



WorkSmarts

Fall Back Into Compliance



SpencerFane®

Case Law Update – Developments from the Courts and Practical Takeaways

Megan Meadows and Brian Peterson

- Be cognizant of the special rules and ethical obligations that apply to the settlement of wage and hour claims and FLSA collective actions
- Under certain circumstances, business owners and executives can be held personally liable for WARN Act violations
- Promptly investigate and take reasonable steps to resolve employee complaints of unlawful discrimination
- If your company utilizes electronic signatures on employment forms then document what steps the software vendor takes to confirm and verify the identity of the individual who completes the online forms

Lifecycle of an IRS Audit: How to Prepare for and Defend an IRS Tax Controversy

Kelly Mooney

- Review and respond promptly to any notices issued by the IRS. Ignoring notices will not make the problem go away.
- Be courteous and professional in all dealings with IRS staff; remember that being rude and/or aggressive does not win better treatment, while being professional goes a long way.
- Involve your tax professionals in the audit process as soon as possible, initially your return preparer followed by tax counsel, if needed.
- Be patient. The IRS audit process is slow and time-consuming, even during the best of times. Expect that a full resolution, no matter how straightforward the issues, can take a year or more.

Update Plan Documents and SPDs for CAA Changes in Advance of Open Enrollment

Greg Ash

- Surprise billing standards under “No Surprises Act”
- Emergency services and OON claims
- Balance billing protection
- Continuing care protection
- Provider directories

Update Agreements with Plan Vendors

Greg Ash

- Review and update ASO agreements
 - Allocation of responsibilities for CAA and TiC compliance to TPA/ASO provider
 - Review and revise for prohibited “gag” clauses
 - Review adequacy of indemnification language

Coordinate with Consultants

Greg Ash

- Request MHPAEA NQTL analysis
 - “Fiduciary protection” letter
 - Pay particular attention to “carve-out” pharmacy or MH/SUD providers (who are unlikely to coordinate with M/S vendors to ensure parity)
- Request ERISA § 408(b)(2) disclosures

Consider COVID Vaccine Surcharge Carefully

Greg Ash

- Evaluate existing wellness program incentive awards and ACA affordability restrictions to determine maximum surcharge
 - Consider higher deductible or co-payments for unvaccinated participants, rather than higher premium
- Update wellness program materials to include required information about reasonable alternative standards, etc.
- Determine how long you will give participants to obtain vaccines, and whether/how surcharge will be refunded if vaccine obtained after plan year commences
- If implemented mid-year, consider change-in-status rules for cost increases
- Consider any collective bargaining implications
- Evaluate approach to reasonable alternative standards for those who refuse vaccine

Gender Politics in the Workplace

Sonja McGill and Courtney Powell

- Pregnancy discrimination laws are changing. Always check the law of the state where your employees are located.
- Keep an eye out on *Bostock*

Pandemic Preparedness

Helen Holden and Jon Watson

- In a fast moving environment, employers should strive for maximum flexibility and continual communication with employees about policies, practices, and procedures.
- Areas that are challenges for compliance, such as administration of leaves of absence and ADA compliance, remain challenges when faced with novel developments in the workplace like the COVID-19 pandemic. Staying up to date in these areas assists employers to address fast-moving developments.

Top Tips for Enforcing Non-Compete Agreements

Rick Herold and Doug Weems

- Evaluate whether the agreement is enforceable as a matter of law given the applicable law.
- Define your company's objectives at the inception of the case.
- Consider the potential positive outcomes.
 - Injunctive relief.
 - Monetary damages.
 - Message of deterrence to a competitor.
- Balance against the potential costs.
 - Will you be required to disclose sensitive information (confidential information, customer lists, trade secrets, pricing models, etc.)?
 - Will customers necessarily be forced to sit for depositions?
 - Internal costs of complying with discovery demands, sitting for depositions and having a corporate representative attend the jury trial.
 - Attorneys' fees and costs.
 - Vendor costs (forensic work to extract email).
 - Expert costs.
 - Risk of non-compete being declared unenforceable

WorkSmarts Seminar Team

September 22 & 23 Seminar Team

Greg Ash

Partner | Overland Park, KS
gash@spencerfane.com

Rick Herold

Partner | Phoenix, AZ
rherold@spencerfane.com

Helen Holden

Partner | Phoenix, AZ
hholden@spencerfane.com

Sonja McGill

Partner | Dallas, TX
smcgill@spencerfane.com

Megan Meadows

Partner | St. Louis, MO
mmeadows@spencerfane.com

Kelly Mooney

Of Counsel | Phoenix, AZ
kmooney@spencerfane.com

Brian Peterson

Associate | Kansas City, MO
bpeterson@spencerfane.com

Courtney Powell

Of Counsel | Oklahoma City, OK
cpowell@spencerfane.com

Jon Watson

Partner | Denver, CO
jmwatson@spencerfane.com

Doug Weems

Partner | Kansas City, MO
dweems@spencerfane.com

Elizabeth Wentz

Partner | Springfield, MO
ewentz@spencerfane.com

Randi Winter

Partner | Minneapolis, MN
rwinter@spencerfane.com

Save the Dates!

Be sure to mark your calendar for our “**WorkSmarts**” half day virtual conference series.

February 2021						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
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28						

May 2021						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
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30	31					

September 2021						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
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November 2021						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
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