



SuperVision™ TODAY

Labor & Employment News

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Think Third-Party Harassment Can't Harm You? Think Again

By [Carrie M. Harris](#)

On April 29, 2014, the United States Court of Appeals for the Fourth Circuit's ruling of *Freeman v. Dal-Tile Corp.*, No. 13-1481, 2014 WL 1678422 (4th Cir. Apr. 29, 2014) addressed third-party harassment.

The Court held that an employer can be liable under Title VII for the harassment of an employee by a third-party where it knew - or should have known - that a third-party was harassing an employee, but failed to take prompt remedial action reasonably calculated to end the harassment.

Read the entire article [here](#).

Social Media and Financial Institutions - What You Need to Know

By [Erin Jones Adams](#) and [R. Scott Adams](#)

Notes from the Chair and Executive Editor

Welcome to the second quarter edition of *SuperVision Today*, the quarterly e-newsletter published by Spilman's Labor & Employment Group.

Readers of this newsletter are invited to our 2014 West Virginia SuperVision symposium, set for Friday, June 27 in Charleston, West Virginia. The symposium will take place near the conclusion of Charleston's FestivALL celebration, which culminates in the premier summer event in the region - the Wine & All That Jazz celebration.

This year's symposium is designed to help you prepare for What's Next in labor and employment law so you can manage your human resources and meet your goals for the coming year. Legal and business leaders will examine an array of hot HR topics, including arbitration agreements, employee wellness, restrictive covenants and other critical employment issues.

In addition, we are excited that Colonel William E. Crane, Chief of Staff, Land Component Commander, West Virginia Army National Guard will be our keynote speaker. Col. Crane will discuss leadership and crisis management; we expect his talk to be one of the highlights of the event. We always have a packed house for SuperVision, so click [here](#) to reserve your place today or contact Pamela Kesling at 304.720.4065 or pkesling@spilmanlaw.com for additional information. We look forward to seeing you there!

The latest extension of the social media puzzle involves financial institutions. But, banks are not the only financial institutions governed by the alphabet soup of regulatory organizations addressing financial services (the OCC, Federal Reserve, FDIC, CFPB, NCUA and State Liaison Committee that represents state regulators). Nonbank entities are also supervised by the Consumer Finance Protection Board ("CFPB"), such as some insurance and real estate investment entities.

The members of the Federal Financial Institutions Examination Council ("FFIEC"), have published final supervisory guidance titled "Social Media: Consumer Compliance Risk Management Guidance." The Guidance clarifies the specific actions regulated entities must take to ensure their use of social media on behalf of the company does not mislead consumers or violate regulations.

Read the entire article [here](#).

"Waive" Goodbye to Employer Liability Under ADA (for Voluntary Accommodations)

By [Gordon L. Mowen II](#)

An employer faces a difficult situation when a temporarily disabled employee, who cannot perform his or her essential job functions, requests an accommodation.

This situation becomes significantly more complicated when the employee receives the "accommodation," but never recovers enough to resume performing the essential job functions. Can the employer terminate the disabled employee without violating the Americans with Disabilities Act ("ADA")?

Recent case law strongly suggests the answer is.....

Read the entire article [here](#).

For our West Virginia readers, the West Virginia Legislature is currently meeting in extraordinary session, in part to amend their recent amendments to the West Virginia Maximum Hour and Minimum Wage Act. The revised law maintains the scheduled increases to West Virginia's minimum wage, but returns issues of who is exempt from overtime to federal, as opposed to state, law. In short, while it makes sense to review your list of exempt employees periodically - if you were in the process of doing a review, finish it - the status of who is exempt from overtime will not change. We will continue to monitor the legislature for any other changes to West Virginia's overtime laws.

In this edition of *SuperVision Today*, Larissa Dean explains the NLRB's proposed rules for union elections and what they may mean for employers. Carrie Harris shares what employers need to know about third-party harassment. Erin Jones Adams and R. Scott Adams review additional requirements financial industry employers need to include in their social media policies. And, Gordon Mowen examines some of the risks in accommodating individuals temporarily, based on a recent court decision.

We strive to bring you valuable content each edition of *SuperVision Today*. 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

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Editor, *SuperVision Today*

Quickie Elections & You: NLRB's Proposed Rule Changes

By [Larissa C. Dean](#)

In 2011, the National Labor Relations Board ("NLRB" or the "Board") issued proposed changes to its election rules for the purpose of speeding up the election process. These so-called "quickie" election rules were adopted by the Board without a quorum. The rules were subsequently invalidated by the U.S. District Court for the District of Columbia, and 94% of union elections continued to occur within 56 days after a union had filed an election petition.

On February 6, 2014, the Board again issued proposed "quickie" election rules, seeking public comment through April 7. While the "quickie" election proposal to shorten the time between the filing of a petition and an election has made news, the NLRB is proposing many more measures that will affect employers. When taken as a whole, the proposed changes will significantly alter the manner in which employers respond to election petitions.

Several of the proposed changes are discussed [here](#).



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Mr. Wallace's primary areas of practice are labor and employment law and complex civil litigation. He has represented employers in all phases of employment litigation in state and federal courts throughout the firm's regional footprint. He is admitted to the West Virginia State Bar, United States District Courts for the Northern and Southern Districts of West Virginia, United States District Court for the District of Columbia and the United States Court of Appeals for the Fourth Circuit. He is a graduate of the University of Virginia and Wake Forest University School of Law.



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