Complaining and Swearing About Clients Is Not Protected Under the NLRA

In Quicken Loans, Inc., the National Labor Relations Board found that two mortgage bankers’ discussion involving complaints about clients, including swearing about the clients, was not protected concerted activity under the National Labor Relations Act. As in Alstate Maintenance, LLC, which we discussed in our January 2019 E-Update, this case illustrates the Board’s trend of holding that employees’ mere griping that does not seek to initiate group action, or better employees’ working conditions, does not constitute protected concerted activity. Full Article

Constangy, Brooks, Smith & Prophete

Help Wanted - "Preferably Caucasian?"

It has been illegal to specify race or sex (or national origin, color, or religion) in an employment ad for about the past 55 years. It’s been illegal to specify age for about the past 52 years. Your whole reason for being is to help your clients hire people. So, don’t skimp on educating your employees about the EEO laws as they relate to hiring and recruiting. If you use inexperienced employees who don’t know the law to write your ads (NOT RECOMMENDED), require that the ads be reviewed and edited by someone with some experience and knowledge before they’re published. Full Article

Constangy, Brooks, Smith & Prophete

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U.S. Supreme Court to Review Trio of Cases Concerning LGBTQ Employee Rights under Title VII

In its next term, the U.S. Supreme Court will review a trio of employment discrimination cases considering whether federal sex discrimination protections under Title VII apply to an employee’s sexual orientation and gender identity. In two of the cases the Court will hear, Altitude Express v. Zarda from the Second Circuit, and R.G. and G.R. Harris Funeral Homes v. EEOC from the Sixth Circuit, the terminated employees prevailed on claims alleging specifically illegal termination by relying on Title VII’s protection against sex discrimination based upon sexual orientation and gender identity. The Eleventh Circuit took the opposite approach in Bostock v. Clayton County, Georgia and declined to extend such protection to the employee. Full Article

Greenbaum, Rowe, Smith & Davis

Beware Worker Harassment Claims For Nonemployee Conduct

A new decision from the U.S. District Court for the Eastern District of Pennsylvania highlights the exposure employers have to claims of sexual harassment based upon actions allegedly made by nonemployees, including customers, contractors or vendors. The law requires the employer to provide a safe and secure workplace free from harassment — whether by its own employees or others — thereby discounting the golden rule of good client relations: “The customer is always right.” In certain circumstances, the employer must act to protect its employees from unlawful harassment. Full Article

Windels Marx

What Employers Need To Know About The New EEOC Chair

Janet Dhillon’s confirmation as the new Chair of the Equal Employment Opportunity Commission (EEOC) earlier this week will have an impact on employers in more ways than one. Besides installing an agency head that is seemingly in a position to understand and balance the interests of the business community and workers alike, the Senate has restored a quorum to the agency for the first time in several months... Full Article

Fisher Phillips

What The Heck Are Employee Weingarten Rights And Are There Limits?

There are many legal nuances companies must deal with on the employee relations front in union versus non-union environments. For example, employees in a unionized workforce have the right to have, upon request, a union representative present with them during any investigative interview that may lead to discipline of that employee – commonly referred to as “Weingarten rights.” These rights currently apply only to employers who have unionized workforces. The National Labor Relations Board (NLRB) expanded Weingarten rights to non-union employees for a brief period in the early 2000s, but the agency has since reverted to having them apply exclusively in union settings. Full Article

Barnes & Thornburg
**STATE & INTERNATIONAL COMPLIANCE**

**CALIFORNIA**

California Court of Appeals Bolsters Willfulness Defense to FCRA Actions

In a positive development for employers, the California Court of Appeals affirmed summary judgment for an employer in a class action alleging willful violations of the Federal Fair Credit Reporting Act. [Full Article]

*Hunton Andrews Kurth*

**MINNESOTA**

The Battle over the Minneapolis Sick and Safe Time Ordinance Continues: Court Holds the Law Applies to Employers Outside City Limits

On April 29, 2019, the Minnesota Court of Appeals overturned a state district court ruling and found that the Minneapolis Sick and Safe Time Ordinance (SST Ordinance) applies to employers outside the City limits. [Full Article]

*Littler Mendelson*

**ARKANSAS**

Panic Attacks Covered Under the ADA, According to Arkansas District Court

A recent court decision left employers weary of implementing disability-related policies and absence management initiatives in the workplace. Earlier this month, the Eastern District of Arkansas interpreted the Americans with Disabilities Act ("ADA") to include panic attacks as a covered disability under the Act. [Full Article]

*Gordon & Rees*

**MASSACHUSETTS**

Retail Salespeople Paid on Commission Are Entitled to Overtime and Sunday Pay, Massachusetts SJC Says

The decision creates a significant difference between Massachusetts and federal law. Under Section 7(i) of the Fair Labor Standards Act, retail salespersons paid at least half their total earnings in commission are exempt from the FLSA’s overtime requirements. [Full Article]

*Proskauer*