SULLIVAN HAYES & QUINN, LLC

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Human Resource and Workplace Law Developments

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1. REMINDER! Effective May 5, 2018 - NYC "Earned Safe and Sick Time Act":

The New York City paid sick leave law has been amended and renamed. It was effective May 5, 2018. Reasons qualifying for paid time off have been increased. The definition of "family member" has been broadened. Handbooks and policies have to be updated to cover an employee's right to use safe time. At hire, new employees must be informed of their right to accrue and use safe time. The permitted uses of safe time need to be described in policies and handbooks.

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2. Worker Centers Under Scrutiny:
The U.S. Department of Labor has been requested to designate worker centers as being subject to the Labor-Management Reporting and Disclosure Act ("LMRDA"). The LMRDA requires labor organizations to elect officers and disclose finances. A 28-page report finds many worker centers to be "union fronts." It is argued that specific worker center organizations are advocating for the employees of specific employers. This makes them groups existing to deal with employers on behalf of employees concerning grievances, wages and other terms of employment and therefore subject to the LMRDA.

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3. Court Throws Out Arbitrator's Coddling of Sex Harasser:
The Appellate Division (1st Dept.) of the New York State Supreme Court reversed an Arbitrator's ruling that an employee fired for sexually harassing a co-worker should only have been given a 10-day suspension.

The male employee repeatedly sexually harassed his female supervisor in front of subordinates. Employees corroborated the incidents. They also reported having been harassed by the same individual. The Employer in response to the supervisor's complaint had assigned the employee to a different area. But the employee continued his misbehavior, resulting in his firing.

His labor union filed a labor contract grievance that the Union eventually took to arbitration. The Arbitrator found the facts as reported but faulted the woman supervisor for not complaining sooner; and overturned the firing, reducing it to a 10-day suspension.

The Court recognized courts' limited role in reviewing labor arbitrations. But this Court said the Arbitrator's substitution of a 10-day penalty violates public policy. The Court further found "unfathomable" how an arbitrator could adopt the findings of fact of a serious harassment having been committed and not uphold the Employer's anti-harassment policy. It further criticized the Arbitrator's maligning the victim for not complaining sooner. The Court ordered that its remand of the case be assigned to a different Arbitrator.

SH&Q OBSERVATION: *The Employer had an effective and thorough prohibited harassment policy and complaint procedure, which it had applied. It was only the Union and the Arbitrator that interfered with it. Employers faced with similar circumstances need to realize that even though courts will rarely and reluctantly reverse arbitration awards, judicial intervention can still be sought when there is a strong argument that the result violates established law and public policy.*

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4. Cost-of-Living:
The Consumer Price Index ("CPI") increased two-tenths of a percent in

April. Over the past twelve months, the CPI has increased 2½%.

5. NLRB Upholds Contractor's Safety Manager Recording of Picketing:
The NLRB ruled that a safety manager of a construction engineering company did not engage in unlawful union surveillance when he videotaped and photographed union picketing activity at the construction site of a hotel. Employees were picketing the site in a pay dispute. The safety manager observed the union picketers blocking an employee entrance, a crosswalk and three lanes of traffic. There was a lack of signs or other indicators of the protest. The manager saw employees turned away, received complaints from employees, and saw union agents blocking three lanes of traffic.

Photographing or taking videos of employee statutorily protected activity without legitimate justification unlawfully creates the suspicion of surveillance. The Board found that the manager had justification to record what he believed were safety hazards.

6. New Workplace Developments and Rules:
Plans for new workplace regulations have been announced. The NLRB will issue a rule that describes a test for determining if two or more businesses are joint employers. Joint employers can each be liable for the other's unfair labor practices and have to bargain with the other's workers.

In September, the U.S. Department of Labor ("DOL") intends to revise the definition of "regular rate" on which required FLSA overtime has to be calculated.

The DOL also plans to modify "hazardous work" definitions that prevent 16- and 17-year-olds from working in an effort to expand apprenticeships and job opportunities for youth.

In January 2019, the EEOC plans on issuing a rule on how employers can incentivize workplace wellness programs without violating the Americans with Disabilities Act ("ADA") or the Genetic Information Nondiscrimination Act ("GINA").

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