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This ASAP updates the prior ASAP issued in February, 2005, relating the decision of the Pennsylvania Commonwealth Court prohibiting non-attorneys from appearing as representatives of corporate employers in unemployment compensation proceedings.

http://www.littler.com/nwsltr/asap_02_EC_Pennsylvania.html

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Pennsylvania Governor Rendell Signs Legislation Allowing Non-Attorneys to Represent Corporate Employers in Unemployment Compensation Proceedings

By: *John M. O'Donnell and William J. Leahy*

In February, 2005, the Pennsylvania Commonwealth Court issued a decision holding that corporations could not be represented by non-attorneys in administrative proceedings involving unemployment compensation claims. *Harkness v. Unemployment Compensation Board of Review*, No. 150 C.D. 2004 (Pa. Commw. Feb. 3, 2005). As a result of the *Harkness* decision, company employees could appear and testify at unemployment compensation hearings without legal representation, but they were not permitted to ask questions of witnesses, make objections, or deliver legal arguments.

The Pennsylvania legislature, in response to requests from various business and employer groups, has passed legislation designed to restore the prior practice of allowing non-attorneys to represent employers in unemployment compensation hearings. On June 15, 2005, SB 464 was signed into law by Governor Ed Rendell. The provision of the statute dealing with representation in unemployment compensation proceedings takes effect immediately.

Section 3.214 of the unemployment compensation act is amended to read:

Section 214. Representation in Proceedings.
Any party in any proceeding under this Act before the department, a referee or the Board may be represented by an attorney or other representative.

This broad language should permit representation of employers by internal or external non-attorney representatives at the initial, as well as appellate, stages of proceedings before the Unemployment Compensation Board of Review. This would apply regardless of the type of business organization. Because the language refers to "any party," it appears that claimants are also permitted to be represented by non-attorney representatives.

In signing the legislation, the governor indicated that the bill was intended to restore a "process designed to be simple and expedient for employers and workers, and not financially burdensome for either."

In addition to addressing the issue of representation in administrative hearings, SB 464 also implements changes necessary to bring Pennsylvania into compliance with the federal "SUTA Dumping Prevention Act of 2004." "SUTA Dumping" refers to a procedure where employers seek to avoid higher UC tax rates by shifting employees to another entity, frequently a shell corporation or a leasing company. The new legislation retains "Employer" status for any employer who transfers some or all of its workforce to another entity but retains or shares any employer functions with the new entity. The law further prohibits the transfer of an employer's UC experience record or reserve account balance to a new employer if the Department of Labor determines that the transfer of employees was done primarily to obtain a lower rate of contribution.

Additionally, the legislation creates a Job Training Fund to provide grants in rural counties to certain entities that run workforce education programs or job training assistance to incumbent workers, adult and youth workers, and other workforce development programs.

Finally, the legislation imposes both criminal liability and/or civil monetary penalties for willfully failing or refusing to submit reports as required or for other violations of the Act. Criminal violations are deemed summary offenses subject to fines of between \$100 and \$1,500 for each offense and/or imprisonment for up to 30 days. Civil penalties may be up to \$1,500 per day of violation, or per offense, up to a maximum of \$10,000.

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¹ Maryland has a law that limits the sanction that a medical marijuana user may face if arrested by state or local authorities, and many other states, like Virginia, have laws that permit marijuana use by a doctor's permission, but which are not effective, because doctors may not lawfully prescribe marijuana.

² See, e.g., *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 490 (2001) (refusing to read into the Controlled Substances Act an exception for medical necessity.)