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## MONTHLY UPDATE

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### U.S. SUPREME COURT

- *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1555 (U.S. 2007) (Notice pleading requires a plaintiff to establish with some specificity a plausible claim, not just conclusorily assert a claim). See also, *EEOC v. Concentra Health Servs.*, \_\_\_ F.3d \_\_\_, 2007 U.S. App. LEXIS 18487 (7<sup>th</sup> Cir. 2007) (applying and splitting on the proper interpretation of *Bell Atlantic*).
- *Ledbetter v. The Goodyear Tire & Rubber Co.*, 127 S.Ct. 2162 (U.S. 2007) (Paycheck rule rejected for Title VII claim). C.f., ongoing Congressional attempts to reverse *Ledbetter*, e.g., the “Lily Ledbetter Fair Pay Act,” HR 2831.
- *Davenport v. Washington Educ. Ass’n.*, 127 S.Ct. 2372 (U.S. 2007) (A state can require (public sector) unions to obtain written consent before spending a nonmember’s agency fees for election-related purposes).
- *Long Island Care at Home, Ltd. v. Coke*, 127 S.Ct. 2339 (U.S. 2007) (DOL regulation regarding FLSA and companionship workers upheld).

### IMMIGRATION REFORM

- *AFL-CIO v. Chertoff*, N.D. Cal., No. 07-4472, order dated 8/31/07 (Homeland Security regulations regarding Social Security mismatch letters, frozen).
- *Montes v. Vail Clinic, Inc.*, \_\_\_ F.3d \_\_\_, 2007 U.S. App. LEXIS 19293 (10<sup>th</sup> Cir. 2007) (English-language requirement upheld). See also Senate Appropriations Committee resolution, approved by vote on June 28, 2007, to curtail EEOC budget and prohibit expenditures of EEOC funds on litigation of English-only cases.
- *Ruehl v. Viacom, Inc.*, \_\_\_ F.3d \_\_\_, 2007 U.S. App. LEXIS 21468 (3<sup>rd</sup> Cir. 2007) (OWBPA release struck because employer told employee that OWBPA information was available but did not actually give the OWBPA statistics to employee).
- *Williams v. W.D. Sports, N.M., Inc.*, \_\_\_ F.3d \_\_\_, 2007 U.S. App. LEXIS 18721 (10<sup>th</sup> Cir. 2007) (Tenth Circuit interpreted and applied Supreme Court’s recent holding in *White* regarding conduct that does and does not constitute an actionable basis for a retaliation claim).

- *Riggs v. Airtran Airways, Inc.*, \_\_\_ F.3d \_\_\_, 2007 U.S. App. LEXIS 18769 (10<sup>th</sup> Cir. 2007) (Tenth Circuit explained, applied, if not defended, *McDonnell-Douglas* as an analytical framework for the judge in his/her role as “gatekeeper”).
- *Jarvis v. Potter*, \_\_\_ F.3d \_\_\_, 2007 U.S. App. LEXIS 20789 (10<sup>th</sup> Cir. 2007) (Tenth Circuit interpreted the concept of a “direct threat” in disability cases).

#### EEOC

- 29 CFR 1625 (New EEOC regulations enacted implementing Supreme Court’s decision in *General Dynamics Land System, Inc. v. Cline*, the concept of “relatively older age” in ADEA claims).
- “Unlawful Disparate Treatment of Workers with Caregiving Responsibilities,” Enforcement Guidance No. 915.002.

#### GENERAL EEO

- *Murphy v. IRS*, 493 F.3d 170 (D.C. Cir. 2007) (Prior holding withdrawn and reversed, now upholding IRS regulation regarding taxability of non-personal injury claims).

#### STATE LAW AND MISCELLANEOUS

- Amendments to Colorado Wage Claim Act, House Bill 07-1247.
- Amendments to Colorado’s state EEO statute, adding “sexual orientation” and “religion” as protected classes, Senate Bill 07-025.
- *Rash v. J.V. Intermediate Ltd.*, \_\_\_ F.3d \_\_\_, 2007 U.S. App. LEXIS 19947 (10<sup>th</sup> Cir. 2007) (Duty of loyalty interpreted, although under Texas law, with an analysis of broader interest even here in Colorado; the Tenth Circuit interpreted such authorities as the Restatements).
- *Cowger v. Henderson Heavy Haul Trucking, Inc.*, \_\_\_ P.3d \_\_\_, 2007 Colo. App. LEXIS 484 (Colo. App. 2007) (Tort claim by employee of subcontractor held not barred by workers compensation even though subcontractor had a workers compensation policy in place and employee was injured within the course and scope of employment), *cert. granted*, \_\_\_ P.3d \_\_\_, 2007 Colo. LEXIS 842 (Colo. 2007).
- *In re. J.A. Walker Co. v. Cambria Corp.*, 159 P.3d 126 (Colo. 2007) (Colorado Supreme Court explained the different roles of judge versus arbitrator in determining enforceability of arbitration agreements under both current and old versions of Colorado’s Uniform Arbitration Act).
- *Bader v. Northern Line Layers, Inc.*, \_\_\_ F.3d \_\_\_, 2007 U.S. App. LEXIS 21645 (9<sup>th</sup> Cir. 9/10/07) (Construction workers’ “single site of employment” under WARN is each of their respective construction sites, and such sites, when scattered across the country, cannot be aggregated).

#### NLRB

- *Sheet Metal Workers’ Int’l Ass’n, Local Union No. 2 v. McElroy’s, Inc.*, \_\_\_ F.3d \_\_\_, 2007 U.S. App. LEXIS 20627 (10<sup>th</sup> Cir. 2007) (Tenth Circuit interpreted and applied the

Supreme Court's *Deklewa* decision in a case involving a sec. 8(f) employer's ability to terminate a collective bargaining agreement with an evergreen clause).

- *Sheet Metal Workers' Int'l Ass'n, Local Union No. 15 v. NLRB*, \_\_\_ F.3d \_\_\_, 2007 U.S. App. LEXIS 19201 (D.C. Cir. 2007) ("Street theatre," specifically the union's "mock funeral," is "not the functional equivalent of picketing," and therefore enjoys a greater level of protection similar to handbilling). See also *State of New Jersey v. DeAngelo*, 2007 N.J. Super. LEXIS 304 (N.J. App. 9/13/07) (Criminal conviction of union protester for displaying inflatable rat in violation of municipal ordinance banning the display of balloon signs, upheld despite protester's claim of an NLRA right and a First Amendment right of speech).
- *Oil Capitol Sheet Metal, Inc.*, 349 NLRB No. 118 (5/31/07) (NLRB has revised its evidentiary standard in backpay cases for SALTs).

#### OSHA

- *Summit Contractors, Inc.*, OSHRC Docket No. 03-1622 (OSHA's "controlling employer" doctrine in multiemployer worksites rejected).