

# LEGAL & LEGISLATIVE UPDATES

## October 2015

By:

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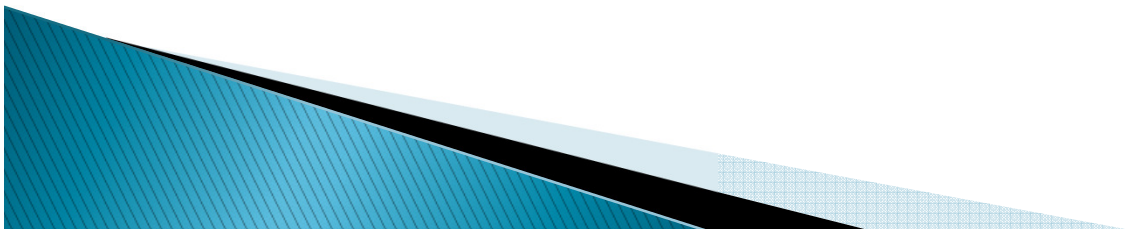
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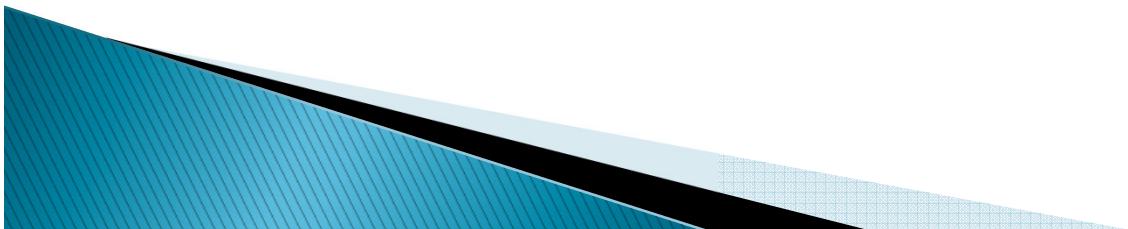
# NLRB: *Danbury Hospital*

- ▶ Within 2 business days after direction of election (or agreement), employer must provide: (*Excelsior* “plus” list):
  - Full names
  - Work locations
  - Shifts
  - Job classifications
  - Contact information
    - Home address
    - Available personal email
    - Available personal cellular or phone numbers



# *Danbury Hospital*

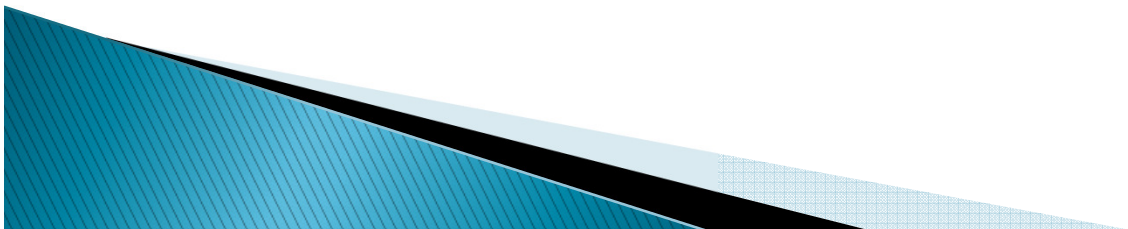
- ▶ Union lost, filed objections
- ▶ Employer didn't provide all required information
- ▶ Relied upon 1 source
  - ▶ Other electronic sources available
  - ▶ Provided incomplete data
  - ▶ Did not confirm with employees
- ▶ Hearing officer ordered re-run election



# *Danbury Hospital*

## ► Tips:

- Once an election petition is filed:
  - Anticipate the need for the list:
    - Check all available resources for required information
    - Consider update notices to employees
      - Caution: method used to contact and receive responses
    - If email, could result in a new “source”



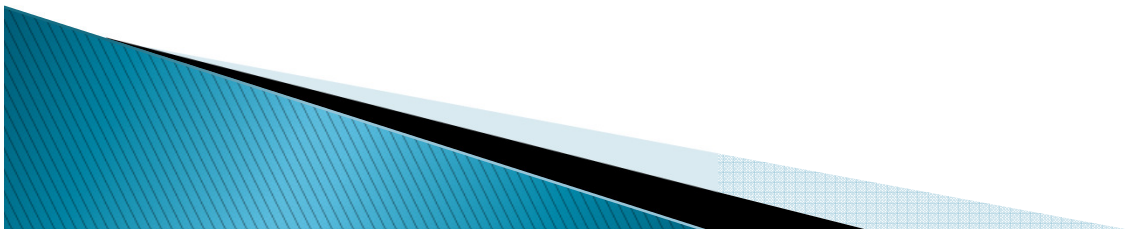
# *Kaye v. Rosefelde,* N.J. Supreme Court

- ▶ Employees owe a duty of loyalty
  - Fact sensitive inquiry
  - Employee must act in interests of an employer in all matters connected to that relationship
  - Employees in a position of trust/confidence owe higher duty of loyalty
- ▶ Employer unable to show actual economic loss caused by employee disloyalty
- ▶ N.J. S.Ct.: Employer entitled to recover salary paid (or retain salary due) during period of disloyalty



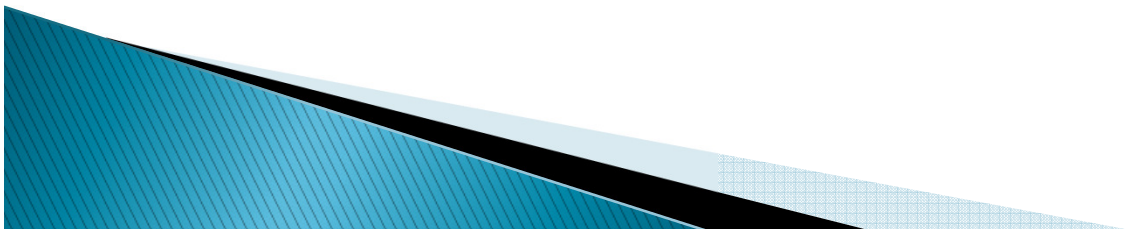
# *Kaye v. Rosefielde,* N.J. Supreme Court

- ▶ Decided by a Judge (not jury)
- ▶ Four factors relevant to deciding breach of loyalty:
  - Contract provisions related to the employee's actions;
  - Employer knowledge of/agreement with employee's actions
  - Employee's status and position
  - Nature of the conduct and effect on the employer



# *Kaye v. Rosefielde,* N.J. Supreme Court

- ▶ Willful and deliberate breach
  - Not entitled to ANY compensation even for properly performed services
- ▶ Employer can raise as a claim or a defense
- ▶ Tips:
  - Caution: retention of salary can result in wage and hour claims, investigations/audits.
  - Investigate: is the employee “judgment proof”?



# THANK YOU!

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