

Your Monthly Legal Update – January 2009
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UPDATE ON ROLE PLAY SCENARIO

First of all, Happy New Year to all!! The economy is rough but we are somehow all going to get through this. I have promised to keep you posted on my arrest and conviction record case that we used for our sample trial. We have started out the New Year with an apologetic letter from the Administrative Law Judge indicating that he recognizes his delay in issuing the decision but cannot assure us when we will receive one. Of not, so you have an idea as to how long these cases take, this case started in December 2006. The case was tried in February 2008 which was unusual as most cases take a year or more to get through the investigatory these days after the budget cuts. This matter was fully brief by both parties, which means that all thorough legal summaries of the trial were provided by both parties to the Administrative Law Judge, by May 2008. We are now in January and still waiting for a decision from the Judge, knowing that if he decides in our favor we will then be heading towards an appeal with the Labor and Industry Review Commission, the overseeing entity over the Equal Rights Division.

How long do matters take these days before LIRC? Well, by way of example only, another case of mine that started in December 2005, took until August 2006 to result in a finding from the ERD. This case was then tried in mid April 2007. A decision was issued by the Administrative Law Judge in our favor in late January 2008. This was then appealed by the opposing party to the Labor and Industry Review Commission and all briefing was completed by December 28, 2008. We are now awaiting a decision. Needless to say this case has taken a long time.

Why am I raising these issues. I am giving you an idea as to how long the current employment discrimination takes at the State level. At the federal level, things go much faster but with the retirement of Judge Shabaz, who scheduled his trials within six months of the parties filing suit, it will be interesting to see who his replacement is and whether that Judge will be more apt to schedule trials 10 to 12 months out like Judge Crabb. Any client in any situation needs to economically assess their litigation costs. I thought it relevant this month to lay out the typical time parameters that this office is currently facing.

I also wanted to advise that my practice is seeing a lot more Plaintiffs independently filing against companies with the federal EEOC. The filings directly to the EEOC could now start increasing due to the recent Congressional changes in defining “disability” that have lessened legal standards. It will be interesting to see what the New Year will bring. It has also been my experience as defense counsel with the EEOC, that they somewhat become advocates for the employee and do not maintain neutrality.

Will this government pass laws that will make it easier for Unions to seek entrance through a ballot process that can avoid confidential voting and force employees to publicly vote – a move that is certainly not advantageous to employers. It will be interesting to see how the auto industry and their unions impact this analysis in the current economic state that our country finds itself. Now is not the time to let your guard down and not act proactively. Now is the time to keep all of your ducks in a row as with unrest comes more dispute. We are facing a time of

transition but there will be hope at the end. It is my hope that while we have a challenging New Year that we will come out stronger. Please keep up hope.