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PART TWO

How To Protect Your Business From Employment-Related Claims

We received several questions concerning additional employment-related claims in follow-up to our prior report. Although the prior issue focused primarily on protecting your business from discrimination claims, there are other statutes employers must be aware of concerning employee rights. You should also consult your local counsel for specific state statutes addressing legal rights of your employees.

Employers should be familiar with the following statutes that may result in penalties, fines or litigation:

- **Employee must be eligible to work:** 8 U.S.C. §1324(a) places responsibility on employers for requiring proof of eligibility to work. Only a citizen or a non-citizen with authorization to work may be hired. The U.S. Department of Labor website provides information on the process and can be found at www.dol.gov/asp/programs/guide/aw.htm.
- **Improper basis for termination:** You may not fire an employee for the following:
 - Filing a bankruptcy petition
 - Filing a workers' compensation claim
 - The issuance of a wage garnishment against the employee
 - Participation in another individual's civil rights claim
 - Making a formal complaint under the Fair Labor Standards Act
- **USERRA, 38 U.S.C.A. §4316:** All employers are subject to the provisions of this Act, which provide rights to persons returning from service in the Armed Forces, including job reinstatement and a limited period under which they cannot be fired without cause.

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- **Employee compensation:** The employer must set the wage which must exceed the minimum wage. You should check with your local counsel concerning specific requirements of wages, pay periods and incentives. A periodic statement of earnings and deductions may be required for your jurisdiction. Further, deductions must be authorized by the employee in writing or required by law. Withheld taxes, wage garnishments and child support orders are examples of deductions authorized by law. Deductions authorized by the employee are generally the employee's share of health insurance premium.
- **Family Medical Leave Act, 29 U.S.C. §2615 (FMLA):** This Act imposes obligations on employers with at least 54 full-time employees in one location or within a 75-mile radius to provide leave for specified family and health purposes. You should consult your local counsel to determine whether you are an employer obligated to provide leave under the FMLA.
- **Workers' Compensation:** Employers are required to purchase and maintain workers' compensation insurance in the states in which they do business. If your business performs work in other states, you need to check with your insurance agent and your attorney to ensure that you have coverage in additional states. Further, to the extent you may utilize the services of independent contractors, consultation with your attorney is required to ensure that the employer is not exposed to a workers' compensation claim by an independent contractor.

These are just a few of the statutes that create rights for employees. If you have questions about these statutes and their application to your business, you should contact your legal counsel. We would be happy to answer questions that you may have to employment-related matters.

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The contents of this publication should not be construed as legal advice and should not be acted upon without consulting an attorney.

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