

# PUBLICATION

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## Buckle Up: Employers Must Ready for New Developments

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Life's getting more challenging for employers. A new NLRB head bodes a near certain reversal of employer-friendly holdings; the IRS is gunning for imperfect retirement plans; and Congress now has mandatory paid sick leave on the docket alongside the ever-present EFCA legislation. If there is any light at the end of the tunnel, we find it in a recent Supreme Court ruling that shifts the burden to prove disparate treatment under the ADEA to the employee, and on the state level, in Tennessee's amendment of its workers' compensation law to reduce employer exposure.

Goodbye, Pro-Employer Rulings - New NLRB Chair Expected To Overturn Recent Holdings: Democrat Wilma Liebman was recently nominated by President Obama to serve as the NLRB Chairman. Liebman, who served as a minority member of the NLRB during the Bush administration, was a frequent dissenter from the majority opinions of the Republican-dominated Board. Two other recent appointees, Craig Becker and Mark Pearce, are also Democrats. Since the majority has shifted, several of the Board's recent opinions are likely to be revisited and overturned in upcoming months. Eight of those significant cases are described here.

On the Clock - Mandatory Paid Sick Leave Contemplated by Congress: In May, Congress introduced the "Healthy Families Act," which would require employers to provide their employees with a minimum amount of paid sick leave, to be used for the care of the employees themselves or of their family. Among other requirements, employers would be required to offer employees a minimum of one hour of paid sick time for each 30 hours worked, from the first day on the job.

Employers Win a Surprise Age Discrimination Ruling: The Supreme Court's recent ruling in *Gross v. FBL Financial Services, Inc.* increases an employee's burden to prove a disparate treatment claim under the Age Discrimination in Employment Act (ADEA).

Top Reasons Why Qualified Retirement Plans Fail: The IRS intends to conduct expanded retirement plan audits this year. Qualified retirement plans are a benefit that many employers provide to their employees. Employees are able to save for retirement on a tax-deferred basis, and employers get tax deductions for contributions they make to the qualified retirement plans. Because of the tax benefits the employer receives, and also because the federal government is concerned that employers may not administer their qualified retirement plans fairly for all employees, qualified retirement plans are vulnerable to audits by the IRS and the DOL.

Tennessee Employers Protected with New Amendment to Workers' Compensation Law: On June 11, 2009, Governor Phil Bredesen signed a bill that amends the Tennessee Workers' Compensation Law by limiting employers' liability for employee injuries sustained during voluntary recreational, social and athletic activities. The new law comes in response to the Tennessee Supreme Court's 2007 decision that deemed compensable an employee's death while playing basketball on the employer's premises during a break period.

You Need To Understand The Fair Labor Standards Act: Part 3 - Are You A Joint Employer? General contractors typically use subcontractors to perform various aspects of the project, and some subcontractors also use subcontracted labor. In these situations, you may be liable for your subcontractors' violations of the FLSA.

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