HRHero.com
A division of BLR®

North Dakota
EMPLOYMENT LAW LETTER

Part of your North Dakota Employment Law Service

Lisa Edison-Smith, Vanessa Lystad, and KrisAnn Norby-Jahner, Editors
Vogel Law Firm

Vol. 23, No. 7
August 2018

What's Inside

What's Online

Podcast
Attract top candidates with visual job postings
ow.ly/zN6m30kBiDD

Hiring
Delays leave you with least-qualified applicants
http://bit.ly/2lLkgXj

Agencies
Pluses, minuses of Trump proposal to merge DOL, DOE
http://bit.ly/2KnOnlH

Find Attorneys
To find the ECN attorneys for all 50 states, visit
www.employerscounsel.net

ECN EMPLOYERS COUNSEL NETWORK
EMPLOYERSCOUNSEL.NET

REASONABLE ACCOMMODATIONS

Package undeliverable: UPS driver's disability bias claim loses appeal

by Vanessa Lystad

In the August 2017 North Dakota Employment Law Letter, we gave you a brief synopsis of a case involving a UPS driver who asserted discrimination claims against his employer for failure to accommodate his disability (see "Former UPS driver gets second chance to prove disability bias claim" on pg. 6 of that issue). Back in 2017, the U.S. 8th Circuit Court of Appeals (whose decisions apply to employers in North Dakota) found that there were fact issues related to the driver's failure-to-accommodate claim that required the case to be sent back to the trial court.

After its decision, however, the 8th Circuit granted a request to rehear the case before the entire panel of judges and vacated its ruling. In a new opinion issued recently, the full 8th Circuit found that UPS had properly engaged in the interactive process and did not fail to reasonably accommodate the driver's disability. Read on to find out more.

UPS's attempts to accommodate

Jerry Faidley began working for UPS as a package car driver in 1987. In 2010 and 2011, he suffered a number of work-related injuries and had hip replacement surgery. In April 2012, his physician, Dr. Devon Goetz, finally released him to return to work with no restrictions.

For Faidley's first three days back at work, he worked between 6.12 and 9.65 hours to complete his route. When he saw that his fourth day was scheduled to last almost 12 hours, he told his supervisor he was in too much pain to work that amount of time. After consulting with the union steward and an occupational nurse, UPS made an appointment for Faidley to see Goetz.

After Faidley saw Goetz, the doctor issued a status report that Faidley could return to work but required a permanent restriction limiting him to working no more than eight hours a day. Shortly after this meeting, Faidley provided the report to his station manager, who told Faidley that he couldn't work with the restriction and sent him home.

Two days later, Faidley contacted UPS to say he wanted to continue working at UPS, even if he had to transfer positions. In response, UPS sent him a "Request for Medical Information" form to be completed by his physician and met with him after he returned the form for an "accommodation checklist meeting." As noted in UPS's Americans with Disabilities Act (ADA) Compliance Manual, the purpose of this meeting was to:

> Engage in a good faith, interactive meeting with the employee in order to determine whether the employee can be accommodated in his current job and, if

AGENCY ACTION

EEOC reports on age discrimination 50 years after ADEA. Age discrimination remains too common and too accepted 50 years after the federal Age Discrimination in Employment Act (ADEA) took effect, according to a report from Victoria A. Lipnic, acting chair of the Equal Employment Opportunity Commission (EEOC). The report, released June 26, 2018, says only about three percent of those who have experienced age discrimination complained to their employer or a government agency. Studies find that more than three-fourths of older workers surveyed report their age is an obstacle to getting a job. The report includes recommendations on strategies to prevent age discrimination, such as including age in diversity and inclusion programs and having age-diverse hiring panels. The report says research shows that age diversity can improve organizational performance and lower employee turnover and that mixed-age work teams result in higher productivity for both older and younger workers.

NLRB launches internal ethics review. The National Labor Relations Board (NLRB) announced in June it is undertaking a comprehensive review of its policies and procedures governing ethics and recusal requirements for Board members. The review is in response to criticism of Board member William J. Emanuel's participation in a case that his former law firm was involved in. After critics of an NLRB decision on joint employment claimed Emanuel should have recused himself, the Board tossed out its employer-friendly decision in the *Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co.* case. In the Board's June announcement, NLRB Chair John Ring said he has proposed a review to examine "every aspect of the Board's current recusal practices in light of the statutory, regulatory, and presidential requirements governing those practices." Among other things, the review will evaluate existing procedures for determining when recusals are required.

EEOC examines barriers facing women in federal public safety jobs. The EEOC in June issued a report claiming women still face employment barriers in gaining public safety positions within the federal government. The report, "Recruitment & Hiring Gender Disparities in Public Safety Occupations," is part of the EEOC's effort to aid the federal government in serving as a model employer. The report identified the following barriers women face: lack of work-life balance, misperceptions that women are uncomfortable with carrying firearms, misperceptions that women are uncomfortable with physically strenuous job functions, hiring officials' concerns that women can't meet rigorous fitness exam requirements, and too few initiatives aimed at the recruitment of women. ✤

not, to determine whether there are any other positions that are currently available, or that will become available within a reasonable period of time for which he is qualified, and for which he can perform the essential job function with or without accommodation.

At the meeting, Faidley indicated that he was unaware of any jobs he could do without the eight-hour restriction. The day after this meeting, he followed up, urging UPS to grant his request for an eight-hour restriction for his current position as a package car driver. UPS, however, determined that he couldn't be accommodated in that position because one of its essential functions included being able to work at least 9.5 hours a day.

UPS further discussed reassigning Faidley to other jobs as a reasonable accommodation and encouraged him to bid on positions that he identified as full-time eight-hour jobs for which he was qualified. In this discussion, UPS's HR director raised the possibility of Faidley becoming a "feeder driver," which required working more than eight hours a day and would have required additional training but didn't require as much walking, lifting, or climbing into the trucks. During the litigation, the HR director testified that the position wasn't available at the time. In response, Faidley indicated that he was unaware that position was a possibility and believed he could have performed it for the required 9.5 hours per day given its different physical requirements.

Faidley was ultimately not able to obtain reassignment to another full-time job because some positions weren't vacant and he lost the bidding on others for lack of seniority. As an alternative, UPS offered him a part-time inside job, but he declined because it would reduce his seniority and bidding rights. Therefore, he remained on medical leave.

In January 2013, Faidley filed a complaint against UPS, claiming his employer failed to accommodate his disability in violation of the ADA and equivalent state law. In the same month, he returned to his doctor to review other nondriver positions in light of a comment from UPS and union representatives that the eight-hour work restriction was "the biggest drawback" to bidding on other full-time positions. The doctor issued revised restrictions, stating that Faidley could perform any job other than package car driver with no hourly restriction.

Based on the revised restrictions, Faidley won a bid for a full-time combined loader/preloader position with UPS. However, soon after he started in the position, he began to experience too much pain. He returned to the doctor, who issued a status report, recommending Faidley work only four hours a day at the preloader job. An attorney for UPS responded that the company was unable to accommodate the request. When Faidley returned to the doctor the following month, they agreed on permanent restrictions, including no hourly restriction, minimal lifting above shoulder height, and no lifting more than 70 pounds.

In May 2013, Faidley met with UPS for a second accommodation meeting to discuss his new restrictions. In the meeting, he identified other possible positions, but UPS determined he

couldn't perform their essential functions because of his medical lifting restrictions. UPS offered him another part-time position as an alternative, which he declined. In February 2014, he filed a second complaint against UPS for disability discrimination, among other claims.

Review by the courts

To establish his disability discrimination claims under the ADA, Faidley was required to show (1) he is disabled within the meaning of the Act, (2) he is a qualified individual under the Act (i.e., someone who, with or without a reasonable accommodation, can perform the essential functions of the position), and (3) he suffered an adverse employment action because of his disability.

After consolidating Faidley's first and second complaints and reviewing those elements, the district court ruled in favor of UPS on Faidley's claims. It found:

- Working more than eight hours a day was an essential job function of the package car driver position that couldn't be accommodated because of Faidley's permanent restrictions;
- He wasn't qualified for reassignment to a feeder driver position because working nine or more hours a day was an essential job function and his doctor unambiguously limited him to no more than eight hours a day;
- The part-time positions offered by UPS were reasonable accommodations, and he wasn't qualified to remain at the company after he rejected them; and
- A reasonable jury couldn't find that UPS acted in bad faith during the interactive accommodation process.

The district court therefore granted judgment in UPS's favor.

Originally, the 8th Circuit agreed with the district court on all points with the exception of its conclusion related to the feeder driver position. On this issue, the 8th Circuit initially held there was a material fact dispute related to whether Faidley was qualified for the position based on a note from the HR director that Faidley "preliminarily appear[ed] capable of performing the essential job functions" of a feeder driver and based on the fact that it was anticipated the position would come open in the near future.

After rehearing the case, the 8th Circuit changed its tune and agreed with the district court on all points, including that Faidley was *not* qualified for the feeder driver job. The court explained that because this position required him to work 9.5 hours a day, it was an essential function. His own physician, however, clearly indicated that he couldn't work that length of time when he restricted Faidley's workday to eight hours. Contrary to its previous decision, the court found the note from the HR director didn't present a material fact dispute about whether Faidley was qualified for the position because it was simply a preliminary subjective opinion and couldn't override the physician's restriction. In short, because he wasn't qualified for the position, UPS wasn't obligated to propose it as an accommodation.

The court further noted that UPS had made "extensive efforts" to accommodate Faidley, including meeting with him twice to discuss alternative positions, identifying full-time positions he was qualified to perform, and offering him available part-time positions. Therefore, the court agreed no reasonable jury would find UPS acted in bad faith in the interactive process for Faidley to continue pursuing his disability discrimination claims.

Lessons learned

This case highlights the importance of the interactive process in situations involving requests for reasonable accommodations. You are required to engage in good faith in the interactive process in the face of a request for accommodation. The process is called "interactive" for a reason—it involves an open discussion between you and the employee to determine whether any reasonable accommodation is available. Meeting with the employee (perhaps on more than one occasion), suggesting and offering reasonable alternatives, and seeking appropriate medical information with the employee's authorization—as UPS did in this case—are all important steps to take before denying a request for accommodation.

The author can be reached at vlystad@vogellaw.com. ✤

HR ISSUES

Upholding the psychological employment contract

Do you realize that every one of us has a psychological contract with our organization? The psychological contract is a concept that describes the understandings, beliefs, and commitments that exist between an employee and an employer. Although it is unwritten and intangible, it represents the mutual expectations that are felt between the two. The psychological contract is strengthened (or weakened) by each party's perception of the employment relationship. It is formed through daily interactions between colleagues, managers, and the organization.

The psychological contract influences how employees behave when they're on the job and when they're relating to their managers. An employee balances what she puts into her job with how she feels she is being treated by her employer. If she feels she is giving more than she is getting back in return, the balance is skewed and the psychological contract is breached. The psychological contract will develop and constantly evolve over the working relationship.

3 deal breakers

So what can you, as a manager, do to uphold your side of the psychological contract? Clearly, there are many things, but a few critical "deal breakers" include:

(1) Making sure employees' paychecks are always correct;

(2) Ensuring that their vacation isn't messed with—either by miscalculating the time they've earned or interrupting them while they're on vacation; and

(3) Demonstrating that you care about them as people.

The two most important rules in HR are to never mess up anyone's paycheck or vacation time. Vow to do what you can to ensure you hold up your end of the deal.

Paycheck accuracy is critical. In terms of paychecks, employees trust their organization to keep up with what they are owed—it's the basic minimum they expect from you. When an employee opens his paycheck or examines his pay stub, he needs to know that what he is holding is correct and above reproach. He has performed up to your expectations and he's entitled to have the same expectations of the organization with regard to an accurate paycheck. This should be your first and most important order of business when a team member comes to you with a paycheck problem.

Time off is sacred. Similarly, we cannot overstate the importance of making sure accrued time off is correct on the HR information system or on pay stubs. Everyone works hard for their money and their time off, so miscalculating earned leave is almost as big a snafu as incorrectly calculating a paycheck. When an employee points out a mistake, the sun shouldn't set that day before the discrepancy is resolved.

The same goes for holding employees' time off as sacred. Calling or e-mailing someone while she is on vacation should be saved for "true emergencies," which should be few and far between. Don't you want your team members to be able to relax and enjoy their well-earned time off?

Sharing is caring. Finally, do your team members know how much you care about them as people and not just as employees? Knowing that your boss has your best interests at heart goes a long way toward keeping the balance of the psychological contract intact.

The employment relationship can be adversely affected if there's a perceived breach in the psychological contract. When employees believe their employer has failed to fulfill its obligations, they feel that the psychological contract is broken. Breaches of the psychological contract can lead to an employee becoming disengaged from her job, and if the breach isn't resolved, it can continue to cause disaffection and demotivation, which results in a further decline in performance.

Bottom line

It's the employer's responsibility to try to maintain the employment relationship and to spot any deterioration. It's easier to maintain the psychological contract than to repair it following a breach. If you had to grade yourself on the three psychological deal breakers, how would you come out? ✤

UNIONS

'Fair-share' fee ruling brings new day for public employers, employees

With proponents of a U.S. Supreme Court decision against the collection of "fair-share" fees claiming a victory for First Amendment rights and critics calling the ruling an example of the Court siding with billionaires against workers, employers are adjusting to a major change in the world of agency shops in the public sector.

In an agency shop arrangement, employees can be required to accept the union as their exclusive representative or pay a fee to cover the cost of contract negotiations. In a 5-4 ruling on June 27, the Court struck down a 41-year-old precedent allowing unions of public-sector workers to collect those fees—often called fair-share or agency fees—from nonunion members in states that allow agency shops. Such fees were an important part of the financial structure of the unions that negotiate pay and benefits for public schoolteachers, police and fire personnel, and various other workers at all levels of government. With a new precedent in place, public-sector employers and unions are finding their way in a new labor-management landscape.

Background

The decision in *Janus v. American Federation of State, County, and Municipal Employees (AFSCME)* reverses precedent set in the 1977 *Abood v. Detroit Board of Education* decision, which allowed unions to collect a portion of union dues from employees who chose not to join the union but were covered under contracts the union negotiated. The collection of such fees was supposed to allow the union to cover the costs of collective bargaining without forcing workers who chose not to join the union to financially support the union's political aims.

The *Janus* case involved Mark Janus, an employee of the Illinois Department of Healthcare and Family Services, who objected to being required to pay fees to a union he chose not to join. He argued that requiring public-sector employees to pay even a portion of union fees required them to subsidize political speech in violation of their First Amendment rights. He maintained that even issues covered in contract negotiations are fundamentally political when they involve public employees.

The Court has tackled the constitutionality of fair-share fees before. The justices heard similar arguments in the March 2016 *Friedrichs v. California Teachers Association* case. Coming shortly after the death of Justice Antonin Scalia, the Court's decision in *Friedrichs* resulted in a 4-4 tie, which left the *Abood* precedent in place.

At the time, many predicted fair-share fees would have been struck down but for the death of Scalia. Scalia's replacement on the Court, Justice Neil M. Gorsuch, provided the fifth vote necessary to overturn *Abood*. He was joined by Chief Justice John G. Roberts Jr. and Justices Samuel A. Alito Jr., Anthony M. Kennedy, and Clarence Thomas. Dissenting were Justices Elena Kagan, who wrote the dissenting opinion, and Ruth Bader Ginsburg, Stephen G. Breyer, and Sonia Sotomayor.

Reaction to decision

After the *Janus* decision was announced, union leaders called on workers to recommit to unions and step up organizing drives. A statement from leaders and members of the AFSCME, the American Federation of Teachers (AFT), the National Education Association, and the Service Employees International Union (SEIU) said public-sector workers would be "more determined than ever" to band together in their unions.

"Today's decision sends our economy in the wrong direction. But it is also a rallying point," the statement said. "We call on elected leaders and candidates to do everything in their power to make it easier to unite in unions and build more power for all working people."

The National Right to Work Foundation called the decision a victory that "restores the First Amendment rights of free speech and freedom of association to more than 5 million public school teachers, first responders, and other government workers across the country."

Janus, the child support specialist for state government in Illinois who brought the case, called the Supreme Court's

WORKPLACE TRENDS

Research finds people of color less likely to get requested pay raises. Research from compensation data and software provider PayScale, Inc., shows that people of color were less likely than white men to have received a raise when they asked for one. The research, announced in June, found women of color were 19% less likely to have received a raise and men of color were 25% less likely. The research also notes that no single gender or racial/ethnic group was more likely to have asked for a raise than any other group. The most common justification for denying a raise was budgetary constraints (49%). Just 22% of employees who heard that rationale actually believed it. Of those who said they didn't ask for a raise, 30% reported their reason for not asking was that they received a raise before they felt the need to ask for one.

Promotions without pay raises found to be common. New research from staffing firm OfficeTeam finds that 39% of HR managers said their company commonly offers employees promotions without salary increases. That's a 17-point jump from a similar survey in 2011. The new research also determined that 64% of workers reported they would be willing to accept an advanced title that doesn't include a raise, up from 55% in 2011. The study found that more male employees (72%) are open to accepting a promotion without a salary increase than women (55%). Workers ages 18 to 34 are most willing to take a new title that doesn't include a raise.

Report explores strain on caregivers. A report from employee benefits provider Unum details how caregiving responsibilities can take emotional, physical, and financial tolls on caregivers and result in lower productivity and engagement at work. The report, "Adult Caregiving: Generational considerations for America's workforce," details findings from research fielded among caregivers of adult family members among Baby Boomers, Gen Xers, and Millennials. The report notes that what caregivers want most from their employers is flexible schedules, employer-paid family leave, and the ability to work from home.

Study finds organizations' confidence exceeds preparedness. Deloitte Global's 2018 crisis management survey finds that nearly 60% of organizations surveyed believe they face more crises today than they did 10 years ago, but many overestimate their ability to respond. An announcement from Deloitte says the study uncovered gaps between a company's confidence that it can respond to crises and its level of preparedness. The gap is even more evident when evaluating whether organizations have conducted simulation exercises to test their preparedness. ✤

UNION ACTIVITY

AFL-CIO launches campaign leading up to elections. The AFL-CIO kicked off its Labor 2018 campaign in June with a nationwide day of action aimed at educating voters in advance of the midterm elections. "We're unleashing the largest and most strategic member-to-member political program in our history, sparking change by doing what we do best: talking to each other," AFL-CIO President Richard Trumka said. "Street-by-street and person-by-person, we're having conversations about the issues that matter most: higher wages, better benefits, time off, a secure retirement, and a fair return on our labor." The campaign includes canvasses and phone banks taking place in at least 26 states.

Union leaders speak out against Janus decision. Union leaders spoke out against the U.S. Supreme Court's June 27 decision in the case of *Janus v. American Federation of State, County, and Municipal Employees (AFSCME),* with a statement from AFSCME saying the Court "sided with powerful CEOs, billionaires, and corporate special interests against public service workers and everyday working people." The Court overruled a 1977 decision that allowed unions to collect "fair-share" fees from workers who don't join the union but are covered under union contracts. AFL-CIO President Trumka said the decision "abandons decades of commonsense precedent." A statement from the AFSCME, the American Federation of Teachers, the National Education Association, and the Service Employees International Union (SEIU) said the Court's decision "was nothing more than a blatant political attack to further rig our economy and democracy against everyday Americans in favor of the wealthy and powerful."

Proposed DOL, Education Department merger criticized. The proposal to merge the U.S. Departments of Labor and Education announced in June met with disapproval from union leaders. AFL-CIO President Trumka called the proposal "a dangerous and bad idea that should be stopped." He said the core functions of the two departments—serving children and protecting working people—"are critical tasks that require the individual attention each receives" by having the departments separate. He also said the track record of the Trump administration includes attacks on public education and worker safety and health and therefore calls into serious question the intentions of the proposal. "Merging Education and Labor instead of the business-centric Commerce and Treasury departments is another indication that this is simply about increasing privatization and handing out more power to corporations at the expense of working people," Trumka said. ✤

decision "a victory for all of us" that puts an end to the practice of nonunion members being forced to pay fair-share fees to keep their jobs.

What's next?

Some employer interest groups have warned that a ban on fair-share fees will discourage union leaders from agreeing to no-strike clauses in contracts since those clauses sometimes accompany agreements to collect fair-share fees. And in the wake of the decision, unions surely will be looking to bolster membership so that they won't be so reliant on fees from nonmembers.

Some have predicted that the *Janus* decision will be a crippling blow to public-sector unions, the one bright spot the labor union movement has seen in recent decades. Overall union membership has dwindled for years but has been healthier in the public sector.

Figures released in January from the U.S. Bureau of Labor Statistics (BLS) show that the unionization rate for private-sector workers remains far lower than the rate for public-sector workers—6.5 percent in the private sector versus 34.4 percent for workers in the public sector. So with the unfavorable Supreme Court decision, many predict more troubles ahead for labor.

In spite of the unfavorable ruling, leaders of public-sector unions have vowed to fight to stay relevant. "Don't count us out," Randi Weingarten, AFT president, said after the ruling. "While today the thirst for power trumped the aspirations and needs of communities and the people who serve them, workers are sticking with the union because unions are still the best vehicle working people have to get ahead."

Weingarten cited Kagan's dissenting opinion, which claimed no justification for reversing *Abood*. "Not only was *Abood* well within the mainstream of First Amendment law, it has been affirmed six times and applied to other cases upholding bar fees for lawyers and student activity fees at public colleges," Weingarten said. ✤

EMPLOYEE BENEFITS

DOL loosens rules for association health plans

Employers may soon have new options to obtain group health insurance through association health plans (AHPs) under new regulations recently issued by the U.S. Department of Labor (DOL). A brief primer on the mechanics of insurance may be helpful before we dive into the new rules and what they could mean for you.

One of the foundational principles of insurance is that the more people you have participating in a group health plan, the lower your risk and therefore the lower your premiums over time. Larger groups have more premiums being paid into them. Therefore, a large claim isn't going to make as big of an impact on future rates. A million-dollar claim for a preemie baby on a large corporation's health plan will hardly be a blip on their rates, but the same claim on a smaller employer's policy could cause double-digit increases.

That is why AHPs are desirable. They theoretically offer employers the opportunity to join together to purchase insurance for their employees, thereby creating a larger risk pool and stabilizing their premiums over time. However, in the past, the rules for establishing an AHP were quite restrictive. The new regulations from the DOL attempt to make AHPs more available and give employers better options for obtaining affordable health insurance for their employees.

What has changed

Before the new regulations, the rules for AHPs were specifically designed to prevent associations from being formed solely for the purpose of offering health insurance and/or avoiding the oversight of state insurance departments. As a result of those rules, AHPs were difficult to form and operate and were relatively rare.

The new rules attempt to change that by scaling back the rules that apply to AHPs to the following core requirements:

- The primary purpose of the association must be to offer health coverage to its members.
- The association must have at least one "substantial business purpose" that is unrelated to providing health coverage or other employee benefits (but this is an extremely broad requirement and could be something as simple as promoting common business or economic interests).
- The association's members must be either (1) in the same trade, industry, line of businesses, or profession or (2) in the same state, city, county, or metropolitan area (including one that crosses state lines).
- The AHP must satisfy certain requirements regarding the organizational control and operation.

On the whole, these requirements are significantly easier to meet than the existing rules for AHPs.

Who might benefit

For most existing AHPs, employer members of the plan are subject to the same regulatory requirements as if they were not participating in an AHP. In other words, small employers are still subject to the rules that apply to small groups (such as the requirement that all policies provide essential health benefits) and large ones are subject to the rules applicable to large employers (such as the employer mandate).

Under the new rules, however, the coverage offered through the AHP would be treated as part of a large group regardless of the size of the employer member. Thus, although employers of all sizes would be eligible for the rules' new AHP option, employers currently in the small group or individual market are likely to be most interested. Joining an AHP that covers 50 or more employees would put them in the large group market and give them more flexibility to offer reduced benefits at a lower cost to themselves and their employees. Not to mention that, as discussed above, joining a larger pool can spread the risk and help keep your rates down.

What the future holds

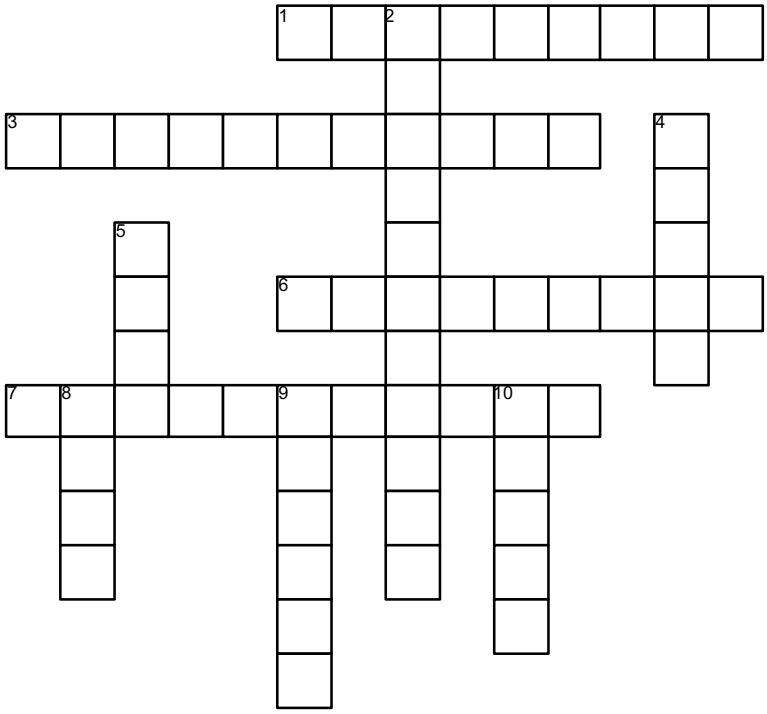
While AHPs sound good in theory, at this point it's impossible to tell whether they will really take off. State insurance departments still retain regulatory authority over them to some extent, and many have not been fond of AHPs historically because of a tendency toward fraudulent practices in the past.

In addition, there are legitimate concerns about such plans pulling in only healthy groups and members, leaving others with all the risk and rapidly rising premiums. It's likely that many states will take a close look at what they can do to avoid that type of scenario.

The long and short of it is that if you are offered an opportunity to join one of these plans, keep in mind that it's too soon to know how it is all going to play out, and it may not be a legitimate opportunity. A call to your benefits attorney may be advisable just to be safe. ✤

JUST FOR FUN

Mindteaser of the month



ACROSS

1 Public-sector unions used to be able to collect ____ _____ fees from nonunion employees (two words).

3 The DOL recently issued new regulations for _____ health plans.

6 A _____ employee is one who can perform the essential functions of a position, with or without a reasonable accommodation.

7 A requirement for AHPs is to have at least one _____ business purpose.

DOWN

2 The _____ process is necessary for employers to determine if there is a reasonable accommodation for an employee with a disability.

4 The EEOC recently reported that _____ percent of employees have complained of age discrimination to their employer.

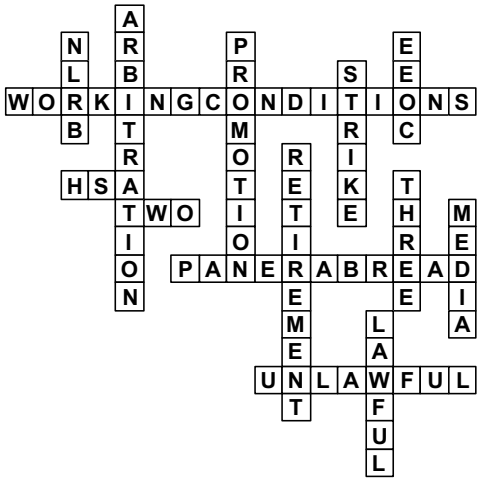
5 The _____ recently announced that it is reviewing its ethics and recusal policies for board members.

8 Benefit provider _____ issued a report regarding the effects of caregiving responsibilities on employees.

9 Fair-share fees for public-sector unions are also known as _____ fees.

10 The famous 1977 case _____ was recently overruled by the U.S. Supreme Court.

Solution for July's puzzle



NORTH DAKOTA EMPLOYMENT LAW LETTER (ISSN 1086-2641) is published monthly for $447 per year by **BLR®—Business & Legal Resources,** 100 Winners Circle, Suite 300, P.O. Box 5094, Brentwood, TN 37024-5094.

Editorial inquiries should be directed to the editors at Vogel Law Firm, 218 NP Ave., P.O. Box 1389, Fargo, ND 58107-1389, 701-237-6983; 200 North 3rd St., Ste. 201, P.O. Box 2097, Bismarck, ND 58502-2097, 701-258-7899.

For questions concerning your subscription or Corporate Multi-User Accounts, contact your customer service representative at 800-274-6774 or custserv@blr.com.

HRhero® a division of BLR BLR®