

certiorari, (ser-she-eh-ra-re) noun [Latin, to be informed]; to be informed as a means of gaining appellate review; a common writ.

When at least four of the nine U.S. Supreme Court justices vote to hear a case, the court issues a writ of certiorari.

WORKER

Competent Attorneys Help Ease Adverse Changes in Workers' Compensation Laws

Now, more than ever, injured Oklahoma workers need the assistance not only of a competent physician but of a competent attorney, as well.

Recent changes in Oklahoma workers' compensation law now give employers the right to choose the doctors who will treat workers injured on the job. Why is this not in the worker's best interest? Consider the following.

BlueCross/BlueShield and the State Insurance Fund – now called CompSource – have announced a new working arrangement. Under this arrangement, any injured worker employed with a company that has insurance through CompSource will have their case managed by BlueCross/BlueShield that has a network of doctors who have agreed to work “on the cheap”, to whom the employee will be sent.

In other words, the employee will get substandard medical care in exchange for saving the insurance company a dollar or two.

This change highlights the need for injured workers to follow through with a competent lawyer so their rights will be protected. For instance, under the new law, although the employer initially gets to choose an injured worker's doctor, if the employee hires a lawyer and files his workers' compensation claim, he or she then has the right, on ten days' notice, to change doctors and be treated by a doctor of their own choosing.

Another wrinkle of which workers should be aware: if the employer does not furnish medical care at the company's expense to an injured worker within three days after being notified of a job-related injury, then the worker may choose his or her own doctor and receive care.

An attorney competent in Oklahoma's ever-changing workers' compensation law can help injured workers navigate these procedural hurdles so they can get the medical care they want and deserve. ●

SPRING 2003

CERTIORARI

Journal of Consumer Advocacy



PRSRT-STD
U.S. Postage
PAID
Tulsa, OK
Permit #717

Frasier, Frasier &
Hickman, LLP

1700 Southwest
Blvd. P.O. Box 799
Tulsa, Oklahoma
74101

RETURN SERVICE REQUESTED

FLSA the cornerstone
of worker protection
See page 2

George W. Bush
is Public Enemy No. 1
See page 3



SPRING 2003

CERTIORARI

Journal of Consumer Advocacy

CONSUMER INFORMATION FOR THE CLIENTS AND
FRIENDS OF FRASIER, FRASIER & HICKMAN, LLP

**Frasier, Frasier &
Hickman, LLP**
Attorneys at Law

1700 Southwest Boulevard
P.O. Box 799
Tulsa, Oklahoma 74101
918-584-4724 or
1-800-522-4049

World Wide Web Address:
<http://www.frasierlaw.com>

E-mail Address:
frasier@tulsa.com

Thomas Dee Frasier
1924-2001

James E. Frasier

Steven R. Hickman

John W. Flippo

Everett R. Bennett, Jr.

J.L. Franks

Frank W Frasier

George M. Miles

Patrick S. Parr

Michael A. Shiflet

John Bogatko

WORKERS

Sabre Employees Bring Lawsuit, Improve Hostile Work Environment

Seven current and former employees of Sabre in Tulsa brought a lawsuit alleging they faced discrimination at work and were exposed to a racially hostile work environment. Importantly, their willingness to take action caused several structural changes at Sabre that reduced the discrimination they had faced.

What discrimination? The incidents were many and varied. Among the discriminatory and racially hostile incidents they faced at various times:

- The "L.A. High School Math Proficiency Exam," a racist e-mail that infected the work place that basically made fun of black people on welfare.
- The "New Millennium Letter" posted on doors and bulletin boards at the workplace that was a "call to arms" to white folks to "take their company back" from minorities, who were described in racist terms.
- A comment in the workplace that black peoples' hair looked like pubic hair.
- During training sessions, black employees were made to sit together.

Also, Sabre offered white employees opportunities for career advancement, while denying such opportunities to black employees. The company told various plaintiffs at different times that promotions were "frozen," while at the same time promoting white employees. Also, white employees were given perks of employment – such as time off to attend school and

flexible work schedules – which were denied to black employees.

Sabre did little to protect the seven plaintiffs or ease their fears. In fact, the company acted as though the discriminatory incidents never took place and remained silent about them.

When the plaintiffs complained to management, a company vice president was sent from Dallas to investigate their claims. When they saw no results, they took their complaints to the federal Equal Employment Opportunity Commission in November 2000. Still the problems continued.

Finally, in April 2002, Frasier, Frasier & Hickman brought a lawsuit in federal court on the workers' behalf. The lawsuit alleged the seven plaintiffs had been subjected to discrimination and a racially hostile work environment – both illegal under federal law.

"It is hard to believe that in our society today such a large corporation would have such a relaxed attitude towards discrimination and the law," said attorney Steve Hickman.

"During the course of the proceedings, in talking with lower management about the defendants' claims, it was hard to find anyone who felt that these racially offensive incidents could even be considered racial."

However, the case in federal court took a different position. And, Sabre has implemented changes to make the workplace fairer. ●

Fair Labor Standards Act the Cornerstone of Worker Protection

The Fair Labor Standards Act was first passed by Congress and signed into law by President Franklin Roosevelt in 1938. And brought minimum wage, overtime and child labor reforms into the American workplace. Since then, FLSA has been amended several times. But it still is the cornerstone of federal laws protecting workers.

The U.S. Department of Labor administers and enforces the FLSA through the Wage and Hour Division. The FLSA requires that most employees in the United States be paid at least a minimum wage and overtime pay at time and one-half the regular rate of pay after 40 hours in a workweek. In addition, the law includes child labor and record keeping provisions.

MINIMUM WAGE

In 1997, the FLSA increased the federal minimum wage to \$5.15 an hour. A subminimum wage – \$4.25 an hour – is

For additional information, visit the Frasierlaw Consumer Center at www.frasierlaw.com

established for employees under 20 years of age during their first 90 consecutive calendar days of employment with an employer. Employers are prohibited from displacing employees in order to hire youth at the subminimum wage. Also prohibited are partial displacements such as reducing employees' hours, wages, or employment benefits.

TIP CREDIT

An employer may credit a certain amount of the tips received by tipped employees (e.g., waiters and waitresses) against the employer's minimum wage obligation when certain conditions are met. The law sets the employer's cash wage obligation at not less than \$2.13 an hour. However, if an employee's tips combined with the employer's cash wage of \$2.13 an hour do not equal the minimum hourly wage, the employer must make up the difference. ●

YOUTH WORKERS

Child Labor Laws

From the Oklahoma Department of Labor

- The minimum age to be employed in Oklahoma is 14 years. Children working either on farms or for parents or any entity in which a parent owns an equity interest are exempt. Children engaged in the sale or delivery of newspapers to consumers are also exempt.
- The work permit – also known as the Employment Certificate of Age and Schooling – shall be approved by the principal or equivalent administrative officer of the school which the child attends or should be attending.
- A minor under the age of 16 years may work up to three (3) hours on school days (Monday to Friday), up to eight (8) hours on non-school days (days in which attendance is not compulsory), and up to 18 hours in a school week. A minor under the age of 16 years may work up to 40 hours in a non-school week if school is out for the entire week or in the summer.
- From the Tuesday after Labor Day to May 31st of the following year, a minor under age 16 years may not work before 7:00 a.m. or after 7:00 p.m. From June 1st to Labor Day, a minor under age 16 years may not work before 7:00 a.m. or after 9:00 p.m. A minor under the age of 16 years may not work overtime.
- There are no restrictions on the hours or times once the minor reaches 16 years of age. ●

CASE FILE

Jury Awards Deputy Overtime Compensation

A federal court jury recently required the Mayes County sheriff to pay a former deputy overtime compensation. Previously, the sheriff's office had allowed the deputy only his salary, with no payment for overtime hours.

"This pay method resulted in the deputy receiving less than \$10 per hour, even though he was risking his life on a daily basis," said attorney Steve Hickman, who represented the former deputy.

"The county had relied on a Court of Appeals decision that seemed to indicate that deputy sheriffs were not entitled to receive overtime compensation under the Fair Labor Standards Act. This has resulted in abuse by counties in making deputy sheriffs work unlimited hours for no pay, even though state law mandates a work day of eight hours.

The jury found that this deputy sheriff, who only rarely had contact with the sheriff and who answered through his "chain of command" as a patrol officer, was not on the "personal staff" of the sheriff so as to be exempt from overtime requirements.

"This case against Mayes County clearly highlights employer abuse of the wage and hour laws. The Bush Administration's attempt to take away the right to overtime is ill-advised and will work a hardship on many, but most especially on those at the lower end of our economic system. We need to retain what laws we have to protect against even worse abuses," Hickman said. ●



For America's workers, George W. Bush has become Public Enemy No. 1.

First, the Bush Administration took sides with the fast food industry, retailers and other opponents of the minimum wage to block any increases in the current \$5.15 per hour standard.

Now, the Bush Administration has proposed new regulations that would deny overtime wages to thousands of workers – many of whom already are underpaid and abused. The suggested changes in the Fair Labor Standards Act regulations would affect many of the more than 80 million workers protected currently by the law.

The proposed new rules would allow employers to reclassify many workers currently eligible for overtime as managers, administrative or professional employees – a category exempt from time-and-a-half overtime. The rules would wipe away overtime protection for large numbers of aerospace, health care, defense, high tech and other workers – and also for workers above a certain income level.

While the proposed rules would raise the income ceiling for some low-wage workers to automatically qualify for overtime, many workers would remain uncovered by that automatic protection.

Why would George W. Bush and his Administration propose weakening the FLSA? One only has to look to the published "findings" of right-wing think tanks to find the answer. According to one of these groups, "The FLSA

"The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little."

Franklin D. Roosevelt
January 20, 1937

restricts opportunity and violates basic morality."

Wrong! The current federal minimum wage should be declared immoral. And it is the Bush Administration that is violating basic morality by attempting to strip overtime pay from untold numbers of workers.

Bush's proposed FLSA rule changes are regressive and ugly. They threaten to set back workers' rights 65 years. And their adoption should be resisted vigorously.

Jim Frasier

CONSUMER

Restricting Patients' Rights to Protect Special Interests

Tens of thousands of people die each year from preventable medical errors. But rather than reform the medical system to prevent needless deaths and injuries, doctors and big insurance companies are lobbying Congress to limit the rights of injured patients to seek full recovery in the courts.

One piece of legislation, Senate Bill 607, has been called the Health Act of 2003 but it is grossly mislabeled. It does nothing to improve health, and everything to improve the bottom line for negligent health care providers and special interests such as drug manufacturers and suppliers.

The Bush Administration touted draconian limits on recovery for malpractice just as a little girl became America's anguish when she received an organ transplant of the wrong blood type.

There is a short-term crisis in medical malpractice insurance rates for some specialties in some states, caused by low interest rates and the stock market decline. But the real medical malpractice crisis is the quality of medical care. According to the Institute of Medicine, 44,000 to 98,000 Americans die in hospitals each year due to *preventable* medical errors. The annual cost to the economy of these preventable medical errors is between \$17 billion and \$29 billion.

Insurers and the medical lobby should stop lying about the causes of the temporary spike in malpractice rates and seek real health care and insurance industry reforms that will protect patients and lead to lower premiums for doctors

The family of Jessica Santillian deserves adequate compensation for the horrible mistake made. ●

Scholarship Applications Available

The Julia Fredin Fraiser Foundation is accepting scholarship applications from high school seniors preparing to continue their education. The Foundation also is accepting renewal applications for those who received scholarships last year.

Applications and renewal applications may be obtained by calling, writing or coming into the office of Frasier, Frasier & Hickman. The application deadline is June 1, 2003.

Julia Frasier passed away in 1996. She was married to Tomy Frasier for 50 years. The Foundation was organized in recognition of her great interest in the education of young people. During her life, she financially helped many students and encouraged many more to continue their education.