



# EMPLOYMENT LAW MATTERS

Latest legal developments and practical guidance for effective HR management

October 2005

**Route to:**

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### In this issue ...

- Firm Attorneys to Speak at "Human Resources Law and Management Conference" at Turning Stone Casino
- Understanding EEOC Investigation Procedures
- ADA Prevents Discrimination Based On Association with Disabled
- Ferrara-Fiorenza Law Firm's Breakfast Briefing Schedule

**Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C.** provides comprehensive legal representation and counseling exclusively to public and private sector employers in the areas of employment law and labor relations.

## Firm Attorneys to Speak at "Human Resources Law and Management Conference" at Turning Stone Casino

Delacroix Consulting Group, LLC, the human resource management consulting arm of the Ferrara-Fiorenza law firm, is presenting a one and one-half day "**Human Resources Law and Management Conference**" at the Turning Stone Casino and Resort in Verona, New York on November 10 and 11, 2005. The conference has been approved by the Society for Human Resource Management (SRHM) for 10.25 recertification credit hours toward PHR and SPHR recertification through the Human Resource Certification Institute (HRCI).

The Delacroix Consulting Group, LLC is a nationally-recognized human resources management consulting firm located in Syracuse, New York. Delacroix provides its clients with day-to-day management expertise and strategies in all HR-related matters. They also specialize in training employers and their supervisors/managers about effective employment practices designed to minimize the risk of costly employment litigation.

Delacroix also provides its clients with a full-range of HR support services, such as policies, checklists, employment applications, employment-related form letters, etc., all tailored to meet each client's unique needs.

The "Human Resources Law

broker vs. salesperson relationships; compensation and benefit issues; when are commissions due?; protecting your trade secrets and sales lists; etc.)

**Fair Labor Standards Act (FLSA) New Overtime Rules and Old Mistakes** (covering: understanding the New Rules; "Time and One-Half Alternatives"; travel time issues; etc)

**The Interplay of the Family and Medical Leave Act (FMLA) and Americans with Disabilities Act (ADA)**

**Connecting Employee Performance to Company Goals** (Participants will learn how to integrate human resource management into their company's overall strategic planning goals. It provides both a practical guide to the design and use of such a seamless management system. Participants will learn about: (1) making performance evaluation a way of life in their company; (2) implementing performance and development programs; (3) how to conduct an effective employee appraisal interview; and (4) how to manage a non-performer.)

The Conference presenters

### The bottom line is ...

*The conference brochure and registration form, as well as additional information about the conference, can be accessed at: [www.delacroixconsulting.com](http://www.delacroixconsulting.com).*

and Management Conference" will cover the following topics:

**Ten Tips for Handling Your Toughest and Trickiest Personnel Problems** (e.g., discharging an employee for poor attitude; legally replacing an employee on Workers Compensation or Disability; handling workplace romances; investigating sexual harassment charges, etc.)

**Understanding the Unique HR Issues Surrounding Your Sales Employees** (including: understanding

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## Firm Attorneys to Speak at “HR Law and Management Conference” (cont’d)

will be attorneys with the law firm of Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C., Nicholas J. Fiorenza and Michael L. Dodd. Nicholas J. Fiorenza is the managing partner of Ferrara-Fiorenza Law Firm. He is a 1976 graduate of Binghamton University and a 1979 graduate of the George Washington University National Law Center, where he graduated with a concentration in labor relations and employment law. His practice has been dedicated to this concentration both in the private and public sectors.

From 1979 through 1987 Mr. Fiorenza served as President of the Printing and Imaging Association of New York State, Inc. During this period he was responsible for the daily business management of all aspects of this statewide trade association, as well as for representing the individual employment law and labor relations interests of the group's 200 member companies. Mr. Fiorenza expanded his private practice in 1987, and later began his own practice dedicated solely to labor relations

and employment law. In addition to his active practice, Mr. Fiorenza has developed and presented comprehensive managerial workshops on a myriad of employment-related topics, including administration of workplace discipline, affirmative action obligations, and general compliance with all aspects of federal and state employment law. He is a frequent speaker and author with respect to such topics.

Michael L. Dodd is an employment and labor law litigation attorney with the Ferrara - Fiorenza Law Firm. Mr. Dodd handles employment discrimination and labor law cases before state and federal courts, as well as at the administrative level. Mr. Dodd graduated *magna cum laude* from the State University of New York at Oswego in 1985 with a B.A. in Political Science. Mr. Dodd began his career working for the Speaker of the New York State Assembly where he was responsible for drafting legislation, organizing subcommittee proceedings, and public relations for several State Assembly members. He

then became the Director of Government Relations for the Manufacturers Association of Central New York, Inc. where he was responsible for the creation and implementation of the Association's legislative program and its lobbying efforts.

Mr. Dodd graduated from Syracuse University College of Law in 1993. He currently serves the Ferrara - Fiorenza Firm in the day-to-day representation and counseling of public and private sector employers. Mr. Dodd is a frequent writer and speaker on the interplay of the FMLA, ADA and Workers Compensation, preventing workplace harassment claims, and numerous other employment law-related topics.

*The conference brochure/registration form as well as additional information about the conference can be accessed on the Delacroix website, [www.delacroixconsulting.com](http://www.delacroixconsulting.com). If you have any additional questions about the conference or wish to register call 315-234-3800.*

## Understanding EEOC Investigation Procedures

Did you know that an applicant, employee or former employee can file a discrimination charge against your company either with the federal Equal Employment Opportunity Commission (EEOC) or the New York State Division of Human Rights (SDHR)? While both agencies are charged with enforcing anti-discrimination laws, their investigative procedures differ significantly. In this month's "Employment Law Matters", we will examine the administrative procedures of the EEOC. Next month, we will explore the SDHR's investigative methods.

When a discrimination claim against your company is filed with the EEOC, you will be notified of the charge and

provided with the name and contact information for the investigator assigned to your case. A charge does not constitute a finding that your company engaged in discrimination. Rather, the EEOC has a responsibility to investigate and determine whether there is a "reasonable cause" to believe discrimination occurred.

At the start of an investigation, the EEOC will advise you if your charge is eligible for mediation or settlement. There may be reasons for considering both, but you should contact your attorney before making any such decision. Feel free to contact our firm in this regard, at 315-437-7600.

During the investigation, you and the Charging Party will be asked to provide information. Your investigator will evaluate the information submitted to determine whether unlawful discrimination has taken place. You may be asked to:

- submit a position statement. This is your opportunity to tell your side of the story and you should take advantage of it.
- respond to a Request for Information (RFI). The RFI may ask you to submit copies of personnel policies, Charging Party's personnel files, the personnel files of other

## Understanding EEOC Investigation Procedures (cont'd)

individuals and other relevant information.

- permit an on-site visit. In some cases, an on-site visit may be an alternative to a RFI if requested documents are made available for viewing or photocopying.
- provide contact information for or have employees available for witness interviews. You may be present during interviews with management personnel, but an investigator is allowed to conduct interviews of non-management level employees without your presence or permission.

If the charge was not dismissed by the EEOC when it was received, that means there was some basis for proceeding with further investigation. There are many cases where it is unclear whether discrimination may have occurred and further investigation is necessary.

### Some Helpful Tips for Working with the EEOC

- Work with the investigator to identify the least burdensome way to gather relevant evidence.

- You should submit a prompt response to the EEOC and provide the information requested, even if you believe the charge is frivolous.
- Provide complete and accurate information in response to requests from your investigator.
- The average time it takes to process an EEOC investigation is about 182 days. So, be patient.
- If you have concerns regarding the scope of the information being sought, advise the investigator. Although EEOC is entitled to all information relevant to the allegations contained in the charge, and has the authority to subpoena such information, in some instances, the information request may be modified.
- Keep relevant documents. If you are unsure whether a document is needed, ask your investigator. By law, you are required to keep certain documents for a set period of time.

### Conclusion of the Investigation

Once the investigator has completed the investigation, the EEOC will make a

#### Did you know...?

## ADA Prevents Discrimination Based on Association with Disabled

Did you know that the Americans with Disabilities Act (ADA) prohibits discrimination against applicants/employees based on their relationship or association with an individual with a disability? Section 1630.8 of the ADA regulations provides that, “[i]t is unlawful ... to ... discriminate against,

a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.” For example, it would be improper to refuse to hire a job applicant based on the fact that the individual has a disabled child,

determination on the merits of the charge. If the EEOC determines that there is no reasonable cause to believe that discrimination occurred, the Charging Party will be issued a letter called a Dismissal and Notice of Rights that tells the Charging Party s/he has the right to file a lawsuit in federal court within 90 days from the date of receipt of the letter. The employer will also receive a copy of this document.

If the EEOC determines there is reasonable cause to believe discrimination has occurred, both parties will be issued a Letter of Determination stating that there is reason to believe that discrimination occurred and inviting the parties to join the agency in seeking to resolve the charge, through an informal process known as conciliation. Where conciliation fails, the EEOC has the authority to enforce violations of its statutes by filing a lawsuit in federal court. If the EEOC decides not to litigate, the Charging Party will receive a Notice of Right to Sue and may file a lawsuit in federal court within 90 days.

If you have any questions, or if you need assistance in responding to an EEOC investigation or on-site visit, please feel free to contact our office.

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### Ferrara-Fiorenza Law Firm's Breakfast Briefing Schedule

The following workshops, presented to the public at no charge, will be held from 8 AM to 9 AM (with check-in at 7:45 AM) at the Wyndham Hotel, 6301 Route 298, East Syracuse, New York (location subject to change). Call 315-437-7600 to make reservations today!

DATE	TOPIC
October 13, 2005	Drugs and Alcohol in the Workplace: The Employer's Dilemma
November 10, 2005	<b>RESCHEDULED TO DECEMBER 8, 2005</b>
December 8, 2005	Employment Offer Letters and Contracts: Read Between the Lines

### HR ADMINISTRATION AND TRAINING SERVICES

The Ferrara-Fiorenza Law Firm provides a full range of HR administration consulting services, including, in part:

- A comprehensive audit of your HR policies, practices and procedures.
- Advice for complying with employment laws.
- More effective, more efficient HR policies, practices and procedures, along with implementation strategies and assistance.

The Firm also works with employers to tailor training on a variety of personnel issues for managers/supervisors, including:

- Minimizing the Risk of Employment Litigation
- Preventing Workplace Harassment
- Leadership and Influence
- Managing Non-Performing Employees

For more information on the services Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C. can provide to you, contact us at 315-437-7600.

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