

## THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

**Nondiscrimination Rules for Health Care Plans Delayed by IRS**--On December 22, 2010, the Internal Revenue Service issued Notice 2011-1 delaying the application of the provisions of the *Patient Protection and Affordable Care Act* ("PPACA").

The PPACA prohibits non-grandfathered, fully-insured group health plans from discriminating in favor of highly compensated individuals in terms of benefits or eligibility. An insured group health plan that fails to comply with the nondiscrimination requirement could be subject to significant sanctions including a penalty of potentially up to

\$100 per day per individual for each day the plan does not comply with the requirement.

The PPACA's nondiscrimination provision was to become effective for non-grandfathered plans in plan years beginning on or after September 23, 2010. However, the Notice delays the effective date for the new nondiscrimination requirement until after the IRS, Department of Labor and Department of Health and Human Services have issued regulations. Further, the IRS anticipates that the regulations will provide

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**Arbitrator Upholds Determination that Non-Tenured Teachers Do Not Have "Seniority"**--An arbitrator has denied a grievance filed by the O'Fallon Federation of Teachers which claimed that the Board of Education of O'Fallon Township High School District No. 203 violated the governing collective bargaining agreement when the Board terminated a fourth year non-tenured teacher instead of allowing the fourth year teacher to "bump" a "less senior" non-tenured teacher.

In this case, successfully defended by **Ellen Rothenberg** and **Stephanie Jones**, the parties had negotiated a procedure for placing all teachers on the seniority list regardless of tenure status. Such procedures were based upon a memorandum of understanding which included all tenured and non-tenured staff on the list.

The Union argued that, by including non-tenured teachers on the list, the Board granted those teachers the rights normally associated with seniority, including bumping rights. The Union made this argument while admitting that it never shared this interpretation with the Board at the bargaining table.

The Board argued that the language in the agreement was simply a procedure and granted no additional rights to teachers. The arbitrator found in favor of

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### Consumer Price Index

Percent change for the month of **November 2010**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	-0.1	-0.1
12 Mth	0.4	0.7
St. Louis-6 Mth	1.1	1.2
12 Mth	2.3	2.8
U.S. Mthly	0.0	0.1
12 Mth	1.1	1.3

December CPI figures will be released January 14, 2011. For the most recent CPI, visit our website at: [www.hlerk.com](http://www.hlerk.com).

*The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.*

### Reminders & Notes

- HLERK congratulates **Terry Hodges** on being designated one of Illinois leading women lawyers by *Leading Lawyer Magazine*. Terry joins **Mike Loizzi**, **Stan Eisenhammer** and **Bennett Rodick** in being recognized by their peers for excellence as Illinois leading lawyers.
- Join **Bennett Rodick** and **Jay Kramling** at IAASE's Winter Conference in Springfield on January 19-21, 2011 and **Mike Loizzi** and **Cindi DeCola** at the IASPA Annual Conference in Lisle on January 27-28, 2011.
- Join **Bennett Rodick** and **Nancy Krent** at the administrator academy approved program on *Legal Issues in Special Education* sponsored by the Special Education Leadership Academy. The program is scheduled for February 24th in Deer Grove, IL.

#### Offices:

Arlington Hts. 847-670-9000

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**Deadlines Approach for Employee Non-Renewal and Dismissal Actions**—With each new calendar year, boards of education must determine personnel actions governing both certificated and educational support personnel beginning with the February 1st deadline for posting seniority lists. Statutory timelines and other requirements govern reductions-in-force, dismissals, reclassifications and non-renewals.

We look forward to working with you during this time period, but please remember that each employee situa-

tion is different and does not permit immediate "form letter" (or form resolution) type of responses. We know this is a challenging time of year for you and we will "go the extra mile" to ensure that your timelines are met, but we ask that you provide for sufficient notice of your needs to allow us to respond to all of our requests on a timely basis.

**Contact Ellen Rothenberg or Tina Christofalos with your evaluation, dismissal, non-renewal or RIF inquiries. We look forward to working with you.**

**IRS Cont.** group health plan sponsors additional time to make any necessary changes to plan designs prior to having to comply. This issue is just one of many complex issues school districts will face in implementing

the various phases of the health care reform law.

**Contact Heather Brickman or Barb Erickson with your employee benefits inquiries.**

**Seniority Cont.** the Board, holding that the language and past practice created procedures for placing people on the seniority list and did not grant the rights commonly associated with seniority to non-tenured teachers. The arbitrator held that, even though it may have been the Union's intention to give non-tenured teachers

the seniority rights associated with tenure, since the Union did not present that argument to the Board, they failed to make their agreement clear to the Board members.

**Contact Ellen Rothenberg or Tina Christofalos with your employee dismissal and RIF inquiries.**

**Illinois Labor Law Only Requires Advance Notice of Investigatory Interview When Employee So Requests**—In *Illinois State Toll Highway Authority v. Illinois Labor Relations Board*, 2010 WL 4542900 (2d Dist. 2010), the Illinois Appellate Court, Second District, ruled that, while an employee was entitled to advance notice about the subject matter of an investigatory interview, the employee was required to request such advance notice. The Court's ruling overturned the decision of the Illinois Labor Relations Board ("ILRB") in favor of the employee.

The Service Employees International Union, Local 73 ("Union"), filed an unfair labor practice charge against the Illinois State Toll Highway Authority ("Authority") on behalf of a toll collector and a member of the Union. The Union charged that the Authority violated the employee's right to union representation under the "Weingarten" rule and Sections 10(a)(1) and (a)(4) of the *Illinois Public Labor Relations Act* by not providing the employee with advance notice about the topic of investigation before the Authority conducted an in-

vestigative interview.

At the hearing on the Union's charges, the employee testified that she was told to report to the Authority's central administration office for a meeting but was not given a reason for the meeting. At that meeting, she was told that the Authority had evidence that she had not turned in or failed to collect nearly \$6,000.00 in tolls over approximately 10 weeks. A union steward was summoned to represent the employee during the investigation.

The ILRB found that the Authority's actions violated the employee's rights under *Weingarten* and the *Public Labor Relations Act*. The appellate court set aside the ILRB's ruling and held that while the ILRB correctly determined that the employee was entitled to advance notice about the subject matter of the investigatory interview, she was also required to request such advance notice.

**Contact Cindi DeCola or Stan Eisenhammer with your personnel investigation inquiries.**