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August 5, 2021

Welcome

Welcome to our third issue of the 2021 edition of *SuperVision*. It is no surprise that the ongoing COVID-19 pandemic is still causing issues -- and that certainly includes issues for employers. Therefore, we take a look at the growing discussion of employer vaccine mandates. As labor and employment issues persist outside of the pandemic, we also review newly proposed DOL regulations regarding tipped employees, discuss the important role your labor and employment attorney plays at deal closings, identify the top five issues impacting labor right now, update you on the status of the union election at Amazon's warehouse in Alabama, and introduce you to the new West Virginia Workers' Compensation Intermediate Court.

We hope you find these topics informative. If you have any questions about these topics or suggestions for future articles, [please let us know](#).

[Eric W. Iskra](#), Chair, Labor & Employment Practice Group
[Carrie H. Grundmann](#), Executive Editor, *SuperVision*

Employer Considerations in Mandating Vaccines and Other Measures

By [Jeffrey D. Patton](#)

With COVID-19 cases on the rise precisely as employers are seeking to return employees to the workplace, many companies are assessing what steps to take in response. While many companies already have announced mandatory vaccination policies, many more are actively evaluating whether to take this step, to re-impose mask wearing and social distancing measures, or other potential options. Our Labor and Employment Group is actively benchmarking with businesses across industry lines and working closely with those who are weighing this important decision.

Click [here](#) to read the entire article.

Employers with Tipped Employees: Changes are Coming (Again) from the DOL

By **Carrie H. Grundmann** and **Kelsie A. Wiltse** (*Ms. Wiltse is a law student at the Elon University School of Law and served as a 2021 Summer Associate at Spilman Thomas & Battle.*)

Questions concerning how to pay employees in tipped occupations have plagued employers for years. Tipped employees that perform duties that are not sufficiently related to their tipped occupation must be paid at least the full minimum wage, not the lower tip credit wage, when performing those duties. The DOL's approach as to what is/not related to the tipped employee's occupation has changed administration-by-administration. With a new administration, employers are again faced with potential new guidance.

Click [here](#) to read the entire article.

Doing a Deal? Include your Labor and Employment Lawyer

By **Kevin L. Carr**

While engaging a talented corporate transactional lawyer is critically important to the success of a merger, sale or acquisition, a lesser-known -- but integral -- part of the transaction team should be a skilled labor and employment lawyer. Particularly on the buyer's side, a labor and employment lawyer can identify potential labor and employment issues with the target company that may impact the structure of the deal, the purchase price, or even whether or not the transaction will be consummated. We have a brief discussion of the areas in which a labor and employment lawyer can add significant value to a transaction.

Click [here](#) to read the entire article.

Labor Update: What Got Our Attention in the Past Three Months

By **Mitchell J. Rhein** and **Peter R. Rich**

There has been a lot of labor activity in the past three months. President Biden announced the two appointees who would join National Labor Relations Board Chair Lauren McFerran to create a majority of Democrats on the Board. President Biden nominated Gwynne Wilcox to fill an existing vacancy. Ms. Wilcox is a senior partner at Levy Ratner, a New York City firm that represents labor unions and employees. Ms. Wilcox also serves as associate general counsel for the largest Local of the SEIU. President Biden additionally nominated David Prouty, the general counsel for SEIU Labor 32BJ, to replace Member Emanuel when his term expires on August 27. Once confirmed, there will be a Democratic voting majority on the Board.

Besides these nominations, we discuss five labor developments that caught our attention in the past three months.

Click [here](#) to read the entire article.

The Battle at Bessemer: Round 2 Goes to the Union

By **Chelsea E. Thompson**

On August 2, 2021, the high profile union campaign at the Amazon warehouse in Bessemer, Alabama took another interesting turn, as a hearing officer with the NLRB recommended that the Board throw out the earlier union election that Amazon won. As grounds for recommending a new vote, the hearing officer sustained the Union's objections related to improper locations for official polling stations, the existence and location of security cameras and collection boxes, and Amazon's improper electioneering and polling of employees.

Currently tied, the "Battle at Bessemer" does not end here.

Click [here](#) to read the entire article.

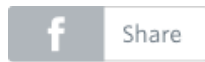
West Virginia's New Intermediate Appellate Court Fundamentally Changes Workers' Compensation Litigation Practice

By **H. Dill Battle III** and **Charity K. Lawrence**

The 2021 West Virginia Legislative Session produced a major change for West Virginia workers' compensation litigation in the West Virginia Appellate Reorganization Act of 2021. Specifically, Senate Bill 275 was enacted to create an Intermediate Court of Appeals for West Virginia. It also eliminates the Workers' Compensation Office of Judges ("OOJ") and establishes the West Virginia Workers' Compensation Board of Review ("BOR") as the initial reviewing body for objections to decisions made by insurers regarding workers' compensation claims.

After June 30, 2022, the OOJ will be eliminated, and, effective July 1, 2022, all powers and duties of the OOJ will be transferred to the BOR. (W. Va. Code § 23-1-1h.) After this date, all objections to decisions of the Insurance Commissioner, private carrier, or self-insured employer, must be filed with the BOR instead of the OOJ. The BOR will have exclusive jurisdiction to review objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer. Instead of the three-member panel currently comprising the BOR, the BOR will consist of five members appointed by the Governor.

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