

News & Types: Employment, Labor & Benefits Update

# Employment, Labor & Benefits Update - December 2016

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Practices: Employment, Labor & Benefits

## **UPCOMING WEBINAR**

In January, we will present a complimentary webinar entitled "Post-Election HR Management Outlook." We plan to discuss a number of issues, including how potential legislation and policy decisions of a new administration will affect HR management practices, what legislative and regulatory changes are anticipated, and what strategic planning is required. Please watch for your invitation.

## **A MESSAGE FROM THE CHAIR**

By Frank J. Del Barto

As the Chair of the Firm's Employment, Labor and Benefits Practice Group, I am tasked with preparing and executing the Practice Group's business plan within the Firm's overall strategy. Although I prepare and submit the business plan and remain responsible for its execution, I am fortunate to work with many talented associates and principals who make my job easier because they work each day to solve client challenges in an efficient and cost-effective manner. As a Practice Group, we strive to provide business-oriented solutions to a myriad of employment, labor and employee benefit challenges.

As we prepare to close out 2016 and plan for 2017, I wanted to summarize some 2016 milestones for the Practice Group and also share with you our plan for 2017. In January 2016, Alan Kaplan started the year with a presentation to HRoundtable members on employment challenges facing employers in 2016. In March, Alan and Nancy Sasamoto presented "Managing Change in the Midmarket: Getting an ROI on Talent Transition in 2016" with our friends from BPI Group. In May and June, Jiwon Yhee assisted in the presentation of webinars on the Final Rule dealing with the salary-level change under the FLSA (recently enjoined). In August 2016, I did my part by presenting a webinar on the status of the recent 401(k) fee litigation epidemic. In September, the Practice Group conducted its annual seminar that was attended by over 125 clients and friends of the Firm. Throughout the year, Mary Shellenberg, Jennifer Watson and I performed employee benefit plan due diligence in several corporate transactions. David Stein and John Stanis obtained favorable results for clients in employment-related litigation matters.

In 2017, the Practice Group will continue to strive to provide important information to clients and friends through our monthly newsletter, client advisories, lunch-time webinar series, and our annual seminar, to be held in September 2017. In the first quarter of 2017, the Practice Group will present webinars on the impact of

the recent election, the new Form I-9, and employee onboarding procedures, and will also provide an update on 401(k) fee litigation. Other webinars are also planned, and you will receive invitations to each webinar. As legal developments occur during 2017, you will continue to receive client advisories that explain issues and their impact, as well as provide meaningful guidance. We plan to focus on strengthening existing relationships through superior service, and building new relationships through hard work and dedication.

For 2017 and beyond, I believe that we have the ideal team of principals and associates to counsel you on your legal issues. Therefore, on behalf of the Practice Group, I thank you for the continued opportunity to be of service. We wish you the best for the Holiday Season and look forward to serving your needs in 2017.

## **HOLIDAY PARTIES AND RISK MANAGEMENT**

By Alan M. Kaplan

Employment lawyers representing management dread holiday parties, and for good reason. For one, employees, in the spirit of celebrating the holidays, may get carried away and engage in inappropriate behavior, such as drinking to excess and using drugs, dancing on the tables in the restaurant or on desks in the office, and snapchatting and facebooking embarrassing and inappropriate photos of their co-workers. Not only that, after the official office party ends, employees may continue to celebrate until daybreak at a hotel bar or a party bus. Finally, the effects of the party may linger long after the party ends: the following Monday, employers may experience absenteeism, a loss in productivity, and allegations and complaints of sexual, racial and national origin harassment. Employers need to think about managing the risks that holiday parties can bring. What are some pro-active steps that management can take? What is the best action plan for an office party? What actions should management implement after the party?

One way that an employer can effectively manage the risks of an office party is to create program committees to plan and implement the party. The program committee should be comprised of employees, so that the employees have a stake in making the party a pleasant, and appropriate, experience for everyone. The program committee could distribute letters to employees reminding them of the employer's expectations. Such letters could also remind employees of the company's anti-harassment, drug/alcohol, and anti-gossip policies. Additionally, the program committee should arrange for designated drivers, reserve a block of rooms at a nearby hotel prior to the party for use by fellow co-workers, and have cash on hand for (and the telephone numbers of) taxis. A human resources professional could carry a list of all of the employees' names and addresses to give to the taxi driver. The role of the party committee starts before and continues during and after the party.

Second, employers should discourage employees from continuing the celebration after the officially-sponsored event. In one reported case, a male supervisor's inappropriate behavior on a party bus led to a court's protective order that required the supervisor not to come within 1,000 feet of one of the office employees. Implementing the protective order was difficult because both employees worked in the same section of the company's facility.

Third, human resources personnel should be deeply involved in preparing for and managing the office holiday party. Before the party, human resources professionals should brainstorm and plan for potential problems that

may arise during and after the party. They should review their anti-harassment, anti-gossip and drug/alcohol policies to ensure that the policies comply with the changing laws and case decisions by the Equal Employment Opportunity Commission and National Labor Relations Board. They should coordinate with the planning committee and help arrange for designated drivers, taxis, and hotel rooms for those who should not be driving. At the party, human resources personnel should monitor employees' behavior to prevent harassment, inappropriate behavior, and/or excessive drinking. The following Monday after the party, human resources professionals need to determine the reasons for absences. Is the employee absent because of harassment that occurred at the party the previous weekend? In addition, during the days and weeks following the party, are employees gossiping and joking about other employees' actions at the party? If an employee complains about harassment or inappropriate behavior that happened at the party, how will human resources investigate the complaints and take appropriate remedial action?

Holiday parties are meant to be festive events that allow employees to celebrate the holidays and have fun together after a year of hard work. Such parties, however, can quickly turn ugly if not properly managed. Implementing the recommended actions above can help make a holiday party a success and a more pleasant experience for both employers and their employees.

For more information about this or any other employment law topic, please contact Frank Del Barto, Chair of the Employment, Labor & Benefits Group, at 847.734.8811 or via email at [fdelbarto@masudafunai.com](mailto:fdelbarto@masudafunai.com).