

# The McKenzie Mailer

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## UPCOMING EVENTS

Bob McKenzie will be one of the featured speakers at the upcoming

**Spring 2006  
BizOp Showcase  
and Economic  
Development Summit**

Being held at the Hyatt Regency in Jacksonville, Florida on Wednesday, June 1.

### The Topic

**“A High Performance Workplace – You Can Feel It in The Air”**

For more information:  
[www.thsmallbusinessreport.com](http://www.thsmallbusinessreport.com)

**Click here for information on the EEOC enforcement statistics:**

<http://www.eeoc.gov/stats/enforcement.html>

**For information on the Wage and Hour Press Releases, click here:**  
<http://www.dol.gov/opa/media/press/esa/main.htm>

## **The Compliance Vultures are Circling – Are You Prepared?**

At a recent seminar held by the labor law firm of Fisher & Phillips, it was stated that over 450 employment related lawsuits are filed each week. Most of the targets of these lawsuits are private employers with between 15 and 100 employees. These lawsuits involve wage and hour violations as well as violations of the discrimination statutes.

Recently, a firm in Jacksonville was on the wrong end of a \$6.8 million jury award to a former employee who claimed she was sexually harassed. In this particular case, the woman was given \$6.75 million in punitive damages primarily because the company had not provided harassment training to its employees and had not communicated a complaint procedure. Just the other day, the President of Toyota North America resigned after allegations of sexual harassment.

In the past several years, class action lawsuits filed under wage and hours regulations have exceeded those involving discrimination. There are a couple of reasons for this. The first is that most companies are in violation of the Fair Labor Standards Act, the Federal law that regulates minimum wage and overtime requirements, and violations are pretty easy to prove. Another reason is that, under the law, plaintiffs' attorneys can get all of the legal fees, regardless of the size of the damage award. A third reason is it is easier to file a lawsuit under the Fair Labor Standards Act than it is under Title VII of the Civil Rights Act. With discrimination charges, the complainant must file a charge of discrimination through the Equal Employment Opportunity Commission before being able to file a lawsuit in federal court. Here's just a few of the back pay awards handed down by the Wage and Hour Division of the Department of Labor since February of this year: a very well known cruise line operator - \$6.25 million for failure to pay overtime; a well known bank in the Southeastern US - \$1,000,000 for requiring employees to work through lunch or after normal working hours and not paying overtime; one of the biggest job boards in the world - \$524,000 for misclassifying employees and a nationally known provider of real estate and escrow insurance - \$778,000 for shortchanging employees in their overtime pay.

The next big thing is immigration enforcement. Immigration and Customs Enforcement (ICE) under the Department of Homeland Security has initiated an all-out effort to find employers who hire illegal immigrants. In the past, employers were usually only liable for civil damages. However, recent raid on employer sites are resulting in criminal charges to the business officers under the Racketeering Influenced and Corrupt Organizations, or RICO. Under RICO, business owners now face jail sentences of 10 to 40 years and fines of up to \$250,000 for each unauthorized alien employed. These raids, which started in earnest a few months ago, are occurring all over the country. Industries targeted are those in security sensitive businesses such as airports, railroads, power plants and utilities or those known to rely on undocumented aliens as employees such as agriculture, construction and landscaping. Additionally, the Social Security Administration is now cooperating with the Department of Homeland Security and reporting companies with a high number of mismatched social security numbers.

The moral of this story – do the right thing. Develop a policy on harassment and discrimination and communicate it. Know the rules of the Fair Labor Standards Act and pay employees according to the regulations and hire people who are allowed to work in the country.

It is not worth going to jail over.

