New York Times commented on the plans of the United States Department of Justice to ramp-up enforcement of civil rights legislation: ‘On employment discrimination, the division should once again start bringing the sort of high-impact cases that the Bush administration abandoned. . . . The Justice Department [’s] authority is more important than ever with federal stimulus money flowing. The division should use it to ensure that public schools, hospitals, transportation systems and other institutions do not discriminate.’ The increased enforcement efforts of the DOJ, DOL, EEOC, and OCR, together with the increasing diversity of the workplace, have already resulted in increased employment litigation of all kinds – making alternative dispute resolution an attractive option for employers and employees in these difficult economic times.

► **MEDIATION** – To provide more transparency and information in the mediator selection process, I have launched a video about my dispute resolution practice on my website, www.rdradr.com. I have received great feedback about the video, which is also posted on YouTube, both from counsel and their clients. Please share any insights you may have into what other information might be helpful in the mediator selection process.

► **ARBITRATION** – Post *Pyett* cases continue to enforce arbitration agreements, including those in employee handbooks, applications, and policies. See, for example, Judge Cote’s decision in *Rodriguez v. Four Seasons Hotel Ltd.*, 09 Civ. 2864 (7/10/09), in which she entered an order compelling arbitration of a multi-count discrimination claim under the Four Seasons Hotel’s document called “EmPact.” The EmPact booklet, distributed to all employees, included an internal dispute resolution procedure culminating in mediation and arbitration, “unless the employee has chosen to opt out.” Finding that both the employee and hotel general manager signed the booklet, and in the absence of evidence that the employee opted-out, the district court enforced the booklet as an agreement to arbitrate.

► **TRAINING & INVESTIGATIONS** – Given the economic stress on employers and employees in the now post-recessionary economy, there are conflicting reports as to whether workplace diversity is still an important aspect of the American business case. As reported in The New York Times Magazine, 9/13/09, “Some companies are finding their commitment to diversity and inclusion to be an expensive luxury – and have quietly cut back on that commitment. At the same time, other companies are redoubling their commitment, even at a time when expenditures in other areas have been cut back.” Even without significant budget for formal diversity programs, the importance of training managers and employees with respect to sensitivity to employment law and diversity issues and in the art and science of responding to possible violations of company diversity and EEO policies should not be underestimated. Recent changes in the FMLA, ADA, and the unsettled legal implications of use of social media sites at work, add new subjects that managers and employees need-to-know. For an interesting take on the importance of training, visit www.nyreport.com, link ► 635, “Train or Die (Just Wallow).”

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