

SNIFFEN & SPELLMAN, P.A.

LABOR AND EMPLOYMENT LAW ALERT November 2020

REMINDER: New Federal Coronavirus Leave Laws Due to Sunset at the End of the Year

Our Firm has written extensively on the Coronavirus pandemic over the past year in the Labor and Employment Law Alert. One topic that has been heavily covered has been the enactment of new leave laws by Congress in light of the pandemic. This included the enactment of a law that contained two additional leave requirements. These requirements included expanded family medical leave for those that have to care for a child whose school or place of care was closed due to the pandemic. The other, the Emergency Paid Sick Leave Act, required the provision of paid leave to employees for a set amount of time and within certain limitations if the leave was for specific COVID-19-related reasons.

We have written before that these laws were set to expire at the end of the year. Believe it or not, the end of the year is upon us. There has been no extension of the provisions of these laws, so they will cease to apply at the end of the year. Keep this in mind as you evaluate employee leave requests.

Professor's First Amendment Retaliation Claim Fails Before the Eleventh Circuit

The Eleventh Circuit Court of Appeals recently rejected an appeal from a fired Florida Atlantic University professor who claimed his termination was in retaliation for exercising his First Amendment rights. The professor was fired after publishing on his blog that he believed the Sandy Hook Elementary School shooting was a hoax. University officials maintained that the firing was because of multiple incidents of insubordination by Plaintiff. A jury ruled in the University's favor following a nine-day trial, and the appellate court upheld that decision.

The Eleventh Circuit's opinion is available [here](#).

Florida Passes Minimum Wage Constitutional Amendment

Amendment 2 (titled, "Raising Florida's Minimum Wage") passed with 60.8% of the popular vote on November 3, 2020. Amendment 2 modifies Article X, Section 24 of the Florida Constitution and requires periodic \$1.00 per year increases to the minimum wage until it reaches \$15.00 per hour on September 30, 2026. While the minimum wage will only increase by nine cents on January 1, 2021, to \$8.65 per hour, 2021 will also include a second increase on September 30, 2021, to \$10.00 per hour. On September 30 of each year following 2021, the minimum wage will increase by an additional \$1.00 per hour until it reaches \$15.00 per hour on September 30, 2026.

To read more about this topic, please refer [here](#).

EEOC Updates Religious Discrimination Guidance

The Equal Employment Opportunity Commission (“EEOC”) recently published its proposed Updated Compliance Manual on Religious Discrimination. The Manual addresses the recent Supreme Court decision in Bostock v. Clayton County in which the Supreme Court held that Title VII’s prohibition on sex-based discrimination includes prohibitions on firing an employee because of their sexual orientation or transgender status.

The proposed Manual also addresses topics such as the interaction between Title VII and the Religious Freedom Restoration Act (“RFRA”), noting the Supreme Court’s suggestion in Bostock that the RFRA is a “super statute” and may supersede Title VII’s protections. Additionally, the Manual clarifies the scope of the ministerial exception to religious anti-discrimination laws for religious institutions.

The EEOC is currently seeking public input about the revised Manual through December 17, 2020.

To view the proposed Manual, click [here](#).

CDC Issues New Recommendations for COVID-19 Testing Strategies for Critical Infrastructure Sector Response Planning

After finding increased levels of infection and associated illnesses, as well as rising hospitalizations and deaths, the U.S. Centers for Disease Control and Prevention (“CDC”) updated its COVID-19 Critical Infrastructure Sector Response Planning. Critical infrastructure workers include those employed in government facilities, health care, transportation systems, and commercial facilities. The CDC in its update clarified, “reintegrating . . . workers who are not experiencing any symptoms and have not tested positive back into onsite operations should be used as a last resort and only in limited circumstances, such as when cessation of operation of a facility may cause serious harm or danger to public health or safety.” The CDC recommends pre-screening before allowing critical infrastructure workers to enter the workplace; onsite symptom assessment, including temperature screening, prior to each work shift; ensuring employees wear cloth masks; and maintaining social distancing.

Read more about the [updated CDC Critical Infrastructure Sector Response Planning](#).

DOL Issues Travel Time Guidance

The United States Department of Labor (“DOL”) recently issued an opinion letter regarding compensable travel time as it relates to foremen and laborers. The DOL stated all time spent by foremen traveling from a central location to the job site and back is generally compensable. The determining factor as to whether such time is compensable, as stated by the Supreme Court in Integrity Staffing Solutions, Inc. v. Busk, 135 S. Ct. 513 (2014), is whether it is “integral and indispensable” to the principal activities an employee is employed to perform.

The DOL opined that travel time to and from the job site to retrieve or drop off a company truck is “integral and indispensable” to the performance of the foreman’s job by virtue of the truck being needed at the job site and the safety and security precautions of requiring the truck to be stored somewhere other than the job site. However, this does not apply to laborers, as the DOL opined

their time traveling is not “integral and indispensable” to their job. Thus, the commute to work for the laborers, even if they elect to meet at a central location with the foremen before traveling to a job site, is akin to normal commuting by employees, which is not compensable. The DOL further addresses travel to remote job sites and employer-provided hotels in the opinion letter.

The DOL opinion letter is available at the following link: [DOL Opinion Letter](#).

ICE Extends I-9 Flexibility

On March 19, 2020, the U.S. Immigration and Customs Enforcement (“ICE”) announced that it would waive the requirement that workers present original documentation in-person in order to complete the Form I-9 when starting employment with employers that are operating remotely during the pandemic. Instead, employers were permitted to accept copies of the documents submitted via-fax or electronic means, provided that “COVID-19” was marked as the reason for the delay in physical inspection and that physical inspection of the required documents occurred within three days of returning to work. This policy was originally set to expire on May 19, 2020, but has been consistently extended throughout the COVID-19 pandemic.

On November 18, 2020, ICE extended this policy through December 31, 2020, and has reiterated that the relaxed requirements for completing the Form I-9 apply only to those workplaces that are operating remotely.

More information is available at the following links: [ICE News](#); [ICE News](#).

From the Lighter Side: 2020: A Space Odyssey?

A helicopter crew looking for bighorn sheep in the Utah desert earlier this month discovered a large, gleaming metal monolith in a small clearing among the red rocks. There was no clear indication of how or when the 10-foot tall structure, reminiscent of the monolith in the 1968 film “2001: A Space Odyssey,” was placed in this remote location.

Then, a few days after the structure was discovered, the Bureau of Land Management reported that it had mysteriously disappeared. Officials believe this was a “new wave” art installation.

More information can be found [here](#) and [here](#).

Firm News

Sniffen & Spellman Secures Defense Verdict for Employer After Six-Day Jury Trial in Federal Court - Attorneys **Elmer Ignacio** and **Dawn Whitehurst** and paralegal **Karen Barger**, along with Department of Corrections General Counsel Lance Neff, secured a defense verdict for the Department of Corrections against an African-American/Baptist employee who claimed race and religious discrimination. The verdict was announced on November 24, 2020, following a six-day jury trial in the U.S. District Court for the Northern District of Florida. Represented by two law firms which included a nationally prominent civil rights attorney, the employee alleged the Department discriminated against him on the basis of race and religion by not selecting him for promotion. Our attorneys argued and the jury determined the Department had legitimate non-discriminatory reasons for selecting another candidate for promotion.

On November 4, 2020, **Terry J. Harmon** presented “Child Find Issues in Florida” and served as a panelist at the Education Law Association’s 66th Annual Conference.

Sniffen & Spellman, P.A. proudly sponsored the Goodwill Classic Golf Tournament to fundraise and support their mission of providing job training and placement services to people in the community with significant barriers to employers.

Sniffen & Spellman sponsored the Deck the Halls event for the Tallahassee Senior Center. As part of the fundraising event, Michael Spellman co-hosted the Deck-tinis and More virtual martini making class on November 19, 2020.

Past Issues of the Labor and Employment Law Alert Available on Website

You may view past issues of the Labor and Employment Law Alert on the Firm’s website: www.sniffenlaw.com. After entering the Firm’s website, click on the “Publications” page. Our Firm also highlights various articles of interest on our official Twitter feed, @Sniffenlaw.