CALIFORNIA
LABOR & EMPLOYMENT LAW
UPDATE

October 2005

FEDERAL COURTS

Age Discrimination In Employment Act (ADEA)

Court Finds RIF Terminations Were Based On Legitimate Criteria, Not Age Discrimination. In 1999, Qualcomm conducted a company-wide reduction in force (RIF). At the time of the RIF, the company employed about 8,000 people. The company was divided into six business divisions, and each division was divided into various departments, numbering 700 departments in all. About 465 employees were terminated in the RIF. Of that number, 190 (41%) were age 40 or older. The plaintiffs, former employees terminated in the RIF, filed a lawsuit asserting a claim for age discrimination under the ADEA. The trial court found for Qualcomm because the plaintiffs challenged the RIF as a whole, without identifying a specific employment practice that was discriminatory. Plaintiffs moved for reconsideration arguing that they had found "new evidence" in discovery that the company used a "ranking spreadsheet" as the basis of the selection criteria for determining who would be terminated, which caused a disparate impact on the employees protected by the ADEA.

Affirming summary judgment, the appellate court held that the trial court correctly found for the company. First, the court rejected the plaintiffs' argument that the termination decisions were solely a matter of subjective discretion. The evidence showed that the decisions resulted from a combination of objective and subjective criteria. Thus, the plaintiffs were "required to isolate and identify the specific offending employment practice," which they were unable to do. Second, even assuming that the plaintiffs had established a *prima facie* case of disparate impact discrimination, Qualcomm still presented unrebutted evidence that its termination decisions were made to satisfy the differing business needs of the many departments within the company. Consequently, there was a reasonable factor other than age for the terminations. According to the court, the plaintiffs' response - that the termination decisions were not uniform or standardized - did not raise a triable issue of fact. *Durante v. Qualcomm, Inc.*, 2005 U.S. App. LEXIS 15978 (9th Cir. Aug. 1, 2005).

Arbitration

Circuit City's Bid For Arbitration Fails Again. In 2001, the trial court granted Circuit City's motion to compel plaintiff Mantor to arbitration. On appeal, the Ninth Circuit reversed and held the arbitration agreement was unenforceable. *See Circuit City Stores, Inc. v. Mantor,* 335 F.3d 1101, 1109 (9th Cir. 2003). Later in 2003, the Ninth Circuit issued its opinion in *EEOC v. Luce, Forward, Hamilton & Scripps,* 345 F.3d 742 (9th Cir. 2003) *(en banc)*, holding that the Federal Civil Rights Act did not preclude employers from requiring employees to arbitrate future claims as a condition of employment. Relying on *EEOC v. Luce*, Circuit City sought reconsideration of the decision that the arbitration agreement in Mantor was unenforceable. The trial court granted Circuit City's renewed petition to compel arbitration, and Mantor again appealed. The Ninth Circuit had recently considered and rejected this same argument by Circuit City in another case. *See Ingle v. Circuit City,* 408 F.3d 592, 595 (9th Cir. 2005). Thus, the Court reversed the trial court's decision in *Mantor II*, relying on its decision earlier in the year in *Ingle*. *Mantor v. Circuit City*, 417 F.3d 1060 (9th Cir. Aug 3, 2005).

ERISA

Money Damages For Past Harms Is Not An Available Remedy Under ERISA. Plaintiff worked as a special events manager for Hispanic Business, Inc. (HBI), a publisher of business magazines. Effective January 1999, as part of her benefits package, plaintiff was offered long-term disability (LTD) insurance. In July 2000, the (then) HR manager cancelled the policy without notifying the employees. On October 10, 2000, plaintiff was injured in an automobile accident. She attempted to make a claim for LTD benefits but they were unavailable because the policy had been cancelled. On October 18, 2000, the new HR manager sent out an email that the LTD policy had been cancelled inadvertently due to "communication errors."

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Plaintiff sued claiming that HBI breached its fiduciary duty under ERISA by failing to provide accurate information. She further stated that she had relied on HBI's LTD policy and had not purchased outside insurance. The trial court granted HBI summary judgment because no remedy was available. The Ninth Circuit agreed and affirmed. The court did, however, state that the broad fiduciary duties imposed by ERISA require a plan administrator to provide timely notification to employees when a benefit is terminated. Here, three months passed between the time the LTD policy was cancelled and the employees were notified, which, according to the court, was not timely notification. The court noted that timely notification of a cancellation may mean prior notice so that alternate insurance can be purchased.

Despite a finding of a breach, the court ruled that no remedy was available under ERISA's civil enforcement provisions. Because the plaintiff could not be reinstated to the LTD plan (since it was cancelled and never reinstated), her only remedy is a monetary recovery. While equitable claims that seek to prevent future losses are permissible under ERISA, those seeking money damages for past harms are not. Further, the company did not engage in egregious behavior such as hiding the fact of the cancellation or misrepresenting it. Indeed, when the new HR manager learned of the cancellation she emailed the employees immediately. *Peralta v. Hispanic Business, Inc.*, 419 F.3d 1064 (9th Cir. Aug. 18, 2005).

No Breach Of Board's Fiduciary Duty Where Divesting Stock Would Violate Insider Trading Rules. In mid-1998, McKesson and HBOC began merger talks. When an auditor discovered at least four accounting irregularities at HBOC, the merger was initially called off. It eventually went through in January 1999. In April, the McKesson and HBOC benefit plans merged and, shortly thereafter, the company announced that HBOC had engaged in illegal and improper accounting practices. The stock plummeted and the McKesson employee pension benefit plan lost $800 million.

Participants in McKesson Corporation's plan sued their employer's board of directors for alleged breaches of its fiduciary duties under ERISA, raising issues about what transpired prior to the merger and what occurred between the time of the merger and the announcement about the accounting practices. In essence, the employees blamed the board for the stock's decrease and argued that it breached its fiduciary duties to diversify, investigate the potential merger, invest the plan's assets wisely, and diversify after the stock started falling.

The trial court granted the defendants' motion to dismiss all counts of the complaint. As for the pre-merger issues, the court concluded that there was insufficient evidence to support the claims that the board breached its fiduciary duties. The court further ruled that it would have violated insider trading rules if the board had, in fact, divested the plan of company stock after the merger but before it announced the financial irregularities. According to the court, because ERISA does not preempt federal securities laws, a fiduciary cannot be liable for failing to disclose material, non-public information, or for failing to divest a plan of employer stock when doing so would mean engaging in insider trading. The court also dismissed the employees' claims that the board breached its duties of prudence and loyalty, even though the stock price dropped about 75% during the relevant time. *In re McKesson HBOC, Inc. ERISA Litigation*, 2005 U.S. Dist. LEXIS 16482 (N.D. Cal. July 29, 2005).

Wage & Hour

Dual Function Paramedics/Firefighters Riding In Paramedic Ambulances Are Not Exempt Under The Fire Protection Exemption. This case involved cross-trained or dual function paramedics/firefighters and the FLSA overtime exemption for employees engaged "in fire protection activities." Deciding an issue of first impression, the Ninth Circuit ruled that the fire protection exemption should not apply to these dual function paramedics. When responding to a fire in a paramedic ambulance, which happened only once or twice a year, the paramedics were not "responsible" for fire protection as contemplated by the applicable regulations. In support of its conclusion, the court noted that the evidence was undisputed that the dual function paramedics do not carry firefighting equipment or breathing apparatuses, a dispatcher does not know whether a single or dual function paramedic will be sent to a call, dual paramedic ambulances are not regularly dispatched to fire scenes (only to those where there appears to be a need for advanced life support medical services), dual function paramedics are not expected to wear fire protective gear, dual function paramedics are dispatched to a variety of incidents at which they are expected to perform only medical services, and, finally, there was no evidence that a dual function paramedic was ever ordered to actually perform fire suppression. *Cleveland v. City of Los Angeles*, 420 F.3d 981 (9th Cir. Aug. 22, 2005).

Commuting Time For IRS Employees To Temporary Work Site Is Not Compensable Where Site Is Within Official Duty Station. While negotiating a collective bargaining agreement, the union, NTEU, sought to include a provision to compensate IRS employees who were required to spend extra time commuting from home to a temporary work site within their official duty station. The Secretary of the Treasury argued that the provision violated a government-wide regulation defining "hours of work" issued by the Office of Personnel Management (OPM). Under the regulation, normal "home to work" travel is not compensable. The FLRA dismissed the petition, finding the provision conflicted with the regulation and was non-negotiable. The Ninth Circuit agreed, finding that a provision requiring the IRS to compensate employees for travel to a site within their duty station conflicts with the government-wide OPM regulation that defines hours of work. *Nat'l Treasury Employees Union v. Fed. Labor Relations Auth.*, 418 F.3d 1068 (9th Cir. Aug. 12, 2005)

NATIONAL LABOR RELATIONS BOARD (NLRB)

Internet Help-Desk Technicians Unlawfully Accreted To An Existing Unit Of Customer Service Representatives. Frontier provides telephone and internet service to residential and business customers throughout the country. It operates six "call centers" located throughout the country. Both internet help desk technicians (IHD techs) and customer service representatives (CSRs) work at the various call centers. The Rochester Telephone Workers Association (RTWA) has represented the CSRs. In 2000, Frontier's parent company sold certain assets but retained the IHD techs for itself. Consequently, Frontier needed to reestablish an IHD department. It decided to locate it at the Rochester call center, near the CSRs, but separated by a concrete fire wall. An initial start-up staff of 35-40 techs was hired in December 2000 and by January 2002, there were 120 IHD techs. The techs were interested in union representation, but wanted to be represented by the Communication Workers of America (CWA), not RTWA. Having collected authorization cards from 65% of the techs, CWA filed a representation petition with the Board on February 28, 2002. However, the day before the petition was filed, Frontier gave in to the RTWA's demand to include the techs in the existing unit of CSRs.

The Board found that the accretion of the IHD techs to the CSR unit was improper. Although the Board concluded that there were factors that favored accretion - such as geographic proximity, functionally integrated work in the call center, and centralized control of management and labor relations affecting all workers at the call center - the Board concluded that they were offset by factors that disfavor accretion. First, there was no employee interchange. In the 14-month period that the IHD techs were at the Rochester call center, there were no temporary transfers, no permanent transfers of IHD techs to CSR positions and only five permanent transfers of CSRs to IHD tech positions. Second, there is no common day-to-day supervision. The techs have their own supervisors and operate as a distinct department within the call center. Third, they have different terms and conditions of employment. Fourth, they are subject to different leave and benefit policies. Fifth, the compensation formulas for the two units are fundamentally different. And sixth, their skills and duties are different. Thus, the Board concluded that the accretion violated the National Labor Relations Act. *Frontier Tel. of Rochester, Inc.*, 344 N.L.R.B. No. 153 (July 29, 2005).

CALIFORNIA COURTS

Constitutional Law

Appointments And Promotions Of State Employees Cannot Be Based Solely On The Seniority Of The Eligible Candidates. The California Constitution requires that permanent appointments and promotions in state service be based solely on merit. Thus, the legislature may not approve collective bargaining agreements that require state employers to make appointments based on the seniority of the candidates who meet the eligibility requirements, including requisite ranking after a competitive exam in non-transfer cases, without allowing for comparative merit evaluations of the candidates. At issue were "post and bid" pilot programs whereby permanent appointments and promotion for post and bid positions were based on seniority in state service. Consideration of seniority may be appropriate but it may not be the only criteria. Thus, the court found that a state hiring and promotion process that made appointments based solely on seniority was unconstitutional. *California State Personnel Bd. v. California State Employees Ass'n, Local 1000*, 36 Cal. 4th 758 (2005).

FEHA

California Supreme Court Broadens Scope Of Retaliation Claims. Yanowitz was a regional sales manager for the Northern California and Pacific Northwest regions of L'Oreal, a cosmetics and fragrance company. Jack Wiswall, the division's GM who worked out of New York, visited California and directed Yanowitz to fire a dark-skinned female sales clerk because she was not sufficiently physically attractive. He advised the plaintiff to get "somebody hot" as a replacement sales clerk. Yanowitz ignored the order. On a return visit, when Wiswall discovered the clerk still employed, he again instructed plaintiff to hire a "young" and "very sexy" blonde. The plaintiff resisted and requested an "adequate justification" for a termination of the sales clerk, but Wiswall never gave one. Yanowitz never told Wiswall she thought his order was discriminatory, and never discussed the incident with anyone else in the company.

Starting in April 1998, plaintiff's direct supervisor, Richard Roderick, who reported directly to Wiswall, began soliciting negative information about the plaintiff from her subordinates. Yanowitz was openly criticized at meetings, Roderick and Wiswall had her travel and expense reports audited, and Roderick wrote several memoranda to HR documenting his concerns about her job performance. Plaintiff realized she was being set up for termination when, on July 16, 1998, Roderick wrote her a memorandum criticizing her promotional activities and questioning a business trip she had made to Hawaii. Plaintiff requested a meeting to discuss the memorandum. L'Oreal's HR Director set a meeting for July 22, and refused to postpone it despite Yanowitz's requests for additional time to prepare a defense. At the meeting, Yanowitz was not given an opportunity to respond to the memorandum, but only questioned by Roderick about her allegedly poor performance until she broke down into tears. She then took stress leave, but did not return to work.

Plaintiff filed claims for age, religion, and sex discrimination, as well as a claim for retaliation. The trial court summarily adjudicated the retaliation claim in favor of L'Oreal, holding that plaintiff had failed to protest or complain about discrimination, and thus had not engaged in a "protected activity." The court of appeal reversed, holding that Yanowitz's refusal to comply with her supervisor's order could be a "protected activity" if she reasonably believed the order was sexually discriminatory. The California Supreme Court affirmed.

The decision broadens employer liability for retaliation in three significant respects. First, the court held that the plaintiff had engaged in protected activity even though she had not reported or protested the offensive order, but rather simply advised that she needed "adequate justification" to fire the sales clerk; it was enough that the plaintiff reasonably believed that the order to fire the clerk was discriminatory, and that the employer, "in light of all the circumstances," was aware of that belief. Second, the court held that the plaintiff could have suffered an adverse employment action under "the totality of the circumstances" even if she suffered no formal job detriment. Third, the court permitted the plaintiff to rely on the continuing violation doctrine to include allegedly retaliatory acts that preceded the limitations period if those acts were related to acts that occurred within the limitations period.

A dissenting opinion sharply criticized the majority. Observing that the plaintiff had not reported Wiswall's edict to hire a "hot" replacement for the female sales clerk to anyone in the company and had not even expressly complained to Wiswall that his edict was discriminatory, the dissent opined that it made "no sense to extend whistle-blower protection to someone . . . who did not make any complaint, did not engage in any meaningful communication . . . and did nothing to . . . cause [the employer] to take voluntary steps to avoid or remedy a perceived FEHA violation."

Practice Note: The ruling in *Yanowitz* is another dramatic example of the California judiciary choosing to make life more congenial for plaintiffs. The ruling will encourage frivolous litigation by permitting employees to sue even when they have not overtly opposed acts suspected to be "discriminatory," and by permitting employees to claim they have suffered adverse employment action when in fact they have simply been criticized for performance deficiencies and have not suffered any economic harm. The ruling encourages employers to take steps along the following lines:

- Require employees to report promptly any acts they believe to be discriminatory (just as many employers now require employees to report harassment); this will make less believable claims of secret opposition.

- Require employees to report promptly any acts they believe to be retaliatory.

- Ensure that managers listen to, document, and respond to all employee concerns regarding personnel practices.

Finally, note that the court declined to discuss whether a gender-neutral requirement that an employee be physically or sexually attractive would by itself violate California law. *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal. 4th 1028 (2005).

Labor Law

County's Policy of Denying A Popular Benefits Package To Represented Employees Found Illegal. Even prior to union certification, the County of Los Angeles made it known that, based on a county ordinance, represented physicians would not be able to enroll in the most favorable health care benefit programs - the Flex and Megaflex plans. Following certification, the parties negotiated a contract but could not agree on the benefits issue. Because no agreement was reached, the County removed unionized physicians from the Flex and Megaflex programs and denied other unionized physicians admission to those programs. To address that specific issue, the Legislature passed *Gov't Code* § 3504.5, which prohibits the County from providing different health benefits to unionized employees than non-unionized employees, unless the union agrees. By its terms, the statute was to be applied retroactively to a date prior to the date on which the County terminated the unionized physicians from participation in the Flex and Megaflex programs. The County Board voted to reinstate the benefits two years after the removal. The Court of Appeal held that the county ordinance denying the Flex and Megaflex programs to represented employees violated the terms and intent of *Gov't Code* § 3504(c) and was illegal. The court ordered the County to reinstate all members to the Flex and Megaflex programs, and to pay those benefits retroactive to the date when it terminated them. *Union of Am. Physicians and Dentists v. Los Angeles County Employee Relations Comm'n*, 131 Cal. App. 4th 386 (2005).

Wage & Hour

The Industrial Welfare Commission's Definition Of "Employer" Cannot Be Used To Impose Personal Liability On Corporate Shareholders Or Agents (Officers And Directors) For An Employee's Claim For Unpaid Wages Under Labor Code § 1194. The plaintiff was employed by Earl Scheib, Inc. and Scheib of California, Inc. (collectively "Scheib") as both a shop manager and an assistant shop manager at several automobile painting shops owned by Scheib. The plaintiff alleged that Scheib, along with eight individuals who were either shareholders and/or agents of Scheib, authorized and participated in a policy and practice of requiring shop managers to work overtime hours without paying them overtime compensation, and that he and the other managers had been improperly classified as exempt employees in violation of *Labor Code* §§ 1194 and 510, as well as certain applicable state wage orders. The trial court dismissed the claims against the individual defendants. Affirming on appeal, the court agreed with the trial court that a *Labor Code* § 1194 claim cannot be asserted against individuals.

The California Supreme Court agreed with the trial and appellate courts that corporate shareholders and agents should not be held personally liable for a corporate defendant's failure to comply with the state's overtime compensation requirements. The plaintiff contended that the definition of "employer" that has been followed by the Industrial Welfare Commission since 1947 - that an employer includes any individual who "exercises control over the wages, hours, or working conditions of any person" - applied. The court refused to apply that definition because there was no clear legislative intent to abridge the common law rule that corporate agents, acting within the scope of their agency are not personally liable for the cor-

porate employer's failure to pay wages. Plaintiff also argued that corporate directors should be held liable for tortious conduct that they personally directed or participated in, citing *Frances T. v. Village Green Owners Association*, 42 Cal. 3d 490 (1986). The court rejected that argument, holding that a mere failure to comply with statutory requirements did not meet the rule set forth in the *Village Green* case.

A concurring opinion characterized the plaintiff's position as "not untenable," and proposed that "it would make sense for the Legislature to extend the reach of § 1194 to include individuals who are directly responsible for the nonpayment of overtime wages but who hide behind the corporate form. Permitting workers to recover unpaid overtime wages from corporate officers and agents in some limited circumstances is neither a novel nor an untested remedy." *Reynolds v. Bement*, 36 Cal. 4th 1075 (2005).

Summary Judgment Properly Denied Where Nurses Claim Short-Shift Differential Violated Overtime Law. Nurse-plaintiffs brought this action to dispute the defendant hospital's practice of paying a bonus of approximately $4 per hour for short shifts (less than 10 hours in one day). The plaintiffs argued that the practice was a subterfuge to evade overtime requirements by paying a lower rate for longer shifts. The hospital argued that the "short-shift differential" was an incentive to encourage nurses to take disfavored short shifts. The trial court denied the hospital's motion for summary judgment, and the court of appeal affirmed the order, finding that there were disputed issues as to "whether the short-shift differential is a subterfuge or artifice designed to evade the overtime laws." The court distinguished "short-shift differentials," which modify the pay rate solely on the basis of the amount of time worked, from "shift differentials," where an employee receives additional pay due to the nature of the work, such as working a nightshift or undesirable tasks.

In an unpublished portion of the opinion, the court also affirmed the trial court's denial of summary judgment on plaintiffs' Labor Code § 226 claims. Plaintiffs claimed that the hospital failed to provide an itemized statement showing gross wages earned and total hours worked. The hospital argued that the pay stubs, which showed "federal taxable wages" and hours paid, met the statutory requirement because the gross wages earned and total hours worked could be determined. The court held that the hospital's practice was inconsistent with the express provisions of the code. *Huntington Mem'l Hosp. v. Superior Court*, 131 Cal. App. 4th 893 (2005).

Workers' Compensation

Employer Cannot Maintain Fraud Claim Against Employee Believed To Have Filed A Fraudulent Workers' Compensation Claim. In *Leegin*, the defendant employee ("Diaz") submitted a workers' compensation claim that she was temporarily totally disabled in both arms. When the employer ("Leegin") discovered evidence that the workers' compensation claim was false, it initiated surveillance, which revealed the defendant engaging in activities inconsistent with her claim. With the workers' compensation claim still pending, Leegin sued Diaz for fraud, arguing that it had been injured by increased insurance premiums. Diaz brought an anti-SLAPP motion, arguing that the fraud claim interfered with her right to seek redress under the workers' compensation system. The trial court granted the motion, holding that Leegin's claim was barred by the exclusivity provisions of the workers' compensation system.

On appeal the court affirmed the trial court's ruling, but on different grounds. The court held that the exclusivity provisions of the workers' compensation system did not apply to claims by the employer against an employee, but only to claims by the employee against the employer. The court nonetheless held that Leegin could not defeat the anti-SLAPP motion because there was no probability that it would prevail on the merits of its fraud claim. The court reasoned that Leegin could not show that it had reasonable reliance or damages. Leegin argued that it had relied on Diaz' misrepresentations by forwarding her workers' compensation claims on to its insurer. The court rejected that argument, based on the fact that Leegin was legally required to forward injured employees' claims to its insurer both by statute and by contract, regardless of whether Leegin believed them. The court also rejected Leegin's claim that it was damaged by increased insurance premiums as premature because the workers' compensation claim was still pending.

The court opined that its ruling was further supported by public policy considerations: "Permitting an employer to bring a civil action for fraud against an employee while the workers' compensation proceeding is pending could have a chilling effect on an employee's exercise of the right to file a workers' compensation claim." It further noted that where an employer believes that an employee's workers' compensation claim lacks merit, it should make use of its statutory remedies within the workers' compensation framework. *Leegin Creative Leather Prods., Inc. v. Diaz*, 131 Cal. App. 4th 1517 (2005).

Non-Employment Cases Regarding Same-Sex Couples

Female Partner Ordered To Pay Child Support Under Equitable Estoppel Theory. *Elisa B.* arose out of a child support dispute between two lesbian partners who never registered as domestic partners. The women decided to have children, and each was artificially inseminated. One woman, Emily, gave birth to twins that the other woman, Elisa, agreed to support. They agreed that Emily would stay home with the children. Two years after the birth of the children the women separated and Emily sued for child support. The trial court sided with Emily and ordered that child support be paid by Elisa. The Court of Appeal ordered the trial court to vacate its order that Elisa support the children, holding that she was not a parent under the

definition of the Uniform Parenting Act. The California Supreme Court disagreed, holding that Elisa was obligated to support the twins because she supported the pregnancy, received the twins into her home, and held them out as her own. *Elisa B. v. Superior Court of El Dorado County*, 37 Cal. 4th 108 (2005).

Domestic Partners Are The Equivalent Of Spouses For The Unruh Act, Thus A Business That Extends Benefits To Spouses Must Extend The Benefits To Domestic Partners. Plaintiffs, a lesbian couple who were registered domestic partners, sued a country club, to which one of them belonged, alleging that the club violated the Unruh Civil Rights Act (the Unruh Act), by failing to extend to them the same benefits extended to married members. The trial court granted the club summary judgment on plaintiffs' marital status discrimination claim with very little discussion, and the Court of Appeal affirmed. The California Supreme Court reversed, holding that marital status claims are cognizable under the Unruh Act, but, for purposes of such claims, a distinction exists between registered domestic partners and other unmarried couples and individuals. The court explained that domestic partners registered under the California Domestic Partner Rights and Responsibilities Act of 2003 are the equivalent of spouses for the purposes of the Unruh Act. Thus, a business that extends benefits to spouses but denies them to registered domestic partners engages in impermissible marital status discrimination. The Court rejected plaintiffs' alternate argument that distinguishing between married and unmarried couples constituted marital discrimination, holding that such distinctions do not constitute marital status discrimination when they are supported by legitimate business reasons. *Koebke v. Bernardo Heights Country Club*, 36 Cal. 4th 824 (2005).

LEGISLATIVE UPDATES

Federal Developments

IRS Now Allows Elimination Of Optional Pension Forms Of Benefit. One problem that plagues many pension plans is the accumulation of "protected" forms of benefit. These are often unusual annuity forms - typically inherited from other plans that have been merged as part of historical acquisitions - that participants almost never elect but that have to be kept in the plan because ERISA generally prohibits the elimination of any form of payment for benefits that have already accrued. The IRS has recently released regulations that offer plan sponsors an opportunity to simplify their defined benefit pension plans. The regulations permit otherwise protected benefits to be eliminated in three circumstances: redundant benefits, non-core benefits, and low-value subsidies. The regulations generally apply to any amendment adopted after August 12, 2005.

See www.seyfarth.com for our Management Alert on these regulations.

California Developments

Safety Concerns Permit Crane Operator Certification Test To Be Given In English Only. A Los Angeles superior court has refused to issue a preliminary injunction over the crane operator certification test being given in English only. The judge determined that safety trumps any potential discrimination. *See* Cal-OSHA Rptr. Vol. 32, No. 26 (July 1, 2005).

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ATLANTA
One Peachtree Pointe
1545 Peachtree Street , N.E., Suite 700
Atlanta, Georgia 30309-2401
404-885-1500
404-892-7056 fax

BOSTON
Two Seaport Lane, Suite 300
Boston, Massachusetts 02210-2028
617-946-4800
617-946-4801 fax

CHICAGO
55 East Monroe Street, Suite 4200
Chicago, Illinois 60603-5803
312-346-8000
312-269-8869 fax

HOUSTON
700 Louisiana Street, Suite 3700
Houston, Texas 77002-2797
713-225-2300
713-225-2340 fax

LOS ANGELES
One Century Plaza
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
310-277-7200
310-201-5219 fax

NEW YORK
1270 Avenue of the Americas, Suite 2500
New York, New York 10020-1801
212-218-5500
212-218-5526 fax

SACRAMENTO
400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428
916-448-0159
916-558-4839 fax

SAN FRANCISCO
560 Mission Street, Suite 3100
San Francisco, California 94105
415-397-2823
415-397-8549 fax

WASHINGTON, D.C.
815 Connecticut Avenue, N.W., Suite 500
Washington, D.C. 20006-4004
202-463-2400
202-828-5393 fax

BRUSSELS
Boulevard du Souverain 280
1160 Brussels, Belgium
(32)(2) 647 60 25
(32)(2) 640 70 71 fax