Federal Bar Association
Labor and Employment Law Section
Summer 2016

The Labouring Oar

Message from the Chair

By Donna Currault

Our L&E Section is looking forward to the FBA Annual Meeting and Convention in Cleveland, Ohio on September 15-17, 2016. If you haven't already registered, you really should because it's a great opportunity not only to fulfill your CLE obligations with spectacular programs but also to meet peers from all over the country. On the Friday morning of the conference, our L&E Section will present a session entitled "Race and Religion in the Workplace: A Look at the Last 25 Years." Phillip Kitzer (Teske Micko Katz Kitzer & Rochel PLLP) will moderate a panel of experienced practitioners including Roula Allouch (Chair of the Council on American-Islamic Relations), Danielle Brewer Jones (The Brewer Law Office, PLLC) and Craig Cowart (Jackson Lewis PC) who will explore claims of race and religious discrimination in the workplace and how those claims have changed over the years. And later that afternoon, starting at 3:30 pm, the L&E Section will hold its annual in-person meeting for all Section members, followed by a social hour. If you are an L&E Section member or interested in becoming a member of the L&E Section, please join us for this meeting and social.

In addition to the exciting events at the Annual Meeting, the L&E Section has several other CLEs on the calendar. Our traveling program—L&E in a Nutshell—has been a huge hit! We are partnering with great Chapters across the country to bring this program to Minneapolis in August, Oklahoma City in September, San Diego in October, and Phoenix in November. And we are working to bring the L&E Nutshell program to San Juan, Omaha, Portland, St. Louis, and other locations next year. Of course, we also have video webinars available for viewing at your convenience. Jessica Summers (Paley, Rothman) will discuss the latest developments on the Department of Labor's FLSA and White Collar Exemptions on August 10 at 10:00 am, and John Lassetter (Littler Mendelson) and Joel Schroeder (Faegre Baker Daniels) will discuss the shift of policymaking from Congress to the Executive Branch, as well as to the states and local governments, on November 9, 2016.

Of course, we also continue to plan for our 7th Biennial Conference being held in San Antonio, Texas, on March 9-10, 2017. Although all of the CLE sessions are not yet finalized, we already have commitments from great speakers who will no doubt provide our members with top-notch discussions of advanced topics and developing issues faced by L&E practitioners. If you have not been to one of our Biennial Conferences before, you really have to put this on your cal-

Chair continued on page 2

A Look at What's Inside

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REQUEST FOR PROPOSALS

The Labor and Employment Section is seeking written proposals for presentations at the FBA's 2017 Labor and Employment Section Biennial Conference, to be held on March 9-10, 2017 in San Antonio, Texas.

The purpose of the presentation should be to educate conference attendees and stimulate discussion on current and practical topics in Labor & Employment law. If you are interested in submitting a proposal for this conference, please provide the following:

- Proposed speaker(s); include brief background (including whether you have spoken at previous FBA events) and contact information;
- Proposed title of presentation;
- Summary of the presentation; include purpose and content; and
- Target audience for the presentation (plaintiff or defense bar; or professionals providing advice and counsel for employers, such as attorneys, human resources professionals, and/or employers; or all of the foregoing).

If you submitted a proposal for the 2016 National convention and it was not selected for presentation, submission of those materials in response to this request will be sufficient—but please indicate if that is the case. All proposals must be received by Aug. 15, 2016 by submission to the CLE & Programming Committee at **2017FBALEConf@PCLifeguard.com**.

Please contact Corie Tarara, Chair of the L&E CLE & Programming Committee, at ctarara@seatonlaw.com or 952-921-4615, with any questions regarding the conference or proposal. ■

SAVE THE DATE!

The Labor and Employment Law Section of the Federal Bar Association announces the

7TH BIENNIAL

LABOR AND EMPLOYMENT LAW CONFERENCE

MARCH 9-10, 2017 • SAN ANTONIO, TEXAS

Chair continued from page 1

endar. We are still accepting proposals for presentations, so please forward any suggestions for topics or speakers that may be of interest to our membership to ctarara@seatonlaw.com.

The L&E Section also continues its award-winning publications highlighting recent developments in our practice area. In this issue of *The Labouring Oar,* we are happy to include Tara Adams's article on Municipal Paid Sick Leave Laws and Daniel Lowin's discussion of the new Defend Trade Secrets Act of 2016. And Jack Blum's informative "Election Year Labor and Employment Law Considerations for Private Employers" is certainly a timely issue for all of us. Sam Strantz's discussion of Company Privilege and the Advice-of-Counsel Defense is a must read, as is Tom Carroll's and Joel Schroeder's article on how Employment Law policymaking has shifted from Congress to others. Of course, we continue to deliver electronic Monthly Circuit Updates which provide section members with an overview of recent developments throughout the circuits.

I am thrilled with the wonderful programs, publications, and events that we have organized this year. These things can only be accomplished through the hard work and effort of our active members. On behalf of the entire Section, I would like to thank everyone for their hard work. And I particularly want to thank all of the authors for their contributions to this issue and for sharing their insight and views on these timely L&E topics.

It's never too late for you to get more involved with the L&E Section. If you would like to explore other opportunities within the FBA and our L&E Section, please contact me at dcurrault@gordonarata.com. ■

Election Year Labor and Employment Law Considerations for Private Employers

By Jack Blum

Few would dispute that the 2016 election season has been one of the odder elections in recent memory. Featuring circus-like debates and a brash real estate developer-cum-reality TV star, a democratic socialist, and a former First Lady under FBI investigation as potential major party nominees, the primaries alone have not failed to provide fodder for workplace discussion. For private practice employment lawyers, this national spectacle adds yet another mine into the minefield of labor and employment law. What rights and liabilities would arise if an employer took adverse action against an employee simply because the employer disagreed with the employee's politics? Or could on-the-job political discussion be so obnoxious as to create a hostile work environment? These and other issues may confront labor and employment lawyers in this election year.

This article examines some election-year concerns potentially applicable to private-sector for-profit employment relationships as we move towards the 2016 general election. Given that scope, several election-year issues relevant in other contexts are not addressed in detail. These include the Hatch Act's prohibition on the ability of some federal employees to engage in various types of on-the-job political activities, the protection that some public-sector employees may enjoy against political-based discrimination, and implications that employee political activities may carry for non-profit employers.

I. Federal Law

Under Title VII, the federal employment discrimination statute, political affiliation is not a protected class.[1] Only discrimination on the basis of race, color, religion, sex, or national origin is prohibited under Title VII. Disability, age, and genetic information are additional protected classes under other federal statutes. Nor do the First Amendment's protections of speech and political association, in most cases, apply to limit the conduct of private employers under federal law.[2]

The federal Voting Rights Act contains a provision prohibiting any person, whether or not acting under color of law, from intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce, any other person for the purpose of interfering with that person's right to vote in federal elections.[3] There appears to be a split of authority as to whether this prohibition is enforceable by a private right of action.[4] Moreover, the impermissible intention under the statute is limited to the act of voting and would likely not apply on its face to a claim of discrimination based on political opinions, views, or party membership.

A final consideration under federal law is the National Labor Relations Act (NLRA). Under the NLRA, employees of union and non-union employers alike are guaranteed the right to engage in concerted activity for mutual aid and benefit to improve the terms and conditions of their employment. In a case involving a union's attempt to distribute literature urging employees to take action against a right-to-work law and criticizing a veto of an increase in the federal minimum wage, the U.S. Supreme Court held that the concerted activity right is not limited to actions within the channels of the immediate employer-employee relationship.[5] Instead, the concerted activity right protects employees who seek to advocate among their co-workers regarding political issues germane to the employment relationship.[6] An employer seeking to limit its employees' discussions of workforce election issues could well find itself on the wrong end of a concerted activity unfair labor practices charge brought by the National Labor Relations Board.

II. State Law

While Title VII does not treat political affiliation as a protected class, many states have enacted legislation protecting employees from discrimination based on their political views or affiliations. As might be expected, these state law protections are as varied and diverse as the states that enacted them. Some jurisdictions have, unlike federal law, treated political affiliation as an additional protected class in their general employment discrimination statutes.[7] Other states, some without specifically calling out political affiliation or activity, generally prohibit employers from taking adverse action based on an employee's off-duty activities.[8] Such prohibitions could fall short, however, to the extent that the employee has engaged in on-the-job political activity or speech. Another method that some states use to protect employees from discrimination based on their political opinions or activities ties the protection to the employee's exercise of state or federal constitutional rights.[9]

Several other states prohibit employers from punishing or retaliating against employees for engaging in political activities.[10] Many of these state statutes, while applicable to the employment relationship, appear to have been enacted more out of concern for the protection of the electoral process than for the protection of employee rights. These statutes vary widely in the types of conduct that is protected, with some covering only formal political activities like running for office or voting, and others encompassing broader forms of advocacy.[11] They also vary in the penalties they impose, with some states even imposing criminal penalties upon violating employers.[12]

As if the patchwork of state laws were not complicated enough, at least one federal circuit judge has further muddied the waters by suggesting that these state law protections may be preempted by Title VII in some instances. This suggestion came in the context of a former employee's lawsuit under South Carolina's statute prohibiting termination based on an employee's exercise of constitutional rights after the employer fired the employee for displaying the Confederate flag in the workplace. While the Fourth Circuit in an *en banc* opinion ultimately ordered that the case be remanded to state court for want of a substantial federal question, at least one judge was sympathetic to the employer's argument that it would be caught between a rock and a hard place due to the apparent conflict between South Carolina's prohibition on punishing the employee for exercising his freedom of speech and Title VII's duty to maintain a discrimination-free workplace. In a concurring opinion, Judge Roger Gregory suggested that state laws like South Carolina's protecting political expression could well be preempted by Title VII to the extent that the state law impaired the ability of an employer to prevent the development of a hostile work environment.[13]

Finally, there is the prospect of an employer's liability for common law abusive or wrongful discharge in violation of public policy. While the precise contours of this doctrine vary from state to state, it does not appear implausible that state constitutional rights of freedom of association could be deemed a sufficiently strong public policy, particularly given the absence, in many cases, of an alternative remedy for employer actions limiting the right of association.

III. Hostile Work Environments

While federal anti-discrimination laws are not directly applicable to political viewpoints and beliefs, it is possible that workplace election-year discussions could take center stage in a lawsuit under Title VII. This is because many of the issues that have loomed large in this and past election cycles—such as immigration, terrorism and ISIS, and social issues like abortion, religious liberty, and LGBT rights—may serve as proxies for Title VII's explicit protected classes. The most likely backdrop for such claims appears to be in the context of hostile work environments—alleging that a supervisor's or co-worker's political discussion made the workplace hostile—or as evidence of pretext in the *McDonnell-Douglas* burden-shifting analysis.

Some federal district courts have recognized this possibility. In denying an employer's motion for summary judgment on a hostile work environment claim, one court described the line between criticism of the political actions of Christian conservatives and criticism of the Christian religion as a "muddy" dispute of material fact.[14] Another court, albeit in dicta, noted that an employee's comments associating Muslims with terrorism could potentially create a hostile work environment for a Muslim co-worker.[15] As touched upon above, several courts have also considered whether the display of the Confederate flag creates a hostile work environment for African-American employees.[16]

By and large, however, employees making such arguments face an uphill battle. The problem for employee-plaintiffs in many of these cases is the general Title VII hostile work environment requirement that the discriminatory conduct be severe and pervasive in the workplace. Plaintiffs alleging "proxy-political" discrimination stemming from workplace debates on topics like the merits of affirmative action,[17] the Israel-Palestine conflict,[18] and derogatory comments about President Barack Obama,[19] among others, have failed to meet this standard. However, all hope is not lost for employees seeking to avail themselves of this argument. In *Paasewe v. Action Group, Inc.*, the Sixth Circuit reversed a grant of summary judgment in favor of the employer where a supervisor told the plaintiff-employee not to wear an Obama campaign shirt, threatened to kill then-Senator Obama if he won the election, remarked that the African-American employee should take Mr. Obama back to Africa, and the company's human resources employees selectively enforced a prohibition on political paraphernalia so as to allow white employees to display McCain campaign pins and flyers but forbid African-American employees from showing support for the Obama campaign.[20]

IV. Conclusion

These topics are just some of the issues that may face labor and employment lawyers as the tumultuous 2016 election cycle continues to progress. Just as labor and employment law is an ever-changing field, this election cycle to date has not failed to surprise. One can only imagine what developments might emerge from the federal district and circuit courts as the 2016 election cases make their way through litigation over the next several years. ■

Jack Blum is an associate in the Employment Law and Commercial Litigation practices at the law firm of Paley, Rothman, Goldstein, Rosenberg, Eig & Cooper, Chartered in Bethesda, Maryland. Blum focuses his practice on representing employers in claims involving agency charges, employment discrimination, wage and hour issues, non-compete and non-solicitation covenants, and the interpretation of employment agreements. In the area of commercial litigation, Blum represents a wide range of clients in cases involving shareholder and partnership disputes, business torts, breaches of contract, real estate development rights, environmental contamination, trade secrets, and complex trust and estate issues.

Endnotes

[1]42 U.S.C. § 2000e-2(a).

[2]*Dixon v. Coburg Dairy, Inc.*, 369 F.3d 811, 817 n.5 (4th Cir. 2004).

[3]52 U.S.C. § 10101(b).

[4]*Broyles v. Texas*, 618 F.Supp.2d 661, 697 n.11 (S.D. Tex. 2009).

[5]*Eastex, Inc. v. N.L.R.B.*, 437 U.S. 556, 565-66 (1978).

[6]*Id*. at 569-70.

[7]D.C. Code § 2-1402.11(a); V.I. Code Ann. tit. 10, § 61(1).

[8]*E.g.*, Colo. Rev. Stat. Ann. § 23-34-402.5(1); Mont. Code Ann. 39-2-904 (requiring "good cause" for employee's dismissal); N.D. Cent. Code Ann. § 14-02.4-03(1); N.Y. Labor Law § 201-d(2)(a), (c).

[9]Conn. Gen. Stat. § 31-51q; S.C. Code Ann. § 16-17-560.

[10]*E.g.*, La. Stat. Ann. § 961; Minn. Stat. Ann. § 10A.36; Mo. Rev. Stat. § 130.028; Neb. Rev. Stat. § 32-1537; Nev. Rev. Stat. § 613.040; Colo. Rev. Stat. § 8-2-108(1); Cal. Lab. Code § 1102.

[11]For an exhaustive discussion of the various state-law provisions, see Eugene Volokh, *Private Employees' Speech and Political Activity: Statutory Protection Against Employer Retaliation*, 16 Tex. Rev. L. & Pol. 295 (2012).

[12]*See* Minn. Stat. Ann. § 10A.36 (gross misdemeanor); Neb. Rev. Stat. § 32-1537 (class IV felony).

[13]*Dixon*, 369 F.3d at 821-26 (Gregory, J. concurring in the judgment).

[14]*Parker v. Side by Side, Inc.*, 50 F.Supp.3d 988, 1011-1012 (N.D. Ill. 2014).

[15]*Powell v. Media Gen. Operations, Inc.*, No. 7:10-3170-HFF-KFM, 2011 WL 4501836 (D.S.C. 2011).

[16]*Dixon*, 369 F.3d at 821-26 (Gregory, J. concurring in the judgment) (collecting cases).

[17]*Smith v. Alcon Labs., Inc.*, No. 00 C 7982, 2002 WL 1727393 (N.D. Ill. 2002) (refusing to "sanction such a radical extension of

employment discrimination law" by "transform[ing] this simple political disagreement into an actionable case of hostile work environment under Title VII.").

[18]*Finkelshteyn v. Staten Island Univ. Hosp.*, 687 F.Supp.2d 66, 78 (E.D.N.Y. 2009) (discussion did not involve "use of incendiary language, racial epithets, or other hallmarks of racial animus"); *Mills v. PeaceHealth*, 31 F.Supp.3d 1099, 1117 (D. Ore. 2014) (comment "involved a political discussion of the Middle East not directed at plaintiff").

[19]*Shuler v. Corning, Inc.*, 4:08CV00019, 2008 WL 3929139, at *11 (W.D. Va. 2008) ("An objectively reasonable person would not find comments regarding a Presidential candidate's race enough to create a racially hostile work environment."); *accord Shaw v. City of W. Monroe*, 12-0318, 2013 WL 1385628, at *6 (W.D. La. 2013); *Gibbs v. Brown Univ.*, 09-cv-392-ML, 2011 WL 1299950, at *8 (D.R.I. 2011).

[20]*Paasewe v. Action Group*, 530 Fed. Appx. 412, 413-15 (6th Cir. 2013).

A Summary of Present and Proposed Municipal Paid Sick Leave Laws

By Tara Craft Adams

There has been a recent push among larger metropolitan areas to mandate the provision of paid sick time to private employees through municipal laws, including city ordinances and ballot referenda. This is the result, at least in part, of failed efforts to pass federal or statewide legislation that would accomplish the same objective. Although the passage of municipal law is certainly not a simple process, generally requiring multiple revisions between a city council and specialized committees, as well as public hearings and comment periods before voting and enactment, cities seem to have had some success in utilizing ordinance procedures or similar methods to achieve what would otherwise require lengthy and arduous legislative processes. Because many of the municipalities that have been able to enact these ordinances successfully are large and can contain hundreds of thousands, and even millions, of private employees, the effect can be quite widespread.

According to the National Partnership for Women and Families, nearly four in 10 private-sector workers—and more than 80 percent of low-wage workers—do not have paid sick days to care for their own health, meaning that at least 43 million workers have no access to paid sick days at all, and millions more cannot earn paid sick time that can be used to care for a sick child or family member.[1]

Historically, many state and federal government employees have received paid sick days, and that continues to be true. At present, all states provide paid sick days to at least some state employees, and the federal government provides 13 paid sick days a year to its full-time employees. In addition, in September of 2015, President Obama issued Executive Order 13706 requiring federal contractors and subcontractors—which represent a fairly significant number of employers—to provide paid sick leave to employees.

At the statewide level, nine states—California, Connecticut, Hawaii, Maine, Maryland, Minnesota, Oregon, Washington, and Wisconsin—and the District of Columbia allow at least some workers who already have paid sick days granted to them by their employers to use those days to care for themselves as well as certain family members in certain circumstances. Of those nine, only four states—Connecticut, California, Massachusetts, and Oregon, along with the District of Columbia—actually require at least some private employers to provide paid sick leave to employees and to allow employees to be able to use those days to care for themselves or ill family members.

Alaska, Arizona, Georgia, Illinois, Michigan, Minnesota, New Jersey, New York, North Carolina, South Carolina, Vermont, and Washington all have attempted to enact legislation requiring the provision of paid sick leave by private employers. Of these, Vermont and New York (to some extent) have been successful. Vermont's law becomes effective for large employers on January 1, 2017, and for smaller employers on January 1, 2018. Although it does not require general paid sick leave, New York recently enacted a paid family leave law that provides virtually all employees with up to 12 weeks of paid family leave to care for a new child or family member with a serious health condition; that law becomes effective on January 1, 2018.

With regard to sick leave laws at the municipal level, many municipalities have chosen to utilize ordinances (or other municipal law) to mandate paid sick leave, often in states where legislative efforts have failed.

The cities of San Francisco, California; Seattle, Washington; Portland, Oregon; New York City; Oakland, California; Tacoma, Washington; Philadelphia, Pennsylvania; Emeryville, California; and the New Jersey cities of Newark, Jersey City, Irvington, Passaic, East Orange, Paterson, Trenton, Montclair, Bloomfield, and New Brunswick, all presently have paid sick leave laws that operate similarly to state sick leave laws—employees earn a statutory (or higher) amount of paid sick leave and can use it for themselves or to care for ill family members.

Other municipalities that have passed sick leave laws that are scheduled to take effect either later this year or in 2017 are Elizabeth and Plainfield, New Jersey; Spokane, Washington; Santa Monica, California; Minneapolis, Minnesota; and Montgomery County, Maryland. Additionally, Los Angeles, San Diego, Chicago, and Albuquerque all are in some stage of proposing or voting on required paid sick leave for private employees. The proposals in Los Angeles and San Diego would mandate employers to provide more paid sick time than currently required under California state law.

Though there is some variance, these laws generally require employers to provide employees with paid leave to diagnose, care for, or treat their own illnesses or those of sick family members, or to seek preventative medical care. The permissible uses of

statutory sick leave are often broader than the sick leave that is typically granted by an employer. Some laws, such as those in Seattle, Portland, New Brunswick, Tacoma, Philadelphia, Emeryville, and Minneapolis, also require employers to provide paid leave for domestic violence, stalking, or sexual assaults. The laws also generally have specific requirements relating to annual accrual and carryover, and some include anti-retaliation provisions, notice and posting requirements, and recordkeeping obligations. In addition, some of the laws, such as California's, require employers to provide written notice of available paid sick time with each pay stub. Significantly, even others, such as those in Santa Monica and Los Angeles, also increase the minimum wage for employees.

The other side of the municipal sick leave coin is state preemption, which is also increasing in popularity. In response to the legislating actions of municipalities, states have been passing or attempting to pass contrary laws that preempt municipalities in those states from enacting laws requiring private employers to provide paid sick leave. Arguably, the most notable such law was passed in Wisconsin in 2011, preempting Milwaukee's sick leave law, which had passed by ballot initiative with 69% support, and prohibiting local ordinances from requiring employers to provide paid sick leave to employees. Other states with preemption laws currently on the books include Georgia, Louisiana, Arizona, Florida, Indiana, Kansas, Mississippi, Tennessee, North Carolina, Michigan, Oklahoma, and Alabama, with the majority of those laws enacted within the past three years.

Administratively, having to track the requirements of multiple sick leave laws at both the state and municipal levels has the potential to impose a significant burden on employers. For example, an employer who operates in the New York area could conceivably have to keep track of the requirements of the paid sick leave mandates of Connecticut, New York City, the various New Jersey municipal sick leave ordinances, New York's family leave law, and, if that employer happened to also be a federal government contractor, Executive Order 13706. While it may seem easy enough for that employer simply to provide enough leave to cover each of the applicable laws, the variance in the amount of time that can be accrued, capped and carried over, notification requirements, and definitions of "family" for whom sick leave could be used to care, muddies the waters considerably. However, until there is cohesive state and federal legislation regarding paid sick leave, employers may simply have to comply with multiple sick leave ordinances. ■

Tara Craft Adams is an attorney in the Labor, Employment and Higher Education group at Gray Plant Mooty in Minneapolis, Minnesota. Tara can be reached at tara.adams@gpmlaw.com.

Endnotes

[1]www.paidsickdays.org/research-resources/quick-facts.html#.V1satVUrJhE (last visited July 25, 2016).

A Membership Perk: Monthly Circuit Updates

Don't forget that your membership in the Labor and Employment Section gives you access to the Monthly Circuit Updates! Each month, summaries of all the major labor and employment decisions in each Circuit are provided to all members in an eNewsletter that is also available on the Section's webpage at www.fedbar.org/sections/labor-employment-law-section.aspx. These Updates are an invaluable resource that allows members to stay up-to-date on important developments in each Circuit. Take a deep dive into all the new cases within your Circuit each month, and/or peruse all of the developments around the country to stay abreast of the law for your clients. If you would like to volunteer as a contributor for the Circuit Updates, please contact Kathryn Knight (kknight@stonepigman.com) or Brian Rochel (rochel@teskemicko.com) for more information.

The Shift of Employment-Law Policymaking from Congress to the Executive, the States, and Local Governments

By Thomas W. Carroll and Joel P. Schroeder

The foundations of labor and employment law are the common law and a patchwork of statutes and regulations, including well-known and firmly established federal statutes like the Fair Labor Standards Act (FLSA), the National Labor Relations Act (NLRA), Title VII, the Age Discrimination in Employment Act (ADEA), the Family Medical Leave Act (FMLA), and others. Congress has passed some employment laws during the Obama administration—including the Lilly Ledbetter Fair Pay Act and the Defend Trade Secrets Act. But given the gridlock in Congress, new employment laws have been developing at a more rapid pace at the administrative, state, and local level. This article provides a brief overview of some of the new laws that are emerging from federal agencies, state legislatures, and city governments across the country—and what to watch out for in the months and years ahead.

Federal agencies push the envelope.

When Congress doesn't act, federal administrative agencies often do. In the employment space, that often means the Equal Employment Opportunity Commission (EEOC), the Department of Labor (DOL), and the National Labor Relations Board (NLRB).

As explained in the last issue of *The Labouring Oar*, the EEOC continues to push the bounds of Title VII by arguing that sexual-orientation discrimination and gender-identity discrimination constitute discrimination on the basis of sex. Recently, the Department of Justice (DOJ) joined the fray in *United States v. North Carolina*,[1] a federal lawsuit challenging a North Carolina law that requires public agencies to restrict restroom use based on the sex stated on someone's birth certificate. Among other claims, the lawsuit alleges that North Carolina is committing pattern-and-practice discrimination on the basis of sex, in violation of Title VII, because the new law discriminates against transgender people. Because Title VII does not explicitly protect gender identity or transgender status, the DOJ ties them to sex, which is protected. According to the DOJ's complaint, "[g]ender identity and transgender status are inextricably linked to one's sex and are sex-related characteristics." The State of North Carolina raised several defenses, including that Title VII's protection against sex discrimination does not extend to gender identity. Although the reach of Title VII may not be decided by this case, the case reflects the Obama Administration's efforts to extend Title VII's protections.

Title VII is not the only way the executive branch is pushing the envelope on LGBTQ rights. The DOL's Office of Federal Contract Compliance Programs (OFCCP) recently issued new rules governing sex discrimination by federal contractors and subcontractors, effective August 15, 2016. The rules revise the definitions of sex discrimination and sex harassment to include gender identity and transgender status. And, consistent with the administration's stance on public restrooms in the wake of North Carolina's law, a transgender employee working for a federal contractor must be allowed to use the restrooms (and similar facilities like changing rooms) that correspond to the employee's gender identity.

The DOL is also revamping wage-and-hour law without Congress through its rulemaking authority. For example, the DOL's recently-released overtime regulations raise the minimum salary requirement applicable to millions of employees previously exempt from the FLSA's overtime provisions. The regulations—which are slated to take effect on December 1, 2016—do not differentiate among industries and will particularly affect hospitality, restaurant, and nonprofit employers.

The NLRB made its splash in de facto policymaking last year when it issued its decision in *Browning-Ferris Industries of California*, 362 NLRB No. 186. The decision upended years of NLRB precedent on the standards governing joint employment. Previously, joint employment required an *actual* exercise of direct and immediate control over workers. In *Browning-Ferris*, however, the NLRB found that the old standard was narrower than the law requires, and it announced a new standard. Now, joint employment may exist where the entity in question has indirect control over the workers, or even where the entity has the *right to control* the workers, regardless of whether it actually exercises that right. The case is currently on appeal to the U.S. Court of Appeals for the D.C. Circuit. The NLRB also flexed its muscle with the so-called "ambush" election rule, which shortens the time period for collective-bargaining elections and curtails employers' rights. That was enough to get Congress's attention, but President Obama vetoed a Republican-passed resolution that tried to reverse the rule.

States and local governments act when Congress does not.

While Congress has been relatively dormant in the employment-law arena, state and local governments have continued to legislate the employer-employee relationship. Some noteworthy trends are gathering steam at the state and local level as Congress does not act.

First, many cities and states have already passed laws providing employees with paid sick leave, and many more local jurisdictions are considering such laws. Many of the local ordinances are in larger cities such as Oakland, Washington D.C., Minneapolis, and New York, but some smaller cities are passing them too. Currently, only a handful of states—California, Connecticut, Massachusetts, Oregon, and Vermont (effective January 2017)—require paid sick leave. But legislators in several other states have introduced similar bills, and we expect to see more paid sick leave laws enacted. Although many employers who already provide paid time off satisfy the amount of leave requirements under these paid sick leave laws, the particular requirements vary from jurisdiction to jurisdiction, and the lack of an overriding federal policy means that employers must at least confirm that their policies comply with several different laws, if not craft unique policies from city to city and state to state.

Second, "ban the box" bills continue to be advanced at the state level, with mixed success. These bills seek to prohibit employers from asking about criminal history on job applications. According to the National Employment Law Project, 24 states have adopted some sort of ban-the-box policy, and nine states have banned private employers from asking conviction questions on job applications.[2] Even where ban-the-box legislation hasn't passed or doesn't apply to private employers, private employers may be prohibited from asking about arrests or convictions on applications. In Colorado, for example, the state antidiscrimination agency issued guidance that such inquiries may be discriminatory.

Third, state and local governments continue to raise minimum wages even though the federal minimum wage of $7.25 per hour has not changed since 2009. Most significantly, California and New York will raise the state minimum wage to $15.00 in the coming years. Cities are implementing minimum wages, too. Although several states have passed laws prohibiting municipalities from establishing a local minimum wage that differs from the state's minimum wage, the Economic Policy Institute reports that 29 cities and towns have minimum wages higher than their state's minimum wage.[3]

Fourth, states are considering and are passing bills that go beyond what the federal Equal Pay Act requires. In Maryland, equal-pay protections now extend to gender identity, and not just sex. In California (which already has one of the toughest equal-pay laws on the books), legislation has been introduced that would similarly expand equal-pay laws to include race and ethnicity. And other states have considered laws that would prohibit employers from asking about pay history in applications, with supporters arguing that the prohibition will help prevent pay discrimination at the outset.

Finally, San Francisco passed a law requiring six weeks' fully paid parental leave—a benefit historically left to the discretion of employers. The law goes into effect in either 2017 or 2018, depending on an employer's number of employees, and will require employers to supplement what employees receive under the California Paid Family Leave program so that employees receive 100% of their wages while on parental leave. When implemented, this law will make San Francisco the first U.S. jurisdiction to require fully paid parental leave. Other states and cities, including Minnesota and Washington, D.C., have considered bills providing for paid parental leave. This trend is expected to continue.

Conclusion

In each of these developing areas—sexual orientation, gender identity, overtime pay, joint-employer status, paid leave, ban the box, and wages—Congress unquestionably has the power to set national standards. But until one party controls both houses of Congress and the presidency, we expect that the patchwork of employment laws will continue to become more and more varied across the country, with the executive branch leading new employment laws and regulations at the federal level, and state and local governments implementing their own. ■

Joel Schroeder is a partner at Best & Flanagan in Minneapolis and Tom Carroll is a senior associate at Faegre Baker Daniels in Denver. Both represent employers in litigation throughout the country and advise employers on best practices for navigating local, state, and federal employment laws. In addition, Schroeder is co-chair of the FBA Labor and Employment Law Section's Standing Committee on Legislation & Congressional Relations. Schroeder can be reached at jschroeder@bestlaw.com and Carroll can be reached at thomas.carroll@FaegreBD.com.

Webinar Invite:

"The Shift of Employment Law Policy-Making from Congress to the Executive, the States, and Local Governments" will be the subject of a one-hour FBA webinar to be held on November 9, 2016. Joel Schroeder of Best & Flanagan and John Lassetter of Littler Mendelson will be presenting. To register for this webinar, please visit www.fedbar.org.

Endnotes

[1]Case No. 1:16-cv-00425 (M.D.N.C.).

[2]www.nelp.org/content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf (last visited July 25, 2016).

[3]www.epi.org/minimum-wage-tracker/#/min_wage/Washington (last visited July 25, 2016).

Something Old, Something New: A Substantive and Strategic Review of the Defend Trade Secrets Act of 2016

By Daniel Lowin

Until now, trade secret protection has been exclusively a matter of state law—with the resulting patchwork of statutory and common-law regimes posing challenges for interstate companies. In May of 2016, President Obama signed into effect the Defense of Trade Secrets Act (DTSA), which creates a new federal cause of action for trade secret misappropriation.

The DTSA's legal rubric largely mirrors that established by the Uniform Trade Secrets Act (UTSA), a model statute adopted (sometimes with revision) in almost all 50 states. However, the DTSA adds several new twists to traditional trade secret protections:

- It provides unique remedies not available under state law, including immediate *ex parte* recovery of trade secret materials.
- It requires employers to disclose whistleblower immunities to employees as a condition for recovering exemplary damages or attorneys' fees.
- By creating a federal cause of action for trade secret theft, it provides businesses with access to federal courts for tag-along non-compete and other state law claims.

The following sections summarize the basic trade secret rubric, discuss some of the DTSA's unique features, and provide practical considerations for litigators and clients.

I. The Uniform Trade Secret Act

The Uniform Trade Secret Act permits trade secret owners to secure injunctive and monetary relief against misappropriation. Paraphrased, the Act defines "trade secret" as "information, including a formula, pattern, compilation, program, device, method, technique, or process," that (i) the owner reasonably tries to keep secret and (ii) is valuable because it is kept secret.[1] Classic examples of trade secrets include the recipe for Coca-Cola® or the formula for WD-40®, but trade secrets may include a wide range of confidential business information.

To maintain trade secret status, the owner must make "efforts that are reasonable under the circumstances to maintain [the] secrecy" of the information.[2] Some efforts, such as employee keycards and confidentiality agreements, are simple and relatively universal. Company-specific efforts may be set forth in workplace policies covering physical and electronic security.

The UTSA defines "misappropriation" somewhat convolutedly:

> "Misappropriation" means:
>
> (i.) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
>
> (ii.) disclosure or use of a trade secret of another without express or implied consent by a person who
>
> a. used improper means to acquire knowledge of the trade secret; or
>
> b. at the time of disclosure or use, knew or had reason to know that the discloser's or user's knowledge of the trade secret was
>
> i. derived from or through a person who had utilized improper means to acquire it;
> ii. acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
> iii. derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
>
> c. before a material change of the discloser's or user's position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.[3]

Parsing this verbiage, "misappropriation" occurs when a trade secret is:

> (i.) acquired by improper means, including "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means;"[4] or
>
> (ii.) used or disclosed without its owner's consent by someone who improperly acquired it, or knew or should have known it was improperly or mistakenly acquired.

The UTSA permits injunctive relief and compensatory damages measured by actual loss, unjust enrichment, or reasonable royalties. In addition, plaintiffs may recover exemplary damages and attorneys' fees for "willful and malicious" misappropriation and, conversely, defendants may recover attorneys' fees for claims made in bad faith.[5]

II. The Defend Trade Secrets Act

The operative provision of the DTSA states:

> An owner of a trade secret that is misappropriated may bring a civil action under this subsection if the trade secret is related to a product or service used in, or intended for use in, interstate or foreign commerce.[6]

The DTSA employs definitions similar to those used in the UTSA, except it defines "trade secret" as "all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how

stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing," as long as such information is subject to reasonable protections and derives value from its secrecy.[7]

Although the UTSA and the DTSA require similar proof for misappropriation, the federal statute contains several unique provisions—some of which expand, while others limit, the scope of available relief.

a. Seizure of Property.

In "extraordinary circumstances," the DTSA permits a trade secret owner to obtain an *ex parte* order for a federal officer to seize allegedly-stolen trade secret materials "when necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action."[8] In addition to proving the typical elements required for injunctive relief, the owner must convince the court that a temporary restraining order would not suffice and that the alleged misappropriator "would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such person[.]"[9] The owner also may not publicize or play any role in the seizure (or access the seized property) until after a hearing.[10] Conversely, the DTSA permits a party injured by a wrongful seizure order to pursue an action against the party that sought it.[11]

b. No "Inevitable Disclosure" Relief.

Although the DTSA and the UTSA both allow injunctive relief to prevent actual or threatened misappropriation, the DTSA expressly forbids injunctions that "prevent a person from entering into an employment relationship," and requires that any conditions imposed on such employment "be based on evidence of threatened misappropriation and not merely on the information the person knows."[12] These provisions prevent aggrieved parties from parlaying trade secret claims into non-competition restrictions through the "inevitable disclosure" doctrine.

c. Whistleblower Immunity.

The DTSA immunizes individuals from liability for disclosing trade secrets in connection with whistleblowing activities. It further requires employers to disclose this immunity "in any contract or agreement . . . that governs the use of a trade secret or other confidential information."[13] An employer may comply with this requirement by including (or cross-referencing a policy containing) the following language in its confidentiality agreements:

> An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law.
>
> An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
>
> An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal; and does not disclose the trade secret, except pursuant to court order.[14]

The DTSA further requires employers to include this disclosure in their consultant and independent contractor agreements: the statute defines "employee" as including "any individual performing work as a contractor or consultant for an employer."[15] If an employer fails to provide the required disclosure, it cannot recover exemplary damages or attorneys' fees "in an action against an employee to whom notice was not provided."[16]

III. Practical Considerations

The DTSA likely will have several strategic impacts on trade secret litigation. First, it will enable companies to bring related state-law claims (such as for breaches of confidentiality or non-competition agreements) in federal court, where judges often are more adept at addressing complex business competition disputes. Second, its seizure remedy offers immense protection against "worst case" scenarios, such as where a departing employee threatens to immediately disclose confidential information to a competitor. It also leaves some open questions—such as whether the Act will move federal courts towards a more uniform approach to trade secret protections, or whether the courts will look to the substantive law of the state in which they sit. The interaction between the DTSA and state law may be particularly significant in Massachusetts and New York, the two states that have not enacted the UTSA.

Finally, in the wake of the DTSA, employers should take the following practical steps:

- Add the necessary whistleblowing disclaimers to any agreements covering confidential information—including non-disclosure agreements, non-competition/non-solicitation agreements, intellectual property and inventions ownership agreements, and general offer letters or employment agreements.
- Add the necessary whistleblower disclaimers to contract templates for consultants and independent contractors.
- Audit the foregoing agreements generally to ensure that they comply with applicable law and are being used and enforced properly.
- Audit policies and procedures relating to confidential information to ensure that they provide adequate trade secret protections and are being followed by employees.

In sum, the Defend Trade Secrets Act provides legal and strategic benefits for companies seeking to prevent misuse of confidential information. However, it also requires them

to update their contracts and agreements protecting such information, and should serve as a prompt to audit other policies, procedures, and agreements relating to post-employment restrictions. ■

Daniel Lowin is a Senior Associate with Seaton, Peters & Revnew, P.A., a management-side labor and employment law firm located in Minneapolis, Minnesota. Prior to joining the firm, he spent six years as in-house counsel for a publicly-traded analytics technology company and four years as a litigator with a top-100 national law firm. A Minneapolis native, Daniel returned to the Twin Cities in 2005 after graduating from Amherst College and Harvard Law School. He can be reached at 952-921-4623 or dlowin@seatonlaw.com.

Endnotes

[1]*E.g.* Minn. Stat. § 325C.01 Subd. 5.
[2]*See, e.g., id.*
[3]*E.g., id.* Subd. 3.
[4]*E.g., id.* Subd. 2.
[5]*E.g.*, Minn. Stat. § 325C.02-.04.
[6]18 U.S.C. § 1836(b)(1).
[7]*Id.* § 1839(3).
[8]*Id.* § 1836(b)(2)(A)(i).
[9]*Id.* § 1836(b)(2)(A)(i)(I)-(VIII) establishes a detailed list of requirements for issuance of an *ex parte* order.
[10]*Id.* § 1836(b)(2)(A)(i)(VIII).
[11]*Id.* § 1836(b)(2)(G).
[12]*Id.* § 1836(b)(3)(A)(i).
[13]*Id.* § 1833(b)(3)(A).
[14]*Id.* § 1833(b)(1)-(2).
[15]*Id.* § 1833(b)(4).
[16]*Id.* § 1833(b)(3).

Dissent Among the Ranks: Company Privilege Eclipses Advice-of-Counsel Defense

By Samuel P. Strantz

"Well, legal told me I should do it." This phrase is one of the more common get-out-of-jail-free cards for corporate employees whose actions subject them to civil liability. A recent shift in the law, however, has determined that employees relying upon the advice of their corporate counsel may not assert the advice-of-counsel defense in civil suits unless their employer agrees to waive the attorney-client privilege. In one of the few cases to address this issue, the court in *United States v. Wells Fargo Bank, N.A.* held that the attorney-client privilege is absolute and will not give way to the advice-of-counsel defense absent a waiver.[1] The court also expressed doubt on the validity of cases holding that the advice-of-counsel defense can trump the attorney-client privilege in the criminal context, kick-starting a jurisdictional split over this issue.

I. Evolution and Utility of the Advice-of-Counsel Defense

In an era where statutory laws are rapidly amended, it is important that in-house counsel provide advice to their corporate clients more often than in the past, and it is likewise important that the clients feel comfortable adhering to that advice. The advice-of-counsel defense has served as a useful defense for executives or in-house counsel charged with a criminal violation of these laws or subjected to personal civil liability.

The advice-of-counsel defense allows a defendant to show that there was no wrongful intent underlying his or her wrongful actions. The defense demonstrates that the defendant lacked the mens rea needed to commit the offense, or, in the civil context, that the defendant lacked the specific state of mind required and acted in "good faith."

Consequently, the defense is not always an affirmative defense, but rather negates an element of the offense itself.[2] The Courts of Appeal generally outline the defense, which has been accepted in U.S. courts for well over a century,[3] as some variation of the following: "[A] defendant must show that he: (i) fully disclosed all material facts to his attorney before seeking advice; and (ii) actually relied on his counsel's advice in the good faith belief that his conduct was legal."[4] While not every court has adopted the exact standard, they are generally consistent.

II. Conflict between the Attorney-Client Privilege and Advice-of-Counsel Defense

Interestingly, two doctrines that should work together appear now to be mutually exclusive. *U.S. v. Wells Fargo* revolved around the government's suit against Wells Fargo for alleged violations of the False Claims Act and the Financial Institutions Reform, Recovery, and Enforcement Act. The government later added Wells Fargo's Vice President of Quality Control as a defendant, citing the vice president's role in the bank's alleged violations. The vice president argued that he had relied upon the advice of Wells Fargo's attorneys concerning the statutory compliance. To support his defense, the vice president sought to reveal his specific communications with Wells Fargo's attorneys. Further, it was undisputed that the vice president lacked authority to waive the privilege, which belonged to Wells Fargo.

The government opposed a joint defense proposal that would sever the vice president, which the district court rejected as premature. Wells Fargo then filed for a protective order asserting that all communications between the vice president and the bank's attorneys were protected by the attorney-client privilege.

III. The Attorney-Client Privilege is Absolute and Not Subject to Balancing

The district court granted the protective order, holding that the bank's assertion of the attorney-client privilege trumped the vice president's advice-of-counsel defense. The court reasoned that, because the attorney-client privilege is not qualified, a defendant does not have the absolute right to present privileged information, even in criminal cases. To hold otherwise would 1) render the privilege uncertain, 2) prejudice Wells Fargo, and 3) create a "perverse 'incentive for plaintiffs to pursue claims against individual employees in the hopes of forcing a waiver of the corporation's privilege.'"

The district court also refused to balance the interests of the vice president against the corporation's interests in asserting the privilege. It based its refusal on the Sixth Circuit's reasoning in *Ross v. City of Memphis*, the only appellate court to consider this issue.[5] *Ross* held that the corporation's assertion of the attorney-client privilege precluded an employee's use of the advice-of-counsel defense in a civil discrimination case because the U.S. Supreme Court ruled that the attorney-client privilege is absolute and survives the death of the client, with no exceptions for cases of "extreme injustice" or where the information was "of substantial importance." In *Swindler & Berlin v. United States*, the Supreme Court also rejected a balancing test as undermining the purpose behind the privilege, reasoning that the client may not know at the time of disclosure its relevance to future matters.[6] Based on the *Ross* and *Swindler* decisions, the *Wells Fargo* court rejected arguments for a limited, judicially-compelled disclosure as requiring the balancing test prohibited by *Swindler* and potentially opening the door to other privileged documents.

The *Wells Fargo* court also declined to follow *United States v. Grace* and its offspring,[7] which were criminal cases holding that the attorney-client privilege yields to the advice-of-counsel defense where the privileged communications are "of such probative and exculpatory value as to compel admission of the evidence" over the objections of the co-defendant company holding the privilege. The district court noted that *Grace* had erred in failing to consider the Supreme Court's explicit rejection of a balancing test in *Swindler* and concluded that employer indemnification of the employee could mitigate the potentially harsh result for the employee.

IV. Chilling Effect on Communications with Company Counsel

There are situations where the attorney-client privilege and advice-of-counsel doctrines can work in harmony. In a case where the employer is willing to waive its attorney-client privilege, the advice-of-counsel doctrine can prove quite useful. For example, if you have an employee who truly acted in

good faith and a company lawyer who provided good judgment, the employer can comfortably waive privilege and allow the employee to rely on the advice-of-counsel defense, assuming the documents that would be produced support the employer's case. While this might seem an uncomfortable situation, the employer will benefit by demonstrating loyalty and protection of its employees in the face of litigation.

On the other hand, if the employer is unwilling to waive its attorney-client privilege, how can an employee reconcile advice sought from company counsel with the fact that he or she could be criminally or civilly liable for the result? If the employer enforces its attorney-client privilege and disallows the employee from asserting the advice-of-counsel defense, the employer has effectively deserted its employee on an island of indefensible liability. This division would cause an employee's reluctance even to seek advice from company counsel or disclose potential issues to counsel, which is clearly harmful to a company from both a legal and a business standpoint.

V. Best Practices for Corporate Executives and In-house Counsel

In order to make the advice-of-counsel defense available as an initial matter, counsel should consider issues such as proper documentation and the intertwining relationship of the attorney-client privilege. Some tips include the following:

- Clarify the representation. The advice-of-counsel defense is not available to all employees of the company. Corporate counsel usually only represents the corporation, not each of its employees individually.
- Retain independent counsel. If an individual employee's obligations are different from the corporation's directions or obligations, the employee should retain his or her own counsel for advice regarding the matter in question. That way, the individual can obtain an unbiased opinion unrelated to the company's interests as to the legality of a particular action. Doing so would provide the employee with greater confidence that he or she will be able to present the advice later, if necessary, to show that he or she acted in good faith.
- Discuss corporate waiver of the attorney-client privilege. An individual employee should not be afraid to ask corporate officers whether they would agree in advance to waive the privilege if the employee ever needed to assert an advice-of-counsel defense.
- Contract around the issue. While this scenario may be unlikely, perhaps an employer would be willing to include language in an employee's contract allowing the employee to control the privilege or, alternatively, indemnifying the employee from personal liability. ■

Sam Strantz is a trial attorney in the Memphis office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. Sam concentrates his practice in litigating employment, securities (both broker-dealers and associated persons), white collar defense, and general business dispute cases in state and federal court. Sam can be reached at sstrantz@bakerdonelson.com.

Endnotes

[1]*United States v. Wells Fargo Bank, N.A.*, Civ. A. No. 12-7527 (S.D.N.Y. Sept. 22, 2015).

[2]*United States v. Benson*, 941 F. 2d 598, 613 (7th Cir. 1991).

[3]*See State v. Patterson*, 71 P. 860 (Kan. 1903) (rejecting advice-of-counsel defense when the defendant sought the advice after committing the alleged act); *People v. Long*, 15 N.W. 105 (Mich. 1883) (rejecting advice-of-counsel defense when defendant failed to follow the advice of counsel).

[4]*United States v. Rice*, 449 F. 3d 887, 897 (8th Cir. 2006); *see also United States v. Butler*, 211 F. 3d 826, 833 (4th Cir. 2000); *United States v. Lindo*, 18 F. 3d 353, 356 (6th Cir. 1994); *United States v. Kenney*, 911 F. 2d 315, 322 (9th Cir. 1990); *CE Carlson, Inc. v. SEC*, 859 F. 2d 1429, 1436 (10th Cir. 1988); *United States v. Eisenstein*, 731 F. 2d 1540, 1543 (11th Cir. 1984); *United States v. West*, 392 F. 3d 450, 447 (D.C. Cir. 2004).

[5]*Ross v. City of Memphis*, 423 F.3d 596 (6th Cir. 2005).

[6]*Swindler & Berlin v. United States*, 524 U.S. 399 (1998).

[7]*United States v. Grace*, 439 F. Supp. 2d 1125 (D. Mont. 2006).

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We encourage each of you to become involved in Section activities. Consider joining us in Cleveland for the FBA Annual Meeting and Convention, Sept. 14-17, 2016, and plan now to attend the Section's 2017 Bienniel Conference in San Antonio, March 9-10. Also, visit our webpage (www.fedbar.org/sections/labor-employment-law-section.aspx) to take advantage of the information and resources available there, and watch for our monthly Circuit Updates to stay abreast of recent developments in labor and employment law. For additional information on how you might become even more involved in the Section, contact Donna Currault, Section Chair, at DCurrault@gordonarata.com.

Again, welcome! We look forward to counting you among the ranks of our active members.

Employment Law in a Nutshell

The Labor and Employment Law Section is proud to sponsor its third annual Minneapolis seminar, Employment Law in a Nutshell. This seminar is being co-sponsored by the Younger Lawyers Division, the Law Student Division, and the Minnesota Chapter of the FBA. The seminar is a live, half-day CLE and will take place on the afternoon of Wednesday, Aug. 31 at the University of St. Thomas School of Law in Minneapolis (Room 321). The event will focus on the basics of labor and employment law, featuring three hour-long presentations:

1) Anti-Discrimination, Harassment and Retaliation
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Gordon, Arata, McCollam, Duplantis & Eagan, LLC
201 St. Charles Ave. 40th Floor
New Orleans, Louisiana 70170-4000
Phone: (504) 582-1111

VICE CHAIR
Corie Tarara
Seaton, Peters & Revnew, P.A.
7300 Metro Blvd. Suite 500
Minneapolis, MN 55439
(952) 921-4615
ctarara@seatonlaw.com

DEPUTY CHAIR
Karleen Green
Phelps Dunbar LLP
City Plaza, 400 Convention Street, Suite 1100
P.O. Box 4412
Baton Rouge, LA 70821
Phone: (225) 346-0285
Fax: (225) 381-9197
karleen.green@phelps.com

SECRETARY
Kathryn M. Knight
Stone Pigman Walther Wittmann L.L.C.
546 Carondelet St.
New Orleans, LA 70130
(504) 593-0915
kknight@stonepigman.com

TREASURER
Elizabeth "Betsy" Siberry Chestney
Cornell Smith Mierl & Brutocao
1607 West Avenue
Austin, Texas 78701
(512) 328-1540
bchestney@cornellsmith.com

IMMEDIATE PAST CHAIR
Craig A. Cowart
Jackson Lewis P.C.
999 Shady Grove Road
Suite 110
Memphis, TN 38120
Phone: (901) 462-2618
Craig.Cowart@jacksonlewis.com

EDITOR, *THE LABOURING OAR*
Kathryn M. Knight
Stone Pigman Walther Wittmann L.L.C.
546 Carondelet St.
New Orleans, LA 70130
(504) 593-0915
kknight@stonepigman.com

STANDING COMMITTEES:
(All Chairs/Co-Chairs are members of the Governing Board)

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Co-Chairs:
Danielle Brewer Jones
The Brewer Law Office, PLLC
1891 Pass Rd.
Biloxi, MS 39531
Phone: (228) 388-0053
dbrewer@brewerlegalservices.com

Karleen Green
Phelps Dunbar LLP
City Plaza, 400 Convention Street, Suite 1100
P.O. Box 4412
Baton Rouge, LA 70821
Phone: (225) 346-0285
Fax: (225) 381-9197
karleen.green@phelps.com

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EDITOR, *THE LABOURING OAR*
Kathryn M. Knight
Stone Pigman Walther Wittmann L.L.C.
546 Carondelet St.
New Orleans, LA 70130
(504) 593-0915
kknight@stonepigman.com

Brian Rochel
Teske Micko Katz Kitzer & Rochel, PLLP
222 South Ninth Street, Ste. 4050
Minneapolis, MN 55402
(612) 746-1558
rochel@teskemicko.com

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Corie Tarara
Seaton, Peters & Revnew, P.A.
7300 Metro Blvd. Suite 500
Minneapolis, MN 55439
(952) 921-4615
ctarara@seatonlaw.com

Phillip Kitzer
Teske Micko Katz Kitzer & Rochel, PLLP
222 South Ninth Street, Ste. 4050
Minneapolis, MN 55402
(612) 746-1558
kitzer@teskemicko.com

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Nancy Bloodgood
The Foster Law Firm, LLC
895 Island Park Drive, Suite 202
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Phone: 843-744-7828
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Elizabeth "Betsy" Siberry Chestney
Cornell Smith Mierl & Brutocao
1607 West Avenue
Austin, Texas 78701
(512) 328-1540
bchestney@cornellsmith.com

Standing Committee on Executive Agency Outreach:
Co-Chairs:
M. Kathleen McKinney
National Labor Relations Board
600 South Maestri Place
7th Floor
New Orleans, LA 70130
(504) 589-6374
Kathleen.mckinney@nlrb.gov

Elizabeth "Betsy" Siberry Chestney
Cornell Smith Mierl & Brutocao
1607 West Avenue
Austin, Texas 78701
(512) 328-1540
bchestney@cornellsmith.com

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Baker Donelson Bearman *et al.* PC
201 St. Charles Ave., Suite 3600
New Orleans, Louisiana 70170
(504) 566-5225
sgriffith@bakerdonelson.com

Joel P. Schroeder
Best & Flanagan LLP
60 South Sixth Street, Suite 2700
Minneapolis, MN 55402
(612) 339-7121
jschroeder@bestlaw.com

Standing Committee on Awards
Craig A. Cowart
Jackson Lewis P.C.
999 Shady Grove Road
Suite 110
Memphis, TN 38120
Phone: (901) 462-2618
Craig.Cowart@jacksonlewis.com

CHAPTER REPRESENTATIVES:
(All are members of the Governing Board and of Standing Committee on Membership and Chapter Relations)

Timothy Bliss
Vetter & White
CenterPlace
50 Park Row West, Suite 109
Providence, RI 02903
(401) 421-3060
TBliss@vetterandwhite.com

José Gonzalez-Nogueras
Jimenez Graffam & Lausell
Midtown Bldg. Fourth Floor
420 Ponce de Leon Ave.
San Juan, Puerto Rico 00918-3405
Phone: (787) 767-1030
Fax: (787) 751-4068
jgonzalez@jgl.com

Jim Hammerschmmidt
The Law Firm of Paley Rothman, Attorneys at Law
4800 Hampden Ln. 4th Floor
Bethesda, MD 20814
(301) 951-9338
jrh@paleyrothman.com

Whitney Sedwick Meister
Fennemore Craig PC
2394 E. Camelback Road
Suite 600
Phoenix, AZ 85016
(602)916-5412
wmeister@fclaw.com