



SupervisionTM TODAY

Labor & Employment News

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Labor & Employment Group

1-800-967-8251

Immigration Reform May Affect All Employers

by Larissa C. Dean

On January 29, 2013, President Obama announced his plan for comprehensive immigration reform. While the proposal to require mandatory, phased-in electronic employment verification has obvious implications for employers, the proposal to provide a pathway to earned citizenship may have an unforeseen effect on employers, as well. While surprising to some, many individuals in all walks of life do not have work authorization but are still members of the workforce.

Consider the following scenario: a long-term employee approaches you or a supervisor in your company and advises you that she provided you with a false social security card at the time she was hired, but that she now has a valid social security card and that she would like to update her records. How should an employer handle such a situation?

Read the full article on our

Notes from the Chair & Executive Editor

The Labor and Employment Group of Spilman Thomas & Battle would like to welcome you to our first newsletter for 2013. Before we say anything else, we have to ask: **Have you updated your FMLA poster?** Starting March 7, 2013, you need to be using the latest version that adopts the latest tweaks to the regulations implementing the Family and Medical Leave Act. Those changes will mainly

- * Make clear that veterans who may be entitled to military caregiving leave must have been discharged or released under conditions other than dishonorable within five years of when the leave begins;
 - * Create a more flexible definition for serious injury or illness of a covered veteran;
 - * Permit certification of a servicemember's serious injury or illness from any health care provider and not just those affiliated with the DOD, VA, or TRICARE networks;
 - * Extend qualifying exigency leave to eligible employees who are family members of members of the Regular Armed Forces;
 - * Increase the amount of time an employee may take for qualifying exigency leave related to the military member's Rest and Recuperation (R&R) leave from five days to up to fifteen days;
 - * Provide for qualifying exigency leave for parental care leave to provide care necessitated by the covered active duty of the military member for the military member's parent who is incapable of self-care; and
 - * Create a unique method of calculation of leave for airline flight crew employees.
- If you need a copy of this poster, please contact our nearest

[website](#).

Primer on West Virginia State Law Labor and Employment Claims?

by [Peter R. Rich](#)

On January 4, 2013, Judge Irene M. Keeley of the United States District Court for the Northern District of West Virginia issued a Memorandum Opinion and Order that partially granted the Defendant's Motion for Summary Judgment in the case of Eddy v. Biddle, Barr and Dolgencorp, LLC, Civil Action No. 1:11CV137.

Judge Keeley subsequently entered a Final Judgment on January 11, 2013, and the case was dismissed with prejudice. The Final Judgment has now been appealed to the Fourth Circuit by both parties. Even though this case is on appeal, Judge Keeley's discussion of the various claims Eddy asserted is instructive for attorneys coping with the shotgun-style litigation approach increasingly employed by those representing terminated employees (and helping employers perhaps avoid the suits in the first place). Judge Keeley's ruling on the Wage Payment claim is of particular interest in that it turned on an interpretation of when a "discharge" effectively occurs under the Act and, thus, triggering the 72-hour clock for paying all wages due.

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

How to Survive the Department of Labor's Wage and Hour Enforcement

by [Carl H. Hellerstedt, Jr.](#)

As most employers know, the federal wage/hour law under the Fair Labor Standards Act ("FLSA") includes the requirement to pay "non-exempt" employees time and one half of their "regular rate" for work in excess of 40 hours in a work week. The U.S. Department of Labor ("DOL") is charged with enforcing the FLSA through its Wage and Hour Division. (It is currently engaged in a multi-year

office, or get it at the Department of Labor's [website](#).

As you plan ahead for 2013, please keep in mind that we will conduct SuperVision symposia at three different locations this year: Pittsburgh in the spring; Charleston, West Virginia for our full symposium in mid-to-late June and Roanoke, Virginia in the fall. We will distribute more information about these conferences as details become available.

In this edition of Supervision Today, we take a look at a few topics in the ever-changing world of Affordable Care Act compliance, and will feature an article on the Act in each edition of SuperVision Today this year. Also in this issue, Larissa Dean explores recent concerns in immigration law; Carl Hellerstedt offers some timely wage and hour good advice and Pete Rich discusses a recent case regarding the West Virginia Wage Payment and Collection Act and what employers should do in response.

[Eric W. Iskra](#)

Chair, Labor & Employment Group

[Eric E. Kinder](#)

Editor, SuperVision Today

Taking a Look at the Latest on Affordable Care Act

by [Eric E. Kinder](#) and [Erin Jones Adams](#)

Employers nationally continue to struggle with how to respond and adapt to the ever-changing landscape that is the Patient Protection and Affordable Care Act (often known as ObamaCare or the ACA). We at Spilman Thomas & Battle will continue to work with you through 2013 and beyond as the implementing regulations for the ACA continue to be issued. We are working to identify strategies to help employers navigate the process in the manner that best serves their respective industries.

Before discussing guidance issued recently regarding wellness programs that are part of a health care plan, there is news of a bit of a reprieve. Originally all employers were to provide notice to their employees regarding their state health insurance exchange no later than March 1 of this year. The written notice would inform employees of the existence of the health exchanges in their state, the manner in which an employee may contact the exchanges and information on how an employee may be eligible for a premium tax credit if the employee purchases a health plan through an exchange and other related tax issues. States, however, have been slow to decide if they were going to establish an exchange, and if so, what the rules for that exchange would be. Accordingly, the Department of Labor has stated that employers are not required to comply until it issues regulations regarding employer compliance with these notice requirements. Currently, the Department of Labor expects the timing for distribution of notices to be late summer or fall of this year, and it is considering providing model generic language that employers can use. We will send out information to employers when these regulations are issued.

ongoing enforcement initiative focused on vendors performing services for the fracking and pipeline industry that has recovered nearly \$200,000 in wages in that industry alone.) Prudent employers will want to be diligent to ensure compliance with wage and hour matters in light of the DOL's willingness to audit employers.

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

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Jeffrey D. Patton

Mr. Patton is Member in Charge of our Winston-Salem office and leads that office's Labor and Employment practice. He also regularly practices in the areas of trial work and complex commercial litigation and class actions. Mr. Patton is involved in all types of employment litigation, as well as advising management on compliance issues in an effort to avoid or protect against lawsuits. He regularly provides advice, counseling and representation to employers and businesses on the full array of employment and labor issues, including EEO policies and practices and H2A and H2B workers programs, and also represents management in dealings with unions and union avoidance campaigns.



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Responsible Attorney: Eric W. Iskra