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LABOR AND EMPLOYMENT

Whistle-blowers to labor agreements spur industry trend

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If it involves human interaction in the workplace, chances are there's a law affecting it. And where there are laws, there are lawyers ready to advise, counsel, prosecute and defend clients in all manifestations of employer/employee relationships.

From one-person practices helping a worker get an overdue paycheck to mega firms prepared to argue the subtleties of whistle-blowing before the Supreme Court, metro Denver is well-supplied with attorneys guarding the rights of workers and employers alike.

Both plaintiffs and defendants come in all sizes, as do the firms representing them. A typical plaintiff might be an individual who feels their rights have been abused by an employer, but they also can be labor organizations suing a company for violations of their contract or a class-action suit challenging the validity of a labor law or practice.

Defendants tend to be employers, but also can be individuals against whom a sexual-harassment or workplace-intimidation charge has been made.

John Husband, partner and chair of the management committee at Denver's Holland & Hart LLP and widely regarded as the dean of labor and employment law in Colorado, sees the specialty driven by an ever-expanding body of regulation, creating a growing demand for attorneys in that field.

"There are two segments of the specialty, and each has legislation either recently approved or pending that will dramatically change the rules of engagement," Husband said.

Employment law, dealing with individual issues such as discrimination and wrongful dismissal, long has been a point of contention between the two main political parties.

Democrats argue that court decisions, such as the Supreme Court ruling in *Ledbetter v. Goodyear Tire & Rubber*, which upheld a 180-day statute of limitations for filing pay discrimination claims, excessively favor employers.

In response, Congress passed the Lilly Ledbetter Fair Pay Act of 2009 so that the statute of limitations resets with each new discriminatory paycheck, even if issued to the same employee, effectively allowing employees to file claims dating to their first day of employment if the basis for the suit is ongoing discrimination. On Jan. 29, it was the first piece of legislation signed by President Barack Obama, on his ninth day in office.

Husband said he expects changes such as this to continue for the next few years as long



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John Husband, partner and chair of the management committee at Denver's Holland & Hart LLP, says that expanding regulations have driven the focus of employment and labor law.

as Congress can pass legislation without fear of a veto from an unsympathetic president.

Workers' rights and the employment law surrounding them are a relatively recent legislative trend. But labor law — the law that deals with labor agreements, principally between unions and employers, has been around much longer.

"Although we saw less activity in this area as union membership declined, new legislation such as the Employee Fair Choice Act could further change the landscape," Husband said.

A sub-specialty of labor and employment law has developed around the Employee Retirement Income Security Act (ERISA). Irene Gallagher is a shareholder in Brownstein Hyatt Farber Schreck LLP's employee benefits group. She advises employers on the planning of their programs and compliance issues that need to be addressed.

"ERISA was enacted to protect employee retirement benefits from mismanagement and abuse and to regulate the administration of health and welfare benefits for employees," Gallagher said. "I work with clients to advise them on setting up benefit plans and offer counsel on administering the plans so that they remain in compliance with the law. It's often similar to the work that a tax attorney might do."

She has represented clients in regulatory matters before the Internal Revenue Service and the Department of Labor, and helped clients implement internal processes to correct plan defects.

Two areas she said would have a significant impact on ERISA specialists are the changes being sought in health care, and the

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need to deal with the looming crisis in Social Security and the impact that may have on other forms of retirement plans.

Late-night TV is rife with ads for lawyers who promise "to get you what you deserve" if you feel that you've been unfairly treated in the workplace as an individual, but labor and employment law also is the arena for a growing number of class-action suits.

Discrimination (age, gender, race and ADA-related) and employee benefits are two areas of litigation that frequently appear as the basis for class-action suits.

The most notable class actions in Denver in recent years are suits filed against Qwest Communications International Inc., its officers and its financial partners, alleging mismanagement of its employee retirement funds and benefits.

Class actions allow large groups of employees to bring common claims against an employer together in a single action, thereby increasing the leverage of the plaintiffs over what they might have if acting individually. They can extend for long periods of time (one of the Qwest suits was in litigation for more than seven years) and can cost millions of dollars to resolve.