

**EMPLOYMENT LAW UPDATE**

April 5, 2006

**How Many Employees Do You Have?**

When an employer employs fifteen (15) employees during twenty (20) calendar weeks of the year, the employer becomes subject to two (2) important federal laws: (1) Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin; and (2) the Americans with Disabilities Act (ADA), which prohibits discrimination against individuals with a disability. When an employer employs twenty (20) employees in twenty (20) calendar weeks, the employer also becomes subject to the Age Discrimination in Employment Act (ADEA), which prohibits discrimination in the workplace based on age.

The United States Supreme Court recently issued an opinion that reminds employers to pay attention to the number of employees employed. In *Arbaugh v. Y & H Corp., d/b/a The Moonlight Café*, the Supreme Court held that an employer who did not raise the number of employees as a defense during the merits of the case lost the defense. S.Ct. Op. No. 04-944 (Feb. 22, 2006). The Court held that the employer could not raise the defense in post-trial motions because the defense had not been raised at trial.

The Supreme Court's decision in *The Moonlight Café* case has two lessons for employers. First, any defense regarding the number of employees should be raised immediately. Employers will have the chance to raise the defense in any proceeding before a state or federal agency as well as raising the defense early in any litigation. Second, employers should be mindful of whether or not they employ fifteen (15) or more employees and, if so, should take steps to ensure compliance with the federal laws.

Once an employer recognizes that it has responsibility under these federal laws, preventative steps are available to help ensure compliance and to protect against liability. For example, employment policies can be provided to employees stating the requirements of the law and providing employees with a process for reporting any non-compliance. Through policies and training, an employer can take affirmative steps to comply with state and federal laws and to reduce potential liability.

**Employment Poster.**

On December 19, 2005, the United States Department of Labor issued new regulations under the Uniformed Services Employment and Reemployment Rights Act (USERRA) that provide additional guidance for the prohibition of discrimination against any person because of service in the military and for reemployment rights upon return from military service. One of the regulations provides for employers to post the new notice of rights under USERRA. The new information can be found on the United States Department of Labor website ([www.dol.gov/](http://www.dol.gov/)).

**Immigration.**

**Reminder** - The earliest date to submit an application for a fiscal year 2007 H-1B visa is April 1, 2006. The 2007 fiscal year for purposes of H-1B visas begins on October 1, 2006. The 2006 cap for H-1B visas was reached in August of 2006. It is best to submit applications for fiscal year 2007 as close to April 1, 2006 as possible.

The information provided in this document is provided as information only and is not intended as legal advice. If you have questions, please feel free to contact Wendy Wilkie at the phone number listed below or via e-mail at [wwilkie@hagoodkerr.com](mailto:wwilkie@hagoodkerr.com).