



SuperVision™ TODAY

Labor & Employment News

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Labor & Employment Group

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PDA Usage Drives Claims for Unpaid Overtime

by Kate Sturdivant Gibson

In this day and age it is commonplace for employers to issue communication devices such as Blackberries, iPhones and Androids (collectively "PDAs") to employees. These devices allow employees to work and respond to emails and other communications without being tethered to their desks. They are beneficial to both the employer and employee - PDAs help the employer by increasing employee productivity and help the employee by allowing greater work flexibility. Unfortunately, the issuance of these devices creates an unanticipated complication for many employers - unpaid overtime.

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

DOL Proposes New Rules for Home Health Care Service Providers

by Carrie M. Harris

Notes from the Chair & Executive Editor

Our first 2012 edition of SuperVision Today features a number of timely articles for C-suite executives, human resources professionals and L & E practitioners. It is our intent for SuperVision Today to provide information that is of value to you. Accordingly, if there are topics that you would like to see covered or ideas or matters that you want to see addressed within SuperVision Today, please feel free to drop us a line, and we will see what we can do. Please look for our upcoming SuperVision conferences (our live seminar on cutting-edge human capital topics) to take place in Charleston, W.Va. on June 22 and in the Winston-Salem, N.C. triad area this fall. For more information about the SuperVision seminar series or on Spilman's nationally recognized Labor and Employment Practice Group, please visit www.spilmanlaw.com/labor-employment.

Click [here](#) to read our thoughts on a recent U.S. Supreme Court decision affecting arbitration. We will be sure to discuss this decision in more detail in subsequent editions of this e-newsletter.

Eric W. Iskra
Chair, Labor & Employment Group

Eric E. Kinder
Editor, SuperVision Today

Recess Appointments to NLRB Stir

Home health care service providers may need to review how they pay many of their employees, as a long-standing overtime exemption is slated to be eliminated by the Department of Labor ("DOL"). The DOL has published a Notice of Proposed Rulemaking to revise the regulations pertaining to companionship and live-in domestic workers, with a 60-day public comment period set to close in the near future. If the new regulations are implemented, they would eliminate the availability of the companionship exemption for third-party employers providing home health care.

Read more on our [website](#).

DOL Proposes Changes to the FMLA

by [Larissa C. Dean](#) & [Tamara B. Williamson](#)

The Department of Labor's Wage and Hour Division is proposing changes to the regulations that govern the Family and Medical Leave Act (the "FMLA" or the "Act"). The proposed changes include provisions relating to an employer's ability to opt to use different increments of FMLA under certain circumstances and clarify an employer's responsibility to reinstate an employee after FMLA leave in situations where it may be impossible, as opposed to inconvenient, to reinstate an employee mid-shift. The changes would also remove optional-use forms and notices from the FMLA. Finally, the proposed changes reflect new statutory amendments to the FMLA contained in the National Defense Authorization Act (the "NDAA") and in the Airline Flight Crew Technical Corrections Act (the "AFCTCA"). The Division is accepting public comments until April 16, 2012.

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

Controversy

by [Peter R. Rich](#)

President Obama announced on January 4, 2012, that he would use his power of recess appointment to fill three vacancies on the National Labor Relations Board (NLRB). All three appointees had been formally nominated by the President for their positions but the Senate Health, Education, Labor, and Pensions Committee had not yet acted on any of the nominations. The new members are Sharon Block (D), Terence F. Flynn (R), and Richard Griffin (D). The appointees join current NLRB Chairman Mark Gaston Pearce (D) and Member Brian Hayes (R) to bring the Board to its full 5-member strength for the first time since late August of 2010. Pearce and Hayes were both confirmed by the Senate to their positions on June 22, 2010.

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

In the Wake of *Kasten*

by [Erin Jones Adams](#)

The anti-retaliation provision in Section 215(a)(3) of the Fair Labor Standards Act ("FLSA") makes it unlawful for an employer to "discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding." On March 22, 2011, the Supreme Court of the United States decided *Kasten v. Saint-Gobain Performance Plastics Corp.*, 131 S. Ct. 1325 (2011), and continued its expansion of employee protections for workplace conduct, holding that Section 215(a)(3) of the FLSA bars retaliation based on oral as well as written complaints. In January 2012, the Fourth Circuit applied the reasoning from *Kasten* to broaden the scope of protected activity under the FLSA to include intra-company complaints.

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

Labor & Employment Team Member



[Larissa C. Dean](#)

Larissa regularly represents clients in litigation and at trial on federal and state claims of employment discrimination, wage and hour violations, retaliation, and other employment-related claims. She also provides strategic advice and counseling to clients on

labor and employment matters with the goal of avoiding litigation. Larissa has a strong background in electronic discovery and provides advice on related matters such as preservation of information, form of production and the utilization of e-discovery vendors and software when necessary.



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