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THE EAGLE'S VIEW

April 2003 Volume 3, Issue 4

Union Membership in Private Industry Drops to 8.5%

According to February 25 figures of the Labor Department's Bureau of Labor Statistics, union membership in private industry is at 8.5% of all workers, down from 8.9% in 2001. Among government workers, 37.5% were union members, up from 37.2% in 2001. Combining both private and public sectors, union membership declined slightly last year to 13.2% from 13.4% in 2001.

According to the AFL-CIO, union membership tracks changes in the U. S. workforce and the decline should be placed in the context of the weak economy. A professor of economics at Trinity University attributed the declining union membership last year to the large number of layoffs, particularly in the more heavily unionized manufacturing and airline sectors. This professor predicted that the percentage of union membership in the private sector could fall

into the 6% range in the next few years. "It's tough for unions because they have to tax a smaller and

do" to keep the rate from declining further, according to Professor Barry T. Hirsch.



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smaller base [of current members] to finance the organizing that they have to

union membership, at 4.9% and 3.2%, respectively.

Four states had union membership rates of more than 20% last year, including New York (25%), Hawaii (24%), Alaska (24%) and Michigan (21%). South Carolina and North Carolina remain the states with the lowest

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AFL-CIO Organizing Summit Plans to Reverse Losses

Acknowledging that the labor movement will not survive unless it finds new, more successful organizing strategies, labor organizers met in Washington during January to brainstorm new ways to win organizing campaigns. The organizing summit was the first AFL-CIO sponsored conference in more than 40 years to convene top organizers to discuss what they have been doing wrong and what needs to be changed, according to AFL-CIO President John Sweeney.

Although the AFL-CIO

leaders offered their perspectives on the future of union organizing.

Tom Woodruff, Executive Vice President of the Service Employees International Union (SEIU), the largest AFL-CIO union, said that prior to 1996, fewer than ten locals had active organizing programs because they saw organizing as the job of the international union. That has changed, and the locals have been asked to commit at least 20% of their revenues to organizing. In 2000, delegates to the

union's convention approved the creation of a special fund into which locals will pay \$1.00 per member per month for organizing, and this year that fund will generate almost \$50 million. The SEIU plans to commit a total of \$150 million to organizing in 2003 alone, he said. The union

will have some 1,000 full-time organizers and 5,000 member organizers.

Bruce Raynor, President of the Union of Needletrades, Industrial and Textile Employees (UNITE), said the union movement needs to find ways to pressure employers. As an example, Raynor said that after a sixteen-month fight to

organize some 1,000 workers at Brylane, a catalogue company in Indianapolis, the parties reached an agreement to allow workers at the company's distribution centers to vote on representation in a secret mail-in card/ballot procedure. If the majority sends in cards to a third party neutral, the company will recognize the union, he said. Raynor said that the only way UNITE was able to get this card-check recognition was because of the pressure the union put on Brylane, which is owned by a French conglomerate. He said the union picketed the stores in the U.S. which are owned by the same conglomerate and recruited French unions to put pressure on the company, published a "sweatshop" catalogue, and put on a "sweatshop fashion show."

Raynor said that unions need to allocate resources to organizing, knowing that many projects never will be financially advantageous. He noted that UNITE spent ten years organizing a group of 100 workers in Atlanta. Labor also has to figure out how to be strategic, he said. Raynor said, "we have failed to make the right to organize a national issue," adding that unions have to take on "large fights" with employers. Raynor's union plans to spend 50% of its budget on organizing, so that "organizing will be the central theme of our union," he said.

Paul Booth, the executive

KNOW YOUR ATTORNEY



SUZANNE ROTEN

Suzanne is a senior associate with Wimberly Lawson Seale Wright & Daves, PLLC and practices out of the Knoxville, Tennessee office. She practices primarily in employment law including discrimination claims, wage and hour matters, disability and family leave matters and wrongful discharge. She represents management in a variety of litigation settings and counsels employers in preventive policies and procedures. Suzanne received a Bachelor of Arts degree (English and American Literature, with honors) from the University of California, San Diego. She received her Master of Library Science degree from the University of California, Berkeley; and received her Doctor of Jurisprudence from the University of California, Los Angeles, School of Law. She also served as Managing Editor for the UCLA Law Review.



began a "voice at work" campaign several years ago to spotlight employer interference in organizing campaigns that involved community activities, religious leaders and elected officials, Sweeney said the labor movement hasn't been working hard enough to generate community and political support. Different labor

assistant to the president of another union, told the summit that it is important for organizers from different unions to talk with each other. Unions have a strong interest as competitors and are

reluctant to support each other in campaigns, which has to change, he said.

One of several breakout sessions during the organizing conference developed the following recommendations for

organizing drives:

- Union members must be educated about what employers do when workers try to form unions.
- Unions need to work with coalitions, including community,

religious leaders, and organizations such as Jobs for Justice.

- Unions need to force politicians to support the right to organize, to show up at rallies, and even to be arrested with workers.

Looking Into Insurance for Employment-Related Claims

Over the years employers have looked at their insurance policies to determine if employment-related claims are covered, and now employment practices liability insurance (EPLI) has become a new form of protection. Some aspects of the various types of coverage are discussed below.

General Liability Insurance

The first thought to an employer when an employment case is filed, might be to look at its general liability insurance policy. In addition to the duty to pay any settlement or judgment on behalf of the employer, the other major feature of general liability policies is the duty to provide the employer's legal defense. General liability policies usually provide coverage for damages resulting from "bodily injury" and "caused by an occurrence" or "personal injury." Bodily injury generally is defined in a policy as "bodily injury, sickness or disease" and is potentially triggered when an employee claims to have suffered emotional distress as a result of discrimination. However, courts often rule that emotional distress resulting

from discriminatory treatment, but not evidenced by physical symptoms, does not meet the bodily injury requirement. Further, personal injury sometimes is defined by the policy to expressly include or exclude harassment and discrimination, while personal injury generally is defined by the policy to include defamation, which can often be claimed along with discrimination. Thus, if a discrimination complaint also includes related court causes of action, such as defamation, for example, the insurer's duty to defend the employer with respect to the entire case may be triggered.

The bodily injury trigger of coverage must generally arise from an "occurrence" however, which generally is defined as an "accident." The controversial issue is whether discriminatory treatment can ever qualify as an accident. Even if a discrimination suit claims bodily injury, a number of exclusions might void coverage. Bodily injury typically is excluded if the injury is suffered by an "employee" and arises "out of and in the course of employment by the insured." Although this exclusion is intended to

preclude coverage for occurrences covered under workers' compensation or under separate employer's liability policies, a number of courts have excluded all employment-related claims.

General liability insurers have included broad employment-related practices exclusions in their policies in recent years that exempt any bodily or personal injury that arises out of any "refusal to employ... termination or [other] employment-related practices, policies, acts or omissions, such as ... harassment, humiliation or discrimination." Policies with this exclusionary endorsement likely will be deemed not to provide coverage for discrimination claims.

Directors & Officers, and Homeowners' Policies

Another type of policies that employers often review when suits are filed include a "directors and officers liability policy" which might provide coverage for an officer or director who is sued in an employment-type case, but such policies generally do not indemnify the organization itself. Individual defendants may even have coverage under

a homeowner's policy.

EPLI Policies

In recent years, EPLI coverage has greatly expanded in use. Such type policies only started in the early 1990's but now probably 100 insurers offer various types of EPLI policy coverage. EPLI policies are intended to cover various types of employment cases, including violation of employment discrimination statutes; employment-related torts, such as invasion of privacy and defamation; and, to varying degrees, breach of contract claims, whether implied or express contracts.

Coverage has expanded significantly in recent years for EPLI policies. Many policies no longer incorporate exclusions for intentional acts, class actions, or claims arising from reductions in force, downsizing, and acts that occurred prior to the insured buying the policy. Carriers often even include coverage for punitive damages where permitted by state law.

Whatever type of coverage might be applicable, policy holders who fail to promptly notify insurance carriers of pending litigation place

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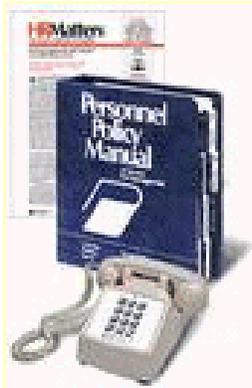
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their coverage at risk. Therefore, an early examination of policies and potential coverage is



Discounts are given to employers who utilize risk management materials such as a sound employee handbook, appropriate published harassment policies, internal employment-related education and efforts to maintain and document appropriate personnel records

years, its costs have also expanded significantly. EPLI premiums are generally based on the number of a business' employees plus that business' claims history. Discounts are given to employers who utilize risk management materials such as a sound employee handbook, appropriate published harassment policies, internal employment related education and efforts to maintain and document appropriate

some cases underwriters may not offer an employer coverage at any cost if such policies are not in place.

Each employer needs to make a decision in its own case about whether EPLI coverage makes sense. In some companies, employers don't really need the coverage because they don't have many claims. There are also certain downsides to EPLI coverage and it is important for employers to make sure they understand the

about settlement decisions, and how to handle and try the case.

Coverage of a particular EPLI policy may vary widely, including the amount of premiums, coverage limits, deductibles, and co-insurance rates. Usually, the range of coverage may be expanded by paying a higher premium. For example, it is not uncommon for an EPLI policy to have a \$100,000 deductible, or even higher. Thus, even in the best of circumstances, EPLI coverage may not be a complete solution to the problem of exposure to employment claims, although it may serve as sort of a "peace of mind" to catastrophic claims.

highly desirable.

While EPLI coverage has broadened in recent

personnel records. Open door complaint procedures are also desirable, and in

specifics of what their policies provide, including what it excludes, what rights they have to choose their lawyers, what their rights are to have input into decisions