

ITEMS OF INTEREST IN THIS EDITION:

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FEDERAL IMMIGRATION REFORM MAY BE DEAD, BUT THE COST FOR IMMIGRATION SERVICES JUST WENT WAY UP

Anthony H. Monioudis

From mid-May to early July, the news was dominated by discussion of the "Grand Compromise," the deal that was agreed to by leaders of the Republican and Democratic parties and heralded as a breakthrough that would lead to immigration reform. No sooner were these words uttered than people started lining up with complaints – it went too far; it did not go far enough; it created a pathway to citizenship; it promoted amnesty; it created a guest worker program; any guest worker program would be used to lower wages for American citizens, and so on and so on. It suffered a devastating setback on a crucial vote and was thought to be dead, only to be resurrected, redebated and defeated once again. Conventional wisdom suggests that no significant action will be taken – at the federal level – with regard to immigration issues until sometime after the election in 2008.

So, it would seem, we are left with the existing system for another year or two to work with. Only, it is not going to be exactly the same anymore. In all the hullabaloo with the Grand Compromise, little media notice was given to a significant fee increase published in the Federal Register. Think, on average, in the 80% range. Thus, while the existing rules for procuring nonimmigrant and immigrant visas remain the same, the cost to secure went up in a big way.

By way of example, the filing fee for the standard I-129 Petition utilized for H-1B and L visas, among others, is going from \$190 to \$320. In the immigrant visa arena, when sponsoring an employee for permanent residency a/k/a the Green Card, the filing fee for the I-140 form utilized jumped from \$195 to \$475. An application for employment authorization – I-765 – almost doubled from \$180 to \$340 and the filing fee to Adjust Status (form I-485), as in from nonimmigrant to immigrant, went from \$325 to a whopping \$930!

But wait, there is more! The Department of Labor new rules itself, effective July 16, 2007 with regard to Program Electronic Review Management costs. These new rules make clear that the employer is on the hook for all such expenses, including attorney's fees and expenses associated with advertising, and may not charge back the employee for such expenses. Stiff sanctions await any employer that does so upon a finding of fraud, intentional false statements or a pattern and practice of noncompliance. Lawyers are not immune either. In fact, they are placed in the crosshairs, running the risk of being barred from making such submissions in the future. As you might expect, this is making attorneys very nervous and desirous of dotting every "i" and crossing every "t." Oh, and by the way, agreements that employees have to refund or reimburse employers for the outlay of expenses if they leave the employer before a certain period of time are no longer enforceable.

Lessons to be learned by employers: 1) increase budgets for any nonimmigrant and/or immigrant visa petitions being planned; 2) watch out for poachers, employers anxious to woo your workers away after you have invested in the sponsorship and thus avoid this expense themselves; 3) evaluate those being considered for sponsorship for a true and lasting commitment to work for you; and 3) take an active role in selection of the attorneys to assist in the process. There is just too much risk, especially in the employer-sponsored immigrant visa area, to sit back and rely on the attorney the employee picked to handle the work.

Looking on the bright side, there is a silver lining to all of this. The fee increases do not go into effect until July 30, 2007, so there is still some time to finalize and file petitions and take advantage of the lower fees!

EEOC ISSUES CAREGIVER DISCRIMINATION GUIDANCE

Thomas R. Bagby

On May 27, 2007, the EEOC issued "Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities." In its guidance, the EEOC acknowledges that federal laws do not prohibit discrimination against caregivers per se but nonetheless cites various circumstances in which discrimination against caregivers could constitute unlawful discrimination.

EEOC's guidance states that the following may constitute unlawful discrimination against caregivers:

- different treatment of female caregivers compared to male caregivers;
- gender role stereotyping of working women;
- pregnancy discrimination;

- discrimination against male caregivers;
- discrimination against women of color;
- caregiver discrimination under the Americans with Disabilities Act ("ADA"); and
- hostile work environment harassment.

EEOC's guidance is intended to assist investigators, employees and employers in determining whether employment decisions relating to caregivers might constitute unlawful discrimination under Title VII or the ADA. The guidance offers numerous examples of situations related to caregivers and analyzes whether or not they might constitute unlawful discrimination.

FEWER UNION ELECTIONS, BUT UNION WIN RATE INCREASES FOR TENTH STRAIGHT YEAR

Thomas M. Winn, III

The Bureau of National Affairs has reported that the number of Union elections in 2006 decreased to 1,648, down from 2,142 in 2005. The number of eligible voters involved in those elections also decreased from 126,008 in 2005 to 113,083 in 2006. While these developments would appear to be positive news for management, Unions once again proved increasingly successful at the polls, a trend that management should find disturbing.

Unions won 61.5% of all representation elections in 2006, up slightly from 61.4% in 2005. Union success rates have exceeded 50% in each of the past ten years with a consistently improving trend. Unions also proved slightly more successful in decertification elections in 2006, as compared to 2005, winning 34% of the time, up from 33.7%.

Unions continue to have greater success at the polls in elections involving smaller units. In units of 1 to 49 employees, the union win rate was 66 %, compared to 52.7% in units with 50 to 99 employees, 50.4% in units of 100 to 499 employees, and 51.6% for units of 500 or more employees.

At the head of the organizing pack among the most active unions in 2006 was the International Brotherhood of Teamsters with 425 representation elections. The Teamsters were followed in the 2006 top ten by the Service Employees International Union (166 elections), the

International Association of Machinists (127 elections), the United Food and Commercial Workers (117 elections), the International Brotherhood of Electrical Workers (110 elections), the International Union of Operating Engineers (108 elections), the United Steelworkers (71 elections), the Laborers' International Union (58 elections), the United Auto Workers (42 elections), and the Communications Workers of America (30 elections).

SEIU was the most successful of the top 10 unions, winning 72.9% of the time, while the Machinists ranked second (70.1%), followed by IBEW (67.3%), IUOE (63.9%), and the Laborers (60.3%). Of the top 10 unions, SEIU also organized the most employees (15,130) followed by the Teamsters (8,146).

It should be remembered that NLRB statistics do not reflect the full extent of union organizing. Many unions organize largely through neutrality and card-check agreements and other methods. Moreover, the proposed Employee Free Choice Act (S.842, H.R. 1696) ("EFCA") would eliminate the traditional process altogether. Under the EFCA, the NLRB would be required to certify a union as bargaining representative where the union has signed authorization cards from 50% + 1 of employees. While the NLRB would be required to investigate the authenticity of the cards attained, the employees would lose their right to the democratic process of a secret ballot election.

GETTING TO KNOW . . .

Daniel C. Summerlin, III Principal, Labor & Employment Section



*Born: June 1
Birthplace: Chapel Hill, NC*

Dan received his BA (1994) from University of North Carolina at Chapel Hill and his JD (1997) from the College of William & Mary. Dan has been married to Shannon for 10 years and they have three daughters (Taylor 7, Callie 5 and Caroline 3)

LEU: What Inspired you to move back to Roanoke after Law School?

DCS: I was part of the summer associate program at Woods Rogers during my second summer of law school. During that summer, I looked at Roanoke in a completely different manner than when I was in high school. I also was able to work on some really interesting projects at the firm and knew that this would be a great place to practice law. Overall, I had a great summer experience and that made the decision really easy for me. My wife is from the bay area in California so I was not sure what she would think of Roanoke but she has loved it from the beginning.

LEU: How many Triathlons do you participate in annually and how do you train?

DCS: This year, my wife and I participated in 5 triathlons in Virginia and North Carolina. Between work and family the only remaining time for training is early in the morning so I spend most mornings before work either swimming, biking or running.

LEU: What is your favorite part of Labor & Employment Law?

DCS: Most L&E situations that we become involved in include a fascinating combination of people and situations. No two situations are ever alike and helping a client navigate through the various laws and regulations of each one is very satisfying.

LEU: Thanks, Dan. It's been fun "Getting to Know . . ." you!



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SAVE THE DATE!

26th Annual Labor & Employment Seminars:
Danville: November 15, 2007
Lynchburg: November 28, 2007
Roanoke: December 12, 2007

More information to follow.