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The Lawyers of Triquetra Law focus our practice on ACE:

Appeals
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Big Changes in UC Law Affect Severance Payments and Job Searches

By Andrea C. Farney, Esq.

Prior to January, an employee didn't need to worry about receiving both a severance payout and unemployment. That's because the law excluded severance payments from consideration in awarding unemployment compensation to a former employee. That all changed January 1, 2012.

Recent changes to the unemployment compensation law now require a determination of how severance payments affect employee's unemployment eligibility. You used to be able to advise clients that receiving a severance payment would not affect their unemployment. No more though. Governor Corbett signed Act 6 of 2011 on June 17, 2011 bringing several significant changes to UC law. ***Now, severance pay is offset to the extent it exceeds 40% of the average annual wage statewide.*** *See 43 P.S. §804(d)(1.1).* The current average annual wage statewide is $17,853. This means an employee can receive a severance up to that amount without any unemployment compensation effect. But severance above that amount, depending on the employees regular full-time salary, offsets unemployment. Here's an

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U.S. Supreme Court Finds Ministerial Exception for Religious Employers

By Sharon R. Lopez, Esq.

Our federal constitution sets forth our social contract with our government leaders, with various articles dictating the powers and limits of each branch, yet arguably the most powerful agreement between our citizenry and our government lies in the Bill of Rights, the first ten amendments. The First Amendment's freedom of religion clause prohibits government from interfering with internal church decisions. It states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." In 1990 the Supreme Court held a neutral and generally applied law did not interfere with the free exercise of religion, yet this year, the Court reached a different result.

The Court held federal and state employment discrimination laws interfered with freedom of religion and established a ministerial exception in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694, 181 L. Ed. 2d

Workers Hurt on the Job Need Employment Law Assessments to Protect their Leave, Accommodation, and Anti-discrimination Rights.

By Andrea C. Farney Attorney at Law

Your client got hurt on the job and now their employer is giving them a hard time. You delve into the situation a bit further. The employer told your client they no longer have any work for them anymore because they can't lift those 50lbs of product. Or perhaps your client is noticing she is under unusual scrutiny from her boss. She didn't get her regular annual increase and has recently been put on a performance improvement plan. This wouldn't be too suspicious, except she wasn't told she had any performance problems the first eight years on the job—*before* she got hurt. As an employment lawyer, I unfortunately hear these types of scenarios fairly regularly. I call it "adding insult to injury."

The employee got hurt while working, and now, besides the obvious physical and emotional recovery from the accident—their job seems to be on the line. This is a stress cocktail. *So, what can you do?* Your client needs an employment law assessment. For one, he may have rights under the **Family Medical Leave Act (FMLA) to protected time off of work.** Under the FMLA, a covered employee has the absolute right to have 12 weeks of unpaid time off per year for serious health conditions. Employers are also prohibited from retaliating against employees who receive FMLA. He may need what is called **intermittent FMLA.** He may also have rights under the **Americans with Disabilities Act (ADA).**

The ADA provides a qualified employee with the right to seek reasonable accommodations to allow them to remain employed. A client covered under the ADA can have rights to take off additional time under some circumstances. They may be able to stay on the job by requesting a restructuring or modified work schedule. Maybe your client tells you that lifting 50lbs is so rare that most workers don't ever actually have to do it. If that's the case, your client should seriously consider attempting to keep his job. If he's already been let go, he should have his discrimination claim valued.

Injured workers are often approached or asked to sign what's referred to as a global settlement. Such agreements can be in the worker's best interest if their employment law claims are adequately assessed and understood. Usually the employee is resolving her workers compensation matter and is signing an agreement to release claims. Employers and insurance companies like global settlements because they resolve everything at one time. My cynical side tells me they also like this because they want the employee to sign off before they hear about their employment law rights. The worker's attorney, however, has to make sure they aren't giving away the worker's employment law claims in global settlements. In a case called *Flynn v. Fed. Express,* 2008 U.S. Dist. LEXIS 41322 (E.D. Pa May 23, 2008), the workers compensation compromise and release agreement included a provision releasing "all past, present and future liability." The Court found the employee preempted from bringing his ADA claims after signing such a global agreement. Waiving claims without an assessment of the other possible claim, e.g. discrimination, FMLA, wage and hour claims, could result in malpractice issues.

Triquetra Law welcomes employment law referrals from workers compensation and personal injury attorneys. Contact us at 717-299-6300 for more information.

Supreme Court, Continued from page 1

650, 2012 U.S. LEXIS 578 (2012). It was a unanimous and narrowly written opinion.

Hosanna is a Lutheran religious school, which employed two types of teachers, "called" teachers and "lay" teachers. Although both types of teachers engaged in similar teaching activities, called teachers completed additional religious requirements and were commissioned by the church as a "minister of religion" at the school. Cheryl Perich was a called teacher, who suffered a disabling condition that required her absence from school for a few months. When she informed the school she was fit to return to work, the school offered her a severance package in exchange for her resignation. Perich refused to resign and informed the school that she intended to "assert her legal rights." Subsequently, the school fired Perich because of her "insubordination and disruptive behavior" by "threatening to take legal action." in a traditional employment discrimination situation, this would be a classic retaliation claim.

Perich filed a disability and retaliation charge with the EEOC and the case proceeded to court. Hosanna filed a motion for summary judgment arguing the First Amendment barred the lawsuit since the school fired Perich for a religious reason: suing violated the church's belief that Christians should resolve their disputes internally. The United States District Court for the Eastern District of Michigan granted summary judgment to the school, finding the employment relationship was ministerial in nature, and therefore barred by the First Amendment. The United States Court of Appeals for the Sixth Circuit reversed, finding Perich was not a minister for the purposes of the First Amendment bar on government's interference with the free exercise of religion. The United States Supreme Court accepted the case for certiorari and found otherwise.

The EEOC argued that the ministerial exception should be only apply to workers who performed "exclusively religious functions." The school argued the exception should apply to any employee the church deems a minister.

After reviewing the history of religious freedom in the United States, including James Madison's understanding of the First Amendment religion clauses, the Court restated the principle that the state should not interfere in internal religious affairs, even when addressing issues of slavery and discrimination. "When ecclesiastical tribunals decide such disputes, …'the Constitution requires that civil courts accept their decisions as binding upon them.'" *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 705, 181 L. Ed. 2d 650, 663, 2012 U.S. LEXIS 578 ***27-28 (2012). The Court found the First Amendment protects churches employing ministers from laws that interfere with the church's selection of its ministers. This is called the "ministerial exception."

The Court went on to find the ministerial exception applied in Perich's case because: 1) Hosanna held her out as a minister; 2) the congregation called her to the ministry; 3) Perich had to complete theological training to qualify for the calling; 4) Perich also accepted the calling and its accompanying housing perks and tax exemptions; and 5) the Perich's duties included certain religious activities.

The Court limited its holding to the facts in this case, but nonetheless expressed a policy of non-interference in religious matters. "The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission. … The church must be free to choose those who will guide it on its way." *Id.* at 720. The Court also dismissed the EEOC's arguments of pretext as it required entanglement with religious beliefs in the Perich case.

Justice Alito authored one of the concurring opinions directing the lower court so look at the ***functional status*** of the employee when determining whether the exception applied. *Id.* at 716.

Analysis: Hosana-Tabor ends the ministerial exception debate. The ministerial exception will not act as a bar to suit; it is an affirmative defense borne by the defendant religious employer. The exception is fact sensitive.

Triquetra Law Lawyers & Staff Update

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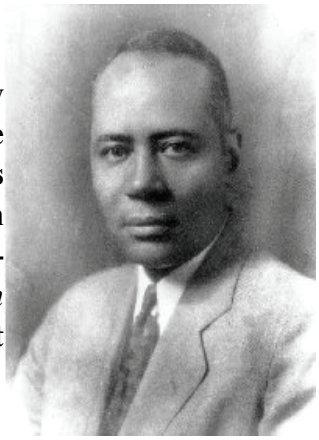
February is Black History Month. Learn more about famous civil rights lawyer Charles Hamilton Houston—the legal engineer of the road to *Brown vs. Board of Education* at www.naacp.org.



Bar Related Activities: Local and State Bar diversity efforts continue to keep us busy. **Andrea and Sharon** serve on the **PBA Diversity Team and on the LBA's Diversity Committee.**

Sharon is actively involved in the PBA's Gay & Lesbian Rights Committee. She spearheads the Committee's *Open Court* Newsletter which is designed to get the word out on GLBT legal issues for lawyers. The newsletter is available for downloading at www.pabar.org/public/committees/gayright/pubs/nletter.asp.

Andrea serves as Chair of the PBA Legal Services to Persons with Disabilities Committee. She is in her first year as Chair and has been appointed by Tom Wilkinson, PBA president-elect, to continue for another year.

Andrea also serves as a co-chair the PBA's Minority Bar Committee's Diversity Summit. This year the Summit will be held in Pittsburgh and is scheduled for October 26, 2012.

Unemployment Changes: continued from page 1, by Andrea C. Farney

example: Employee A is downsized by her company and offered a severance package. Employee A's salary is $52,000. The severance offered is 6 months or $26,000. To calculate the offset you first subtract $17,853 from the $26,000, leaving $8,147. You then divide the $8,147 severance pay by Employee A's regular full-time weekly wage of $1,000, or $8147/$1000. The result, 8.147, which is the number of weeks Employee A will have to wait after application before receiving any unemployment benefits. *See 43 P.S. § 804(d)(1.1)(iii).*

That's the bad news. The good news is Employee A should still be eligible for the full number of weeks of compensation once payment starts, i.e. they still get 26 weeks of benefits if that is the existing number of eligible weeks.

Another major change involves new job search requirements. All employees receiving UC must now:

1. Sign-up for the Pennsylvania CareerLink system;
2. Conduct an active search for work; and
3. Keep a record of work search activities. *See 43 P.S. §801(b).*

The PA Department of Labor is empowered under the new law to establish specific requirements as to what constitutes an "active search" for work. *Id.*

Recently, the Department issued job search instructions requiring an individual to apply for at least two or three jobs per week, depending on how long the individual has received benefits. Beyond job applications, recipients must also participate in job-search activities such as searching for positions on the CareerLink system, networking with friends and colleagues, and attending job fairs. The Department's work instructions are available on the Department's website: www.uc.pa.gov. The Department also provides a form, UC-304, for recipients to record their job search activities. The use of the form is suggested, not required.

The law still allows employees to appeal unfavorable decisions. Employees must file an appeal within 15 days of the order or decision to preserve their rights.

Triquetra Law attorneys represent clients in unemployment compensation hearings and appeals. We provide representation for a flat For more information contact us at 717-299-6300.