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Labor and Employment Law

Ignorance Is Not Bliss: Knowing When to Issue a Litigation Hold

Has your company adopted a records management and document retention program that will pass legal muster? Does your company have a protocol in place to ensure that a litigation hold is issued at the right time and to track compliance after the hold is issued? If not, a recent federal court decision serves as a stark reminder that employers must issue litigation holds on a timely basis and track compliance with the directives found in the hold. In *Green v. Blitz U.S.A., Inc.* (E.D. Tex. 2011), the court sanctioned the defendant in a products liability case when it learned, more than two years after the case had closed, that the defendant declined to issue a litigation hold and destroyed potentially relevant documents.

In *Green*, the jury returned a verdict in favor of the defendant, but discovery in a related case later revealed that the defendant had failed to produce a number of relevant documents. Further inquiry revealed that the defendant had never issued a litigation hold, had placed a self-confessed "computer illiterate" in charge of its document retention efforts, had declined to conduct an electronic word search for relevant e-mails and had failed to suspend its standard document destruction policy. In addition to imposing a $250,000 sanction, the court also required the defendant to provide a copy of the court's order and opinion to every plaintiff in every lawsuit pending against it in the past two years, and to file a copy with its first responsive pleading in every new lawsuit for the next five years.

Although employers and attorneys have become increasingly familiar with the duty to preserve relevant evidence, *Green* demonstrates that some companies continue to get it wrong. It is increasingly important to understand what events will likely trigger the duty to preserve in the context of an

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employment-related dispute, and what types of documents must be protected.

Triggering Events

An employer has a duty to preserve documents when it knows or should know that evidence is relevant to a current or future legal action. This duty arises automatically when an employer reasonably anticipates litigation. An employer can reasonably anticipate litigation when it receives notice that it is party to a legal or administrative proceeding. *See, e.g., Jones v. Bremen High Sch. Dist. 228*, No. 08-CV-3548, 2010 WL 2106640, at *6 (N.D. Ill. May 25, 2010) ("Defendant clearly had a duty to preserve documents relevant to plaintiff's claims when it received notice of plaintiff's EEOC charges."); *Mosaid Tech. Inc. v. Samsung Electronics Co.*, 348 F. Supp. 2d 332, 336 (D.N.J. 2004) ("[T]he duty to preserve exists as of the time the party knows or reasonably should know litigation is foreseeable. At the latest, in this case, that time was . . . when [the plaintiff] filed and served the complaint.").

An employer may also have a duty to preserve evidence before any formal proceeding has begun. For example, some courts hold that an employer can reasonably anticipate litigation when it receives a letter threatening potential legal action and requesting the preservation of relevant information. *See, e.g., D'Onofrio v. SFZ Sports Group, Inc.*, No. 06-687, 2010 WL 3324964, at *7–8 (D.D.C. Aug. 24, 2010) (holding that the employer had a duty to preserve relevant evidence when it received a letter from the plaintiff stating that she intended to initiate litigation, and requesting that electronically stored information be preserved); *Sampson v. City of Cambridge*, 251 F.R.D. 172, 181 (D. Md. 2008) (stating that "[i]t is clear that the defendant had a duty to preserve relevant evidence . . . when plaintiff's counsel sent the letter to defendant requesting the preservation of relevant evidence, including electronic documents. At that time, although litigation had not yet begun, defendant reasonably should have known that the evidence described in the letter 'may be relevant to anticipated litigation.'")

An employer may even have a duty to preserve relevant evidence, based simply on the totality of the circumstances. In one case, a federal court in Connecticut upheld a $2.6 million jury verdict and held that it was proper to instruct the jury to draw an adverse inference against the employer for failing to suspend its standard document destruction policy three months *before* the plaintiff filed the complaint. The court reasoned that several factors demonstrated that the employer could have reasonably anticipated litigation well before the complaint was filed, including: the nature and severity of the plaintiff's injury, the employer's pre-litigation retention of a medical expert and claims manager to evaluate the scope of the plaintiff's injury, and the use of video surveillance to monitor the plaintiff's activities. While the court declined to cite a single triggering event, it concluded that the totality of the circumstances indicated the employer had a duty to preserve documents at the time it destroyed certain reports.

These cases make clear that employers should routinely evaluate what events trigger the duty to preserve. Moreover, simply issuing a litigation hold or asking employees to preserve documents, without actively monitoring compliance, is insufficient to avoid legal liability. Employers should develop a standardized process to identify triggering events and ensure that key players understand their preservation obligations. Many employers, for example, issue a legal hold and require recipients to certify in writing that they have identified all relevant information. Other employers periodically circulate legal holds to notify new employees and remind existing employees of the ongoing duty to preserve. In light of the potential sanctions that can be imposed on noncompliant companies, it is essential that employers implement a standardized process for issuing legal holds and ensuring compliance.

Types of Documents to Preserve

As a general rule, an employer need not preserve "every shred of paper, every e-mail or electronic document, and every backup tape." *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 217 (S.D.N.Y. 2003). Rather, an employer need only preserve "unique, relevant evidence that might be useful to

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an adversary." *Id*. The scope of this duty will vary depending on the nature of the claim, but information must be preserved that an employer knows or should know is relevant to the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery, or is the subject of a pending discovery request. This includes electronic and hard copy documents that are in existence at the time the duty attaches, and all relevant documents created thereafter.

Typically, in an employment discrimination case, an employer must preserve the claimant's personnel file, e-mail account for the time in question, and correspondence to and from supervisors and other key players, including human resources professionals involved in the adverse employment action. The employer should also preserve information related to potential comparators. This may include employees who worked in the same position as the claimant, reported to the same supervisor or were subject to the same type of treatment or adverse action. Information related to the nature, timing and resolution of any other recent discrimination claims filed against the employer should also be preserved.

There is no one-size-fits-all approach to issuing legal holds, and applying the duty to preserve to real-world situations often presents a challenge. Vedder Price attorneys are well versed in minimizing litigation risks through the effective use of legal holds and records management programs, and are available to assist employers with any of their pre-litigation needs.

If you have any question about document retention programs, litigation hold practices or electronic discovery in general, please contact **Bruce A. Radke** (312-609-7689), **Michelle T. Olson** (312-609-7643) or **Amy L. Bess** (202-312-3361). ■

Vedder Price Hosts "Reconnect for a Cause"

On April 21, 2011 *Elizabeth N. Hall* and *Megan J. Crowhurst* hosted a networking event for female alumni and current members of the Labor and Employment Group. Bottomless Closet, a Chicago nonprofit workforce agency, participated in the event and accepted donations of women's business clothing and accessories for welfare recipients who lack suitable attire for job interviews.

A second women's networking and charitable event will be held in early fall for a more expansive group of our clients, contacts and friends. More information to follow soon.

The Supreme Court Sharpens the Claws of the "Cat's Paw" Theory

In our July 2009 newsletter, we highlighted then-recent decisions evaluating the "cat's paw" theory of liability in discrimination cases. Under that theory, an employer can be liable for discrimination where the supervisor who harbored discriminatory animus towards the plaintiff influenced an adverse action, but did not in fact make the ultimate decision.

In *Staub v. Proctor Hospital*, cited in that same issue, the plaintiff sued for discriminatory discharge in violation of USERRA, which protects members of the military. He claimed that he was terminated due to the antimilitary animus of two supervisors. The company contended that the termination decision was made by an individual in Human Resources who relied, in part, on information provided by the supervisors but who did not herself harbor antimilitary animus. The plaintiff argued that Human Resources' actions were insufficient, and that the company was liable for discrimination based on the animus of his supervisors, which led to his discharge.

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While the jury agreed with the plaintiff, the Seventh Circuit did not. Instead, the Seventh Circuit held that cat's paw liability exists only where a non-decision making supervisor exercises "singular influence" over the decision maker, such that the discriminatory action was the product of "blind reliance." Because the ultimate decision maker in *Staub* did not rely solely upon the information of the hostile supervisors, but also investigated some of the facts relevant to the termination on her own, the court held that the employer did not violate USERRA when it discharged the plaintiff.

Last month, the Supreme Court reversed the Seventh Circuit's ruling, finding that the plaintiff had in fact met his burden. The Court specifically noted that the employer was at fault because "one of its agents committed an action based on discriminatory animus that was intended to cause, and in fact did cause, an adverse employment decision." It found, therefore, that an employer is liable for USERRA-based discrimination using the cat's paw theory where:

- A supervisor performs an act motivated by antimilitary animus;
- The supervisor intends for that act to cause an adverse employment action; and
- The act is a proximate cause of the ultimate employment action.

The Supreme Court's decision seemingly raises the bar for employers hoping to escape liability for employment decisions prompted by discriminatory animus, even when an unbiased decision maker made the final call after an impartial investigation. Accordingly, employers should endeavor, whenever possible, to carefully investigate all of the facts and circumstances leading up to a supervisor's request to terminate an employee, and not to take the supervisor's version of events at face value.

If you have any questions about this article, please contact **Elizabeth N. Hall** (312-609-7795) or **Neal I. Korval** (212-407-7780). ■

Wage and Hour Developments in the Hospitality and Service Industry—Simple Steps Employers Can Take to Minimize the Risk of Preventable Lawsuits

Employers today are facing a barrage of wage and hour lawsuits on an unprecedented scale. Indeed, it is not uncommon to see plaintiffs' attorneys target a particular industry for "special" attention, especially when there appears to be a significant number of employers unclear about or unconcerned with the obligations imposed by the Fair Labor Standards Act (FLSA) and state wage and hour laws. The hospitality industry has come under just such scrutiny, with single plaintiff and class action lawsuits filed against national chains as well as local "mom and pop" establishments. With no employer immune, there are several areas where a proactive employer should pay particular attention.

Minimum Wage, Overtime and Off-The-Clock Claims

One issue that turns up time and again, particularly with less sophisticated employers, involves incorrect minimum wage payments. Under federal and state law, employers are required to pay nonexempt employees the minimum wage. In many cases, employers do not realize the federal or state minimum wage has changed and that, as a result, hourly employees are not being paid the appropriate minimum wage until a lawsuit has been filed. Employers often mistakenly rely on HR consulting firms or payroll companies to notify them of any changes in the minimum wage. However, the wage and hour laws place the onus of compliance on the employer. Unless the employer has an indemnification agreement with its payroll provider, the employer is on the hook for the unpaid wages plus any fees or other penalties that may be imposed. Employers should periodically verify whether a minimum wage hike has occurred or is planned.

Another easily correctible mistake involves the incorrect payment of overtime to hourly workers. Instead of paying employees time-and-one-half

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(1.5x) the hourly rate for hours worked in excess of 40, some hospitality and service industry employers continue to pay employees the straight time rate for overtime hours. For example, an employee is paid $10 per hour for all hours worked, including overtime hours, even though the federal and state laws require the employee to be paid $15 per hour for all hours over 40. Some employers erroneously believe that an employee may agree, or even offer (in exchange for more hours) to accept a lesser overtime wage than is required by the law. The law is very clear, however, that employees may not waive their right to be paid the minimum or overtime wage.

Off-the-clock claims are another headache plaguing hospitality employers. These lawsuits stem from the nonpayment of wages for time spent working by employees before clocking in and after clocking out (i.e., off-the-clock work), and they are often filed in conjunction with minimum wage and overtime claims. To succeed on these claims, the employees must prove that the employer knew they were engaging in off-the-clock work activities without compensation. The success of these claims often hinges on whether the employer has implemented timekeeping rules, notified employees of the rules and disciplined employees who violated them. Credibility of the supervisors and witnesses is also a major factor.

Employers would be well-served to require employees to clock in and out using a time clock and to have supervisors review the time cards on a weekly basis. Under federal and state law, employers are required to keep accurate records. Failure to do so can result in the courts giving more credence than they otherwise would to the employees' estimate of the hours they worked. Employers should also make clear to employees that they are not permitted to work overtime without prior authorization and that they will be disciplined up to and including termination if they work unauthorized overtime. Employers also may want to consider implementing workplace rules requiring employees to start working as soon as they clock in and to leave the premises after they clock out, and depending on the industry and job, prohibiting employees from working at home.

Lest employers think these lawsuits are not a cause of concern, under federal law, employees may be awarded liquidated damages in an amount that is equal to the amount of the unpaid minimum wage or overtime amounts plus their attorneys' fees. Thus, lawsuits, often stemming from innocent mistakes, may end up costing employers hundreds of thousands of dollars, not including attorneys' fees. Moreover, state or federal departments of labor may decide to audit all of the company's wage and hour practices.

Be Careful with Tip Credit Arrangements

Treatment of "tipped" employees is another hospitality industry practice that is frequently challenged by plaintiff's attorneys. Under federal and most states' laws, employers may pay tipped employees a reduced hourly rate if the employer follows certain rules. For example, Illinois law permits employers to pay tipped employees an hourly rate of $4.95 per hour, rather than the statutory $8.25 per hour. To qualify for this credit under federal law, the employer must satisfy the following requirements:

- Inform each tipped employee of the "tip credit" arrangement by, for example, posting the federal DOL notices regarding tipped employees and having employees sign a written acknowledgement of understanding.
- Tipped employees must receive at least $30 in tips per month. Compulsory service charges determined by the employers are not tips.
- Tipped employees must be paid at least the minimum wage when the decreased hourly rate and tips are added together.
- Employees must be permitted to keep ALL tips, provided that a valid tip-sharing arrangement (or "tip pool") may be utilized. Employees may not be required to contribute more to the tip pool than what is "customary and reasonable."

If the employer fails to satisfy *any* of the above conditions, the tip credit arrangement is invalid and the employer may be liable for the amount saved by using the tip credit, any additional overtime amounts and liquidated damages.

Most lawsuits challenging the tip credit take issue with the last element. The general rule is that tip-sharing arrangements typically may *not* include dishwashers, cooks, managers, maintenance employees, janitorial staff and any other individuals not typically involved in serving customers. Managers generally may not participate because their primary responsibility is to supervise, not service customers. Starbucks has been fighting lawsuits all over the country, which claim that various supervisory employees should not be included in the tip pool. The safest course is to limit the tip pool to employees whose primary responsibility is directly servicing customers.

Another type of lawsuit that could have wide-ranging ramifications for the service and hospitality industries challenges the amount of time that tipped employees spend on non-tip producing activities. In *Fast v. Applebee's International*, the Eighth Circuit Court of Appeals affirmed a Missouri federal district court decision adopting the U.S. Department of Labor's position that non-tip producing activities, when routine and in excess of 20 percent of the employee's shift, should be compensated at the minimum wage with no tip credit allotted. With this decision, employers are confronted with the onerous task of implementing monitoring and record keeping practices aimed at tracking whether minuscule activities, such as cutting lemons, need to be detailed during the employee's shift. This case may well prompt the plaintiffs' bar to pay even more attention to how service and hospitality employers pay their employees.

There is some good news for hospitality employers. The United States Department of Labor recently reversed a long-standing enforcement rule specifying that, for purposes of how much an employee may contribute to a tip pool, the term "customary and reasonable" meant 15 percent. In other words, the DOL previously took the position that requiring employees to contribute more than 15 percent of tips into a tip pool would jeopardize the employer's tip credit arrangement. The DOL pronounced in its new regulations that there is no maximum contribution percentage that applies to valid mandatory tip pools. Employers should nevertheless be mindful to establish "tip pool" contribution rates that are consistent with industry standards.

If you have any questions about these or other issues affecting the hospitality and/or service industry, please contact **Aaron R. Gelb** (312-609-7844), **Joseph K. Mulherin** (312-609-7725) or **Lyle S. Zuckerman** (212-407-6964). ■

Supreme Court Continues Expansive Interpretation of Retaliation Claims

On March 22, 2011, the U.S. Supreme Court held that oral complaints are protected under the Fair Labor Standards Act's (FLSA) anti-retaliation provisions. In *Kasten v. Saint-Gobain Performance*, the Court resolved a split among the circuits as to whether the statutory term "filed a complaint" found in the FLSA encompasses oral, as well as written, complaints. A 6-2 majority found that, while the language of the statute may be ambiguous, the intent of the FLSA compelled the conclusion that oral complaints are indeed protected. This should come as no surprise to anyone, given how the Court has ruled in a number of cases involving retaliation claims over the past few years.

In *Kasten*, the employee claimed that he verbally "raised a concern" with his shift supervisor about the location of the employer's time clocks, which he felt prevented employees from being paid for time they spent donning and doffing protective gear in violation of the FLSA. Kasten also alleged that he told his lead operator he was "thinking about starting a lawsuit about the placement of the time clocks," and he informed an HR employee that the company would lose if he challenged the location of the time clocks in court.

The company eventually terminated Kasten's employment, after repeated warnings, for failing to record his comings and goings on the company's time clocks. Kasten, not surprisingly, contended that he was discharged because he complained orally to company officials about the location of the time clocks. The district court entered summary judgment in the company's favor, holding that the FLSA does not protect oral complaints, and the Seventh Circuit affirmed the decision.

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The Supreme Court reversed the Seventh Circuit's ruling, holding that oral complaints are indeed protected. In arriving at this conclusion, the Court gave deference to the position taken by the Secretary of Labor that the phrase "filed a complaint" encompasses oral complaints, as well as written ones. The Department of Labor articulated this position in an enforcement action years ago, and it has reaffirmed this position in subsequent briefs.

Writing for the majority, Justice Breyer set forth the minimum requirements that an oral complaint must meet in order to protect the person who made it, namely that it "must be sufficiently clear and detailed for a reasonable employer to understand it, in light of both content and context, as an assertion of rights protected by the statute and a call for the protection." The Court held that this standard may be met by both oral and written complaints.

As noted above, the *Kasten* decision marks another expansion of the protections afforded to employees who come forward to report or complain about potential violations of the laws intended to protect them.

Most recently, in January 2011, the Supreme Court found in favor of a man who claimed that he was fired because his fiancée filed a sex discrimination claim against their mutual employer (*Thompson v. North American Stainless*). In a previous term, the Court held that an employee may bring a retaliation claim under Section 1981 (*CBOCS West, Inc. v. Humphries*) and that a federal employee may sue for retaliation under the Age Discrimination in Employment Act, despite the lack of the term "retaliation" in either statute (*Gomez-Perez v. Potter*). The Court also found in favor of an employee who claimed that she was fired after answering questions relating to another employee's sex harassment claim (*Crawford v. Metropolitan Government of Nashville & Davidson County*) and held that retaliation under Title VII encompasses any employer action that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination" (*Burlington Northern & Santa Fe Railway Co. v. White*).

If you have any questions about these issues, please call **Thomas M. Wilde** (312-609-7821), **Katherine A. Christy** (312-609-7588) or **Jonathan A. Wexler** (212-407-7732). ■

Illinois Civil Union Law Requires Employer Action

The recently enacted Illinois law recognizing civil unions has implications for all Illinois employers. The law becomes effective June 1, 2011. Before that date, employers should review and update their policies and employee benefit programs that may be affected by the law. This is true for both employers that provide domestic partner benefits and those that do not.

The Illinois Religious Freedom Protection and Civil Union Act (the "Civil Union Act") allows same-sex and opposite-sex couples to enter into a new form of legal relationship called a "civil union." Under the Act, persons entering into a civil union are entitled to the same legal protections, benefits, obligations and responsibilities as spouses under Illinois law. The law provides a process for establishing a civil union and for dissolving one.

The Civil Union Act also contains a reciprocity provision under which Illinois will recognize as a civil union any same-sex marriage, civil union or other substantially similar legal relationship (other than a common law marriage) that was legally entered into in another jurisdiction. Currently, five states (Connecticut, Iowa, Massachusetts, New Hampshire and Vermont) and the District of Columbia, as well as a number of foreign countries (including Canada) permit same-sex couples to marry. Other states (including Oregon, Nevada, New Jersey and Washington) have laws similar to the new Illinois Civil Union Act recognizing civil unions or domestic partnerships. Still other states (including Colorado, Maine, Maryland and Wisconsin) accord more limited legal recognition to such relationships.

Complicating matters, the federal Defense of Marriage Act provides that, for purposes of federal law, "the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." So, while civil union partners generally are to be treated

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the same as spouses under Illinois law once the Civil Union Act becomes effective later this year, it appears that they will not have the same rights or status as spouses under federal law.

Of course, employers operating in Illinois are subject to both Illinois and federal law. Certain programs maintained by private-sector employers, such as bereavement leave, are governed exclusively by state law; others, such as retirement plans and flexible spending accounts, exclusively by federal law; and still others, such as insured health benefits plans (but not self-insured plans), by both federal and state law. Unfortunately, this creates significant complexity for employers.

Illinois employers that currently offer domestic partner benefits should review their domestic partner benefit program in light of the Civil Union Act. For example, the definition of "domestic partner" in the domestic partner benefits policy and the applicable benefit program documents and leave of absence and other policies may need to be revised to specifically encompass civil union partners. In addition, consideration should be given to whether an affidavit attesting to the existence of a domestic partnership will continue to be regarded as sufficient, or if Illinois employees should be required to formalize the relationship as a civil union in order to receive domestic partner benefits.

Illinois employers that do not offer domestic partner benefits will need to review their benefit plans and leave of absence and other human resources policies that involve spouses of employees to determine the impact of the Civil Union Act. For example, an employer with medical or dental insurance funded through a group insurance policy issued in Illinois will find that civil union partners will be eligible for coverage on the same terms as spouses beginning June 1, 2011, even though the employer may not want to provide such benefits.

If you would like more information or have any questions, please contact **Thomas G. Hancuch** (312-609-7824) or **Jessica L. Winski** (312-609-7678). ■

The New York Department of Labor Issues Guidance Concerning the New York Wage Theft Prevention Act

Employers operating within New York state should be aware that the New York Wage Theft Prevention Act (WTPA) has become effective. The new law, which became effective April 9, 2011, imposes notice requirements on employers and imposes enhanced penalties for willful as well as nonwillful violations of the wage-hour laws.

As discussed in detail in our **January 19, 2011 Bulletin**, the WTPA generally requires that employers notify all newly hired employees and all current employees of the following: (i) the employee's rate of pay; (ii) whether the employee is paid by the hour, shift, day, week, salary, piece, commission or otherwise; (iii) any allowances claimed as part of the minimum wage such as tips, meals or lodging allowance; (iv) the employee's regular payday; and (v) the employer's name (including any DBAs), address and telephone number. Additionally, the WTPA codified several regulations concerning the information required to be included on the pay stubs given to employees with their paychecks.

The New York State Department of Labor (NYSDOL) has now posted sample notices on its website, which comply with the WTPA's notification requirements. Specifically, the DOL has issued notices for:

- Hourly rate employees.
- Multiple hourly rate employees.
- Employees paid a weekly rate or salary for a fixed number of hours fewer than 40 in a week.
- Employees paid a salary for varying hours, day rate, piece rate, flat rate or other nonhourly pay.
- Employees paid under the Prevailing Rate.
- Exempt Employees.

The NYSDOL's sample notices may be accessed **here**. Significantly, we must point out that the NYSDOL's sample notices include statements and

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sections that are not mentioned in the statute. For example, the DOL's sample notice to exempt employees adds a statement that "[m]ost workers in NYS must receive at least 1½ times their regular rate of pay for all hours worked over 40 in a workweek, with few exceptions. A limited number of employees must be paid overtime at 1½ times the minimum wage rate, or not at all." These notices, however, are merely samples, and employers may craft their own notices (as long as they are in compliance with the terms of the WTPA).

In addition, the NYSDOL has issued FAQs that address many important issues that were raised to the NYSDOL since passage of the WTPA. The NYSDOL's FAQs may be accessed **here**. Of particular note, the DOL has provided the following guidance:

Who Is Covered by the WTPA?

- All private sector employers must comply with the WTPA.
- The WTPA applies to charter schools, private schools and not-for-profit corporations.

When and How Are Notices to Be Provided?

- Notices are required at the time of hire, and yearly between January 1 and February 1. Employers are not required to give a notice at other times of the year.
- Notices must be given each year even if none of the information has changed.
- Notices may be attached to letters or employment agreements given to new hires as long as the notice is on its own form.
- Notices may be given electronically, but only if the employee can acknowledge receipt of the notice and print out a copy for his file.

Must Commission-based Employees and Unionized Employees Receive the Notices?

- *Commission-based Employees:* Under Labor Law § 191.1c, commissioned salespeople are required to sign a written commission agreement. The DOL advises that the commission agreement be attached to the pay notice each year.
- *Unionized Employees:* Since collective bargaining agreements may cover multiple job titles that are paid multiple wage rates, individual employees must receive notices of their applicable wage rates.

Are Notices Required for Changes to Wage Rates?

- Employers in the hospitality industry must provide a new notice each time a wage rate changes.
- For employers not in the hospitality industry, notice is not required where there is an *increase* in a wage rate and that increase is reflected on the next wage payment statement.
- For any *reduction* in a wage rate, the employee must be notified in writing before the reduction is implemented.

In What Languages Will Employers Be Required to Provide Notices?

- Sample notices will be available in English, Spanish, Chinese, Korean, Creole, Polish and Russian.
- Employers must provide notices to employees in their primary language if the NYSDOL provides notice templates in that language. Otherwise, the employer is required to provide the notice only in English.

We will continue to post updates on the WTPA in the event the NYSDOL issues supplemental guidance or judicial opinions are published that further interpret the statute. If you have any questions concerning the WTPA, or would like to discuss creating a notice form unique to your business, please do not hesitate to contact your Vedder Price relationship attorney, **Laura Sack** (212-407-6960) or **Roy P. Salins** (212-407-6965). ■

Recent Vedder Price Accomplishments

- *Aaron R. Gelb* and *Megan J. Crowhurst* won summary judgment in federal court in Louisiana on claims of race discrimination and retaliation. The plaintiff, a sales representative, alleged that he was put on a performance improvement plan because of his race, and the employer retaliated against him by terminating his employment several weeks after learning that he had filed a Charge of Discrimination with the EEOC.

- *Amy L. Bess* and *Sadina Montani* obtained dismissal of an ADA claim brought in the U.S. District Court for the Western District of Virginia by a former employee who alleged his employer failed to accommodate his disability.

- *Neal I. Korval* recently concluded negotiations for a successor CBA for a large New York medical group, covering six of their facilities. The new contract not only achieved the client's fiscal objectives, but revamped language in several key areas.

- *Jonathan A. Wexler* achieved a 98 percent reduction in a fine that the New York State Workers' Compensation Board sought to impose on a client for failing to carry workers' compensation insurance.

- *Lyle S. Zuckerman* won dismissal, on a pre-answer motion, of a federal breach of contract claim brought by a plaintiff union under Section 301 of the Labor Management Relations Act. The court agreed with our construction industry client that the dispute was required to be arbitrated by the parties' labor agreement, and was thus subject to dismissal for failure to exhaust administrative remedies.

- *Edward C. Jepson, Jr.* and *Elizabeth N. Hall* prevailed on an appeal to the First Circuit Appellate Court of Illinois of a lower court's dismissal of a plaintiff's claim pursuant to the Illinois Whistleblower Act.

- *Amy L. Bess* and *Sadina Montani* obtained dismissal of a Title VII discrimination, ADA and Rehabilitation Act suit brought in the U.S. District Court for the District of Maryland by a former employee who alleged discriminatory discipline and termination against a national professional services firm client.

- *Sadina Montani* argued on behalf of a national consulting firm and was granted summary judgment in Virginia state court against a tortious interference claim brought by a former contractor.

Vedder Price is a founding member of the Employment Law Alliance—a network of more than 3,000 employment and labor lawyers "counseling and representing employers worldwide." Membership provides Vedder Price and its clients with network access to leading employment and labor counsel in all 50 states and over 100 countries around the world.

Final Days to Register!

2011 Annual Employment Law Update

Please join us at Vedder Price's Annual Employment Law Update conference, held this month in Chicago and Rosemont, Illinois. The conference will feature programs presented by the firm's Labor and Employment attorneys from our Chicago, New York and Washington, D.C. offices. The program is complimentary.

Chicago
Tuesday, May 10, 2011
The Standard Club
320 South Plymouth Court
Chicago, Illinois

Rosemont
Wednesday, May 18, 2011
Hilton Rosemont/O'Hare
5550 North River Road
Rosemont, Illinois

Presentations Include:

- Practical Solutions to the Indefinite Medical Leave Problem
- Unions, Employers and National Labor Law: Where Is It All Headed?
- Developments and Trends in the Restrictive Covenant and Trade Secrets Area
- Health Care Reform: What Employers Need to Know Now
- Must-Know Court Decisions (and Other Things): 2010–2011
- Pre-Employment Screening and Selection Procedures: Know Your Rights . . . and Theirs

To register for either event, please visit our events page at www.vedderprice.com.

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