



Issue 3, 2018

## ● The Editor's Note

Welcome to the third quarter edition of *SuperVision*, the e-newsletter for Spilman Thomas & Battle's Labor & Employment Law Group. We have finished another educational year of SuperVision conferences with a great session recently in Greensboro, North Carolina. Planning already is beginning for next year's series, so if you have any topics you would like to see covered, please feel free to let us know.

If you attended one of our SuperVision symposia, you know the value our team places on training and audits. We stand ready to conduct best-in-class training on the prevention of harassment and discrimination for all of your employees, and can even provide specially tailored presentations that you can use during the on-boarding process for all future employees. In addition, we can provide a tune-up to your personnel policies by providing a detailed review of your handbook and audit of your payroll practices for compliance with the Fair Labor Standards Act and the Equal Pay Act. Please feel free to reach out to any of us in the department to schedule a training and/or an audit.

In this edition of *SuperVision*, Chelsea Thompson explores new developments from the National Labor Relations Board regarding handbook policies and whether or not they comply with the National Labor Relations Act. Sarah Kowalkowski explains the recent revisions from the Department of Labor to their FMLA documents. Spencer Cook takes a look at a new North Carolina law that is intended to help employers and their candidates with criminal convictions. And, Dill Battle has an article for West Virginia employers regarding when an employer may claim overpayment of temporary total disability workers' compensation benefits. As always, we welcome any suggestions and comments regarding the e-newsletter and thank you so much for reading.

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

[Eric E. Kinder](#), Executive Editor, *SuperVision*

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## ● Employer Handbooks in the NLRB's Post-Boeing World

By [Chelsea E. Thompson](#)

Employers rejoiced in December 2017 when the National Labor Relations Board ("NLRB") issued its decision in *The Boeing Company*, 365 NLRB No. 154 (Dec. 14, 2017), overthrowing its precedent regarding employers' handbooks. The *Boeing* decision was much more employer-friendly, creating a new three-category system by which the NLRB balances an employer's right to maintain discipline and productivity in the workplace with the individual employee's ability to exercise his or her Section 7 rights. The new categories were welcomed, but caused considerable confusion. What handbook rules fell into each category? Which categories were lawful under the National Labor Relations Act ("NLRA")? Without additional guidance, employers were unsure how to implement the *Boeing* decision.

Recognizing this uncertainty, the NLRB's General Counsel issued a memorandum on June 6, 2018 (GC 18-04) (the "Guidance"), further explaining *Boeing's* three category system. The Guidance describes each category in detail, explaining the employer's potential justification for the rule, quoting model handbook language, and reciting the "balance" the NLRB determined for each category. The most important part, however, was its identification of (a) which handbook rules fell into each category and (b)

which categories were lawful under the NLRA.

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

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## ● **New FMLA Forms. New Expiration Date. Same Content.**

By **Sarah E. Kowalkowski**

For those employers who have been eagerly awaiting the release of the new model FMLA forms by the Department of Labor, the wait is over. [As we mentioned in our most recent e-newsletter](#), the DOL submitted its model FMLA forms to the Office of Management and Budget in April 2018 and requested a three-year extension for the model forms without any proposed changes. The Paperwork Reduction Act of 1995 requires the DOL to submit its model FMLA forms to the OMB every three years for approval.

On September 4, 2018, the DOL issued new model FMLA forms with only one change: the expiration date. The new forms expire on August 31, 2021.

Employers that use the model forms, as opposed to their own customized forms that comply with the FMLA, should begin using the new forms as soon as possible. The new forms are available on the [DOL's website](#).

Please contact us if you have any questions.

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## ● **A Second Chance: North Carolina Expands Law Incentivizing Employers to Hire Certain Convicted Felons**

By **J. Spencer Cook**

North Carolina has enacted a law intended to help employers catch up to the employment demands of a growing economy, while offering some individuals a second chance at earning a living.

On June 25, 2018, Gov. Roy Cooper signed House Bill 774 ("H.B. 774"), which will take effect on December 1, 2018. H.B. 774 expands the group of individuals convicted of low-level felonies in North Carolina who can petition courts for a certificate that provides potential employers immunity from employment-related negligence lawsuits.

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

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## ● **When Does Overpayment Actually Occur?**

By **H. Dill Battle III**

In *Reed v. Exel Logistics, Inc.*, No. 17-0864, 2018 WL 2769041 (W. Va. June 6, 2018), the Supreme Court of Appeals of West Virginia clarified the circumstances necessary for an employer to claim overpayment of temporary total disability ("TTD") benefits. The question arose after an employer's claims examiner paid a claimant for an additional 156 days past the 104-week limit. The court held this type of "overpayment" lacked the requisite statutory elements, and therefore, the employer could not seek reimbursement.

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

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