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TRADE ACT OF 2002 & COBRA

By Timothy P. Brechtel

The Trade Act of 2002 provides special COBRA rights for terminated employees who are eligible for trade adjustment assistance, as determined by the Department of Labor or state labor agencies. The Act provides such employees with a **second 60-day period during which they can elect COBRA coverage**, even if they declined COBRA coverage when it was initially offered. The second COBRA election period is not available after six months have passed from the initial loss of group health plan coverage. If an employee elects coverage during the “second-chance” period, the insurance is not retroactive and applies only from the date of the election.

The Act also provides employees with a **refundable tax credit** of 65% of the cost of their COBRA coverage. Eligible employees will be able to direct payment of the credit to their employer in partial satisfaction of their COBRA premiums, meaning that the employee will only have to come up with 35% of the cost of the premium in order to be covered. This feature of the Act will not be effective until the IRS publishes regulations governing how the process will work. The Act requires the IRS to issue such regulations by August 1, 2003.

The tax credit and second-chance COBRA election period only apply to **workers who lose their jobs for trade-related reasons** (such as jobs lost due to foreign imports or a transfer of production to overseas locations). However, there is a move in Congress to expand the tax credit feature to all COBRA-qualified beneficiaries. For the time being, employers that do not have any former employees who are eligible for trade adjustment assistance will not be affected by the new law. Employers that are affected will likely need to revise their COBRA notices to address the second-chance COBRA election period. The second-chance COBRA election applies only with respect to petitions for trade assistance filed on or after November 4, 2002.

UNION ORGANIZING ON THE RISE

By Sidney F. Lewis

Unions are back on the offensive. Union organizing has increased dramatically in the last few months. Maintaining a union-free environment is a 365-day-a-year job. It is important to constantly be mindful of employee relations, employee issues surfacing in the workplace, and union activity in your area. The quicker you learn about card signing, the quicker you can react and the more likely you are to slow or stop the card signing.

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There are many factors that prompt employees to join or vote for a union. Some of these are:

1. Wages
 - a. Not competitive with like jobs in other companies in the same industry and in the same operating area.
 - b. No increases either on merit or general basis.
2. Benefits
 - a. Not competitive with other companies in the same industry in the same operating area.
 - b. Do not meet the needs of the employees.
3. Do Not Know What Is Expected of Them
 - a. No periodic appraisal of performance by supervisor.
 - b. Rules and regulations not known or communicated.
4. Don't Have a Say on Things Affecting Job
 - a. Suggestions not given consideration.
 - b. Changes made without employees being informed.
5. Poor Working Conditions
6. Not Kept Informed on Things
 - a. Wage scales.
 - b. Company benefits and what they mean.
 - c. Expansion, new management, new supervisors, promotions.
 - d. New methods and equipment.
 - e. Company plans, profits, sales, etc.
7. Inconsistent and Unfair Administration of Policies, Rules, and Regulations
 - a. Favoritism.
 - b. Promises are broken.
3. No recognition.
8. No Identification with Company or Management
 - a. No sense of belonging.
 - b. Employees do not participate in change.
9. First-Line Supervision
 - a. Not concerned about employees, their problems, their roles, their advancement.
 - b. Do not appear often enough in the working area.

Company Defensive Policies

While an employer can never completely remove its workplace from the reach of union organizers (and certainly not from in-house employee organizers), certain policies may be adopted which make the union organizer's task more difficult. These are the solicitation, distribution, and access poli-

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cies of the employer.

No-Solicitation Policies

An employer may adopt a policy providing that employees may not engage in nonwork solicitation activities during the time they are expected to be working. However, these policies must be communicated and consistently enforced regarding **all** nonwork solicitations.

Bulletin Boards

An employer may also adopt a no-bulletin board solicitation rule (or other similar policy) that forbids the posting of any solicitation for outside purposes on company bulletin boards or elsewhere throughout the workplace. Again, this must be consistently enforced.

Distribution Rules

Employers may prohibit the distribution of material (except cards) in nonwork areas.

Access Rules

Employers may generally preclude access to its premises by nonemployee union organizers for the purposes of engaging in organizational activity.

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

Editor and Author: H. Mark Adams
Jones Walker
201 St. Charles Ave., 47th Fl.
New Orleans, LA 70170-5100
ph. 504.582.8258
fax 504.582.8015
email: madams@joneswalker.com

Author: Sidney F. Lewis, V
Jones Walker
201 St. Charles Ave., 47th Fl.
New Orleans, LA 70170-5100
ph. 504.582.8352
fax 504.589.8352
email: slewis@joneswalker.com

Timothy P. Brechtel
Jones Walker
201 St. Charles Ave., 51st Fl.
New Orleans, LA 70170-5100
ph. 504.582.8236
fax 504.582.8012
email: tbrechtel@joneswalker.com

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Labor, Employment & Employee Benefits Practice Groups

H. MARK ADAMS¹
JENNIFER L. ANDERSON
JOHN C. BLACKMAN
TIMOTHY P. BRECHTEL
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¹ Also admitted in Mississippi

² Also admitted in West Virginia

³ Also admitted in Texas

⁴ Admitted in Florida & Peru only

⁵ Also admitted in Tennessee

⁶ Also admitted in Georgia

JONES WALKER SEMINAR
STAYING UNION FREE
Bank One Building, 52nd Floor
December 3, 2002

To register or to get more information,
Contact labor@joneswalker.com
or call
Sid Lewis at (504) 582-8352