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FROM THE MANAGING DIRECTOR

Larry Bingham,
Managing Director, Co-founder in 1974

The single most valuable asset of most businesses is their people --- their employees. And yet, no two work places are exactly the same. They vary tremendously based on industry, corporate culture, personalities of managers and co-workers, physical environment and many other factors. Add to this complexity the ever growing and ever changing federal and state regulations governing relationships between employers and employees and their work places.

Good employment lawyers recognize these legal and business complexities and the individualized nature of each company in helping them develop strategies and policies for achieving legal compliance and developing a loyal and productive work force. Good employment lawyers not only know the law, they quickly learn the dynamics and goals of the particular business and work with its owners and managers in crafting creative and practical solutions for legally solving problems and achieving goals.

Because successfully managing the resources of its people is vital to the success of most companies and

because good employment lawyers can help companies attain that success, this newsletter features employment law issues and the attorneys in our Employment Law Practice Group. It focuses on recent developments in employment law, such as new federal overtime and COBRA rules, and offers tips for legal compliance. But even more importantly, it introduces you to some of our own vital assets, our employment law attorneys, including our newest shareholder, Sharon Coberly, who brings to our firm over 25 years of experience in employment law and civil litigation. It also introduces you to two other additions to our firm, our new associates, Lara Owens and Bryan Didier, who were both admitted to the Missouri Bar in October. Like the other members of our firm, all of these attorneys share our firm's commitment to helping our clients prevent and solve problems. We invite you to put our most valuable assets to work for you.



Sharon Coberly

JOINS OUR FIRM

It's with great excitement that we announce Sharon Coberly has joined our firm as a shareholder, bringing over 25 years of experience in employment law and civil litigation. As Rachel Baker, one of our firm's lead employment lawyers, recently said, "We are thrilled to have Sharon's experience at both the advice and trial level."

In the area of employment law, Sharon contributes her 25 years of experience counseling and representing companies on a broad range of employment-related issues. That experience includes advising employers on how to comply with the many federal workplace and employment laws and regulations, such as Title VII, Age Discrimination in Employment Act, the Equal Pay Act, the Family Medical Leave Act, the Americans with Disabilities Act, and the Fair Labor Standards Act (including Wage & Hour), as well as the corresponding state laws. It also includes extensive experience developing and updating personnel manuals; preparing employment agreements, noncompete agreements and separation agreements; performing self-audits; investigating potential employee misconduct; and providing compliance training.

In providing these employment law services, Sharon focuses on helping company managers avoid problems by establishing clear policies and agreements and by consistently applying and enforcing them. She believes a preventive style of managing employees not only saves substantial money in liability awards and litigation costs, it creates worker loyalty and a high morale that fosters quality work and productivity. In a recent interview, she said: "Managers who supervise through intimidation or who unfairly

or inconsistently enforce company rules, create a work environment that fosters low worker productivity and a disgruntlement that breeds high turnover and high claims. Managers who supervise employees in a consistently, positive and fair manner generate loyal employees who respect their employers and take pride in their work. Applying a positive approach doesn't mean you ignore bad behavior or reward bad work. It means you train employees on how to do their jobs well and you treat, instruct and discipline them in a way that doesn't demean them or take away their dignity."

"Applying a positive approach doesn't mean you ignore bad behavior or reward bad work. It means you train employees on how to do their jobs well and you treat, instruct and discipline them in a way that doesn't demean them or take away their dignity."

Despite the best of prevention efforts, employee claims and litigation cannot always be avoided. In representing employers, Sharon has an enviable record of success, both in court and in mediation and other alternative forms of dispute resolution. She has court room experience in Federal and State courts of more than 20 states, successfully enforcing noncompete agreements, defending employers against claims of discrimination based on age, disability, race, religion and gender, and otherwise representing clients in employment matters. Especially remarkable is her success in obtaining summary judgments

for clients involved in discrimination cases, thereby enabling them to avoid the risks and expenses associated with jury trials. In reflecting on this success, Sharon said, "The key to getting summary judgment is knowing the facts and law and deposing the plaintiff as early as possible as that is the most opportune time to obtain admissions that weaken the plaintiff's case. Two of my favorite questions to ask a plaintiff-employee in a deposition are: 'Looking back, what would you do differently?' and, 'What do you think is the real reason for your discharge?'"

Often an unprepared plaintiff will honestly admit he or she was terminated because he or she didn't work hard enough, violated work rules, was often late or careless, etc. An early plaintiff's deposition is also the best time to get the plaintiff-employee to admit that he or she has no evidence of discrimination. Whenever the plaintiff doesn't have knowledge of facts that might at least create a question of fact as to whether the employer discriminated against the employee, a summary judgment in favor of the employer is appropriate."

...continued on page 7

Does your employee handbook address these issues?

It may be time to update your company's employee handbook. Depending upon the size of your organization, your handbook should cover some or all of the following topics (in no particular order):

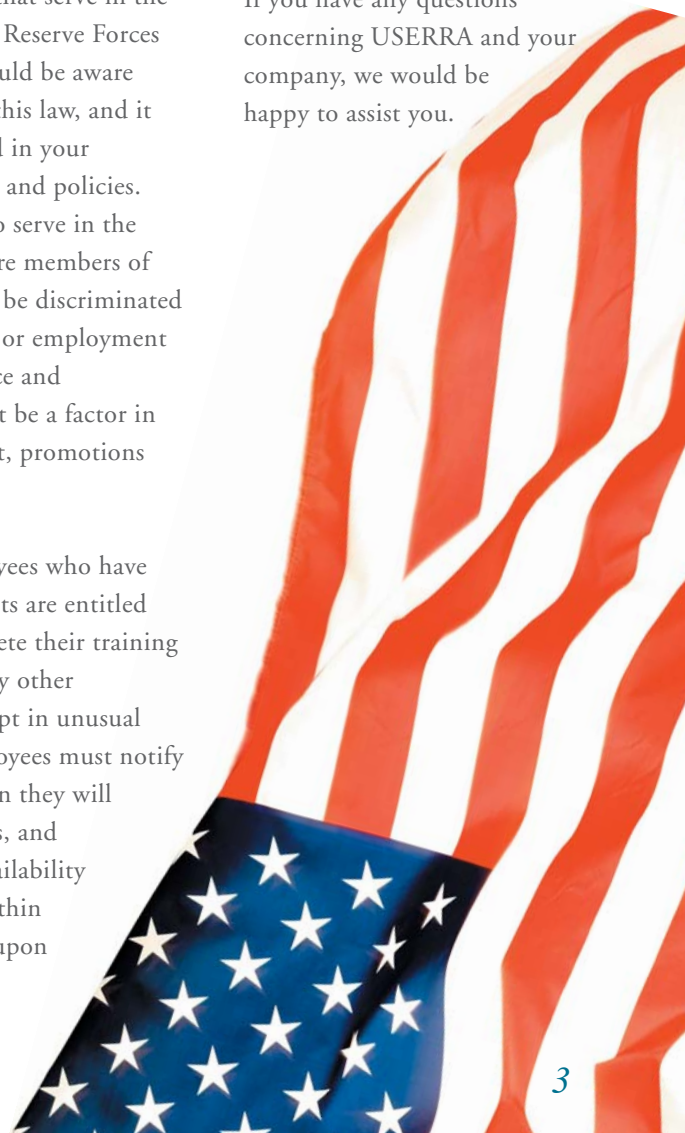
- At Will Disclaimer
- Verification of Employment Eligibility
- Equal Employment Opportunity Policy/ Anti-Harassment and Non-Retaliation Policy
- Harassment Policy and Complaint Procedure
- Family and Medical Leave Policy (Counting Method, Paid or Unpaid, Benefits Accrual)
- Leave Policies for:
 - Sick Leave
 - Holidays
 - Vacations
 - Educational Leave
 - Bereavement Leave
 - Community Service (Voting, Jury Duty)
 - Military Service (USERRA)
- Paid Time Off and Whether Paid or Forfeited at Termination
- Termination/Disciplinary Action
- Wage Deductions
- E-mail/Voice mail and Other Business Equipment Use
- Weapons Policy
- Direct Deposits
- Payroll Errors and Corrections Safe Harbor Policy
- Substance Abuse/Drug/Alcohol Testing
- Smoking
- Attendance
- Tardiness

The Military **AND YOU**

As our nation's military commitments continue to require an unprecedented reliance on members of the Reserve and National Guard, employers are increasingly faced with questions about their rights and those of their employees and potential employees. The Uniformed Services Employment and Reemployment Rights Act ("USERRA") provides certain guarantees for members of the Armed Services. Even if you currently do not have employees that serve in the National Guard or a Reserve Forces component, you should be aware of the provisions of this law, and it should be considered in your employment manual and policies. In brief, persons who serve in the National Guard or are members of the Reserve may not be discriminated against in the hiring or employment process. Their service and commitments cannot be a factor in denying employment, promotions or other benefits.

Furthermore, employees who have military commitments are entitled to time off to complete their training obligations and many other commitments. Except in unusual circumstances, employees must notify the employer of when they will be on military orders, and must report their availability to return to work within certain time frames upon completion of their current tour of duty.

Upon return from a period of training or service, employees are entitled to reinstatement at the position they would hold if their service with the employer had not been interrupted. In addition to these reemployment provisions, USERRA has provisions regarding seniority for benefits and pensions, as well as entitlement to continued availability of benefits while employees are in a military status. If you have any questions concerning USERRA and your company, we would be happy to assist you.



New federal overtime rules

COULD AFFECT YOUR COMPANY

For the first time in decades, the U.S. Department of Labor has significantly changed its rules governing overtime pay under the Federal Labor Standards Act (“FLSA”). The new federal rules went into effect on **August 23, 2004**, and modify the minimum wage and overtime pay exemptions available for certain “white collar” workers employed as executive, administrative, professional and outside sales employees and certain computer professionals. Contrary to popular belief, simply paying an employee a salary or giving the employee a managerial title does not automatically make the employee exempt from entitlement to overtime pay. In order for “white collar” executives, administrative employees and most professional employees to be exempt from the federal minimum wage and overtime rules, the employees must be paid a minimum salary and perform duties that meet the specific requirements of one of the exempt categories.

Because the penalties for noncompliance with the FLSA are severe and because the Department of Labor plans to increase its enforcement activities in this area, it is important for employers to understand the rule changes and the impact of the changes on their own wage and overtime obligations. So, here’s a summary of the key changes and our recommendations for assuring compliance.

The New Rules

- Raise the current minimum salary for the executive, administrative and professional exemptions to \$455 per week. So, no employees paid a salary of less than \$455 per week, or \$23,660 per year, will qualify as exempt.
- Create a new highly compensated employee exemption for employees who are: (a) paid on a salary or fee basis of at least \$455 per week; (b) receive total annual compensation of \$100,000 or more; and (c) perform non-manual work which includes some executive, administrative or professional function.
- Revise the “duties tests” for all of the white collar exemptions, and define “primary duty” for purposes of these exemptions as “the principal, main, major or most important duty that the employee performs” – based on all the facts in a particular case – not just time. Accordingly, an employee’s “primary duty” could conceivably take even less than 50% of the employee’s time.
- Clarify that these exemptions do not apply to any “blue collar” workers (i.e.–employees who perform work involving repetitive operations with their hands, physical skill and energy), regardless of their compensation.
- Clarify that deductions can be made from an exempt employee’s salary without losing the exemption only under these very limited circumstances:
 - (1) When an employee is absent for one or more full days for personal reasons other than sickness or accident, deductions may be made in full-day increments only;
 - (2) When an employee is absent for one or more full days due to sickness or disability, and has exhausted all of his or her accrued paid leave pursuant to the employer’s policy, deductions may be made in full-day increments only;
 - (3) Deductions may be made to offset any amounts received by the employee for jury duty, witness duty or military duty fees during the employee’s absence;
 - (4) Deductions may be made for penalties imposed in good faith for infractions of major safety rules;
 - (5) Deductions may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for violations of workplace conduct rules;
 - (6) Deductions may be made for unpaid leave under the Federal Family and Medical Leave Act, which applies to employers with at least 50 employees within a 75-mile radius; and
 - (7) When the employee works less than a full week during the first and/or last weeks of work, the employer may pay a proportionate amount of an employee’s full weekly salary.
- Limit the circumstances in which exemptions will be lost for improper deductions and create a “safe harbor” for good faith compliance efforts.

Meet our employment law

TEAM



Our Employment Law Practice Group includes: Karla Shepard, Andi McCarthy, Sharon Coberly, Lara Owens (standing). John Neyens, Rachel Baker (seated).

Plan for Compliance

In order to assure compliance with the FLSA, as modified by these new rules, we recommend that employers take the following steps:

- Review the current classifications of all employees who are not being paid overtime and reclassify them as necessary to conform with the new rules;
- Review current personnel policies and payroll practices and ensure they are modified as appropriate;
- Create detailed job descriptions that reflect actual duties and support employee classifications for purposes of FLSA;
- Create a policy for meeting the new safe harbor for improper deductions; and
- Consider a “preemptive” wage and hour compliance audit by legal counsel.

Please note, this article only briefly summarizes the new FLSA overtime rules. The rules are much more comprehensive and include, among other things, the new “duties tests” mentioned above. In addition, this article addresses only the FLSA; it does not cover applicable state wage and hour laws. Care must be taken to comply with all of these laws.

We can assist employers in understanding the various overtime laws. We can also help them implement a “safe harbor policy” for when good faith errors are made under the FLSA, perform preemptive audits and otherwise facilitate legal compliance. For more information, feel free to contact any one of the attorneys in our Employment Law Practice Group.

We advise businesses extensively on issues relating to the avoidance of employment-related litigation and administrative actions, including the development of policies and procedures that comply with the myriad of federal and state employment laws. We counsel clients – and, when necessary, engage in litigation – concerning Title VII, the Age Discrimination in Employment Act, the Americans with Disabilities Act, COBRA, the Fair Labor Standards Act, the Family and Medical Leave Act, Missouri’s service letter statute, the enforcement of non-competition agreements, workers’ compensation and a variety of other statutory and common law issues. We also offer customized presentations to management either summarizing applicable employment laws or addressing particular areas of concern.

Additionally, we have substantial experience advising businesses on the complex tax and ERISA regulations governing employee benefit plans. We routinely advise employers on structuring, interpreting, administering and

terminating qualified plans and other employee benefit plans, such as profit sharing plans, 401(k) plans, employee stock ownership plans, health plans, cafeteria plans, life insurance plans and tax-exempt welfare benefits trusts. We further represent executives and companies in negotiating, developing and administering executive compensation packages, including salary deferral agreements, supplemental executive retirement plans, company-owned and split dollar life insurance arrangements, rabbi trusts, and all types of incentive compensation and stock option plans.

In providing these services to companies (large and small), we strive to be considered important members of the client’s team and always knowledgeable, prompt, efficient, trustworthy and enjoyable to work with. That ideal similarly drives us in representing executives, employees and other individuals. Sounds a little corny, but then again, we probably are. We like what we do and would enjoy the opportunity to serve you.

New COBRA

NOTICE RULES

The U.S. Department of Labor recently issued new regulations that clarify the timing and content of notices required under the Consolidated Omnibus Budget Reconciliation Act, commonly referred to as COBRA. COBRA is the federal law enacted in 1986 which requires group health plans sponsored by employers with 20 or more employees to offer employees and their families the opportunity to temporarily extend health coverage (called “continuation coverage”) upon the occurrence of certain “qualifying events”, such as voluntary or involuntary job loss, that would otherwise cause plan coverage to end. The new COBRA rules are effective for plan years that begin after **November 26, 2004**. Accordingly, employers covered by COBRA likely will need to modify their COBRA procedures and forms to conform to the new rules described below prior to the end of the current plan year.

Timing of the Notices

COBRA requires every covered employer to give its employees at least two notices of the right to continuation coverage under its group health plan. The first notice is the general notice, which must be provided to each employee at the commencement of coverage under the group health plan. The new COBRA rules clarify that this general notice must be provided no later than: (i) 90 days after the employee or the employee’s spouse first becomes covered by the health plan; (ii) the date on which the health plan first becomes subject to the continuation coverage requirements; or (iii) the date on which the administrator of the group health plan is required to furnish an election notice to the employee or the employee’s spouse or dependent. The second notice is the “election” notice. According to the new rules, the election notice must be provided by the

employer no later than 30 days after the occurrence of the following qualifying events: the employee’s death, termination of employment, reduction in hours or Medicare entitlement, or the commencement of a proceeding in bankruptcy with respect to the employer.

Content of the Notices

In addition, the new COBRA rules change the content requirements for both the general notice and the election notice. They also contain model notices for both the general notice and the election notice. According to the new rules, and consistent with the model forms, the general notice now must be provided to both the employee and the employee’s spouse. However, separate notices to both the employee and the employee’s spouse are not required. A single notice addressed to both the employee and employee’s spouse satisfies this requirement if the group health plan’s most recent information is that the employee and the employee’s spouse reside at the same address. The election notice must contain an explanation that failure to elect COBRA continuation may adversely affect portability rights under the Health Insurance Portability and Accountability Act to obtain uninterrupted coverage from another group health plan.

Both notices also must contain a statement explaining the importance of keeping the group health plan administrator informed of current addresses and advising the plan participants that more complete information on COBRA rights is available from the group health plan administrator and the plan’s summary plan description. The new COBRA rules provide further

guidance and clarification on when the continuation period is extended due to Social Security disability, death or divorce. The COBRA notices are now required to provide an explanation of these extensions and to specify procedures by which employees are to notify the group health plan administrator in order to claim these extensions.

Other Procedural Requirements

The new COBRA rules also impose the following additional procedural requirements on group health plan administrators:

- If a plan receives a request for coverage from a person who is not eligible for COBRA, then the plan now must respond and explain the reason for the denial.
- If a plan is terminating COBRA coverage before the end of the maximum period, such as due to a failure to receive a premium payment, then the plan must now notify the employee “as soon as practicable following the administrator’s determination that coverage shall terminate”.

As a result of the new rules, employers covered by COBRA should review their notice forms, summary plan descriptions and procedures to determine whether they need to be updated. The compliant forms and policies must be implemented by the end of the current plan year. If you have any questions about how the new COBRA rules will impact your group health plan, or if you need new COBRA notice forms or the required revisions to your summary plan description, then please contact any member of the Seigfreid Bingham’s Employment Law Practice Group.

Preventing weapons in the workplace

The Missouri Concealed-Carry Act, which was enacted by the Missouri legislature in the Fall of 2003, is now in effect. All counties in Missouri other than St. Louis County are currently issuing permits. Under the Missouri Concealed-Carry Act, most permit holders are expressly allowed to carry firearms in their place of work. However, Missouri employers can prevent employees from carrying firearms on company property if specific affirmative steps are taken to notify permit holders of the employer's restrictions. These steps include the posting of signs as well as the creation and distribution of detailed anti-weapon policies, which specifically address the Missouri Concealed-Carry Act.

Kansas is currently one of only a handful of states that does not allow its residents to carry concealed firearms. In addition, Kansas does not recognize concealed weapons permits issued by other states or political subdivisions. However in 2004, Governor Kathleen Sebelius vetoed legislation that would have authorized Kansans to carry concealed handguns. The bill would have allowed permit holders to carry firearms at their place of employment unless restricted by the employer. Lawmakers are likely to try again in 2005. So Kansas employers should keep informed about changes in the law to ensure they need not take action to continue to prevent weapons in the workplace.

Two new associates

JOIN SBLSG

Lara Owens



Lara is practicing in the areas of general litigation and employment law. As one of the newest members of the firm's Employment Law Practice Group, Lara will concentrate on advising clients regarding employment law, as well as providing litigation services at both the trial and administrative agency levels. Lara looks forward to working in the employment law field in particular because *"it provides opportunities to make the workplace better for both the employer and the employee."*

Lara received her law degree in 2004 from the University of Missouri – Kansas City, graduating with distinction, and she graduated summa cum laude from the University of Missouri – Columbia with a Bachelor of Science degree in Environmental Design in 1998. Prior to attending law school, Lara worked as a corporate interior designer in Kansas City.

Bryan Didier



Bryan is practicing in the areas of general business law, health care law and tax law. In talking about the start of his legal career, Bryan said, *"I am excited about the opportunity to help large and small companies achieve their business goals in ways that minimize legal and business risks."*

Bryan received his J.D. from the University of Kansas in 2004, earning the C.C. Stewart Award for his ranking as the number one graduate in his class. Bryan also earned an M.S. in Management from Troy State University in 1992 following completion of his undergraduate education at the United States Naval Academy, where he earned a B.S. in English and a Minor in French.

Bryan was on active duty with the United States Navy from 1991 to 2001, serving as a helicopter pilot and as an Admiral's Aide. He completed two deployments to the Arabian Gulf and an assignment to Joint Task Force Noble Anvil during the Kosovo conflict. He is currently in the United States Naval Reserve and holds the rank of Lieutenant Commander.

Sharon Coberly JOINS THE FIRM ...continued from page 2

Sharon has also represented employees in claims against their past or present employers. This experience representing plaintiff-employees helps Sharon formulate winning defenses for her employer clients because it gives her unique insights into the strategies the attorneys for the plaintiff-employees are likely to use. Among her most notable verdicts representing plaintiff-employees was a \$330,000 jury verdict in favor of her male client for sexual harassment by his female boss. Sharon said, "That case was groundbreaking in many respects, not the least of which was a male victim of sexual harassment and an award of punitive damages against a municipality. It received national recognition and was my fifteen minutes of fame, with an interview on the national television show, Inside Edition, and articles in USA Today and People Magazine."

Sharon also has substantial civil litigation experience in areas other than employment, primarily in the areas of insurance coverage and insurer bad faith. She frequently represents insurers on coverage disputes, including claims of bad faith refusal to settle. An insurer bad faith claim is brought by an insured when the insured's insurance company had a chance to settle a case for an amount within the limits of the insured's policy, but failed to do so, causing the insured to be liable for the excess, uninsured amount. One such case involved defending a well-known insurer in a \$7.5 million claim by its insured who had been sued in another suit by a car accident victim after being rendered paraplegic. The paraple-



gic accident victim obtained a multi-million dollar judgment against the insured. The insured in turn contended that his insurer had refused to settle the paraplegic victim's case within his \$50,000 policy limits and, as a result, he was personally liable for the amount in excess of his policy limits. After raising a novel, but pivotal, legal argument in a pretrial motion, Sharon settled this case for less than the expected cost of trial. She also provides advice and training on implementing business practices that reduce the likelihood of such claims.

Sharon obtained her law degree from the University of Missouri at Kansas City. Prior to joining Seigfreid Bingham, she practiced at the Kansas City offices of two large, national law firms. For nine years in between her positions with those firms, she co-founded, managed and practiced employment law at Coberly & Brown, P.A. Having practiced at both national law firms and small, specialty firms, Sharon

believes Seigfreid Bingham creates just the right fit. "By joining Seigfreid Bingham, I can continue to provide my clients the same quality of service, but at prices that are more in line with the local Kansas City market. The ability to charge lower rates also gives me an opportunity to grow my practice. I also look forward to being a member of Seigfreid Bingham's general litigation team. I am already enjoying the camaraderie and collegial atmosphere at Seigfreid Bingham and am excited about our future."

Sharon is married to Steve Forsyth who currently runs an Internet book business and formerly owned Forsyth Travel Library. Steve and Sharon live "out South" and are proud of their "his and her" tractors. They enjoy traveling, especially to Santa Fe and abroad, and watching the lives of their five adult children unfold.



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