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Proceedings

A monthly newsletter from McGraw-Hill

April 2011 Volume 2, Issue 9

Contents

Dear Professor,

Spring has finally arrived! Welcome to McGraw-Hill's April 2011 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 2, Issue 9 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the April 2011 newsletter topics with the various McGraw-Hill business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. United States Justice Department guidelines regarding tobacco industry 'corrective' advertising;

2. Parental leave in the United States compared to parental leave in other nations;

3. A recent United States Supreme Court decision regarding vaccine manufacturer liability;

4. Videos related to a) an employer's demand for an employee's Facebook password; and b) the Wisconsin public employee collective bargaining rights controversy;

5. An "Ethical Dilemma" related to the "No Child Left Behind" Act; and

6. "Teaching Tips" related to Video 2 ("Clock Ticking on Wisconsin Union Standoff") and the "Ethical Dilemma" ("Connecticut Loses 'No Child Left Behind Legal Challenge") of the newsletter.

I wish you an academically-rewarding remainder of the spring semester!

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Of Special Interest

This section of the newsletter covers three (3) topics:

1) United States Justice Department guidelines regarding tobacco industry 'corrective' advertising;

2) Parental leave in the United States compared to parental leave in other nations; and

3) A recent United States Supreme Court decision regarding vaccine manufacturer liability.

Hot Topics in Business Law

Article 1: "Big Tobacco Spitting Mad Over 'Corrective' Ads"

http://www.usatoday.com/money/advertising/2011-02-24-tobacco-ads-justice-dept_N.htm?loc=interstitialskip

The Justice Department wants the largest cigarette manufacturers to admit that they lied to the American public about the dangers of smoking, forcing the industry to set up and pay for an advertising campaign of self-criticism for past behavior.

As part of a 12-year-old lawsuit against the tobacco industry, the government recently released 14 "corrective statements" that it says the companies should be required to make.

One statement says: "A federal court is requiring tobacco companies to tell the truth about cigarette smoking. Here's the truth: ... Smoking kills 1,200 Americans. Every day."

Another of the government's proposed statements begins: "We falsely marketed low tar and light cigarettes as less harmful than regular cigarettes to keep people smoking and sustain our profits."

"For decades, we denied that we controlled the level of nicotine delivered in cigarettes," a third statement says. "Here's the truth. ... We control nicotine delivery to create and sustain smokers' addiction, because that's how we keep customers coming back."

In a court proceeding Thursday, lawyers for the tobacco companies made clear their intent to challenge the Justice Department statements by seeking more information from the government about how it chose those particular statements. The judge in the case, Gladys Kessler, said she would soon rule on how much leeway to give the companies in challenging the statements.

Justice released its proposed statements after winning Kessler's approval to place them in the public record. She has said she wants the industry to pay for corrective statements in various types of ads, both broadcast and print,

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but she has not made a final decision on what the statements will say, where they must be placed or for how long.

The judge ruled in 2006 that the tobacco industry had concealed the dangers of smoking for decades. If Kessler approves, the proposed statements by the cigarette makers would become the remedy to ensure the companies don't repeat the violation. The case was brought by the government against the industry in 1999.

The companies have escaped from having to pay the hundreds of billions of dollars that the government has sought to collect from them. Lower courts have said the government is not entitled to collect $280 billion in past profits or $14 billion for a national campaign to curb smoking.

Philip Morris USA, maker of Marlboro, the nation's top-selling cigarette brand, and its parent company, Altria Group, said Wednesday they are prepared to fight if the Justice Department won't dial back its proposals.

Philip Morris said the Justice Department plan would compel an admission of wrongdoing under threat of contempt of court by a judge.

"Such a proposal is unprecedented in our legal system and would violate basic constitutional and statutory standards," the company said.

Discussion Questions

1. Do you view the United States Justice Department's effort to force the tobacco industry to set up and pay for an advertising campaign of self-criticism for past behavior as an example of over-regulation of business? Why or why not?

This is an opinion question, so student responses will likely vary.

2. Comment on Philip Morris' statement that the United States Justice Department's proposal "...would violate basic constitutional standards..."

It would be interesting to hear more specifics from Philip Morris in terms of exactly why the company believes the proposal would violate basic constitutional standards. Most likely, this assertion is based on a claimed violation of due process, but the judge is not requiring Philip Morris to admit guilt. Most constitutional protections for defendants relate to criminal actions, and this is not a criminal action against Philip Morris.

3. Rather than the United States Justice Department's attempt to force the tobacco industry to set up and pay for "corrective" advertising, why not allow the tobacco industry to self-regulate in terms of such advertising? Is there an argument to be made here that if the tobacco industry were to engage in such advertising voluntarily, admitting that it lied to the American public about the dangers of smoking, the industry would be "better off" as a result?

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The point here is that the tobacco industry will not likely self-regulate (especially in this instance, since engaging in such advertising would almost rise to the level of an admission of liability), and that government intervention is sometimes necessary in order to correct industry practices that result from an inclination not to self-regulate.

Article 2: "U.S. 'Decades Behind' Other Countries in Parental Leave, Report Says"

http://www.msnbc.msn.com/id/41721787/ns/health-kids_and_parenting/

Americans often take pride in ways their nation differs from others. But one distinction — lack of a nationwide policy of paid maternity leave — is cited in a new report as an embarrassment that could be redressed at low cost and without harm to employers.

"Despite its enthusiasm about 'family values,' the U.S. is decades behind other countries in ensuring the well-being of working families," said Janet Walsh, deputy director of the women's rights division of Human Rights Watch.

"Being an outlier is nothing to be proud of in a case like this," she added.

Human Rights Watch, based in New York, focuses most of its investigations on abuses abroad.

But on Wednesday, with release of a report by Walsh on work/family policies in the U.S., it takes the relatively unusual step of critiquing a phenomenon affecting tens of millions of Americans.

The report, "Failing its Families," says at least 178 countries have national laws guaranteeing paid leave for new mothers, while the handful of exceptions include the U.S., Swaziland and Papua, New Guinea.

More than 50 nations, including most Western countries, also guarantee paid leave for new fathers.

Past efforts in Congress to enact a paid family leave law have floundered, drawing opposition from business lobbyists who say it would be a burden on employers.

Instead, there is the 1993 Family and Medical Leave Act, which enables workers with new children or seriously ill family members to take up to 12 weeks of unpaid leave.

By excluding companies with fewer than 50 employees, it covers only about half the work force, and many who are covered cannot afford to take unpaid leave.

"Leaving paid leave to the whim of employers means millions of workers are left out, especially low-income workers who may need it most," said Walsh, citing federal estimates that only 10 percent of private-sector workers have paid family leave benefits.

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With prospects for federal legislation considered dim for now, advocates of family-friendly workplace policies hope for progress at the state level and are looking closely at California and New Jersey, the only states that have paid-leave programs.

Both states have severe budget problems overall, but the leave programs — financed entirely through small payroll tax contributions by workers — are flourishing.

Both offer six weeks of paid leave for workers taking time off to bond with a new child or to care for a seriously ill child, spouse or parent.

Human Rights Watch, which interviewed dozens of parents for its report, said lack of paid leave has numerous harmful consequences — fueling postpartum depression, causing mothers to give up breast-feeding early, forcing some families into debt or onto welfare.

Cathy Frazier of Mendota Heights, Minnesota, and her husband, Joe, believe that her severe bout of postpartum depression could have been avoided or at least eased if he had been able to take paid leave after the birth of their son six years ago.

Cathy and Joe Frazier, shown at their home in Mendota Heights, Minnesota, believe Cathy's post-partum depression could have been avoided or at least mitigated if Joe had been able to take time off from work to be with her after their son's premature birth six years ago.

The boy was born two months early, spent five weeks in the hospital, and remained in frail health after he went home.

The couple said Cathy had to provide most of his care single-handedly while Joe was working long hours at a local public-access TV station.

"If Joe had been around, it would have been better," Cathy Frazier said in a telephone interview. "I might have gotten sick, but not like I was."

The depression was so severe that she was hospitalized for a week, and went into debt paying for therapy with a credit card because her insurance didn't cover it.

Six years later, she said she still struggles with depression, taking medication and unsure about her prospects for accepting any job that would involve working outside her home.

Conversely, Jennifer Shankman of Malibu, California, was grateful to benefit from her state's paid leave program, which helped her take off a total of five months — three paid, two unpaid — after her son was born in September.

"It helped me to not feel as stressed," said Shankman, who's now back at work as a youth camp director. "It made a big difference mentally."

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The Human Rights Watch report urges other states to emulate New Jersey and California by adopting paid leave programs.

Any takers might get federal help — the Obama administration, in its recent budget proposal, proposed allocating $23 million to help states with startup costs for such initiatives.

One possible beneficiary could be Washington state. A paid leave measure was passed by lawmakers there in 2007, but never implemented due to lack of funding.

New Jersey's program started in July 2009 and its balance as of Dec. 31 was $39 million — robust enough so the state recently reduced workers' contribution by half. The maximum annual payment is now less than $18 instead of more than $35.

Through December, New Jersey had approved 44,972 claims — 91 percent of those filed — and paid out $105 million in benefits at an average of $471 a week.

California's program began in 2004 and is run by the State Disability Insurance plan, which collects 1.1 percent of pay from 13 million eligible workers.

In 2009-10, the state paid out $469 million for 180,675 claims, with an average weekly benefit of $488.

In New Jersey, men make up about 12 percent of the parents seeking paid leave to bond with a new child. In California, men's share of the leave has risen from 17 percent to 26 percent since 2004.

In each state, some business leaders remain unenthusiastic, though there is no clamor to repeal the programs.

Michael Egenton, senior vice president of New Jersey Chamber of Commerce, said the impact had been relatively modest thus far.

He attributed this to the recession and the desire of most workers to take paid leave only after conferring with their bosses to ensure the absence wouldn't be disruptive.

"With the tough economy, people are feeling, 'I'm glad I have a job,'" he said. "We'll be interested in seeing where the program goes when the economy improves."

In California, Chamber of Commerce policy advocate Jennifer Barrera said the leave program — combined with other policies — "creates a significant administrative burden on employers, increases costs, and minimizes the ability of companies to expand hiring and create new jobs."

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However, Eileen Applebaum of the Center for Economic and Policy Research, a liberal Washington think tank, said she and a colleague reached a different conclusion in a recent survey of 235 California businesses.

She said the vast majority of employers found the leave program had a positive or neutral effect on productivity, profitability, turnover and worker morale.

Applebaum contended that business associations, rather than individual employers, were the main obstacle to paid-leave proposals in Congress and state legislatures.

"Employer associations in other countries help their companies be successful," she said. "In this country, employer associations largely exist to resist anything that might be good for workers."

In the European Union, paid parental leave varies from 14 weeks in Malta to 16 months in Sweden, which reserves at least two months of its leave exclusively for fathers. Most EU countries have maintained the provisions of their programs despite the recession.

Ellen Bravo of the Family Values at Work Consortium, a 15-state network working for family-friendly policies, said the bid to expand paid leave in the U.S. was hampered by the clout of corporate lobbyists and the relatively weak status of the labor movement.

"Family values often end at the workplace door," she said. "What we're fighting for isn't just modest — it's meager compared to what other countries have."

Discussion Questions

1. Comment on the fact that at least 178 countries have national laws guaranteeing paid leave for new mothers, while the handful of exceptions include the United States, Swaziland and New Guinea.

In terms of paid leave for new mothers, whether it should be a source of national embarrassment for the United States to be grouped with lesser developed countries is perhaps subject to debate. Some may view a national mandate of paid leave as an example of over-regulation of business, while others may consider such a mandate to be a perfect example of sound public policy.

2. Is it reasonable to expect that in the foreseeable future, the United States Congress will pass legislation ensuring some form of paid family leave? Why or why not?

No, it is not reasonable to expect that the United States Congress will pass such legislation in the foreseeable future. With the United States economy still in the "doldrums," many legislators would likely view such legislation as too burdensome on business. Even in the 1990s, when the United States economy was "booming," the United States Congress did not seriously consider paid leave as a part of the Family and Medical Leave Act of 1993.

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3. Is the Family and Medical Leave Act (FMLA) a suitable substitute for new legislation guaranteeing paid family leave? Why or why not?

The Family and Medical Leave Act (FMLA) does not mandate paid family leave, so from the perspective of a worker who desires to take such leave, how could the FMLA be a suitable substitute for such legislation? In reality, few workers can afford to take twelve (12) weeks of unpaid leave each year, even if they felt they should in terms of caring for a newborn son or daughter, a sick family member, etc.

Article 3: "Supreme Court Rejects Vaccine Lawsuit"

http://www.cbsnews.com/8301-504564_162-20034847-504564.html?tag=stack

The United States Supreme Court recently gave vaccine manufacturers greater protection from lawsuits by parents who say vaccinations harmed their children, ruling that Congress had blocked those types of claims against drug makers.

In a 6-2 decision, the justices said Congress had effectively shut the courthouse door to these lawsuits in 1986, when it created a special vaccine court designed to compensate victims of vaccine injuries.

The decision immediately was hailed by the American Academy of Pediatrics, which said it would safeguard the nation's vaccine supply by protecting vaccine makers from potentially crippling legal liability--which could have driven manufacturers out of the vaccine market.

"Childhood vaccines are among the greatest medical breakthroughs of the last century," said the organization's president, Dr. O. Marion Burton. "Today's Supreme Court decision protects children by strengthening our national immunization system and ensuring that vaccines will continue to prevent the spread of infectious diseases in this country."

But it was a crushing defeat for the parents of Hannah Bruesewitz, who have waged a years-long legal battle after their daughter suffered a series of seizures when she got a routine DPT vaccination at her 6-month checkup.

The seizures caused Hannah severe brain damage. Today, 19 years later, her vocabulary is that of a toddler.

With Hannah facing a lifetime of constant care, the Bruesewitz's first filed a claim for compensation in the special vaccine court, under the Vaccine Injury Compensation Program. Congress, concerned that runaway jury verdicts would drive vaccine makers out of the market, created that program for families whose children suffer adverse reactions from vaccines.

When their claim was denied, they sued Wyeth, the vaccine manufacturer, arguing the DPT vaccination was defectively designed and that the company could have provided a safer vaccine.

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"Someone has to be responsible for this," Robie Bruesewitz, Hannah's mother, said when the Court took up their case.

But courts ruled against them, holding that vaccine compensation program was the sole way to handle those types of lawsuits against vaccine manufacturers. And today, the Supreme Court agreed.

In a decision by Justice Antonin Scalia, the Court said the special compensation program preempts lawsuits like the one filed by the Bruesewitz's, which allege vaccines were defectively designed. The program was designed to get those cases out of the courts--making it easier for parents to be compensated, while also protecting drug makers from outsized jury verdicts.

"Vaccine manufacturers fund from their sales an informal, efficient compensation program for vaccine injuries," Scalia said. "In exchange they avoid costly tort litigation and the occasional disproportionate jury verdict."

Justice Sonia Sotomayor, joined by Justice Ruth Bader Ginsburg, dissented. Justice Elena Kagan did not participate in the case because she worked on it before she joined the Court.

The vaccine protocol Hannah received injured 65 other children. In 1998, it was removed from the market.

But that was too late for Hannah.

"We should have been taking our daughter to college this fall," her mother told CBS News last October. "If she would have been a normally, typically developing child, she'd be going to college."

Discussion Questions

1. Comment on the American Academy of Pediatrics' assertion that the United States Supreme Court's decision "protects children."

The American Academy of Pediatrics' assertion is based on the assumption that by limiting the liability of vaccine manufacturers, such manufacturers are more inclined to research and develop new vaccines that will be beneficial to children. The following question, however, remains: "What about the children who have actually been harmed by defective vaccines?"

2. The article references the fact that in 1986, a special vaccine court was established to compensate victims of vaccine injuries. In your reasoned opinion, is such a court of special jurisdiction a suitable substitute for a "regular" trial in civil court? Why or why not?

Student opinions in response to this question will likely vary. In formulating their opinions, however, it would be beneficial for students to visit the following website describing the National Vaccine Injury Compensation Program, administered by the United States Court of Federal Claims:

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http://www.uscfc.uscourts.gov/vaccine-programoffice-special-masters

3. Is this decision, in effect, a type of tort reform? If so, does the United States Supreme Court decision constitute "legislating from the bench?" Explain your response.

In your author's opinion, this is a type of tort reform, since injured plaintiffs are denied their right to a traditional civil jury trial. Whether the National Vaccine Injury Compensation Program is a suitable alternative to traditional civil litigation should spark intense debate among your students.

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Video Suggestions

Video 1: "ACLU--Employer Demands Facebook Password"

http://technolog.msnbc.msn.com/_news/2011/02/22/6108312-aclu-employer-demands-facebook-password

Note: Before answering the three (3) Discussion Questions below, please see the following article accompanying the video:

"ACLU: Employer Demands Facebook Password"

Enjoy scary movies? Then check out this video from the American Civil Liberties Union of Maryland.

It tells the true story of Robert Collins, a nursing student, father and corrections supply officer with the Maryland Department of Public Safety and Correctional Services. Returning from a leave of absence following his mother's death, Collins was told that he'd have to hand over his Facebook password if he wanted to be reinstated. That this was now standard procedure.

"My personal communications, my personal posts, my personal pictures, looking at my personally identifiable information, where my religious beliefs, my political beliefs, my sexuality — all of these things are possibly disclosed on this page," Collins tells the camera. "It's absolute total invasion and overreach."

The demand was a standard requirement perhaps, but also a violation of the Federal Stored Communications Act, which makes it illegal for an employer or anyone else to access stored electronic communications without valid authorization. "If allowed to continue, this practice would permit the government to review wall postings, e-mail communications, and photographs posted privately by the friends and family of job applicants and employees undergoing recertification," the ACLU of Maryland said in a statement.

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Discussion Questions

1. Defend the Maryland Department of Public Safety and Correctional Services' actions in this case. What is the employer's best argument justifying its actions?

The "best" argument justifying the Maryland Department of Public Safety and Correctional Services' actions in this case is that Facebook information regarding prospective and current employees is vital information in determining whether an employee is "fit to serve."

2. Does the employee have a constitutional argument against his employer's procedure? If so, what is the constitutional argument?

The employee's constitutional argument against employer access to such information would be based on the implied right to privacy recognized in the United States constitution. Although the "right to privacy" is not specifically mentioned in the Constitution, courts have implied that right based on the Fourth Amendment, which restricts government searches of "persons, places and effects" by requiring the government to obtain a warrant based on probable cause prior to conducting a search. It should be noted here that the employer in this case, the Maryland Department of Public Safety and Correctional Services, is a government entity.

In terms of private employers, courts have consistently upheld their right to access employee (or prospective employee) information in making a human resource-related decision. This is based on the assumption that the employee (or prospective employee) does not have to work for a particular employer if he or she does not approve of the employer's desire to access personal information.

3. Is the employer's "standard procedure" a violation of the Federal Stored Communications Act, which makes it illegal for an employer or anyone else to access stored electronic communications without valid authorization? What about the employer's argument that the employee has a choice to either give authorization for Facebook access, or to refuse such authorization and find another job?

This is an interesting question, since the court will have to reconcile the provisions of the Federal Stored Communication Act with employers' "need to know" information that will assist them in determining whether employees (or prospective employees) are "fit to serve."

Video 2: "Clock Ticking on Wisconsin Union Standoff"

http://video.foxnews.com/v/4549600/clock-ticking-on-wisconsin-union-standoff

Discussion Questions

1. Is this "standoff" really about a government budgetary crisis, or instead about collective bargaining? Explain your response.

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Student opinions will likely vary in response to this question, and may be substantially affected by their political orientation. Some students may argue that the government budgetary crisis is really a "red herring" in this case, since Wisconsin government employees have apparently given in to Governor Walker's demands for increased employee contributions to their health care plan and pension plan. Other students may argue that the standoff is really about the government budgetary crisis, since "union-busting" may be the only way for the state of Wisconsin to address its long-term fiscal challenges.

2. In your reasoned opinion, should government employees have the right to collectively bargain? Why or why not?

This is an opinion question, so student opinions will likely vary.

3. Instead of denying government employees collective bargaining rights altogether, what about denying government employees the right to strike instead?

In your author's opinion, this is an intriguing proposed solution to the Wisconsin standoff between Governor Walker and Wisconsin employees. For an article in support of such a resolution, see the following article:

"A Solution to the Wisconsin Standoff"

http://www.forbes.com/2011/02/23/wisconsin-teacher-collective-bargaining-leadership-managing-standoff.html

Every statehouse and public employee union in the nation should be watching the standoff in Wisconsin. The situation there is not unique. It represents taxpayer frustration throughout the country and is a bellwether of disputes to come.

The problem is that states, cities, school districts and municipalities are broke. They need to cut back and cannot and should not raise taxes. Often, while elected officials in the role of chief executive struggle just to maintain services and have no hope of doing anything proactive, public employee unions can ignore the realities on the ground and use both labor laws and their political muscle to achieve wages and benefits that are inconsistent with the economic times.

The usual answer of management, layoffs, does not work in these times. With unemployment at around 9% and services already stretched, the threat does not resonate and in practical terms does not work anymore.

Governor Scott Walker is correct to try and corral the issue once and for all. These times call for change. However, there is a compromise to get there that does not require the state to vitiate collective bargaining rights. Collective bargaining is American. It is bigger than Republicans or Democrats. It should be bigger than politics. It should not be the baby that goes out with the bathwater, not if there is another way. And there is.

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In Wisconsin the unions, in a smart tactical move, offered to give into the governor's demands on pension and health reform in exchange for maintenance of their collective bargaining rights. Although this sounds good on its face, it does not solve the problem of what happens next year or what happens in other local county school or village contracts.

In sum, the unions are looking for a one-shot solution, while the governor is seeking a structural fix. I believe there is a structural fix that advances the governor's cause while maintaining collective bargaining rights for employees.

Today in most states, the public employee collective bargaining laws prohibit employees from striking. In exchange, the employees through their union are given binding arbitration. But to get to binding arbitration, the parties need to reach impasse, a term that in labor law means deadlock, with no hope of resolution. Once there, the status quo remains in place until the arbitration award is rendered. In practice, this period can last years, and it has provided a strong disincentive for public unions to agree to any givebacks. It's obvious: Why would a union yield now when it can delay, delay, delay and then settle later?

The way to resolve this is to reconfigure the burden of the law. Treat public employees the way the National Labor Relations Act treats private employees. Under the NLRA, after impasse, employers are permitted to implement changes. The union then has the right to respond by a strike. In the public sector there is no right to strike, only arbitration. The fix here is to eliminate the status quo during the binding arbitration phase. Allow the state employer to implement changes, and allow the union to contest those changes in arbitration.

This subtle shift will motivate unions to bargain in sincerity and not hide behind status quo, and it will also allow state employers to bargain in good faith for structural and work rule changes. The burden on state employers will be to act reasonably or risk having their proposals reversed. Since the ability to pay is always a factor in public sector labor disputes, this will produce the best result possible. Real savings can be implemented to solve budget crises, and real bargaining can occur between employers and employees, with the compromise outcomes benefiting the taxpayers.

Update: "Wisconsin Lawmakers Cut Public Worker Bargaining Rights"

http://www.aolnews.com/2011/03/10/wisconsin-gop-skirts-democrats-strips-public-workers-bargainin/

Wisconsin lawmakers voted on March 10, 2011 to strip nearly all collective bargaining rights from the state's public workers, ending a heated standoff over labor rights and delivering a key victory to Republicans who have targeted unions in efforts to slash government spending nationwide.

The state's Assembly passed Gov. Scott Walker's explosive proposal 53-42 without any Democratic support and four no votes from the GOP. Protesters in the gallery erupted into screams of "Shame! Shame! Shame!" as Republican lawmakers filed out of the chamber and into the speaker's office.

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The state's Senate used a procedural move to bypass missing Democrats and move the measure forward Wednesday night, meaning the plan that delivers one of the strongest blows to union power in years now requires only Walker's signature to take effect.

He says he'll sign the measure, which he introduced to plug a $137 million budget shortfall, as quickly as possible - which could be as early as Thursday.

"We were willing to talk, we were willing to work, but in the end at some point the public wants us to move forward," Walker said before the Assembly's vote.

Walker's plan has touched off a national debate over labor rights for public employees and its implementation would be a key victory for Republicans, many of whom have targeted unions amid efforts to slash government spending. Similar bargaining restrictions are making their way through Ohio's Legislature and several other states are debating measures to curb union rights in smaller doses.

In Wisconsin, the proposal has drawn tens of thousands of protesters to the state Capitol for weeks of demonstrations and led 14 Senate Democrats to flee to Illinois to prevent that chamber from having enough members present to pass a plan containing spending provisions.

But a special committee of lawmakers from the Senate and Assembly voted Wednesday to take all spending measures out of the legislation and the full Senate approved it minutes later, setting up Thursday's vote in the Assembly.

Walker has repeatedly argued that collective bargaining is a budget issue, because his proposed changes would give local governments the flexibility to confront the budget cuts needed to close the state's $3.6 billion deficit. He has said without the changes, he may have needed to lay off 1,500 state workers and make other cuts to balance the budget.

The measure forbids most government workers from collectively bargaining for wage increases beyond the rate of inflation unless approved by referendum. It also requires public workers to pay more toward their pensions and double their health insurance contribution, a combination equivalent to an 8 percent pay cut for the average worker.

Police and firefighters are exempt.

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Of Special Interest

This section of the newsletter addresses ethical questions surrounding the "No Child Left Behind" Act.

Ethical Dilemma

"Connecticut Loses 'No Child Left Behind Legal Challenge"

http://www.msnbc.msn.com/id/41723439/ns/us_news-crime_and_courts/

The U.S. Supreme Court decided recently against hearing Connecticut's challenge to the federal No Child Left Behind law, ending the state's six-year lawsuit over how to pay for the stepped-up student testing considered one of the law's cornerstones.

Connecticut was the first state to challenge the 2002 law, which includes provisions requiring yearly standardized tests for children in grades three through eight. Connecticut previously tested students in grades four, six and eight.

The state's lawsuit sought to push the federal government to either change its testing rules or cover the extra testing costs, which Connecticut officials say add up to many millions of dollars.

The high court's decision not to hear the state's appeal came after a federal judge and the 2nd U.S. Circuit Court of Appeals in New York both had agreed in earlier rulings that the lawsuit was premature.

Former state Attorney General Richard Blumenthal, now the state's junior U.S. senator, had argued that Connecticut could not be forced to absorb those extra costs because of a provision barring unfunded mandates on the states.

Connecticut's options, if any, were unclear as word of the Supreme Court's decision spread among state lawmakers, education administrators and others.

"We respect the court's decision and will consult with the state Department of Education on what next steps, if any, to pursue," said Connecticut Attorney General George Jepsen, Blumenthal's successor.

State Education Department spokesman Thomas Murphy said Tuesday that the costs have been one of several topics of discussion as Congress considers how to proceed with reauthorizing the No Child Left Behind law and whether to revamp its requirements.

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"The (Connecticut) lawsuit may have provided some additional attention to this, and may help to move us to a new approach to school improvement," Murphy said.

Some advocates of the lawsuit said they are encouraged that Blumenthal, as a senator, can keep pushing for changes he sought in the case. Connecticut state Representative Andrew Fleischmann, a co-chairman of the legislature's education committee, said he is optimistic about improvements.

Blumenthal sued after the General Assembly and then-Governor. M. Jodi Rell approved a measure directing the attorney general to fight the Bush administration's law.

"While I find it unfortunate that the Supreme Court decided not to take up this case, I find some solace in the fact that we have a new administration that is going to rewrite the law and make it far more effective and sensible," Fleischmann said.

Blumenthal said he was disappointed by the Supreme Court's decision.

The court pronouncement "further underscores the need for strong action through the legislative process to reform educational policy, starting with the reauthorization of the Elementary and Secondary Education Act," Blumenthal said.

"I continue to believe strongly that more resources are necessary, unfunded mandates are misguided, and that educational reform is vital for our children, families and taxpayers," he said. "I look forward to working with my colleagues to ensure that any legislation affecting so many families across Connecticut will provide schools with the resources they need to raise the achievement of all our students."

The Connecticut lawsuit wasn't universally praised in its home state, however.

The Connecticut State Conference of the NAACP received a federal judge's permission in 2006 to intervene in the suit on the side of the federal Department of Education.

The NAACP and a group of minority parents and students it represents argued that the state was pursuing the lawsuit with money that could be used for other purposes. They also worried that voiding the law could set a precedent to allow the circumventing of many civil rights statutes.

Discussion Questions

1. In your reasoned opinion, does the No Child Left Behind Act present not only a legal issue, but also an ethics issue? If so, what is the ethics issue?

In your author's opinion, there are ethical considerations at the "heart" of the No Child Left Behind Act. Those issues are as follows:

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a. Does the federal government have an ethical obligation to ensure that students in traditionally underperforming states are given a reasonable opportunity to improve their educational performance?; and

b. Does the federal government satisfy its ethical obligation to such children by simply mandating increased standards (which typically require additional funds), or must the federal government "put its money where its mouth is" in terms of providing funding to accompany those standards?

2. In terms of the No Child Left Behind Act and the ethical obligation to educate children, has the state of Connecticut failed the children within its jurisdiction? Why or why not?

This is an opinion question, so student opinions will likely vary. The state of Connecticut will likely contend that it is doing all it can (within reason) to ensure the educational accomplishments of its students, but that such efforts are constrained by funding availability, and that funding is especially limited in economically-challenging times.

3. In terms of the No Child Left Behind Act and the ethical obligation to educate children, has the federal government failed children across the United States? Why or why not?

The strongest argument against the No Child Left Behind Act is although increased standards for state-by-state student accomplishment might sound advisable, such standards are not realistic without additional funding to ensure compliance. In your author's opinion, it is easier to articulate and mandate increased educational standards than it is to provide the funding necessary for their fulfillment.

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Of Special Interest

This section of the newsletter will assist you in covering:

1) Video 2 ("Clock Ticking on Wisconsin Union Standoff"); and

2) The Ethical Dilemma ("Connecticut Loses 'No Child Left Behind Legal Challenge.")

Teaching Tips

Teaching Tip 1 (Related to Video 2--"Clock Ticking on Wisconsin Union Standoff"): Wisconsin Labor History Society

Note: For an excellent primer regarding Wisconsin labor history (which should provide insight into why and how the standoff between Wisconsin Governor Walker and state employees developed), please see the following web address:

http://www.wisconsinlaborhistory.org/?page_id=34

Teaching Tip 2 (Related to Ethical Dilemma-- "Connecticut Loses 'No Child Left Behind Legal Challenge"): Research Regarding the No Child Left Behind Act

Note: Please see the following web addresses for research information addressing the No Child Left Behind Act:

http://www2.ed.gov/nclb/overview/intro/execsumm.html

http://www2.ed.gov/nclb/overview/intro/edpicks.jhtml

http://www.sourcewatch.org/index.php?title=No_Child_Left_Behind_Act

http://www.pbs.org/wgbh/pages/frontline/shows/schools/nochild/

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Chapter Key for McGraw-Hill/Irwin Business Law Texts

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Kubasek et al., Dynamic Business Law	Chapters 9, 10, 42 and 45	Chapters 5 and 42	Chapter 5	Chapters 5 and 42
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 5, 24 and 25	Chapter 24	Chapter 4	Chapters 4 and 24
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition	Chapters 7, 20, 48 and 51	Chapter 51	Chapter 3	Chapters 3 and 51
Barnes et al., Law for Business, 10th Edition	Chapters 7, 20, 25 and 46	Chapter 25	Chapter 4	Chapters 4 and 25
Brown et al., Business Law with UCC Applications Student Edition, 12th Edition	Chapters 6, 19, 20 and 35	Chapters 35 and 36	Chapter 2	Chapters 2 and 36
Reed et al., The Legal and Regulatory Environment of Business, 15th Edition	Chapters 6, 10, 17 and 19	Chapters 19 and 21	Chapter 6	Chapters 6 and 21
McAdams et al., Law, Business & Society, 9th Edition	Chapters 7, 12 and 15	Chapters 12 and 14	Chapters 5 and 8	Chapters 5, 8 and 14
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2, 9, 11 and 21	Chapter 11	Chapter 2	Chapters 2 and 11

This Newsletter Supports the Following Business Law Texts:

Barnes et al., Law for Business, 10th Edition, 2009© (007352493X)
Brown et al., Business Law with UCC Applications Student Edition, 12th Edition, 2009© (0073524948)
Kubasek et al., Dynamic Business Law, 2009© (0073524913)
Kubasek et al., Dynamic Business Law: The Essentials, 2010© (0073377686)
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition, 2010© (0073377643)
McAdams et al., Law, Business & Society, 9th Edition, 2009© (0073377651)
Reed et al., The Legal and Regulatory Environment of Business, 15th Edition, 2010© (007337766X)
Melvin, The Legal Environment of Business: A Managerial Approach, 2011© (0073377694)