

## A New Law and a Court Decision

*Two important legal developments affecting your payroll budget and the way you do business are in the General Assembly and the NC Supreme Court. CAI is active on both issues to bring the employer perspective to lawmakers and justices.*

### FIXING THE UI SYSTEM AND RE-PAYING THE DEBT

Expect the next wave of unemployment insurance reform early in 2013 when our lawmakers return to Raleigh. The broke trust fund, the debt owed to the federal government for benefits paid, the continued deficit in the current account and the right level of benefits for the future are all on the table. How much this fix will cost employers (and your budget) is not yet clear. It will depend on your particular circumstances and experience rating. It is hard to imagine fixing all that is broken without higher taxes in some form, at least until the trust fund is rebuilt.

The Great Recession took a poorly-managed system and put it in the deficit ditch. Agency decisions to greatly expand

who can receive benefits by misapplying long-standing legal standards of “misconduct” and “substantial fault,” plus inept administration of computer problems and benefit overpayments, added to the cash outflow. De-emphasis on assessing candidate skills, getting them training and matching them to today’s jobs were icing on this bad-tasting cake.

CAI is a founding partner of Employers Coalition of NC and we are at the center of reform efforts. We co-funded the most complete study of the UI system with the NC Chamber Foundation this year. The study [available at <http://j.mp/nc-ui>] recommends five ways to return the system to solvency and its original purpose.

#### Study Recommendations:

- 1) Repay the federal loan quickly through a bond, to save money
- 2) Return to a focus on re-employment and re-training is needed
- 3) Poor agency management has weakened the common-sense requirements for receiving benefits
- 4) Our benefit levels are the highest in our region and should be brought in line
- 5) Tax rates and experience rating practices need revisions to keep the system sound and cost competitive

Stay tuned for future reports.

### A PERFORMANCE REVIEW IS DEFAMATORY?

In the case of *White v. Trew*, a professor at NC State sued his manager for defamation (libel) claiming that remarks in a performance review were untrue and damaged his professional reputation. For a plaintiff to make a defamation claim, they must show an untrue statement was “published” to a third party. Our Court of Appeals found that since the manager, Trew, sent the review to the department head (as required by policy)

this meant the review was published to a third party and White could sue for defamation.

CAI and its sister employer associations in NC filed an amicus brief\* with the state’s Supreme Court arguing this intra-company sharing of a performance review among managers with a need-to-know cannot be the basis of a defamation suit [see the brief at <http://j.mp/WVT-12>]. No “third party” is involved.

If suits are allowed like this, employers will need defensive measures to over-restrict access to performance discussions and reviews, hurting both employees needing help or opportunities and managers seeking guidance from others.

Oral argument was held in October. A decision should come in a few months and we will report on the result and any actions recommended.

\*CAI thanks Matt Keen and the law firm of Ogletree Deakins for their work in drafting the brief. CAI’s John Gupton ably assisted.

Contact me directly if I can help you or your team.

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*Executive Scan* provides a quick update on internal and external issues affecting your workplace with timely advice on ways to respond. It is provided to members and friends of CAI.

*Executive Scan* is written by CAI's CEO, Bruce Clarke, JD.

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