

## HUNTON EMPLOYMENT & LABOR PERSPECTIVES™

HELP / ANALYSIS & DEVELOPMENT IN EMPLOYMENT & LABOR ISSUES

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### Supreme Court Provides for Judicial Review of EEOC's Conciliation Efforts

May 28, 2015

The Supreme Court's decision in *Mach Mining, LLC v. EEOC* provides for judicial review with respect to the EEOC's conciliation efforts in claims of unlawful discrimination against an employer. In *Mach Mining*, the EEOC filed suit against Mach Mining, LLC on the basis of sex discrimination, specifically, with regard to Mach Mining's hiring practices. After the EEOC determined that reasonable cause existed as to Mach Mining's unlawful hiring practices, the EEOC sent a letter to Mach Mining inviting the employer to participate in an informal conciliation proceeding with the plaintiff to attempt to rectify the charge. In its letter, the EEOC notified Mach Mining that an EEOC representative would be contacting the respondent in order to begin the informal conciliation process regarding the charge. Roughly a year later, the EEOC sent a second letter to Mach Mining, stating it had determined that conciliation efforts had been unsuccessful. The EEOC then filed suit in federal court.

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## The Changing Landscape of Same Sex Marriage Law

May 22, 2015

As the national debate regarding rights for same sex couples continues, more and more states are granting marital rights to members of the same sex. Although we are only in the second quarter of 2015, five states have either passed legislation or have high court rulings that expand the rights of same sex couples. And, in the coming weeks, the U.S. Supreme Court will rule upon issues of marriage equality in *Obergefell v. Hodges*, eventually rendering a decision that may have significant impact on both federal and individual state laws.

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## Wellness Programs: A New Layer of Compliance

May 19, 2015

The Equal Employment Opportunity Commission (“EEOC”) has issued proposed rules (“ADA Proposed Rules”) on the extent to which employers may offer incentives to promote participation in wellness programs without violating the Americans with Disabilities Act (“ADA”). The ADA Proposed Rules apply if a wellness program includes disability-related inquiries or medical examinations, including inquiries or examinations that are part of a health risk assessment. Health risk assessments are reported to be the most common form of incentivized employee wellness programs.<sup>1</sup> Thus, many employers would likely be impacted by these new rules if finalized.

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## NLRB Social Media Rules Continue to Surprise as Board Reinstates Employee After Calling Boss "Nasty Mother F\*\*\*\*\*"

May 18, 2015

Under the National Labor Relations Act (“Act”), employers usually may not discipline employees for engaging in certain collective or concerted activity, including comments regarding terms and conditions of employment, unless the employee’s behavior is so outrageous that it loses the protection of the Act. But how far can employees push the boundary before their conduct will be found indefensible?

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## Ambush Election Update; 40 Percent Reduction In Campaign Time, Almost 100 Percent More Petitions

May 12, 2015

As expected, the implementation of the NLRB’s ambush election rules has spurred unions to initiate organizing campaigns across the

country. As discussed in our previous posts and a webinar hosted by the Firm, the new rules make it easier for unions to organize employees through an expedited election process, and makes it possible for elections to be held 11 to 12 days after the petition has been filed. Recently released data confirms that a significant increase in petition filings occurred after the April 14, 2015 implementation date of the new ambush rules. To summarize, an average of approximately 42 petitions were filed per week for the month of March to April 13th. From April 13th to the beginning of May, the average number of petitions filed per week shot up to approximately 60. Such averages are deceptive, however, in that the number of petitions filed per week has increased every week since the implementation date, rising to nearly 80 petitions filed for the last week of April.

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## ACA Update: Health Care Exchanges Begin Issuing Employee Subsidy Notices to Employers

May 6, 2015

The Affordable Care Act (ACA) requires the state and federal health care exchanges to notify employers if an employee has been determined to be eligible for a premium tax credit or cost-sharing reduction for exchange coverage. The notices are issued for those individuals who have been determined to be eligible for such a subsidy. As employers begin receiving notices, they should consider how best to track this information and whether it would be worthwhile to appeal the subsidy eligibility determinations where the information is incorrect.

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