Hunton Employment & Labor Perspectives Blog
Hunton & Williams LLP
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HUNTON EMPLOYMENT & LABOR PERSPECTIVES™

HELP / ANALYSIS & DEVELOPMENT IN EMPLOYMENT & LABOR ISSUES

This Client Alert is a monthly update on labor and employment developments as posted on **Hunton & Williams' Employment & Labor Perspectives Blog**. If you would like to receive email alerts when new posts are published, please visit our blog and enter your email address in the subscribe field.

Recent posts on the **Hunton Employment & Labor Perspectives** Blog include:

- EEOC Rebuked by Fourth Circuit on Criminal Background Check Litigation
- Five Reasons Why Businesses Should Take Steps Now To Make Their Websites Accessible
- Too Much Too Soon: S.D.N.Y. Considers Plan to Distribute Collective Action Notice Through Social Media And Says No
- ACA Update: Government Issues Preliminary Cadillac Tax Guidance
- New NLRB Deferral Standard Signals Changes For Employers
- Another Step In The Right Direction: W.D. Ark. Permits Certain Types of Private FLSA Settlements
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EEOC Rebuked by Fourth Circuit on Criminal Background Check Litigation

March 4, 2015

On February 20, 2015, a unanimous panel of the Fourth Circuit affirmed the exclusion of expert testimony by EEOC expert Kevin Murphy and the grant of summary judgment against the EEOC in its suit challenging Freeman's use of credit and criminal background checks in the hiring process. Although the Fourth Circuit's decision expressed no opinion on the merits of the EEOC's claim, the court found summary judgment was justified because the "sheer number of mistakes and omissions" in Murphy's analysis rendered it unreliable. While the court's published opinion cited the "alarming number" of "mind-boggling errors" by Murphy, it was a concurring opinion by Judge Agee (which is actually longer than the unanimous decision of the court) that more thoroughly and severely criticized Murphy's expert testimony and the EEOC's "disappointing litigation conduct." According to Judge Agee, Murphy's work was "riddled with fundamental errors, mistakes, and misrepresentations," but even more disquieting was what

appears to be a “pattern of suspect work from Murphy,” and the EEOC’s continued championing of Murphy “[d]espite [his] record of slipshod work, faulty analysis, and statistical sleight of hand.”

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Five Reasons Why Businesses Should Take Steps Now To Make Their Websites Accessible

March 31, 2015

The DOJ announced last November that it again was delaying the target date for publishing its proposed website regulations for state and local governments to December 2014, and its proposed website regulations for public accommodations until June 2015. Next, without further comment, the DOJ failed to make its December 2014 deadline for its state and local government regulations. Given that the state and local government regulations deadline was missed, and that the DOJ has not yet submitted its public accommodations regulations to the federal Office of Management and Budget for required review and approval, it is virtually certain that the June 2015 deadline for public accommodations regulations will be missed as well. Bottom line – affected businesses won’t see the DOJ’s new website accessibility regulations anytime soon.

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Too Much Too Soon: S.D.N.Y. Considers Plan to Distribute Collective Action Notice Through Social Media And Says No

March 30, 2015

In *Mark v. Gawker Media LLC* (“Gawker”), S.D.N.Y. Case No. 13-cv-4347, the Court permitted Plaintiff’s counsel to submit a plan to distribute class notice through social media. Plaintiff put forward a plan to use five websites to not only distribute notice, but also to potentially locate additional collective action members. The Southern District of New York rejected this proposal, even after the parties had agreed to certain aspects of it, finding “[t]he proposals [were] substantially overbroad for the purposes of providing notice to potential opt-in Plaintiffs, and [that] much of Plaintiff’s plan appear[ed] calculated to punish Defendants rather than provide notice of opt-in rights.”

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ACA Update: Government Issues Preliminary Cadillac Tax Guidance

March 25, 2015

The IRS recently issued Notice 2015-16 addressing the excise tax on high cost employer-sponsored health coverage enacted under the Affordable Care Act. This tax, which is commonly referred to as the "Cadillac" tax, will take effect in 2018. While it does not provide

definitive guidance on which employers can rely, the Notice does provide some useful insights as to the agency's intended approach regarding key aspects of the tax.

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New NLRB Deferral Standard Signals Changes For Employers

March 23, 2015

Often times, the same set of underlying facts will give rise to both a contractual dispute between an employer and a union and an unfair labor practice charge. In these instances, an arbitrator usually decides the contract dispute, while it is the National Labor Relations Board's responsibility to determine the merit of the alleged unfair labor practice. Historically, however, the Board has commonly declined to hear unfair labor practice charges related to contractual disputes, and has instead deferred to arbitrators' earlier contractual rulings. Until recently, the burden fell on the party seeking to avoid Board deferral (usually the union) to prove that deferral was inappropriate. Practically, this ensured that employers could easily avoid addressing the same issues or facts in essentially duplicative litigation.

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Another Step In The Right Direction: W.D. Ark. Permits Certain Types of Private FLSA Settlements

March 16, 2015

As we previously reported, federal courts around the country have slowly begun to take a more flexible approach to evaluating the enforceability of private FLSA settlement agreements, calling into question the widely-held, decades-old view that settlements of FLSA claims are unenforceable unless they are approved by the DOL or a court. Last month, the U.S. District Court for the Western District of Arkansas joined this slowly growing movement, holding that in individual FLSA lawsuits, court approval of the FLSA settlement agreement is not necessary if all parties are represented by counsel.

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ACA UPDATE: IRS Issues Final Forms And Instructions For Employer Coverage Reporting

March 12, 2015

The IRS recently issued final versions of the new Forms 1094-B, 1095-B, 1094-C and 1095-C, along with related final Instructions. These forms are for reporting of coverage in 2014, but are expected to be similar for reporting for 2015.

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