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SuperVision™ TODAY

Labor & Employment News

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Notes from the Chair and Executive Editor

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

With the election results in, Spilman's L&E group anticipates interesting state legislative sessions throughout our footprint. (For our readers with interests in West Virginia, Spilman has prepared an extensive election report that you can view here.) As part of our continuing goal to keep our clients and friends up-to-date on the latest developments in the law, including anticipated or forthcoming legislation, we are starting a labor & employment blog called *Navigating SuperVision*. We recommend you subscribe to it here so you don't miss anything. The blog will provide timely information on matters that cannot wait for the publication of our e-newsletter - though the e-newsletter will continue in order to provide more in-depth information on important labor and employment issues.

We also are planning to launch a SuperVision webinar series in 2015. After listening to your comments, we understand your time is valuable and many of you may not have time to travel and attend our traditional, full-day SuperVision symposia (though these events will continue as well). These webinars will be 60-minute live, hosted events with a focus on addressing critical issues in the workplace today. After each webinar, the content will be available on our website for later viewing. Webinar topics currently under consideration include social media, changes to the Pregnancy Discrimination Act and dealing with labor organizers. If you have any suggestions for what you would like us to address, please let us know.

Independent No More: The Crackdown on Use of Independent Contractors

By Larissa C. Dean

For years, many employers have tried to reduce their tax burdens by treating persons who perform services for them as individual contractors as opposed to employees and thereby reducing the payroll withholding taxes they must pay. This employer classification of employees as independent contractors - and often misclassification - has recently drawn closer scrutiny from the courts and state governments.

What does this mean for you? Click here to read the entire article.

OSHA Reporting and Recordkeeping Rule - Change is in the Air

By Samuel M. Brock, III

OSHA and their changes keep us all on our toes. In the September 18, 2014 Federal Register, OSHA published revisions to 29 CFR Part 1904 with respect to updated reporting and recordkeeping requirements.

Employers located in states under Federal OSHA jurisdiction (such as Pennsylvania and West Virginia) must comply with the new reporting and recordkeeping requirements effective January 1, 2015. Employers located in states operating their own safety and health programs (such as North Carolina and Virginia) should consult the applicable state plan. However, OSHA has encouraged states to implement the new reporting and recordkeeping requirements by January 1, 2015 or as soon thereafter as possible. The new reporting and recordkeeping rule, generally, contains three types of changes.

Click here to find out what the changes are and how they could impact you.

Waiting for the Dust to Settle: ***Mach Mining*** and the Future of EEOC's Duty to Conciliate in Good Faith Prior to Civil Litigation

By Gordon L. Mowen, II

In 2013, individuals filed more than 100,000 charges of Title VII violations with the Equal Employment Opportunity Commission, thousands of which the EEOC has - and continues - to aggressively investigate and pursue. A problem arises, however, when the EEOC's zealousness translates into unreasonable conciliation demands that deadlock the potential resolution of these claims prior to the filing of a lawsuit. Specifically, this aggressiveness conflicts with the EEOC's express statutory duty to attempt to secure, in good faith, a conciliation agreement with the employer as a precondition to filing suit.

Click here to learn more.

The lead article in this edition *of SuperVision Today* will continue our series on the Affordable Care Act and the obligations large employers will face in the new year. Erin Jones Adams and Anna Sweigart will spell out those issues as we head into 2015. Of course, the Supreme Court of the United States may have a say on this, as it has agreed to hear the dispute regarding individual mandates. We explained the controversy in a past edition, which you can read here. Also in this edition, Larissa Dean takes a look at the increasing scrutiny placed on independent contractors and whether they are truly employees. Sam Brock shares some important updates on OSHA. And, lastly, Gordon Mowen explores the latest challenges to the EEOC's conciliation process.

If you have any questions or ideas for future articles, please feel free to reach out to us. And, don't forget to keep an eye out for our blog.

Eric W. Iskra
Chair, Labor and Employment Group

Eric E. Kinder
Editor, *SuperVision Today*

Don't Forget! Preparing for the Affordable Care Act Employer Mandate

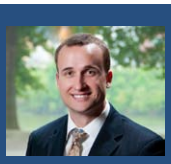
By Erin Jones Adams and Anna L. Sweigart

With 2015 just a few weeks away, employers with 100 or more full-time or full-time equivalent employees should be gearing up for the implementation of the Affordable Care Act ("ACA") employer mandate, which subjects employers to a tax for:

- Failing to offer any health care coverage to 95% (for 2015 only, 70%) of their full-time employees (and their dependents) or
- Failing to offer minimum essential coverage that is affordable and that provides an actuarial value of at least 60% of the employee's likely health care costs.

Employers with between 50 to 99 full-time or full-time equivalent employees received a one year reprieve and are not subject to the employer mandate until January 1, 2016.

What do you need to know? What do you need to do? Click here to read the entire article.



Gordon L. Mowen, II

Mr. Mowen's primary area of practice is complex tort litigation with an emphasis on labor and employment law. He also defends against Workers' Compensation and Federal Black Lung claims. Mr. Mowen is admitted to the West Virginia State Bar and the United States District Courts for the Northern and Southern Districts of West Virginia. He obtained a Bachelor of Arts degree in psychology, with honors, from the University of Louisville, and earned his J.D., with honors, from the University of Kentucky College of Law.

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