



July 12, 2012

NON-COMPETE & TRADE SECRETS

Court Says It's Time to Pay The Piper, Even if the Piper Hasn't Paid: Fee Provisions and Third Party Payments



Employers who have the foresight to draft a non-compete agreement often fail to consider some of the potentially adverse financial ramifications from enforcing the non-compete agreement through litigation. Most employers seeking to enforce a non-compete agreement unhappily discover that they may be on the hook to pay the attorney's fees a subsequent employer funds in defense costs. Yet that is exactly what could happen if the employer doesn't correctly draft the fee provision in the non-compete agreement. [Continue reading.](#)

For more information on this topic, please contact [Peter Vilmos](mailto:peter.vilmos@burr.com) at (407) 540-6622 or peter.vilmos@burr.com. For more news and developments relating to non-compete and trade secrets law, please visit our blog: www.noncompetetradesecretslaw.com. To receive notice of future blog posts, please [subscribe to this blog's RSS feed.](#)

Please click [here](#) for a list of our Non-Compete & Trade Secrets attorneys.

Marcel L. Debruge to be Inducted as a Fellow of The American College of Labor and Employment Lawyers



Burr & Forman is pleased to announce that [Marcel L. Debruge](#), a partner in the firm's Birmingham office, will be inducted as a Fellow of the American College of Labor and Employment Lawyers during the College's fall 2012 meeting.

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News Briefs

Companies May Get Pension Contribution Break Under New Law

A new law will let companies contribute billions of dollars less to their workers' pension funds, raising concerns about weakening the plans that millions of Americans count on for retirement. But with many companies already freezing or getting rid of pension plans, many critics are reluctant to force the issue.

(Source: Atlanta Journal-Constitution (free reg. req'd), 2012-07-09)

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EEOC Warns Firms Against Using Criminal Records to Screen Workers

New guidelines from the Equal Employment Opportunity Commission on using criminal records to screen prospective workers could cause headaches for employers but may also create opportunities for ex-offenders trying to land a job. Disqualifying job applicants simply on the basis of a criminal record is too broad a step for most companies to take in their hiring screening, the EEOC guidance states, and firms need to review their policies to ensure they are narrowly tailored to match the needs of their businesses.

(Source: Rockford Register Star, 2012-06-28)

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Technology Raising New Questions on Overtime Pay for Employers

Those smartphones and BlackBerrys that enable work anytime, anywhere are increasingly blurring the lines between work life and personal life -- and introducing the sticky issue of when overtime is owed to workers. The always-connected worker and the pressures of the uncertain economy have led many to feel that they should always be working -- because they can, thanks to the growing use of smartphones.

(Source: The Columbus Dispatch, 2012-07-09)

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Organized Labor Spends More on Politics Than Previously Thought

Organized labor spends about four times as much on politics and lobbying as generally thought, according to a Wall Street Journal analysis, a finding that shines a light on an aspect of labor's political activity that has often been overlooked. Previous estimates have focused on labor unions' filings with federal election officials, which chronicle contributions made directly to federal candidates and union spending in support of candidates for Congress and the White House.

(Source: Fox News, 2012-07-10)

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Cities Set Precedent, Introduce Laws to Curb Obesity Hiring Bias

Two U.S. cities could provide a national model for combating workplace discrimination

Fellows of the College are selected on the basis of their dedication to the study and enhancement of civility and professionalism in the practice of Labor and Employment Law, as well as to the improvement of the delivery and quality of labor and employment legal services.

Click [here](#) to read more about the College of Labor and Employment Lawyers.

John Coleman Named Among 100 Most Powerful Employment Lawyers in America for Fourth Consecutive Year



Burr & Forman is pleased to announce that [John J. Coleman, III](#), a partner in the firm's Birmingham office, has been named to the list of "100 Most Powerful Employment Lawyers in America," published by

Human Resource Executive and *Lawdragon*. This marks the fourth consecutive year in which Coleman has been recognized on the list, which is derived from hundreds of law firm submissions and editorial research conducted over the past year. Coleman remains the only Alabama lawyer honored.

Burr & Forman Nashville Office Supports Second Harvest in "Legal Food Fight" Campaign

The Nashville office of Burr & Forman was one of 11 Tennessee law firms to participate in the "Legal Food Fight" Campaign, benefitting the Second Harvest Food Bank of Middle Tennessee. The firms collectively raised \$23,550.48, surpassing the Campaign's goal of \$20,000. As a result, 90,000 meals will be provided to the men, women and children who rely on the food bank each week.

In the friendly competition, Burr & Forman took home a first place win, raising the most funds in the small firm category, and also surpassed three of the four firms in the large firm category. Led by Nashville associate [Faisal Delawalla](#), Burr & Forman's fundraising efforts over the three-week virtual event totaled more than \$3,000. Click [here](#) to read the full story.

because of obesity, according to a new paper. Urbana, Illinois, and Madison, Wisconsin, are among six cities across the United States that prohibit discrimination against people because of their weight, much as Title VII of the federal Civil Rights Act prohibits discrimination based on race, sex, color, religion, or national origin.

(Source: Futurity, 2012-06-25)

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BP, Contractors to Settle Gender Bias Complaints for \$5.4M

The oil company BP and its contractors have agreed to pay up to \$5.4 million to resolve complaints that some women weren't considered for temporary jobs responding to the 2010 Gulf of Mexico oil spill because of their gender.

(Source: The New York Times, 2012-06-29)

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Appeals Court Reinstates Humana Racial Discrimination Case

A federal appeals court has reinstated a putative class action racial discrimination case brought by a former Humana employee in a technical legal ruling. According to the 6th U.S. Circuit Court of Appeals ruling in Kathryn Keys vs. Humana Inc., Ms. Keys, a former director at the Louisville, Ky.-based health insurer who is African-American, stated that after two reorganizations, her role and responsibilities had been diminished unlike those of Caucasian directors.

(Source: Business Insurance, 2012-07-05)

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Some Worry Employers' Use of E-Verify Could Boost Discrimination

Defenders of Hispanics in South Carolina warn that the law obliging companies to check the immigration status of new employees will spark discrimination against the community. After the enactment in 2008 of a state immigration law requiring companies to use the federal E-Verify program to determine whether workers are in the country legally, South Carolina authorities have been gradually instructing businesses on implementing the new regulation.

(Source: Fox News, 2012-07-02)

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New Rule Requiring More 401(k) Fee Disclosure Takes Effect

You will soon know more about just how much your retirement plan is really costing you. A new federal rule took effect July 1 that requires 401(k) plan providers to disclose certain 401(k) fees, and employers to distribute these disclosures to plan participants by Aug. 30.

(Source: CNNMoney.com, 2012-07-02)

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Miami OKs Requiring "Responsible Wage" for Construction Workers

Arguing that construction workers on public-private partnership projects should not be relegated to the status of "working poor," Miami-Dade County commissioners approved a requirement that private buildings constructed on county-owned land must pay their construction workers a "responsible" wage. The legislation, sponsored by Commissioner Sally Heyman, is similar to existing living-wage laws that govern payments to various service workers who are paid with county dollars.

(Source: Miami Herald (free reg. req'd), 2012-07-03)

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