NLRB Upholds Employers’ Right to Prohibit Union Solicitation on Their Property

The National Labor Relations Board (NLRB) has overturned a 38-year old ruling and held that employers may lawfully prohibit non-employee union solicitation in public spaces on their property, absent evidence of discriminatory enforcement.

Under prior NLRB case law, employers were required to permit solicitation and other promotional activities by non-employee union representatives in areas open to the general public, so long as their conduct was not disruptive. Failure to allow such activities was considered a violation of Section 8(a)(1) of the National Labor Relations Act (NLRA). This so-called “public space” exception was set aside by the NLRB’s recent decision involving The University of Pittsburgh Medical Center (UPMC) and its subsidiary, UPMC Presbyterian-Shadyside.

In the UPMC case, two non-employee union organizers held meetings with off-duty employees in the public cafeteria at Presbyterian-Shadyside. When complaints were made to security, the union organizers were asked to leave, refused to do so, and ultimately were escorted out by the local police. The union filed an unfair labor practice charge, claiming that this was a violation of the “public space” exception. An administrative law judge ruled for the union, and UPMC appealed to the NLRB. In a 2-1 decision, the labor board rejected the “public space” exception and ruled in favor of UPMC. The Board found that because there was no evidence that UPMC knowingly allowed any other promotional or organizational activity by non-employees on its premises, and because the union organizers had other reasonable means of communicating with employees, the exclusion of the union organizers under these circumstances was not discriminatory.
The NLRB also rejected the union’s argument that the hospital’s failure to remove another non-employee cafeteria patron was evidence of a discriminatory motive. The Board found that the other patron was using the cafeteria for its intended purpose, to eat lunch.

EEOC Updates Guidance on Filing of Pay Data

On July 1, the Equal Employment Opportunity Commission (EEOC) updated the Component 2 EEO-1 filing site with answers to frequently asked questions and other materials to assist filers with the submission of Component 2 data. Employers with 100 or more employees during the 2017 workforce snapshot period are required to submit Component 2 compensation data to the EEOC for calendar years 2017 and 2018 by September 30. The Component 2 EEO-1 Online Filing System data collection instrument is available for all filers as of July 15, 2019. System login information was sent to employers via USPS letter and email on July 15.

OSHA Publishes Webpage on Measles Prevention

OSHA has developed a new webpage on measles, a highly-contagious, potentially serious illness with more than 1,000 confirmed cases in 28 states thus far in 2019, according to the Centers for Disease Control and Prevention.

Workers in child care and health care, laboratories, and environmental services, and those who travel abroad, have the greatest risk of exposure and infection. While there are no specific OSHA standards covering measles, other requirements may apply to preventing occupational exposure including: OSHA’s Personal Protective Equipment (PPE) standards; OSHA’s Bloodborne Pathogens (BBP) standard; and the General Duty Clause.

The webpage provides information about preventing and reducing workers’ measles exposure, along with information on vaccination and treatment. There are specific tabs on hazard recognition, medical information, OSHA standards, and control and prevention.

DOL Releases New FLSA Opinion Letters

The US Department of Labor (DOL) issued three new opinion letters relating to Fair Labor Standards Act
(FLSA) compliance issues. Opinion letters are official, written advisories published by the Wage and Hour Division that address how the Act applies to a specific situation presented by the individual or entity requesting the letter. The most recent opinion letters cover:

- The calculation of overtime pay for non-discretionary bonuses paid on a quarterly and annual basis. (FLSA2019-7)
- The application of the highly compensated employee exemption to paralegals employed by a trade organization. (FLSA2019-8)
- Permissible rounding practices for calculating an employee’s hours worked. (FLSA2019-9)