



### MESSAGE FROM THE CHAIR

*Jeffrey M.  
Schlossberg*

It is with great pride that I assume the role of Chair of the Employment Law Group at Ruskin Moscou Faltischek.

The Employment Law Group has grown substantially over the past several years thanks to the trust you have placed in us. We attribute our growth to being responsive, proactive, and providing practical solutions to real-life workplace problems.

We look forward to continuing to serve the needs of our clients and the opportunity of working with new friends. Please feel free to contact me or any member of the Employment Law Group.

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## SUPREME COURT ISSUES EMPLOYEE-FRIENDLY RULING

In a unanimous decision announced on June 22, 2006, the United States Supreme Court made it significantly easier for plaintiffs to show they suffered retaliation after complaining about discrimination. The Supreme Court ruled in *Burlington Northern & Santa Fe Railway Co. v. White*, that a female forklift operator was retaliated against when her employer reassigned her to more demanding job duties and then suspended her for 37 days following her complaints of sex discrimination (she received full back pay several months later). The Court clarified conflict among various Courts of Appeals and set a standard that significantly eases the showing necessary for a retaliation claim.

The lesson of *White* is that employers must not only focus on training supervisors as to how to avoid discrimination, but equally on providing direction and guidance to supervisors on how to treat workers after they complain of discrimination. This is especially so because an employee may assert a valid retaliation claim even though the underlying claim of discrimination that led to the complaint is without merit. Intuitively, supervisors are likely to assume that a baseless discrimination claim equals a baseless retaliation claim. Such is not the case.

We expect to publish further written material on this important decision in the near future.

## NEW YORK LAW ENACTED GOVERNING DISPOSAL OF EMPLOYEE RECORDS

On June 9, 2006, a new law was enacted setting forth specific measures for how employers must dispose of records containing employee personal information. The "Disposal of Personal Records Law" is intended to help

## Ruskin Moscou Faltischek's Employment Law Capabilities:

- Sexual Harassment
- Discrimination
- Restrictive Covenants (non-compete, non-solicitation) and Unfair Competition
- Protection of Trade Secrets, Proprietary Information and Business Opportunities
- Employment At Will, Breach of Contract and Termination for Cause Litigation
- Employee Policy Manuals
- Family and Medical Leave
- Wage and Hour Requirements
- Employee vs. Independent Contractor
- Executive Employment Agreements and Severance Packages

protect individuals from the growing threat of identity theft. New York's law follows on the heels of last year's Federal Trade Commission regulation (reported in the June 2005 RMF Employment Law Alert) that governed disposal of information derived from consumer reports. The new state law, however, is much broader.

The law, which becomes effective in December 2006, states that an employer cannot dispose of records containing personal identifying information unless it does one of the following: shreds the record; destroys the personal identifying information contained within the record; modifies the record to make the personal identifying information unreadable, or takes other action consistent with accepted industry practice to ensure that no unauthorized person will have access to the personal identifying information.

"Personal identifying information" includes a Social Security number, driver's license number, mother's maiden name, and bank or other financial institution account numbers.

A civil penalty may be imposed for violation of the statute in an amount up to \$5,000 per occurrence. An affirmative defense can be asserted if the employer can show that it used due diligence in its attempt to properly dispose of covered records.

In light of the growing trend to protect personal information, we encourage employers to reconsider collecting data such as Social Security numbers and other identifying information unless absolutely necessary.



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