SNIFFEN & SPELLMAN, P.A.

LABOR AND EMPLOYMENT LAW ALERT
December 2023

Upcoming Employment Law Changes in 2024

In 2024, several legislative and rule changes are scheduled to come into effect, these include:

- January 1, 2024 – OSHA requirements for reporting workplace illnesses and injuries goes into effect. Please see our November update or go here for more information.
- January 1, 2024 – Section 316.126, Florida Statutes, is amended to require motorists to move over or slow to 20 miles per hour or less for disabled vehicles on Florida roads if the vehicle is stopped and displaying hazard lights, using road flares, or if people are visibly present. Violations of this statute can result in fines.
- February 26, 2024 – NLRB's Final Rule on Joint Employment stating that joint employers are classified as those that have control over the essential terms and conditions of employment goes into effect. Please refer here for more information.
- September 30, 2024 - Florida's minimum wage will increase to $13.00 per hour.

We also anticipate that other changes will likely go come into effect soon, including the rescheduling of marijuana from a Schedule I to Schedule III drug based on the recommendations of the Department of Health and Human Services in August of 2023. While the DEA has yet to take action regarding this recommendation, this would effectively make marijuana usable in medical treatments, and could cause a ripple effect due to the application of the Americans with Disabilities Act, and other rules which prohibit discrimination on the basis of medical conditions. We will be keeping an eye on the rescheduling as it develops, and will provide updates throughout the year as necessary.

Department of Labor Releases Statistics for 2023

The Department of Labor Wage and Hour Division (WHD) has releases its recovery statistics for 2023, and has claimed that more than $274 million has been recovered for over 163,000 workers in 2023. Notably, the Department of Labor has identified the construction and food service industries as those with the highest violations in 2023, claiming that $35.5 million and $39.6 million were recovered from these industries respectively. The majority of the audits conducted by the WHD revolve around violations of the Fair Labor and Standards Act, which dictates that most blue collar workers be paid on an hourly basis, and that they be paid overtime at a rate of 1.5 times their regular rate for working more than 40 hours in a workweek. Regarding the food service industry, the WHD also seeks violations including the unlawful withholding tips and illegal tip pooling which can lead to significant fines and damages being paid to employees.

The best defense to these claims is the maintenance each employee's time records for at least five years, the use of accurate time recording, and a regular internal audit of your internal procedures to ensure ongoing compliance.

To see more of the statistics released by WHD, please refer here.

Suing Unions for Property Damage During Strike Did Not Violate the NLRA

On December 28, 2023, the Supreme Court issued an opinion affirming that labor unions could be sued for damage to property caused by striking employees. Glacier Northwest sells ready-made concrete in Washington State, which is delivered in trucks with rotating drums that keep the concrete from solidifying. During negotiations related to a collective bargaining agreement in 2017, and on August 11, 2017, the union called for a work stoppage. While Glacier acted quickly to instruct drivers to complete deliveries already in progress, the union told these same drivers to cease work immediately. While Glacier was able to act quickly and recover its trucks before the cement dried inside of them, they were forced to essentially destroy the concrete inside of them. Ordinarily, the National Labor Relations Act (NLRA) prohibits actions against labor unions in retaliations for striking, including the filing of suit for damages for lost work. However, because the complaint alleged that the union coordinated the strike to cause the essential destruction of the concrete, the union failed to "take reasonable precautions to protect" against the foreseeable damage to Glacier's property, a key requirement of unions under the NLRA. Accordingly, Glacier did not violate the NLRA by filing suit.

To read more, please refer here.

Facebook Settles Department of Justice Suit

In early 2021, the Department of Labor (DOL) audited Facebook due to allegations related to its PERM applications, which are part of the applications necessary to permit foreign citizens to work in the United States permanently. As a result of these audits, the Department of Labor determined that Facebook had not appropriately advertised these positions, leading to foreign workers being recruited over U.S. residents and citizens. Following this determination, the Department of Justice (DOJ) filed suit, alleging that Facebook engaged in discriminatory hiring practices. As a component of this settlement, Facebook was order to pay a $4.75 million civil penalty, and up to $9.5 million to eligible victims of the alleged discrimination, as well as train its employees on complying with the notice and advertisement procedures required prior to filing a PERM.

To read more, please refer here.

Supreme Court Dismisses ADA Case Resolving Circuit Split as Moot

Deborah Laufer has generated hundreds of lawsuits across the country by bringing suit against hotels whose websites do not state whether or not they have rooms for the disabled. Through the prolific nature of her filings, she managed to generate a circuit split in federal court, specifically, the Second, Fifth, and Tenth Circuit Couts of Appeal have found that she lacks standing to sue

under the ADA as she never intended to or attempted to stay at the hotels, while the First, Fourth, and Eleventh Circuits have found that she has the requisite standing. In an odd twist to the case of *Acheson Hotels, LLC v. Laufer*, the case before the same Court that was set to resolve this split, her attorney, Tristan Gillespie, a Maryland attorney, was suspended from the practice of law for demanding $10,000 in attorney's fees for each case he filed on Laufer's behalf, despite using boilerplate complaints, and funneling hundreds of thousands of dollars to the father of Laufer's grandchild. Following these revelations, Laufer dismissed all of her pending cases with prejudice. While the Supreme Court could still have resolved this question of standing, which has an effect on numerous ADA related issues throughout the country, the Court determined instead that the dismissal was not an attempt to evade review but rather remanded the case to the Circuit Court to dismiss the matter as moot, leaving open the question of whether a viewing a website that does not state whether or not disabled accommodations are available is enough to bring suit.

To read this opinion, please refer here.

Firm News

The Firm sponsored the martini bar at the Tallahassee Senior Center's Deck the Halls fundraiser on Friday, December 1.

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

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