



Section News

Employment Justice Center Receives Frances Perkins Public Service Award

The Section honored the D.C. Employment Justice Center (EJC), a not-for-profit organization that provides a full range of employment law services to low-wage workers, as the second recipient of its Frances Perkins Public Service Award at the 2005 Annual Meeting in Chicago. Judith Conti and Kerry O'Brien, founders of EJC, received the award on behalf of EJC and spoke at the Pro Bono Committee's Annual Meeting Workshop. EJC Workers Rights' Clinic Coordinator Hannah Barton, who was placed at EJC by a Lutheran public service organization and will attend Yale Law School in the fall, and Laurie Wardell, director of the Equal Employment Opportunity Project of the Chicago Lawyers Committee for Civil Rights Under Law, also

spoke at the workshop. All four speakers discussed volunteer opportunities available to lawyers through their organizations.

Conti and O'Brien founded EJC in 2000 in response to a survey by the D.C. bar that revealed that disadvantaged residents felt they had no place to turn to for employment-related legal services. Their goal in establishing the EJC was to secure, protect, and promote workplace justice in the D.C. metropolitan area. The EJC works toward this goal by (1) providing direct legal services, (2) educating low-wage workers on their workplace rights and responsibilities, and (3) advocating for systemic change that will benefit low-wage workers through traditional legislative and administrative advoca-

cy as well as community organizing.

The backbone of EJC's invaluable legal services program is its Workers' Rights Clinics, which are held weekly in two communities in the D.C. area. Through the clinics, the EJC has advised and counseled over 5,000 individual workers, collected over \$1.5 million in back wages and benefits, and returned many people to jobs from which they were wrongfully terminated.

EJC's most significant achievement to date was a sweeping victory in a class action lawsuit against the D.C. Disability Compensation Program (DCP), the workers' compensation system for D.C. government employees. EJC challenged the DCP's regulations and practices, under which numerous qualified disabled workers had lost

their benefits. In November 2004, a federal judge voided all of the DCP's regulations, enjoined the program from terminating any benefits until it issued proper regulations, and ordered reinstatement of all benefits as of September 24, 2004, at an amount that is likely to exceed \$20 million.

EJC has a volunteer corps of more than 250 law students, paralegals, and attorneys who donate time and expertise to the program.

The Pro Bono Committee of the Section of Labor and Employment Law encourages all members to perform at least 50 hours of pro bono work per year in accordance with Rule 6.1 of the ABA's Model Rules of Professional Conduct. For more information, go to www.abanet.org/labor/pbcomm.html. ■

Labor Standards Committee Issues Supplement to Wage and Hour Treatise

Wage and hour plaintiffs are increasingly commencing their lawsuits in state court, turning from federal "opt-in" suits under the Fair Labor Standards Act (FLSA) to the more typical class action "opt-out" suits available under state law.

This phenomenon is discussed in the 2005 Supplement to the Section treatise *Wage and Hour Laws: A State-by-State Survey*, written by members of the Federal Labor Standards Legislation (FLSL) Committee and published by BNA Books. Both the supplement and the main volume are available at a substantial discount to Section members (see page 11).

There are several reasons for the increase in suits based on state law. Most obviously, many states permit wage and hour suits to be pursued as true opt-out class actions as opposed to the FLSA collective actions in which each plaintiff must affirmatively opt in to the

lawsuit. The opt-in requirement under the FLSA has resulted in most lawsuits (other than those that are union-sponsored) involving less than half the eligible workforce because language barriers, itinerant low-income workforces, and fear of employer retaliation inhibit participation. In contrast, state law class actions include the entire affected workforce for the entire applicable limitations period.

A related reason, however, is that defense lawyers are propounding discovery in federal court collective actions to all of the opt-in plaintiffs. In many cases this increases the cost of litigating the case. Additionally, many opt-in class members cannot be located or otherwise fail to respond and are dismissed from the cases. In state court class actions, the representative plaintiffs alone must respond to discovery, a much less onerous discovery obligation, and

one in which the entire class of plaintiffs remains in the case.

Also, state laws sometimes offer advantages to plaintiffs. Many states provide for longer statutes of limitations than the FLSA. Some states allow claims unavailable under the FLSA, such as failure to provide meal periods, pay wages on time, provide an employee's last paycheck, or take proper deductions from paychecks. Some states provide for additional penalties for failure to comply with state law, such as compounded interest or liquidated damages for these additional claims.

A further reason is that state courts may provide a more hospitable forum for plaintiffs' claims. The importance of this reason has diminished, however, as a result of the passage of the Class Action Fairness Act. Under this act, which was signed into law in February, cases in which there is diversity

between one plaintiff and one defendant and which involve 100 or more plaintiffs with claims for more than \$5,000,000 in the aggregate will be removed to federal court.

Members of the FLSL Committee also contribute to annual updates to the Section's treatise *The Fair Labor Standards Act* (see page 11) and are working on a treatise on the Family and Medical Leave Act.

The committee, which will hold its midwinter meeting in San Juan, Puerto Rico, March 1-3, welcomes new members. Further information about the meeting will be posted on the Section website at www.abanet.org/labor. ■

