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IN THIS ISSUE

IMPORTANT MISSISSIPPI DECISIONS ISSUED IN JULY, AUGUST, & SEPTEMBER 2009

WORKERS COMPENSATION/UNEMPLOYMENT

In ***Johnson v. Sanderson Farms, Inc.*, 2008-WC-01218-COA (Miss. Ct. App. Aug. 25, 2009)**, the Mississippi Court of Appeals awarded Johnson disability benefits under the Mississippi Workers' Compensation law. Johnson claimed that she developed carpel tunnel syndrome in both hands while cutting and chopping chicken daily at Sanderson Farms. Johnson was tested several times for carpel tunnel syndrome, but the tests never revealed any evidence of carpel tunnel. However, Johnson was able to produce a doctor who remained steadfast in her diagnosis that Johnson had carpel tunnel syndrome anyway. Her treating physician's opinion carries the most weight in a worker's compensation decision. Therefore, the Court affirmed her award of disability benefits. So, as long as an employee can find a doctor who will testify that he or she had a disability that was caused by his or her work, the employee will likely be awarded worker's compensation benefits. (Click here for opinion.)

For injuries that occur while on the job, the employee's exclusive remedy is under the Mississippi Workers' Compensation Law, meaning the employee may not sue the employer in a separate lawsuit. However, there is an exception if the employer had an actual intent to injure the employee. In ***Franklin Corp. v. Tedford*, 2007-CA-01454-SCT (Miss. Sept. 10, 2009)**, the Supreme Court of Mississippi agreed that the employees were not barred by the exclusive remedy of the Mississippi Workers' Compensation Law and were allowed to proceed in their lawsuit against Franklin. Franklin manufactures furniture, and it switched to a new type of glue. This glue had numerous warnings about the harmful effects of vapors from the product; the product recommended adequate ventilation. However, Franklin decided not to install ventilation for the glue workers. Franklin's worker's compensation insurance conducted an evaluation of the vapors and again recommended ventilation. Franklin again declined to ventilate the area. Eventually numerous employees became ill and several were hospitalized from vapor exposure. The Court found that the employees offered sufficient evidence that Franklin had the actual intent to injure the employees in order to allow the suit to proceed. (Click here for opinion.)

In ***Mississippi Department of Employment Security v. Clark*, 2008-CC-00582-COA (Miss. Ct. App. July 21, 2009)**, the Mississippi Court of Appeals denied unemployment benefits to Clark. Clark worked for Peco Foods, and one day he reported to work under the influence of alcohol. Several managers had a reasonable suspicion that Clark was under the influence of alcohol at work, so in accordance with Peco's policy, they administered an alcohol and drug test on Clark. He failed the alcohol test and was fired. The Court held that this constituted a termination due to misconduct connected to work, which disqualified Clark from unemployment benefits. The Court found that (1) the company had a written policy with zero-tolerance for alcohol or drugs

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at work, (2) the policy allowed for the periodic testing of blood and/or urine, (3) the employee was given a copy of this policy, (4) the employee signed a form acknowledging receipt of the policy, (5) the employee tested positive for alcohol, and thus (6) the employee violated the employer's established policy. The violation of an employer's established policy can constitute willful misconduct, which disqualifies the employee from receiving unemployment benefits. (Click here for opinion.)

ARBITRATION AGREEMENTS

In ***Monticello Community Care Center, LLC v. Estate of Martin*, No. 2007-CA-02158-COA (Miss. Ct. App. Aug. 25, 2009)**, the Mississippi Court of Appeals held that there was no valid arbitration agreement between the parties. Martin was originally admitted to the nursing home in 1997 and the admission agreements that she signed in 1997 did not contain an arbitration provision. Later, in 2001, the nursing home presented a revised admission agreement to all of its residents, which did contain an arbitration provision. However, a resident did not have to sign the revised admission agreement (with the arbitration clause) if the person was already a resident of the facility. Martin's sister signed the revised agreement with the arbitration clause anyway. First, the Court found that Martin's sister did not have authority to sign the agreement for Martin. But more importantly, the Court held that there was no consideration to support a valid arbitration agreement. If the residents had been required to execute a new admission agreement in order to remain at the nursing home, then there would have been sufficient consideration. However, because the residents were not required to sign this new agreement, it was not a valid contract as it lacked consideration. Therefore, if your business has clients or customers sign arbitration agreements, you need to ensure that the services or products will only be provided if the arbitration agreement is signed. (Click here for opinion.)

RE-ZONING

In ***Edwards v. Harrison County Board of Supervisors*, 2008-CA-01271-SCT (Miss. Aug. 27, 2009)**, the Supreme Court of Mississippi upheld a re-zoning of 627 acres of land located in Harrison County from agricultural to general industrial. The Court found that there was a "change in the neighborhood" and a "public need" for the zoning change because of Hurricane Katrina. The Court stated that the impact of Hurricane Katrina could not be ignored, nor could its impact on the growth of Harrison County to the north of Interstate I-10. The dissent disagreed that there was any evidence of a "change in the neighborhood" that was rezoned. The Court's own precedent seems more in line with the dissent, so this may be a one-time decision. The Court essentially made an exception to the re-zoning requirements for areas affected by Hurricane Katrina. (Click here for opinion.)

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In ***Modak-Truran v. Mayor Harvey Johnson*, 2008-CA-00104-SCT (Miss. Aug. 13, 2009)**, the Supreme Court of Mississippi found that a re-zoning constituted "illegal spot zoning." This case involved the Fairview Inn in Belhaven, which wanted to open a restaurant to the public. The Fairview Inn was classified as a Bed and Breakfast which could only serve meals to lodgers or guests at receptions or other events. At the request of the Fairview Inn, the City of Jackson changed the definition of a Bed and Breakfast to allow places zoned as a bed and breakfast to have a restaurant that serves the general public. Spot zoning is illegal because it is discriminatory zoning. The only bed and breakfast affected by this change was the Fairview Inn. The Court found that the change was designed to favor the Inn and that such preferential treatment constituted illegal spot zoning. (Click here for opinion.)

CONTRACTOR LICENSES

Mississippi law requires residential builders and remodelers to have a license. If a builder or remodeler does not have a license, then he cannot file a lawsuit to enforce any building or remodeling contract.

In ***Lutz Homes, Inc. v. Weston*, 2008-CA-00464SCT (Miss. Aug. 20, 2009)**, the Court allowed Lutz Homes to bring its breach of contract claim. At the time Lutz entered into a construction contract with Weston, Lutz did not have a license. Barry Lutz, individually, had a residential builder's license, but his business, Lutz Homes, Inc., did not have license. After a contract dispute arose based on the work performed and payment, but before suit was filed, Lutz obtained the correct license, in the correct name of Lutz Homes, Inc. The Court allowed Lutz to proceed with its counterclaims against Weston because it became licensed prior to asserting any claims in a lawsuit. So, prior to filing any lawsuit or asserting any counterclaims in a lawsuit, make sure that your company is properly licensed. (Click here for opinion.)

In ***Puckett v. Gordon*, 2008-CA-01159-COA (Miss. Ct. App. Aug. 18, 2009)**, Gordon hired subcontractors to do some repair work on Puckett's roof after Hurricane Katrina. When Puckett refused to pay Gordon, Gordon sued Puckett. The Court held that Gordon was barred from bringing suit. The Court found that Gordon acted as the general contractor for the project and that Gordon did not have a general contractor's license. Thus, Gordon was barred from filing suit. If there is any chance that your work could be considered general contracting or remodeling work, then you should always have a license to protect your right to sue. (Click here for opinion.)

Mississippi law states that any contract that is issued or awarded to a contractor who did not have a current certificate of responsibility issued by the State Board of Contractors at the time of the submission of the bid, is null and void. In ***United Plumbing & Heating Co., Inc. v. AmSouth Bank*, 2007-CA-01944-COA (Miss. Ct. App. July 21, 2009)**, the Court held that a contract to hire United as a construction manager was null and void. United held a current certificate of responsibility from the Board to perform asbestos removal, heating and air conditioning work, plumbing work, and renovations. But United did not posses a certificate of responsibility to perform work as a construction manager. Thus, the contract at issue was void. So, it is important to ensure that your business has a certificate of responsibility with the correct classification for the type of work that you undertake to perform. (Click here for opinion.)

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