

# RATH YOUNG PIGNATELLI

## Employment Law Update – Fall 2008

by Lucy C. Hodder

- ❖ Update Mandatory Posters: New Hampshire employers should update mandatory posters, which now require posting the definition of an independent contractor in a visible location. The definition of “employee” under New Hampshire law was changed effective January 1, 2008 to provide new standards for who constitutes an independent contractor. An individual must meet all 12 requirements to be treated as an independent contractor under New Hampshire law. Please check for free posters at the New Hampshire Department of Labor website [www.labor.state.nh.us/mandatory\\_posters.asp](http://www.labor.state.nh.us/mandatory_posters.asp).
- ❖ The New Hampshire Department of Labor recently announced that the state’s minimum wage increased from \$6.55 per hour to \$7.25 per hour effective September 1, 2008. The federal minimum wage, which currently remains at \$6.55 per hour, will increase to \$7.25 per hour effective July 24, 2009. If your organization is subject to both state and federal law, the higher rate of \$7.25 per hour applies. For more information, visit the New Hampshire Department of Labor website at [www.labor.state.nh.us](http://www.labor.state.nh.us).
- ❖ Retaliation Claims - U.S. Supreme Court: The United States Supreme Court has found that retaliation claims brought under the Civil Rights Act of 1866 (42 U.S.C. §1981) may be pursued as a stand-alone right of action. Previously, there had been a question as to whether retaliation claims brought under the racial discrimination statute can proceed without an underlying discrimination claim, and the Supreme Court has held they can. Cracker Barrel OCS West, Inc. v. Humphries, United States Supreme Court, May 27, 2008. Retaliation claims under Title VII, §1981 and the Age Discrimination Employment Act can now survive as independent claims regardless of whether there is underlying discrimination. Thus, an employee who complains he or she was retaliated against for engaging in protected activity under most of the civil rights statutes is now clearly protected by these statutes.
- ❖ This fall, the United States Supreme Court will hear arguments in Crawford v. Metropolitan Government of Nashville and Davidson County, #06-1595. The Supreme Court will review whether or not the anti-retaliation provision of Title VII protects a worker from being dismissed because she cooperated with her employer’s internal investigation of sexual harassment. The 6<sup>th</sup> Circuit had found that Title VII should only cover retaliation for protected activity involving a reporting or investigation of an EEOC complaint actually filed with the Equal Employment Opportunity Commission.

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- ❖ Genetic Information Nondiscrimination Act: In May 2008, GINA was signed into law. The Act prohibits employers and insurance companies from discriminating against individuals on the basis of genetic information.
  
- ❖ The EEOC issued guidance on unlawful treatment of workers with caregiving responsibilities. See [www.eeoc.gov/policy/docs/quanda\\_caregiving.html](http://www.eeoc.gov/policy/docs/quanda_caregiving.html). While there is no specific protected class category for caregivers under Title VII or the other statutes enforced by the EEOC, the EEOC notes that caregivers often have rights under the Family and Medical Leave Act, and that unlawful discriminatory treatment arises where a worker with caregiving responsibilities is subjected to discrimination based on the protected characteristic under EEOC law, such as sex and/or race. Some of the numerous examples cited by EEOC outlining potential violations include:
  - Sex-based stereotyping of working women;
  - Denying a male caregiver leave to care for an infant under circumstances where such leave would be granted to a female caregiver;
  - Subjecting a worker to severe pervasive harassment because his wife has a disability;
  - Refusing to hire a worker who is a single parent of a child with a disability based on the assumption that caregiving responsibilities will make the worker unreliable;
  - Making assumptions about pregnant workers, for example, that result in limiting a pregnant worker's job duties based on pregnancy related stereotypes; and
  - Reassigning a woman to less desirable projects based on the assumption that as a new mother she will be less committed to her job.

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