SNIFFEN & SPELLMAN, P.A.

LABOR AND EMPLOYMENT LAW ALERT
April 2024

Florida Modifies Registration Requirements For Public Employee Bargaining Agents

On March 22, 2024, the Governor signed Senate Bill 1746 into law, which modified some of the requirements for unions representing public employees. From a membership perspective, public safety telecommunicators, emergency medical technicians, and paramedics who are members of unions whose majority membership is comprised of law enforcement officers, correctional officers, correctional probation officers, firefighters, public safety communicators, emergency medical technicians, or paramedics, have the ability to have their dues deducted directly from their paychecks upon the request of the bargaining agent. Employees may cease the direct deductions by providing both the union and their employer with written notice thirty days prior to when they want the deductions to stop.

From a organization perspective and in order to be registered as a bargaining unit, a union must now submit, as part of its application, the amount and frequency ongoing union dues and a current annual financial statement prepared by a independent certified public accountant in addition to other established requirements. This financial statement is different from the previous requirements, which only required that the financial statement be audited, without establishing who might be required to prepare it. This financial statement must also include disbursements made by the union in addition to other established categories of information. Additionally, in order to renew its registration, unions must update the information provided in their application, including the information in the financial statement annually.

To read more about this law, please refer here.

Florida Bars Local Governments From Mandating Wages and Heat Protection in Contracts

On April 12, 2024, HB 433 was signed into law. This law modified Section 218.077, Florida Statutes, and created Sections 448.106, and 448.077, Florida Statutes, to preempt local government entities from regulating certain labor practices. Specifically, the modifications to Section 218.077, Florida Statutes, preempt local governments from controlling or considering the wages to be paid to employees of entities that they contract with, and will go into effect September 30, 2026. The newly created Section 448.106, Florida Statutes, prohibits local government entities from establishing regulations related to heat mitigation, training on heat mitigation, heat exposure protections, or first aid for heat related issues through either general regulation, or through its competitive procurement process unless doing so is required by a federal grant. Finally, Section 448.077, Florida Statutes prohibits local governments from regulating scheduling practices of employers in any form.

To read more about these changes, please refer here.

HB 49 Expands Teenager's Ability to Work in Florida and Reduces Employer's Restrictions

HB 49 was signed into law on March 22, 2024, and dramatically reduces the requirements for employers who want to employ 16- and 17-year-olds throughout the State. As we previously reported in March, this bill expands the hours that those under the age of 18 can work, permitting 16 and 17 year olds to work as much as those who have reached the age of majority except during the school week (unless the minor is enrolled in virtual school, has dropped out of school, or is in a home education program, in which case there are no limits for when school is in session) and removing mandatory break provisions for 16 and 17 year olds. It remains fundamentally unchanged from the version reported in March, and is codified in Section 450.081, Florida Statutes.

To read more, please refer here.

Texas Court Strikes Down NLRB Joint-Employer Rule

On March 8, 2024 the U.S. District Court for the Eastern District of Texas blocked the National Labor Relations Board's (NLRB) new joint-employer rule. The joint-employer rule would have made it more likely for employers to be deemed joint employers. The NLRB issued its new rule in October 2023 to determine whether two or more entities may be considered joint employers for purposes of the National Labor Relations Act (NLRA). The new rule was meant to take effect March 11, 2024.

With the NLRB's past rule, entities were only considered joint employers if they exercised actual and direct control over a specified list of essential terms and conditions of employment. Under the new 2023 rule employers are considered joint employees if " they share an employment relationship with those employees under common-law agency principles" and they "share or codetermine those matters governing employees' essential terms and conditions of employment," which the rule defined as having "control (whether directly, indirectly, or both)" over "one or more of the employees' essential terms and conditions" whether or not the entity actually exercised such control." The court found that the new joint employer rule did not create a clear standard for employers to follow and that the rule was arbitrary and capricious. The judge also found that the rule failed to address the impact the rule would have on various industries. The NLRB responded to the decision stating they are considering the next steps in this case.

Find a copy of the opinion here.

Eleventh Circuit Finds that But-For Causation Needed for ADA Discrimination Claims

The Eleventh Circuit issued an opinion affirming a district court's grant of summary judgment for an employer in an ADA claim. The plaintiff, Jennifer Akridge, appealed the summary judgment for defendant Alfa Mutual Insurance Company. Akridge brought a claim under the Americans with Disabilities Act (ADA). Akridge argued that the Alfa discriminated against her by terminating

her to avoid paying healthcare costs related to her multiple sclerosis (MS). Alfa self-insures for medical plans. Alfa claimed they terminated Akridge because her position was no longer needed and they needed to cut her position to save on business expenses. Akridge's medical plan was administered by a third party and the defendant claimed they had no way to determine Akridge's healthcare costs. Further, Alfa did not maintain information about individual employees' healthcare costs.

Akridge argued that she was not required to show her disability was a but-for cause of her termination but may simply show it was "a motivating factor," but the court disagreed with this argument. The court held that because the ADA does not contain similar motivating-factor language as found in Title VII, Akridge cannot resort to this lesser showing and a but-for standard had to be followed for discrimination claims. The court found Akridge did not provide sufficient evidence to support a pretext argument and Akridge had failed to present sufficient evidence of "mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination" to survive summary judgment.

Find the opinion here.

Firm News

Michael Spellman presented "Becoming a Master Facilitator of Employment Law" at the 2024 Southeast Loss Control (SELC) Conference on April 10, 2024.

Rob Sniffen presented a Legal Update on Sovereign Immunity at the Florida School Boards Insurance Trust's Spring Meeting on April 17, 2024.

Michael Spellman presented "It's All Fun and Games Until Someone Calls HR" at the 2024 Florida League of Cities Summit on April 18, 2024.

The Firm sponsored the 2024 Tallahassee Tennis Challenger at Forestmeadows Tennis Complex. Proceeds from the annual tournament benefit the D. Mark Vogter, M.D. Neuro-Intensive Care Unit at Tallahassee Memorial Healthcare.

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

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