Weekly Wright Report (11/20/17)

EMPLOYMENT LAW

How Long of a Break Can an Employee Take Without Clocking Out?

A recent decision reaffirms the Department of Labor ("DOL") rule that worker breaks under 20 minutes are generally still considered compensable time under the FLSA. In Sec'y United States Dep't of Labor v. Am. Future Sys., No. 16-2685 (3d Cir. 2017), the DOL sued the employer claiming its interpretation of the FLSA is a bright-line rule providing that short breaks ranging from five minutes to twenty minutes constitute compensable hours worked. The Court agreed that "hours worked" includes some breaks and is not limited to the time an employee actually performs his or her job duties. This decision serves as an important reminder for employers to compensate employees for short rest breaks as hours worked, even if their state law does not require paid rest breaks. Ask Don DWalsh@wcslaw.com

Chicago Passes Ordinance Requiring Hotels to Provide "Panic Buttons" To Certain Employees

At a time of the #MeToo Revolution taking place, Chicago took a proactive measure to protect its hotel workers from sexual harassment. In October 2017, the Chicago City Council passed the Hotel Workers Sexual Harassment Ordinance (the "Ordinance"), which requires Chicago hotels to develop anti-sexual harassment policies and provide employees who work alone in hotel rooms with panic buttons. Employers who fail to comply with these requirements or retaliate against employees for invoking the Ordinance's protections may be subject to fines and/or the suspension or revocation of their hotel license.

By July 1, 2018, Chicago hotels must equip employees who work alone in guest rooms or restrooms with a "panic button" or notification device that can be used to summon help if the employee reasonably believes that an ongoing crime, sexual harassment, sexual assault or other emergency is occurring. These devices must be provided at no cost to the employee. Non-compliance will result in monetary fines and a revocation or suspension of the hotel operating license.

The Ordinance also requires Chicago hotels to develop and maintain a written sexual-harassment policy to protect employees against sexual assault and sexual harassment by guests. The policy must: (a) encourage employees to report instances of alleged sexual assault and sexual

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harassment by guests; (b) describe the procedures that the employee and employer must follow in such cases; (c) instruct the employee to cease work and leave the immediate area where danger is perceived until hotel security personnel or the police department arrive to provide assistance; (d) offer temporary work assignments to the complaining employee during the duration of the offending guest's stay at the hotel, which may include assigning the employee to work on a different floor or at a different station or work area away from the offending guest; (e) provide the employee with necessary paid time off to sign a complaint with police department and testify as a witness at any legal proceeding that may ensure as a result of such complaint; (f) inform the employee that the Illinois Human Rights Act, Chicago Human Rights Ordinance and Title VII of the Civil Rights Act of 1964 provide additional protections against sexual harassment in the workplace; and (h) inform the employee of the Ordinance's prohibition on retaliation.

In addition, employers must provide employees with a copy of the hotel's anti-sexual harassment policy in English, Spanish and Polish and post the policy in all such languages in conspicuous places in areas of the hotel, such as supply rooms or employee lunch rooms. Ask Laura LRubenstein@wcslaw.com

Making Management Training Effective at Your Workplace

As more victims of sexual harassment are speaking out, employers are having to confront the failure of their workplace harassment training and reporting systems. The primary reason most harassment training fails is that both managers and workers regard it as a pro forma exercise aimed at limiting the employer's legal liability. Many companies have opted for on-line harassment training videos, which tend to be boring and non-engaging. But companies have turned to computerized training because it is cheaper, easier to coordinate and takes less time.

In its 2016 report on harassment, the Equal Employment Opportunity Commission (EEOC) admitted that the last three decades of sexual harassment training have not been effective. Employment and management experts and court opinions all suggest that training should include carefully developed classroom programs that make use of interactive group exercises, with opportunities to get questions answered and learn real-world applications, through specific examples of policy violations. Pre-canned,"one size fits all" training, such as generic video tapes, or training that presents the obvious caveats, e.g. you cannot grab and kiss another person without their consent, does not, in the eyes of the law or in the reality of the workplace, prove adequate.

And most important in these re-vamped trainings is that everyone in the organization should attend, including top leadership. As we have seen in the news each day, exempt leaders can create the kind of double standard that leads to abuse of power. Ask Laura LRubenstein@wcslaw.com or Don DWalsh@wcslaw.com

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