

# Labor and Employment Law

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## HEADLINES

- ◆ Reversing Course, EEOC Approves A Firm's Mandatory Arbitration Plan
- ◆ EEOC Issues Fact Sheet On ADA And Epilepsy
- ◆ OFCCP Sets New Targeting Plan
- ◆ Court Finds That Insurance Adjusters Are Not Exempt From Overtime
- ◆ Illinois Enacts WARN Act Equivalent
- ◆ NLRB Switches Position: Grad Students Can't Organize
- ◆ Illinois Allows Attorney General To Bring Civil Rights Lawsuits Against Employers

### Insert

- ◆ ODRO Update

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## EEOC

### Reversing Course, EEOC Approves A Firm's Mandatory Arbitration Plan

The Equal Employment Opportunity Commission (EEOC) has long opposed agreements between an employer and employee requiring the employee to submit all employment disputes to an arbitrator in lieu of suing the employer in court. A 1997 EEOC policy statement states that mandatory arbitration is "contrary to the fundamental principles evinced in [employment discrimination] laws." Yet, in a recent case in federal district court in California, the EEOC entered into a settlement agreement with a law firm that allows the firm's mandatory arbitration program to remain in effect (but, with some slight alterations). *EEOC v. Luce, Forward, Hamilton & Scripps*, CV 00-1322.

Although the settlement agreement does not alter the EEOC's 1997 policy statement, and the EEOC has not issued any definitive pronouncements accepting mandatory arbitration of

employment disputes, the settlement agreement demonstrates that the EEOC has recognized that federal courts have repeatedly upheld the validity and enforceability of arbitration agreements in the employment context (as long as the agreement includes certain employee protections, such as some discovery, the right to recover the same type of damages as are available under Title VII, etc.)

In view of this decision to settle, it is likely that the Commission will reconsider its policy on mandatory arbitration agreements. But our readers should not expect any change—or even a "public" discussion of this issue—until long after the November presidential election.

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### EEOC Issues Fact Sheet On ADA And Epilepsy

On July 28, 2004, the EEOC posted a Fact Sheet on its Web site discussing how the Americans With Disabilities Act (ADA) might apply to applicants and employees with epilepsy and other seizure disorders. The 14-page Fact Sheet discusses such issues as:

- ◆ when epilepsy is considered a disability under the ADA;
- ◆ when an employer may ask an applicant or employee questions about epilepsy;
- ◆ what should an employer do when an applicant or employee voluntarily discloses that he or she has epilepsy;
- ◆ what types of reasonable accommodations may be needed by employees with epilepsy;

- ◆ how an employer should handle safety concerns about applicants and employees with epilepsy; and
- ◆ how employers can protect against harassment because of epilepsy or other disability.

The Fact Sheet is available on the EEOC's Web site at <http://www.eeoc.gov/facts/epilepsy.html>. It should be required reading for employers who have employees with a seizure disorder.

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