Fog Still Shrouds The Bridge To Justice (Updated 02/20/11)

Insights
2.14.11

The parameters of and processes associated with the DOL/ABA Bridge to Justice initiative remain neither transparent nor open, at least where employers are concerned. We have attempted to delve into these matters since posting our November and December comments.

On December 28, we submitted a request to the U.S. Wage and Hour Division under the federal Freedom of Information Act for "copies of all standard letters, memoranda, notices, instructions, statements, forms, summaries, descriptions, booklets, and all other documents and written materials that the U.S. Labor Department and/or any of its subordinate agencies are using or intend to use to communicate with complaining individuals and/or to attorneys representing them in connection with matters arising under or relating to the 'Bridge to Justice' initiative recently undertaken in conjunction with the American Bar Association." We also asked for "copies of all standard letters, memoranda, notices, instructions, statements, forms, summaries, descriptions, booklets, and all other documents and written materials that the U.S. Labor Department and/or any of its subordinate agencies are using or intend to use to communicate internally about matters arising under or relating to the aforementioned 'Bridge to Justice' initiative."

The 20-business-day deadline for a response from the Division has expired. We have received no documents, nor has our request been acknowledged. We sent a status inquiry on February 4.

We hope that, when we finally receive responsive materials, they will shed some light upon the many still-unaddressed questions that the Initiative provokes. Among them are these:

♦ Will the Labor Department notify employers that it has received a request to release information from an investigative file under the Initiative? Under what circumstances and how far in advance of any release will this notification be given? What will be the nature and substance of this notification? Will the employer have a meaningful opportunity to oppose the release?

♦ Will the Labor Department notify an employer that it has released information relating to that employer to a complainant under the Initiative, whether or not this was done pursuant to a request? If so, what will be the timing and nature of that notification?

♦ How will the Labor Department ensure that its investigations and other activities implicating the Initiative conform to the policies articulated in Section 51a07 of its own *Field Operations Handbook* (see below), including the one admonishing that "[n]o investigation shall be made of any employer

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

(see below), including the one admonishing that "[n]o investigation shall be made of any employer solely to obtain information for use by an employee in a Sec[tion] 16(b) suit" brought under the federal Fair Labor Standards Act?

♦ What "special process", if any, does the Initiative provide for an employer to obtain information from an investigative file?

♦ Will the Labor Department make any determination as to whether matters referred under the Initiative actually involve the FLSA or any other law the Labor Department enforces? If it will do so, how will it handle inquiries that do *not* implicate any such laws?

♦ Exactly what will the Labor Department be saying to people it refers to attorneys under the Initiative?

♦ Will the Labor Department's communications be different for referred matters about which it drew no conclusions, versus those as to which it concludes there is a "violation"? Will those communications characterize a matter as a "violation" in situations in which the file contains no response from the employer?

Stay tuned for further developments.

UPDATE 02/20/11: On February 17, 2011, we received a letter acknowledging our FOIA request. The letter bears a handwritten date of February 10 and was postmarked on February 14. We hope this means that we will receive responsive documents soon.

FOH Section 51a07.pdf (15.76 kb)

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.