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The Weekly Wright Report

Labor and Employment

Is a Paid Leave the Right Accommodation?

The ADA requires employers to offer reasonable accommodations to employees wrestling with disabilities. Some employers want to offer a leave of absence to an employee instead of agreeing to a worksite accommodation. Two recent cases reach different results on this possibility. Smith v. DuPage County Sheriff (N.D. Ill. 6/5/17), concluded paid leave was not a reasonable accommodation where the employee had proposed several light duty assignments. In contrast, in Young v. Peralta Community College District (N.D. California 6/7/17), the court held that a combination of paid medical leave and working from home was a reasonable accommodation. Employers need to conscience of needs of position and what may be a reasonable accommodation.

Join Employer Standards Withdrawn

The U.S. Department of Labor ("DOL") withdrew two administrator interpretations published during the Obama Administration which narrowed the definition of independent contractor and broadened the scope of joint employment. These withdrawn interpretations deemphasized the long-standing practice of assessing an employer's control over a worker to determine whether an individual should be classified as an employee. Compliance with the law is still essential and there is no clear guidance what impact on the workplace this will have. Employers continue to face stiff penalties and problems when they misclassify employees and it impacts taxes, overtime, worker's comp coverage and premiums and benefits.

Regular Work Breaks May Result in Higher Productivity

A recent study showed that employees who regularly take short breaks are far more productive than those who work continuously for hours on end. The study found that the ideal work-to-break ratio was roughly an hour of uninterrupted work, followed by a break lasting 15 to 20 minutes. Regardless of how employers feel about the results, they should understand their legal obligations with regard to employees' meal periods and rest breaks.

- If an employer chooses to offer short breaks (lasting five to 20 minutes), the employer must count the time as compensable work hours and pay the employee for the break time. (29 C.F.R. 785.18.)

- Bona fide meal or lunch periods (usually 30 minutes or more) do not need to be paid, so long as the employee is free to do as they wish during the meal or lunch period. (29 C.F.R. § 785.19.) In other words, the employee must be completely relieved from duty. An employee "completely relieved of duty" is one who is completely relieved from any duty, whether active or inactive, while eating.

- Under the FLSA, employers are required to provide "reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk." (29 U.S.C. § 207(r).) Employers are also required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk." (§ 207(r).)

Construction Law

Among other changes, the 2017 revisions to A201 make a change to the contractor's demands for Mediation and Arbitration/Litigation. After the "Initial Decision Maker" provides its decision on a claim, Sections 15.2.6.1 and 15.3.3 allow either party to demand in writing that the other party file for mediation or binding dispute resolution (arbitration or litigation as agreed by the parties). If the other party fails to file for mediation or binding dispute resolution within the required time, "then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision" on the claim. This allows either party to force resolution of a claim if not resolved by other means.

Collections

The U.S. Supreme Court resolved a lingering question regarding the status of certain creditors under the Fair Debt Collection Practices Act (FDCPA). In Henson v. Santander Consumer USA Inc., the Court unanimously held that a company may collect debt it purchased for its own account without being considered a "debt collector" under the FDCPA, even if the debt was in default when purchased. A company collecting its own debt, even if the debt was in default when purchased, is not collecting a debt owed to another.