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E-UPDATE

October 25, 2018

RECENT DEVELOPMENTS

OSHA Once Again Permits Broad Post-Incident Drug Testing and Rate-Based Safety-Incentive Programs

In yet another example of the Trump administration reversing course on Obama-era guidance, the Occupational Safety and Health Administration issued a "Clarification of OSHA's Position on Workplace Safety Incentive Programs and Post-Incident Drug Testing Under 29 C.F.R. § 1904.35(b)(1)(iv)," in which it retreated from the significant restrictions the prior administration had placed on such activities.

The Old Guidance: In 2016, OSHA had published a final rule that, among other things, generally prohibited employers from retaliation for reporting work-related illnesses or injuries. Concurrent and subsequent guidance from OSHA addressed this prohibition in the context of post-incident drug testing and safety-incentive programs. In those documents, OSHA took the position that post-incident drug testing was only permitted "if there is a reasonable possibility that employee drug use could have contributed to the reported injury or illness." If there is no such possibility, such testing would likely discourage reporting and therefore would be considered a violation of the Act, according to OSHA. At the time that OSHA issued the final rule, there was widespread discussion by legal commentators that employer policies requiring automatic testing after every incident were now prohibited by OSHA. Additionally, OSHA found that rate-based safety-incentive programs that denied bonuses or other prizes because of a reported injury discouraged reporting and thereby violated the Act.

The New Guidance: Now OSHA has retreated from those aggressive positions, stating that the prior documents have been superseded to the extent they are inconsistent with the new guidance.

As to drug testing, OSHA asserts that "most instances of workplace drug testing are permissible" under the law. Specifically as to post-incident testing, OSHA now states that it is acceptable to conduct "[d]rug testing to evaluate the root cause of a workplace incident that harmed or could have harmed employees. If the employer chooses to use drug testing to investigate the incident, the employer should test all employees whose conduct could have contributed to the incident, not just employees who reported injuries." This language removes the "reasonable possibility that employee drug use contributed to the incident" requirement, which allows greater latitude to employers to conduct such testing where there is, in effect, any possibility that drug use could have had a role in the incident.

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In addition, OSHA reiterates that the following types of drug testing are permissible (as they were previously):

- Random drug testing.
- Drug testing unrelated to the reporting of a work-related injury or illness.
- Drug testing under a state workers' compensation law.
- Drug testing under other federal law, such as a U.S. Department of Transportation rule.

With regard to safety-incentive programs, OSHA reiterates that incentive programs rewarding reporting of near-misses or hazards and encouraging involvement in a safety and health management systems are always permissible. As to rate-based programs that reward employees at the end of an injury-free period or evaluate managers based on lack of injuries, OSHA now acknowledges that these may be permissible "as long as they are not implemented in a manner that discourages reporting." Specifically, an employer using such a program must "implement[] adequate precautions to ensure that employees feel free to report an injury or illness."

In explaining what constitute such adequate precautions, OSHA cautions that a statement alone that employees are encouraged to report and will not be subjected to retaliation for reporting is not sufficient. Rather, OSHA recommends that employers could take the following actions to avoid the inadvertent deterrent effect of rate-based programs:

- an incentive program that rewards employees for identifying unsafe conditions in the workplace;
- a training program for all employees to reinforce reporting rights and responsibilities and emphasizes the employer's non-retaliation policy;
- a mechanism for accurately evaluating employees' willingness to report injuries and illnesses.

The memorandum directs various officials to revise the prior guidance to ensure consistency with the current position, so we can expect the reissuance of these documents in the future.

DOL Announces New Compliance Tools for New and Small Businesses

The Department of Labor announced on October 17, 2018 two new webpages intended to assist both businesses and workers on compliance with the laws enforced by the DOL's Wage and Hour Division, including the Fair Labor Standards Act, the Family and Medical Leave Act, and child labor laws. These webpages, developed in response to employer feedback, collects tools and information in a centralized location.

The New and Small Business Assistance webpage offers information on the following:

- Laws Enforced by WHD
- WHD Compliance Assistance Resources (including videos, toolkits, labor standards, fact sheets, FAQs, posters, and other materials)
- WHD e-Tools (including information about the Payroll Audit Independent Determination program and eLaws advisors)
- Other DOL Resources

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- Other Governmental Resources
- State Laws and Resources

The Compliance Assistance Toolkits webpage offers the following toolkits for employers to help them understand and comply with the law, by answering frequently asked questions about federal labor standards and providing relevant federal posters:

- Basic Compliance Assistance
- Fair Labor Standards Act (FLSA)
- Family and Medical Leave Act (FMLA)
- Agriculture
- Government Contracts
- Youth Employment

New Workplace Obligations for D.C. Employers - Generally and Those of Tipped Workers

On October 23, 2018, the District of Columbia Mayor signed the "Tipped Wage Workers Fairness Amendment Act of 2018," which includes a new posting requirement for all employers and broad new obligations for employers of tipped workers. The law will take effect following a 30-day period of Congressional review and publication in the D.C. Register.

Applicable to all private employers: The new law requires the Mayor to create a website setting forth employees' rights and benefits under D.C.'s anti-discrimination and labor laws (including wage and leave laws), and providing resources for consultation. Employers will be required:

- To post a new poster containing the new internet website address and list of laws, along with other information, in a conspicuous location, specifically including timeclocks and breakrooms. This will replace the individual posting requirements under the various laws.
- To provide a binder or other compilation of the information from the website at each poster location. This information must be updated monthly.

The failure to comply with these posting and notice obligations is subject to a $100 per day fine.

Applicable to employers of tipped workers: The law repeals a voter-passed ballot measure, Initiative 77, that would have increased the minimum wage for tipped workers. Instead, the law mandates a public education campaign on the rights of tipped workers under the minimum wage, wage payment, and paid sick leave laws, and creates an internet and telephone reporting system for violations of these laws. (Notably, the reporting system appears to apply for any violation of these laws – not just those related to tipped workers.) The law also imposes extensive new obligations on employers of tipped workers, as follows:

- Mandatory sexual harassment training, either through a course developed by the Office of Human Rights or from an OHR-certified provider:
    - New employees must receive in person or online training within 90 days after hire, unless they have received such training within the past two years.
    - Current employees must receive in person or online training within two years.
    - Owners and operators must receive in person or online training every two years.
    - Managers must receive in person training (online is not permitted) every two years.

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- Certification of the training completed by each individual must be provided to the OHR within 30 days.

- Sexual harassment policy:
  - A policy that outlines how to report sexual harassment to management and to the OHR must be filed with the OHR by July 1, 2019.
  - The employer must distribute its sexual harassment policy to all employees and post the policy in conspicuous locations by July 1, 2019.
  - By the effective date of the law, employers must document instances of sexual harassment reported to management, including whether the reported harasser was a non-manager, a manager, an owner, or an operator. Of concern, there is no applicable time period set forth.
  - By July 1, 2019 and annually thereafter, employers must report to OHR the number of sexual harassment complaints received by management, as well as the total number of reported harassers who were non-managers, managers, owners, and operators.

- Notices to tipped workers:
  - Employers must provide a written notice to tipped workers regarding certain rights under the law, information about tip-sharing (if applicable or if not), and credit card payments.
  - Any tip-sharing policy must be posted.

- Third-party payroll administrators:
  - Beginning January 1, 2020, employers (other than hotel employers) must utilize a third-party payroll business to prepare their payroll.

- Pay statements:
  - With each wage payment, employers must provide an itemized statement containing specific wage and hours worked information, as well as a new tip declaration form completed by the tipped worker for each pay period that sets out cash tips and credit card tips.

- Quarterly reporting:
  - Until January 1, 2020, (non-hotel) employers must submit a quarterly report, no later than 30 days after the end of the quarter, to the Mayor certifying that each employee was paid at least the required minimum wage, including gratuities. The report must contain employee-specific information as to: hours worked per week; total pay, including gratuities; average weekly wage; and the employer's current tip-out policy. Of note, this requirement appears to apply to all employees of the employer, not just tipped workers.
  - After January 1, 2020, the third-party payroll administrator must submit the required. quarterly report for (non-hotel) employers.
  - Hotel employers with tipped workers must submit the quarterly report as well.
  - The report should be submitted online, unless doing so would be a hardship in which case it will be submitted in hard copy.

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- Mandatory Minimum Wage Act Revision Act of 1992 training:
    - Owners and operators must receive in person or online training on the Act at least once annually.
    - Managers must receive in person training (online is not permitted) Act at least once annually.
    - Current employees must be offered in person or online training at least once annually.
    - Certification of compliance with this training requirement must be provided by December 31 of each year to the Department of Employment Services.

In addition, the law creates a Tipped Workers Coordinating Council, which is made up of specific representatives for tipped workers, employers and public agencies. The responsibilities of the Coordinating Council are to:

1. Improve coordination and functioning of the wage policies for tipped workers, investigations into wage theft involving tipped workers, and reporting mechanisms for tipped workers.
2. Conduct regular and anonymous case reviews of all parties involved in claims of wage violations for tipped workers; and
3. Develop a protocol to ensure that feedback and recommendations from case reviews are incorporated into the Department of Employment Service's policies, procedures, practices, training, and decisions to re-examine investigations, when applicable.

TAKE NOTE

OSHA Creates Targeting Program Based on 300A Submissions. The Occupational Safety and Health Administration is implementing a site-specific targeting program based on injury and illness data from electronically-submitted Forms 300A for CY 2016, which certain employers were to have submitted by December 15, 2017.

Form 300A is required for employers with 250 or more employees that are currently required to keep OSHA injury and illness records, as well as employers with 20-249 employees in certain industries with historically high rates of injury or illness. The program targets for inspection: (1) those employers with a high rate of injury, as reported on the Form 300A; (2) employers who failed to submit Form 300A, in order to discourage non-reporting; and (3) a random sample of low-rate employers, for purposes of quality control. Those states with OSHA-approved State Plans are required to have their own inspection targeting programs.

OSHA's October 17, 2018 press release on the program also notes that it offers an On-Site Consultation Program for employers with up to 250 workers, which provides "free, confidential safety and health advice on complying with OSHA standards, and establishing and improving safety and health programs." If an employer is participating in this consultation program, the consultation either will take priority over or result in a deferral of a targeted inspection.

COBRA Notice Violations May Result in Payment of Employee's Medical Expenses. In the first federal appellate decision to address the remedy for violations of the Consolidated Omnibus Budget Reconciliation Act's (COBRA) notice provisions, the U.S. Court of Appeals for the Fifth Circuit held that an employer may be liable for the payment of an employee's medical expenses.

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COBRA requires employers to provide certain notices to employees of their rights to continuing healthcare coverage. This includes notice of eligibility for healthcare continuation, as well as notice of termination of coverage. In *Hager v. DBS Partners, Inc.*, the employee failed to receive the required notice of termination, and he sued the employer, seeking reimbursement of his medical expenses.

The Employee Retirement Income Security Act (ERISA) provides civil money penalties for violations of COBRA's notice provisions. These include awards of "up to $100 per day from the date of such [notice] failure" as well as "such other relief as [the court] deems proper." The Fifth Circuit found that the employee's medical expenses could constitute "such other relief."

Thus, given the potential significant penalty that could be imposed for notice failures, employers should ensure timely and accurate compliance with COBRA's notice requirements. To the extent that an employer relies upon a third party administrator to transmit such notices, the employer should also check to make sure the TPA is in compliance, and should also consider including indemnification and hold harmless clauses in their TPA agreements to cover potentially deficient notices or failures to provide notice.

Inconsistent Explanations Undermine Employer's Defense. Because there were "inconsistencies and contradictions" in the supervisor's and HR director's explanations as to why the company began an investigation that led to an employee's discharge, the U.S. Court of Appeals for the Seventh Circuit found that the employee had established a triable case for whether she was actually fired in retaliation for a sexual harassment complaint.

In *Donley v. Stryker Sales Corp.*, an employee filed an internal sexual harassment complaint against a sales manager that resulted in the manager's termination. Immediately following the termination, the company began investigating alleged misconduct by the employee during a team meeting six weeks earlier. The investigation found that the employee had taken pictures of a vendor's drunken CEO that she shared with co-workers, and the employee was terminated. During the lawsuit, the employee's supervisor and the HR director offered differing accounts of when the company learned of the photos and why the investigation commenced. The court found that these inconsistencies, along with the delayed timing of the investigation, could constitute evidence of pretext for retaliation.

This case emphasizes the importance of ensuring that the company's explanations for its actions must be logical and consistent.

Employers Should Provide Harassment Policies In Applicable Languages. A recent case highlights the need for employers to provide harassment policies in the language(s) spoken by their workforce.

Under the *Faragher/Ellerth* affirmative defense, as established by the U.S. Supreme Court, an employer may avoid liability for co-worker harassment if the employer exercises reasonable care to prevent and correct promptly any harassing behavior, among other things. The employer can demonstrate this care by implementing and distributing an effective harassment policy.

In *Tinoco v. Thesis Painting, Inc.*, the employer adopted and distributed an anti-discrimination policy, but the policy was deemed to be "defective or dysfunctional," because it was provided only

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in English. The alleged harasser was Spanish-speaking only, and he could not read or understand the policy.

Thus, this case warns employers that harassment policies should be made available to non-English speaking employees in their language. If a written translation is not available, the employer should have a manager verbally translate the policy, word for word, and have the employee acknowledge by signature a written acknowledgment in their language that a verbal translation was provided, the date and time of the translation, who translated the policy, and that the employee was given an opportunity to ask any questions about the policy.

Employer Must Pay for Post-Offer Medical Exams. If an employer requires an applicant to obtain a post-offer medical exam, the employer must pay for the exam, according to the U.S. Court of Appeals for the Ninth Circuit.

In *EEOC v. BSNF Railway Co.*, the company made a offer of employment to the applicant, conditioned on a post-offer medical evaluation. Because of a history of back issues, the applicant was required to obtain an MRI. He told the company he could not afford to get one, and the company rescinded the job offer.

The court acknowledged that the ADA permits follow-up medical testing where such testing is "medically related to previously-obtained medical information," but noted that the statute was silent as to who pays for the testing. The court found that imposing the costs on individuals would contravene the anti-discrimination provisions and the policy purposes of the ADA, by forcing them "to face costly barriers to employment." Therefore, according to the court, employers must bear the costs of any such testing.

Corporate Entities May Be Considered Employees Under the FLSA. Individuals who created corporate entities that then performed work for a company as "franchisees" were nonetheless found to be employees under the Fair Labor Standards Act, according to the U.S. Court of Appeals for the Tenth Circuit.

In *Acosta v. Jani-King of Oklahoma, Inc.*, a janitorial company required individuals and pairs of related individuals to form corporate entities, and then hired the entities through franchise agreements to perform cleaning services. The Department of Labor conducted an investigation into this practice, and the Secretary of Labor found that, based on the economic realities of the situation, these franchisees were actually employees under the FLSA.

The Tenth Circuit agreed with the Secretary, noting that, "It is well settled that the economic realities of an individual's working relationship with the employer—not necessarily the label or structure overlaying the relationship—determine whether the individual is an employee under the FLSA." The Tenth Circuit then applied the six-factor economic realities test to find employee status: (1) the degree of control exerted by the alleged employer over the worker; (2) the worker's opportunity for profit or loss; (3) the worker's investment in the business; (4) the permanence of the working relationship; (5) the degree of skill required to perform the work; and (6) the extent to which the work is an integral part of the alleged employer's business.

Some companies have taken similar steps as the company in this case to attempt to separate themselves from "employer" status, arguing that the separate corporate entities operate as

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franchisees or independent contractors. This case warns employers that the DOL and courts will look beneath a corporate form or label to assess whether an individual should be deemed an employee under the FLSA.

Adverse Employment Action Required for Failure-to-Accommodate Claims. In order to bring a failure-to-accommodate claim under the Americans with Disabilities Act, a plaintiff must establish that she suffered an adverse employment action, according to the U.S. Court of Appeals for the Tenth Circuit.

In *Exby-Stolley v. Bd. Of County Commissioners, Weld County, Colorado*, the Tenth Circuit noted that the failure to provide reasonable accommodation is a form of discrimination under the ADA, and an employee must establish an adverse employment action in order to sustain a discrimination claim. Under the ADA, an adverse employment action is related to "job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." The Tenth Circuit rejected the plaintiff's argument that a failure to accommodate is itself an adverse employment action, instead holding that there must be a material alteration in a term, condition or privilege of employment.

This holding, in which the Tenth Circuit joins the Eighth and D.C. Circuits, raises the bar for plaintiffs asserting a failure to accommodate. In keeping with common sense, they must establish that there was a significant negative impact on a term, condition or privilege of employment – and not just a mere inconvenience.

Employer May Make Benefit Changes In Keeping with Past Practice Under a CBA. The National Labor Relations Board held that an employer did not violate the National Labor Relations Act in unilaterally implementing annual changes to employees' benefits after the collective bargaining agreement had expired.

As discussed in our December 18, 2017 E-lert, the Board issued *Raytheon Network Centric Systems*, in which it confirmed that, "Where . . . the employer takes actions that are not materially different from what it has done in the past, no 'change' has occurred" and therefore no bargaining is required, even if the CBA under which the past practices occurred has expired. Applying that holding in *E.I. Du Pont De. Nemours, Louisville Works*, the Board held that an employer's annual benefit changes pursuant to an expansive management rights clause contained in an expired CBA were consistent with a past practice of annual changes during the term of the CBA, and were thereby lawful. The employer was not required to provide the union with advance notice of the changes or the opportunity to bargain.

Blanket Ban on Insignia Violates the NLRA. The U.S. Court of Appeals for the Fifth Circuit found that an employer's dress code banning "any type of pin or stickers" violated the National Labor Relations Act.

In *In-N-Out Burger, Inc. v. NLRB*, an employee wore a "Fight for $15" button to work, in solidarity with the national campaign to raise the minimum wage, and was instructed to remove it. He filed an unfair labor practice charge, and the Board found that the employer's policy violated the NLRA. On appeal to the Fifth Circuit, the employer argued that it strictly enforced its dress code in order to promote a consistent public image. Twice a year, however, the employer required employees to wear

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large company-issued buttons: once in celebration of the holiday season and once to support its charitable foundation. The employer also argued the no-pin rule was intended to ensure food safety.

The Fifth Circuit noted that a blanket ban on insignia, such as buttons and pins, relating to the terms and conditions of employment constituted an unfair labor practice under the NLRA. There is a "narrow" exception to this rule where the employer can demonstrate "special circumstances sufficient to outweigh [its] employees' [NLRA] rights and legitimize the regulation of such insignia." Such a special circumstance has been found where the wearing of insignia would "unreasonably interfere with a public image that the employer has established." In this case, however, the employer "failed to demonstrate a connection between the 'no pins or stickers' rule and the company's asserted interests in preserving a consistent menu and ownership structure, ensuring excellent customer service, and maintaining a 'sparkling clean' environment in its restaurants." Moreover, the employer's own pin-wearing requirement during the year undercut any "special circumstances" argument. Thus, the Fifth Circuit found that the wearing of small pins advocating for a higher minimum wage did not unreasonably interfere with the employer's public image or implicate food safety.

We note that a different rule applies in the healthcare setting. Normally, a ban on buttons and other insignia is presumptively valid in patient care areas, as long as it is uniformly applied.

The Fluctuating Workweek Overtime Calculation Cannot Be Used If Incentives Are Paid. An employer that paid weekly incentives for off-day, offshore, and holiday hours was disqualified from using the fluctuating workweek (FWW) method of calculating overtime, according to the U.S. Court of Appeals for the Fifth Circuit.

Under the Fair Labor Standards Act, the FWW may be used when an employee works hours that fluctuate from week to week. The employee and employer can agree that the employee will receive a fixed weekly salary that constitutes straight time pay for all hours worked in a week (including those over 40), and will receive overtime pay at one-half the hourly rate (rather than one and a half times the hourly rate). Because the hours fluctuate while the weekly rate stays the same, the hourly rate also fluctuates, decreasing as the hours worked increase.

In *Dacar v. Saybolt, LP*, the employer paid the above-mentioned incentives, which were added to the weekly base salary. The Fifth Circuit found that these payments caused the weekly salary to vary, in violation of the requirement for a fixed weekly salary. Accordingly, the employer was disqualified from using the FWW method. Thus, employers wishing to use the FWW method must ensure that no additional payments are made on top of the fixed weekly salary.

NEWS AND EVENTS

Darryl G. McCallum and Courtney B. Amelung won a complete defense verdict following a six-day federal court jury trial on a former employee's claims of race and national origin discrimination against her employer. Darryl and Courtney were able to demonstrate that the employee was legitimately disciplined for documented performance issues. Originally, the lawsuit involved two other plaintiffs. The trial court granted summary judgment on all of the plaintiffs' claims, and the U.S. Court of Appeals for the Fourth Circuit upheld the ruling for two of the plaintiffs, but sent the third plaintiff's claims to trial.

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Gary L. Simpler won an arbitration for a major lighting manufacturer involving a representation rights dispute between two unions over the closing of one facility represented by one union and the transfer of work to another facility represented by the other union. The arbitrator agreed with the Company that the work should be staffed with employees who performed the work at the old location and who were represented by the first union. This decision avoided significant training costs and allowed the Company to maintain efficiency, quality and customer service.

Teresa D. Teare was elected as Secretary of the Maryland State Bar Association's Labor and Employment Section Council, which is the governing and leadership body for the Section.

J. Michael McGuire presented a session on "Employee Bad Conduct in the Workplace and on Social Media: When is it Protected by Federal Law?" at the LifeSpan Network/Health Facilities Association of Maryland (HFAM)'s annual conference, which took place October 22-24, 2018 in Ocean City, Maryland.

TOP TIP: Workplace Recordings – The Intersection of the NLRA and State Laws

Employers are facing the conundrum of how to deal with workplace recordings. Some states require two-party consent for any recordings, rendering surreptitious recordings illegal. But until recently, the National Labor Relations Board (NLRB) found such illegal recordings to be protected by – and usable under – the National Labor Relations Act, which, by the way, applies to both unionized and non-unionized employers. But where are we now?

Although the Obama NLRB deemed most instances of surreptitious tape recordings by employees of workplace conversations to be protected concerted activity (PCA) even though unlawful under the law of a State, the more conservative Trump NLRB has now recalibrated this position. This does not mean that illegal under State law = unprotected under the National Labor Relations Act. Instead, the question under the current approach is whether the surreptitious recording is justified in the context of the activity at issue (i.e. is the individual engaged in conduct that furthers the purposes of the NLRA, like recording unsafe workplace conditions or recording an unlawful interrogation by management about union activity), such that the illegality of the taping should be outweighed by the justification that it is PCA under the NLRA.

In *Boeing Co.*, which we discussed in a December 15, 2017 E-lert, the NLRB issued an opinion in which it rejected its prior approach to handbook rules and developed a new approach, in which rules were assigned to three categories: (1) Rules that are generally lawful, (2) Rules that warrant individualized scrutiny, and (3) Rules that are unlawful. In that decision, the Board specifically found an employer's no-recording rule to fall into the first category. This position was reiterated in the NLRB General Counsel's "Guidance on Handbook Rules Post-*Boeing*," as we discussed in our June 8, 2018 E-lert. In addition, two Advice Memoranda from the NLRB General Counsel (GC) are helpful with regard to this issue. (Advice Memos respond to requests for guidance submitted by Regional Directors trying to decide whether a case raises a question of unfair labor practices.)

The first GC memo addresses whether an employer violated the NLRA by refusing a union rep's request to tape record investigatory interviews and other meetings involving a certain manager for use in grievances. The GC concluded that the employer's refusal was proper. The GC explained that NLRB precedent recognizes that open and unhampered communications between the union and

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management are critical to the bargaining relationship. Where the purpose of the meetings concerns a subject that is a core part of that relationship (such as collective bargaining sessions and grievance meetings), recording will undermine the core objective of open and free discussion. Hence, refusing to permit the recording of such meeting is proper. By extension, the surreptitious taping of such meetings is equally (if not more) corrosive of the bargaining relationship and should not be protected by the NLRA.

The second GC memo concerns surreptitious taping of a meeting by an employee in violation of a company policy prohibiting such tapings, and provides a good overview of the revised NLRB position on this issue. In particular, it highlights a nuance that should not be overlooked. Because such rules are presumed to be lawful, in order to be found unlawful, there must be a specific showing that the rule was applied in a way that violates the protections of the NLRA. In this case, the employee who surreptitiously recorded a meeting was unprotected because he (1) lied about having done it and (2) was not engaged in PCA. The General Counsel makes a point of distinguishing the situation where the secret taping is done in connection with actions that constitute PCA, meaning that such conduct still may be protected even though it violates an employer policy or state law.

Bottom line, employers can now enact policies that generally prohibit recording in the workplace, but you must ensure that in applying the policy, you do not prevent employees from engaging in PCA. This is the case even if non-consensual recordings are illegal under state law.

RECENT BLOG POSTS

Please take a moment to enjoy our recent blog posts at laboremploymentreport.com:

- New Jersey Paid Sick Leave Takes Effect October 29, 2018 by Courtney B. Amelung, October 22, 2018
- Reasonable Accommodations – Not Just for Essential Functions! by Fiona W. Ong, October 17, 2018 (Selected as a "noteworthy" blog post by the *Employment Law Daily*)
- Upon Further Review: The DEA Legalizes a Marijuana-Derived Drug by Darryl G. McCallum, October 10, 2018
- OSHA-Compliant Injury Reporting Policies by Fiona W. Ong, October 4, 2018 (Selected as a "noteworthy" blog post by the *Employment Law Daily*)

Also, the following blog post was featured on HRSimple.com:

- Disability – Dr. or employee approved? by Fiona W. Ong, October 24, 2018

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