



Navigating you through the various legal employment and business issues that your Company encounters as your journey to business success!

Navigational Beacon

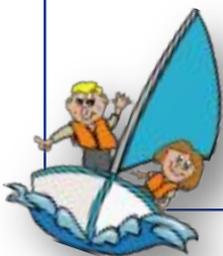
A Simon | Paschal PLLC Publication.

Q1 2014

What Employers Need to Know...

We've heard a lot about the Affordable Care Act, but what else do employers need to know? Let's start with company internships.

Almost all employers hire interns. For years, most employers have not paid these interns. The Department of Labor finally started cracking down. Only if an internship satisfies the following six criteria can it be an unpaid internship: (1) the internship is similar to training that would be given in an educational environment; (2) the internship experience is for the benefit of the intern; (3) the intern does not displace regular employees but works under close supervision of existing staff; (4) the employer that provides the training derives no immediate advantage from the activities of the intern and on occasion its operations may actually be impeded; (5) the intern is not necessarily entitled to a job at the conclusion of the internship; and (6) the employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.



More Inside!



Are you prepared for the Healthcare Reform?

Breakfast:

Join us on March 11, 2014 at 7:45 a.m. for our first Quarterly Breakfast of the New Year at our office (13601 Preston Rd., Ste. W870, Dallas 75240). We will provide breakfast and a chance to network followed by a short presentation on **NEW LAWS IN 2014**. RSVP to Paul at paul@simonpaschal.com.

“Supervisor” Liability Narrowed by U.S. Supreme Court

In June 2013, the United States Supreme Court issued a 5-4 decision that narrowed a company’s harassment liability for actions by a “supervisor.” Two 1998 Supreme Court cases held that a company was strictly liable (meaning a company was liable without a finding of fault) for a supervisor’s harassment of an employee if the harassment led to an adverse tangible employment action.

The question before the Court in the June 2013 case was whether or not the rule from the 1998 cases applied to harassment committed by any person a company vested with authority to direct and oversee a victim’s work or only to individuals who had the power to take tangible employment actions against the harassment victim. Tangible employment actions include hiring, firing, demoting, failing to promote, transferring, disciplining, or issuing a decision causing a significant change in benefits.

Prior to the June 2013 decision, many courts across the country included as supervisors, those individuals who did not have authority to take tangible employment actions but did direct and/or control an employee’s day-to-day work. The Equal Employment Opportunity Commission held the same view and issued enforcement guidance based on this view.

The June 2013 Supreme Court decision, however, adopted the narrow definition of “supervisor” and held that for an employer to be held strictly liable for a supervisor’s harassment of an employee, the supervisor must be empowered by the employer to take tangible employment actions against the harassment victim.

So what should employers take away from this



Social Media Background Check Pitfalls

A Carnegie Mellon University study recently found that between 10 to 33% of U.S. companies searched social networks for job applicants’ information. In those cases, candidates whose public profiles indicated they were Muslim were less likely to be called for interviews than Christian applicants. This study shows that even though most employers avoid asking applicants improper questions in interviews, social media profiles are leading to inadvertent discovery of items that ultimately result in unconscious and unintentional biases. These things lead to discrimination lawsuits. That said, social media can provide an array of valid and legal information about applicants (from illegal drug use to poor communication skills to disclosure of confidential information). So what’s a happy median? Try training an employee not involved in the hiring process to do the social media searches, eliminate the protected information, and provide a sanitized report to the hiring individuals. There is still some risk involved but it is minimal and still allows you to obtain the benefits of social media searches.



Another great Simon | Paschal client

Client Spotlight

MedTrials, Inc. is a contract research organization that serves as a provider of specialized clinical research services ranging from clinical trial consulting, project management and monitoring, data management, biostatistics and auditing to providing industry-specific training programs. As clinical trial management experts, they have also developed technology and business process efficiencies that bring projects in on time and within budget. We are proud to have MedTrials, Inc. as a client and we appreciate the faith they put in us. Check out more about this great company at www.medtrials.com.

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decision? First, this absolutely is a win for employers. Second, a company should review its job descriptions, practices, and procedures to make sure the number of employees who have authority to take tangible employment actions are limited to an amount necessary for business purposes. By limiting that number and increasing the number of “persons of authority” who simply oversee an employee’s work but do not have authority to take tangible employment actions, an employer can lessen its potential liability.

As always, though, employers should have multiple routes to report harassment and should always take prompt remedial action to address any complaints.

Seasonal Workers are Regular Employees

When you are hiring seasonal workers, remember that they should be treated like any other employee. They are subject to the same employment eligibility verification requirements and receive the same non-discrimination and anti-harassment protections. Most seasonal workers are not exempt from overtime but be sure to check the specific job description against the exemption requirements. Employers should be sure to tell seasonal hires in writing when their seasonal employment is *expected* to end but also emphasize that their employment is at-will. Also, employers need to make sure they maintain accurate records regarding seasonal employees since among other things, seasonal employment counts toward the 12-month eligibility requirement under the FMLA and seasonal employees can often become regular, non-seasonal employees. Finally, employers should train seasonal employees just as they train any other employees.



On the Horizon . . .

While there are a several new laws and regulations that will impact you in 2014, there are several proposed laws that may or may not be enacted that could impact your business. Here are just a few proposed laws that you should keep an eye on:

1.

The Employment Non-Discrimination Act. ENDA is a tie on statute to Title VII that would expand the protected classes to include discrimination based on sexual orientation. ENDA has been introduced in every Congress since 1994, with the exception of one term.

2.

The Social Networking Online Protection Act. This bill would protect employees from having to divulge their social media information to employers and potential employers.

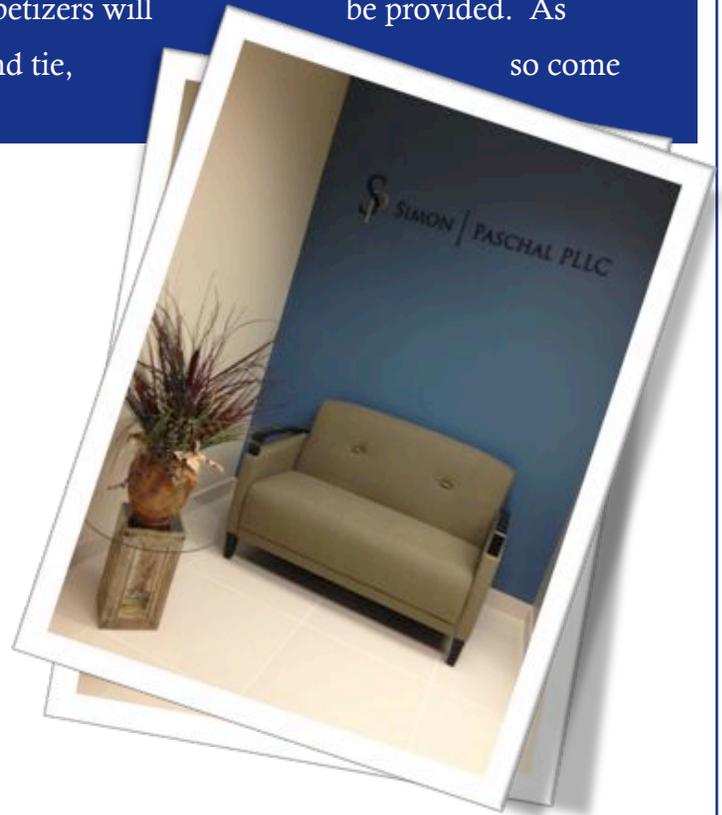
3.

Working Families Flexibility Act. Bill allows employees to choose to take comp time instead of overtime and bank up to 160 hours a year to use to care for family members.

Firm Open House: January 23 5:30 – 8:30pm

Please join us on Thursday, January 23 from 5:30 pm to 8:30 pm as we host an Open House to introduce you to our new office. Drinks and appetizers will be provided. As many of you know, we prefer jeans to the suit and tie, so come as you are and come and go as you feel.

The small print: The contents of this newsletter is not intended to provide specific legal advice and you should not take any action based on the content of this newsletter without seeking legal counsel. If you have specific questions, please contact a lawyer.



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