

Service

Labor & Employment

Department of Labor Now Assisting Plaintiffs to Obtain Private Legal Counsel to Sue Their Employers

As of December 13, 2010 the Department of Labor (DOL) and the American Bar Association (ABA) will assist plaintiffs in obtaining private legal counsel for claims brought under the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA).

According to the DOL, the Wage and Hour Division receives 35,000 employment-related legal complaints in a typical year – 25,000 of those complaints relate to the FLSA or FMLA. The DOL lacks the capacity to prosecute all of the claims it receives. In the past, when the DOL decided it did not have the resources to pursue a complaint, the DOL would inform the aggrieved individual of his/her right to bring a private cause of action under the FLSA or FMLA.

Now, through the Bridge to Justice program, the DOL will not only inform complainants of their right to a private cause of action, but also connect these individuals to a newly created ABA referral system that will provide access to attorneys willing to assist with their claims. When a complainant is informed that the DOL is declining to pursue a complaint, the complainant will be given a toll-free number and the opportunity to contact and retain a local, qualified private sector attorney.

In addition, where the DOL has conducted an investigation, the complainant will also receive information about any violations found and back wages owed. This information will be included in the letter informing the complainant that the DOL will not be pursuing further action, and will be immediately available to prospective attorneys deciding whether to take the case. The DOL has also developed a special process for complainants and representing attorneys to

quickly obtain certain relevant case information and documents from the DOL's investigation.

What This Means to You

Employers should closely monitor what is provided to the DOL during an investigation. Employers must assume that any information it provides to the DOL during an investigation will not be confidential and will be made available to the complainant's attorneys. Nevertheless, you should consider adding language to the response that the information provided is for the sole purpose of responding to the claim, and is confidential and/or proprietary information that the DOL is not authorized to release without specific written authorization of the respondent. At the very least, this language will avoid a claim of waiver to future objections to the disclosure of the information.

Contact Info

For additional information and assistance, please contact your Husch Blackwell attorney.

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