

# Selected Labor & Employment Law Updates

*compiled by* Book Review/Updates Editor

This section of the *Journal* provides notes on recent cases, pending or newly enacted legislation, and other current legal materials. The Updates section is designed to aid the practitioner in relating the *Journal* articles to the daily practice of labor and employment law. The *Journal* welcomes outside submissions of brief judicial and legislative summaries.

*Supreme Court holds that NLRB's backpay award to unauthorized alien violated immigration policies underlying IRCA. Hoffman Plastic Compounds, Inc. v. NLRB*, No. 00-1595, 2002 U.S. LEXIS 2147 (2002).

On March 27, 2002 in a 5-4 decision, the Supreme Court reversed a D.C. Circuit opinion upholding an award of backpay to an unauthorized alien who provided false documentation to obtain employment.

The Court relied on the Immigration Reform and Control Act of 1986 (IRCA) and *Southern S.S. Co. v. NLRB*, 316 U.S. 31 (1942). IRCA prohibits the employment of undocumented aliens in the United States. It is illegal for an undocumented alien to subvert IRCA by tendering fraudulent documents. The Court reasoned that under *Southern S.S. Co.*, it is established that the NLRB may be required to yield where its chosen remedies end in a result contrary to a federal statute or policy that is outside of the purview of the Board. Thus, the Court held that "awarding backpay to illegal aliens runs counter to policies underlying IRCA, policies that the Board has not authority to enforce or administer."

*Supreme Court holds that employers need not grant more than 12 weeks of FMLA leave in one year. Ragsdale v. Wolverine Worldwide, Inc.* 122 S. Ct 1155 (2002).

Under the Family and Medical Leave Act of 1993 (FMLA) qualifying employees are guaranteed twelve weeks of unpaid leave each year. The Act encourages employers to adopt more generous policies. In keeping with this, Wolverine granted Ragsdale thirty weeks of medical leave in

1996. Wolverine refused Ragsdale's request for additional leave or permission to work part-time and terminated her when she did not return to work. Ragsdale's suit alleged that a Labor Department regulation required Wolverine to grant her twelve additional weeks because she received no notice from Wolverine that her thirty weeks of leave would count against her FMLA entitlement. She was awarded summary judgment by the District Court, which found that the regulation was in conflict with the statute and the Eighth Circuit affirmed.

The Supreme Court affirmed, holding that the Labor Department regulation (§ 825.700(a)) is contrary to the FMLA and further, was beyond the Secretary of Labor's authority. Specifically, the Court held that the Secretary's penalty for breach is contrary to the FMLA because it denies an employer any credit for leave granted before notice was given to the employee of their FMLA rights. The Court reasoned that this penalty is unconnected to any prejudice that the employee might have suffered from the employer's lapse since the employee will be entitled to twelve additional weeks of leave even if the employee would have acted in the same manner had notice been given.

Finally, the penalty amends the FMLA's fundamental guarantee of entitlement to twelve weeks of leave in a twelve-month period, which is a compromise between employers who wanted fewer weeks and employees who wanted more.

*Supreme Court holds that an employment discrimination complaint need not contain specific facts establishing a prima facie case under the McDonnell Douglas framework. Swierkiewicz v. Sorema N.A., 122 S. Ct. 992 (2002).*

Swierkiewicz sued his employer alleging that he was discharged in violation of Title VII and the Age Discrimination in Employment Act. The District Court dismissed and the Second Circuit affirmed, holding that an employment discrimination complaint must allege facts constituting a prima facie case of discrimination as set forth under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

The Court held that the *McDonnell Douglas* framework is an evidentiary standard and not a pleading requirement. The court held that under FED. R. CIV. P. 8(a)(2), a proper complaint must contain only a short and plain statement of the claim showing that pleader is entitled to relief.

*Supreme Court holds that the Coal Act does not permit assignment of retired miners to the successors in interest of out of business signatory operators. Barnhart v. Sigmon Coal Co., 122 S. Ct. 941 (2002).*

The Coal Industry Retiree Health Benefit Act of 1992 gives the Commissioner of the Social Security Administration the authority to assign fiscal responsibility for a retired coal miner's health benefits to the most appropriate coal mining company that employed the retired miner. If the assigned coal miner is no longer in business responsibility may be assigned to a related person or entity.

In this case the Commissioner assigned over eighty miners to the Jericol Mining Company, because it was a successor in interest to an out of business mining company that had employed the retired miners. The District Court granted summary judgment and the Fourth Circuit affirmed, concluding that Jericol was not a related entity under the statute.

In a 6-3 decision, the Supreme Court affirmed, holding that the Coal Act is explicit as to who may be assigned liability for beneficiaries and that signatory operators are not identified anywhere in the statute as possible assignees. The Court rejected arguments by the Commissioner that in light of the statutory purpose of the Coal Act, signatory operators should be included as assignees where there is no other related person or entity in existence.

*Supreme Court holds that an arbitration agreement does not bar an EEOC suit for victim specific remedies. EEOC v. Waffle House, 122 S. Ct. 754 (2002).*

Eric Baker was fired after suffering a seizure at work and being fired. He filed an EEOC complaint alleging that Waffle House violated Title I of the Americans with Disabilities Act of 1990 (ADA). The EEOC filed an enforcement suit, independent of Baker. The EEOC alleged that the employer's employment practices violated the ADA and sought injunctive relief as well as backpay, reinstatement, and compensatory and punitive damages for Baker.

The District Court denied Waffle House's petition under the Federal Arbitration Act (FAA) to stay the EEOC's suit and compel arbitration. The Fourth Circuit held that the arbitration agreement did not preclude the EEOC from bringing suit since the EEOC was not party to the agreement. The Fourth Circuit did, however, limit the EEOC to injunctive relief.

The Supreme Court reversed and remanded, holding that the ADA authorizes the EEOC to exercise the same enforcement powers, remedies, and procedures that are set forth in Title VII. Under the 1991 Amendments to Title VII, the EEOC has authority to bring suit to enjoin an employer

from engaging in unlawful employment practices, and to seek reinstatement, backpay, and compensatory or punitive damages in both Title VII and ADA actions. No statutory or Supreme Court precedent suggests that the existence of an arbitration agreement between private parties materially alters the EEOC's statutory function or available remedies.