



## **October, 2014 Employment Law Hot Topics**

*Sarah E. Pawlicki, Esq., SPHR and James B. Yates, Esq., SPHR  
Eastman & Smith Ltd.*

### **Ohio Bureau of Workers' Compensation Class Action Lawsuit Forms Due on October 22**

State-fund employers listen up! Within the last few months you may have received a notice that your company may be eligible for participation in a class action settlement in a case titled *San Allen v. Ohio Bureau of Workers' Compensation*. The lawsuit involves allegations that employers that did not participate in group-rating programs from 2001-2008 paid excessively high premiums to the Bureau of Workers' Compensation because the Bureau was giving deep discounts to the groups. The lawsuit has been pending since December, 2007 and in March, 2013, a Cuyahoga County Common Pleas Court judge found in favor of the class for more than \$858 million. The Bureau appealed that decision and the court of appeals decision reduced the judgment to \$651 million. In order to avoid further appeals, the plaintiffs and Bureau have settled for \$420 million.

In order for your organization to get a part of the settlement you need to be a member of the class and return your claim form by **October 22, 2014**. Class members are employers in one or more years from 2001-2008 that: 1) were state-funded; 2) were not group rated; and 3) reported payroll in a manual classification that was "inflated" due to group rating. Claim forms were mailed to employers in late August. If your organization received a claim form you may get more information and even find out the potential maximum recovery that the organization will receive by logging on to [www.ohiobwclawsuit.com](http://www.ohiobwclawsuit.com). The amount that each organization eventually receives depends upon a number of factors including the number of valid claim forms returned and the amount of costs and attorneys' fees awarded to the class counsel. **One thing is for certain; your organization will receive nothing if you do not complete and return the form by October 22!**

### **2015 Ohio Minimum Wage Will Be \$8.10**

On October 1, 2015, the Ohio Department of Commerce announced that the state's minimum wage will increase from \$7.95 to **\$8.10** on January 1, 2015. Ohio's minimum wage is adjusted every year as required by an Ohio Constitutional Amendment according to the Consumer Price Index. The federal minimum wage remains \$7.25 (for now).

### **SCOTUS Refuses to Hear Same-Sex Marriage Cases**

On October 6, 2014, the U.S. Supreme Court refused to hear cases from the Seventh Circuit, Fourth Circuit, and Fifth Circuit Courts of Appeal that struck down same-sex marriage bans in Indiana, Wisconsin, Utah, Virginia, and Oklahoma. On October 7, 2014, the Ninth Circuit Court of Appeals struck down same-sex marriage bans in Nevada and Idaho and on

October 12, 2014 a federal district judge struck down Alaska's same-sex marriage ban. As a result, same-sex marriage is now legal in 29 states and the District of Columbia and more bans are still being challenged. Ohio's same-sex marriage ban, passed in 2004, is still being litigated in the United States Court of Appeals for the 6<sup>th</sup> Circuit. In *Henry v. Himes*, Judge Timothy Black of the United States District Court for the Southern District of Ohio held in April, 2014 that the same-sex marriage ban is "facially unconstitutional and unenforceable under any circumstances."

What does the same-sex marriage ban have to do with human resources? Many employment laws and benefits are extended to married individuals. The U.S. Department of Labor has already issued a statement as a result of the *Windsor* case decided in 2013, that employers in states where same-sex marriage is legal must extend leave under the Family and Medical Leave Act to same-sex spouses and provide health insurance benefits in the same manner as heterosexual spouses. In addition, children of same-sex spouses would be considered dependents for purposes of FMLA leave and benefits. Some Ohio employers have already begun to extend same-sex spouses benefits so long as the marriage was entered into in a state where same-sex marriage is legal. We will wait to hear the fate of Ohio's same-sex marriage ban in the coming months.

### **EEOC Sues Two Employers for Transgender Discrimination**

If you attended TAHRA's Diversity Conference this year, you will recall that discrimination against transgendered individuals has been on the EEOC's radar lately. Although there is no federal law specifically prohibiting discrimination against individuals on the basis of their gender identity or expression, the EEOC has taken the position that if an individual is discriminated against for not conforming to gender "norms" such as appearance, dress, or manner of speaking, this constitutes sex-stereotyping, which was declared illegal by the U.S. Supreme Court in 1989.

On September 25, 2014, the EEOC filed two lawsuits on behalf of transgendered individuals. In *EEOC v. Harris Funeral Home* (filed in Michigan federal district court which has the same U.S. Court of Appeals as Ohio), the EEOC alleges that a transgendered female was discharged after informing her co-workers that she was beginning the process of transitioning from male to female. The lawsuit also alleges that the employer provided work clothes only to male employees. In *EEOC v. Lakeland Eye Clinic* (pending in Florida federal district court), a transgendered female alleges her position was eliminated after she began transitioning from male to female. The lawsuit also alleges that although the employer claims her position was eliminated, it was filled two months after her discharge. Both cases are in the very early stages but their outcomes could have a wide-reaching impact on gender identity and expression in the workplace, so stay tuned!

*Sarah Pawlicki and Jim Yates are attorneys with the law firm of Eastman & Smith Ltd. in the firm's Labor and Employment Group and longtime TAHRA members. Sarah may be reached at (419) 247-1701 or sepawlicki@eastmansmith.com and Jim may be reached at (419) 247-1830 or jbyates@eastmansmith.com.*