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SuperVision™ TODAY

Labor & Employment News

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The Board Plays On: The NLRB Clarifies Its Position on At-Will Disclaimers

by Alyesha Asghar Dotson

In 2012, the National Labor Relations Board (NLRB) set the business community atwitter when an administrative law judge in *American Red Cross* decided that an at-will disclaimer in an employee handbook violated the National Labor Relations Act (NLRA) by being overly broad. In that case, the NLRB made the unprecedented argument that an at-will employment policy could violate Section 7 of the NLRA because it could chill an employee's ability to communicate with others about wages, hours and working conditions or to engage in otherwise protected activity.

Read the full article on our website.

Interns This

Notes from the Chair & Executive Editor

Welcome to the second quarter edition of *SuperVision Today*, the quarterly e-newsletter published by Spilman's labor and employment group. As part of our ongoing commitment to client service, we continue to expand the ways you can gain updates on the latest in labor and employment news and regulations. In addition to this quarterly newsletter and our SuperVision symposium series, we are excited to now offer you the Spilman SuperVision app for iOS devices, available for download in the Apple App Store. This app allows you to choose from several common employment situations and walk through a simple decision tree on the topic of your choice via a series of yes/no questions. By using the app, you will gain a better understanding of your particular issue and what your options are, and learn at what point you should seek the counsel of a knowledgeable legal advisor for that issue.

Before we discuss our upcoming regional SuperVision symposium, we wanted to ask: ***have you started using the new I-9 forms?*** These forms were recently updated by the United States Immigration and Naturalization Service, and all employers must be using the newly revised forms now. Should you have any questions about how to complete the I-9 or whether you are using the right form, please contact your Spilman attorney or the chair of our immigration practice group, Larissa Dean.

We are very excited to invite you to our 2013 regional SuperVision symposium, scheduled for Friday, June 28, 2013 in Charleston, W.Va. Our program, which packs a wealth of knowledge into a convenient, single-day format, takes place during Charleston's 10-

Summer? Evaluating Your Unpaid Internship Programs Under the FLSA

by Carrie M. Harris

America's high school and college students will soon be finishing another school year, and employers across the country are gearing up to welcome many of these young adults as interns for the summer. Interns are staples in many organizations and often provide valuable benefit to a business. As employers strive to keep costs down, including that of labor, many use unpaid summer help where possible. Many student interns are happy to have the chance to learn on the job and will agree, if not volunteer, to work for free.

Read the full article on our website.

Affordable Care Act Standards Related to Essential Health Benefits, Minimum Value, Actuarial Value and Accreditation

by Erin Jones Adams

On February 25, 2013, the Department of Health and Human Services (HHS) released its final rule (the Final Rule) setting forth standards for health insurance issuers under the Patient Protection and Affordable Care Act (the Affordable Care Act). Specifically, the Final Rule outlines exchange and issuer standards related to coverage of essential health benefits, minimum value and actuarial value. The Final Rule also confirms a timeline for qualified health plans (QHP) to be accredited in federally-facilitated exchanges, among other provisions.

Read the full article on our website.

Pick Off the Plaintiff? Rule 68 Offers of Judgment Gain Significant

day FestivALL event, culminating with the Wine & All That Jazz festival. This year's presentations will focus on providing the keys to unlock today's toughest human resources issues. Attorneys from each of Spilman's offices will be joined by a number of corporate counsel and HR professionals with first-hand experience tackling cutting edge issues and best practices for your HR department.

A highlight of the symposium will be the lunchtime panel of HR professionals and corporate counsel from throughout the region. Our program will conclude with the always popular "Ask a Lawyer" segment, giving you the opportunity to vet your toughest issues with Spilman's labor & employment team. We always have a packed house for SuperVision, so reserve your place today or contact Angie Baker for additional information. We look forward to seeing you there!

In this edition of *SuperVision Today*, Alyesha Asghar Dotson updates her article featured in our fourth quarter 2012 newsletter, providing the latest National Labor Relations Board guidance on drafting allowable at-will disclaimers. Carrie Harris provides tips for ensuring your unpaid summer interns are properly classified. Erin Jones Adams continues our series on the Affordable Care Act. Scott Adams examines a recent development in handling large-scale wage and hour cases. Finally, Rick Wallace has an update for our clients with operations in West Virginia on the latest modifications to the West Virginia Wage Payment and Collection Act, a statute that sometimes trips up employers to the delight of plaintiff's lawyers throughout the state.

We hope you enjoy our content this quarter. As always, if you have any questions or ideas for future articles, please feel free to reach out to us.

Eric W. Iskra
Chair, Labor & Employment Group

Eric E. Kinder
Editor, SuperVision Today

Easing the Time-frames: W.Va. Relaxes the Time in which Employer Must Pay Discharged Employees

by Richard M. Wallace

Because of recently-enacted changes to the West Virginia Wage Payment and Collection Act, West Virginia employers will have more time to pay final wages to discharged employees. Prior to this change, the Wage Payment and Collection Act required that employers pay discharged employees within 72 hours of termination. The revised law, which will become effective July 12, 2013, now mandates that payment to discharged employees be made no later than the next regular payday or four business days, whichever comes first. "Business days" are defined as days on which state offices are open for regular business. Payment is to be made through regular pay channels or, if requested by the discharged

Importance Following New Supreme Court Decision

by R. Scott Adams

Last month, the United States Supreme Court (Supreme Court) provided an unexpected gift to entities facing collective actions under the Fair Labor Standards Act (FLSA) by holding that defendants may moot such a case by making an offer of judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure. This ruling could have application to the more common vehicle for multiple plaintiff claims, class actions under Rule 23, but that has yet to be tested. Nonetheless, this is an important case for any defendant facing multiple plaintiff claims because of its potential application to class actions.

Read the full article on our website.

employee, by mail. An employer remains liable for three times the unpaid amount to an employee who is not paid in a timely manner. The timing of payment to employees who are laid off or resign without a pay period's notice is unchanged; payment must be made no later than the next regular payday. Similarly, employers must still pay employee who resign with a pay period's notice on the employee's last day of work.

With these changes, employers will experience a measure of relief from the prior draconian 72-hour rule. Unfortunately, in some circumstances, the relief may not be quite as generous. For example, if the employee is discharged on a Wednesday before a Friday payday, under the "next regular payday or four business days, whichever comes first" rule, the employer now may have only two business days to provide that last paycheck. So, the employer may actually have less time to make payment to a discharged employee than prior to the amendment. By and large, however, this amendment will provide much needed relief from the prior 72-hour rule. In any case, the best practice for employers is still to have the final paycheck ready to be given to the employee at the discharge meeting or exit interview. Following that best practice will alleviate any possible liability for late payment under this Act.

Ellen J. Vance

Ellen is Counsel in the firm's Charleston, W.Va. office. Her practice focuses on employment litigation. She regularly represents companies in employment discrimination actions before the West Virginia Human Rights Commission and before state and federal courts in West Virginia. She also advises employers regarding personnel policies. She was recently named to the *West Virginia Super Lawyers* magazine's "Rising Stars" list for employment/ labor law.

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