

Legal Updates April 2014

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NLRB Says . . . No to “No Negativity” Policies

- ▶ Hills and Dales General Hospital
- ▶ “We will not make negative comments about our fellow team members and we will take every opportunity to speak well of each other.”
- ▶ “We will not engage in or listen to negativity or gossip. We will recognize that listening without acting to stop it is the same as participating.”

NLRA

- ▶ ULP Section 8(a)(1)
 - Violates employee’s Section 7 rights to engage in concerted protected activity.
 - Provisions overbroad and ambiguous.
 - Captures terms and conditions of employment
- ▶ “We will represent Hills & Dales in the community in a positive and professional manner in every opportunity.”
 - Discourages public protest of ULPs or complaints to third parties about terms and conditions.

Hills and Dales General Hospital

- NOTE: No actual conduct at issue.
- Each policy deemed a violation on its face.
- Employee involvement in development was irrelevant.
- Time for a re-write!?!

M&As!

- Thompson v. Real Estate Mortgage Network,
3rd Circuit Court of Appeals
- Successor is liable for predecessor's FLSA violation
- A hires B's employees, only paystub changed!
- Lower common law standard applies to Federal statutes
 - Continuity of operations & workforce
 - Notice of the legal obligation
 - Ability of the predecessor to provide relief

Severance Payments

- U.S. v. Quality Stores
- Lump sum severance payments made to laid-off employees are taxable wages for *FICA* purposes.
- 7.65% each.
- Spell it out in your severance agreements (should already be in there!)
 - Payment(s) subject to all standard deductions, withholdings, court ordered garnishment and/or repayment or salary reduction agreement(s)

ADA Amendments

Mazzeo v. Color Resolutions Intl, LLC, (11th Cir.)



THANK YOU!

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