



LEGAL AND LEGISLATIVE UPDATE: AUGUST 2007

KEVIN M. GOLD, ESQUIRE, LEGISLATIVE DIRECTOR

EFFORT TO CHANGE UNION ELECTION RULES FAILS

Many employers will be pleased to know that efforts to overhaul the manner in which employees select union representation recently failed in the United States Senate. As mentioned in the March Legal and Legislative Update, and at a recent HRP meeting, there was significant support in Congress to pass the union-backed Employee Free Choice Act. The legislation, introduced in the Senate by Edward M. Kennedy, failed to get to a vote after an attempt to end debate on the Act failed. The Act had previously passed the House by a 241-185 margin. The failure to end the debate and bring the Act to a vote means the Act will not pass in 2007. However, it is expected to make a strong comeback next year.

Among other things, the Act would have amended the National Labor Relations Act to require employers to recognize unions based solely on signed cards. The Act would also impose mandatory mediation and arbitration for first contract negotiations and substantially increase penalties on employers for any labor law violations during organizing campaigns and first collective bargaining agreement efforts. The primary concern of employers was that, absent the normal secret ballot election process, unions could exert undue influence over employees to get them to sign cards without having the benefit of the employer's views on unionization.

Although secret ballot elections will continue to be the rule, employers are still well advised to implement positive workplace policies and eliminate employee dissatisfaction in order to prevent any unwanted unionization efforts. Open door policies, prompt and fair resolution of employee complaints and consistent application of workplace rules are some of the things employers can do to help avoid discontent.

BSA RAISES THE REWARD FOR REPORTING SOFTWARE PIRACY – TARGETS PENNSYLVANIA

The Business Software Alliance (BSA), the global organization representing the interests of major software manufacturers such as Adobe, Microsoft and Apple, recently announced that it is increasing its reward incentive offered to employees who report software piracy to \$1 million.

The reward incentive, which is in place to battle illegal software piracy in the workplace, will offer as much as \$1 million for credible employee reports of business software piracy from July 2007 to October 2007.

BSA has also launched a national advertising campaign to increase awareness of the reward incentive, pursuant to its “Blow the Whistle” campaign, and to encourage employees to report software piracy. The campaign specifically targets certain states, including Pennsylvania.

If BSA receives a credible tip, it aggressively (and often ruthlessly) pursues the offending company, and not only levies hefty fines on the company (which can be as high as \$150,000 per *each incident* of software copying), but also attempts to publicly embarrass the company in the media. Such efforts are aimed at deterring other companies from using licensed software by using the offending company as an example of the often severe implications of business software copyright infringement. Unfortunately, in many cases, the employee charged with making sure software is properly licensed is the employee reporting the alleged violation.

How can your company avoid a nasty, embarrassing, and expensive battle with the BSA? The answer is simple; take action *now* to ensure your company is compliant by following three steps:

1. First, the company should conduct an internal audit of its software programs and licenses to determine whether all such programs have proper licensure. The audit should be overseen and reviewed by legal counsel to ensure the results are protected by the attorney-client privilege.
2. Next, to ensure continued compliance, the company should create and implement a software licensing policy. Again, the creation and implementation of this policy should be overseen and reviewed by counsel.
3. Finally, the company should clearly communicate to its employees that unlawful software copying will not be tolerated under any circumstances, as a business can be held liable for various forms of illegal software piracy (even if an employee installs, without the company’s knowledge, illegal copies of software obtained outside of the workplace onto the company’s computers).

If your company happens to receive a letter from the BSA indicating that it has targeted the company for an investigation after receiving an employee tip, it is imperative to contact legal counsel immediately.

For more specific guidance on these issues, you may reach Mr. Gold at (717) 237-6702 or by email at kgold@rhoads-sinon.com.