



February 2010

Court Approves \$6.2 Million Distribution in EEOC v. Sears Disability Settlement

235 Former Employees Terminated at End of Workers' Compensation Leaves of Absence to Share Settlement Proceeds after Participating in Claims Process

The U.S. Equal Employment Opportunity Commission (EEOC) recently announced court approval of the distribution of a \$6,200,000 compensation fund in the landmark Americans with Disabilities Act (ADA) litigation between the EEOC and Sears, Roebuck & Co. The distribution is being carried out pursuant to the terms of a consent decree. In its lawsuit against Sears, the EEOC had alleged that Sears maintained an inflexible workers' compensation leave exhaustion policy and terminated employees instead of providing them with reasonable accommodations for their disabilities, in violation of the ADA. The case resulted in the largest ADA settlement in a single lawsuit in EEOC history.

Under the terms of the decree, the EEOC provided claim forms to certain Sears employees who had been terminated under Sears' workers' compensation leave policy. The claimants were asked to report to the EEOC, among other things, the extent of their impairments, their ability to return to work at Sears, and whether Sears had made any attempt to return them to work. Based on these criteria, the EEOC found that 235 individuals were eligible to share in the settlement. The average award was approximately \$26,300. More than twenty claimants were found to be ineligible by the EEOC.

US Labor Department Moves to Debar Long Island, NY, Mail Hauling Contractor and Recover \$1.8 Million in Back Wages for 500 Employees

The U.S. Department of Labor will recover more than \$1.8 million in back wages for more than 500 employees of MT Transportation & Logistics Services Inc., a trucking company based in Bay Shore, NY under contract with the United States Postal Service (USPS) to haul mail. The company and its principal officers also will be debarred from receiving future government contracts for a three-year period.

USPS mail haul contracts are subject to the prevailing wage and fringe benefits provisions of the federal McNamara-O'Hara Service Contract Act. The McNamara-O'Hara Service Contract Act requires contractors and subcontractors performing on federal service contracts in excess of \$2,500 to pay service employees no less than the wage rates and fringe benefits found prevailing in the locality for the classification of work that they perform. The department's Wage and Hour Division cited the company and the company's officers for failing to pay their service employees the legally required hourly rates and fringe benefits.

The Focus

In an administrative complaint filed with the Labor Department's Office of Administrative Law Judges (ALJ), the Wage and Hour Division named as respondents the company, Anthony Alvarez as president, Andrew Meyers as vice president-sales, Della Herzog as vice president-finance and Terri Chester as controller/general manager. The ALJ approved a consent finding and order to resolve the complainant when the respondents agreed to pay a total of \$1,830,800 in back wages and interest for the period from Dec. 1, 2005, to Dec. 31, 2008. The judgment also orders the company and the principal officers to be debarred from future government contracts for three years and to establish a compliance program to ensure future compliance with wage and hour laws.

US Department of Labor's OSHA Proposes More Than \$59,000 in Penalties against C&W Industries for Willful and Serious Safety and Health Violations

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) is proposing \$59,250 in penalties against C&W Industries in Union Springs, Ala., for safety and health violations.

OSHA began its inspection in August 2009 after receiving a complaint about a number of deficiencies at the plant, including unguarded machinery that exposed workers to amputation hazards, insufficient training and certification for forklift operators, and deficiencies in the plant's fire prevention system.

After conducting a safety inspection, OSHA cited the company with one willful safety violation with a \$38,500 penalty for failing to protect workers from caught-in and amputation hazards while cleaning, changing dies and performing maintenance on press machines. The inspection revealed the employer had failed to implement lockout/tagout procedures to prevent accidental energy start-up despite being aware of its obligation to institute such a program. OSHA defines a willful violation as one committed with plain indifference to or intentional disregard for employee safety and health.

"Workers should not have to risk amputations in order to earn a paycheck," said Kurt Petermeyer, director of OSHA's Mobile Area Office. "Company management was aware of the requirements to establish a lockout program and did not take action."

Eight serious safety violations with proposed penalties totaling \$13,750 also have been issued for operating an improperly guarded press brake and inadequate guarding on floor fans. OSHA found employees were exposed to struck-by hazards while operating overhead hoists and cranes, fire hazards, and tripping and slipping hazards.

A separate health inspection revealed hazards associated with failing to offer the Hepatitis B vaccination and training to workers who provided first aid response for two amputations in the facility. After an amputation a week prior, blood was not cleaned off the machine before it was placed back into operation, exposing operators to possible contamination.

Additionally, the employer has been cited for 10 other-than-serious violations with \$7,000 in penalties for failing to complete incident reports for seven instances where workers sustained injuries at the facility. Other violations include failing to maintain OSHA 300 logs correctly, prepare annual injury and illness summaries, and develop and implement a Hazard Communication Program for hazardous chemicals, materials and respiratory protection.

The Focus

Question of the Month

Question: What is the best way to verify employment when I rehire an employee?

Answer: When you rehire an employee, you must ensure that he or she is still authorized to work. You may do this by completing a new Form I-9 or you may re-verify or update the original form by completing Section 3.

If you rehire an employee who has previously completed a Form I-9, you may re-verify on the employee's original Form I-9 (or on a new Form I-9 if Section 3 of the original has already been used) if:

1. You rehire the employee within 3 years of the initial date of hire; and
2. The employee's previous grant of employment authorization has expired, but he or she is now eligible to work under a new grant of employment authorization; or
3. The employee is still eligible to work on the same basis as when Form I-9 was completed.

It is important to note that you **MUST** complete a new Form I-9 if the version of the form you used for the previous verification has since been replaced by a new version.