

Important Labor & Employment Law Developments

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- Immigration
- Labor & Employment
- Labor Relations

An McV Labor & Employment Law Alert

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- ***New Amendments to the Act Against Stalking in Puerto Rico allows employers to request protective orders for employees who are victims of stalking***

On July 30, 2016, the Act Against Stalking in Puerto Rico was amended to authorize employers to request a protective order for an employee if (1) said employee is or has been a victim of stalking or criminal conduct as defined by the Act Against Stalking and (2) the stalking has occurred in the employee's workplace or its surroundings. Prior to requesting the protective order for the employee, the employer must notify the employee of its intention to request such protective order.

- ***Puerto Rico Supreme Court holds Act 180 does not require that private employers pay employees their accrued and unused sick leave balance upon employment termination***

On June 10, 2016, the Puerto Rico Supreme Court in *Zayas Rodríguez v. Puerto Rico Telephone Co.*, 2016 TSPR 118 (2016), held that in the absence of a voluntary employment policy providing otherwise, private employers are not required by the Puerto Rico Minimum Wage, Vacation and Sick Leave Act (Act 180-1998) to liquidate the accrued but unused sick leave balance of their non-exempt employees upon employment termination.

- ***OSHA publishes Final Rule requiring the electronic submission of reports regarding workplace injuries and illnesses, and addressing retaliation***

On May 12, 2016, the Occupational Safety and Health Administration ("OSHA") published a Final Rule requiring employers to electronically submit information regarding workplace injuries and illnesses to a secure website. This new rule takes effect on January 1, 2017.

In essence, all establishments that employ 250 employees or more at any given time during the previous calendar year must electronically submit information from their 2016 300A OSHA Form to OSHA or its designee, no later than July 1, 2017. By July 1, 2018, said establishments will be required to file the information from their 2017 OSHA's Forms 300A, 300 and 301, and beginning in

Important Labor & Employment Law Developments

2019, they will have to submit annually all the required information by March 2 of the year after the calendar year covered by the Form(s). Other designated establishments with less than 250 employees, but with 20 or more employees, will also be required to electronically submit this information in compliance with these deadlines.

Employers not required to keep or submit the abovementioned records may be required to maintain and submit them upon notification from OSHA or its designee.

OSHA's Final Rule also requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation, and further clarifies that an employer's reporting procedure must be reasonable and not deter or discourage employees from reporting. One way of complying with this duty is by displaying the OSHA Poster titled "It's the Law", which can be downloaded from the OSHA website. OSHA has delayed the enforcement of these provisions until November 1, 2016.

- ***The National Labor Relations Board determines that employees in bargaining units combining solely and jointly employed employees of a single user employer are no longer required to obtain employer consent***

On July 11, 2016, the National Labor Relations Board (NLRB) held in *Miller & Anderson, Inc.*, 364 NLRB 39, that employer consent is no longer necessary for units that combine jointly employed and solely employed employees of a single user employer, returning to its holding of *M.B. Sturgis, Inc.*, 331 NLRB 1298 (2000). The traditional "community of interests" factors will be used to decide if such units are appropriate. The NLRB reversed the 2004 *Oakwood Care Center* decision which held that bargaining units that combined solely employed employees of a single user employer and jointly employed employees of the same user employer and a supplier employer constituted multi-employer units, which were appropriate only with the consent of the parties.

- ***EEOC issues its final Enforcement Guidance on Retaliation and Related Issues***

On August 29, 2016, the EEOC issued its final Enforcement Guidance on Retaliation and Related Issues. The Guidance addresses retaliation under each of the statutes enforced by EEOC, including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), Title V of the Americans with Disabilities Act (ADA), Section 501 of the Rehabilitation Act, the

Important Labor & Employment Law Developments

Equal Pay Act (EPA) and Title II of the Genetic Information Nondiscrimination Act (GINA).

The new Guidance discusses what constitutes protected activity, provides examples of employer actions that may constitute retaliation, explains the legal analysis used to determine if the evidence supports a claim of retaliation, and discusses other related issues. Employers must be aware that the EEOC has conveyed a very broad definition of protected activity and retaliation, and as such, employers are encouraged to revise and update their policies to ensure compliance with these new definitions.

Employers can access the new Guidance from the EEOC's website. A convenient summary can be accessed in: <https://www.eeoc.gov/laws/guidance/retaliation-qa.cfm>.

■ ***The National Labor Relations Board decides that Student Assistants are covered by the National Labor Relations Act***

On August 23, 2016, the NLRB issued in *The Trustees of Columbia University in the City of New York and Graduate Workers of Columbia–GWC, UAW*, 364 NLRB 90, a 3-1 decision establishing that student assistants working at private colleges and universities are statutory employees covered by the National Labor Relations Act, including those who are engaged in research funded by external grants. The NLRB concluded that all the petitioned-for student assistants are statutory employees, and that the petitioned-for bargaining unit, comprised of graduate, undergraduate and terminal Master's degree students is an appropriate unit. In consequence, the NLRB reversed *Brown University and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America*, 342 NLRB 483 (2004).

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