DORSEY

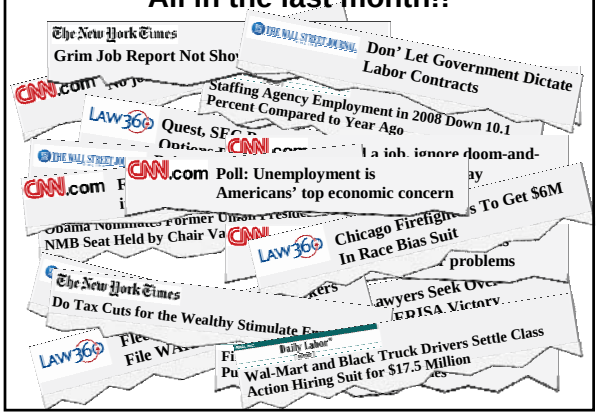
Gina and Ada bit by the COBRA: Benefits And Employment Law Update 2009

Employee Benefits Planning Association

April 2, 2009
Michael Droke
Stephanie Strike
Dorsey & Whitney LLP

1

All in the last month!!



DORSEY

2008 STATISTICS

Sign of things to come:

- **32,000**
  - **= employment lawsuits filed fed court 2008; up 6% from 2007**
- **524,000**
  - **= # workers laid off in December 2008 alone**

3

Michelle's Law

- Ensures continuation of benefits under parents' health benefit plans for college students who take a medically necessary leave of absence from college.
- Coverage cannot terminate on the earlier of (1) first anniversary of the medially necessary leave of absence, or (2) date coverage would otherwise have terminated under the plan
- Does not address COBRA coverage issues

Mental Health Parity Act

- Requires group health plans to provide parity between medical/surgical and mental health benefits in the application of annual dollar limits and aggregate lifetime dollar limits
- Had been scheduled to expire on December 31, 2008
- Now expanded and made permanent by the Emergency Economic Stabilization Act of 2008

New Protections: Genetic Information Nondiscrimination Act ("GINA")

- Who: All employers subject to Title VII.
- What: Prohibits employers from
  - Engaging in genetic discrimination; and
  - Requesting, requiring, or purchasing genetic information with respect to employee or employee's family member.
- "Genetic Information" includes:
  - Employee's genetic tests;
  - genetic tests of employee's family members; and
  - manifestation of a disease or disorder in employee's family members.
- When: Effective November 21, 2009
- Provides for private rights of action, with jury trials and compensatory and punitive damages

DORSEY

What are the COBRA Provisions in the American Recovery and Reinvestment Act of 2009 (ARRA)?

- **In general, the new law provides a 65% COBRA subsidy (called premium assistance) to employees who are involuntarily terminated between September 1, 2008 and December 31, 2009 (and covered family members).**
- **For those who qualify, the employer accepts 35% of the COBRA premium as full payment. The plan can then obtain reimbursement from the federal government for the remaining 65%, whether the plan is insured or self-funded.**

DORSEY

What Types of Health Plans are Eligible for Premium Assistance?

Health Benefits Eligible for Premium Assistance	Health Benefits Not Eligible for Premium Assistance
Medical plans (including high deductible health plans) Dental plans Vision plans Health Reimbursement Arrangements (HRAs) Any other group health plans subject to COBRA (other than health flexible spending account plans)	Health care flexible spending account plans (Health FSAs) Non-ERISA health savings accounts (HSAs)

DORSEY

What Types of Employers Must Offer Premium Assistance?

- **Employers subject to COBRA.**
- **Public employers subject to the PHSA.**
- **The federal government.**
- **Employers not subject to COBRA but offering insured health coverage subject to state "Mini-COBRA laws" -- e.g. insured plan for 10 employee employer (special rules apply).**
- **Employers participating in multiemployer plans (special rules apply).**

DORSEY

Which COBRA Qualified Beneficiaries are Assistance Eligible Individuals (AEIs)?

- **Eligible for COBRA between September 1, 2008 and December 31, 2009,**
- **Elect COBRA,**
- **Qualifying event is the employee's involuntary termination of employment that is not a termination for gross misconduct, and**
- **Employee's loss of employment occurs between September 1, 2008 and December 31, 2009.**

10

DORSEY

Special Eligibility Issues

- **Must be a COBRA qualified beneficiary (presumably excludes domestic partners who are not Code Section 152 dependents).**
- **With the exception (perhaps) of newborns and newly adopted children, have to have been a qualified beneficiary at time of qualifying event.**
  - Example: Jack, an AEI, elects COBRA in September 2009. He marries in October and adds his spouse to his COBRA coverage through his special enrollment rights. We do not think she is eligible for premium assistance.
- **Per IRS, if qualified beneficiary waived COBRA and took other (non-COBRA) coverage, not eligible for premium assistance.**

11

DORSEY

What is an Involuntary Termination of Employment?

- **Currently no guidance.**
- **If for gross misconduct, not eligible, even though involuntary.**
- **Performance based termination would be eligible (absent gross misconduct).**
- **Terminations resulting from position eliminations, straights RIFs would be involuntary.**

12

What is an Involuntary Termination of Employment?

- Reduction in hours without employment termination not eligible.
- But lots of gray areas: Window programs? Layoffs of union workers with rights of recall? Early retirements? Resignation after drastic salary decreases?
- Some possible models:
  - Internal Revenue Code Section 409A's definition of involuntary separation from service. (If so would it include good reason and window programs?)
  - State definitions of involuntary termination for purposes of unemployment compensation.
- IRS has promised guidance.

13

What Happens if an Individual Requests Premium Assistance and the Plan Denies the Request?

- If plan is subject to ERISA, expedited DOL review available "in such form and manner as shall be provided…"
- Non-ERISA plan decisions will be reviewed by HHS.
- Decision made within 15 business days after receipt of application for review.
- Review shall be de novo and final.
- Reviewing court shall grant deference to DOL determination.
- ERISA remedies available to participants in plans subject to COBRA.

14

What is the Amount of Premium Assistance?

- Premium assistance is 65% of what the plan would otherwise be requiring the qualified beneficiary to pay for the COBRA continuation coverage. In other words, the plan can only charge the AEI 35% of whatever the plan normally charges for this COBRA coverage, not what the plan could charge.
- Examples:
  - Plan charges maximum amount permitted by COBRA (100% cost of coverage plus 2% administrative fee). Premium assistance rate for qualified beneficiary is 35% of the 102% rate.
  - Plan charges less than maximum amount permitted by COBRA (e.g. plan provides coverage at "employee rates" for some limited time after termination). Premium assistance rate for qualified beneficiary is 35% of the employee rate for period plan charges that rate as COBRA rate.

15

Special Issues: Severance Plans

- If employer currently subsidizes health coverage during severance period and if permissible under terms of plan, employers may want to terminate continued provision of subsidized coverage during severance while premium assistance is available and required.
- Potential issues:
  - Is plan clear that subsidized severance period is COBRA coverage?
  - Can plan be amended to change health subsidy?
  - Will changing health subsidy raise issues about viability of release?
  - Does amending plan raise any 409A issues?
  - Is affected employee likely to be "high income individual"?

16

When is Premium Assistance Available?

- Available for "period of coverage" beginning on or after February 17, 2009.
- Generally March 1.
- If AEI overpays for COBRA in March or April, plan can reimburse excess within 60 days of payment or credit to future payments if it is reasonable to believe credit will be used within 180 days of overpayment.

17

When Does Premium Assistance End?

- Premium assistance ends on the earliest of the following events:
  - 9 months after commencement of premium assistance.
  - The date following the expiration of maximum COBRA coverage.
  - The date COBRA is lost for some other reason (e.g. non-payment of reduced premium).
  - The first date that the individual is eligible for other employer group health coverage or Medicare. Note that eligibility for coverage, not coverage, is what is required. Also, coverage consisting only of dental, vision, counseling, health FSA and/or limited on-site medical facilities do not prevent premium assistance eligibility.

18

How Does the Employer Know if the Individual is Eligible for Other Coverage?

- AEI required to notify plan of eligibility for other coverage.
- Failure to provide timely notice results in 110% penalty imposed on the AEI for premium reduction provided "after termination of eligibility" (subject to reasonable cause exception).

19

Are There Income Restrictions on Eligibility for Premium Assistance?

- Premium assistance recaptured for "high-income individuals" (HIIs).
  - Defined as those with between $125,000 and $145,000 in modified adjusted gross income in year when receiving premium assistance if filing singly ($250,000 and $290,000 if filing jointly).
  - Subsidy phases out for HIIs.
  - HIIs can waive subsidy by notifying employer. Waiver is irrevocable.
  - In absence of a waiver, plan continues to provide premium assistance.
  - If HII does not file waiver, repays subsidy in part or whole with tax return.

20

Does the Employer Have to Provide New Notices Relating to Premium Assistance?

- Yes.
- Failure to update and distribute notices as required potentially subjects employers to daily COBRA penalties (ERISA $110 per day and Internal Revenue Code excise tax of $100 per day).

21

DORSEY

Supplement All COBRA Election Notices with:

- Availability of premium assistance.
- Forms to establish eligibility for premium assistance.
- Name, address and telephone number necessary to contact plan administrator and any other entity in connection with premium assistance.
- Description of extended election period for individuals who had no COBRA election in place on February 17, 2009 but who would be an AEI if such election were in effect.

22

DORSEY

Supplement All COBRA Election Notices with:

- Description of obligation to notify plan of eligibility for other disqualifying employer health coverage or Medicare.
- Description of rights to reduced premiums and any conditions on entitlement to reduced premiums.
- If offered, description of option to enroll in different coverage.
- It appears this supplement to the election notice may need to be sent to all qualified beneficiaries experiencing qualifying events after September 1, 2008, regardless of the nature of the qualifying event. Section 3001(a)(7)(A). May be easier to determine when model notices are issued.

23

DORSEY

Notice of Extended Election Periods

- Special extended 60 day election period required for those who are eligible for premium assistance as of February 17 except that as of that date they (i) have not elected COBRA but are still in their election period, (ii) elected COBRA but never paid or stopped paying, or (iii) did not elect COBRA and the COBRA election period has expired.
- No second election for plans only subject to state “mini-COBRA” laws.
- 60 day election period runs from later of February 17 or provision of new supplemental notice.
- Deadline to provide extended election notice is April 18, 2009.

24

Notice of Extended Election Periods

- Some confusion about who should be sent the extended election notice. We recommend that it be sent to all employees (and qualified beneficiary dependents) terminated on or after September 1, 2008, regardless of reason for termination.
- Some commentators are advising sending extended election notices to ALL qualified beneficiaries regardless of nature of qualifying event. May be easier to decide when model notices are issued.
- Second election period does not extend maximum COBRA continuation coverage period.
- Lots of unanswered questions about "second elections."

25

DOL Model Notices

- http://www.dol.gov/ebsa/COBRA.html

26

Should Plans Update Any Other Materials?

- We recommend updating initial COBRA notice and consider updating of summary plan description.
- Consider use of supplement for initial notice.

27

How Are Employers Reimbursed for Providing 65% Premium Assistance?

- Note: This slide assumes a single employer plan subject to COBRA. Different rules apply to multiemployer plans and small insured plans not subject to COBRA but subject to state continuation coverage law.
- If self-funded plan, employer can claim reimbursement after AEI has paid 35% of the premium.
- Employer offsets premium assistance against payroll taxes (i.e. federal withholding and FICA).
- If reimbursement credit exceeds payroll liability, can claim refund or offset against next quarter's liability.

28

What Reporting Requirements Do Employers Have Relating to Premium Assistance?

- Report premium assistance reimbursement claimed on lines 12a and 12b of 2009 IRS Form 941.
- Additional reporting may be required by IRS. ARRA requires plans to maintain records (i) to extent subsidy is claimed, attesting to involuntary nature of terminations, (ii) amount of payroll tax offset and estimates of offsets for subsequent reporting periods, (iii) TINs of all covered employees, amount of subsidy reimbursed and indication of whether subsidy reimbursement is for single or more than single level of coverage.
- Premium assistance not reported as taxable income on AEI's W-2. May be other W-2 reporting required (including special reporting relating to employees who exceed income threshold).

29

What Happens if an Employer Claims Too Much Reimbursement?

- Any overpayment of reimbursements will be treated as an underpayment of payroll taxes. Presumably means subject to penalties on underpayment of payroll taxes.

30

What is the Plan Enrollment Option?

- THIS IS OPTIONAL.
- Plan can let AEIs elect different health coverage than coverage in effect immediately before qualifying event if:
  - The employer so elects.
  - The premium is the same or less than the prior coverage.
  - The coverage is also offered to active employees.
  - The different coverage is not only dental, vision, counseling, referral services, on-site clinic with limited services or a health FSA.
  - AEI has 90 days to elect from notice of the plan enrollment option.

31

Notice Pursuant to Treasury Department Circular 230

- To comply with certain Internal Revenue Service ("IRS") rules, we must inform you that any U.S. federal tax advice contained in this presentation, including handouts, is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed by the IRS. Under IRS rules governing tax advice, a taxpayer may rely on professional advice to avoid federal tax penalties only if that advice is provided in a tax opinion that conforms with extensive federal requirements. We understand that you do not intend to use or refer to anything contained in this presentation to promote, market, or recommend any particular entity, investment plan, or arrangement.

32

Ledbetter "Fair Pay Act"

- Adopts "paycheck rule": Statute of Limitations restarts every time someone receives a paycheck or other remuneration that has been impacted by a prior discriminatory decision.
- Laws amended:
  - Title VII,
  - ADEA,
  - ADA, and
  - Rehabilitation Act.

33

Family and Medical Leave Amendments

When: Jan. 16, 2009

What:

- **Broad entitlements to military caregivers.**
- **Guidance on breadth of "qualifying exigency."**
- **Clarifies eligibility requirements.**
- **Modifies process relating to medical certification.**
- **Allows employers to obtain additional fitness-for-duty information.**
- **Imposes higher standard of effort on employees seeking intermittent leave.**
- **Clarifies interaction between light duty and use of FMLA leave.**

34

Family and Medical Leave Amendments

Broad entitlements to military caregiver leave.

- **Eligible employees: "spouse, son, daughter, parent, or next of kin" of covered service member.**
- **Entitlement: leave to care for a "covered service member" with a serious illness or injury.**
- **Leave may be taken intermittently where medically necessary.**
- **Employers are entitled to verification of need for leave.**
  - **DOL Form WH-385 complies with the Regulations.**

35

Family and Medical Leave Amendments

Military caregiver leave provisions that differ from other leave:

- **Up to 26 (rather than 12) weeks of leave to care for a covered service member in a "single 12-month period."**
- **26 weeks is to care for one service member and one injury. Additional weeks of leave (in new "single 12 month period") can only be taken to care for different illness or injury of the service member or to care for different service member.**
- **12-month period in which leave can be taken begins on first day of leave and ends 12 months after that date, regardless of method used by employer to determine 12 workweeks of leave entitlement for other FMLA-qualifying reasons.**

36

DORSEY

Family and Medical Leave Amendments

Guidance on the breadth of a "qualifying exigency."

- **Entitlement: Up to 12 weeks of leave because of "any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation."**
- **Leave may be taken intermittently.**
- **Employers are entitled to verification of the need for FMLA leave under this provision.**
  - **DOL Form WH-384 complies with the Regulations.**

37

DORSEY

Family and Medical Leave Amendments

"Qualifying exigency" may include:

1. **"Short-notice" deployment calling a covered military member to service within 7 or fewer days notice;**
2. **Attendance at military events and related activities (e.g., official ceremony, program, informational briefings);**
3. **Arrangement of childcare and school activities;**
4. **Making of financial or legal arrangements;**

38

DORSEY

Family and Medical Leave Amendments

"Qualifying exigency" may include:

5. **Attendance at counseling;**
6. **Time to spend with person on short-term, temporary rest and recuperation leave (up to 5 days for each instance of rest and recuperation);**
7. **Post-deployment activities for up to 90 days after termination of active duty service or to address issues arising from death of service member;**
8. **Additional activities related to, arising out of, or necessitated by the active duty or call to active duty.**

39

DORSEY

Family and Medical Leave Amendments

Clarify eligibility requirements.

- Employed-for-12-months eligibility requirement does not require that 12 months be continuous. Employer ***must*** consider previous employment with the company, up to a seven-year break.
- Regulations incorporate USERRA's requirement that any hours that would have been worked but for employee's military service be counted toward 1,250-hours-worked eligibility requirement.
- Employee may attain FMLA eligibility status while on a non-FMLA leave of absence.

40

DORSEY

Family and Medical Leave Amendments

Modify processes relating to medical certification.

- New certification provisions allow employers to seek "information sufficient to establish" that employee cannot perform the essential functions of his or her position and, where applicable, the medical necessity of intermittent leave.
- Notice requirements: Employers requiring medical certification to confirm entitlement to FMLA leave must notify employee of such requirement within 5 business days of receiving notice of the request for leave or of the leave having begun.
- DOL developed two new prototype medical certification forms
  1. for an employee requesting leave for his or her own serious health condition;
  2. for an employee caring for a family member

41

DORSEY

Family and Medical Leave Amendments

Allow employers to obtain additional fitness-for-duty information.

- Employers may now require that fitness-for-duty certifications address employee's ability to perform the essential functions of his or her position.
- Employers that require fitness-for-duty certificate must inform employee of essential functions of the position that will have to be addressed in the certification.
  - Information must be provided no later than when employer first notifies employee that his or her leave is designated as FMLA leave.
- Employer may require fitness-for-duty certification no more often than every 30 days for employees taking leave on an intermittent or reduced leave schedule and only if there are reasonable safety concerns.

42

DORSEY

Family and Medical Leave Amendments

Higher standard on employees seeking intermittent leave.

- Employees who use FMLA leave on intermittent or reduced hours schedule basis for planned medical treatment now must make a "reasonable effort" to schedule the leave so it is not unduly disruptive to the employer.
- Employees who require foreseeable leave for planned medical treatment still may be temporarily reassigned to a position that better accommodates such a schedule.
  - Reassignment only permissible for employees who take foreseeable leave for planned medical treatment or where employer and employee agree to intermittent leave for the birth of a child or adoption or foster care placement.
  - Transfer not permissible where intermittent leave is unforeseeable.

43

DORSEY

Family and Medical Leave Amendments

Interaction between light duty assignment and FMLA rights.

- Employer does not have to offer, and employee does not have to accept, light duty assignment in place of taking FMLA leave.
- If employee takes light duty assignment, time spent working assignment may not be counted as FMLA leave.
- At conclusion of light duty assignment, or at conclusion of applicable 12-month FMLA year, employee remains entitled to FMLA leave (if not exhausted) and/or to his or her statutory right to job restoration.
  - (unless light duty assignment is taken after employee's exhaustion of FMLA leave and inability to return to his or her original position).

44

DORSEY

FMLA Bootstrapping

Farrell v. Tri-County Metro. Transport. Dist., 530 F.2d 1023

- Employee with multiple medical conditions repeatedly requested FMLA leave but was denied
- Jury found that employer wrongfully denied FMLA leave and that employee suffered emotional stress or other mental problems causing additional days off work
- HELD: Employee entitled to damages for days he lost due to emotional distress caused by the wrongful denial of FMLA

45

DORSEY

Legislative Landscape: ADA Amendments

When: January 1, 2009

What:

- **Expand scope of "disability"**
- **Change "regarded as" prong**
- **Revise discrimination prohibition language**

46

DORSEY

ADA Amendments

Expand scope of "disability":

1. **New examples of "major life activity"**
2. **Rejection of *Toyota Motor Mfg.* holding**
3. ***Without regard* to ameliorative effects**
4. **Includes episodic impairments and remission**

47

DORSEY

ADA Amendments

An employee is "regarded as" ***disabled when:***

- **Subject to prohibited action**
- *Because of* **an actual or perceived physical or mental impairment – whether or not the impairment limits or is perceived to limit a major life activity**

48

ADA Amendments

New discrimination prohibition language:

Qualified individual with a disability

vs.

"on the basis of disability"

49

Employee Or???

Fichman v. Media Center, 512 F.3d 1157

- **Small community access channel sued for age and disability discrimination**
- **HELD: Board members who were not on payroll are not "employees" for purposes of coverage; employer too small to be sued under either ADEA or ADA**
- **Court followed earlier USSC decision regarding the "payroll rule" to determine coverage**
- **Take Home Point: If you're a smaller employer or close to jurisdictional limit, pay close attention to pay rolls to make sure you don't carry employees after their termination**

50

Employee Or???

NLRB v. Friendly Cab Co., 512 F.3d 1090

- **Taxicab drivers required to use "Friendly" cabs, adhere to standards, and pay certain amount**
- **Drivers sought representation by Teamsters local**
- **HELD: drivers were "employees" not "independent contractors" and could be represented; employer forced to bargain**
- **Take Home Point: Similar to Washington's new case on commuting time, be careful what restrictions are placed on workers; can lead to unintended consequences**

51

Wage-and-Hour Updates

Washington Minimum Wage:
- Now $8.55 per hour.

Federal Minimum Wage:
- $6.55 per hour, as of July 24, 2008. $7.25, as of July 24, 2009.

Oregon
- $8.40 per hour

California
- $8.00 per hour (no change from last year)

San Francisco
- $9.79 per hour

52

Wage-and-Hour: Commissions

Backman v. Northwest Publishing Ctr., 147 Wn. App. 791

- Employee sold advertising for magazines, earning monthly salary and commissions. Employee had to reimburse commissions if the customer did not pay for the ads after they ran. Employee not paid accrued commissions for pending advertisements at termination.
- HELD: Employer unlawfully, willfully withheld wages. It could have written the contract to allow employer to hold final commissions, but did not.
- Take Home Point: All commission agreements must be carefully drafted to consider what occurs at termination of employment, and upon extraordinary sales.

53

Disability Discrimination and Accommodation

Townsend v. Walla Walla Sch. Dist., 147 Wn. App. 620

- Employee with hearing impairment claimed disability after she was transferred to new location in food services department by supervisor who commented on impairment
- Employee able to perform job with accommodations including use of hearing aid and lip reading
- HELD: Employee could not satisfy accommodation claim because she was not substantially limited in ability to perform the job with accommodations

54

DORSEY

New Protections: Domestic Violence

Danny v. Laidlaw Transit Servs., 193 P.3d 128

- **Employee with five children requested time off to move out of physically abusive relationship, and later move her children out of home. Request occurred during large project in which employee was key participant.**
- **One month after request, employee demoted and later terminated**
- **HELD: protection from domestic violence is protected as public policy under Washington law. Includes: concrete actions to encourage domestic violence victims to end abuse, leave abusers, protect children, cooperate with law enforcement, and prosecution efforts.**
- **(New Washington law now also protects reasonable time off in response to domestic violence)**

55

DORSEY

Retaliation Expanded

Crawford v. Metropolitan Government of Nashville:

- **Title VII protects employees who are interviewed during employers' internal investigations.**

CBOCS West v. Humphries:

- **Implied causes of action against retaliation existed under Section 1981 of the Civil Rights Act of 1866**

56

DORSEY

California Fair Employment and Housing Act (FEHA) Cases

- **No individual liability for retaliation claims under FEHA.** Jones v. The Lodge at Torrey Pines Partnership, 42 Cal.4th 1158 (2008).
- **Employers do not have a duty under FEHA to accommodate an employee's use of marijuana, even for medicinal purposes.** Ross v. RagingWire Telecommunications, Inc., 42 Cal.4th 920 (2008).
- **One-year statute of limitations on FEHA claims may be equitably tolled while employee voluntarily pursues an internal administrative remedy.** McDonald v. Antelope Valley Community College District, 45 Cal.4th 88 (2008).

57

Sexual Harassment: Smaller Employers

Wahl v. Dash Point Family Dental Clinic, 144 Wn. App. 34

- Employee worked as unpaid intern, then on payroll for small dental clinic with less than 8 employees on staff
- Dentist/Owner engaged in significant acts of harassment, including increasingly graphic sexual comments and propositions
- HELD: Common law public policy claim exists for constructive termination due to harassment
- Take Home Point:
  - Even smaller employers may be subject to harassment claims, if the employee is either fired or quits (constructive discharge) as a result

58

Employee Privacy

Quon v. Arch Wireless

Held: Employers may violate employees' 4th Amendment right to privacy by reviewing employees' electronic data.

Facts: Employer had written policy that stated employees had no privacy right in e-mail or text messages transmitted via company property. However, Company's practice of generally not reviewing these messages and to treating such messages as private created an expectation of privacy, such that review of these messages violated the employees' rights.

TAKE HOME POINT:

- Practice should be consistent with Policy.

59

Changes Applicable to Federal Contractors

Proposed Changes to E-Verify Requirements

What: Required to use E-Verify to confirm employment eligibility of…

Who:

- All new hires, and
- Current employees if employer enters into new federal contract (or modifies an existing contract) that requires E-Verify for current employees.

When: May 21, 2009 - New Effective Date

60

Changes Applicable to Federal Contractors

Accessibility of Online Applications

What: Federal contractors must ensure electronic job application procedures are accessible to individuals with disabilities and covered veterans.

How: Employ steps to ensure accessibility and Reasonably accommodate.

Why: OFCCP is scrutinizing this.

61

Proposed FOREWARN Act

If Enacted, law would:

- **Revise WARN Act definitions of "employer" "plant closing" and "mass layoff."**
- **Require employers to provide 90 (up from 60) days written notice before ordering plant closing or layoff.**
- **Require employers to notify U.S. Secretary of Labor w/in 60 days of closing or layoff.**
- **Make employers liable for double back pay for a notice violation.**
- **Authorize Secretary of Labor to bring civil action on behalf of employees.**

62

Proposed EMPLOYEE FREE CHOICE ACT

Would Amend National Labor Relations Act in 3 Major Ways:

1. Union Certification:

- **Would impose mandatory certification base solely on majority of employees signing cards or petition.**

2. Contract Negotiations

- **90 days to negotiate first contract.**
- **30 days of mediation.**
- **Mandatory interest arbitration for a 2-year contract.**

3. Employer Penalties

- **Triple back pay for discharge violations committed during original negotiation process.**
- **$20,000 civil damages for willful or repeated violations.**

63

DORSEY

Thank You for Attending!

Michael Droke
Partner, Office Head
(206) 903-8709 : phone
droke.michael@dorsey.com

64