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Super**V**ision™ TODAY

LABOR & EMPLOYMENT NEWS

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Discrimination of LGBT is Sex Discrimination: EEOC Guidance Clearly Outlines the Commission's Position

By Erin Jones Adams

As discussions regarding the rights of lesbian, gay, bisexual and transgender ("LGBT") employees in the workplace increase, the Equal Employment Opportunity Commission ("EEOC") offers guidance concerning treatment of LGBT individuals as a protected class under Title VII of the Civil Rights Act.

Last month, the EEOC issued *What You Should Know About EEOC and the Enforcement Protections for LGBT Workers* (the "Guidance").

What does the Guidance say and how, as an employer, can you protect yourself? Click [here](#) to read the entire article.

Notes from the Chair and Executive Editor

Welcome to the second quarter edition of *SuperVision Today*, the e-newsletter for Spilman Thomas & Battle's Labor and Employment group.

In case you missed the big news from the U.S. Department of Labor, the new overtime regulations have been finalized, and the required salary basis to treat employees as exempt from overtime has essentially doubled. We addressed the changes in a recent e-blast, but if you missed it, we have included our analysis in this edition of *SuperVision Today*. The changes also will be discussed at upcoming SuperVision symposia.

We just completed the first of our 2016 SuperVision series in Pittsburgh with our friends in Ohio, Pennsylvania and northern West Virginia. Plans are heavily underway for our Charleston, West Virginia SuperVision on June 24, 2016, and our Greensboro, North Carolina seminar on September 13, 2016. This year, we immerse ourselves in your workplace issues as we discuss a number of critical cutting-edge workplace topics, including the latest from the DOL and other emerging issues. In addition, we will address topics such as successfully navigating leave issues under workers' compensation, the ADA and the FMLA; balancing work and off-duty conduct (including social media) of your employees; developing best practices for managing electronic devices and electronic document management; and knowing how to plan and implement workforce restructurings and reductions if they become necessary. During the Lunch & Learn segment, our attendees

Easier Retaliation Claims on the Horizon? EEOC Proposes New Guidance

By [Carrie M. Harris](#)

The Equal Employment Opportunity Commission ("EEOC") is considering easing the burden a complaining employee faces to establish a claim for retaliation in proposed revisions to its Enforcement Guidance on Retaliation ("Guidance"). The EEOC's Guidance is essentially the manual investigators follow in reviewing complaints of discrimination or retaliation. The Guidance was last amended in 1998. Since that time, the number of retaliation charges filed with the EEOC has essentially doubled. By 2015, retaliation claims were the most frequently filed charges, representing 44.5 percent of all charges filed. The EEOC's most recent Guidance is unlikely to stem the tide of retaliation claims.

What does this mean for employers? Click [here](#) to read the entire article.

Let's be "Friends" - Should I "Friend" My Employees? And Other Questions Raised by the IPPA

By [John B. Hardison](#)

On the last day of the 2016 Regular Session, the West Virginia Legislature passed a bill that will require all West Virginia employers to evaluate their social media policies and practices. HB 4364, known as the Internet Privacy Protection Act ("IPPA"), prohibits employers from forcing employees or job applicants to provide access to their personal social media accounts except in limited circumstances. The IPPA further imposes affirmative obligations on an employer that inadvertently receives an employee's username and password for his or her social media account. The implications

will engage in conversations with members of our labor and employment team and fellow employment professionals on topics such as understanding the employment litigation process, dealing with arbitration agreements, handling workplace investigations, and addressing hot topics within the field of labor law. Invitations have gone out for Charleston, and Greensboro's invitations will be mailed following the Charleston event. If you would like to attend, please contact Pamela Kesling at pkesling@spilmanlaw.com.

In this edition of *SuperVision Today*, Erin Jones Adams previews some major issues in avoiding liability in the emerging area of treatment of members of the LGBT community. Carrie Harris takes a look at the latest in the retaliation front from the EEOC. And our newest team member, John Hardison, helps West Virginia employers understand internet privacy legislation passed on the very last day of the Legislative Session.

As always, we welcome your comments and feedback and look forward to seeing you at one of our SuperVision symposia.

[Eric W. Iskra](#)

Chair, Labor & Employment Practice Group

[Eric E. Kinder](#)

Editor, *SuperVision Today*

The Department of Labor Finalizes the New Overtime Rules

By [Eric E. Kinder](#)

Salary basis adjusted down from the proposed rule, but still much higher than current rule.

New requirement goes into effect December 1, 2016.

The Department of Labor ("DOL") has slightly modified its proposed rule updating the salary basis, or minimum necessary salary, employers are required to pay in order to treat employees as exempt from overtime. Under the final rule, which will go into effect December 1, 2016, an employee must be paid a minimum salary of \$913 per week (or \$47,476 per year) in order to qualify as exempt from overtime under most of the traditional white collar exemptions. The DOL expects the new rule to extend the right to overtime protections to 4.2 million more employees.

Click [here](#) to read about the details.

of the IPPA, which applies to all West Virginia employers, include potential wrongful discharge and invasion of privacy claims.

Accordingly, all employers must evaluate whether their current policies and practices conform to the IPPA before it becomes effective on June 10, 2016.

Click [here](#) to learn more.



Join us June 24 in Charleston for our annual SuperVision symposium. Space is limited so [register now!](#)



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