



SuperVision™ TODAY

Labor & Employment News

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Careful What You Ask For: The EEOC Takes a Hard Line on the Use of Arrest and Conviction Records in Employment Decisions

by [Alyesha P. Asghar](#)

The U.S. Equal Employment Opportunity Commission (EEOC) has long contended that when employers use criminal histories to make employment decisions, they run the risk of violating Title VII of the Civil Rights Act by basing their decision on information that has an unfair impact on minorities. The EEOC recently stepped up its enforcement efforts and publicly settled with Pepsi for \$3.13 million over the beverage company's use of a blanket exclusion policy of people with criminal records. Shortly thereafter, the EEOC issued an Enforcement Guidance clarifying its position concerning the use of criminal records in employment decision-making. This Guidance should be considered by any employer covered by Title VII before using criminal records to make

Notes from the Chair & Executive Editor

The second quarter of the year here means work has begun in earnest on our annual Regional SuperVision conference. The conference is set for Charleston, W.Va. on June 22, 2012 during the height of Charleston's FestivAll and just before the Wine and All That Jazz celebration. This year's theme is a look at the issues surrounding an employee's tenure at a company in a single day. We will walk participants through best practices on handling the issues most likely to arise in dealing with a "typical" employee during the course of that employee's career with a company. From the opening steps of hiring and recruiting to ensuring the right employee was hired, to navigating complex employment issues that may arise, through the final separation from the employee, we will cover all aspects of an employee's career in a "can't-miss" session. We believe that our SuperVision seminar has become the premier labor and employment conference in the region. We hope you take the opportunity to join us later this month - there's still time to [register!](#)

This edition of *SuperVision Today* covers a number of hot topics. Alyesha Asghar explains the EEOC's recent enforcement guidelines on the use of arrest and conviction records in the hiring process. Pete Rich discusses the pros and cons of taking an employment dispute to arbitration, as opposed to litigation. Erin Jones Adams walks us through the always-complicated employee verification process. And Carrie Harris discusses the Supreme Court's recently recognized ministerial exception

employment decisions.

Read the full article on our [website](#).

Pros and Cons of Employee Arbitration Agreements - A Practical Discussion

by [Peter R. Rich](#)

Agreements to compel the resolution of most employment related disputes are enforceable under the Federal Arbitration Act (FAA). The courts, including the United States Supreme Court, have mandated the enforcement of arbitration agreements in employment cases under the FAA provided the agreements are fair, provide due process, and enable employees to preserve all the rights and remedies that they would have been entitled to in a court of law. See *Circuit City Stores Inc. v. Adams*, 532 U.S. 105 (2001); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 35(1991) (age discrimination claims); *State ex rel. Clites v. Clawges*, 685 S.E.2d 693 (W.Va. 2009)(sex discrimination and retaliatory discharge claims). However, an employer's decision to require arbitration of disputes as a condition of employment requires consideration of more than whether the agreement itself is likely to be upheld and that decision may well not be the same in all circumstances.

Read more on our [website](#).

U.S. Supreme Court Recognizes Constitutional Right of Religious Organization to Select its "Ministers"

by [Carrie M. Harris](#)

A religious organization has a constitutional right to make decisions about the hiring and firing of its "ministers" under the First Amendment. In a recent U.S. Supreme Court decision, *Hosanna-Tabor Evangelical Church and School v. E.E.O.C.*, 132 S.Ct. 694, 2012 WL 75047 (2012), the Supreme Court ruled that religious organizations can assert the "ministerial exception" under the First Amendment to bar employment discrimination suits by those who can be considered "ministers" of the organization.

from Title VII.

[Eric W. Iskra](#)
Chair, Labor & Employment Group

[Eric E. Kinder](#)
Editor, SuperVision Today

2012 E-Verify Laws Update

by [Erin Jones Adams](#)

On May 26, 2011, in *Chamber of Commerce of the United States of America et al. v. Michael B. Whiting et al.*, 131 S.Ct. 1968 (2011), the Supreme Court of the United States upheld states' rights to mandate use of the employment verification program (E-Verify) organized by the United States Department of Homeland Security (DHS) and Social Security Administration (SSA). As a result of this decision, the majority of states in and around the Spilman footprint have worked to enact legislation requiring its use. E-Verify is a free Internet-based system maintained by DHS through which employers can validate the employment eligibility of newly hired employees in a matter of seconds by electronically comparing the Form I-9 to records maintained by the DHS and SSA. If the information matches, the employee is deemed eligible to work in the United States. E-Verify will alert the employer if there is a mismatch that necessitates further examination.

North Carolina, South Carolina, Virginia and Tennessee have all passed legislation addressing the use of E-Verify for private and public employers based on varying conditions. Pennsylvania encourages use of the E-Verify program and has comparable legislation currently pending. Pa. SB 637, Reg. Sess. 2011-2012. West Virginia has introduced multiple bills (most recently on February 16, 2012) that would require the use of E-Verify. WV HB 4552, Reg. Sess. 2012.

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Labor & Employment Team Member

Peter R. Rich

Pete is a Member in the firm's Pittsburgh office and has more than 30 years of experience in labor and employment law. He has served as a chief negotiator for employers in a number of labor contract negotiations and has presented hundreds of labor arbitration cases. He also has hands-on experience with all types of human resource issues, including the drafting and administration of personnel policies, corporate downsizing programs and the defense of civil rights claims. Pete also has significant experience in workers' compensation law. He is admitted to practice in Pennsylvania and West Virginia.



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Responsible Attorney: Eric W. Iskra