

TOP OF THE NEWS

Outback Suit Grows

A federal labor investigation that began when two former Outback Steakhouse employees complained of alleged sex discrimination has ballooned into a nationwide lawsuit with more than 150,000 potential plaintiffs, including nearly every woman who has worked at one of the Tampa chain's 700 U.S. restaurants since 2002.

The scope of the legal battle wasn't immediately apparent in September when the Equal Employment Opportunity Commission filed suit against Outback on behalf of two Colorado women and others "adversely affected." Outback, which denies the EEOC's allegations of discrimination, says the federal agency initially planned to limit the potential plaintiffs to a 20-store, tristate area run by the same regional manager.

But the EEOC says it always meant to pursue a national claim against Outback, the oldest and largest of eight chains owned by Tampa's

OSI Restaurant Partners Inc. And last month, a federal judge in Colorado agreed. If Outback's appeal of the ruling fails, it will have to fork over the name, address, gender, job description and salary history of more than 300,000 current and former U.S. employees. Roughly half are women and will be invited to join the discrimination suit.

EEOC lawsuits are rare. In fiscal 2006, the agency received 75,768 separate discrimination charges nationwide but filed only 403 lawsuits, or about one for every 190 complaints. Only a small fraction targeted Fortune 500 corporations like OSI.

"... cute girls shold remain servers ..."

Moreover, the timing could hardly be worse for Outback. The steak house chain is battling an image problem among turned-off female diners and saw its president resign last week after just three months on the job. And parent company OSI is just weeks away from a shareholder

vote on a controversial \$40-per-share offer to convert from a publicly traded to a privately owned corporation.

A national class-action lawsuit seemed unlikely back in 2003, when Jennifer Turner-Rieger filed an EEOC complaint against her former employer of more than 10 years. According to court filings, Turner-Rieger began her Outback career as a waitress in the Denver area. She eventually was promoted to a management position overseeing servers, hostesses and the bar - one of three top positions at the store level. But the promotion came only after she assured regional manager Tom Flanagan, who allegedly had told staff that "cute girls" should remain servers, that she wasn't planning to have children.

The Equal Employment Opportunity Commission recently decided to focus more energy on bigger targets, and the agency says it has evidence of a pattern of sex discrimination at Outback Steakhouse.

More than 150,000 current or former Outback employees will likely be invited to join the suit. [PE]

Child Labor Flyer Enclosed!

President's Report

~Dave Miller~

FAA To Raise Pilots' Mandatory Retirement Age

On January 30, 2007, the Administrator of the Federal Aviation Administration (FAA) announced that the federal agency will propose amending Part 121 of the Federal Aviation Regulations (FAR) to raise the mandatory retirement age for pilots who fly for Part 121 scheduled air carriers from age 60 to age 65. Many companies that employ pilots to fly their corporate aircraft have maintained mandatory retirement policies for their pilots modeled after the FAA's Part 121 rule. With the announcement by the FAA Administrator regarding raising the Part 121 retirement age to 65, many of these companies may decide to reassess their policies.

EMPLOYERS MAY NEED TO REVISE THEIR INTERNAL POLICIES

Employers that maintain mandatory retirement policies for their pilots should be aware that the Equal Employment Opportunity Commission (EEOC) deems such policies to violate the Age Discrimination in Employment Act (ADEA). The EEOC takes the position that corporate flight departments cannot rely upon the FAR Part 121 retirement rule because that rule applies only to Part 121 scheduled air carrier operations. Corporate flight operations are conducted under FAR Part 91, which does



not contain a mandatory retirement rule.

Employers need to review and consider the types of policies and procedures that may be implemented by their flight departments to maintain a high level of safety without resorting to (and possibly defending) mandatory retirement policies. [PE]

Three Basic Principles to a Safe Workplace

In E. Scott Geller, Ph.D.'s book, *People-Based Safety*, these three basic principles demonstrate that behavioral safety is more than a narrow program of interpersonal observation and feedback.

- **Observable behavior** — You can be objective and impersonal about behavior, unlike discussions on attitudes and feelings. Whatever the intervention approach, focus on behavior.
- **System causes** — Holding people accountable for process numbers they can control enables true empowerment.
- **Positive consequences** — Recognizing people's safe behavior facilitates more learning and positive motivation than criticizing at-risk behavior. [PE]

The beginning is the most important part of any work. — Plato

RAIDS & LEGISLATION

U.S. Raid At Plant Nets 62 Arrests

As part of a continuing workplace crackdown, federal officials charged managers of a Beardstown, IL, cleaning company with helping at least 25 workers buy stolen Social Security numbers, many from an underground market in Chicago.

The two managers at Quality Service Integrity Inc. were arrested during an early-morning raid Wednesday in central Illinois, along with 60 employees suspected of being in the U.S. illegally. A criminal complaint also charges 25 workers with identity fraud.

“... the Beardstown case shows increasing sophistication . . .”

The arrests were made in a meatpacking plant that has a contract with the cleaner, said Gail Montenegro, spokeswoman for Immigration and Customs Enforcement.

Officials of QSI, which has an office in the Cargill Meat Solutions Plant in Beardstown, did not return phone calls.

In an e-mailed statement, Cargill, a worldwide meat producer based in Wichita, Kan., said the company “takes seriously the legal obligation to employ only individuals who are legally authorized to work in the United States. Cargill will continue to cooperate with ICE in this matter to the extent it is requested to do so.”

With immigration raids nationwide raising alarms among employers and immigrant advocates alike, the Beardstown case shows increasing sophistication in the hiring of illegal immigrants, Montenegro said.

In the past, an employer may have simply looked the other way when an undocumented immigrant showed up with fake papers. But a federal affidavit in this case alleges that the QSI managers directed their prospective hires to buy stolen IDs in Chicago, in this case many from U.S. citizens living as far away as Texas or New York.

In some instances, the company manager, Gerardo Dominguez-Chacon, supplied workers with Social Security numbers, the affidavit states. The fraud was uncovered with the help of several QSI workers who had been arrested earlier and agreed to wear recording devices, the affidavit says.

“It used to be that someone would come to the U.S. illegally and the first thing they’d do is go to 26th Street and purchase a set of fake documents,” Montenegro said, referring to Chicago’s predominantly immigrant Little Village neighborhood. “What we’re seeing more and more is the market for valid IDs, actual Social Security numbers and IDs of legal permanent residents whose IDs are unwittingly being stolen from them.”

Immigrant advocates condemned the raid, saying federal deportations in recent months have split apart families and

brought unnecessary pain while Congress prepares to renew its debate on federal immigration reform.

Among legislation being considered is a bill that would offer citizenship to many of the country’s estimated 12 million undocumented immigrants. [PE]

Paid Sick Leave

Senator Ted Kennedy of Massachusetts has introduced legislation that would require employers to provide 7 days of paid sick leave to employees working 30 or more hours per week.

The legislation, called the Healthy Families Act, would apply to employers with 15 or more employees. U.S. Representative Rosa DeLauro of Connecticut has also introduced the legislation in the House.

Both lawmakers have introduced similar legislation in the past. While Democrats now hold a majority in both chambers of Congress, the legislation is opposed by many Republicans, who could block the legislation.

Under the proposed legislation, paid sick days would be pro-rated for employees working less than 30 hours per week.

Employees would be able to take paid sick leave for their own physical or mental illness and to care for a child, a parent, or a spouse.

“San Francisco recently became the first . . .”

The legislation would also require that accrued paid sick leave carry over from year to year, but employers wouldn’t be required to permit an employee to accumulate more than 7 days of the sick leave.

San Francisco recently became the first jurisdiction to require employers to offer paid sick leave to employees. The ordinance requires employers to give 1 hour of paid sick leave to an employee for every 30 hours worked in the city. The ordinance allows employees to accrue up to 40 hours of paid sick leave if they work for a small employer (fewer than 10 employees). Employees of larger employers can accrue up to 72 hours.

Paid sick leave bills have been introduced in several other states. [PE]

Slow Growth

Fewer companies expect to add workers this quarter than in the first three months of the year, according to a recent survey that still points to a fairly steady, solid job market.

Twenty-nine percent of hiring managers said their firms planned to expand their payrolls in the April-June quarter, down from 34% who said they added workers in the first quarter, according to an online survey for USA TODAY and CareerBuilder.com by Harris Interactive.

The survey suggested the job market is softening a bit but certainly isn’t falling off a cliff. More than half of the hiring managers said they plan to keep their staffing levels unchanged in the second quarter, about the same as in the first quarter. And only 5% said they plan to cut staffs. [PE]

Child Labor Flyer Enclosed!



Human Resources Question with Candice Weaver

THE MONTH'S BEST QUESTION

Workers' Comp Abuse

Q: "We have an employee who has told a supervisor that if he is fired or laid off, he will file a Workers' Compensation claim to retaliate. Can an employee do that, and what is our defense?"

A: An employee must inform the employer of any injury or illness suffered as a result of their employment. Claims filed after layoff or termination are subject to close review.

A recently reported case gives hope to employers who are sometimes held hostage by employees who would "use the system" against them.

WORKERS' COMPENSATION DENIED

The Workers' Compensation Appeals Board ruled that employees must file a workers' compensation claim before termination or layoff in order to be eligible for benefits. *Chavez v. Workers' Compensation Appeals Board (March 23, 2007)*

Workers' compensation law was written to avoid retaliatory filings by disgruntled former employees. Once employees are injured, they must report the injury as soon as possible or risk not being covered.

This case, *Chavez v. Workers' Compensation Appeals Board*, is unpublished and therefore cannot be relied upon as precedent by courts in the future, but it provides useful guidance regarding the obligations of an employee when a workplace injury occurs.

The employer in this case had a consistent policy that required all employees to report injuries immediately. All injuries that were reported were then documented.

It is important for employers to follow consistent protocol when a workplace injury occurs. As demonstrated in this case, the employer's credible testimony that protocol had not been followed indicated that no report of an injury occurred.

EMPLOYERS SHOULD ALWAYS:

- Immediately provide employees with workers' compensation claim forms when learning of an injury and follow that practice consistently.
- Document all reports of workplace injuries as they are received.

Employers should not be afraid to dispute claims that are believed to be fraudulent when the evidence suggests that no legitimate claim has been filed. [PE]

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EMPLOYMENT SEMINARS

The Small Business Development Center and Pacific Employers will host the series at the Tulare-Kings Builders Exchange on the corner of Lover's Lane and Tulare Avenue in Visalia, CA. RSVP to Pacific Employers at 733-4256 or the SBDC, at 625-3051 or fax your confirmation to 625-3053. The mid-morning seminars include refreshments and handouts.

2007 Topic Schedule

◆ **Family Leave** - Federal & California Family Medical Leave, California's Pregnancy Leave, Disability Leave, Sick Leave, Workers' Compensation, etc.; What are the Pitfalls & How do you handle them?

Thursday, May 17th, 2007, 10am - 11:30am

◆ **Wage & Hour and Exempt Status** - Overtime, wage considerations and exemptions.

Thursday, June 21st, 2007, 10am - 11:30am

◆ **Hiring & Maintaining "At-Will"** - From the thought to hire to putting to work, we discuss maintaining procedures that protect you from the "For-Cause" Trap!

Thursday, July 19th, 2007, 10am - 11:30am

◆ **Record Keeping** - Forms, Posters, Signs, Handouts, Fliers - Just what paperwork, posters, flyers and handouts does an Employer need?

Thursday, September 20th, 2007, 10am - 11:30am

◆ **Guest Speaker Seminar** - Annually we bring you a speaker for a timely discussion of labor relations, HR and safety issues of interest to the employer.

Thursday, October 18th, 2007, 10am - 11:30am

◆ **Discipline & Termination** - The steps to take before termination. Managing a progressive correction, punishment and termination program.

Thursday, November 15th, 2007, 10am - 11:30am

These morning seminars are free of charge and include refreshments and handouts.



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They are not intended to serve as legal opinions, and should not be deemed a substitute for the advice of proper counsel in appropriate situations.

McDonald's Teen Employees Settle Lawsuit

GLC Restaurants, Inc., which operates McDonald's restaurants in Arizona and California, has agreed to pay \$550,000 to eight female teenage workers who were sexually harassed by a middle-aged male supervisor.

The lawsuit, filed by the U.S. Equal Employment Opportunity Commission on behalf of the young workers, charged that the supervisor was a repeat offender who engaged in unwanted touching and made lewd comments. The suit claimed that GLC knew that the manager had been accused of harassment at another of its restaurants, but failed to take action to prevent him from repeating the misconduct. [PE]

FREE & UNLIMITED CONSULTATION?

Yes FREE! A benefit of Pacific Employers' Membership is Free, Unlimited, direct, phone consultation on labor, safety or personnel question on the Pacific Employers' Helpline at: (559) 733-4256 or Toll Free (800) 331-2592.

Court Scales Back Whistleblower Rights

The U.S. Supreme Court has issued a new ruling that limits the right of whistleblowers to recover a slice of the damages paid by government contractors whose violations are exposed. Engineer James Stone filed a lawsuit under the Federal False Claims Act (FCA), charging Boeing Co. made false statements regarding safety and environmental issues at its nuclear plant in Colorado. The U.S. government joined in the suit and eventually won \$4.2 million in damages.

Although the FCA permits whistleblowers to partake in such awards, the high court ruled that Stone wasn't entitled to a share because he wasn't the "original source" of the information about Boeing's wrongdoing. In fact, the jury's verdict wasn't based on information Stone provided. [PE]

California Manufacturing Jobs Drop

California has entered its fourth straight year of factory losses as 1,525 manufacturing establishments went out of business or relocated over the past 12 months, according to the 2007 Directory of California Manufacturers.

The report says California lost 1,525 (5.25 percent) plants and 24,266 related jobs (1.4 percent) since February 2006. MNI identified 55 companies that left California for other states with 18 % of these moving to Texas, 13 % to Arizona, 5 % to Oregon and 4 % to Nevada. [PE]

Store Chain Agrees to Pay \$1 Million

Chestnut Petroleum Dist. Inc., with 37 gas station/convenience store locations throughout N.Y., New Jersey and Connecticut, has agreed to pay 767 employees a total of \$900,000 in back wages — plus a \$100,000 penalty to the federal government — to resolve a U.S. Department of Labor lawsuit alleging violations of the federal Fair Labor Standards Act (FLSA).

An investigation by the Labor Department's Wage and Hour Division revealed that employees at these various locations were paid less than the federal minimum wage and were not properly compensated for overtime hours worked. The employers failed to keep required records that showed, among other things, the hours worked each day, total hours worked each week and rates of pay for many of