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Using Class Action Waivers

The USSC Gives Employers a Tool to Stave Off the Threat of Class Actions and Class Arbitrations

by Alyesha Asghar Dotson

Earlier this year, in the *Oxford Health Plans LLC v. Sutter* and *American Express Co. v. Italian Colors Restaurant* decisions, the United States Supreme Court held that arbitration agreements containing class and collective action waivers could give employers a way to manage the constant risk of class proceedings. In sum, employers who want to avoid class and collective actions should have their employees expressly waive that option when they agree to arbitration. By doing so, employers can avoid class proceedings, assuming there is no specific legislation to the contrary and that the agreement is not otherwise unenforceable.

Read the full article on our

Notes from the Chair & Executive Editor

Welcome to the third-quarter edition of *SuperVision Today*, Spilman Thomas & Battle's labor and employment e-newsletter. We are very excited about the recently launched Spilman SuperVision app for iOS devices. This app, which is available for free download in the Apple App Store, is designed to help you with employment law questions we frequently encounter. The app will allow you to explore common employment law situations, such as those relating to overtime, final wage payment and social media. By following the app's simple decision tree mechanism, you can gain a better understanding of these particular issues, what your options are, and when to seek the counsel of a knowledgeable legal advisor. Please take a moment to download the app (or walk through the app's decision tree on our website) and let us know what other labor and employment law topics you would like us to tackle next.

For our friends in Virginia and North Carolina (and any who missed our Charleston event), our next SuperVision labor and employment law symposium is Thursday, September 26 in Roanoke, Virginia. SuperVision presentations will cover such topics as the Affordable Care Act, social media, dealing with disability leave and other hot topics. We are particularly thrilled that National Labor Relations Board Member Harry I. Johnson, III will be delivering our lunchtime keynote presentation. Attendance is expected to be high, so please reserve your spot now.

In this edition of *SuperVision Today*, Alyesha Dotson addresses the growing acceptance of class action waivers by courts and the value of incorporating a waiver into job applications, contracts and offer

website.

A Vignette of Lingering ACA Considerations

by Erin Jones Adams

Despite the highly publicized announcement that enforcement of the "Pay-or-Play" mandate (which requires businesses to provide health insurance to all full-time employees or face yearly penalties of up to $3,000 per employee) has been delayed until 2015, important considerations remain for businesses and consumers about how they will ultimately be affected by the Affordable Care Act. Businesses may have additional time to comply, but given the volume of new rules and changes, a number of areas still require assessment and planning.

Read the full article on our website.

3 Weeks Left: Is Your Business Ready for HIPAA Compliance?

by R. Scott Adams

The September 23, 2013 deadline for covered entities, business associates and their subcontractors to implement the new HIPAA rules is approaching quickly. In case you missed it, on January 25, 2013, the U.S. Department of Health and Human Services issued an omnibus final rule modifying the Health Insurance Portability and Accountability Act of 1996. The effective date is September 23, 2013, and your business must review its policies and take necessary steps to ensure HIPAA compliance and avoid potential penalties from failing to act.

Read the full article on our website.

letters. Erin Jones Adams examines some of the latest issues concerning the Affordable Care Act. Rick Wallace and Lindsay Griffin Smith discuss some important dos and don'ts for annual performance reviews, and Scott Adams highlights a number of items that should be on every HIPAA compliance checklist.

We hope you enjoy our content this quarter. As always, if you have any questions or ideas for future articles, please feel free to reach out to us.

Eric W. Iskra
Chair, Labor & Employment Group

Eric E. Kinder
Editor, SuperVision Today

The Dos and Don'ts of Performance Evaluations

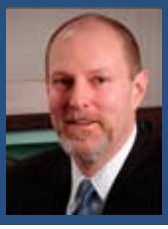
by Richard M. Wallace and Lindsay Griffin Smith

Performance evaluations take up the time of the employer, supervisors, and of course the employee - paid time for supervisors and employees - and for a company, time is money. A performance evaluation can be a confrontation, and pointing out flaws in your employees can breed dissent and lead to a mutinous workforce. Time, money, morale and other excuses provide ample fodder for employers to rationalize not evaluating their employees. So, why should employers conduct employee performance evaluations?

The Temptation to Skip
The benefits of avoidance appear to outweigh the costs of evaluating - until a disgruntled employee who was terminated for consistent poor performance sues the former employer for age, disability, equal pay, genetic information, national origin, pregnancy, religion and race discrimination with a side of sexual harassment and retaliation. While the employee's claims are unfounded, the jury only has the testimony of the supervisor and former employee and the documents in the employer's file with which to evaluate the claims. If the employer neglected to complete regular performance evaluations, the file is without tangible evidence demonstrating the employee's poor performance over time, which is much more effective at contradicting the employee's testimony. Needless to say, this is not where any employer wants to be.

With the above scenario in mind, let's reevaluate evaluations.

Read the full article on our website.



Samuel M. Brock III

Sam's labor and employment practice focuses on litigation and trial work in matters such as employee benefits and ERISA, federal and state discrimination laws (Title VII, ADEA, ADA, FMLA, etc.), and federal

and state wage and hour laws. He also counsels and defends clients in matters relating to the NLRA, including union avoidance, collective bargaining and labor arbitration. Additionally, Sam counsels and represents clients on OSHA and other safety and health matters. He is admitted to practice in West Virginia, Virginia and Pennsylvania.

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