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September 8, 2022

Welcome

Welcome to the third issue of *SuperVision* for 2022. Before turning to the topics covered in this edition, we have a number of important and exciting announcements!

First, we want to congratulate [Eric Kinder](#) for his selection as the 2022 recipient of the DRI Albert H. Parnell Outstanding Program Chair Award for his leadership role in developing DRI's 45th annual Labor & Employment Law Seminar. This award honors one individual who created a dynamic educational program enhancing DRI's image, and who further has led and participated in effective planning, marketing, and presentation of the educational program. Please join us in applauding Eric for all of his efforts.

Second, we also would like to recognize and congratulate the 60 Spilman attorneys who were selected by their peers for inclusion on the [2023 Best Lawyers list](#), [10 who were selected as Best Lawyers "Lawyers of the Year,"](#) and [nine others who were selected as Best Lawyers "Ones to Watch"](#) – including many lawyers in our Labor & Employment Practice Group. Recognition by Best Lawyers is based entirely on peer review and is designed to capture the consensus opinion of leading lawyers about the professional abilities of their colleagues within the same geographic and legal practice areas.

Finally, Spilman is pleased to announce its sponsorship of the American Bar Association's 16th Annual Labor and Employment Conference behind held in Washington, D.C. from November 9-12, 2022. We would love to see you there! You can learn more about this always important conference [here](#).

This issue of *SuperVision* covers a variety of topics, some of which are breaking news, including the National Labor's Relations Board's newly published notice of proposed rule on joint employment and the recent ruling from the Fourth Circuit recognizing gender dysphoria as a disability under the ADA. We also provide guidance on ERISA health plans in the wake of the U.S. Supreme Court decision overturning *Roe v. Wade*, the need to update employee handbooks to recognize the emergence of remote work, and how to handle harassment by non-employees impacting your workplace.

We hope you enjoy this issue and find the topics interesting! As always, feel free to [contact us](#) with your feedback or if there is a particular topic you would like us to cover.

[Eric W. Iskra](#), Chair, Labor & Employment Practice Group

The NLRB Proposes to Re-Re-Revise Its Joint Employer Standard

By: **[Kevin L. Carr](#)**

On September 6, 2022, the National Labor Relations Board issued a notice of proposed rulemaking regarding the standard for determining joint employer status under the National Labor Relations Act. The rule as proposed would effectively overturn a rule on the same subject issued just over two years ago during the Trump administration.

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

The Impact of Overturning *Roe v. Wade* on ERISA Benefit Plans

By: **[Mitchell J. Rhein](#)**

In late June 2022, the Supreme Court of the United States decided *Dobbs v. Jackson Women's Health Organization*, overruling *Roe v. Wade* and *Planned Parenthood v. Casey*, which had previously recognized a woman's constitutional right to terminate a pregnancy prior to fetal viability. After *Dobbs*, many states sought to protect a woman's choice to terminate her pregnancy. Other states, however, had laws that automatically went into effect to restrict or ban abortions within their jurisdiction or, like West Virginia, began debating whether and to what extent to restrict or ban abortions.

For employers who offer reproductive health benefits through their employee benefit plans, laws restricting abortion raise questions about health care coverage and whether employers must make changes to their benefit plans to ensure continued access and compliance with the law in the different jurisdictions where they may operate. We discuss the top three questions we have heard (and answered).

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

Federal Circuit Court Holds that Gender Dysphoria is a Protected Disability Under the Americans with Disabilities Act

By: **[Sarah E. Kowalkowski](#)**

The Fourth Circuit Court of Appeals (covering Virginia, West Virginia, North Carolina, South Carolina, and Maryland) held that gender dysphoria, a condition experienced by some transgender individuals, is a protected disability under the Americans with Disabilities Act. See *Williams v. Kincaid*, No. 21-2030 (4th Cir. Aug. 16, 2022). This ruling extends the protections of the Americans with Disabilities Act, such as the right to a reasonable accommodation, to individuals with gender dysphoria.

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

Avoiding the Latest Handbook Traps for the Unwary in the Age of Remote Work

By: **[Eric E. Kinder](#)**

Most employers know their employee handbooks need to be living documents that are reviewed and updated when conditions change. If any employer doubted the need for doing this, the past two years should have convinced them otherwise – with the need to incorporate policies to address statutorily mandated COVID-19 sick leave and/or vaccinations. While many of the mandatory COVID-19 sick leave policies are sunsetting, the sun is just rising for remote work issues. Indeed, employee handbooks are

often more vital in the remote work setting since a remote worker cannot walk down the hall and ask HR questions.

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

Third Party Harassment Claims: When the Customer is Wrong

By: Heather M. Garrison

Most employers know that they have a legal obligation to protect employees from harassment at work and to prevent it from recurring. Many employers assume that this obligation relates to harassment by employees and managers; however, it actually extends to harassment by third parties, including customers or vendors. Several recent cases brought by the U.S. Equal Employment Opportunity Commission reinforce the concept that employers can be liable for the harassing conduct of third parties if the employer knew or should have known of the conduct and failed to take timely remedial measures.

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



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