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Clarifying Blurry Boundaries of Compensable Time Under FLSA

By Milind K. Dongre

The Fair Labor Standards Act ("FLSA") requires that employees be paid for all work and receive overtime pay for work that is part of the employee's "principal activities" beyond 40 hours a week. However, the FLSA also states that employers do not have to compensate employees for work performed prior to or after the employee's "principal activities." Historically, the line between what work is compensable and what work is not has caused some confusion. Moreover, courts have not uniformly interpreted the phrase. Fortunately for employers, the Supreme Court recently provided an answer.

Click here to read the entire article.

Addressing New

Notes from the Chair and Executive Editor

Welcome to the first quarter edition of *SuperVision Today*, the newsletter for Spilman's Labor & Employment Group. In 2015, we are stepping up our focus on partnering with our clients to help address their potential labor and employment issues before they become problems. This year, our plan to help you get there includes both our annual SuperVision™ symposia series and a new series of SuperVision™ webinars.

This new series of lunch-and-learn webinars will be free for you to attend from the comfort of your own desk. These will be one-hour-long, interactive presentations on hot-button issues, with ample time for Q&A. Our first webinar is scheduled for March 3. Eric Kinder and Erin Jones Adams will address how to design a proper wellness program without running afoul of the ADA or the ACA. Our second webinar on March 17 will be of particular interest to those with employees in West Virginia: following the close of West Virginia's 2015 regular session of the Legislature, Eric Iskra and Eric Kinder will lead you through a review of the changing landscape in West Virginia employment laws. With Republicans in control of the West Virginia Legislature for the first time in 80 years, we are looking at a number of significant changes that will impact employers and civil litigation in West Virginia.

Of course, 2015 will see the continuation of our SuperVision symposia series. Watch for your save-the-date to arrive in the next few weeks. As of this writing, the complete agenda is still being finalized, but the following dates are set: Pittsburgh

Individuals or Identities in the Workplace

By Larissa C. Dean

On November 20, 2014, President Obama announced an Immigration Accountability Executive Action that, among other things, provides new or expanded immigration benefits to certain unauthorized immigrants. While a federal court judge issued an order temporarily blocking the implementation, the Secretary of the Department of Homeland Security has stated the Justice Department will appeal the order. Further, legal scholars have opined that the executive action is well within the rights of the administration to issue. Employers need to be cognizant of several issues that may arise when four to five million individuals gain employment authorization in the coming months. There are two scenarios related to current employees that employers should be prepared to handle.

Click here to read the entire article.

"Ruff" Days at the Office: Service Dogs (and Other Animals) in the Workplace

By Kate Sturdivant Gibson

With everything from alpacas, pigs and turkeys, to even a snake being claimed as service animals, it is not surprising that many business owners are asking what truly qualifies as a "service animal" under the law. Just last fall, a Wisconsin McDonald's encountered a situation where a patron wanted to dine with her service kangaroo. With the ability to obtain a service vest and even an "authentic" certificate just a few clicks away, more and more people are making claims that their accompanying animals are not mere pets, but service animals. Now, more than ever, it is important that business owners understand what the law says about service animals.

Click here to read the entire article.

NLRB Tightens

SuperVision™ will be May 6 at PNC Park, and we will be at the Embassy Suites in Charleston, West Virginia on June 26. We will be in Roanoke at The Patrick Henry Ballroom and the greater Triad area in North Carolina at the WinMok at Kinderton on September 17 and 18, respectively. As part of the agenda, there will be an opportunity to discuss your most important HR topics with Spilman attorneys, other colleagues, and thought leaders in the profession. We would love to know what ideas you want to discuss and ask you to let us know by emailing SuperVision@spilmanlaw.com.

In this edition of *SuperVision Today*, Carrie Harris examines how a recent Fourth Circuit decision on the scope of harassment could apply to you, Milind Dongre reviews a recent United States Supreme Court decision regarding when the clock starts and stops for employees under the Fair Labor Standards Act, Larissa Dean explores new issues in the field of immigration as they affect all employers, Kate Gibson takes a look at the growing issue of employers and businesses responding to requests to accommodate "service animals," and Pete Rich discusses the NLRB and the tightening of arbitration deferral standards.

We hope you enjoy this issue. Feel free to contact us if you have any suggestions for future articles.

Eric W. Iskra
Chair, Labor & Employment Practice Group

Eric E. Kinder
Editor, *SuperVision Today*

Is Summary Judgment Unavailable for Sexual Harassment Claims?

The Impact of ***Walker v. Mod-U-Kraf*** Ruling of Sexual Harassment Claims in the Fourth Circuit

By Carrie M. Harris

In modern employment litigation, the employer's ultimate goal is to prevail at summary judgment, thereby avoiding the expense of trial and the unpredictability of a jury. A recent decision from the Fourth Circuit Court of Appeals, however, indicates it is going to be increasingly difficult for an employer in this circuit to prevail at summary judgment on claims of sexual harassment.

In *Walker v. Mod-U-Kraf Homes, LLC*, the district court for the Western District of Virginia granted summary judgment to the employer on the plaintiff's sexually hostile work environment claim, holding that she failed to present evidence that an objectively reasonable person would perceive the complained-of behavior as abusive or hostile. Good news, right? Not so fast. On appeal, the Fourth Circuit reversed and held that "the facts presented in the record are simply too close...for summary judgment to be appropriate."

The importance of the Court's decision was not its recitation of the law, but rather, the facts upon which the Court relied.

Arbitration Deferral Standards

By Peter R. Rich

The National Labor Relations Board ("Board" or "NLRB") has long limited its involvement in disputes between employers and unions concerning labor agreements that provide for binding arbitration where the disputes involve allegations of contractual violations and unfair labor practices arising from parallel facts. A recent decision by the NLRB in *Babcock & Wilcox Construction Co*. announced a tightening of the standards applicable to the Board's deference to the parties' chosen means of dispute resolution. What does this mean for employers?

Click here to read the entire article.

There were no allegations of physical touching, demonstration of sexual acts, propositioning or threatening behavior, which have been present in most Fourth Circuit cases denying summary judgment to an employer. The sole basis for the plaintiff's claim was "inappropriate sex-based comments [made] on a near-daily basis" by a male co-worker.

What does this mean for employers?

Click here to read the entire article.

Larissa C. Dean

Ms. Dean is a Member in our Morgantown office. Her primary areas of practice are labor and employment law, immigration, and discovery of electronically stored information in general civil litigation and commercial matters. She has vast experience as trial counsel regarding claims of race, sex, religion, age, and disability discrimination; wage and hour; class and collective actions; retaliation; FMLA; and non-compete cases. In addition, her experience includes drafting employment policies and employee handbooks, and training management clients on various topics, including anti-discrimination, family and medical leave, and employment eligibility verification. She is coordinator of Spilman's Women's Initiative and editor of the labor and employment blog *Navigating SuperVision*.

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