

Wimberly Lawson
 Wright Daves & Jones, PLLC

Attorneys & Counselors at Law

Briefly
 November 2010 Volume 10, Issue 11

**EEOC OFFICIALS TO PARTICIPATE
 IN PANEL DISCUSSION AT CONFERENCE**



Fred J. Bissinger
Thursday, November 18
 Marriott Downtown Knoxville
 Riverview Room
EEOC Panel Discussion
 2:45 pm - 3:45 pm
 Moderated by
 Fred J. Bissinger

Based on the response to the EEOC Enforcement Initiatives article last year, we have invited the EEOC to participate in a panel discussion at Wimberly Lawson’s Annual Labor and Employment Law Update Conference this month. Sarah Smith, Area Director of the EEOC’s Nashville Area Office, and Sylvia Hall, Supervisory Investigator and Training Coordinator in the same office, have graciously accepted our invitation to participate. Their participation will help us better understand the EEOC’s current enforcement initiatives and how employers can better navigate the Charge of Discrimination process.

The Current Trends

Historically, race has been the most common basis for charges of discrimination. From 1997-2009, race claims constituted between 35%-37% of all charges filed on an annual basis. In 2009, for the first time ever, race was not the number one basis for charges of discrimination as slightly more retaliation claims (all statutes) were filed. Thirty-six percent (33,579) of all charges filed were based on race, whereas 36% (33,613) of charges were filed based on retaliation. In 2010, it is anticipated that retaliation claims will be the number one basis for charges of discrimination. This shift is significant for a number of reasons.



Anne T. McKnight.....
Friday, November 19
 Marriott Downtown Knoxville
 Riverview Room
EEOC Panel Discussion
 9:45 am - 10:45 am
 Moderated by
 Fred J. Bissinger and
 Anne T. McKnight

First, while no longer the number one basis on which charges are filed, the number of race claims is holding steady, which means that race is still a prevalent issue in our society. Second, the frequency with which retaliation claims are filed has increased dramatically since 1997. In 1997, retaliation claims (all statutes) constituted 22.6% of all charges filed. Since 1997, the number of retaliation claims filed has steadily increased each year culminating in 2009, with retaliation claims becoming the leading basis for charges of discrimination.

In 2009, sex (30%), age (24.4%), and disability (23%) were the third, fourth, and fifth leading bases for charges of discrimination. In 2010, it appears that those three basis will remain in the top five, but disability claims appear poised to outpace age claims.

For more information on What’s Hot this year with the EEOC, Fred Bissinger will moderate a panel discussion with the EEOC panelists at the Annual Labor and Employment Law Update Conference on Thursday, November 18, 2010, in the Riverview Room at the Marriott Downtown Knoxville from 2:45 - 3:45pm. On Friday, November 19, 2010, Fred Bissinger and Anne T. McKnight will moderate the panel discussion with the EEOC panelists in the Marriott’s Riverview Room from 9:45am - 10:45am.

Our Firm Wimberly Lawson Wright Daves & Jones, PLLC is a full service labor, employment and immigration law firm representing management exclusively. The firm has offices in Knoxville, Morristown, Cookeville and Nashville, Tennessee and maintains its affiliation with the firms of Wimberly, Lawson, Steckel, Schneider & Stine, P.C., Atlanta, Georgia; and Wimberly Lawson Daniels & Fisher, LLC, Greenville, South Carolina.

LATEST DEVELOPMENTS IN TENNESSEE WORKERS COMPENSATION LAW

The following information is a general overview of recent Workers Compensation legislation passed by the 106th General Assembly that are of interest to employers seeking to effectively manage Workers Compensation claims under Tennessee Workers Compensation Law.



Fred Baker

Maximum and Minimum Benefit Rate Changes

Effective July 1, 2010, the Tennessee General Assembly adopted the following changes to the maximum and minimum benefit rates for injured employees:

Temporary Benefits - The maximum weekly benefit rate for injuries occurring July 1, 2010 through June 30, 2011 is \$841.50 or 110% of the states average weekly wage.

Permanent Benefits - The maximum weekly benefit rate for injuries occurring July 1, 2010 through June 30, 2011 is \$765.00 or 100% of the states average weekly wage.

Minimum Weekly Benefit - The minimum weekly benefit rate for injuries occurring July 1, 2010 through June 30, 2011 for both temporary and permanent benefits is \$114.75.



Gerard Jabaley

Reconsideration of a Prior Permanent Partial Disability Award/Settlement

Public Chapter 1034 addresses situations where large scale reductions in hours are negotiated between management and employees in order to maintain the continued financial viability of a facility. For instance, if employees in a factory commonly work 40 hours per week, a reduction to 30 hours per week may avoid permanent closure of the facility and a corresponding layoff of employees. If a reduction in pay or hours affects at least 50% of all hourly employees, reconsideration does not apply.



Michael Jones

Pain Management Treatment

Public Chapter 920 authorizes treating physicians of patients receiving medical care under the Tennessee Workers Compensation Law to refer those patients for pain management if pain is persisting beyond the expected period of healing. If MMI is not otherwise assigned by treating physician, MMI is presumed to have occurred within 104 weeks after pain management is commenced.

Future Medical Disputes

Historically, cases that were tried or were subject to a court approved settlement had future medical disputes heard in the same tribunal that approved the settlement or issued the judgment after trial. Public Chapter 858 amends Tennessee Code Annotated Section 50-6-204(g)(2) (effective April 12, 2010) to establish an alternative venue for deciding post-judgment or post-settlement medical issues.

Thursday, November 18
Marriott Downtown Knoxville,
William Blount South Room
TN Workers Comp Law
11:00 am - 12:00 noon
Fred Baker, Gerard Jabaley,
Michael Jones and
Andrew Hebar

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Be sure to visit our website often www.wimberlylawson.com
for the latest legal updates, seminars, alerts and firm biographical information!

HEALTHCARE REFORM

EFFECTS AND STRATEGIES FOR EMPLOYERS

In what was described as the most sweeping social change legislation in decades, President Obama signed the Patient Protection and Affordable Care Act (PPACA) in March of this year. The much-publicized play or pay rule, which requires employers with fifty or more employees to offer coverage or pay a per-employee penalty, does not take effect until 2014. Likewise, the much-maligned requirement that all individuals obtain health insurance or pay a tax penalty is not scheduled to take effect until 2014. Many of PPACA's reforms, however, took effect immediately, or affect health plans with plan years beginning after September 23, 2010.



Rebecca Brake Murray



Catherine Shuck



Andrew Hebar

Now PPACA's future is in doubt, as the Republican leadership promises to repeal all or parts of the law. Even if Congress does not amend or repeal PPACA, it is the subject of numerous constitutional challenges currently pending in the courts. What is the future of this important, complicated, and highly contentious law?

This year Wimberly Lawson's Annual Labor and Employment Law Update Conference offers an in-depth look at the effects of PPACA, at compliance strategies for employers, and considers what parts of the law are most likely to be repealed, modified, or left unchanged. Rebecca Murray, Catherine Shuck and Andrew Hebar will present this topic on Thursday, November 18, 2010 in William Blount South at the Marriott Downtown Knoxville from 2:45pm - 3:45pm. Additionally, a brief overview of the recent Healthcare Legislation will be presented in the Ballroom at a General Session on Thursday, November 18, 2010 from 10:15am - 10:30am by Les A. Schneider and James L. Hughes of Wimberly Lawson's Atlanta affiliate office. On Friday, November 19, 2010, an Open Forum and Question and Answer session regarding Compliance with ObamaCare will be presented by James W. Wimberly, Jr., James Hughes and Catherine Shuck in the Marriott's Andrew Jackson Room from 9:45am - 10:45am.

Thursday, November 18, Marriott Downtown Knoxville

Healthcare Reform Effects and Strategies, William Blount South Room
2:45 pm - 3:45 pm, Rebecca Murray, Catherine Shuck and Andrew Hebar

Thursday, November 18, Marriott Downtown Knoxville

Healthcare Legislation Overview (General Session), Ballroom
10:15 am - 10:30 am, Les A. Schneider and James L. Hughes

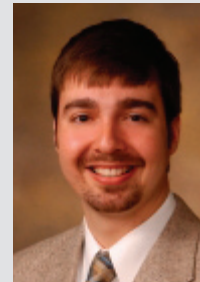
Friday, November 19, Marriott Downtown Knoxville

Compliance with ObamaCare Open Forum and Question and Answer Session
Andrew Jackson Room
9:45 am - 10:45 am, James W. Wimberly, Jr., James Hughes and Catherine Shuck

KNOW YOUR ATTORNEY

JESSE D. NELSON

JESSE D. NELSON is a Senior Associate with Wimberly Lawson Wright Daves & Jones, PLLC in the Knoxville, Tennessee office of the firm, joining in November 2010. His law practice includes an



emphasis in workers' compensation defense and employment law. Jesse graduated magna cum laude from Lambuth University with a B.S. in Sociology with concentration in Criminal Justice. He also majored in Political Science and was a Lambuth Scholar. Jesse obtained his Doctor of Jurisprudence degree from the University of Mississippi School of Law, graduating cum laude in 2006. While in law school, Jesse served as a member and articles editor of the Mississippi Law Journal and also clerked with the United States Attorney's Office, Northern District of Mississippi. Jesse is a member of the Tennessee Bar Association.

THE 2010 LABOR EMPLOYMENT UPDATE CONFERENCE



**November 18 & 19, 2010
KNOXVILLE MARRIOTT**

500 HILL AVE SE, KNOXVILLE, TN

For registration information please contact
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bhoule@wimberlylawson.com

TO SUBSCRIBE to our complimentary newsletter, please go to our website at
www.wimberlylawson.com or email [bhoul@wimberlylawson.com](mailto:bhoule@wimberlylawson.com)

SOCIAL MEDIA IN THE WORKPLACE



Heather Thorne

Friday, November 19

Marriott Downtown Knoxville,
William Blount North Room

*Social Media in the Workplace
- Problems and Cures*

9:45 am - 10:45 am

Heather Thorne

In the fast growing world of social media, it is nearly impossible to find someone who does not have a presence on at least one social networking site. Social networking sites (Facebook, LinkedIn, Twitter, MySpace) are fast becoming a primary way for one to express himself. It should be no surprise that countless employers are also embracing social media networking in terms of marketing, advertising, branding, recruiting, and maintaining company morale. Due to the exponential growth in online networking, the question is not about when an employer gets involved with social media; it is about how an employer gets involved.

Social media networking sites have become one of the most used online categories. Employers can no longer ignore the risks or the benefits. For an employer to branch out into the world of social media, it is crucial that it execute a social media policy. The time to implement that policy is now. There is no doubt that social media is here to stay and its popularity only continues to grow.

Heather Thorne and Jeff Jones will present *Social Media in the Workplace - Problems and Cures* on Friday, November 19, 2010 in the Marriotts William Blount North from 9:45 am - 10:45am at Wimberly Lawsons Annual Labor and Employment Law Update Conference in Knoxville.

“LATEST DEVELOPMENTS IN TN WORKERS COMPENSATION LAW” continued from page 2



Andrew Hebar

Workers Compensation Advisory Council

Public Chapter 1087 provides that the Workers Compensation Advisory Council is attached to the Department of Treasury for administrative purposes. Members shall not be registered lobbyists. The bill became effective July 1, 2010.

Construction Industry Exemption From Obtaining Workers Compensation Insurance

Public Chapter 1149 creates a procedure for sole proprietors, partners, officers of corporations, and members of limited liability companies engaged in the construction industry to file for an exemption from obtaining Workers Compensation insurance to cover themselves. Construction industry employers must still provide insurance coverage to statutory employees, even if the employer has only one such employee. The exemption registry shall become effective on March 1, 2011.

For more information on the latest developments in Tennessee Workers Compensation law, Fred Baker, Gerard Jabaley, Michael Jones and Andrew Hebar will participate in presenting a breakout session on Thursday, November 18, 2010, in William Blount South at the Marriott Downtown Knoxville from 11:00 am - 12:00 noon. On Friday, November 19, 2010, Fred Baker, Gerard Jabaley, Michael Jones and James Friauf will present additional information on workers compensation in a breakout session entitled *Oops! That Wasn't Right: Most Common Mistakes in Handling Workers Compensation Claims* in the Marriott's Alvin York room from 9:45am - 10:45am.



James Friauf

Friday, November 19, Marriott Downtown Knoxville

Oops! That Wasn't Right: Most Common Mistakes in Handling Workers Compensation Claims, Alvin York Room

9:45 am - 10:45 am, Fred Baker, Gerard Jabaley, Michael Jones and James Friauf