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## *Experience and Expertise in Employee Benefit Solutions*

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**February 2008**

### **OSHA records another successful enforcement year in FY 2007**

The Occupational Safety and Health Administration (OSHA) recently released its annual enforcement statistics, confirming that the agency's enforcement programs are producing positive results for the benefit of American workers.

In FY 2007, OSHA conducted 39,324 total inspections, a 4.3 percent increase over its stated goal of 37,700. Total violations of OSHA's standards and regulations were 88,846, a 6 percent increase from Fiscal Year (FY) 2006. The agency cited 67,176 serious violations, a 9 percent increase from the previous year and a more than 12 percent increase over the past four years. The number of cited repeat violations also rose from 2,551 in FY 2006 to 2,714 in FY 2007.

Fatality and injury and illness rates have continued to decline to record lows. The injury and illness incidence rate of 4.4 per 100 employees for calendar year (CY) 2006 was the lowest that the Bureau of Labor Statistics (BLS) has ever recorded. Workplace fatality rates hit an all-time low in CY 2006 with 3.9 fatalities per 100,000 employees. For more information, visit [www.osha.gov](http://www.osha.gov).

### **U.S. Department of Labor's Wage and Hour Division announces record wage recovery for FY 2007**

*Agency collects more than \$1.25 billion for workers since 2000*

The U.S. Department of Labor's Wage and Hour Division (WHD) recently announced its enforcement data for Fiscal Year 2007, highlighting increases over previous years. Since FY 2000, WHD has recouped more than \$1.25 billion for nearly two million workers. For FY 2007, the 341,624 workers receiving recovered back wages is the second largest number since 1993, and the amount of those wages, \$220,613,703, is the highest ever. That amount also constitutes a 67 percent increase over the 2001 figure.

Recently, WHD has placed a major focus on bringing very large employers into compliance. Numerous employers have made multi-million dollar payments, in two instances to more than 20,000 workers. Earlier this year, WHD obtained the largest private-sector settlement in the agency's history.

WHD is responsible for administering and enforcing some of our nation's most comprehensive labor laws, including: the minimum wage, overtime, and child labor provisions of the Fair Labor Standards Act; the Family and Medical Leave Act; the Migrant and Seasonal Agricultural Worker Protection Act; worker protections provided in several temporary visa programs; and the prevailing wage requirements of the Davis-Bacon Act and the Service Contract Act.

More information on agency results is available on the Wage and Hour Division Website, [www.dol.gov/esa/whd](http://www.dol.gov/esa/whd).

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## The Focus

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### **Lockheed Martin to Pay \$2.5 Million to Settle Racial Harassment Lawsuit**

*EEOC Says African American Electrician Subjected to 'N-Word' and Threats of Lynching at Worksites across the Country*

The U.S Equal Employment Opportunity Commission (EEOC) recently announced a major settlement of a race discrimination and retaliation lawsuit against Lockheed Martin, the world's largest military contractor, for \$2,500,000 and other relief on behalf of an African American electrician who was subjected to a racially hostile work environment at several job sites nationwide – including threats of lynching and the “N-word.”

The monetary relief for former Lockheed employee Charles Daniels is the largest amount ever obtained by the EEOC for a single person in a race discrimination case, and one of the largest amounts recovered for an individual in any litigation settlement by the agency. Additionally, the Bethesda, Md.-based company agreed to terminate the harassers and make significant policy changes to address any future discrimination.

The EEOC's suit, filed in August 2005, alleged that Daniels was subjected to severe racial harassment while working on military aircrafts as part of a field service team in Jacksonville, Fla., Whidbey Island, Wash., and Oah'u, Hawaii. The EEOC charged that Daniels was the target of persistent verbal abuse by coworkers and a supervisor whose racial slurs and offensive language included calling him the “N-word” and saying “We should do to blacks what Hitler did to the Jews” and “If the South had won, then this would be a better country.” Daniels was also subjected to multiple physical threats, such as lynching and other death threats after he reported the harassment. Despite its legal obligations, Lockheed failed to discipline the harassers and instead allowed the discrimination against Daniels to continue unabated – even though the company was aware of the unlawful conduct.

The EEOC enforces federal laws prohibiting employment discrimination based on race, color, gender, religion, national origin, age and disability. Further information about the EEOC is available on its web site at <http://www.eeoc.gov>.

### **FMLA to Include Employees Related to Service Members**

On January 28, 2008, President Bush signed into law H.R. 4986, the National Defense Authorization Act for FY 2008 (NDAA), Pub. L. 110-181. Among other things, section 585 of the NDAA amends the Family and Medical Leave Act of 1993 (FMLA) to permit a “spouse, son, daughter, parent, or next of kin” to take up to 26 workweeks of leave to care for a “member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.”

The provisions in the NDAA providing this leave are effective as of the date of the President's signing. The Department of Labor is working quickly to prepare more comprehensive guidance regarding rights and responsibilities under this new legislation. In the interim, WHD will require employers to act in good faith in providing leave under the new legislation. Because the NDAA amends the FMLA, FMLA-type procedures should be used as may be appropriate (for example, procedures regarding substitution of paid leave and notice).

The NDAA also permits an employee to take FMLA leave for “any qualifying exigency (as the Secretary [of Labor] shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.” By its express terms, this provision of the NDAA is not effective until the Secretary of Labor issues final regulations defining “any qualifying exigency.” DOL is expeditiously preparing such regulations. In the interim, DOL encourages employers to provide this type of leave to qualifying employees.

The new law requires that employees be made aware of these new provisions. We are providing this poster to assist you in complying with the new FMLA requirements of the National Defense Authorization Act of 2008.