SNIFFEN & SPELLMAN, P.A.

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CDC Panel Eases Quarantine Guidelines for Vaccinated Persons with Exposure/Suspected Exposure to COVID-19

A CDC advisory panel issued updated guidance on February 12, 2021 regarding quarantine for vaccinated persons exposed to others with confirmed or suspected infection of the COVID-19 virus. The CDC Advisory Panel on Immunization Practices (ACIP) regularly issues interim recommendations for the use of the two currently FDA authorized COVID – 19 vaccines - Pfizer and Moderna.

The panel's interim guidance suggests that vaccinated persons who meet the following criteria need not quarantine if exposed to someone with suspected or confirmed COVID-19:

- Fully vaccinated (i.e, > two weeks from second dose)
- Are within three months of receiving the second dose
- Have remained asymptomatic since the current COVID-19 exposure

Persons who do not meet all three criteria should quarantine the same as non-vaccinated persons (14 days from exposure or 7 days if negative test (with testing conducted 5 or more days after exposure). All persons, whether fully-vaccinated or not, should continue to mask, social distance, avoid crowds and poorly ventilated areas, and wash hands frequently.

The updated interim guidance can be found here.

OSHA Says Vaccinated Employees Should Still Wear Masks And Follow Other Practices Related To COVID-19

With vaccine rollout growing around the country, many are asking whether COVID-19 safety precautions such as masks and physical distancing are necessary once one is vaccinated. OSHA has recently issued guidance stating that employers should still require employees who have received the COVID-19 vaccine to wear masks and follow other precautions in the workplace.

Read more here.

OSHA Revises COVID-19 Work Place Guidance

In January 2021, OSHA issued revised guidance, "Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace." Some new elements recommended in the guidance include conducting safety hazard assessments; adopting employee absence policies which do not punish workers as a way to encourage potentially infected workers to stay home; and

implementation of protections from retaliation for workers who raise COVID-19-related concerns. This OSHA guidance is not a standard or regulation and creates no new legal obligations. Rather, according to OSHA, the recommendations set out in its guidance "are advisory in nature, informational in content and are intended to assist employers in recognizing and abating hazards likely to cause death or serious physical harm as part of their obligation to provide a safe and healthful workplace."

Read the OSHA revised guidance here.

Florida Commission on Human Relations will Investigate LGBTQ Discrimination

The Florida Commission on Human Relations recently announced that it will investigate claims of discrimination based on sexual orientation and gender identity in employment, housing, and public accommodation. The notice comes after last summer's decision by the US Supreme Court in *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020) holding that terminating individuals because of their sexual orientation or transgender status was a form of prohibited sex discrimination under federal employment discrimination laws.

Read more here.

ICE Provides Additional Extension for Flexibility in I-9 Compliance

The U.S. Immigration and Customs Enforcement (ICE) has again extended employers flexibility in complying with the requirements related to Form I-9, due to COVID-19. It only applies to employers operating remotely and through March 31, 2021. It allows employers flexibility in obtaining, remotely inspecting, and retaining copies of the identity and eligibility documents needed to complete the Form I-9.

Some key points:

(1) Employers may continue to inspect I-9 documents virtually.

(2) Employees who are physically present at their place of employment must submit to routine, in-person I-9 verification.

(3) Employees who begin their employment remotely must submit to an in-person I-9 verification once their employer's in-person operations resume or once those employees are physically present at their work location, whichever comes first.

(4) Employers who are ineligible for the I-9 flexibility are permitted to assign authorized representatives to conduct in-person I-9 document review in their place.

Read more here.

The Stimulus Package and the $15 Minimum Wage: Where Does it all Stands Now?

As readers of the Labor and Employment Law Alert know, the citizens of Florida have recently voted to enact a constitutional amendment gradually raising the minimum wage to $15 per hour, a level that would be reached in 2026. An increased minimum wage has also been part of the discussions surrounding the passage of a new coronavirus relief bill in congress. The measure, which would also increase the minimum wage gradually, would bring the minimum wage to $15 per hour nationwide by 2025. That said, there appears to be a bit of a stall in the process and in the potential to include this measure in any final version of a stimulus bill. The Senate Parliamentarian ruled that the measure could not be included in the bill as a procedural matter given that the bill is being passed through the budget reconciliation process. It is unclear at posting whether the measure will be included in the final bill and in what form.

More can be found about the Senate Parliamentarian's ruling here.

Paid Military Leave Now Potentially a Requirement Under Federal Law

The Seventh Circuit Court of Appeals, which has jurisdiction over lawsuits filed in Wisconsin, Illinois, and Indiana, issued a ruling on February 3, 2021, which could potentially require an employer to give paid military leave. In *White v. United Airlines, Inc.*, a pilot who was also a U.S. Air Force reservist sued United claiming it denied him pay for military leave even though United provided pay for other types of absences such as sick leave and jury duty. The pilot sued under the Uniformed Services Employee and Reemployment Rights Act (USERRA), which prohibits employers from discriminating on the basis of military service. Under USERRA, an employee who takes military leave shall be entitled to the same "rights and benefits" as other employees who are on non-military leave. The lower court had dismissed the pilot's claim, but the Seventh Circuit overturned the dismissal and concluded USERRA mandates employers provide paid military leave to the extent it provides paid leave for other comparable types of absences. The Seventh Circuit did not specifically rule military leave is comparable to sick leave and paid leave for jury duty. Rather, the jury will make this determination as the case proceeds to trial.

Read the opinion here.

A New Day at the NLRB

President Biden has recently made his pick for NLRB general counsel and it is Jennifer Abruzzo. Ms. Abruzzo has significant experience with the NLRB having worked for the agency for decades and served as NLRB Deputy General Counsel and Acting General Counsel. The General Counsel position has discretion to shape labor policy at the agency through the power to issue complaints, often times used to push novel precedents or legal theories. Ms. Abruzzo's nomination still has to be confirmed by the Senate.

The NLRB has also acted recently, after the election of President Biden, to rescind a number of General Counsel memoranda issued during President Trump's administration. These memoranda provide guidance on the application and interpretation of federal private sector labor law. The rescinded memoranda include memos issued on the propriety of handbook rules and whether

certain rules chill protected concerted union activity and the deferral of unfair labor practice charge case handling when there is a contemporaneous grievance proceeding, among others. Employers must be aware of potential changes in the legal landscape in this area of the law under President Biden's administration.

Health Care Company Indicted for Labor Collusion

A federal grand jury has indicted Surgical Care Affiliates LLC (SCA) and its related entities for colluding with other competitors in its hiring process. Specifically, the U.S. Department of Justice claims that SCA made agreements with competitors that it would not solicit their senior level employees in violation of the Sherman Antitrust Act, which prohibits companies from engaging in activity to reduce competition in the marketplace. SCA has been accused of entering into these agreements in an effort to allocate senior level employees between themselves and competitors, thus stifling the marketplace for employees. A maximum penalty of $100 million can be assessed under the Sherman Antitrust Act and may be increased to twice the gain derived from any criminal conduct or loss suffered by victims if either amount is greater than the statutory maximum. While this case is still in its earliest stages, both the FBI and the Department of Justice appear to be pursuing criminal charges fully. Businesses must keep antitrust laws front of mind in pursuing certain personnel arrangements.

To read more on this issue, please refer here.

New Administration Withdraws Department of Labor Opinion Letter Classifying "Gig Economy" Workers as Independent Contractors not as Employees

The Department of Labor on February 21, 2021, withdrew an opinion letter it previously issued in 2019 in which it determined workers for a virtual market place company (VMC) met the criteria as independent contractors and not as employees. Also known as a "gig business," a VMC typically operates as an online or smartphone service which connects service providers to customers (*e.g.*, Uber, Lyft, and Instacart). Withdrawing this opinion letter comes at the heels of the DOL halting the implementation of a final rule on independent contractor classification, which was published during the Trump administration. The rule, which had a delayed effective date of March 8, 2021, clarified that the "economic realities" test be applied when determining whether a worker is an independent contractor or an employee. The delayed effective date allowed the Biden Administration to halt implementation of the rule pending further agency review. Further roll back of rules and other regulations from the former administration are expected. Employers should closely monitor for new proposed rules and guidance by the new administration. Keeping up to date on policies will avoid misclassification of workers as independent contractors.

On the lighter side: Florida's Fourth DCA Upholds *The People's Court*

Queue the intro music, the Florida's 4th District Court of Appeals has upheld a decision issued by the television show *The People's Court,* a long running staple of daytime television which has been on air since 1981. The current judge of the show, Marilyn Milian, has been issuing verdicts on the television series since 2001 after leaving her position as a Judge of the Miami Circuit Court.

In a suit arising out of the purchase of an automobile originally filed in Indian River County, Plaintiff Larkin and Defendant Grutman agreed to settle their dispute through appearing on the show in August 2020, allowing Milian to act as the arbitrator to their case. Apparently dissatisfied with the handling of the case, Larkin moved to have this settlement agreement dissolved after appearing on the show, and was promptly denied by the Indian River County Court. On appeal before the 4th District Court of Appeals, the Court found that the County Court had not abused its discretion in denying Larkin's motion and functionally upheld the ruling of *The People's Court*.

To read more, please refer here.

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