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ARTICLES

No Harm, No Foul: The OSHRC's Authority to Label an OSH Act Violation *de minimis* and to Require No Abatement
Samuel D. Elswick & Richard A. Bales 383

The federal circuits are split on the issue of whether the Occupational Safety and Health Review Commission (OSHRC) has the authority to label a safety and health violation de minimis and require no abatement even if the Secretary of Labor has issued a citation. This article initially examines the legislative background of the Occupational Safety and Health Act, its procedural aspects, the separate roles allocated the Secretary of Labor and the OSHRC under the Act, the three levels of violations, and the OSCHRC's authority to determine the level of severity of a violation. Next, the current split in the Federal Circuit Courts is discussed. Finally, the issue of whether the OSHRC possesses the statutory authority to designate a safety and health violation de minimis is analyzed. The article concludes that the OSHRC does possess the authority to label a safety and health violation de minimis and to require no penalty or abatement, even though an OSH Act violation has technically occurred.

Agricultural Zoning: Impacts and Future Directions
Mark W. Cordes 419

There are numerous ways in which the government strives to preserve farmland in the United States. Because each program is in and of itself inadequate, agricultural zoning has emerged as the foundation of most farmland preservation efforts. This piece examines agricultural zoning as a farmland preservation tool. First, different types of agricultural zoning restrictions are examined. While agricultural zoning has many advantages, it can have adverse effects if not implemented properly. Thus, the article considers various impacts of agricultural zoning – legal, economic, development, and effectiveness in preservation. The article emphasizes that while agricultural zoning is a centerpiece of farmland preservation efforts, its limitations must be recognized. Furthermore, the goal of preserving farmland must always be balanced against the need for reasonable growth within the community. Finally, the author discusses specific recommendations for the future of agricultural zoning.

Price Theory and Anti-Takeover Laws:
Shareholder Protection in Illinois
Vince Goddard 459

The article addresses the need to review the laws that govern corporate mergers and acquisitions and shareholder protections in light of the precarious nature today's economy. It discusses the laws by using the tools of economic analysis, to show that states like Illinois can craft and hone their laws so as to create the ideal environment for corporations to facilitate efficiency, and to ensure the maximum amount of shareholder protection.

Apparent Authority and Healthcare in Illinois
Marc D. Ginsberg 475

This piece examines and dissects two Illinois Supreme Court cases which utilized apparent authority to hold hospitals and HMOs vicariously liable for non-agent or non-servant agent physician negligence. The author argues that the supreme court's effort to ground these decisions in classical agency law is misplaced. The article provides a general overview of the concept of respondeat superior and apparent authority, as well as a brief introduction to the structure of hospitals and HMOs. The author asserts that apparent authority should not be applied in the healthcare setting. Specific problems are roadblocks in the path of the Illinois Supreme Court's reasoning – particularly: the patient's justifiable reliance; Illinois Civil Pattern Jury Instructions which require proof of patient reliance upon "apparent principal"; and, apparent authority in the context of off-premises health care. The author concludes that classic agency principles have been contorted to effect policy decisions that require hospitals and HMOs to vicariously answer for medical negligence.

Workers' Compensation Reviews and Appeals:
A Review and Suggestion for Change
Brad A. Elward 493

This article serves numerous purposes. The piece not only provides a solid analysis of Workers' Compensation appellate procedure, but also includes many tips on appeals, from brief writing to oral arguments. The piece can serve as both a "how to" manual for practitioners and a suggestion for change to the Illinois General Assembly. The author draws on his own extensive experience in appellate procedure, especially in the area of Workers' Compensation. The theme of the piece is that understanding the strict requirements of Workers' Compensation appeals will allow practitioners to successfully prosecute those appeals. The piece then concludes by suggesting areas in which Workers' Compensation laws could benefit from changes and improvements.

COMMENTS

What Constitutes an Invalid "Blanket Consent" Within the Purview of Illinois' Mental Health and Developmental Disabilities Confidentiality Act?
Jana L. Fischer 535

Illinois' Mental Health and Developmental Disabilities Confidentiality Act, 740 Ill. Comp. Stat. 110/1 (2000), prohibits "blanket consent" to the disclosure of mental health and developmental disabilities treatment records. This Comment argues that Illinois' Confidentiality Act inadequately defines "blanket consent" so as to ensure that an authorization for the disclosure of mental health records is obtained on an informed and consensual basis. This is especially so where a recipient's authorization results in the unintended release of information not thought to be contained in the records. The purpose of this Comment is to suggest that the Illinois legislature should look to the doctrine of informed consent in implementing an operational definition of "blanket consent" in order to make certain that the confidentiality and autonomy rights of recipients include the right to make well-informed decisions in authorizing the disclosure of their mental health records.

The Fourth Amendment and The New Face of Terrorism: How September 11th Could Change the Way America Flies
Brett Andrew Skean 567

This comment examines the possible repercussions of the September 11, 2001, attacks on airport security measures and how future judicial review might take into consideration the now compelling governmental interest in safe airways. The historical and modern exceptions to the Fourth Amendment's warrant requirement are examined with an analysis of the possible justifications and constitutionality of physical searches of potential airline travelers. In conclusion, the piece determines the obvious question of whether, in today's terrorist climate, there is a reasonable expectation of privacy when a person enters an airport, and if not, whether there is any resulting Fourth Amendment protection.