

SNIFFEN & SPELLMAN, P.A.

LABOR & EMPLOYMENT LAW ALERT February 2022

Congress Passes Law with Major Changes for Arbitration Agreements

Many employers utilize arbitration agreements. Those agreements with employees require employees with certain employment related disputes, like employment discrimination claims, to bring those claims or disputes before a neutral third-party arbitrator and does not permit such claims to be brought in courts where employees are typically entitled to a jury trial on their claims. There are many advantages to arbitration, including streamlined processes, faster outcomes, and lower costs as compared to traditional litigation.

Congress though just this month radically changed this landscape for employers passing legislation that forbids forced arbitration of most sexual assault and harassment claims brought by employees. The legislation nullifies existing arbitration agreements to the extent they encompass these claims. The legislation has not yet been signed into law by President Biden, but employers need to act now to review their arbitration agreements and consult counsel regarding whether anything in those agreements needs to be addressed in light of this Congressional action.

Read more [here](#).

The Third Annual H-1B Lottery Starts Tomorrow

Registration for the third annual H-1B lottery begins tomorrow, March 1, 2022 and will close on March 18, 2022. For most employers, this will be the only opportunity this year to attempt to secure temporary work visas for skilled foreign workers. Last year 308,613 registrants were entered and 131,970 foreign workers were permitted to apply for H-1B visas over the course of three selection periods. Once registration closes, it will not reopen until March of 2023.

To read more please refer [here](#).

The State of COVID Vaccine Mandates

This Alert has kept readers abreast of the ever-evolving legal landscape concerning COVID vaccine mandates. Employers are still waiting on a potential new mandate from OSHA after the Supreme Court action on the over 100 employee employer COVID vaccine mandate reported on last month. This month's update focuses on the status of the COVID vaccine mandate for federal contractors.

The 11th Circuit Court of Appeals is set to review and hear arguments concerning the federal contractor vaccine mandate on April 8th. Of course, a federal district court has enjoined this mandate nationwide. It is that decision that will be before the 11th Circuit on appeal.

The US Supreme Court will Hear Important Free Speech Case

The United States Supreme Court has agreed to decide [303 Creative LLC v. Elenis](#), an important case involving free speech rights of business proprietors. The case involves a website designer that refused to design websites for same-sex weddings because she opposes same-sex marriage on religious grounds. The case comes to the Supreme Court from Colorado. Colorado state law prohibits businesses open to the public from discriminating against gay people. The website-designer challenged the law and the Supreme Court will decide whether the law violates the designer's rights to free expression under the First Amendment of the US Constitution.

US Women's Soccer Team Settles Equal Pay Act Lawsuit

After years of litigating claims of disparate pay in violation of the Equal Pay Act, [a settlement has been reached](#) in the much talked about litigation concerning the US National Women's Soccer Team. [ESPN](#) reports the settlement to be in the 24-million-dollar range. The Equal Pay Act prohibits sex discrimination and guarantees equal pay for equal work. Employers must be cognizant of the legal obligations imposed by the Equal Pay Act and other state and federal laws when setting pay for employees.

More Developments in Labor Relations Law

The Labor and Employment Law Alert has highlighted numerous developments in the field of labor relations over the past several months, and this month will be no different. The following are some quick hits in this area that is always developing.

- [President Biden issues Executive Order mandating union labor agreements for federal construction projects worth at least \\$35 million.](#)
- White House releases [report](#) from its Task Force on Worker Organizing and Empowerment, recommending inter-agency coordination on the issue. NLRB General Counsel [affirms](#) commitment to such coordination.
- [Student Athletes File NLRB Charge Seeking to Organize.](#)
- NLRB General Counsel [announces](#) that Board will consider whether to seek interim injunctive relief in unfair labor practice cases concerning union organizing campaigns.
- Right to Work though still alive in the [11th Circuit](#).

Florida Appellate Court Holds Public Employee's Job Complaints Not Protected by First Amendment

The First District Court of Appeal's recent decision in *Daniels v. Riggien* is an important one for public employers. The case involved a retaliation claim under the First Amendment of the US Constitution. The employee claimed she engaged in protected speech under the constitution and

was retaliated for it. Public employees retain constitutional rights, including the right to free expression, even when they accept a job with the government.

The speech at issue in the case? The employee, a legislative aid, told higher ups that she was required to perform non-governmental job tasks and that this was a waste of taxpayer money. She was later fired. The First District held that the speech was not protected under the First Amendment because it was just a job complaint. Job complaints made in the capacity of a public employee's role as an employee, and not as a citizen on a matter of public concern, are not protected by the First Amendment.

Read more [here](#).

March Madness and Office Betting – Legalities to Consider

March Madness is an exciting time each and every year even if your team is not in the tournament. Many offices might wish to hold a March Madness pool contest, having employees fill out brackets with their predictions on the outcome of the tournament. Famously, even presidents fill out brackets with their predictions as to which team will bask in that one shining moment.

That said, employers should be wary about sponsoring impermissible gambling pools or brackets. While the Supreme Court held in recent years that gambling on sports was not illegal under federal law, state laws still generally prohibit it. Employers might wish to propose an alternative to gambling office pools by creating a contest for a non-monetary prize such as a gift card.

From the Lighter Side: Life Imitating Art and Snakes on a Plane

The lawyers and staff at Sniffen and Spellman are film buffs like anyone else including of the Samuel L. Jackson classic "[Snakes on a Plane](#)." The old adage that sometimes life imitates art was proven true recently when an AirAsia flight needed to be diverted because a snake found its way onto the plane, or at least what appeared to be a snake. As reported by NPR, this is not the first time this has happened with a snake even once finding its way into a plane's cockpit. One snake on a plane would be even be too much for this author's liking.

Read more [here](#).