The Fast Laner - May 14, 2013

What Is The Fast Laner?

The Fast Laner is a bi-weekly summary of timely issues in labor and employment law prepared for clients and friends of Laner Muchin. *The Fast Laner* will also, when circumstances warrant, serve as our Firm's vehicle to deliver breaking news in the labor and employment field. If you wish to learn more about Laner Muchin, its practice areas and attorneys, please visit our website.

Employers Must Comply With New DOL Notice Requirement Regarding Health Care Exchanges Under Affordable Care Act

On May 8, 2013, the Department of Labor (DOL) released new guidance imposing notice requirements on employers regarding the health care exchanges that are a key element of the Affordable Care Act. Employers must provide this notice to each employee, regardless of the employee's plan enrollment status or whether the employee is on part-time or full-time status. Each notice must include certain information about the employer's health coverage as well as information about the new health care exchanges, the opportunity to apply for a premium tax credit for coverage obtained on the exchanges, and the tax consequences of purchasing coverage through an exchange. The DOL has provided a model notice for employers that offer health insurance coverage and a model notice for employers that do not offer coverage. Both model notice forms require customization before they are issued to employees. For example, employers will need to understand the eligibility provisions of their health insurance plans and whether their plans offer "minimum value" and "affordable" coverage as defined under the employer shared responsibility mandate rules (i.e., Pay or Play) before completing and distributing the notice. The notice must be provided to each new employee at the time of hire beginning October 1, 2013. The DOL will consider a notice to be provided at the time of hire if the notice is provided within 14 days of an employee's start date. With respect to employees hired before October 1, 2013, employers are required to provide the notice by October 1, 2013.

DOL Issues Recommended Changes To COBRA Election Notices To Provide Information About Health Care Exchanges

The Department of Labor (DOL) recently revised the model COBRA election notice to include information regarding the health care exchanges and to eliminate references to exclusions for pre-existing conditions (since such exclusions will no longer be permitted effective January 1, 2014), among several changes. Although the DOL did not change the content requirements of the COBRA election notice, employers may find the revisions useful, especially with regard to the inclusion of information about the health care exchanges. For example, current or former employees who are eligible to elect COBRA may prefer to elect coverage on the health care exchanges and decline continuing their

coverage in the employer's plan through COBRA. Employers should review their COBRA election notices and COBRA general notices and consider revising such notices to reflect the new guidance provided by the DOL. The DOL provided a copy of the model COBRA election notice in redline format illustrating the changes made to the notice.

Federal Court Strikes Down NLRB Posting Requirement But U.S. Supreme Court Likely To Have The Last Word

In ***National Association of Manufacturers v. NLRB***, Case No. 12-5068 (D.C. Cir. May 7, 2013), the U.S. Court of Appeals for the District of Columbia decided that the National Labor Relations Board (NLRB) rule requiring union and non-union employers to post notices advising employees of their right to unionize was unconstitutional and violated the National Labor Relations Act (NLRA). The Court found that the notice violated employers' right of free speech because it only informed employees of their rights to unionize, but did not inform employees of their rights not to unionize or to decertify a union. The court also struck down the component of the rule that would have tolled the statute of limitations on any unfair labor charge against an employer who was not in compliance with the posting requirement. The NLRB had already stayed enforcement of the posting requirement pending resolution of legal challenges and, while this issue may ultimately be decided by the U.S. Supreme Court, employers do not have to comply with this posting requirement for the time being.

NLRB Rules That Target's Policy Banning Employees From Selling Goods Or Services For Commercial Purposes On Company Premises May Interfere With Employees' Exercise Of Protected Union Actity

The National Labor Relations Board (NLRB) continued its trend of finding common personnel policies invalid because, according to the NLRB, employees could read the policies to restrict protected union activity. The NLRB has long held that an employer's ban on solicitation that is limited to working time, or on distribution of literature that is limited to working time and working areas, is valid. However, the NLRB ruled that Target's policy went too far because it prohibited employees, at all times while on Target's premises, from soliciting, distributing literature and selling goods or services for "personal profit" or "commercial purposes." The NLRB found that Target's restriction on selling goods and services for "commercial purposes" could potentially be understood by employees "to mean something different, including solicitation and distribution for other organizations, such as unions." The NLRB said its reading of the policy was supported by Target's statements during a union organizing campaign that a union is a "business" that "sells membership." Employers should consider revising similar policies to define "commercial purposes" in a way that explicitly excludes otherwise protected union activity.

Senate Panel Considers 300 Amendments to Immigration Reform Bill, Bill Likely To Proceed To Full Vote In Senate This Summer

On Thursday, May 9, 2013, the Senate Judiciary Committee began examining about 300 proposed amendments to the 844-page immigration reform bill, an overhaul of the existing immigration system which would increase the number of high-skilled and low-skilled worker visas and provide a path to citizenship for undocumented immigrants. While most of the amendments are unlikely to pass, they provide a valuable preview as to the issues that will be heavily debated over the coming months. Some of the notable proposed amendments include: allowing gay citizens and permanent residents the ability to sponsor a spouse or partner for a visa; banning from U.S. Citizenship anyone who has ever been "willfully present" in the U.S. without legal status; requiring Homeland Security officials to conduct in-person interviews with each undocumented immigrant who applies for legal status; and increasing border security by requiring "operational control" of the border and adding another 700 miles of border fencing. Since a simple majority is all that is required to send the bill to the full Senate, the Senate Judiciary Committee could potentially approve an immigration bill within two weeks and clear the way for major debates on the Senate floor in the coming months.

Questions?

*If you have any questions or comments about The Fast Laner, please e-mail them to **fastlaner@lanermuchin.com**. If you would like to speak with a Laner Muchin attorney about any issues raised in The Fast Laner, please contact your Laner Muchin servicing attorney/contact or send an e-mail to **info@lanermuchin.com**. Information contained in The Fast Laner should not be construed as legal advice or opinion.*

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