

WEINGARTEN RIGHTS: NLRB FLIP-FLOPS ON REPRESENTATION RIGHTS OF EMPLOYEES IN A NON-UNION WORKPLACE

by: Radamés (Rudy) A. Torruella

Since the passage of the Taft-Hartley Act of 1947, managers at all levels of a company ought to be conscious of the actual state of the law in a number of key and constantly changing labor relations issues. They need to be prepared in order to avoid incurring in unfair labor practices that can prejudice their employers and result in very costly litigation and adverse outcomes.

WEINGARTEN RIGHTS ARE BORN

Almost 30 years ago, the United States Supreme Court held that an employee had the right to have a union representative present during an investigatory interview with management. If the employee reasonably believed that the interview might result in disciplinary action and he or she requested union representation, management's denial of the request constituted an illegal "interference with, restraint and coercion of the employee's rights to engage in concerted activities for mutual aid or protection and constituted an unfair labor practice." National Labor Relations Board v. J. Weingarten, Inc., 420 U.S. 251 (1975).

WEINGARTEN IN NON-UNION WORKPLACE

The facts in Weingarten, dealt with a union setting. The National Labor Relations Board ("the Board") is the federal agency entrusted by Congress to enforce the 1947 Taft-Hartley Act or the National Labor Relations Act (the "NLRA"). Board decisions that followed dealt with related issues and entered the realm of the non-union workplace. These later decisions have addressed the question of what rights, if any, an employee has to be represented by a co-worker during a disciplinary investigatory interview if she or he works in a non-union workplace.

THE FLIP-FLOP

In 1982, the Board for the first time answered this question by expanding the Weingarten rights to cover non-union employees. At Material Research Corporation, employee Steve Hochman was called to a meeting with his supervisor Steven Cross. Cross explained that it was "a disciplinary hearing;" earlier in the day, Hochman had organized a group of employees to meet with management to protest new

work schedules instead of following the company's grievance procedure. During the "disciplinary hearing," Hochman's request to have a co-worker present was denied. Instead, he was ordered to sit

(continues on page 2)

In this Issue...

Weingarten Rights: NLRB Flip-Flops on Representation Rights of Employees in a Non-Union Workplace 1-3
by: Radamés (Rudy) A. Torruellas

A "Grave" Fault May Be Insufficient to Establish Just Cause for Termination of Employment 3
by: Javier Rivera Carbone

Re-Hire/ADA Issue to be Resolved by Jury in Drug-Testing Case 4
by: José A.B. Nolla-Mayoral

Recent Amendment to the "Compensation System for Work-Related Accidents Act" 5
by: Jorge A. Antongiorgi

Puerto Rico Supreme Court Clarifies the Scope of Available Employment Related Claims Under the Puerto Rico Constitution 6
by: Juan M. Casellas

U.S. House and Senate Vote to Block the DOL from Enforcing the New FLSA White-Collar Exemption Rules 7
by: José A. B. Nolla-Mayoral



(continued from page 1)

down, which Hochman did. Hochman and Cross exchanged their various arguments. The “disciplinary hearing” ended with Cross placing “a typewritten memo of verbal warning in Hochman’s personal file.”

Hochman filed a charge before the NLRB alleging that his rights under Section 7 of the NLRA had been violated. He alleged that he was denied his right “... to engage in ... concerted activities for the purpose of ... mutual aid or protection.” In issuing its decision in Materials Research Corp., 262 NLRB 1010 (1982), the Board first discussed the employer’s options and its right to retain its broad prerogatives when faced with a non-union employee’s request to be accompanied by a co-employee at an investigatory interview which the employee reasonably believed could result (and in this case, it did result) in disciplinary action. The Board then went on to determine that Weingarten rights apply “equally to represented **and unrepresented employees.**” (Emphasis provided.) That is, Weingarten rights apply in a workplace where there is no union, as well as in a unionized workplace.

In 1985, the Board revisited the issue for the second time; it reversed its holding in Material Research. In Sears, Roebuck & Company, 274 NLRB 230 (1985), the Board held that “Weingarten principles **do not apply in circumstances where there is no certified or recognized union.**” (Emphasis provided.) In E.I. Dupont & Co., 289 NLRB 627 (1988), although the Board, on remand from the Third Circuit, modified the Sears rationale, the Board reaffirmed its holding in Sears, i.e., that Weingarten rights apply only in a union setting, but conceded that this was a “permissible” interpretation of the NLRA rather than a “mandatory” interpretation; it recognized the possibility of a different interpretation, but maintained its holding that “**unrepresented employees do not possess** a Section 7 right to the presence of a fellow employee in an investigatory interview.” (Emphasis provided.)

In 2000, the Board addressed the issue a third time and completed a full circle on this doctrine. It rejected its holdings in Sears, and Dupont; it found that “a return to the rule set forth in Material Research, i.e., that the Weingarten rights **are applicable in the non-unionized workplace** as well as the unionized workplace, is warranted the Board was correct in Material Research....” (Emphasis provided). Epilepsy Foundation of Northeast Ohio, 331 NLRB 92 (2000). Thus, after Epilepsy in 2000, even in a workplace where there is no union, an employee called to an investigatory interview which he or she reasonably believes may result in disciplinary action, has a right to request the presence of a co-worker. The Board decision in Epilepsy was later affirmed Epilepsy Foundation v. NLRB, 268 F.3d 1095 (D.C. Cir. 2001).

Managers at all levels of a company ought to be conscious of the actual state of the law in a number of key and constantly changing labor relations issues. They need to be prepared in order to avoid incurring in unfair labor practices that can prejudice their employers and result in very costly litigation and adverse outcomes

When everybody believed that this was the end of the story, along came IBM Corporation, 2004 NLRB 148. Decided on June 9, 2004, IBM, overrules Epilepsy Foundation, and, doing another flip-flop, returned to the holdings in Sears and Dupont, finding that Weingarten rights do not extend to a workplace where the employees are not represented by a union.

IBM BY ITSELF

It is this author’s perception that IBM contains reasoning and arguments seldom if ever before seen in Board, or even court, decisions. Even September 11 and anti-terrorism are given as grounds to decide against extending representation rights in a non-union setting. In addition to these unusual reasons, however, the decision goes into specifics of what the Board considers its duty “to adopt the Act to changing patterns of industrial life....” In the process, the Board makes a series of statements which could apply in a variety of circumstances.

IBM was decided 3 to 2. Undoubtedly, trying to predict what the state of NLRB case law will be at a given moment on this controversy approaches pure guesswork. Companies need to be aware of the Board’s flip-flops, from one position to the other, with each change in the composition of the Board. That the Board will again overrule itself on this issue, is almost a given; one wonders how many more times.

SIDE ISSUES STEMMING FROM WEINGARTEN RIGHTS

There are, of course, numerous side issues related to Weingarten rights. Some of these are or have to do with:

1. The employee’s request for someone to represent him or her.

So far, no right to representation exists unless the employee requests the presence of a union representative or a co-worker.

(continues on page 3)

(continued from page 2)

2. The employer's obligation to notify the employee of his or her Weingarten rights.

So far, there is no legal requirement that the employer notify an employee that he has the right to request the presence of co-worker or a union representative.

3. The need for the representative's prior knowledge of the subject of the interview.

The cases seem to indicate that the representative has the right to know in advance the subject of the interview.

4. The representative's right to assist and counsel the investigated employee

The cases indicate that the representative has the right to assist and counsel the questioned employee during the interview. However, while the representative may give advice to the employee, this does not mean that he or she may transform

the investigatory interview into an adversarial proceeding.

5. The employee's request is to have his lawyer present.

Generally, case law does not recognize that an employee has the right to have his lawyer present during an internal company investigatory interview.

6. The employers' options

Faced with a request for the presence of a union representative or a co-worker, the employer has several options, these are:

- a. It can grant the request for a representative and, once he or she arrives, conduct the interview;
- b. The employer may choose not to grant the request, terminate the interview, and make a disciplinary decision based on the available information and without the employee's point of view; and

- b. The employer may offer to conduct the interview without a representative or decide not to conduct the investigatory interview with the employee at all.

Employers who choose the second option have the right not to conduct the investigatory interview with the employee and to utilize other methods or sources of investigation.

CONCLUSION

There are serious consequences to the employer who improperly handles Weingarten rights and violates the NLRA. These may include reinstatement, back pay and benefits, in addition to a cease and desist order from the NLRB.

Managers are well advised to keep up-to-date on the state of the law as to this important issue and seek competent legal counsel, **whether or not their employer has a union**, should they be faced with a request from an employee to have someone accompanying them during an investigatory interview. ■

A "GRAVE" FAULT MAY BE INSUFFICIENT TO ESTABLISH JUST CAUSE FOR TERMINATION OF EMPLOYMENT

By: Javier Rivera Carbone

In Rivera Torres v. Pan Pepín, Inc., 2004 TSPR 59, the Puerto Rico Supreme Court recently held that there was no just cause for the termination of an employee who, on a single occasion, incurred in a fault considered "grave" by the rules of conduct adopted by his employer. According to the Court, there is no just cause for the termination of an employee unless the rules of conduct clearly and specifically inform the employee that immediate termination is the consequence of a serious offense. The Court also emphasized that employers have the burden of proving the reasonableness of the rules of conduct, that the employee

received a written copy, and that the employee breached the rules.

In this case, Pan Pepín found 17 expired bags of bread in a store serviced by Rivera. Pan Pepín's procedures manual required Rivera to remove the bread two days before expiration, and considered such omission a "grave" fault. Therefore, Pan Pepín terminated Rivera's employment immediately after the inspection that uncovered said omission. The manual did not specify a penalty for this "grave" fault. When faced with these facts, the Supreme Court reasoned that absent a specific warning of immediate termination, Rivera's conduct

of allowing expired bread to be available in a retail shelf was not serious enough to be considered just cause for termination for a first offense. The general rule continues in place: there is no just cause for the termination of an employee for a first offense unless the act or conduct is of such magnitude that it would be imprudent for the employer to wait until it reoccurs to terminate the employee.

Employers should check their manuals to make sure that they set forth specific consequences for violations of rules of conduct, particularly for conduct that is serious and unacceptable to the employer. ■

RE-HIRE/ADA ISSUE TO BE RESOLVED BY JURY IN DRUG-TESTING CASE

by: José A. B. Nolla-Mayoral

The U.S. Supreme Court recently issued an important ruling in an employment case under the Americans with Disabilities Act ("ADA"). The case is Joel Hernández v. Hughes Missile Systems Company, No. 02-749, U.S. Supreme Court (December 2, 2003), which was remanded to the U.S. Court of Appeals for the Ninth Circuit for further proceedings. For more detailed background information on the issues before the courts, in our Fall 2002, Summer 2003, and Winter 2003-2004 issues of Labor Perspectives we discussed at length the original Ninth Circuit and U.S. Supreme Court rulings.

On March 23, 2004, the U.S. Court of Appeals for the Ninth Circuit, on remand from the U.S. Supreme Court, Case No. 01-15512, further revoked a lower court summary judgment for the employer, by deciding that a triable issue of fact existed as to whether Joel Hernández ("Hernández") was denied re-employment based on his status as disabled because of a past record of addiction or rather because of a company rule barring rehiring of previously terminated employees.

Hernández worked for Hughes Missiles Systems for 25 years. During his last five years of employment he had a drug and alcohol problem that affected his conduct at work. Hernández tested positive for cocaine during a company required drug screening. Faced with the personal conduct violation, he resigned in lieu of being discharged for violating the company's code of conduct. After two and a half years working for another employer and being "clean and sober," Hernández applied for the same position that he held with Hughes Missile prior to his discharge. He attached a letter from his pastor about his active church participation; his Alcoholics Anonymous ("AA") sponsor/counselor wrote another letter about his regular attendance at meetings and commitment to the program. Hernández' AA sponsor also wrote about his progress and recovery. According to a Labor Relations officer with the company, Hernández' application was rejected outright on the basis of an unwritten policy

of not rehiring former employees whose employment ended due to violations of company rules.

After being rejected, he filed a charge of discrimination before the Equal Employment Opportunity Commission ("EEOC"). The company alleged the "application was rejected based on his demonstrated drug use while previously employed and the complete lack of evidence indicating successful drug rehabilitation" and the company maintained its "right to deny re-employment to employees terminated for violation of Company rules and regulations...." Eventually, the EEOC found that Hernández' application was rejected "based on his record of past alcohol and drug use."

On remand from the U.S. Supreme Court, the Ninth Circuit held that ADA's protections are applicable to "[individuals] who have successfully completed or are participating in a supervised drug rehabilitation program and are no longer using drugs, as well as individuals who are erroneously regarded as using drugs when they are not."

The Ninth Circuit noted that the employer had admitted before the EEOC that its reasons for refusing to consider Hernández' application was based on his history of drug abuse; however, before the Court, it was trying to disavow the admission by stating that its statement of position was drafted by a part-time employee who should have relied on the unwritten no-rehire policy in question. Thus, the Court of Appeals concluded that from the Company's conflicting explanations of its conduct, a jury could reasonably conclude that its most recent explanation was pretextual. Moreover, the Court cited Domínguez v. Suttle-Caribe, Inc., 202 F3d 424,432 (1st Cir. 2000) for the proposition that "[W]hen a company, at different times, gives different and arguably inconsistent explanations [regarding its reasons for terminating an employee], a jury may infer that the articulated reason was pretextual."

The Court concluded that Hernández had presented sufficient evidence to establish a

controversy as to whether his application to be rehired was refused because of his past record of addiction, and not because of a company rule barring rehiring of previously terminated employees. Thus, it will be up to the jury to examine the factual issue of whether there was such a policy, and whether it was uniformly applied.

This case illustrates several steps that an employer may take in order to avoid mistakes and try to minimize litigation costs:

- Personnel files should not make reference to employees' failed drug rehabilitation programs but rather to company rules/policies that may have prompted disciplinary action; it has long been recognized that, under the ADA, personnel files should not have medical information or medical records of employees, unless necessary to manage a request for accommodation;
- Recruitment officers should be aware of the protections afforded to rehabilitated persons by the Americans with Disabilities Act and Puerto Rico Act No. 44;
- Position statements before agencies investigating claims, such as the EEOC, should be qualified as non-inclusive, based on the limited information stemming from the charge or claim, and further qualified as an initial response which may be supplemented; reference should be made to the employment history of the charging party as well as to rules or policies related to the controversy at hand; and
- Legal counsel should be engaged to evaluate the facts and to formulate appropriate legal defenses where the charge involves potential liability or possible agency action, or where legal analysis is necessary as part of the response; at the very least, the employer's response should be reviewed by counsel before submission to the agency. ■

RECENT AMENDMENT TO THE "COMPENSATION SYSTEM FOR WORK-RELATED ACCIDENTS ACT"

by: Jorge A. Antongiorgi

There are other alternatives through which advocacy skills may also be used with success to solve controversies, short of litigation. One of these alternatives is lobbying for the approval, repeal, or amendment of legislation

Often judicial recourse is viewed as the first and even the only mechanism available to solve legal problems. However, there are other alternatives through which advocacy skills may also be used with success to solve controversies, short of litigation. One of these alternatives is lobbying for the approval, repeal, or amendment of legislation.

On September 8, 2004, the Governor of the Commonwealth of Puerto Rico signed Act No. 263, which amends the "Compensation System for Work-Related Accidents Act" (the "Act"). The original House Bill No. 4539 was submitted by the Executive Branch. The bill was amended by the legislature to adopt language proposed by McConnell Valdés and signed by the Governor. The amendment was sponsored in the Senate by Hon. Juan Cancel Alegría and Hon. Antonio Fas Alzamora.

The purpose of the amendment submitted by our Firm was to allow motor carriers which provide independent transportation services to obtain a policy insuring their operations. Before the approval of the amendment, the State Insurance Fund Corporation's position was that, pursuant to Article 2 of the Act, businesses engaged in farm, industrial, or public services using middlemen to carry their products, merchandise, or passengers had to provide workers' compensation insurance to the middlemen's employees. As a result, the State Insurance Fund Corporation, pursuant to a policy statement issued on

January 4, 2002, adopted the position that those businesses covered by Article 2 of the Act were considered employers of the individual chauffeurs providing transportation services. Consequently, according to the State Insurance Fund Corporation, the businesses that failed to provide the required workers' compensation insurance were considered as uninsured employers, even in cases where the carriers had obtained their own policy. In addition, the agency attempted to collect the workers' compensation premiums it determined were outstanding for the independent motor carriers and their chauffeurs from these businesses. This generated a public controversy since some businesses that retained freight carriers refused to contract small carriers in order to avoid being considered their employers under the Act. This prompted these carriers to engage in public manifestations.

This was exactly the dilemma faced by one of our Firm's clients with the State Insurance Fund Corporation and which led to our drafting an amendment to the Act and lobbying for its approval. This required many meetings with legislators of the House and Senate and with representatives of the freight industry. The resulting approval of Act No. 263 will benefit other employers in a similar position, as well as those individuals engaged in transportation services who will now be able to obtain their own workers' compensation insurance policies. ■

PUERTO RICO SUPREME COURT CLARIFIES THE SCOPE OF AVAILABLE EMPLOYMENT RELATED CLAIMS UNDER THE PUERTO RICO CONSTITUTION

by: Juan M. Casellas

In an issue of first impression, the Puerto Rico Supreme Court recently held that the Puerto Rico Constitution does not provide a cause of action to an employee who claims to have been terminated for absences motivated by a non occupational illness. In Juan Roberto García v. Aljoma Lumber, Inc., 2004 TSPR 25, the Court determined that, unless there is an independent cause of action based on a particular statute, the exclusive remedy available to an employee in such circumstances is the unjust dismissal indemnity provided by Act No. 80 of May 30, 1976 ("Act No. 80").

The plaintiff ("García") was a fingerlift operator. His employer, Aljoma Lumber, terminated him after being absent from his job for several days. After his termination, García filed a complaint before the Court of First Instance claiming the unjust dismissal indemnity under Act No. 80. He also claimed damages and reinstatement under Section 16 of the Bill of Rights of the Puerto Rico Constitution. García alleged that even though he had informed his supervisor about the need to be absent from work in order to receive medical treatment; and had produced a medical certificate to that effect, he was unjustly terminated for his absence.

Aljoma Lumber asserted as a defense that García had abandoned his job without notifying his supervisors. This he did, according to the employer, after he realized that he was going to be subjected to drug testing. The Court of

First Instance issued a partial summary judgment dismissing the claim brought under the Constitution that it was not actionable under the law.

García appealed the decision before Circuit Court of Appeals and the summary judgment was reversed. According to the Circuit Court of Appeals, a cause of action for damages and reinstatement was available under the Puerto Rico Constitution for an employment termination motivated by an employee's absences for various days due to sickness. Aljoma Lumber questioned the reversal before the Puerto Rico Supreme Court.

For purposes of its review, the Supreme Court assumed that García was absent from work due to sickness; that he informed his supervisor about the need to be absent; and that Aljoma Lumber terminated him due to his absence. The Supreme Court pointed out that as a general rule, in the case of employees contracted for an indefinite period of time, the exclusive remedy for an unjustified termination from employment is the unjust dismissal indemnity provided by Act No. 80. The Court went on to discuss the exceptions to this general rule: when the termination is coupled with other tortious acts proscribed by law or when the termination is made in violation of certain constitutional rights. García claimed the latter exception, alleging that his termination was made in violation of the protection "against risks to his health or personal integrity in his work or employment" provided by Section 16

of the Bill of Rights of the Puerto Rico Constitution.

The Court concluded that the protection provided by the Bill of Rights against risks to an employee's health is meant to protect employees from physical or mental illnesses that are work related. On the other hand, the protection against risks to an employee's personal integrity has to do with conduct that interferes with a person's abstract values; these include reputation, intimacy or personal beliefs. Therefore, the Supreme Court held that when an employee suffers an illness that is not job related, the Constitution does not provide a cause of action against an employer for terminating the employee due to such illness.

The Supreme Court's decision in Aljoma Lumber clarifies the scope of available employment related damage claims under the Bill of Rights of the Puerto Rico Constitution. Nonetheless, employers should be aware that there are local and federal laws which in certain instances provide job protection to employees who suffer non job related illnesses or accidents. Also, and even though this has not been specifically decided, a termination based on an employee's proper use of sick leave could be deemed unjustified under Act No. 80. Cf. Santiago v. Kodak Caribbean, Ltd., 129 D.P.R. 763 (1992). Therefore, this case should not, in any way, be seen as authorizing dismissals due to appropriate use of sick leave. ■

U.S. HOUSE AND SENATE VOTE TO BLOCK THE DOL FROM ENFORCING THE NEW FLSA WHITE-COLLAR EXEMPTION RULES

By: José A. B. Nolla-Mayoral

On September 9 and 15, 2004, the U.S. House of Representatives and the Senate Appropriations Committee took steps to block the enforcement of the U.S. Department of Labor's (DOL) white collar exemption rules (29 C.F.R. Part 541) under the Fair Labor Standards Act. These rules took effect as of August 23, 2004.

The Senate's Appropriations Committee voted 16-13 to attach an amendment sponsored by Sen. Tom Harkin, D-Iowa, to the Senate version of the DOL and Department of Health and Human Services (HHS) appropriations bill. The Committee then approved the amended legislation (S. 2810), by a vote of 29-0.

The Senate version of the appropriations bill would now require that none of the funds provided by the act be used by the DOL to implement or administer any changes to regulations regarding white collar exemptions in effect on July 14, 2004, except those changes in section 541.600 of the DOL's final regulation specifying the amount of salary required to qualify as an exempt employee. This provision further requires the immediate reinstatement and enforcement of the old overtime regulations in effect on July 14, 2004, except for the new section 541.600 salary requirements.

The Senate amendment is similar to a measure that the House of Representatives attached to its version of the DOL and HHS appropriations bill

on September 9, 2004. This provision was introduced in the House by Reps. David Obey, D-Wis., and George Miller, D-Calif. Section. 521. of H.R. 5006, which was approved by the House on September 9 and referred to the Senate on September 10, 2004, reads as follows:

"None of the funds provided in this Act may be used by the Department of Labor to implement or administer any change to regulations regarding overtime compensation (contained in part 541 of title 29, Code of Federal Regulations) in effect on July 14, 2004, except those changes in the Department of Labor's final regulation published in the Federal Register on April 23, 2004 at section 541.600 of such title 29."

The House measure, however, does not contain a provision expressly reinstating

Approval of the measure, or a deadlock in its consideration, could force the DOL to operate without specific funding to implement and enforce its new rules during the fiscal year ending September 30, 2005

the white collar exemption regulations in effect before July 14, 2004. The House passed its appropriations bill by a 223-193 vote.

A conference committee now has to reconcile the two versions. Approval of the measure, or a deadlock in its consideration, could force the DOL to operate without specific funding to implement and enforce its new rules during the fiscal year ending September 30, 2005. It is uncertain if a final draft of the spending package will be approved before Congress adjourns in October for the November 2004 elections.

However, since it is an election year, the overtime amendment might be removed when members of the House and Senate meet to work out the final version of the bill. A Republican controlled Congress would be more likely to strip the amendments to ensure passage of the legislation. The President has threatened to veto any bill if it contains any language tampering with the new white collar exemption regulations. Thus, both amendments may be eventually removed from the final appropriations legislation.

Although the actions by the House and Senate could prevent the DOL from administratively enforcing new overtime regulations, the new regulations would still remain in effect. The old rules were repealed and/or superseded and are no longer in effect. ■

The Labor and Employment Department

	Telephone	Fax	E-mail address
Jorge Antongiorgi	(787) 250-5659	(787) 759-2740	jab@mcvpr.com
María Antongiorgi	(787) 250-2624	(787) 759-2741	maj@mcvpr.com
José I. Ayala	(787) 250-5617	(787) 759-2752	ja@mcvpr.com
Juan M. Casellas	(787) 250-5680	(787) 759-2743	jmc@mcvpr.com
Francisco Chévere	(787) 250-5615	(787) 759-2744	fc@mcvpr.com
Maggie Correa Avilés	(787) 250-5621	(787) 759-2745	mc@mcvpr.com
Iraida Diez	(787) 250-5817	(787) 759-2746	id@mcvpr.com
Agustín Fortuño-Fas	(787) 250-5631	(787) 759-2748	aff@mcvpr.com
Alfredo Hopgood-Jovet	(787) 250-5689	(787) 759-2750	ah@mcvpr.com
Aníbal Irizarry	(787) 250-5646	(787) 759-2751	ai@mcvpr.com
Rica López de Alós	(787) 250-2632	(787) 759-2753	rla@mcvpr.com
Elaine Maldonado Matías	(787) 250-5670	(787) 759-2754	emm@mcvpr.com
Patricia M. Márvez	(787) 250-2636	(787) 759-2765	pm@mcvpr.com
Anita Montaner	(787) 250-5652	(787) 759-2756	ams@mcvpr.com
Karen Morales	(787) 250-3607	(787) 759-2757	kmr@mcvpr.com
Sandra L. Negrón Monge	(787) 250-2638	(787) 759-2759	sln@mcvpr.com
James D. Noël III	(787) 250-5673	(787) 759-2760	jdnl@mcvpr.com
José A.B. Nolla	(787) 250-2613	(787) 759-2761	jan@mcvpr.com
Luis Palou Balsa	(787) 250-5671	(787) 759-2762	lpb@mcvpr.com
Miguel Palou Sabater	(787) 250-5686	(787) 759-2763	mpps@mcvpr.com
Miguel A. Rivera	(787) 250-5634	(787) 759-2717	mar@mcvpr.com
Javier Rivera Carbone	(787) 250-5619	(787) 759-2767	jrc@mcvpr.com
Juan F. Santos	(787) 250-5627	(787) 759-2795	jfs@mcvpr.com
Pedro J. Torres Díaz	(787) 250-2634	(787) 759-2768	pjt@mcvpr.com
Radamés (Rudy) A. Torruella	(787) 250-5679	(787) 759-2769	rat@mcvpr.com
Francisco A. Vargas López	(787) 250-2639	(787) 759-2773	fv@mcvpr.com

Labor Perspectives (c) 2004 by McConnell Valdés, published seasonally, is intended to provide general information concerning legal matters. It is not to be considered as, and does not constitute either, legal advice or solicitation of any prospective client. Readers should not act upon information presented in this publication without individual professional counseling. An attorney-client relationship with McConnell Valdés cannot be established by reading or responding to this information; such a relationship may be formed only by a specific and explicit agreement with McConnell Valdés. The contents of *Labor Perspectives* may not be reproduced, transmitted, or distributed without the express written consent of McConnell Valdés. Further information on the matters addressed in this issue, additional copies or subscriptions, translation to Spanish of the information included, suggested topics for future *Labor Perspectives*, or address updates should be communicated to the Editor in Chief, Rica López de Alós, through the listed telephone number, fax, e-mail address or regular address.

Contributing Editors: Walter G. McConnell, Radamés (Rudy) A. Torruella and Francisco Chévere.

McConnell Valdés
invites you to visit
our website at

www.mcvpr.com

McV
McConnell Valdés

McV
McConnell Valdés

270 Muñoz Rivera Avenue
Hato Rey, Puerto Rico 00918
PO Box 364225
San Juan, Puerto Rico 00936-4225



Printed on 100% recycled paper