



INSIGHT INTO LABOR & EMPLOYMENT LAW

EMERGING ISSUES, EXPERT INSIGHTS

Dear #FirstName#,

News and Tools

Wage and Hour verdicts and settlements dominate the latest headlines

Federal Magistrate Approves \$38 Million Settlement Of Wage-And-Hour Claims, [5-12 Mealey's Litig. Rep. Employ. L. 14 \(2009\)](#)

Minnesota Judge Gives Final Approval Of \$54M Wal-Mart Wage-And-Hour Settlement, [5-12 Mealey's Litig. Rep. Employ. L. 18 \(2009\)](#)

[Read more about verdicts and settlements from Mealey's Litigation Report: Employment Law](#)

Need to find all cases interpreting a particular statute such as 42 USCS §12102
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Emerging Issues in Labor & Employment

Please note, some of the resources may or may not be part of your subscription plan. You will be properly notified before incurring any additional charges.

Swine Flu: Are Employers Ready?

Swine Flu (H1N1 influenza virus) has affected thousands of people since it was first detected in April 2009. A widespread outbreak of the virus could have serious implications for employers and their duty to protect the health and safety of their employees.

For a discussion of employer duties to ensure a safe workplace consult *Labor and Employment Law*, Part VII Occupational Safety and Health, Ch. 190. [Click here to access this title at *lexis.com®*.](#)

For a discussion of whether the flu or a serious health condition entitles an employee to FMLA coverage consult *Labor and Employment Law*, § 166.02. [Click here to access this title at *lexis.com*.](#)

Adam W. Goldberg of Orrick, Herrington & Sutcliffe LLP identifies issues that the flu outbreak presents to companies, including personnel and employee travel policies, and makes recommendations as to how to address them in [Swine Flu Contingency Planning: Legal and Communications Considerations](#).

Expert guidance and news covering the latest developments in [Pandemic and Infectious Diseases](#) are available through the Emerging Issues Law Center at *lexis.com*.

Enforcement of ADA Suits

An increase in ADA litigation is expected following the January 1, 2009, effective date of the ADA Amendments Act. Knowledge of EEOC procedural regulations and judicial enforcement of the ADA is critical to developing effective compliance strategies with your clients.

An overview of ADA enforcement, covering both judicial and EEOC proceedings is discussed in Chapter 142 of *Labor and Employment Law*. [Click here to access this title at *lexis.com*.](#)

The ADA Amendments Act is discussed thoroughly in Chapters 1 and 3 of *Americans with Disabilities Act: Employee Rights &*

Employer Obligations. [Click here to access this title at *lexis.com*.](#)

ADA case law; statutes and regulations; agency decisions; briefs, pleadings, and motions; and targeted news sources are all available through the Labor & Employment Area of Law page. [Click here to access these resources at *lexis.com*.](#)

SERVICE MEMBER RIGHTS

Military Family Leave

On November 17, 2008, the Department of Labor issued highly anticipated revisions to the 1995 regulations interpreting the 15-year-old Family and Medical Leave Act (FMLA). The new regulations also clarify the first-ever amendments to the FMLA, which were signed into law in January 2008, granting additional leave entitlements to military family members.

For the text of the new and amended regulations, consult the [Code of Federal Regulations at *lexis.com*.](#)

Do you need to research certification requirements for service member leave? See *Labor and Employment Law*, Volume 7, § 168.11A. [Click here to access this title at *lexis.com*.](#)

USERRA Litigation

Whether returning from combat or other military service, increasing numbers of service members are actively protecting their employment rights. The federal law providing for reemployment rights of veterans and returning service members is the Uniformed Services Employment and Reemployment Rights Act (USERRA).

For the text of the [Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#), consult the United States Code Service.

Additional resources on USERRA include [An Analysis of USERRA: by N. Peter Lareau](#) and [News on USERRA](#).

Cases in the News

Ricci v. DeStefano

Title VII of the Civil Rights Act of 1964 provides for liability under both disparate treatment and disparate impact theories. In *Ricci v. DeStefano*, a 5 – 4 Supreme Court held that an employer who rejected the results of an employment test because of the fear of disparate impact litigation engaged in disparate treatment discrimination. The only time an employer may discard test results, said the Court, is when there is a “strong basis in evidence” that using the test would result in disparate impact liability. Thus, even when there is a disparate impact, if an employer’s test is job-related and consistent with business necessity for the position in question—and there is no less discriminatory alternative—the employer cannot discard those test results.

[Read expert commentary](#) by Darrell VanDeusen, who explores the issues involved in *Ricci v. DeStefano* and the practical implications of the Court’s decision, 2009 Emerging Issues

4031.

[Read the Supreme Court's opinion](#), *Ricci v. DeStefano*, 129 S. Ct. 2658; 174 L. Ed. 2d 490; 2009 U.S. LEXIS 4945.

For [Supreme Court briefs](#), see 2007 U.S. Briefs 1428.

For the [Supreme Court oral transcript](#), see 2009 U.S. Trans. LEXIS 34.

Larson on Employment Discrimination

[Disparate impact](#), The Basics, Chapter 20

[Race Discrimination](#), Generally, Chapters 49 through 52

[Title VII Summarized](#), Chapter 3

Gross v. FBL Financial Services

Since *PriceWaterhouse v. Hopkins*, it has been generally understood by courts, law professors, and lawyers that its burden-shifting framework is the standard not only for Title VII employment mixed-motive discrimination cases, but also for non-Title VII cases. In *Gross v. FBL Fin. Servs., Inc.*, the Supreme Court was asked to clarify whether the direct evidence requirement articulated in Justice O'Connor's plurality opinion in *Price Waterhouse*, applies to the Age Discrimination in Employment Act (ADEA). But instead of deciding the question presented, the Court in a 5 – 4 decision held that there is no mixed motive analysis available under the ADEA. At all times in ADEA cases, said the Court, a plaintiff retains the burden of persuasion, and must demonstrate by a preponderance of the evidence that but for the plaintiff's age, the adverse employment action would not have occurred.

[Read expert commentary](#), Darrell VanDeusen on New Standards in Age Discrimination Litigation: *Gross v. FBL Financial Services, Inc.*, 2009 Emerging Issues 4021.

[Read the Supreme Court's opinion](#), *Gross v. FBL Financial Services, Inc.*, 129 S. Ct. 2343; 174 L. Ed. 2d 119; 2009 U.S. LEXIS 4535.

For [Supreme Court briefs](#), see 2008 U.S. Briefs 441.

For the [Supreme Court transcript](#), see 2009 U.S. Trans. LEXIS 28.

Employee Rights Litigation: Pleading and Practice
[The Basic Legal Theories of Discrimination Based on Age](#), § 3.03

Larson, Employment Discrimination
[Chapter 8. Proving Disparate Treatment](#).

AT&T Corporation v. Hulteen

In *AT&T Corporation v. Hulteen*, 2009 U.S. LEXIS 3470 (May 18, 2009), the Supreme Court held that a bona fide seniority system does not violate the Pregnancy Discrimination Act of 1978 (PDA) when it pays pension benefits calculated in part under an accrual rule, applied only prior to the PDA's

enactment, which gave less retirement credit for pregnancy leave than for medical leave generally.

[Read expert commentary](#), Pete Lareau on *AT&T Corporation v. Hulteen*, 2009 Emerging Issues 3646.

[Read the Supreme Court's opinion](#), *AT&T Corporation v. Hulteen*, 129 S. Ct. 1962; 173 L. Ed. 2d 898; 2009 U.S. LEXIS 3470.

For [Supreme Court briefs](#), see 2007 U.S. Briefs 543.

For the [Supreme Court transcripts](#), see 2008 U.S. Trans. LEXIS 80.

For further discussion of [pregnancy discrimination](#), see *Larson, Employment Discrimination*, Chapter 47, Pregnancy, Maternity and Parental Rights.

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