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# SS's Boston LiBlog

This is a test-blog to demonstrate the awesome power of the blog! (Think the Wizard of Oz's man-behind-the-curtain-voice.) The Oxford English Dictionary defines a weblog as "n. A frequently updated web site consisting of personal observations, excerpts from other sources, etc., typically run by a single person, and usually with hyperlinks to other sites; an online journal or diary." I'm hoping to reduce the number of emails I send out, by posting that information on a blog.

MONDAY, APRIL 03, 2006

## BNA, Inc., Daily Labor Report, April 3

*Number 63**Monday, April 3, 2006**ISSN 1522-5968*

### HIGHLIGHTS

#### *California Court OKs Unfair Competition Class Based on FLSA Violation*

Telemarketers in California can use a Fair Labor Standards Act claim for the basis of a state unfair business practices opt-out class action, a California appeals court rules in resurrecting a class action against the telemarketing company (Harris v. Investor's Bus. Daily Inc., Cal. Ct. App., No. B178428, 3/29/06).

Finding the FLSA opt-in collective action did not preempt an opt-out class under California's unfair competition law (Cal. Bus. & Prof. Code § 1720), the California Court of Appeals rules that a trial court erred in preventing telemarketers from moving forward with allegations that Direct Marketing Specialists had engaged in unfair or fraudulent business practices when it improperly paid employees.

The appeals court relies on a series of federal cases interpreting the FLSA's preemption provisions and finds that the goals of an FLSA opt-in collective action were not undermined by allowing a state law opt-out class action that was based on the FLSA claim. ... AA-1, Text E-3

#### *Volunteering to Study English at Home Does Not Require Compensation*

An employer that provides employees with paid worktime to learn English does not have to compensate employees who voluntarily take materials home to gain more English-language skills, the Labor Department's Wage and Hour Division says in a recently released

### Previous Posts

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opinion letter (Wage and Hour Opinion Letter, FLSA2006-5, 3/3/06 [released 3/30/06]).

Reacting to a request for an opinion posed by a restaurant that provides its employees English proficiency training, DOL says—in a letter signed by Acting Administrator Alfred B. Robinson Jr.—that as long as the employees volunteer to take the materials home and that the training is not directly related to the workers' jobs, they need not be compensated under the Fair Labor Standards Act.

"[I]t is our opinion that the employees may voluntarily take the language skills materials home and study them outside their regular work hours without the study time being counted towards the employees' hours worked," DOL said, relying on 29 C.F.R. § 785.27. ... A-1, Text E-1

#### *Judge Grants Section 10(j) Injunction Against New Owner of Nursing Home*

A federal judge in Los Angeles grants the National Labor Relations Board's request for an interim injunction ordering the new owner of a nursing home to recognize and bargain with the employees' union representative (*Aguayo v. S&F Market St. Healthcare LLC d/b/a Windsor Convalescent Ctr. of N. Long Beach, C.D. Cal., No. CV05-8165, 3/23/06*).

Granting NLRB Regional Director Victoria Aguayo's petition for injunctive relief under Section 10(j) of the National Labor Relations Act, Judge Wilson finds that the regional director showed probable success on the merits of the claim that S&F Market Street Healthcare violated the statute by refusing to recognize the Service Employees International Union as the bargaining representative of its employees. Aguayo presented sufficient evidence, Wilson says, that S&F is a successor employer for purposes of the NLRA because a majority of its employees previously were employed by the former owner and the nursing home operations remained essentially the same.

However, Wilson denies the regional director's request for an order that S&F reinstate a fired employee who had been a union steward, saying that "the passage of time militates against such an order" because the worker has found another job. ... A-9

#### *Bush Restates Need for Guestworkers, Says Some Might Want Citizenship*

President Bush reiterates his call to Congress to pass a "comprehensive" immigration bill that includes a new guestworker program, and acknowledges that some foreign workers would want to seek citizenship. "One of the important issues about a guestworker

program is, what does that mean for someone's desire to become a citizen of our country? I believe if someone has been here in our country illegally they should not get at the head of the line if they want to become a citizen," Bush says. His comments conclude a three-day summit with Mexican President Vicente Fox and Canadian Prime Minister Stephen Harper.

Bush has stepped up his public discussion about immigration as the Senate has begun debating the issue. Currently pending in the Senate is a proposal approved by the Senate Judiciary Committee that would grant undocumented workers currently in the United States the chance to earn citizenship by meeting certain criteria.

Senate Majority Leader Frist (R-Tenn.) says the Judiciary committee bill "goes too far in granting illegal immigrants with what can be fairly described as amnesty."... A-10

#### *Two Judges Refuse to Limit EEOC Communications With Class Members*

In two separate lawsuits featuring class allegations under Title VII of the 1964 Civil Rights Act, federal judges in Chicago deny the motions by defendant employers who sought to limit the Equal Employment Opportunity Commission's communications with potential class members (EEOC v. Primps LLC d/b/a Supercuts, N.D. Ill., No. 05 C 4592, 3/29/06; EEOC v. Fun in Motions Inc., N.D. Ill., No. 05 C 6889, 3/29/06).

In a lawsuit aimed at the operator of several Chicago Supercuts hair salons and a second suit aimed at a Chicago pool and patio furniture retailer known as Fun In Motion Inc., the defendants petitioned the court for protective orders covering mass communications from the EEOC. In both instances, the defendants sought orders permitting them to review and object to portions of written communications the EEOC might send to potential class members and witnesses. But the judges in both cases reject any process by which the defendants or the court might limit the EEOC's communications.

The judges, both in the U.S. District Court for the Northern District of Illinois, find that the defendant employers failed to show the particular abuses threatened by the EEOC's communications. John Hendrickson, the EEOC's regional attorney in Chicago, says the EEOC routinely attempts to communicate with individuals connected to its suits to distinguish potential class members and develop evidence on both liability and damages issues. ... A-7

#### **ALSO IN THE NEWS**

**ECONOMIC OUTLOOK:** Data released in March showing claims filed for jobless benefits indicate "that the labor market remains firm," Bank

of America economist Gary Bigg tells BNA, reflecting on the month's economic performance. ... D-1

**PERSONAL INCOME:** Total personal income in February rose by \$31.5 billion or 0.3 percent, while wages and salaries climbed \$21.3 billion or 0.4 percent, according to new Commerce Department data.

**AUTOS:** Delphi Corp. files asks a federal bankruptcy court for authorization to reject its collective bargaining agreements covering 13,000 employees and to end retiree health benefits and life insurance. ... A-8

**STEEL:** Union-represented workers locked out by AK Steel at its Middletown, Ohio, plant qualify for unemployment benefits, the Ohio Department of Jobs and Family decides. ... A-6

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#### ECONOMIC NEWS

##### ECONOMIC OUTLOOK

Unemployment, producer prices, and consumer confidence all made strong showings in their most recent reports in March, with one jobless rate figure at a five-year low, a sharp downturn in gas and home fuel costs, and a surprise uptick in consumer sentiment, according to government and private-sector reports released during the month... D-1

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