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EMPLOYMENT LAW ALERT

Spring 2013 Issue

GOOD DOCUMENTATION HELPS PROMOTE WINNING RESULTS

Anyone who has ever attended an employment-law seminar or talked to an employment-law attorney knows the importance of policies and procedures. Equally important is effectively communicating policies and procedures to your employees and consistently enforcing them. But without documentation of these efforts, none of this really matters. Doing everything the right way is no guarantee that the employer will win when an employee sues, but not doing these things guarantees a rough course to any success in a lawsuit.

The recent Sixth Circuit opinion in White v. Baptist Memorial Health Care Corporation, a case originating in West Tennessee, illustrates the importance of retaining good documentation on communicating and enforcing employment policies and procedures. The hospital hired White, a nurse, to work in its emergency room. Under the hospital's policy, if she worked six hours or more, she received an unpaid meal break and the hospital automatically deducted the meal break from her paycheck. (The Fair Labor Standards Act (FLSA) does not prohibit the automatic-meal-break-deduction policy.) Because of the nature of her job, White might miss her meal break or her duties might interrupt her meal break. The hospital required employees to report missed or interrupted meal breaks on an exception log. This procedure would ensure that the hospital paid employees—White included—for the time worked. The hospital put this policy in its employee handbook, and White signed acknowledging that she understood the hospital's policy. Importantly, the hospital documented all of this.

After White quit, she sued the hospital and claimed an FLSA violation because the hospital didn't pay her for missed and interrupted meal breaks. White claimed the hospital paid her for missed meal breaks only if her entire nursing unit missed a meal break. However, the records showed that the one time she reported a missed meal break, the hospital paid her. White never complained to her supervisors or to HR about the hospital not paying her for time worked. White knew the procedure for reporting paycheck errors; in fact, when she followed the procedure the hospital corrected the reported error.

The FLSA requires employers to have a reasonable procedure for employees to report uncompensated time. Here, the hospital had such a procedure and communicated the process to White. When she followed the procedure, the hospital paid her. Further, the hospital had documented that she knew about the procedure and what happened when she followed the procedure. White lost because she could not show that the hospital knew or had reason to know that it wasn't paying her. The hospital's policies and procedures, its communication, proper enforcement, and retained documentation helped successfully defend White's lawsuit.

Practice Tip: You can do your part to make sure you facilitate winning results, too. Employers should have written policies and procedures that include complaint procedures with alternative avenues of complaint, and should have any revisions to those policies and procedures timely distributed. Employers should also have Employees acknowledge receipt and review of all policies and procedures, including any revisions. Most importantly, complaints and their resolutions should be handled expeditiously and documented for future reference.

AREAS OF PRACTICE

Litigation
Professional Malpractice Defense
Tort and Insurance Defense
Employment and Civil Rights
Healthcare
Mediation
Business and Finance
Estate Planning, Wills and Trusts



EMPLOYMENT LAW ALERT

NEW I-9 FORM REQUIRED FOR EMPLOYERS TO USE

The U.S. Citizenship and Immigration Services (USCIS) has revised the Employment Eligibility Verification Form, commonly known as the Form I-9. Employers should begin using the new form as soon as possible. After **May 7, 2013**, employers cannot use the old form and will be subject to penalties for not using the new form.

Employers should use the new form on newly hired employees. Current employees, who already have a properly completed I-9 on file, do not need to complete a new form unless re-verification applies.

The new form is available at: <http://www.uscis.gov/files/form/i-9.pdf>. The regulations regarding the new form are also available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-03-08/pdf/2013-05327.pdf>.

NEW FMLA POSTER REQUIRED

The DOL issued a Final Rule on February 6, 2013, implementing FMLA amendments passed in 2010 and adding new regulations effective March 8, 2013. The federal FMLA poster was updated to reflect the Final Rule changes.

The new poster reflects changes from the National Defense Authorization Act for Fiscal Year 2010 and from the Final Rule. Changes broaden the definition of "veteran" to include a veteran discharged within the past five years. The new poster also notes that the FMLA definition of "serious injury or illness" for current service members and veterans are distinct from the FMLA definition of "serious health condition." The poster also includes a statement about special hours of service eligibility requirements applying to flight crew members per the Airline Flight Crew Technical Corrections Act of 2009.

The new FMLA poster must be posted by FMLA-covered employers. The poster is available at: <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>

UPCOMING EVENT - SPRING EMPLOYMENT LAW CONFERENCE

Join us for an HR Round-Up! Our Spring Employment Law Conference will take place on May 8, 2013, from 8:00 a.m. to 4:00 p.m., at the Carl Grant Event Center, Union University in Jackson. Conference cost is \$75 per person and includes lunch. HR-related vendors and exhibitors will be present to discuss HR services and products. Topics to be discussed include:

- Affordable Care Act
- Unemployment Hearings,
- Case Updates
- Employee Termination Policies
- NLRA Rights in Non-union Workplaces
- Business Trends

Contact Martha Espey at 731-423-2414 or mespey@raineykizer.com to register on or before May 3, 2013. The program has been submitted for up to 5.5 credit hours for PHR, SPHR and GPHR recertification.

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