

## NEUTRAL NEWS YOU CAN USE Spring 2007

► **MEDIATION – Globalization of the workplace will bring more use of mediation to resolve employment disputes.** As more American businesses expand operations overseas and employ personnel in the U.K., Europe, Asia, and Latin America, they will find a growing preference to use ADR and mediation to resolve employment and commercial disputes. Mediators for resolution of international employment disputes are provided by CPR International Institute for Conflict Prevention & Resolution, the American Arbitration Association’s International Centre for Dispute Resolution, and JAMS, which has strategic alliances with various ADR firms abroad.

► **ARBITRATION – Courts continue to defer to arbitration, but contrary messages begin to be heard in the U.S. Senate.** Federal District Court Judge Loretta Preska enforced an NYSE arbitration award against Merrill Lynch that granted significant damages to three registered reps for defamation claims arising out of their U-5 Termination Notices. Judge Preska repeated the oft-stated conclusion, “The federal policy favoring arbitration erects a high barrier to overturning arbitration awards.” *Merrill Lynch v. Savino*, 06 Civ. 868 (April 19, 2007). Citing finality of arbitration as one negative characteristic of the process, U.S. Senators Patrick Leahy and Russell Feingold have introduced legislation aimed at banning mandatory arbitration of customer disputes, arguing that “the system allows brokerage firms to easily outmuscle and outmaneuver their clients when conflicts arise.” *Dear S.E.C., Reconsider Arbitration* (New York Times, May 6, 2007). Will this proposed legislation start a trend affecting arbitration of employment disputes?

► **INVESTIGATIONS – Recent events demonstrate that when there is possible malfeasance or nonfeasance, organizations will turn to independent neutral investigations to generate reliable factual reports to facilitate more effective decision-making.** Examples of independent investigations include the 9/11 Commission, the Iraq Study Group, the Winograd Commission (reporting on Israel’s Military Response to Hezbollah in the 2006 war). The individuals who make up these independent boards provide subject matter and process expertise, credibility, and neutrality. These characteristics should also be sought in

workplace investigators, who should also demonstrate trustworthiness, open-mindedness, and sensitivity to employee relations issues.

► **TRAINING** -- What is the lesson of the *Imus* incident for today's workplace? The rules of engagement have changed significantly. All employees, from the highest paid to the lowest, must be trained to know the rules against discrimination, how they will be enforced, and what each employee's responsibility is to foster a culture of diversity. As succinctly summarized by *DiversityInc.com* (April 12, 2007): "Racial incidents are no longer a side issue for companies like this. What these companies do and how they're perceived affect everything, including employee morale and retention. It's really hard to be proud of a company that exhibits no moral fiber, and in our "YouTube" society, you have a "New York minute" to make the right choice."



**SUMMER IS COMING! With summer approaching, student interns and employees will be in the workforce. The rules against discrimination and diversity initiatives apply to these members of the workforce as well. Now is an ideal time to ensure everyone understands the “do’s and don’ts” of behavior in the workplace.**

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