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Welcome

With the second issue of the 2021 edition of *SuperVision*, we are focusing on "what's next." More than 100 days into Biden's Presidency and with more than 100 million Americans fully vaccinated from COVID-19, we turn our attention to important court cases, the future of unions, the impacts of a yearlong battle with COVID-19, and more. Our focus is on the future, anticipating trends and developing guidance to assist our clients -- no matter the situation. We hope you find this issue interesting and informative. We welcome your opinions and thoughts on future articles, and if we can assist you as you navigate the future, we look forward to doing so.

We hope you enjoy reading.

[Eric W. Iskra](#), Chair, Labor & Employment Practice Group
[Carrie H. Grundmann](#), Executive Editor, *SuperVision*

Hot Topics: Labor and Employment Legal Issues Post-Pandemic

By [Kevin L. Carr](#), [Carrie H. Grundmann](#) and [Eric W. Iskra](#)

As vaccines are rolled out nationwide and are available to any adult who wants one, we appear on the cusp of a return to some level of normalcy. With that return to normalcy will come an increased focus on non-pandemic-related labor and employment issues. Between the pandemic and the new administration, changes in priority and enforcement are inevitable. While not intended to be a deep dive into these issues, this list of hot topics is intended to put these issues on your radar.

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

New Federal Court Decision: Arbitration Clauses can Preclude Appellate Review of Arbitration Decisions

By Carrie H. Grundmann

In an issue of first impression, on April 8, 2021, a three-judge panel of the Fourth Circuit Court of Appeals unanimously ruled that an arbitration clause in an employment contract that waives appellate review is enforceable.

At issue in *Beckley Oncology Assoc., Inc. v. Abumashah* was an arbitration provision that required the parties to arbitrate "all disputes, controversies, and disagreements" regarding the employment relationship. Moreover, while any arbitration award was reviewable by a district court, the parties specifically contracted that the arbitrator's decision "shall be final and conclusive and enforceable in any court of competent jurisdiction *without any right of judicial review or appeal.*"

After being unsatisfied with the arbitrator's award, the employer sought review from the district court who summarily granted Abumashah's motion to dismiss based on the existence of a validly issued decision from the arbitrator. When the employer sought an appeal, the Fourth Circuit denied that appeal finding the appellate waiver in the employment contract enforceable.

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

NLRB's Top Prosecutor Advocates for Broader Interpretation of Employees' Section 7 Rights

By Mitchell J. Rhein

In March 2021, the National Labor Relations Board's Acting General Counsel, Peter Sung Ohr, wrote a memorandum to the Board's Regional Offices that called for "Vigorous Enforcement" of section 7 of the National Labor Relations Act (the "Act"), advocating for increased enforcement of section 7 in two ways. First, it encourages the Board's Regional Offices to enforce section 7 of the National Labor Relations Act, which protects all employees – union or non-union – who engage in protected concerted activities, to further the purpose of the National Labor Relations Act. Second, Mr. Ohr interprets section 7 to expand the breadth of its protection.

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

OSHA Head Nominated and Potential COVID Regulation Moves Toward Issuance

By Mark E. Heath

The Biden administration has nominated Doug Parker, currently chief of California's Division of Occupational Safety and Health ("Cal/OSHA"), as the next head of the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA").

Parker has led Cal/OSHA since 2019 and previously served in President Obama's Mine Safety and Health Administration ("MSHA") office as the Deputy Assistant Secretary for Policy. Last fall, Parker was a member of the Biden-Harris transition team that focused on worker health and safety issues. He also has worked as a staff attorney with the United Mine Workers of America and was Executive Director of California's Worksafe, a legal services provider based in Oakland, CA.

Parker has a J.D. from the University of Virginia School of Law and a Bachelor of Arts degree in History from James Madison University. He was a partner at the law firm Mooney, Green, Saindon, Murphy and Welch in Washington, D.C., before serving in the Obama administration. Early in his career, he worked as a sales and marketing director in communications for the Democratic National Committee and was a staff assistant for the late Senator Paul Wellstone (D-Minn.).

If approved by the Senate, Parker would be the first confirmed head of OSHA since 2016. An OSHA head was never confirmed throughout the Trump Presidency.

As Parker's nomination makes its way through the Senate, the potential of a COVID-19 regulation is gaining strength.

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

The Battle at Bessemer Continues: NLRB to Hear Union Objections to Vote at Amazon Warehouse

By **Chelsea E. Thompson**

On April 9, 2021, all eyes were on Bessemer, Alabama as votes were counted in the most highly publicized union vote in recent memory. President Biden, politicians, activists, nonprofits, and celebrities all weighed in, and significant resources were spent by the Retail, Wholesale, and Department Store Union and Amazon during the two-month long campaign. The import of this vote cannot be understated. Although Amazon's Bessemer warehouse is relatively small—having around 5,900 workers—Amazon's workforce is in excess of 800,000. To date, Amazon has avoided unionization at any of its American warehouses. A successful union campaign in Bessemer, however, could have had a domino effect not just throughout Amazon's other locations across the United States, but potentially across the South where unions traditionally have faced resistance. If unions got a foothold in the previously impenetrable Amazon workforce, union campaigns could gain traction anywhere. The stakes and expectations were high for the vote at Bessemer.

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

Website Accessibility Lawsuits Under the ADA Part Two

By **Carrie H. Grundmann**

In December 2017, we [reported](#) on the number of lawsuits being filed around the country against businesses and retailers for violations of Title III of the Americans with Disabilities Act ("ADA") that requires equal access for persons with disabilities in places of public accommodation. These lawsuits targeted businesses' websites, claiming they were not accessible by the visual or hearing impaired.

In a long-awaited ruling, the Eleventh Circuit ruled 3-2 on April 7, 2021 that "a website is not a place of public accommodation to which the ADA applies," vacating the earlier district court decision finding Winn-Dixie violated Title III of the ADA. See *Gil v. Winn-Dixie Stores, Inc.*, No. 17-13467 (11th Cir. Apr. 7, 2021). While this may seem like a resounding win for businesses and retailers, the holding is actually quite narrow.

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



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