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CALIFORNIA EMPLOYMENT LAW NEWSLETTER

What's New for California Employers?

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Ronald J. Souza
Bruce E. Weisenberg
LYNCH, GILARDI & GRUMMER
A Professional Corporation
170 Columbus Avenue, 5th Floor
San Francisco, CA 94133
(415) 397-2800

The following is a brief summary of the significant employment law developments since our last newsletter.¹

LABOR/NATIONAL LABOR RELATIONS BOARD

Confidentiality/Non-disparagement

Provisions: The National Labor Relations Board (NLRB) has held that confidentiality and non-disparagement provisions contained in some employment agreements can be unlawful under the National Labor Relations Act (NLRA). *Quicken Loans, Inc.* 359 NLRB No. 141 (6/21/13). These provisions included prohibitions on the disclosure of proprietary information and criticisms regarding company products, services, policies, personnel, etc. *Comment:* These decisions make it clear that any policy limiting an employee's speech regarding terms and conditions of employment are being scrutinized by the NLRB.

Other Handbook Provisions: The NLRB also found handbook provisions restricting an employee's after hours return to the workplace to be valid only if the restriction is limited to interior spaces and applies to off-duty access for all purposes, not just union activity. *Remington Lodging & Hospitality LLC* 359 NLRB 95. The NLRB also found that a rule prohibiting employees from giving "any information to the news media regarding" the employer or its customers violated the NLRA in restricting an employee's right to seek public support for their grievances through appeals to the general public. *Comment:* While it's still relatively rare for non-union employees to seek redress

¹ This summary is intended to be a brief overview of significant legal developments and is not an in-depth analysis of the cases or statutes discussed. Our clients are advised to contact their employment attorney before making significant decisions related to the legal developments reported herein. *NOTE:* These cases have not been updated/cite-checked since they were first reported.

through the NLRB, there is still potential for them to do so.

OTHER DEVELOPMENTS

Sexual Harassment: The deadline for complying with managerial sexual harassment training is December 31, 2013. Calif. Govt. Code §12950.1. While this law became effective on January 1, 2005, the deadline for compliance is December of this year. It requires employers with at least 50 employees to provide two hours of classroom or other effective interactive training and education regarding sexual harassment prevention to supervisory employees every two years (the first training deadline was December 31, 2005). *Comment:* Most large employers are already in compliance with this law.

Legislation/Obama Care: On July 2, 2013, the Treasury Department announced that the mandatory employer and insurer reporting requirements will be delayed for one year until 2015. *Affordable Healthcare Act.* Additionally, the provisions regarding Medicaid, children's health insurance programs, and health insurance exchanges were also delayed. *Comment:* These delays were apparently occasioned by the ongoing confusion that still exists regarding the meaning/application of these rules.

Retaliation: As previously reported, the U.S. Supreme Court has recently handed down two decisions which will make it easier for employers to defend against harassment and retaliation claims. First, employers are only strictly liable for "supervisors" who are "empowered by the employer to take tangible employment actions against the victim" including "hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Vance v. Ball State University.* Also, an employee accusing an employer of retaliation must show not only that an adverse employment action was partially

motivated by retaliation, but must have been the main reason for the retaliation. *University of Texas Southwestern Medical Center v. Nassar*. *Comment:* These two decisions provide significant help to employers in defending retaliation claims. However, they are only so helpful to California employers as State law is still more liberal in this regard.

If you have questions regarding any of the aforementioned employment law developments, contact your LGG attorney or Ron Souza at rsouza@lgglaw.com.

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