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— Labor & Employment Law —
Defending Employer's Rights

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David Letterman and CBS Face Class Action Lawsuit By Interns Of *The Late Show*

Mallory Musallam filed a class action complaint against CBS Broadcasting, CBS Corporation, and David Letterman's Worldwide Pants on behalf herself and everyone who has ever been an intern on *The Late Show With David Letterman*, for all compensation, including minimum wage and overtime compensation, which they were deprived of, plus interest, attorneys' fees, and costs. In expressing its intention to vigorously defend against all claims, CBS responded to the lawsuit stating, "We pride ourselves on providing valuable internship experiences, and we take seriously all of our obligations under relevant labor and employment laws."

CBS & David Letterman Slapped With Latest Intern Class Action Lawsuit, Deadline Hollywood, (September 8, 2014) Dominic Patten
http://deadline.com/2014/09/david-letterman-lawsuit-intern-labor-laws-cbs-worldwide-pants-831063

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SEXUAL HARASSMENT

Hostile Work Environment / Retaliation – EEOC Files Sexual Harassment Complaint Against Company For Supervisor's Actions

The Equal Employment Opportunity Commission filed a harassment lawsuit against MountainKing Potatoes alleging several women had been sexually harassed by a production supervisor, and then fired when they resisted or complained. According to the complaint, the supervisor allegedly: (1) licked his finger and put it in the ears of at least two of the female workers; (2) touched female employees' buttocks when they clocked in for work; and (3) forced a female employee to sit on his lap in a dark office while he made inappropriate sexual remarks. Additional allegations against the supervisor include: forcing an employee to work at an unpleasant sorting station when she opposed his advances, then firing the employee when she became angry that he would not remove her from the unpleasant assignment. The EEOC complaint further alleges that a female employee, who was terminated under the pretense of being late, was actually arriving late to work to ensure that the supervisor would not be standing next to the time clock when she punched in. When the employee was disciplined for being late she informed management about the harassment at the time clock. Management asked her for a written statement and sent her to lunch while they considered what to do with her report. When she returned from lunch 40 minutes later, she was terminated for taking too long at lunch.

Potato Producer Hit With EEOC Sexual Harassment Suit, Law360 (August 8, 2014), Allissa Wickham
http://www.law360.com/employment/articles/565471

DISCRIMINATION

Sex Discrimination – Weatherman Passed Over For Anchor Jobs Because He's Not A Young, Attractive Woman

A meteorologist alleging he was passed over for weather anchor jobs because he's not a young, attractive woman, urged a California judge to keep his age and sex discrimination suit alive. Hunter, who is over 40, alleges that he applied for vacant positions with KCBS and KCAL in 2010, but that both jobs went to attractive, young females. A California appellate panel, however, held that reporting the news and creating a television show are both exercises of free speech, and that the conduct therefore qualifies as a form of protected activity. Hunter will have to demonstrate that he has a reasonable probability of prevailing on the merits of his claim if his suit is to survive CBS's anti-SLAPP motion.

Weatherman Rains On CBS Bid To Nix Sex Discrimination Suit, Law360 (August 26, 2014), Brandon Lowrey
http://www.law360.com/employment/articles/571263

Age Discrimination/Retaliation – Trump Entertainment Resorts Sued For Age Discrimination

Three former employees ranging in ages from 53 to 56 filed a complaint against the Trump Taj Mahal casino alleging age discrimination and retaliation in relation to interviews they participated in as part of an ongoing discrimination investigation. The three former employees allege they were terminated because of the "perceived" belief that they would be "weak links" in an age discrimination case that had already been filed against the casino by other table supervisors in the same age range.

Trump Casino, Attorney Defend Age Discrimination Probe, Law360 (September 2, 2014), Joshua Alston
http://www.law360.com/employment/articles/573271

WAGE/HOUR

$26 Million Settlement To Trash Truck Drivers For Meal Period Violations

The City of Los Angeles will pay $26 million to settle with a class of more than 1,000 city trash truck drivers who allege the city broke labor laws by forbidding them from congregating with other drivers or taking naps during their meal breaks. The lead plaintiff alleged that the city regularly made him work for more than five hours without giving him a duty-free meal break of at least 30 minutes. The City estimated that the damages may have been as much as $40 million.

LA Pays $26M To Truck Drivers Barred From Break Naps, Law360 (August 13, 2014), Brandon Lowrey
http://www.law360.com/employment/articles/567032

For Purposes Of Receiving Final Wages, An Employee Who Retires Must Be Treated The Same As An Employee Who Quits

The California Court of Appeal held that the Labor Code requirements applying to employees who "quit" also apply to employees who "quit to retire." The Court of Appeal noted that both the parties and the trial court had offered a variety of dictionary definitions in support of their respective positions that "quit" should or should not include an employee who "retires." Ultimately, the Court reasoned that rules of statutory construction must yield to the purpose and intent of a statute, and that statutes governing conditions of employment, such as the payment of wages, must be liberally construed "in favor of protecting employees." Therefore, the Court interprets an employee who "quits" in sections 202(a) and 203 of the Labor Code to include an employee who "quits to retire."

McLean V. State of California (2014) ___ Cal.App.4th ___.
http://www.courts.ca.gov/opinions/documents/C074515.PDF

NLRB

NLRB Ratifies Action Taken By Board During Tenure of Invalidly Appointed Members

The National Labor Relations Board ratified three regional director appointments, five administrative law judge selections, and "all administrative, personnel, and procurement matters" taken by the Board between January 4, 2012, and August 5, 2013. With these ratifications, the NLRB is attempting to cure any alleged defects in the actions taken by the Board during the period. As we pointed out in our firm's January 2014 Special Update, the U.S. Supreme Court recently ruled that the five-seat labor board lacked the three-member quorum required to operate because three of the five board members had been invalidly appointed. Therefore, all matters taken by the Board during that 18-month period will have to be revisited by the newly appointed Board. Please recall, the Board lacked a quorum and had no authority during the period because the *recess appointments* made by President Obama were invalidated because the Senate was not in recess and was, in fact, holding "pro forma" sessions every three days at the time.

NLRB OKs Moves Made During Invalid Appointees' Tenure, Law360 (August 4, 2014), Ben James
http://www.law360.com/employment/articles/563843

NLRB Provides Five Potential Unit Deficiencies That Could Be Used To Challenge "Micro-Units"

The National Labor Relations Board rejected a bargaining unit of Bergdorf Goodman shoes sales associates claiming they were too "fractured" and arbitrary. In 2011, an NLRB decision (*Specialty Healthcare*) provided the following standard: an employer challenging a so-called micro-unit on the basis that some employees are wrongly excluded from the unit, must show the excluded workers share "an overwhelming community of interest" with the group attempting to organize. While it is still unclear what will satisfy the "overwhelming" standard, last month's NLRB decision did present the following five factors which the Board used in determining that this micro-unit was inappropriate. Employers should analyze these 5 factors when attacking a petition to organize a micro-unit: (1) the boundaries of the unit should correspond to "administrative or operational lines" set by the employer; (2) where the workers share "common supervision" they will likely share a community of interest; (3) where there is "significant interchange" between two groups of employees, they will share a community of interest and belong in the same unit; (4) where there are "unit interchanges" with other employees, that is, where an employer has administratively chosen to operate its business to create the most efficient operation, job functions may not be limited to one particular department, and the smaller unit may not be appropriate; and (5) where pay, hiring and handbooks between two groups of workers are the same, again, a micro-unit may not be appropriate.

Employers will face an uphill battle when they challenge overly narrow bargaining units, and need to be prepared to provide significant evidence of many factors, including the five factors above, as well as how the business is structured, how the employees are trained, and what functions they fulfill.

How Employers Can Fight 'Micro-Units' At The NLRB, Law360 (August 5, 2014), Ben James
http://www.law360.com/employment/articles/563859

Efforts To Obtain Help From Co-Workers To Support A Sexual Harassment Complaint Are Protected By Federal Labor Law

The National Labor Relations Board ruled that an employee who sought witness statements from her co-workers to support a sexual harassment complaint was protected by the National Labor Relations Act for "concerted activity" for the purpose of "mutual aid or protection."

NLRB Protects Co-Worker Seeking Help On Harassment Claim, Law360 (August 12, 2014), Scott Flaherty
http://www.law360.com/employment/articles/566514

Clicking "Like" On Facebook Is Concerted Activity Protected By Federal Labor Law

The National Labor Relations Board ruled that clicking Facebook's "like" button was protected, concerted activity shielded by labor law. Two employees were terminated by their employer when they indicated that they "liked" a status update from a former employee that said, the owners "couldn't even do the tax paperwork correctly and someone should do the owners a favor and purchase the business from them." The NLRB not only found the firings unlawful, but went one step further and found the employer's internet/blogging policy – and its prohibition on inappropriate discussions about the company, management, or other workers – to be unlawful as well.

Facebook 'Like' Protected By Labor Law, NLRB Says, Law360 (August 25, 2014), Ben James
http://www.law360.com/employment/articles/570594

NLRB Finds Multiple Violations Of Labor Law By Hotel Operator In Irvine

The National Labor Relations Board ruled that several portions of the employee handbook of the Embassy Suites hotel unlawfully restricted the rights of workers to organize and discuss their conditions of employment. The overly restrictive policies included: banning employee access to the hotel except during scheduled working hours; and directing workers not to speak with the media, which the judge said could give the employees the impression that they are

prohibited from discussing their wages or conditions of employment. In addition to the handbook issues, the hotel operator was also found to have violated the NLRA during an organizing drive when: (1) a human resources manager created an unlawful "impression of surveillance" when she took a photo of employees in a picket line; and (2) another member of management implicitly promised a promotion to an employee to "discourage union activities."

NLRB Judge Faults Calif. Hotel Operator's Handbook Policies, Law360 (August 8, 2014), Scott Flaherty
http://www.law360.com/employment/articles/565583

OTHER

California Legislature Approves Hotly Contested Bill Requiring Employers To Provide Paid Sick Leave

Assembly Bill 1522, which seeks to guarantee workers in California three days of paid sick leave annually, passed the California Senate and Assembly, and is likely to be signed into law by Governor Brown. The bill is intended to reduce health care costs by permitting workers to use paid sick leave to visit their primary care physician to address an illness, rather than going to the emergency room after business hours due to fear of missing work. The bill would affect all employers, except unionized employers, and creates a presumption of retaliation if an employer denies use of the sick days or takes other adverse action when a sick day is used. If signed into law the bill will take effect on July 1, 2015.

Calif. Legislature Passes Controversial Sick Leave Bill, Law360 (September 2, 2014), Kurt Orzeck
http://www.law360.com/employment/articles/573015

Sick Leave Requirements Are Being Passed/Implemented Nationwide

Passaic, New Jersey, has become the third municipality in New Jersey and the tenth in the nation to pass sick leave requirements. The city's governing council approved an ordinance allowing workers to earn three to five paid sick days annually. The ordinance is intended to help ensure that employees have the financial security to take care of themselves and their families. The ordinances in New Jersey provide that employers with 10 or more workers have to provide up to 40 hours of paid sick time annually. Smaller employers would only have to provide up to 24 hours. New Jersey also has a state bill (similar to California's) that will soon be brought to the state legislature and should create uniformity for businesses in the state.

Third NJ Town Moves Forward With Paid Sick Leave, Law360 (September 3, 2014), Martin Bricketto
http://www.law360.com/employment/articles/573344

Governor Christie Attempting to Dodge $2.4 Billion In Pension Contributions

The State of New Jersey asked a state court to dismiss a suit filed by workers' union challenging Governor Christie's decision to circumvent $2.4 billion in contributions to the state pension fund. Christie argues that the law mandating the payment was void upon creation. The unions filed the lawsuit when Gov. Christie redirected the funds, which were slated for current and future pension contributions, to fill an $875 million hole in the state's budget. The state argues that Gov. Christie cannot be held to the pension law because it directly conflicts with his broader duty of ensuring the state's fiscal health. Christie cut the 2014 contribution nearly a billion in 2014 (from $1.6 billion down to $696 million) and the 2015 contribution over $1.5 billion (from $2.2 billion down to $681 million).

NJ Asks Court to Nix Suit Over $2.4B Pension Cuts, Law360 (September 3, 2014), Joshua Alston
http://www.law360.com/employment/articles/573369

Mayor Garcetti Has Proposed Raising The City's Minimum Wage From $9 to $13.75 by 2017

Under Garcetti's plan Los Angeles' minimum wage would be raised to $10.25 next year, $11.75 in 2016 and $13.25 in 2017. Garcetti stated that even though L.A. has added 40,000 jobs since he took office in July 2013, low wages threaten the City's economic recovery. Garcetti proposes what he believes to be a responsible and gradual raise of the minimum wage, "because it is deplorable and bad for our economy to have 1 million Angelenos stuck in poverty, even when working full time." The mayor's office cited a study of the plan by economists and researchers at U.C. Berkeley, which determined that businesses would be able to absorb the increases; that the increases wouldn't lead to unemployment; and that consumers would only see one small jump in restaurant prices.

LA Mayor Proposes Raising City's Minimum Wage To $13.75, Law360 (September 2, 2014), Kurt Orzeck
http://www.law360.com/employment/articles/573062

IN THE TRENCHES

TD Bank Pays Nearly $10 Million To Settle Overtime Class Action

A group of 2,600 assistant store managers agreed to settle their class action with TD Bank for $9.9 million for violations of the Fair Labor Standards Act and other wage-and-hour laws. The class alleged that they had been improperly classified as exempt from federal and state overtime requirements. The class further alleged that despite their managerial job titles, they perform nonexempt, non-managerial duties, such as serving as bank tellers, counting money in the vault, and opening and closing branches.

TD Bank Shells Out $10M For Overtime Class Action, Law360 (August 22, 2014), Jeff Sistrunk
http://www.law360.com/employment/articles/570488

Lowe's Pays $9.5 Million To Settle HR Managers' Overtime Class Action

A group of human resources managers' agreed to settle their class action with Lowe's for $9.5 million. The class alleged that while given the tile of manager, Lowe's human resources managers lack discretion to make meaningful decisions and do not supervise employees. The class further alleged that the employee's duties actually include menial tasks such as operating cash registers, cleaning bathrooms, greeting customers, and sweeping floors.

Lowe's Strikes $9.5M Deal In HR Managers' OT Class Action, Law360 (August 22, 2014), Michael Lipkin
http://www.law360.com/employment/articles/570466

LinkedIn Pays $6 Million In Overtime Back Wages

Almost 400 current and former employees of LinkedIn will be paid nearly $6 million in overtime back wages. The U.S. Department of Labor said its wage-and-hour division found LinkedIn was in violation of overtime and record-keeping provisions of the Fair Labor Standards Act, when it failed to record, account, and pay for all hours worked in a week. LinkedIn agreed to pay all overtime back wages due, and to take preventive measures to remedy the situation, including providing compliance training and distributing its policy prohibiting off-the-clock work to all non-exempt employees and their managers.

LinkedIn Pays Almost $6M To Workers After Labor Probe, Law360 (August 4, 2014), David McAfee
http://www.law360.com/employment/articles/564033

$5.65 Million Verdict for Wrongful Termination and Defamation

A Sacramento Superior Court jury awarded a single plaintiff $5.65 million for wrongful termination and defamation. Plaintiff and his former wife were both employees of the defendant. Plaintiff alleged that after they were divorced, and after his wife had to take two leaves of absence, his co-workers, including his wife's supervisor, wanted to terminate her because of her stress disability. When plaintiff complained about the treatment against his former wife, his co-workers defamed him regarding his work ethic, which led to an investigation and his wrongful termination. The jury awarded him $5.65 million, which included $3 million in punitive damages.

Salusstio v. Kemper Independence Insurance Company, LA Daily Journal, Verdicts and Settlements (September 5, 2014) Sacramento Superior Court, Case Number 34-2007-00882286-CU-WT-GDS.

$2.8 Million Settlement of Wage/Hour FLSA Class Action

A group of former exempt and non-exempt employees agreed to a $2.8 million settlement with Johnson Controls Inc. for violations of the California Labor Code and Wage Orders. The workers alleged failure to pay all vested and unused vacation wages upon leaving the company.

Linda De La Torre v. Johnson Controls Inc., LA Daily Journal, Verdicts and Settlements (August 22, 2014) U.S. District Court for the Northern District of California, Case Number 5:13 -cv-03214-PSG.

$2.1 Million Settlement of Meal Break Class Action

A group of current and former package handlers agreed to a $2.1 million settlement with Federal Express Corp. for violations of the California Labor Code and Unfair Competition Law. The workers alleged failure to provide proper meal and rest breaks, including class members who were not provided a meal period or a second rest period when they worked two shifts in a day. As part of the settlement, FedEx will be required to clarify its meal and rest period policies.

FedEx To Pay $2M to Settle Meal Break Class Action, Law360 (August 12, 2014), Aaron Vehling
http://www.law360.com/employment/articles/566538

As always, don't hesitate to contact any of our attorneys if you have any questions or comments.

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We also present on various topics, including:

- Labor Negotiations
- Pension Reform; and
- The Limitations of AB 646 Post Impasse Procedures