

**OCTOBER 2005**



**HD Hudson Celebrates  
Its Centennial**

Moss & Barnett client HD Hudson Manufacturing Company, a portable sprayer and duster tank manufacturer, celebrated its 100th anniversary on September 5, 2005. The company was founded in Minnesota and moved its corporate headquarters to Chicago in 1929. The company's plants are located in Minnesota, Iowa, Michigan and China; its products are sold worldwide. HD Hudson sprayer tanks are used by a World Health Organization program that combats malaria, and the company's sprayers have been an integral part of that effort for many years.

Excerpts from the original articles of the incorporation of HD Hudson signed in 1905 are found below.

Our law firm is privileged to have continuously served as legal counsel to HD Hudson for its entire 100 year existence, ever since our attorneys prepared and filed its Articles of Incorporation with the Minnesota Secretary of State in 1905. Moss & Barnett offers our very best wishes for continued success to HD Hudson!

*Know all men by these presents, that the undersigned do hereby  
associate themselves together for the purpose of forming....*

*The time of commencement of this corporation  
shall be September first, 1905....*

*In witness whereof, the undersigned have duly subscribed,  
sealed and acknowledged these presents this 31st day of  
August, 1905....*

*Filed for record in this office  
September 5, A.D. 1905, at 9 o'clock A.M.  
P. E. Hanson, Secretary of State.*

**OCTOBER 2005  
IN THIS ISSUE**

**PAGE ONE**

HD Hudson Celebrates  
Its Centennial

**PAGE TWO**

Common Employer Policy  
Violates the Law

**PAGE THREE**

Superlawyers/  
Leading Attorneys 2005

**PAGE FOUR**

Common Employer Policy  
Violates the Law  
*(continued)*

## COMMON EMPLOYER POLICY VIOLATES THE LAW

By Marcy Frost



Most employers understand that employee compensation decisions involve a multitude of factors. An employee's experience, prior earnings, education, and job performance, the specific requirements of the job, and market conditions all affect compensation. Employers also understand that employees tend to ignore these factors when comparing their compensation to that of their

co-workers. Consequently, employers often try to avoid the problems inherent in discussions among employees about compensation by establishing a policy prohibiting such discussions. This attempt to avoid problems can lead to a bigger problem — violation of the National Labor Relations Act.

The National Labor Relations Act (the "NLRA") is the law that governs union organization, collective bargaining, strikes, and other activities traditionally associated with a unionized work setting. The NLRA, however, is not limited to the traditional union labor context. The NLRA applies to all nonmanagement employees of almost every private sector employer. The National Labor Relations Board (the "NLRB") has set standards for the exercise of its jurisdiction which include almost all private employers that have an annual outflow or inflow, direct or indirect, across state lines of at least \$50,000 or, in the case of retail enterprises, have a gross annual volume of \$500,000.

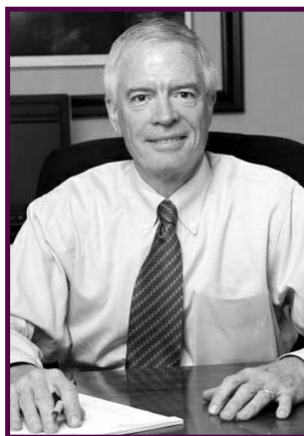
In addition to protecting employees' right to unionize, the NLRA protects the right of employees to engage in "concerted activities for the purpose of...mutual aid or protection." This means that employers cannot take action against an employee who works

with other employees or individually on their behalf to raise concerns or effect change in the workplace. The NLRB and the courts have recognized that employees must be able to discuss issues in order to engage in such concerted activity or, indeed, to identify the need for such activity in the first place. Accordingly, employer policies prohibiting nonmanagement employees from discussing compensation issues have been found to violate the NLRA.

A violation of the NLRA is called an "unfair labor practice." There are a variety of remedies available when an unfair labor practice has been found. If someone's employment is suspended or terminated pursuant to an illegal confidentiality policy, the employer will be liable for all wages the employee would have earned during the suspension or from the date of the termination through the date of the NLRB determination. Possibly even more significant, the employer will be required to reinstate the employee (or obtain the employee's agreement to a monetary settlement to waive the reinstatement right). Where a policy is established but has not been enforced to the detriment of an employee, no monetary penalties would be assessed. Rather, the NLRB would require the employer to revoke the policy and post a notice for employees to see declaring that the employer had committed an unfair labor practice.

While employers cannot prohibit discussion among its nonmanagement employees regarding compensation (or other terms and conditions of employment), employers can try to minimize such discussions by explaining the folly of comparing compensation. We have recommended language such as the following to employers who want to discourage discussions among employees about compensation:

*Continued on Page 4*



*Moss & Barnett shareholder Chuck Parsons was recently inducted into the American Academy of Mortgage Attorneys — an association of real estate law experts selected by peer nomination and rigorous screening. Only two Minnesota lawyers have ever been honored with membership in this distinguished national organization.*

*Congratulations, Chuck!*

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Top Super Lawyers and Leading  
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Left to right: Tom Judd, Arc Hennepin-Carver, 1st Vice President of Board of Directors; Susan Rhode, Friends of Children, Board Vice President; Tom Shroyer, Courage Center Foundation, Chairman; Deanne Greco, Ordway Circle of Stars, Board President.

## MOSS & BARNETT RECOGNIZES COMMUNITY LEADERS

*Moss & Barnett's contributions and deep commitment to our outstanding community are reflected in the leadership positions held by our attorneys. We congratulate them on their dedication and service!*

Continued from Page 2

Company X recognizes that in order to attract, retain and motivate qualified employees, it must be competitive in its labor market and commit the budget resources required to provide staff support to manage its business. Company X further recognizes the need for individual salaries to reflect differences in responsibilities and demands of jobs, as well as differences in the abilities and performance of individuals. As numerous factors impact compensation, comparisons of compensation among employees are misleading. Company X treats employee compensation as confidential, and employees are encouraged to do so also.

Employers should review their Employee Handbooks, commission policies, compensation policies or plans, individual contracts or compensation statements, and other policy statements to determine whether they have an illegal confidentiality provision applicable to nonmanagement employees. Measures should be taken to retract an offending policy or revise an improper agreement without alerting employees to the NLRA violation. We can work with employers to identify appropriate measures to eliminate policies that violate the NLRA.



**IMPORTANT NOTICE**

*This publication is provided only as a general discussion of legal principles and ideas. Every situation is unique and must be reviewed by a licensed attorney to determine the appropriate application of the law to any particular fact scenario. If you have a legal question, consult with an attorney. The reader of this publication will not rely upon anything herein as legal advice and will not substitute anything contained herein for obtaining legal advice from an attorney. No attorney client relationship is formed by the publication or reading of this document. Moss & Barnett, P.A. assumes no liability for typographical or other errors contained herein or for changes in the law affecting anything discussed herein.*

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