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BY BOB GREGG AND THE BOARDMAN CLARK LABOR & EMPLOYMENT LAW GROUP

LEGISLATIVE AND ADMINISTRATIVE ACTIONS

About-Faces

The new administration is reversing course on some regulations, policies, and agency practices. In some instances, it is taking a position opposite of prior rulings.

EEOC Sends Letters to 20 Large Law Firms, Suspicious of Their DEI Practices. After years of criticizing employers for not engaging in equity and diversity efforts, the EEOC has now reversed course and is seeking to closely scrutinize and "*root out*" DEI on the premise that it unfairly discriminates. The EEOC has sent letters to 20 of the nation's largest law firms demanding they provide information showing whether their DEI programs might entail such discrimination. "*No one is above the law,*" stated EEOC chair, Andrew Lucus. The EEOC has shown no evidence that any of the DEI programs act to discriminate. The fact the firms have a program titled DEI is apparently sufficient cause to launch a detailed inquiry.

NLRB Retracts Opinions About Non-Competes. Last year the National Labor Relations Board opined that non-competition/non-solicitation agreements and other types of restrictive covenants were seen as unfair labor practices, restricting employees' job mobility rights. Now the NLRB has rescinded that opinion. These agreements are no longer viewed as unfair labor practices *per se*. *Be aware* that the major prohibitions against non-competition and similar agreements are through state action, not from the federal government. A growing number of states have banned or significantly curtailed these agreements. So, the NLRB's action may not mean much in a number of states.

NLRB Drops Immigrant Detainee Case. The NLRB had filed a case against a private company in the business of contracting to run state prison and immigration

detention facilities. It charged that immigration detainees awaiting their hearing to decide whether they could be admitted to the US were being forced to work for $1 per day in harsh, unsafe conditions. Those who complained were then retaliated against in violation of the NLRA. *In Re GEO* (NLRB 2025) Now, the new administration has withdrawn the case and will not pursue issues involving those in immigration holds or detentions.

LITIGATION

Unusual Case of the Month

Lunch and Learn – Judge Orders Attorneys to Break Bread Together in Peace. "Civil Law" is the term for most non-criminal legal actions. It comes from the Latin "*Civilis,*" meaning "*relating to society*." Unfortunately, civil law, like our current society, is becoming much less civil. Litigation, always a confrontational process, is becoming increasingly hostile, and attorneys have engaged in petty, obstructive tactics, name-calling, and character attacks on each other. This is a disruption for the courts. One judge had enough. Following particularly acrimonious and obstructive behaviors by the attorneys in a Title VII employment case, the judge issued a ruling that included the caution that *"such nonsense wastes time, damages professional relationships, is petty and unconstructive"* and *"stinks of petty gamesmanship." "The Golden Rule – do unto others as you would have them do unto you – is not just a good rule of thumb for everyday life. It is a critical component of legal professionalism. Sadly, in recent years compliance with the rule is becoming rarer and rarer in the litigation arena. It is time to reverse that trend, even if it is only in this case.* Judge David Proctor (N.D. Ala) ordered the attorneys to arrange a long lunch together in which they would discuss appropriate civil behavior. Plaintiff's counsel will pay the lunch bill. Defendant's counsel will leave a large tip. *McCullers v. Koch Foods*

Due Process and Professional Conduct

Principal Fired for Profane Version of School Logo. A school principal used the school's laser printer, after hours, to create a gag gift for a retiring fellow principal. He altered the school's official logo to create drink coasters with profanity and disrespectful references to the school district and alcohol consumption. However, he did not remove the depictions of children from the central part of the logo. Pictures of the gag gift coasters became public and angered many people in the community. The school board terminated the employment after a brief hearing. The principal appealed arguing the brevity of the hearing was a lack of due process. So, the district held a post-termination hearing and affirmed the discharge. The principal appealed

to the courts. The court ruled that the post-termination hearing cured any defects in the first hearing's notice and procedure. The court did award the principal pay for the period between the first hearing and the post-termination hearing. However, it validated the end result of the discharge, ruling there was an inability for the principal to effectively continue in his job following the public knowledge of the disrespect he had shown for the children and community. An offensive "joke" that incorporates the children one is trusted to serve created "*a community loss of trust and respect*" which rendered it virtually impossible to continue in a leadership role. *Stirling v. North Slope Borough School Dist*rict (AK S. Ct., 2025) "Just Joking" is rarely an acceptable excuse in employment cases. In fact, that excuse can result in greater liability for the acts of a manager or executive. Leaders should know better than to engage in offensive, discriminatory, or degrading humor, especially regarding those they have authority over. The courts often see this form of "humor" as a *deliberate disregard* of the manager's or executive's legal and ethical obligations. [For more information, request the article *It Was Just a Joke* — - by Boardman Clark.]

Discrimination

Race

Google Pays $28 Million for Favoring White and Asian Employees. Google will pay $28 million to settle a case alleging it favored White and Asian employees over other racial groups. The California equal pay and race discrimination class action case charged that Google paid White and Asian employees more, favored them in promotions, and put them in faster and higher career tracks than others. The settlement covers a class of 6,632 affected employees. *Cantu v. Google, LLC, et al.,* (Santa Clara Co. Ct., 2025)

Sex

Walmart Settles Sexual Harassment Case for Half a Million. A Walmart Supercenter in West Virginia was sued for sexual harassment and retaliation. The case alleged a manager subjected a number of women to sexual touching, requests for sex acts for money or employment favoritism, and crude sexual comments. The company received multiple ongoing complaints but failed to take corrective action. It then engaged in retaliatory firing for having complained about the harassment. The company has agreed to settle the case for a half million dollars, plus other remedial measures. *EEOC* v. *Walmart Stores East, LP* (S.D. WV, 2025)

LABOR RELATIONS

Governor of Illinois Is Not God. A Chicago area food distribution company negotiated a contract which guaranteed that 80% of the most senior employees would receive at

least 40 paid hours per week. However, when the COVID-19 pandemic hit, and restaurants shut down or had limited hours, the company could only schedule an average of 30 weekly work hours. The union demanded the employees still be paid 40 hours as the contracts required. The company cited the *"Acts of God"* provision in the contract that excused either party from the terms of the contracts. The company argued the pandemic was an unforeseeable natural intervening Act of God. An arbitrator, however, ruled that the closing or curtailing of workplaces and restaurants was primarily due to the directives of the Governor of Illinois, and not God. The arbitrator ordered the extra hours to be paid. On appeal, the court agreed. The arbitrator's decision was within the proper scope of contract (and theological) interpretation*. Quality Custom Distribution Services LLC v. International Brotherhood of Teamsters Local 710* (7th Cir., 2025)

Negligent Retention and Supervision

Employer Liable for Bus Driver's Assault of Passenger. A bus driver got into an argument with a passenger who was boarding the bus. The passenger made the first insulting comment about the driver not stopping at the right spot and having to run to get on the bus and called him an "a — hole." The driver, though, left his seat to attack the passenger, who tried to walk away. The driver punched him in the back of the head, knocked him down, and then kicked him and stomped on the passenger's head causing traumatic brain injury. The passenger sued both the driver for assault and the Transportation Authority for negligent supervision and retention. The driver had a history of complaints for hostile and insubordinate behavior. This included a prior incident of attacking and beating a passenger in which he also crashed the bus into several parked cars, for which he was given only a one-day suspension. He also had altercations with police officers who stopped the bus for traffic issues, resulting in one arrest —leaving his bus and passengers stranded. The Transit Authority argued it should be immune from liability because the driver's actions were outside the scope of being done under any official policy or procedure. The driver was the actor, *not* the Transit Authority. However, the court found that the Transit Authority did have a duty. *"Employers are responsible for exercising reasonable care to ensure their employees do not cause foreseeable harm to a foreseeable class of plaintiffs"* and *"This extends to public employers where the supervising officials had knowledge of a public employee's assaultive behavior."* Thus, allowing the driver to remain employed after the previous behavior was an act of the Transit Authority itself. The negligent retention of the driver was an independent policy decision that placed the public in danger and led to the foreseeable injury of a passenger. *"It was the supervisor's conduct, rather than the employee's intentional conduct that is the true focus"* and led to the harm. Thus, the Transit Authority can be liable. *Theisz v Mass. Bay Transportation Authority* (Supreme Judicial Ct. of MA, 2025)

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Author

Bob Gregg
(608) 283-1751