



## **LEGAL AND LEGISLATIVE UPDATE: OCTOBER 2007**

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### **USE OF NON-ATTORNEYS IN UC PROCEEDINGS FINALLY RESOLVED?**

A recent decision by Pennsylvania's Commonwealth Court may have ended, once and for all, the issue of whether it is permissible for non-attorneys to represent employers in unemployment compensation proceedings. Specifically, in Piunti v. Unemployment Compensation Board of Review, the Commonwealth Court rejected a challenge by four attorneys to the constitutionality of a 2005 amendment to Pennsylvania's Unemployment Compensation Law that specifically permitted non-lawyers to represent either employees or employers.

The lawsuit was based on an argument that the statute, passed after the 2005 Harkness decision requiring attorney representation, infringed the ability of the Pennsylvania Supreme Court to regulate the practice of law. However, the Commonwealth Court disagreed and relied on the Harkness decision by the Pennsylvania Supreme Court earlier this year which held, contrary to the lower court decision, that a non-lawyer "representing an employer in unemployment compensation proceedings before a referee is not engaging in the practice of law." The Court also noted that a number of other states have reached similar conclusions with respect to their unemployment compensation proceedings. The Court also found it "most important" that the Unemployment Compensation Board of Review "has long interpreted the Law to permit both claimants and employers to be represented by non-lawyers in proceedings before an unemployment compensation referee."

Thus, employers are able to breathe another sigh of relief in light of the Harkness decision earlier this year and the recent Piunti decision. This would appear to resolve, once and for all, the issue of non-attorney representation in unemployment compensation proceedings and gives employers the right to choose whether they wish to be represented by counsel.

## **PERSONAL ASPECTS OF EMPLOYMENT LITIGATION**

There is a disturbing trend in employment litigation that has caused many executives and other company officials, including HR personnel, to be concerned. Specifically, employment law is getting more personal, as an increasing number of lawsuits are naming individuals as defendants as permitted by certain employment laws. Among the federal laws that have been interpreted to hold individual decision-makers personally responsible for their actions include the Fair Labor Standards Act, the Equal Pay Act and the Family and Medical Leave Act. Other laws, like Title VII and the Pennsylvania Human Relations Act, are clear that an individual cannot be sued, although the PHRA does impose individual liability for “aiding and abetting.”

However, with respect to those statutes allowing individual liability, plaintiff’s attorneys are strategically suing individuals involved in key decisions, such as denying a salary increase, terminating an employee or failing or refusing to grant a leave of absence.

Although the addition of individuals as defendants in lawsuits certainly raises the stakes, it may also increase the costs of litigation, as many individuals will want to vindicate their name, which may tend to extend the litigation process. Employment Practices Liability Insurance (“EPLI”) can help to protect individual officers and directors and reduce litigation costs, although policies differ with respect to deductibles and exclusions, such as excluding willful or intentional acts.

The best advice for HR managers and other executives is to make sure that they know the law and consistently act within the scope of their employment when they make employment decisions.

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