PRIORITY Read

New Laws Provide Relief for Employers Complying With Wage Garnishments

By: Aliyya C. Rizley; rizleya@millerjohnson.com; 616.831.1712
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Employers attempting to navigate Michigan's wage garnishment laws quickly learn that legal compliance can be complex and risky. Indeed, if an employer does not timely answer or fully comply with a garnishment, it may be subject to a judgment against it for the full amount of the employee's debt. This is a high price to pay for employers, particularly where noncompliance is often the result of administrative error.

In April 2015, employers were granted some relief from these stringent requirements and penalties when Michigan Governor Rick Snyder signed into law two bills that will effectively reduce the administrative burden and financial risk for employers complying with wage garnishments. These changes are outlined below and take effect on September 30, 2015.

Continuing Garnishment. Wage garnishments will now continue until paid off rather than expiring after six months. This will significantly reduce the administrative burden and risk involved with receiving and properly administering multiple garnishments over the time it takes to pay off a debt.

Increased Fee for Creditors. The fee that creditors have to pay employers complying with garnishments will increase from $6 to $35. This amount will more effectively compensate employers for administrative costs associated with garnishments.

Recovery by Withholding. Employers will be allowed to recoup any money paid for a default judgment resulting from a failure to comply with a garnishment by withholding that amount from the employee's wages without written consent from the employee.

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MILLER JOHNSON
Down to Earth. Down to Business.

New Laws Provide Relief, *continued*

This not only allows employers to recover this expense but also reduces the administrative burden associated with recovering the expense.

Proper Service Required. Wage garnishments will now have to be properly served on employers in accordance with the Michigan Court Rules. If the Court Rules are not followed, the garnishment will be void. This eliminates the possibility that garnishments might be mailed to branches or local offices where the likelihood of mismanagement is dramatically higher.

Multi-step Process for Creditors. Creditors will now need to undertake a multi-step process that includes giving the employer multiple warnings and opportunities to achieve compliance before an employer can be liable for failing to comply with a garnishment. Previously, there was little to prevent creditors from obtaining default judgments against employers quickly and without notice that were difficult to set aside or reduce.

If a default judgment is taken against the employer consistent with the multi-step process noted above, employers will now have an opportunity to petition the court to reduce the default judgment to an amount not more than that which would have been withheld if the garnishment had been in effect for 56 days. This could dramatically reduce an employer's financial risk for failing to fully comply with a garnishment.

Miller Johnson attorneys can help employers take advantage of these welcome changes to Michigan law. If you have questions regarding wage garnishment, contact the authors of this article or another member of Miller Johnson's wage and hour practice group.

Save the Date

Miller Johnson's Annual Employment Law Seminar

Our Employment Law Seminar provides practical solutions to your employment and labor law questions. In the three breakout sessions, we are planning on 12-15 choices. Descriptions, the agenda and other program information will be sent later this summer.

The dates for the seminar are **October 1 in Kalamazoo at the Radisson Plaza Hotel** and **October 21 in Grand Rapids at DeVos Place**.

We are submitting the seminar for 3.5 general continuing credit hours through HRCI. It is free for current clients.

For more details, you may view the brochure on our web site at www.millerjohnson.com in mid-August or contact Amy McCaffrey at 616.831.1886 or mccaffreya@millerjohnson.com.

New Supreme Court Ruling May Impact Spousal Coverage Under Your Group Health Plan

By: Mary V. Bauman; baumanm@millerjohnson.com; 616.831.1704

A new U.S. Supreme Court ruling regarding same sex marriage may require employers to revise their spousal group health coverage rules.

Ruling

On June 26, 2015 in the case of *Obergefell v. Hodges,* the U.S. Supreme Court held that the 14th Amendment of the U.S. Constitution requires all states to license a marriage between two persons of the same gender. Further, since same sex marriage must now be available in all states, each state must recognize a marriage between two persons of the same gender when performed legally in another state or jurisdiction. The ruling takes effect immediately.

Spousal Coverage Under Group Health Plans

The U.S. Supreme Court ruling does not address its impact on employer group health plans. Most employer group health plans are subject to the federal law known as ERISA. ERISA permits an employer to prescribe the eligibility rules for spousal coverage in the plan document. If the eligibility rules are clearly set forth, they generally are enforceable.

However, the Equal Employment Opportunity Commission (EEOC) has ruled that employment discrimination relating to sexual orientation is a violation of Title VII of the federal Civil Rights Act. Further, the EEOC has indicated that the protections of Title VII extend to the terms and conditions of employment, including employer group health coverage. The *Obergefell* case will make it more likely that the EEOC will assert an employment discrimination violation with respect to an employer offering group health coverage to opposite sex spouses but not same sex spouses.

For this reason, employers should review the definition of spouse in their group health plans and consider changes.

Domestic Partner Coverage Under Group Health Plans

Some employer group health plans also extend coverage to domestic partners who are not legally married to the employee. Many employers, particularly those operating in states like Michigan which have not permitted same sex marriage, have chosen to do so only for same gender domestic partners in recognition that same sex marriage is not available. Now that same gender marriage will be legal throughout the country, this reason for allowing domestic partner coverage is no longer present.

Further, particularly following the *Obergefell* ruling, to only offer domestic partner coverage to individuals of the same gender as opposed to all domestic partners (whether of the same or opposite gender) may trigger employment discrimination claims. In other words, employees with opposite gender domestic partners may take the position that they are being discriminated against. As a result, employers offering domestic partner group health coverage may need to open up the coverage to partners of both same or opposite gender. On the other hand, because same sex marriage will now be available in all 50 states and because of the adverse tax consequences associated with domestic partner health coverage (usually the value must be included in the employee's income), employers currently offering domestic partner coverage may want to consider discontinuing it.

Other Benefits

Finally, don't forget spouses are typically eligible for more than just medical coverage through an employer. For example, spouses may be eligible for dental and vision benefits, their expenses may be eligible for

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Group Health Plan Spouse Coverage, *continued*

reimbursement under the employer's flexible spending accounts and the employer may offer spousal life insurance. The definition of spouse under these other benefit plans should also be reviewed in light of the *Obergefell* decision.

If you have questions concerning the Obergefell case or this article, please contact the author or any other member of the Miller Johnson employee benefits practice group.

The Supreme Court Opens the Door for Employers to Reduce Union Retiree Health Benefits

By: Tony Comden; comdent@millerjohnson.com; 616.831.1757

In a significant win for employers, the United States Supreme Court invalidated a judicial inference that union retiree health insurance benefits are vested for life in the absence of specific language to the contrary. The Supreme Court's unanimous opinion in *M&G Polymers USA, LLC v. Tackett*, issued on January 26, 2015, gives employers more freedom to alter, reduce, or eliminate retiree insurance benefits for employees who were represented by a union before they retired.

In *M&G,* the Supreme Court invalidated what had been known as the *Yard-Man* inference, which arose out of a case decided in 1983 by the United States Court of Appeals for the Sixth Circuit. In the three decades that *Yard-Man* was the rule in the states covered by the Sixth Circuit—Michigan, Ohio, Kentucky, and Tennessee—union retirees won nearly every single challenge they raised to employers' attempts to modify or eliminate retiree insurance benefits.

The unanimous Supreme Court decision in *M&G* eliminates the *Yard-Man* inference favoring union retirees, making it easier for employers to modify or eliminate retiree health benefits. The Supreme Court ruled that union retiree health benefit disputes should be analyzed under ordinary principles of contract interpretation instead of court-made inferences.

For employers who provide health benefits for retirees who were represented by a union, the Supreme Court's decision creates the possibility for significant cost savings by modifying, or eliminating, union retiree health benefits. Analyzing whether an employer may modify or eliminate union retiree health benefits requires careful consideration of collective bargaining agreements, bargaining records, summary plan descriptions, and communications with retirees, among other potentially relevant considerations.

Miller Johnson employment and labor attorneys have substantial experience advising employers on union retiree health insurance matters. For any questions or assistance, please contact Tony Comden or your Miller Johnson attorney.

Religious Accommodations: It's Not What You Know But What You Think That Matters

By: Rebecca L. Strauss; straussr@millerjohnson.com; 269.226.2986
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The United States Supreme Court recently decided a case about religious discrimination and accommodation in the context of interviewing and hiring job applicants. In *EEOC v. Abercrombie & Fitch Stores, Inc.,* issued on June 1, 2015, Samantha Elauf was interviewed for a position in an Abercrombie & Fitch clothing store. She received an interview rating that qualified her to be hired, but was not offered the position because she wore a headscarf.

Abercrombie & Fitch has a "Look Policy," which prohibits any employee from wearing a "cap." An Abercrombie manager decided that the headscarf violated the Look Policy and that Ms. Elauf should not be hired. No one from Abercrombie discussed the Look Policy with Ms. Elauf, explained the conflict to her, or told her the reason she was not offered a position. Ms. Elauf had a friend who worked at Abercrombie who told her the reason she was not offered the position.

During depositions, an Abercrombie manager testified that they believed Ms. Elauf wore a headscarf because of religious reasons, although Ms. Elauf didn't tell Abercrombie why she wore her head scarf.

The EEOC filed suit, alleging that Abercrombie should have considered, as an accommodation to Ms. Elauf's religious practice, making an exception to its Look Policy. Abercrombie argued that it did not need to consider an accommodation because Ms. Elauf did not request an accommodation. Abercrombie took the position that an employer must have actual knowledge, through a request by an employee, of a need for accommodation.

Title VII

Under Title VII of the Civil Rights Act of 1964, it is unlawful for an employer …

> To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's … religion … or
>
> To limit, segregate, or classify his employees … in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's … religion …

Religion includes "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's … religious observance or practice without undue hardship on the conduct of the employer's business."

Motive vs. Knowledge

The heart of the Court's opinion lies in the difference between motive and knowledge. An employer who acts with the motive of avoiding accommodation may violate Title VII even if it has no more than an unsubstantiated suspicion that an accommodation would be necessary. The Court also stated that an employer who has actual knowledge of the need for an accommodation does not violate Title VII by refusing to hire an applicant if avoiding that accommodation is not its motive.

Applying Neutral Employment Policies to Every Applicant (or Employee)

An employer cannot avoid liability by simply implementing a religiously neutral employment policy.

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Religious Accommodations, *continued*

Title VII gives religious practices favored treatment, obligating employers in some circumstances to make exceptions to their policies.

Take-Aways for Human Resources

- Ask applicants if they are able to follow all of the relevant work rules, including dress codes and grooming/appearance policies. If the answer is no and the applicant indicates that their religion is the reason, consult with management or an attorney about whether accommodating the applicant's religion would be a hardship to your organization.
- Train managers and others who may have responsibilities for interviewing and hiring decisions.
- An applicant or employee does not have to affirmatively tell you about their religion and why it interferes with a job requirement.
- Following a neutral policy (like Abercrombie's Look Policy) is not a defense. When religion is involved, you must ask yourself if your organization can accommodate an exception to the neutral policy.

If you have questions concerning this article or religious accommodations, please contact the author or any other member of the Miller Johnson employment and labor practice group.

Welcome New Miller Johnson Attorney

Mark Wilkinson is a new Member in the Kalamazoo office. He will represent and counsel clients on all aspects of labor and employment law, with a focus on employment litigation and labor relations. He is part of the firm's health care group and the wage and hour practice. He is a member of the Kalamazoo Area Labor-Management Committee and the Kalamazoo Human Resources Management Association. Mr. Wilkinson came to Miller Johnson from Franczek Radelet in Chicago, where he was a partner. He earned his B.A. from Western Michigan University and his J.D. from Wayne State University Law School. Mr. Wilkinson was named a Super Lawyers "Rising Star" in employment and labor from 2012-2015.

New Rules for Amending H-1B Petition with Work Location Change

By: John F. Koryto; korytoj@millerjohnson.com; 269.226.2979
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The United States Citizenship and Immigration Services' (USCIS) Administrative Appeals Office issued a precedential decision in *Matter of Simeio Solutions, LLC* that now requires employers to file an amended H-1B petition for most worksite location changes. The decision clarifies USCIS's position that when a change in the H-1B employee's worksite requires employers to file a new Labor Condition Application (LCA), a "material change" in the terms and conditions of employment has occurred; thus, a new H-1B petition is required to be filed.

For employers who have H-1B workers who have changed worksites on or before April 9, 2015, the USCIS will generally not pursue **new** adverse actions solely for failure to file an amended petition regarding that move after July 21, 2015. However, the USCUS will preserve adverse actions already commenced or completed prior to July 21, 2015. The USCIS guidance also provides employers with a "safe harbor period" that allows an employer to file an amended or new petition for an employee who changed worksites on or before April 9, 2015, if the petition is filed by January 15, 2016. Additionally, employers with H-1B workers who change worksites after April 9, 2015, but before August 19, 2015, must file an amended or new petition by January 15, 2016, or both the employer and employee will be subject to adverse action. If the change in employment occurs after August 19, 2015 then the petitioner must file an amended or new petition before the employee begins working at the new location.

An employer must now file an amended H-1B petition if the H-1B employee has changed or is going to change his or her place of employment to a worksite outside of the metropolitan statistical area (MSA) for the area of intended employment covered by the existing approved H-1B Petition. Once an employer has filed an amended H-1B petition, an H-1B worker can immediately begin working at the new location.

Employers are not required to file a new LCA or amended petition if the H-1B employee is moving to a new job location within the same MSA for the area of intended employment. However, employers must still post the original LCA in the new location.

Short Term Placements

An employer may place an H-1B employee at a new location for up to 30 days per calendar year. An employer may place or assign an H-1B employee to a new location for a period of time greater than 30 days but less than 60 days per calendar year if:

- the H-1B employee continues to maintain an office or workstation at his/her permanent worksite;
- the H-1B employee spends a substantial amount of time at the permanent worksite in a one-year period; and
- the H-1B employee's residence is located in the area of the permanent worksite and not the short-term worksite. No amended petition is required for such short term placements.

Non-worksite Locations

If an H-1B employee is going to a "non-worksite" location, employers do not need to file an amended H-1B petition. The term "non-worksite" means:

- The H-1B employees are going to a location to participate in employee developmental activity, such as management conferences and staff seminars;

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In the News

David Buday and **Sarah Willey** presented the annual employment law update "As the World Turns" at the Michigan Healthcare Human Resources Conference on April 15 in Lansing.

Gary Chamberlin wrote the article "Are You a Federal Contractor or Subcontractor and Don't Know It? Should You Care?" which is in the July issue of the Grand Rapids Association for Human Resources Management Newsletter. He is going to present "Ethics and the HR Department: Guardians of Your Employees' Privacy" at the 2015 MISHRM State Conference on October 15. Gary is also going to present "Legal issues in Transgender Accommodation" at the 2015 Meritas Joint Labor/Employment and Litigation Section Meeting in Boston on October 20.

Tony Comden's blog "Employers Can Modify or Eliminate Union Retiree Health Benefits" is posted on the Michigan Chamber of Commerce's web site. He also did a workshop for them.

Keith Eastland, Mary Bauman, and **Peter Kok** presented at the Associated Builders and Contractors (ABC) Inc., Western Michigan Chapter's Second Annual Employment Law Seminar on May 20 in Hudsonville.

Jeff Fraser did a lunch and learn on Handbook Review for the Employers Association of West Michigan on May 13 in Muskegon.

Peter Kok was the recipient of the ICON Award at the Western Michigan Chapter of the Associated Builders and Contractors Excellence in Construction Awards.

Peter Kok, Nate Plantinga and **Tripp VanderWal** presented at the April 24th meeting of The Employer's Association (TEA) Human Resource Group (HRG).

John Koryto spoke on "US Employment Authorization Options for International Students" at Kalamazoo College on April 27. Along with Raj Malviya, he provided an in-depth discussion on immigration and international taxation and estate planning issues at the "Planning for the International Family" seminar co-sponsored by New York Life on June 16.

Nate Plantinga recently joined the Board of Directors for the Calvin College Alumni Association.

Greg Ripple conducted a webinar "Avoiding Common Mistakes Companies Make When Operating Business Aircraft." The May 19 session was open to law firm affiliate members of Meritas.

Aliyya Rizley presented to the Michigan State Medical Society on May 20 covering "hot topics" in employment law.

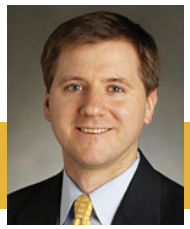
Rebecca Strauss was accepted into the 2015-2016 Leadership Council on Legal Diversity (LCLD) Fellows Program. The program is for mid-career attorneys with strong leadership and relationship skills who are committed to fostering diversity within the country's leading law firms and largest companies, and the legal profession at large.

Mark Wilkinson recently joined the Board of Directors of the Boys & Girls Clubs of Greater Kalamazoo.

Sarah Willey presented legal updates to the South Central Human Resource Management Association in Jackson on March 26. Sarah will also speak at an educational event hosted by Michigan Works in Coldwater on September 10.

"Fair Pay" Doesn't Play Fair

DOL Issues Guidance Interpreting the Fair Pay and Safe Workplaces Executive Order



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In 2014, President Obama signed the "Fair Pay and Safe Workplaces" Executive Order. That Order may sound benign—after all who is against fair pay and safety? But federal contractors shouldn't let this title deceive them. Under newly announced rules, businesses awarded federal contracts valued at or over $500,000 will face significant new reporting requirements and potential road blocks to securing or retaining government contracts. Under the proposed rules, federal contractors will be required to self-report a myriad of actual and potential labor law violations during the bidding process and every six months thereafter. Federal agencies can then use these reports to make contracting decisions and may likely blacklist contractors who they believe have established a history of "severe," "pervasive," or "willful" misconduct.

The Executive Order

The Executive Order will rely on the Federal Acquisition Regulation (FAR) Council to promulgate final regulations before the Order is projected to take effect early in 2016. The Order targets federal contracting in three ways:

First—and probably most significantly—it fundamentally changes the procurement process for all government contracts (including construction) worth more than $500,000. Under the terms of the Order, federal contracting officers are required only to do business with those contractors who demonstrate a "satisfactory record of integrity and business ethics." Although this concept is not new, it will now be measured in terms of the contractor's record of compliance over the preceding three years with respect to 14 different labor and employment laws (as well as analogous state laws). It will be evaluated by a new governmental agency post being created within each agency of the federal government called a "Labor Compliance Advisor."

These Labor Compliance Advisors will be responsible for monitoring prospective and current contractors' compliance history with respect to the following 14 labor and employment laws: the Fair Labor Standards Act (FLSA), Occupational Safety & Health Administration (OSHA), the Migrant and Seasonal Agricultural Worker Protection Act, the National Labor Relations Act (NLRA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), Title VII, the Age Discrimination in Employment Act (ADEA), the Davis-Bacon Act, the McNamara-O'Hara Service Contract Act, Section 503 of the Rehabilitation Act, the Vietnam Era Veterans' Readjustment Assistance Acts (VEVRAA) of 1972 and 1974, Executive Order 11246 (Equal Employment Opportunities), and Executive Order 13658 (the Executive Order establishing a minimum wage for contractors).

How will these Labor Compliance Advisors learn about a contractor's compliance record? They'll hear directly from the contractors themselves. The Order requires all contractors to voluntarily disclose any adverse "administrative merits determinations," "arbitral awards or decisions," and "civil judgments" relating to the specified laws which have been rendered against them within the past three years. Contractors will need to make these disclosures during the bidding process and update the contracting officers every six months. These disclosures can lead a contracting officer to decline a contractor's bid, impose remedial plans, and even impose extreme penalties for contractors who engage in serious, repeated, willful, or pervasive violations such as contract suspension and debarment.

Second, the Order specifies that certain contractors will be prohibited from requiring employees to enter into mandatory arbitration agreements to resolve claims

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Fair Pay and Safe Workplaces, *continued*

originating under Title VII or torts related to sexual harassment or assault. Such arbitration restrictions, previously imposed only on defense contractors, will now affect any large contractors or subcontractors holding contracts valued over $1,000,000.

Third, the Order imposes new wage and hour transparency requirements. Contractors will need to begin informing their employees concerning regular and overtime hours worked, rates of pay, and payment deductions made. For example, the Order requires contractors to affirmatively notify employees in the event that they are being treated as an independent contractor under the law.

The Newly Proposed Rules and DOL Guidelines

On May 28, 2015, the FAR Council, working in concert with the Department of Labor (DOL) issued proposed regulations and guidance under the Executive Order. Following a 60-day notice and comment period that expires on July 27, 2015, final versions of these regulations will become federal law.

The FAR Council's proposed rules provide some clarity for how the Order is likely to be applied—and it is very broad.

- **What must a contractor report? The danger of an "administrative merits determination."** The Order specifies that contractors must report any adverse administrative merits determination, civil judgment, or arbitral award or decision during the bidding process and semi-annually during the term of the contract. But the Order does not define what an "administrative merits determination" means. Here is where the newly proposed rules become scary. Under the proposed rules, an "administrative merits determinations" need not be a final or binding merits determination. Rather, they can be mere allegations of violations that are never litigated or established. For example, a contractor would be required to report DOL wage and hour investigations findings of violations or NLRB Regional Director complaints that are issued, even if the allegations are settled with a non-admissions clause. An EEOC "reasonable cause" letter, or OFCCP show cause notice would also trigger a reporting obligation.

- **Post-award reporting.** Contractors must disclose any new administrative merits determinations, arbitral awards or judgments, or civil judgments rendered against them semi-annually, even if the new determination or judgment is related to a labor law violation that was already reported during the bidding process.

- **Serious, repeated, willful or pervasive?** The proposed rules also defined the terms serious, repeated, willful, and pervasive and provide guidance about how particular labor law violations may be weighed. For example, the proposed regulations classify certain violations as "serious" *per se*—a determination that the contractor engaged in "systemic discrimination," breach of a court order or an administrative order by an enforcement agency, the issuance of a "serious" OSHA citation, the issuance of an NLRB complaint alleging termination of a "lead union adherent during the union's organizational campaign," or a Davis-Bacon violation resulting in due back wages of over $12,000 will all necessarily trigger any sanctions as a "serious" violation.

- **Pre-Dispute Arbitration Agreements.** The Order itself was clear that contractors with contracts valued over $1,000,000 would be prohibited from entering into binding pre-dispute agreements with employees requiring Title VII violations or sexual assault and harassment claims to be arbitrated rather than litigated. But the rules clarify that this prohibition doesn't bar contractors from enforcing valid arbitration agreements that were entered into before the final regulations become effective. This grandfathering clause provides contractors with an opportunity to consult employment and labor counsel to ensure that arbitration agreements are valid now, before the final regulations are issued. This may ensure that these agreements remain enforceable in the future.

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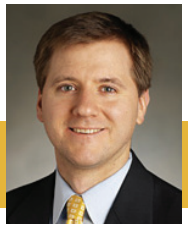
Fair Pay and Safe Workplaces, *continued*

We anticipate that these new reporting requirements may destabilize many long-term contracting relationships and inject uncertainty into the contract awarding process. We also predict that many contractors who are already working under a government contract will be forced to increase compliance spending and oversight to avoid ending up as a blacklisted employer.

For individualized guidance on these issues and how they may impact your organization, please contact a member of Miller Johnson's Employment and Labor practice group.

The NLRB's "Ambush" Election Rules are Here: Are You Ready?



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On April 14, 2015, the National Labor Relations Board (NLRB) implemented its oft-discussed "quickie" or "ambush" election rules. These rules accelerate the period of time between the filing of a union election petition and the election itself. Not coincidentally, the new rules limit the ability of employers to communicate with their employees during a union organizing campaign while simultaneously requiring employers to identify and address significant legal issues within just a few days after an election request is filed. In the past, employers had an average of 42 days from the date the union filed an election petition to the actual date of the election. Under the new rules, the Board can conduct an election in as few as 11 days after the petition is filed.

The new election rules have been in effect for over three months. The Board's stated goal is to average 21 days from the filing of the petition to the election. And the Board has come pretty close to achieving that goal.

So far, the average number of days between petition and election has been only 24 days. This represents 14 fewer days for employers to communicate with employees, a 35 percent decrease from the average in 2014. That is two weeks that an employer no longer has to communicate with their employees about why unionization may not be such a good idea.

Several employer-advocate groups lodged legal challenges almost immediately after the Board implemented the new rules. To date, however, those challenges have been unsuccessful. Recently, a federal district court in Texas dismissed a challenge by a group of building contractors in Texas to halt enforcement of the new rules. A lawsuit filed by the Chamber of Commerce is still pending in federal district court in Washington D.C., but its success is far from certain and one federal court in Washington D.C. refused to grant a temporary restraining order to preclude application of the new rules while litigation proceeds.

Because the new election rules will likely remain in effect for the foreseeable future, if not longer, *it is more important than ever that employers take a proactive approach to union avoidance.* Employers will no longer

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Amending H-1B Petition, *continued*

- The H-1B employees spend little time at any one location; or
- The job is "peripatetic in nature," such as situations where their primary job is at one location but workers occasionally travel for short periods to other locations "on a casual, short-term basis, which can be recurring but not excessive (i.e., not exceeding five consecutive workdays for any one visit by a peripatetic worker, or 10 consecutive workdays for any one visit by a worker who spends most work time at one location and travels occasionally to other locations)."

If you have any questions about the new requirements to file an amended H-1B petition, please contact the author or other members of our Immigration Practice Group.

NLRB's "Ambush," *continued*

have multiple weeks after a union election petition is filed to get their message out to employees. Practically speaking, employers facing an organizing drive may now have just days to communicate effectively with their employees—all while managing complex legal issues related to the election.

Employers should consider holding training sessions with front-line managers and supervisors to help minimize the potential impact of these new rules. For example, do your supervisors know the early warning signs of union organizing activity? Do they know what to look for and what they can and cannot say legally? Are they going to clam up and miss important opportunities to convey lawfully the employer's positions? Can your supervisors identify union authorization cards? Do they understand their significance? Can they lawfully explain what a union authorization card really means to employees who may ask? And can they explain why a card may not do what the union says it does?

Employers should also examine their employee engagement efforts to make sure issues don't arise that may give union organizers an opportunity to find a sympathetic ear or to get a foot in the door. Knowing and engaging your employees to identify and resolve employment issues is not only good practice, but it can also give employers a crucial leg up in identifying and addressing potential union organizing threats under the NLRB's new compressed timeframe.

If you have any questions on this article or the NLRB in general, please contact the authors of this article or any of the attorneys in Miller Johnson's Labor and Employment group. We are also available for training sessions.

MISHRM Annual Conference

Miller Johnson's Employment and Labor attorneys are presenting an **Employment Law Summit** on October 14 to open the conference.

The Summit will have interactive training and guidance sessions including:

- Love My Job, Hate My Boss. What's a Union?
- Our VP of HR Did What?
- SCOTUS, the ACA and You
- It Takes a Village, and With That, Comes a Whole Bunch of Online Villagers

Combined with our own Employment Law Seminar, these two events will make your year.

October 14-16, 2015
DeVos Place, Grand Rapids
www.mishrmconference.org

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