BRYCE DOWNEY & LENKOV LLC

Labor & Employment Newsletter
April 2017

Upcoming Webinar!
4/18/17
Spring Cleaning Your Employment Handbook: What Employers Need To Know
Click Here to Register

Top 5 Things Employers Can Do To "Spring Clean" In The Employment Realm

As we enter the spring months, there are a number of things employers can do to pro-actively "spring clean" in the employment realm. Here are our top five recommendations:

1. **Update Or Prepare An Employee Handbook.** Not only will an up to date handbook allow for more clear and consistent application of company policies, but it can also help support employers defending against discrimination or harassment claims by demonstrating their commitment to EEO and anti-harassment policies. To watch Maital Savin's recent recording on Ten Things Employers Should Know When Updating Employment Handbooks, click here. To register for Maital's 4/18/17 webinar, Spring Cleaning your Employment Handbook, click here.

2. **Conduct Sexual Harassment Training.** Sexual harassment lawsuits are rampant, have high exposure and create the risk of negative media attention. (See the following article to read our in-depth feature on this issue). Employers should regularly train all employees and managers on sexual harassment to help reduce such claims and assist in their defense if such claims ultimately arise. To watch Maital Savin's recent recording, How To Reduce Sexual Harassment Claims In Your Workplace, click here.

3. **Audit Your Wage & Hour Procedures:** The number of wage and hour class action claims continues to rise and create significant exposure for employers of all sizes. A comprehensive audit should critically analyze whether all exempt employees and independent contractors are properly classified as such, and whether time keeping procedures accurately capture all time worked by non-exempt employees. Chicago, Cook County & Illinois employers should also pay close attention to new paid sick leave rules with which they must comply beginning in 2017. See page 2 to learn everything you need to know about the new paid sick leave laws.

4. **Don't Delay: Take Prompt Disciplinary Action Where Appropriate.** Employers who are not sure what to do with a problem employee, should not delay, but rather, should take prompt action, which may include discipline up to and including employment termination. Employers who are not sure if this might run afoul of the law should consult with their HR Specialist or employment attorney. If you would like a copy of our webinar, 10 Tricky Employment Termination Questions Answered, please email mkt@bdlfirm.com.

5. **Understand Accomodation Laws.** With the laws on FMLA, ADA and valid leave policies constantly evolving, employers should stay up to date on their obligations under these laws. Employers should consider attending a seminar or webinar or consulting with counsel on this challenging area. For a copy of Storrs Downey's recent presentation regarding accommodations in today's ever-evolving workplace, please email mkt@bdlfirm.com.

Sexual Harassment Claims: Top Stories

Although most employers understand that sexual harassment is prohibited at work, such claims continue unabated, even in 2017. A few recent headlines provide good reminders of why employers should continue to take action to prevent sexual harassment from occurring in their own workplaces.

First, an Illinois federal jury awarded $6.45 million to two women who were fired from an engineering consulting firm after experiencing gender discrimination and sexual harassment on almost a daily basis.

Plaintiffs allegations included being talked to in vulgar terms by male executives and board members. One of the Plaintiffs alleged being referred to as "Stripper Boobs" and "High Beams" (in reference to the

plaintiff's breasts). She also alleged that her boss would request sexual favors from her and that the company's president referred to her as "cunt" and "bitch." She also alleged that management allowed male employees to record and take pictures of female employees without their consent. The other plaintiff alleged that another male boss masturbated to porn with his office door open within earshot of her and others.

The plaintiffs alleged that they also suffered professionally, being excluded from meetings and seminars, denied promotions and pay, denied bonuses and vacation time and experienced heightened scrutiny.

Additionally, in her viral blog post, former Uber engineer, Susan Fowler, details significant claims of gender bias, sexual harassment and retaliation, which she reported to Uber's HR department, who essentially failed to take corrective action. Fowler alleges that the HR department lied to her and even began to point the finger at her. Fowler ultimately left her role at Uber after one year. Two days after the blog post went up, Uber hired former U.S. Attorney General Eric Holder to lead an internal investigation and also hired a second law firm to investigate Fowler's claims. Fowler has also hired her own attorney while Uber investigates.

While the male-dominated tech industry makes sexual harassment and bias claims more common in the tech world, sexual harassment claims continue across industries. Last year, former Fox News anchor, Gretchen Carlson, made headlines with the $20 million settlement she received after suing her former boss, Roger Ailes, for sexual harassment.

Finally, statements made by hundreds of current and former employees of Sterling Jewelers (the parent company behind Jared the Galleria of Jewelry and Kay Jewelers) were disclosed, alleging a rampant culture of sexual harassment throughout the company. Employees reported being routinely groped and urged to sexually cater to their bosses. Sterling is disputing the allegations, which are currently pending in a private class action arbitration involving 69,000 employees alleging sexual harassment and wage discrimination.

Practice Tip:

Employers should ensure that they have robust policies against sexual harassment, with clear reporting mechanisms. Employers should promptly and thoroughly investigate reports of harassment and take corrective action, if appropriate. To watch Maital Savin's recent recording on How to Reduce Sexual Harassment Claims in Your Workplace, click here.

NY Post Employee Fired After Tweeting About Trump

In the past six months, politics have become more divisive than ever, impacting many workplaces across the country. Take for example, New York Post sportswriter, Bart Hubbuch, who on President Trump's inauguration day, tweeted: "12/7/41. 9/11/01. 1/20/17," likening President Trump's inauguration to Pearl Harbor and 9/11. As a result, The Post fired Hubbuch, who fired back by suing his former employer.

Hubbuch argues that his termination violated a New York law prohibiting employers from terminating employees for engaging in legal off-duty, off-premises "recreational activities" without using the employer's equipment or property. The law defines recreational activities as "leisure time activity," which is generally engaged in for "recreational purposes" such as "sports, games, hobbies, exercise, and the viewing of television, movies, and similar material." However, in the past, a New York federal court rejected a claim that off-duty politically-motivated picketing was covered by the law. Thus, Hubbuch's claim that his tweeting constitutes recreational activity protected under the law is likely to fail, but we will have to wait and see how the court ultimately rules. The Post has also fired back, arguing that Hubbuch tweeted while on shift and had previously been warned about inappropriate social media posts.

Practice Tip:

Non-government employers have broad discretion to limit or even bar employees' political expression in the workplace, subject to any state or local laws, employment contracts and collective bargaining agreements. Such employers may terminate at-will employees for violating such policies. However, employers should be conscientious about applying such policies equally among their employees or risk exposure for discrimination claims (based on race, age, religion, etc.), particularly as much political discourse overlaps with these protected characteristics.

Chicago, Cook County & Illinois Employers: What You Need To Know About Paid Sick Leave

Chicago, Cook County and Illinois employers have not one, not two, but three sick leave ordinances with which they must comply, beginning in 2017. Read on for a quick and easy summary of what you need to know.

Chicago and Cook Country Sick Leave Ordinances

On 7/1/17, separate Chicago and Cook County ordinances providing for paid sick leave will go into effect. In a nutshell, the Cook County Earned Sick Leave Ordinance, and separately, the Chicago Paid Sick Leave Ordinance will allow eligible employees to accrue up to 40 hours of paid sick leave in each 12-month period. The two ordinances mirror each other with the primary difference being the applicable geographic area. Here is a summary of the ordinances' key provisions:

- **Covered Employers:**
  - Individuals and companies with a place of business within the City of Chicago/Cook County (or under the Chicago Ordinance, employers who are subject to at least one of Chicago's licensing requirements) that employ at least one covered employee;
  - Government entities and Indian tribes are excluded from coverage.

- **Covered Employees:**
  - Must perform at least two hours of work for a covered employer while physically present within the geographic boundaries of the City/County in any particular two-week period;
  - Compensated travel time within the geographically covered area (e.g., making deliveries, sales calls and travel related to other business activity in the covered area) counts towards the two-hour requirement.

- **Eligible Employees:** Must work at least 80 hours for a covered employer in any 120-day period.

- **Interplay with CBAs:**
  - The ordinances may be waived by a collective bargaining agreement if the waiver is explicit and unambiguous;
  - The ordinances do not apply to any covered employee in the construction industry who is covered by a collective bargaining agreement.

- **Interplay with Existing PTO Policies:** Employers that already provide paid time off that meets the ordinances' requirements need not provide additional paid leave.

- **Leave Accrual:**
  - Paid leave begins to accrue on the first calendar day after the start of employment or 7/1/17, whichever is later;
  - Employees will accrue one hour of paid sick leave for every 40 hours worked;
  - The Ordinance assumes employees who are exempt from overtime, work 40 hours per workweek, unless their normal workweek is shorter;
  - Employees can accrue only up to 40 hours for each 12-month period.

- **Carry Over & FMLA Interplay:**
  - Employees may carry over half of their unused paid sick leave (max of 20 hours) to the following 12-month period;
  - *However, if employers are subject to the Family and Medical Leave Act (FMLA), their employees may carryover up to an additional 40 hours of unused paid sick leave, to use exclusively for FMLA eligible purposes.*

- **Leave Usage:**
  - Employers must allow employees to begin to use accrued paid sick leave no later than the 180th day after they begin employment. The ordinances do not address how this will apply to existing employees;
  - Employees may use leave for their own illness, injuries or medical care, or for the illness, injury or medical care of a child, legal guardian or ward, spouse or domestic partner, parent, parent of spouse or domestic partner, sibling, grandparent, grandchild, or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship;
  - Leave may also be used for employees or their family members who are victims of domestic violence or a sex offense;
  - Leave may also be used if an employee's place of business or the child care facility or school of their child has been ordered closed due to a public health emergency;
  - Employers may set reasonable minimum increments for the use of paid sick leave up to 4 hours/day;
  - Employers may require employees to provide up to seven days' advance notice if the need for leave is foreseeable, or as much notice as practicable if the need for leave is not foreseeable;
  - Employers may require employees using paid sick leave for more than three consecutive workdays to

provide certification for the leave; however, employers may not require that the certification specify the nature of the medical issue and employers may not delay paid leave because they have not received certification;
    - Employers may not require employees to find a replacement worker to cover their work as a condition of using earned sick leave.

- **Leave upon Separation:** Unless an employment contract or CBA provides otherwise, unused accrued sick leave need not be paid at separation of employment.

- **Notice:**
    - Employers must post notice of employees' rights under the ordinance in a conspicuous place at each facility where a covered employee works that is located in the geographically covered area;
    - Employers must provide employees with written notice of their rights advising employees of their earned sick leave rights under the ordinance.

- **Anti-retaliation:** Employers are prohibited from retaliating against employees who take leave under the ordinances.

- **Potential Damages:** Employers who violate the ordinances are subject to damages equal to three times the amount of unpaid sick leave denied or lost, plus interest, costs and reasonable attorneys' fees.

It is noteworthy that the Illinois constitution provides that municipal ordinances prevail when there is a conflict between county and municipal ordinances. This means that municipalities outside of Chicago, but within the Cook County geographic area, may pass ordinances to opt out of the County's sick leave ordinance. Several municipalities have expressed interest in doing so. We will continue to monitor this and keep you posted.

Illinois Employee Sick Leave Act

Finally, Illinois has passed its own, Illinois Employee Sick Leave Act, which went into effect on 1/1/17. Unlike the Chicago and Cook County ordinances, the Act does not require employers to provide paid sick leave. Instead, the Act expands coverage to allow employees to use paid sick leave for absences due to illness, injury or medical appointments of the employee's child, spouse, sibling, parent or spouse's parent, grandchild, grandparent or step-parent, for reasonable periods of time as the employee's attendance may be necessary, on the same terms that the employee would be able to use sick leave for his/her own illness or injury.

Practice Tip:

Chicago, Cook County and Illinois employers should carefully review and update their leave policies to ensure compliance with these new paid sick leave laws. Such employers should also train managers to ensure that they are complying with their obligations under these laws. Finally, employers should post notice of employees' rights under the Chicago and Cook County ordinances and provide written notice to their employees when the ordinances go into effect on 7/1/17.

Impact Of Trump Travel Ban On Employers

On 1/27/17, President Trump signed a controversial executive order barring refugees from entering the United States for 120 days and immigrants from Iran, Iraq, Syria, Sudan, Libya, Yemen and Somalia from entering the U.S. for three months. The state of Washington filed a lawsuit challenging the travel ban. In February, the U.S. District Court for the Western District of Washington granted a temporary injunction, suspending parts of the travel ban nationwide, which was upheld by the Ninth Circuit.

In March 2017, President Trump issued a revised executive order, which allows immigrants from Iraq into the U.S., but continued to bar refugees from entering the U.S. for 120 days and immigrants from Iran, Syria, Sudan, Libya, Yemen and Somalia from entering for three months. The revised executive order also exempted permanent residents and current visa holders. The U.S District Court in Hawaii blocked the ban just hours before the new ban was set to go into effect. Trump has vowed to continue to keep fighting for his travel ban.

The travel bans and some of President Trump's other pronouncements have stirred up much controversy and have emboldened some individuals to engage in racist and Islamophobic rhetoric. In light of this, and in light of the EEOC's newly added focus on backlash discrimination against Arab, Middle Eastern and South Asian employees, employers should be vigilant of any harassment or discrimination against such employees in their workplaces. Employers who become aware of such conduct should take swift action to investigate and discipline employees for violating their harassment and discrimination policies.

Employers that rely on global talent are left with many questions, especially about what will happen to employees who are foreign nationals. Although it remains to be seen whether the travel ban will be enforced, employers should prepare to address the ban if it is ultimately upheld and consider consulting with immigration counsel. Employers may consider requesting that their U.S. employees who are

affected foreign nationals not travel abroad. Employers who have U.S. employees who may be subject to the ban and whose visas are near their expiration date, may consider working on extending those employees' stays in the U.S.

Overtime Rules To Go Into OT

As we reported in our July and November 2016 newsletters, the U.S. Department of Labor (DOL) previously released regulations which would significantly impact employer's responsibility to pay overtime wages by requiring employers to pay overtime to employees who earn less than $913/week. The regulations were scheduled to take effect on 12/1/16. However, various groups filed challenges to the regulations in federal court. In late November 2016, a federal judge granted a temporary injunction preventing the regulations from going into effect. Thereafter, the DOL appealed the injunction and briefing is scheduled to be completed by 5/1/17.

Many speculate that the Trump Administration will allow the regulation to die by instructing the DOL to withdraw its appeal. However, President Tump's Labor Secretary nominee, Alexander Acosta's position on the new overtime regulation remains unknown. Thus, the fate of the overtime regulations remains unclear. We will continue to monitor the situation and keep you updated.

For details about the DOL regulations, click here.

Trump Orders Fed Agencies To Cut Two Regulations For Every New One

In his effort to stimulate economic and job growth, President Trump has vowed to reform federal agency regulations. On 1/30/17, President Trump signed Executive Order 13771, directing federal agencies to repeal two regulations for every new one they introduce. The Order has been met with much criticism. The Trump administration argues that reducing unnecessary agency regulations will help stimulate the economy and increase job growth. However, opponents of the Order argue that it creates an imbalance of costs compared to benefits, reducing the number of protections for the public.

In February 2017, groups challenging President Trump's deregulatory agenda filed suit in Washington federal district court, alleging that the Order will toss rules that provide a net benefit to society despite their compliance costs. The lawsuit argues that the Order requires agencies to choose whether to issue a new standard at the expense of benefits of two existing standards.

Turning specifically to the employment law arena, the Order provides a predicament for an agency like the EEOC, whose main objective is to protect the public against discrimination in the workplace. Not only will the EEOC have to align its mission with President Trump's focus on job growth, but it must do so while simultaneously reforming its existing regulations, as well as reducing two regulations any time a new one is implemented. Significant regulation reductions of this nature may very well lead to a reduction in the agency's systemic enforcement of workplace discrimination in key areas, and thus, overall reduced discrimination protection in the workplace. However, EEOC's new Acting Chair, Victoria Lipnic, has stated that she hopes to support the new administration's plan, but also intends to continue addressing systemic discrimination issues.

We will continue to monitor and keep you up to date as this new Order plays out.

Are Mandatory Class Action Waivers In Employment Arbitration Agreements Enforceable?

Mandatory class action waivers are commonplace in employment arbitration agreements – but are they enforceable? As we reported in our July 2016 newsletter, on 5/26/16, in *Lewis v. Epic Sys. Corp.*, No. 15-2997, 2016 WL 3029464 (7th Cir. 2016), the Seventh Circuit held that such waivers are not enforceable, determining that they violate employees' rights to engage in protected activity under the National Labor Relation Act. Notably, the Seventh Circuit's decision conflicts with the decisions of other Circuits on this point.

Since our last article addressing the enforceability of class action waivers, the NLRB appealed this issue, in a series of three consolidated cases, including the *Lewis* case, to the United States Supreme Court. The Court has agreed to hear the case, but has delayed oral argument until the end of 2017, leaving employers in limbo on yet another employment law issue.

The impact of the Supreme Court's decision on employers could be significant if the Court finds that such waivers are not enforceable. Such a decision would strip employers of a powerful defense against costly class and collective actions.

Practice Tip:

Until the Supreme Court rules on this important issue, employers in the Seventh Circuit should review their arbitration agreements to ensure that they are enforceable. Employers may consider either removing any provisions waiving class actions or amending any existing provisions to state that that an unenforceable waiver would not invalidate the entire agreement and consider including a savings clause.

Illinois' Amended Right To Privacy Act

On 1/1/17, Illinois' Right to Privacy in the Workplace Act was amended, significantly expanding the scope of online account information employers may not access or request from an employee. The amendment prohibits employers from asking employees or job applicants for passwords or other account information to access their personal online accounts or otherwise demanding access to employees' and applicants' "personal online accounts." Personal online accounts are broadly defined as "online accounts" "used by a person primarily for their personal purposes." The amendment also prohibits employers from requiring or coercing employees or applicants to invite employers to join groups affiliated with their personal online accounts, join employers' online accounts or add employers to contact lists for their personal online accounts. The amendment also includes an anti-retaliation provision for refusing any of the above activities.

Notably, the Act makes clear that it does not prevent employers from monitoring employee use of equipment or online activity while at work. However, if an employer inadvertently obtains personal online account information through such monitoring and fails to delete this information within a reasonably practical period of time, fails to make reasonable efforts to secure the information from disclosure, or uses such information to access an employee's account, the employer will run afoul of the Act's prohibitions.

Employees and applicants may file a complaint through the Illinois Department of Labor or file suit in state court to enforce the Act. Awards may include actual damages, costs, attorney's fees and up to $200 per violation.

Practice Tip:

Employers should review and update their internet and social media policies to ensure compliance with the Act and train managers accordingly.

SCOTUS Declines To Hear Transgender Student's Bathroom Access Case

Gavin Grimm, a 17 year-old transgender boy, who was assigned female gender at birth, but identifies as male, sued Gloucester County School Board in federal court in the Eastern District of Virginia, for prohibiting him from accessing the boys' bathroom. He alleged sex discrimination under Title IX, which bans sex discrimination in education, and discrimination under the Equal Protection Clause of the U.S. Constitution.

The district court dismissed his case, holding that Title IX's ban on sex discrimination does not include gender identity. The Court of Appeals for the Fourth Circuit vacated the lower court's opinion. The Fourth Circuit held that the lower court failed to give sufficient deference to the Department of Education's then-recently issued guidance, which indicated that transgender students should be permitted to use restrooms and locker rooms consistent with the gender with which they identify. On remand, the district court granted Grimm an injunction, allowing him to use the boys' restroom. This decision was appealed up to the Supreme Court.

In October 2016, the Supreme Court agreed to hear the appeal and address the issue of what weight should have been given to the Department of Education's guidance on transgender bathroom access.

In February 2017, under the new Trump Administration, the Department of Education withdrew its prior guidance on transgender bathroom access.

In March 2017, the Supreme Court vacated the Fourth Circuit's judgment in favor of Grimm and remanded the case to the Fourth Circuit for further consideration given the Trump Administration's recent withdrawal of the Department of Education's guidance. *Gloucester Cty. Sch. Bd. v. G. G. ex rel. Grimm*, No. 16-273, 2017 WL 855755, at *1 (U.S. Mar. 6, 2017).

Practice Tip:

Although the *Gloucester Country* case deals with transgender bathroom access for *students*, the courts' decisions will provide very strong guidance as to how the courts will rule on transgender bathroom access for *employees*. Employers should keep a close eye on this case. We will continue to keep you posted.

What Does Gorsuch's Supreme Court Nomination Mean For Employment Law?

In February 2017, President Trump nominated Judge Neil Gorsuch to fill the US Supreme Court vacancy left by the passing of Justice Scalia in February 2016. The Supreme Court is currently comprised of four conservative justices and four liberal justices. Thus, President Trump's nomination of a ninth justice will most likely establish a majority conservative bench, which will critically impact how the Court will rule on numerous controversial issues that will be argued before the Court.

Judge Gorsuch currently sits on the US Court of Appeals for the Tenth Circuit in Denver, Colorado. His career includes clerking for Supreme Court Justices White and Kennedy, working primarily in complex litigation in private practice for roughly ten years and working briefly as a Deputy Associate Director of the Department of Justice.

Judge Gorsuch is a pro-business conservative and if he is confirmed to sit on the Supreme Court, he will likely be embraced by most employers. A review of Judge Gorsuch's opinions in labor and employment cases provides us with some insight as to how he may address such issues if he is confirmed.

He issued the majority opinion in three opinions involving the National Labor Relations Board (NLRB), two of which he held in favor of the employer, finding that the NLRB decisions exceeded and took a far too expansive view of the text of the National Labor Relations Act (NRLA).

He issued the majority opinion in 14 employment discrimination cases, nine of which he held for the employer. He has often criticized courts for giving too much deference (known as *Chevron* deference) to government agencies that enforce labor and employment laws (including OSHA and the NLRB); instead, he believes that courts, rather than administrative agencies, should conduct statutory interpretation. In a recent decision in a case involving an employment retaliation claim, he also criticized the *McDonnell Douglas* burden shifting framework for assessing circumstantial evidence, which he views as burdensome and diverting attention from the fundamental question of whether unlawful discrimination occurred.

The Senate Judiciary Committee is scheduled to vote on Gorsuch's nomination on 4/3/17. It is uncertain whether Judge Gorsuch will be confirmed before the Court hears oral arguments during the next term, which is likely to hear cases involving important labor and employment topics, including whether class action waivers in employment arbitration agreements are enforceable (see page 5 to read our full article on this issue). We will continue to monitor his nomination and keep you posted.

Impact Of EEOC Leadership Changes

On 1/25/17, President Trump appointed Victoria Lipnic to serve as the EEOC Acting Chair. Lipnic has been with the EEOC since 2010, having been appointed as an EEOC Commissioner twice by President Obama.

As the newly appointed Acting Chair, Lipnic must perform a balancing act, in terms of her strategy. She values the agency's involvement in individual cases and will continue to handle those moving forward, but Lipnic also plans to further address systemic issues, such as equal pay. Although she does not intend to initiate any drastic policy shifts in the immediate future, Lipnic has made it clear that the EEOC's policies will align with President Trump's focus on job growth, while also maintaining the agency's mission of enforcing workplace discrimination laws. One looming change, however, may come to the EEOC's recent EEO-1 modification, which would require employers with 100 or more employees to report their pay data, beginning in March 2018. Considering President Trump's Executive Order for reduced agency regulations (see page 5 to read more), along with the fact that Lipnic voted against this modification, the EEO-1 modification will almost certainly be evaluated to ensure it is in accordance with the new leadership's vision.

On a more local level, on 1/8/17, the EEOC appointed Gregory Gochanour as its new Regional Attorney of the Chicago District Office, which covers EEOC cases in six states (a large number of counties in Illinois, and the states of Iowa, Minnesota, North Dakota, South Dakota and Wisconsin). Gochanour replaced former regional attorney, John Hendrickson, who had held the position since 1990. Gochanour has been with the EEOC since 1993 and has operated as a supervising attorney for much of that time. Under Gochanour's supervision in recent years, the EEOC litigated a number of high-profile cases, some of which included issues of transgender discrimination, discrimination against workers with medical issues and sexual harassment in the workplace. As evident by his body of work as a supervising attorney in the Chicago region, Gochanour's approach as the regional attorney will continue to address systemic cases of discrimination.

Under the Trump Administration's new vision, the EEOC will likely be more focused on economic growth and creating job opportunities. However, with the additions of Lipnic and Gochanour, it seems that the EEOC will still maintain its focus on addressing systemic discrimination issues in the workplace.

Stay tuned for further developments.

OSHA's New Silica Rule

OSHA recently issued a final rule on crystalline silica exposure. Beginning in June 2017 for the construction industry and June 2018 for the maritime and general industry, employers that engage in silica generating applications, such as cutting, grinding, drilling or breaking concrete and/or masonry, must fully comply with the new standard and have a written exposure plan on file.

This rule impacts 2 million construction workers and 300,000 workers in general industry operations such as brick manufacturing, foundries and hydraulic fracturing. OSHA estimates the total annualized cost of the rule to be just over $1 billion. However, OSHA also estimates approximately $8.7 billion per year in monetized benefits due to preventing fatal cancers and other diseases caused by silica exposure.

Numerous industry trade groups filed legal challenges to the new rule's validity, which have been consolidated in the D.C. Circuit. While these challenges remain pending, employers are subject to comply with the new rule. Depending on the outcome of these legal challenges, the Trump administration may revise the new rule or challenge OSHA's interpretation of the rule.

To learn more about this new rule and what employers need to do, click here to read our recent in-depth article from our firm's Construction Law blog.

Recent Seminars

Storrs Downey Presents To Illinois Manufacturers' Association

On **2/16/17**, **Storrs Downey** presented "Recent DOL & NLRB Developments" to the Illinois Manufacturers' Association at Ditka's Restaurant in Oakbrook Terrace.

Maital Savin Presents to IMA On Reducing Sexual Harassment

On **3/16/17**, **Maital Savin** recorded a presentation on "How To Reduce Sexual Harassment Claims In Your Workplace" for the Illinois Manufacturers' Association's video reference library.

Click here to view the presentation.

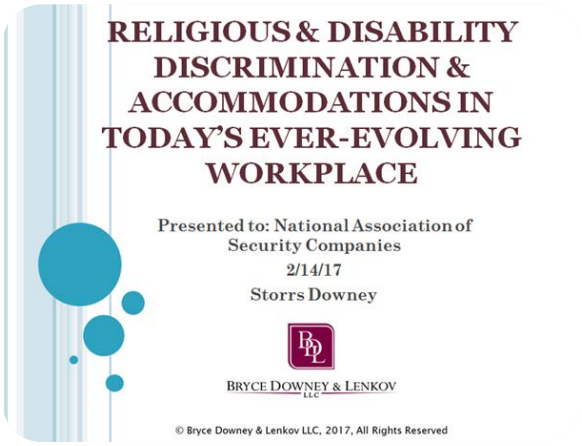
Maital Savin Presents to IMA On Updating Employment Handbooks

On **2/16/17**, **Maital Savin** recorded a presentation on "Ten Things Employers Should Know When Updating Employment Handbooks" for the Illinois Manufacturers' Association's video reference library.

Click here to view the presentation.

Storrs Downey Presents To National Association of Security Companies (NASCO)

On **2/14/17**, **Storrs Downey** presented "Religious & Disability Discrimination & Accommodations In Today's Ever-Evolving Workplace" to the National Association of Security Companies (NASCO) in Fort Lauderdale, FL.



Storrs Downey Presents At National Conference On Employment Practices Liability Insurance

On **1/27/17**, **Storrs Downey** presented "Approaching LGBT Issues in Today's Workplace: Heightened Focus On Sexual Orientation, Gender Identity And Gender Expression Discrimination Claims" at the American Conference Institute's 25th National Conference on Employment Practices Liability Insurance in New York, NY.

Storrs also delighted the audience with his acting ability as he performed the role of Anderson Cooper in "The Job Interview," an original play by Jonathan Evan Goldberg based on Donald Trump's "interview" with Mitt Romney for the position of Secretary of State.

CAST

Anderson Cooper	Storrs W. Downey
Reince Priebus	Brett J. Miller
Mitt Romney	Ben Accardo
Donald J. Trump	Jonathan E. Goldberg

ACT ONE

Scene 1 --- Breaking News	Anderson Cooper
Scene 2 --- The Job Interview	Priebus, Romney
Scene 3 --- The Briefing	Priebus, Trump
Scene 4 --- The Dinner	Trump, Romney

Mock Trial

On **2/16/17**, **Rich Lenkov**, **Michael Milstein** and **Edward Jordan** presented a workers' compensation mock trial at the 2017 Artex Risk Management Conference in Las Vegas, Nevada with plaintiff's attorney **Jason Whiteside** and **Brian White** of Litigation Solutions.

Rich Lenkov Presents To IMA On Work Comp Under Trump

On **1/19/17**, **Rich Lenkov** recorded a presentation on "Workers' Compensation Under Trump" for the Illinois Manufacturers' Association's video reference library.

Click Here to view the presentation.

Firm News

BDL Leading & Emerging Lawyers 2017

We are proud to announce that **Geoff Bryce**, **Storrs Downey**, **Rich Lenkov**, **Jeanne Hoffmann**, **Brian Rosenblatt**, **Terry Kiwala**, and **Alec Miller** have been selected as Leading Lawyers for 2017. Leading Lawyers are recommended by their peers to be among the top lawyers in their areas of practice. Less than 5% of all lawyers licensed in each state receive this distinction.

In addition, **Michael Milstein** and **Maital Savin** have been selected as Emerging Lawyers for 2017. Emerging Lawyers have been identified by their peers to be among the top lawyers age 40 or younger unless they have practiced for no more than 10 years. Less than 2% of all lawyers licensed in each state receive this distinction.

BDL Super Lawyers & Rising Stars 2017

We are proud to announce that **Rich Lenkov** and **Brian Rosenblatt** have been selected as Super Lawyers for 2017. Super Lawyers have been identified by their peers to be among the top 5% of lawyers in their state.

In addition, **Kirsten L. Kaiser Kus**, **Michael Milstein** and **Maital Savin** have been selected as Rising Stars for 2017. Rising Stars have been identified by their peers to be among the top 2.5% of lawyers age 40 or younger in their state, unless they have practiced for no more than 10 years.

BDL Hits The Grammys!

Entertainment law practice co-chair **Brian Rosenblatt** joined clients of the firm and the music industry's biggest stars at the 59th Annual Grammy Awards Ceremony!

Monday On Main Street

BDL co-sponsored the Sundance Film Festival's 8th annual Monday On Main Street event on **1/23/17**. **Rich Lenkov** took part in the exclusive filmmaker social held at Butcher's Chophouse in Park City, UT. Monday On Main Street gives industry professionals a chance to mingle in a lively, upscale setting right in the heart of the fest.

Bryce Downey & Lenkov is involved in all areas of the entertainment sector, including music, theatre, motion pictures, television, live performances, publishing, multi-media and advertising. Click Here for more information on our entertainment practice.

Giving Back

Polar Plunge 2017

On **3/5/17**, the BDL Hamilton team took the Polar Plunge into icy Lake Michigan. This was our 5th year braving freezing temperatures at North Avenue beach to raise funds and awareness for the Special Olympics Chicago.

Special Olympics is the world's largest program for sports training and athletic competition for children and adults with intellectual disabilities. This year, 8 Hamiltons raised over **$1,700** for the Chicago Special Olympics. Congratulations Team BDL!

Hustle Up The Hancock 2017

On **2/28/16**, Team BDL participated in Hustle up the Hancock. **This year's event raised over $1,023,000** for lung disease research, advocacy and education.

Our best times were Marketing Assistant Chris Hoffmann for the half climb (11:15-52 floors) and **Krista Sifuentez** for the full climb (20:55-94 floors).

Upcoming Seminars

- On **5/24-25/17**, **Rich Lenkov** will lead a panel on "Common Ethical Issues" at the 2017 CLM & Business Insurance Workers' Compensation Conference in Chicago. Click Here for more info and to register.

- On **5/24-25/17**, **Kirsten Kus** will lead a panel on "Top Employer Mistakes" at the 2017 CLM & Business Insurance Workers' Compensation Conference in Chicago. Click Here for more info and to register.

Contributors to the March 2017 Labor & Employment Newsletter

The Bryce Downey & Lenkov attorneys who contributed to this newsletter were **Storrs Downey**, **Maital Savin**, and **Paul Kosteski.**

Free Webinars

Bryce Downey & Lenkov hosts regular webinars on pressing issues and hot topics:

- On **4/18/17**, **Maital Savin** will present a webinar on "Spring Cleaning Your Employment Handbook: What Employers Need to Know." Click Here to register for the webinar.

- On **4/19/17**, **Maital Savin** will record a presentation on "Violence in the Workplace" for the Illinois Manufacturer's Association's video reference library. If you would like a copy of the recording, please email mkt@bdlfirm.com.

What you said about our 1/26/17 webinar, "New OSHA Regulations"

"Explained the differences between OSHA regulations and WC considerations."

"The subject matter was critical, interesting and well-presented."

"It gave me knowledge of OSHA, their regulations and ability to assess fines/penalties."

"Great information. You made it easy to understand without legal jargon."

Recent

Hiring Do's And Don'ts (With Video Examples)
Is Your Independent Contractor Actually An Employee?
10 Tricky Employment Termination Questions Answered
Risky Business: Drugs, Sexual Orientation And Guns In The Illinois Workplace

If you would like a copy of any of our prior webinars, please email mkt@bdlfirm.com

Cutting Edge Legal Education

If You Would Like Us To Come In For A Free Seminar, Click Here Now Or Email Storrs Downey At sdowney@bdlfirm.com

Our attorneys regularly provide free seminars on a wide range of labor and employment law topics. We speak to a few people or dozens, to companies of all sizes and large national organizations. Some of the topics we've presented include:

- Religious & Disability Discrimination & Accomodations.
- Recent DOL & NLRB Developments.
- Approaching LGBT Issues In Today's Workplace.
- Hiring Do's And Don'ts (With Video Examples).
- Is your Independent Contractor Actually An Employee?
- 10 Tricky Employment Termination Questions Answered.
- Risky Business: Drugs, Sexual Orientation And Guns In The Illinois Workplace.
- Employment Law Issues Every Workers' Compensation Professional Needs To Know About.

Who We Are

Bryce Downey & Lenkov is a firm of experienced business counselors and accomplished trial lawyers committed to delivering services, success and satisfaction. We exceed clients' expectations everyday while providing the highest caliber of service in a wide range of practice areas. With offices in Chicago, Schererville, IN, Memphis and Atlanta, and attorneys licensed in multiple states, we are able to serve our clients' needs with a regional concentration while maintaining a national practice.

Our attorneys represent small, mid-sized and Fortune 500 companies in all types of disputes. Many of our attorneys are trial bar certified by the federal court and have been named Leading Lawyers, AV Preeminent and were selected to Super Lawyers and Risings Stars lists. Our clients enjoy a handpicked team of attorneys supported by a world-class staff.

Our Practice Areas Include:

- Business Litigation
- Business Transactions & Counseling
- Corporate/LLC/Partnership Organization and Governance
- Construction
- Employment and Labor
- Counseling & Litigation
- Entertainment Law
- Insurance Coverage
- Insurance Litigation
- Intellectual Property
- Medical Malpractice
- Professional Liability
- Real Estate
- Transportation
- Workers' Compensation

Disclaimer:

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