
MASUD, PATTERSON, SCHUTTER, PETERS & VARY, P.C.

ATTORNEYS AND COUNSELORS
SPECIALIZING IN LABOR AND EMPLOYMENT LAW

NEWSLETTER

April, 2008

Volume XII, Issue 1

Masud, Patterson, Schutter, Peters & Vary, P.C. Announces New Shareholder/Partner

We are extremely proud to announce that Richard Vary has recently become a shareholder/partner in the firm. Dick will continue to be lead counsel in defense litigation on behalf of our clients. Formal announcements will be sent congratulating Dick.

Masud, Patterson, Schutter, Peters & Vary to Exhibit at the Mid-Michigan Regional Business Expo

In addition to hosting the Regional Business After Hours, our firm will once again be participating in the Mid-Michigan Regional Business Expo scheduled for Tuesday, May 6, 2008, at the Saginaw Valley State University Ryder Center from 1:00 p.m. to 6:00 p.m. Attorneys Gary Patterson, Elizabeth Peters, and Brian Swanson of our firm will be giving free and informative seminar presentations on the Family and Medical Leave Act, Unemployment Tax Audits and Investigations, and Sexual Harassment during the Expo. Look for our booth. We hope to see you there.

FMLA Amendments Expand Leave for Families of Military Service Members.

On January 28, 2008, President Bush signed into law the National Defense Authorization Act which

included amendments to the Family and Medical Leave Act (FMLA). Now, as a result of this FMLA expansion, in addition to being able to take leave for their own serious health condition, to care for a seriously ill family member, or for the arrival of a new child, the spouses, children or parents of members of the armed forces, including the National Guard and Reserves, are now entitled to FMLA leave for “any qualifying exigency” arising out of a family member’s active duty or call to active duty. This leave is part of the regular 12-week entitlement—that is, the employee gets 12 weeks total per year for any qualifying reason, not an additional 12 weeks for issues relating to a family member’s military service.

The law also creates an entirely new entitlement for family members who need to care for an armed forces member who is injured in the line of duty. These employees can take up to 26 weeks of leave in a single 12-month period (that’s 26 weeks total, not 26 weeks plus 12 weeks of FMLA leave for other reasons) to care for their relative who is undergoing medical treatment, recuperation or therapy, is on outpatient status or is otherwise on the temporary disability retired list for a serious injury or illness. In addition to spouses, children, and parents (the usual family members covered by the FMLA), “next of kin”—defined in the law as a service member’s “nearest blood relative”—are eligible for this type of leave. This appears to be a one-time-only entitlement; the law says this 26-

“Making Labor and Employment Law
Work for Employers”

week leave will “only be available during a single 12-month period.”

As a result of this newly enacted law, if you need assistance in revising your existing FMLA policies, please contact us.

New Requirements for Public Employers who Provide Medical, Optical or Dental Benefits to their Employees

On October 1, 2007, the Michigan Legislature enacted the Public Employees Health Benefit Act, 2007 PA 106. This Act imposes new requirements on public employers who provide medical, optical, or dental health benefits to their employees.

The Act provides that public employers may provide medical, optical, or dental health benefits to their employees by one of the following means, subject to any requirements contained in a collective bargaining agreement:

1. By being self-insured.
2. By joining with other public employers and establishing a public employer pooled plan to provide insurance benefits to not fewer than 250 employees on a self-insured basis.
3. By procuring insurance benefits from insurance carriers, either on an individual basis or with one or more other public employers.

The most significant change imposed by the statute, however, is the requirement that public employers solicit at least 4 bids for coverage when establishing a medical plan, including at least one bid from a Voluntary Employee Benefit Association (“VEBA”), a tax-exempt trust established in accordance with IRS regulations, into which the employer, and sometimes the employee, makes contributions.

The Act requires competitive bids to be obtained whenever a new medical, optical, or dental benefit is established. In addition, at least 4 competitive bids must be obtained every three years when renewing the coverage, and must include one bid from a VEBA. Thus, all public employers will have to solicit competitive bids for coverage within three years of the Act’s passage in order to remain compliant with the

statute. Notably, there is no exception from the competitive bid process for employers who maintain collective bargaining agreements which contain insurance provisions.

The statute also contains very specific funding and reporting requirements for those public employers who wish to provide benefits through the use of a pooled plan, including the requirements for establishing such a plan, and the minimum funding levels required to maintain a pooled plan.

In addition to placing requirements on public employers to obtain competitive bids for insurance coverage, the Act requires insurance providers to provide claims history information to public employers to enable employers to obtain competitive bids for insurance coverage. This is a significant change, as some third-party administrators have steadfastly refused to release claims history to employers, effectively preventing public employers from being able to shop for competitive health care packages. The Act ends this stranglehold and ensures that all public employers are able to shop for insurance benefits based upon actual claims history.

Should you have any questions regarding the Public Employees Health Benefits Act, either in general, or as to how it impacts your particular situation, please do not hesitate to contact us.

New Contractor/Subcontractor Record-Keeping Requirements Under Michigan’s Prevailing Wage Act

The State of Michigan’s Prevailing Wage Act requires that certain wage and fringe benefit rates be paid on state construction projects. It establishes requirements and responsibilities for contracting agents who award state construction contracts, and contractors who are awarded state construction projects. Effective December 17, 2007, every contractor/subcontractor must now, in addition to prior record-keeping requirements under the Act, maintain certified payrolls of each and every construction mechanic, and verification of such certified payroll in writing by either a representative or auditor/certified accountant at the end of such certified payroll.

Employers can Regulate use of Company E-Mail Systems

In a case of first impression, the National Labor Relations Board ("NLRB") in *Guard Publishing Company*, recently addressed the issue of whether an employer has the right to regulate employee use of its company-owned e-mail system. The NLRB, in a 3-2 decision, held that "employees have no statutory right to use an employer's equipment or media for Section 7 communications." Section 7 of the National Labor Relations Act (NLRA) encompasses communications about virtually all union activities by employees, including solicitation, organizing, grievances, picketing, strikes, and discussions about the terms and conditions of employment. In light of this ruling, an employer may, in the words of the Board, "lawfully bar employees' nonwork-related use of its e-mail system, unless the [employer] acts in a manner that discriminates against Section 7 activity." The NLRB then went on to announce a new standard for assessing claims of discriminatory application of an otherwise unlawful policy. Under this new standard, discrimination only occurs if an employer engages in "disparate treatment of activities or communications of a similar character because of the union" or other protected status. This decision of the NLRB gives much greater flexibility to employers in drafting and implementing workplace policies. If you need assistance in drafting your workplace policies and procedures, please contact us.

LAW FIRM UPDATES AND CLIENT SUCCESSES

Masud, Patterson, Schutter, Peters & Vary Says Goodbye to Katherine Gardner

Since November 2001, our law office has had the pleasure of employing Katherine Gardner as an associate attorney. Recently, Katherine decided to leave our firm to pursue other opportunities with

another mid-Michigan law firm. Please join us in wishing Katherine the best of luck in all of her future endeavors.

Successful Defense of MDCR Case

With Kraig Schutter and Brian Swanson's guidance, a mid-Michigan nursing home client successfully obtained dismissal of a Michigan Department of Civil Rights charge. The claimant, a licensed-practical nurse, alleged that the nursing home subjected him to unequal terms and conditions of employment and terminated his employment because of his sex. The company responded by arguing that the employee was in no way subject to any discrimination and that it was the employee's poor job performance and his refusal to comply with his employer's reasonable and legitimate work expectations that caused his termination.

Kraig Schutter and Elizabeth Peters Featured Speakers on Sexual Harassment

Kraig Schutter and Elizabeth Peters of our firm have recently provided sexual harassment training sessions to several mid-Michigan employers. If your organization is interested in sexual harassment training, please do not hesitate to contact us.

****SAVE THE DATE****

Masud, Patterson, Schutter, Peters & Vary, P.C. cordially invites you to attend the Saginaw, Midland, Bay and Mt. Pleasant Chambers of Commerce Regional Business After Hours sponsored by Masud, Patterson, Schutter, Peters & Vary, P.C. and Apple Mountain Resort. This event will take place on **June 26, 2008** from 5:00 p.m. to 7:00 p.m. at Apple Mountain.