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A Compliance Check Newsletter

1.8 Million Dollars Sought From Cleaning Company

The U.S. Department of Labor recently filed a lawsuit against California based Southern California Maid Services and Carpet Cleaning (SCMS) for minimum wage, overtime pay and recordkeeping violations of the federal Fair Labor Standards Act. The suit seeks more than \$1.8 million in unpaid back wages for approximately 386 employees.

The lawsuit, filed in U.S. District Court for the Central District of California, follows a Labor Department investigation that discovered SCMS's violations of the Fair Labor Standards Act (FLSA). The law requires that covered employees earn no less than the federal minimum wage of \$5.15 per hour and no less than one and one-half times their regular rate for hours worked over 40 per week.

The investigation also found that the employers, Sergio Maldonado and Lorenza Rubio, both of Rolling Hills, failed to keep accurate records of employees and the hours they worked.

The East Los Angeles office of the Wage and Hour Division learned of the employer's practices through its participation in the Employment Education and Outreach (EMPLEO) partnership. EMPLEO is an alliance of organizations and government agencies that assist Spanish-speaking workers and employers with work-related concerns.

EEOC Race Bias Suit Against Coca-Cola Bottling to Move Toward Trial, Appeals Court Rules

The Denver-based U.S. Court of Appeals for the 10th Circuit has reversed a New Mexico lower court's dismissal of a race discrimination lawsuit brought by the EEOC against BCI Coca-Cola Bottling Company of Los Angeles (BCI) – which owns Phoenix Coca-Cola Bottling Company and Coca-Cola Bottling Company of Albuquerque.

In its litigation, the EEOC charges BCI with committing race discrimination against Stephen Peters, an African American employee of the Albuquerque facility, when it fired him for not working his scheduled day off, even though he had called in sick and provided medical documentation. The federal district court in Albuquerque had previously dismissed the case on a summary judgment ruling.

In its decision, the 10th Circuit Court of Appeals ruled that EEOC may proceed to trial on the race discrimination claim, filed under Title VII of the 1964 Civil Rights Act. The court found that a jury might reasonably conclude that Peters' termination was based on his race because there was evidence that one of his supervisors, Cesar Grado, treated African Americans more harshly than other employees. EEOC asserts that Grado made such racial remarks as: "Black guys don't look good in trucks, they should drive Cadillacs" and "Brothers don't like the cold."

The Focus

In its opinion, the court observed that, "In making the decision to terminate...the human resources official relied exclusively on information provided by Mr. Peters' immediate supervisor, who not only knew Mr. Peters' race but allegedly had a history of treating black employees unfavorably and making disparaging racial remarks in the workplace."

The court further noted, "[h]olding employers accountable for the actions of biased subordinates also advances the purposes of Title VII." Additionally, the court pointed out that in a similar situation, a non-African American employee was neither fired nor disciplined by Grado after failing to show up for work as directed – as well as not calling in and not responding to repeated pages.

In its lawsuit, the EEOC seeks appropriate back wages and prejudgment interest. The Commission also seeks to provide appropriate affirmative relief necessary to eradicate the effects of Phoenix Coca-Cola Bottling Company and Coca-Cola Bottling Company of Albuquerque's unlawful employment practices including, but not limited to, front pay in lieu of reinstatement and compensation for past and future pecuniary and non-pecuniary losses. Further, the EEOC seeks injunctive relief and any other curative relief to prevent any continuation of the alleged discriminatory practices.

New EEOC Publication Addresses Employment Rights of People with Hearing Loss

The U.S. Equal Employment Opportunity Commission (EEOC), recently announced the issuance of a new question-and-answer (Q&A) fact sheet on the application of the Americans with Disabilities Act (ADA) to job applicants and employees who are deaf or who have hearing impairments. The new publication, the sixth in a series of Q&A documents about specific disabilities in the workplace, is available online at www.eeoc.gov/facts/deafness.html.

The new Q&A publication includes many real-life examples that illustrate the kinds of jobs that people with hearing loss successfully perform and the wide range of accommodations available. Topics addressed in the document include: when a hearing loss is a disability under the ADA; when an employer may ask an applicant or employee about a hearing impairment and what it should do if an applicant voluntarily discloses the impairment; what type of reasonable accommodation an applicant or employee with a hearing disability may need; and what an employer should do if it has safety concerns about an applicant or employee with a hearing impairment.

According to published reports, between 2000 and 2004, estimates of the number of people in the United States with a self-described "hearing difficulty" ranged from 28.6 million to 31.5 million. A "hearing difficulty" can refer to the effects of many different hearing impairments of varying degrees. The number of individuals with hearing difficulty is expected to rise rapidly by the year 2010 when the baby-boomer generation reaches age 65. As compared to other age groups, the percentage of individuals with hearing difficulty is greatest among those individuals age 65 and above.