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Does Minnesota Law Permit Applicants and Employees to Lie on Employment Applications and in Response to Employer Inquiries ?

By Douglas P. Seaton

A recent decision by the Minnesota Court of Appeals in Wright Electric, Inc. v. Ouellette, et al. has generated questions to our office from many employers about whether applicants and employees are still required to provide truthful information in response to employer questions. (We did not represent Wright Electric in this case, but are familiar with the issues and the decision, which has been appealed to the Minnesota Supreme Court.) Some reports about this case suggest that the decision authorizes applicants and employees to lie to the employer when the applicant or employee claims to be doing so in order to further union organizing efforts. This is a misunderstanding, however, of what the Minnesota Court of Appeals decided in the Wright case.

The only thing decided by the Appeals Court in the Wright case was that an employer could not pursue a lawsuit against applicants or employees for false statements made in an employee application or in response to employer questions, if those false statements might have been made as part of an effort to conduct union organizing, because the National Labor Relations Board has exclusive jurisdiction to deal with union organizing issues. The Court decision does not affect an employer's right to require honesty from applicants and employees and to refuse to hire applicants or to fire employees who are dishonest in their dealings with the employer. In fact, in an earlier related proceeding, the National Labor Relations Board's Regional Office in Minneapolis decided that the employer could do just that, so long as the policy not to hire or to fire dishonest applicants or employees was uniformly applied to all applicants and employees, and not selectively applied only to supporters of unions.

Employers should not change their application documents and employment policies requiring applicants and employees to certify the truth of information provided to the employer. Employers continue to be able to enforce such policies and documents by the means employers have always used, refusal to hire and termination of dishonest applicants and employees, so long as these policies are uniformly and consistently enforced. Suing the applicants or employees, however, is clearly not a viable option under this decision.

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This decision is unfortunate, to the extent that it disallows a possible sanction against dishonest applicants and employees, because it may seem to encourage fraudulent behavior in the workplace. Since the lawsuit option against dishonesty has almost never been considered by employers in the past, however, the fact that it is currently not available is not very significant. The traditional employer remedies of refusal to hire or termination if hired is certainly a strong sanction against dishonesty and the Wright decision, even if not overturned on appeal, does not affect this employer right.

The hiring policies, applications, hiring criteria, offer and statement of hire documents and employee handbooks which our firm has prepared for hundreds of employers are still fully valid and enforceable under Wright. If you have any questions about your hiring and employment-related policies and documents, whether our firm prepared them or not, please call the author, or any other Seaton, Beck, Peters, Bowen & Feuss lawyer (952-896-1700) and we will be happy to answer those questions without charge, and to recommend any follow-up actions which we think you may need to take.

What Does the Bush Re-election Mean for Employers?

President Bush's re-election, together with increased Republican majorities in the Senate and House of Representatives, will impact many different legislative, executive and foreign policy issues, and will also affect those appointed (or re-appointed) to cabinet, administrative and judicial appointments. "The Lawyers For Employers" have no claim to any special perspective on many of these issues, but the shareholders of our firm do know a great deal about the likely impact of the election on labor and employment related issues. In a nutshell, in the opinion of Seaton, Beck, Peters, Bowen & Feuss's shareholders, the re-election is good news for employers. Here's why:

- Bush's appointees to the National Labor Relations Board (two Board members' terms expire in 2005) have been and will continue to give employers and non-union employees a fair hearing in union election and unfair labor practice matters. The Board will also likely stop the move toward imposing union representation through neutrality and card-check agreements on employees who haven't voted for a union and reduce protection for union organizers/harassers called "salts."
- Bush will re-appoint Secretary of Labor Chao, who stood up to union bullying and required unions to update and actually file their LM-2 financial reports, challenged union efforts to restrict craft training to limit labor supply, and overcame fierce resistance to update the 50-year old wage and hour regulations to bring them into the 21st Century. We may also see legislation finally approving "comp time" for private employment, and continued efforts to limit the application of the Davis-Bacon prevailing wage statute and reform its administration to increase competition and reduce federal construction costs to private sector levels.
- Most of Bush's judicial and agency appointments and re-appointments will be confirmed and, whatever else they do or do not do, these appointees will ensure that employers are treated more fairly in the tens of thousands of labor and employment related charges and lawsuits filed against employers over alleged whistleblower, retaliation, wage and hour violations, age, race, sex or disability discrimination, wrongful discharge, OSHA violations, contract and promissory breaches, harassment and many other issues.
- Bush and Congressional Republicans will pursue additional litigation reform initiatives and, if employers push for this, these reforms will affect employment claims, the largest single category of federal lawsuits, as well as class actions, medical malpractice and other tort claims.

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- Bush will stand by his Executive Orders barring union-only project labor agreements (which inflate taxpayer costs by excluding 80% of construction employees) on federal construction projects, and notifying union employees of their Beck case right to reduce their dues by the percentage cost of union political and lobbying efforts.
- Bush will seek a rational “guest worker” solution to the problems faced by employers in the hospitality, agriculture, nursing home, construction and related service industries which rely on immigrant labor, while resisting amnesty and instant citizenship for those who have violated the immigration laws.
- Bush will also make his income tax cuts and the repeal of the death tax permanent, and push for tax code reform, which will guarantee that the employers who are investing to create jobs will have something to show for their investment, effort and risk, and that the businesses and jobs they have created will survive into the next generation.

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Are Your Employee Handbook And Employment Documents Protecting Your Firm Or Putting You At Risk?

If your Company's employee policy handbook, hiring and discipline materials, drug and alcohol testing policies, or other critical labor or employment documents or policies are more than 2 years old (or non-existent), your Company is at risk. Call (952-896-1700) or fax (952-896-1704) us if you are interested in a complimentary review of your materials and information on our cost-effective “fixed fee” program to customize and update these materials for your Company. The cost is \$775.00 for handbook and employment materials (with 2 hours customizing time included) and \$375.00 for drug and alcohol testing policy and materials (with 1 hour customizing time included).

Need “In-House” HR or Legal Help?

Could you use “in-house” human resources, labor relations or legal assistance? We have worked with experienced HR and LR consultants in several industries and with several business lawyers and labor/employment lawyers who are available for part-time or full-time assignments. If you would like help in these areas on a part-time, temporary project or full-time basis, or would like to have a lawyer “in-house” for a few hours a week or a month, call Doug Seaton at 952-896-1700 and we'll be happy to discuss how we could help with a referral.