

PARTICIPATOR

August 2010

FEDERAL AGENCIES REVEAL REGULATORY AGENDAS IN SERIES OF WEB CHATS

In late April, the U.S. Department of Labor (DOL) hosted a series of live web chats to discuss the regulatory agendas of various federal agencies. The chats covered details of the proposed regulatory activities of the Wage and Hour Division (WHD), the Occupational Safety and Health Administration (OSHA), the Office of Federal Contract Compliance Programs (OFCCP), and other agencies.

Office of Labor-Management Standards

The chats kicked off with a brief session hosted by the Office of Labor-Management Standards (OLMS). The OLMS web chat covered a proposed regulatory change that could result in increased reporting requirements for certain employers. Currently, employers and labor relations consultants must disclose certain expenditures and arrangements through which the employer hires consultants to persuade employees about their labor rights.

There is an exemption for employers that merely seek “advice” from these consultants, and the OMS is concerned that this “advice exemption” is overly broad. The proposed regulations, which will be ready for public comment in November, would narrow the exemption, resulting in more employers and consultants being required to report details of union avoidance consultations.

OSHA

During the OSHA web chat, one of the first points raised was that the OSHA agenda had been pared back because of limited resources in the department. In spite of this, the remaining plans are still ambitious – 24 regulatory projects, including two high-priority actions.

Because of the previously mentioned resource restraints, OSHA plans to increase enforcement of existing regulations in some areas, as opposed to revisiting and rewriting those standards. For example, at this time, OSHA plans to increase enforcement of ergonomic standards under the existing general duty clause rather than approach specific ergonomics regulations. In the meantime, significant attention will be given to modernizing the OSHA record-keeping systems, moving away from paper recording and

toward electronic systems and recording.

One of the two high-priority actions for OSHA is the “i2p2” standard, which would require each employer to implement an injury and illness prevention program tailored to the actual hazards in its workplace. The i2p2 standard won’t be a substitute for other OSHA standards but rather will shift the burden and responsibility for identifying individual workplace hazards to the employer. That means it will be the employer’s responsibility to identify all hazards in its workplace, and then the actions taken to control those hazards will be governed by existing OSHA standards and the general duty clause.

OSHA recognizes that this proposal is a major paradigm shift for the department and

continued on Page 2

INSIDE ...

**Financial Insight
From the CEO
Used Equipment?**

continued from Cover Page

that there are a number of issues that would need to be worked out regarding this type of standard. Thus, a series of stakeholder meetings will be held across the country to solicit input from all interested parties.

EBSA

Though the topic of chief concern for most during the Employee Benefits Security Administration (EBSA) web chat was the planned implementation of the Patient Protection and Affordable Care Act, there simply had not been enough time since passage of the health care reform law for the agency to give detailed agenda items or responses to the numerous questions about health care reform regulations. However, we do know that the relevant agencies are focusing first on the reform provisions that take effect on plan years beginning on or after September 23, 2010, and that regulations will be issued on an ongoing basis.

OFCCP

During the OFCCP chat, the department discussed its regulatory priorities for the coming year, noting that strengthening construction regulations – particularly in the area of affirmative action requirements – will be the key item on the agency's spring agenda. The agency plans to update and amend the regulations that detail affirmative action program requirements for federal construction contractors and will specifically look at rules dealing with recruitment, training and apprenticeships.

Further, the OFCCP plans to participate in the DOL's overarching initiative to prevent misclassification of workers as independent contractors, so proposed rules setting forth specific requirements for federal construction contractors to properly classify workers are likely to surface. The agency also will continue its drive to hire new compliance officers to assist with enforcement and investigation efforts. To date, the agency has hired 113 of a planned 213 new compliance officers.

WHD

The agenda priorities covered during the WHD web chat include proposed rules on record-keeping under the Fair Labor Standards Act, proposed rules affecting the Family and Medical Leave Act (FMLA), and final rules related to child labor. Proposed rules on employee record-keeping are expected to be published in August, while the proposed revisions to the FMLA rules are expected in November. Final child labor regulations, which have been in the works for some time, are expected to be published soon.

There were a number of questions about the WHD's initiatives toward employee misclassification, which were particularly timely given the recent reintroduction of the Employee Misclassification Prevention Act in Congress. Unfortunately, the WHD was unable to provide many specifics in response to these questions since the rulemaking process is still under way. The WHD noted, however, that its planned update to the regulations on employee record keeping will likely address issues related to employee classification, with particular emphasis on making workers aware of their rights related to their status as employees or independent contractors.

Bottom Line

These agenda items indicate that the era of agency enforcement is still strongly under way, and amended regulations for many significant labor laws will surface later this year and in early 2011. We will keep you informed of all major developments. *Reprinted courtesy of North Dakota Employment Law Letter. For subscription information, please call 800-274-6774 or click to www.HRhero.com.* ■

RISK SERVICES

GETTING A GOOD DEAL ON USED EQUIPMENT?

You have just heard that another entity is going to be replacing some of their equipment. Your budget is very tight. Wow, maybe you can pick up some used equipment for free or, at worst, at a price you can fit in your budget. After all, their old stuff is better than your equipment. Is it? Should you go for it?

Two common items we find that are given away, sold, purchased or accepted by park districts, schools, and fair associations are playground equipment and fold out bleachers. Although this article focuses on playground equipment and bleachers, in general, your concern should be with any type of used equipment that is purchased or accepted. Are you getting more problems than the inexpensive or free equipment is worth?

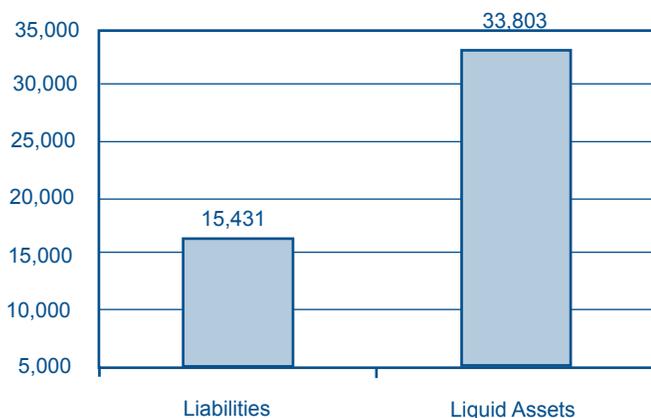
What is the reason(s) the equipment is being removed or replaced? In most cases, it is worn out. This involves additional repair costs for you to meet current safety codes or guidelines. In some cases, repairs or retrofit of the equipment to meet current safety codes/guidelines may be possible. In other cases, it will be impossible at any reasonable cost. Before you act to accept or purchase used items, the manufacturer of the equipment should be contacted. If a manufacturer is out of business, parts may be difficult to find. If they are still in business they may, or may not, recommend retrofitting their original design.

Do your research. There are sources available to consult and determine what may be wrong with an item and if repairs or retrofits are possible. For example, the Consumer Product Safety Commission (CPSC) has published a pamphlet on retrofitting bleachers. This will give you good idea on what would be involved with a bleacher retrofit project.

continued on Page 4

FINANCIAL INSIGHTS

Liabilities to Liquid Assets Ratio (000 omitted) As of June 30, 2010 Ratio = 46%



This ratio is a measure of a company's ability to pay its financial obligations. The ratio is calculated by dividing liabilities (primarily loss reserves) by liquid assets (cash and marketable investments). A ratio less than 105% is desirable. As this graph indicates, NDIRF, with a 46% ratio, is in a very strong position to meet its obligations, with liquid assets more than twice as large as liabilities. ■

FROM THE CEO

It's August and the Minnesota Twins are still in the pennant race, so life is good. For those of you who have followed the Twins over the years, or could use a gift idea for someone who has, a book out this year by Minneapolis sports columnist Doug Grow ("We're Gonna Win Twins") chronicles the team's 50 years in Minnesota and is a fun trip down memory lane. Who could forget Cookie Lavagetto?

August also means we are getting closer to the statewide political subdivision associations' annual conference season. I have met and gotten to know many of you through our mutual attendance at these events and look forward to seeing you there again this year – and to meeting those who may be making the trip for the first time. The conferences are an excellent means by which to stay current on the issues faced by local officials and discuss solutions to common problems.

As you have heard from me and others at NDIRF many times, appropriate training is a very important factor in keeping our liability costs under control. A fundamental gateway to providing that training is the exposure elected decision makers receive to these opportunities at the state association conferences. I hope to see you there! ■

RISK SERVICES

continued from Page 3

If you are getting rid of used equipment, create a flyer (disclaimer) indicating:

1. The equipment may not meet current safety codes or standards. If you know specifically that there is something defective or that it does not meet current codes/standards, this should be expressed in writing.
2. That no warranties or guarantees are expressed or implied as to the condition, suitability, or serviceability of the equipment.
3. If it is powered equipment, include a statement that your entity is not responsible for providing any instruction in the appropriate operation or maintenance of the item.
4. Specify who will remove/dismantle the equipment and ensure safety measures are taken during the process.
5. Standard hold harmless and indemnification language to protect your entity is a must.

We have had a number of situations that are illustrative of the issues that can arise. At times, the equipment is still in good condition and can be easily removed and installed but simple things are missed that cause injury. Think of a slide that is easily removed and installed. However, when re-installed, the slide is placed in a sunny location with the metal chute facing south. A young girl received injury to her legs trying to slide on a hot, sunny summer day. Slides with metal chutes are acceptable, but only if the chute is facing north.

In another instance, a set of fold out bleachers was removed from a school gymnasium and acquired by a fair association. The association installed the bleachers outdoors in a freestanding manner. These bleachers now had no fall protection whatsoever for the top row, nor was there fall protection on the sides. Fall protection was not an issue when in the school as the bleachers had walls on three sides. Unanticipated costs were incurred to bring the bleachers to a condition that would meet applicable code.

Doing a little research and employing some basic risk management tools can help you avoid unanticipated costs through the purchase of poor or inappropriate equipment. Early research will also help to protect your entity against unnecessary liability exposure. ■

Mark Your CALENDAR

Sept

16: NDIRF Board of Directors Meeting
NDIRF offices, Bismarck

14-16: ND Recreation and Parks Assoc.
Annual Conference,
Ramada Plaza & Suites, Fargo

23-25: ND League of Cities
Annual Conference,
Ramkota Inn, Bismarck

Oct

10-13: ND Association of Counties
Annual Conference & Expo
Ramkota Inn, Bismarck

29-30: ND School Board Association
Annual Convention,
Ramkota Inn, Bismarck

North Dakota Insurance Reserve Fund Board of Directors

Randy Bina, Bismarck Burdell Johnson, Tuttle Mark A. Johnson, Bismarck Shawn Kessel, Dickinson Ron Krebsbach, Garrison
Rod Landblom, Dickinson Tom Larson, Park River Connie Sprynczynatyk, Bismarck Scott Wagner, Fargo

PRESORTED
STANDARD
US POSTAGE PAID
BISMARCK, ND
PERMIT NO 419

BISMARCK ND 58502
PO BOX 2258
RESERVE FUND
INSURANCE
NORTH DAKOTA

