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SuperVision™ TODAY
Labor & Employment News

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How do you maintain at-will employment if you can't tell anyone?

by Alyesha P. Asghar

While two recent memoranda from the National Labor Relations Board ("NLRB" or "the Board") have helped clarify the Board's position, employers remain rightfully troubled by the NLRB's position that having employees acknowledge their "at-will employment" status may violate the National Labor Relations Act ("NLRA" or "the Act"). The concern with at-will employment disclaimers in employee handbooks - at least according to the NLRB - is that they can be interpreted by employees as a waiver of the employee's right to engage in protected activities under the NLRA and violate employees' Section 7 rights to engage in concerted activities (such as joining a union).

Read the full article on our website.

Notes from the Chair & Executive Editor

The last quarter of 2012 brought with it the quadrennial election results. On the employment front, the re-election of President Barack Obama means that the Patient Protection and Affordable Care Act (the "Affordable Care Act"), or as it is most commonly known "ObamaCare", is unlikely to be repealed or revised to any significant degree. Accordingly, we here at Spilman Thomas & Battle are putting together an internal task force designed to help you navigate your employer obligations under the Affordable Care Act for when some provisions go into law next year and some in 2014. As part of that effort, Joe Garcia sets out some of the impending deadlines under the Affordable Care Act before the majority of the law goes into effect in 2014.

In addition, the President's re-election means that current enforcement priorities at the National Labor Relations Board are likely to continue for at least the next four years. In the past we have explored the Board's attitudes towards social media, and in this edition Alyesha Asghar takes a look at the Board's treatment of the standard at-will employment disclaimers contained in most employers' handbooks and acknowledgment forms. Criticism of at-will disclaimers appears to be more and more of a focus for the Board.

We also present an article from Scott Adams in our Winston-Salem office regarding the impact of the Supreme Court's decision in the *Dukes v. Wal-Mart* class action and how courts are treating class actions in its aftermath. And for our West Virginia readers, Jennifer Greenlief examines a very recent Supreme Court of Appeals

Update on Class Actions Following *Dukes v. Wal-Mart*

by R. Scott Adams

In the wake of *Wal-Mart Stores, Inc. v. Dukes*, federal courts throughout the country have altered their treatment of class action in important ways that affect employment cases. In addition to its high profile, due to Wal-Mart's status as one of the largest private employers in the nation and the putative class size of 1.5 million people, *Dukes* garnered national attention because the Supreme Court of the United States clarified certain issues that are important for class action practitioners. This update will explain (i) brief background information about *Dukes*, (ii) trends in employment class actions since *Dukes*, (iii) an alternative theory for achieving class treatment, and (iv) the effect on collective action under the Fair Labor Standards Act.

Read the full article on our website.

Latest West Virginia Supreme Court Case Awakens Some Sleeping Giants

by Jennifer S. Greenlief

On November 7, 2012, the West Virginia Supreme Court of Appeals handed down a ruling on an age discrimination case that has important ramifications for all employers in the state. Although the opinion contained no new points of substantive law, the application of law to the particular facts of this case will likely change the dynamics of employment discrimination lawsuits considerably.

Read the full article on our website.

decision that brings troubling news for employers in the state.

Finally, as you plan for 2013, please remember our annual Regional SuperVision conference in Charleston in late June. We are still working on the final details of the agenda as we go to press, but look for more information on what we consider the crown jewel of labor and employment conferences.

Eric W. Iskra
Chair, Labor & Employment Group

Eric E. Kinder
Editor, SuperVision Today

Important Employer-Related Provisions of the Patient Protection and Affordable Care Act Scheduled to Begin in 2013

by Joseph D. Garcia

Following the United States Supreme Court's 5 to 4 decision this summer in *National Federation of Independent Business et al. v. Sebelius*, __ U.S. __, 132 S. Ct. 2566 (2012) and the recent presidential election, it is now certain that the Patient Protection and Affordable Care Act (the "Affordable Care Act") is going to be part of the employment landscape. It is impractical to think the law will be repealed or overturned in the next four years, if ever. Instead, employers should prepare to meet the challenges and opportunities that health care reform will bring.

Most of the lynchpin provisions of the Affordable Care Act are scheduled to begin on January 1, 2014. These include the play-or-pay mandate for employers with over 50 full-time employees, tax credits for small business who provide health care coverage to employees and the effect of state health insurance exchanges on the overall marketplace. Employers should be evaluating how these provisions will affect their businesses right now. But some of the provisions of the Affordable Care Act are set to begin in 2013 will have a substantial effect on employers. Here is a quick summary of those changes.

Read the full article on our website.

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Kevin is a Member in the firm's Charleston, W.Va. office and is co-chair of the firm's Labor & Employment Practice Group. His practice encompasses the gamut of traditional labor law issues facing employers, trial work in employment matters,

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