May | June 2018 Edition

EMPLOYMENT LAW AUTHORITY

Your Resource for Today's Hot Topics in Labor & Employment Law

Ogletree Deakins

KEY TAKEAWAYS FROM THE SUPREME COURT'S RULING ON CLASS ACTION WAIVERS

by Ron Chapman, Jr. (Dallas) and Christopher C. Murray (Indianapolis)

On May 21, 2018, the Supreme Court of the United States settled the contentious class action waiver issue that has riled courts for the past six years. In a 5-4 opinion, the Court upheld class action waivers in arbitration agreements. Relying heavily on the text of the Federal Arbitration Act (FAA) and "a congressional command requiring us to enforce, not override, the terms of the arbitration agreements before us," the Court ruled that the FAA instructs "federal courts to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings." The Court also reasoned that neither the FAA's savings clause nor the National Labor Relations Act (NLRA) contravenes this conclusion. *Epic Systems Corporation v. Lewis*, Nos. 16–285, 16–300, 16–307, Supreme Court of the United States (May 21, 2018).

Below we outline three key takeaways for employers from this ruling.

1. Those employers without arbitration programs should consider whether the benefit of avoiding the risk of class or collective actions outweighs the various downsides of employment arbitration. Each employer's situation is different. Small employers that have little risk of expensive class and collective actions might reasonably conclude an arbitration program does not fit their needs. On the other hand, employers with large numbers of employees in states with a high volume of litigation might greatly benefit from individual arbitration programs.
2. Those employers that already adopted class and collective action waivers in their arbitration agreements should consider whether those agreements should be revised and simplified following the Supreme Court's definitive approval of such waivers. Over recent years, some employers already using class and collective action waivers structured those agreements to best support enforceability under the prior, uncertain state of the law. For example, those employers that inserted opt-out provisions in their agreements might consider whether those opt-outs should be removed. Again, there are pros and cons to doing so, and different employers will reach different conclusions.
3. Employers should plan for claims under state statutes such as California's Private Attorneys General Act (PAGA). Such statutes deputize private parties to enforce state wage laws through quasi-class actions that seek to recover statutory penalties, and claims under such statutes are not subject to arbitration agreements under current law. Employers also should plan for challenges to their arbitration agreements, especially in light of the vigorous criticisms in some media accounts linking arbitration with the concerns of the #MeToo movement. For example, some employers may choose to exclude sexual harassment claims from the scope of their arbitration agreements, thereby allowing such claims to be brought in court.

In light of the Supreme Court ruling, Ogletree Deakins has launched an innovative new product to help employers quickly and conveniently generate arbitration agreements with class action waivers. Ogletree Deakins DIY Arbitration Agreements is a simple, straightforward tool that guides users through a series of questions and then, based on their answers, automatically generates an arbitration agreement tailored to their business needs and preferences.

IN THIS ISSUE

OGLETREE DEAKINS OPENS OFFICE IN PORTLAND, MAINE

Ogletree Deakins is pleased to announce that the firm has entered the Maine market with an office in Portland. Byrne Decker, a veteran ERISA litigator, will serve as the office's managing shareholder. The Portland, Maine office is Ogletree Deakins' 53rd office and sixth office in the Northeastern United States.

D.C. DOWNLOAD

AN INSIDE LOOK AT KEY ISSUES FROM CAPITOL HILL

by James J. Plunkett (Washington, D.C.) and Harold P. Coxson (Washington, D.C.)

Jim Plunkett and Hal Coxson are Co-Chairs of Ogletree Deakins' Governmental Affairs Practice Group and Principals in Ogletree Governmental Affairs, Inc. (OGA), a subsidiary of Ogletree Deakins that assists clients in addressing regulatory and legislative changes emanating from Washington, D.C.

New Wage and Hour Compliance Program at DOL

On April 3, 2018, the Department of Labor's (DOL) Wage and Hour Division (WHD) officially launched its Payroll Audit Independent Determination (PAID) program. The six-month pilot initiative encourages employers to conduct self-audits of their payroll practices and voluntarily report underpayments to the WHD. For more information, see page 5 of this issue.

New DOL Opinion Letters

Roughly 10 months after the DOL announced that it would again be issuing opinion letters, on April 12, 2018, the WHD issued three new opinion letters. The letters deal with compensability of travel time and rest breaks, as well as the treatment of lump-sum payments under the Consumer Credit Protection Act (see page 5 of this issue). Along with the new PAID program, the issuance of opinion letters is an example of the current administration's cooperative approach to Fair Labor Standards Act compliance.

Overtime News

The spring regulatory agenda was issued on May 9, 2018, providing stakeholders a glimpse of the administration's current regulatory priorities. On the wage and hour front, the pending proposal on changes to the overtime regulations is now expected to be issued in January 2019. In the meantime, the WHD has indicated that in September of this year it will propose amendments or clarifications to the definition of "regular rate of pay" for calculating overtime pay.

EEOC General Counsel Nominee

On April 10, 2018, the Senate Health, Education, Labor and Pensions (HELP) Committee held a confirmation hearing for Sharon Fast Gustafson—the administration's nominee for general counsel of the Equal Employment Opportunity Commission (EEOC). The nomination is long overdue, as the general counsel position has been vacant since December 2016. The EEOC is currently at a 2 to 1 democratic majority, as Commissioner nominees Janet Dhillon and Daniel Gade are still awaiting Senate confirmation.

NLRB Fully Staffed

On April 11, 2018, management attorney John Ring was confirmed by the U.S. Senate to be a member of the National Labor Relations Board (NLRB). Ring was quickly elevated to chairman of the NLRB, replacing Marvin Kaplan. Ring's confirmation means that the Board is now fully staffed, with three Republicans and two Democrats.

"Ambush" Elections Update

April 18, 2018 was the deadline for stakeholders to submit comments to the NLRB's Request for Information (RFI) regarding its 2014 changes to its election procedures. This is the first step in what could be a lengthy process. After the Board reviews the comments submitted in response to the RFI, if it chooses to make changes to the 2014 regulations, it will first issue a notice of proposed rulemaking followed by another comment period.

Joint Employer Rulemaking?

The NLRB's recent return to its "indirect" control standard for determining joint employer status has done little to resolve the uncertainty surrounding the issue. Perhaps in an effort to resolve the matter once and for all, the NLRB has announced that it "is considering engaging in rulemaking to establish the standard for determining joint-employer status under the National Labor Relations Act." The Board has not indicated when it might issue a proposal.

Immigration Regulations on the Horizon?

In the aforementioned regulatory agenda, the United States Citizenship and Immigration Services (USCIS) forecasted its continued plans to scrutinize high-skilled visa categories. For employers that complement their workforces with H-1B visa holders, USCIS has indicated that in January 2019 it will propose amendments to the definitions of "specialty occupation," "employment," and "employer-employee relationship." Similarly, USCIS states that in June of this year, it will propose to "remove from its regulations certain H-4 spouses of H-1B nonimmigrants as a class of aliens eligible for employment authorization."

STATE AND INTERNATIONAL ROUNDUP

Arizona

Arizona's fifty-third legislature ended in early May, while over 50,000 demonstrators protested for increased education funding at the state capitol. While the #RedForEd movement essentially ground all remaining legislative action for the 2018 session to a halt, the legislature did manage to pass 369 bills this session. However, only four bills that substantively impact employers made it to the governor's desk, including HB 2311 which creates a blanket limitation on liability for employers that hire ex-offenders.

California

In a landmark decision, the Supreme Court of California recently adopted a new test to determine whether a worker performing services for a company is an employee or an independent contractor under California's wage orders. The new three-factor test, known as the ABC test, will determine whether a company "employs" a worker under the wage orders, which address certain requirements for minimum wage, overtime, and meal and rest periods, among others. *Dynamex Operations West v. Superior Court*, No. S222732 (April 30, 2018).

Canada

The Ontario government recently decided to reverse a controversial part of the amendments to labour and employment legislation that it introduced last year, specifically provisions relating to the calculation of public holiday pay. O. Reg. 375/18 reinstates the public holiday pay formula that had been in place prior to Bill 148. The regulation and reinstatement will take effect on July 1, 2018, and therefore apply to the Canada Day holiday.

Illinois

Several amendments to the Illinois Day and Temporary Labor Services Act will become effective on June 1, 2018. Among other obligations, the Act imposes, on day and temporary labor service agencies, an obligation to "attempt to place a current temporary laborer into a permanent position with a [third-party] client when the client informs the agency of its plan to hire a permanent employee for a position like the positions for which employees are being provided by the agency at the same work location."

Louisiana

The Louisiana First Circuit Court of Appeal recently ruled that the statute of limitations under Louisiana's anti-discrimination law is only tolled during the pendency of an administrative or investigative review, not to exceed 18 months. According to the First Circuit, the employee failed to file suit within the limitations period, and therefore her claims were properly dismissed. *Briggs v. Florida Parishes Juvenile Justice Commission,* No. 2017-CA-1189 (March 12, 2018).

Missouri

In February of 2017, former Missouri Governor Eric Greitens signed Senate Bill 19, which was intended to make Missouri the 28th right-to-work state in the United States. Senate Bill 19 was scheduled to take effect on August 28, 2017. However, due to the passage of Senate Concurrent Resolution (SCR) 49, voters will decide the fate of the right-to-work bill during the primary election on August 7, 2018. If the measure passes, Senate Bill 19 will become effective on August 8, 2018, nearly one year later than the legislature intended.

New Jersey

On May 2, 2018, Governor Phil Murphy signed into law a bill that requires New Jersey employers to provide their employees with paid sick leave. Once enacted, New Jersey will join nine other states and the District of Columbia in requiring paid sick leave. The law will become effective on October 29, 2018.

New York

Governor Andrew Cuomo recently signed into law the 2018-2019 New York State budget, which includes components aimed at combating sexual harassment in the workplace that impose significant new obligations on private and public employers. The New York City Council similarly introduced the Stop Sexual Harassment in NYC Act, which is also aimed at combating harassment and imposes substantial new obligations on most employers in New York City. Mayor Bill de Blasio signed the New York City legislation into law on May 9, 2018.

Pennsylvania

A federal judge in Pennsylvania recently issued an order granting in part and denying in part a motion brought by the Chamber of Commerce for Greater Philadelphia for a preliminary injunction seeking to block the City of Philadelphia's wage equity ordinance. The judge lauded the City's intention to promote equal pay but recognized concerns about restricting free speech rights. Per the judge's ruling, employers may now inquire about prospective employees' wage histories but are prohibited from relying on such when making wage determinations.

South Carolina

On May 17, 2018, South Carolina Governor Henry McMaster signed the South Carolina Pregnancy Accommodations Act into law. The Act, which is effective immediately, requires employers with 15 or more employees to make facilities readily accessible for and provide reasonable accommodations to employees with "medical needs arising from pregnancy, childbirth, or related medical conditions," including lactation. The Act also requires that employers provide employees with written notice of its protections and post related information in conspicuous areas.

Vermont

Vermont's governor recently signed legislation limiting employers' ability to inquire about an applicant's salary history, either directly from the applicant or from the applicant's past employers. Employers will also be prohibited from determining whether to interview a candidate based on his or her salary history. The law applies to inquiries relating to base compensation, bonuses, benefits, fringe benefits, and equity-based compensation. The law will go into effect on July 1, 2018.

Wisconsin

Governor Scott Walker signed an amended version of 2017 Assembly Bill 748, thereby declaring a number of employment issues to be matters of statewide concern and therefore beyond the scope of municipal regulation. Although the bill originally included a provision that would have prohibited local regulation of employment discrimination, that provision was removed by an amendment. As such, municipalities remain free to enact and enforce equal employment opportunity ordinances at the local level.

PAY EQUITY: A SHORT PRIMER ON BANS ON SALARY HISTORY INQUIRIES
A Q&A WITH LIZ WASHKO

by Jansen A. Ellis (Atlanta)

Pay equity legislation is burgeoning. In 2017, several jurisdictions approved bans on salary history inquiries, and the trend continues in 2018. With these new laws and legal developments, employers will be facing new challenges in developing policies and procedures that comply with these laws—that vary from jurisdiction to jurisdiction—while making good business decisions with respect to starting compensation for newly hired employees. In addition, on April 9, 2018, the Ninth Circuit Court of Appeals issued an *en banc* decision in *Rizo v. Yovino*, holding that prior salary does not qualify as a "factor other than sex" to justify a pay difference under the Equal Pay Act—appearing to support the thinking behind the salary history bans. Liz Washko, a shareholder in Ogletree Deakins' Nashville office and co-chair of the firm's Pay Equity Practice Group, answers some frequently asked questions that employers may have on this topic.

Jansen Ellis: What are some preliminary steps employers can take to address bans on salary history inquiries?

Liz Washko: Employers can consider a number of steps, including: implementing a process for keeping abreast of developments as other jurisdictions consider and pass similar legislation; working with their human resources, recruiting, and compensation departments to conduct a critical self-analysis of hiring practices and compensation decisions that rely on salary history; reviewing policies and procedures that apply in the affected jurisdictions and considering whether modifications need to be made; and providing training to recruiters and hiring managers (and anyone else involved in the interview and hiring process) regarding the policy and procedure modifications and legal issues regarding salary history inquiries.

JE: What are some compliance concerns of which employers may not be aware?

LW: Many companies utilize informational methods of recruiting—sometimes long before a position is even available. Those involved in informational recruiting processes (networking events, informal lunches and dinners, etc.) may not recognize the application of salary history inquiry bans to such situations. Compliance oversights may also occur if a company chooses to make narrow policy and procedure modifications that apply only to the affected jurisdictions. In such cases, there may be difficulties with ensuring that there is no "cross-contamination" between jurisdictions—especially if the same people are responsible for recruiting and compensation decisions across jurisdictions.

JE: What are your predictions regarding bans on salary history inquiries in the coming year?

LW: It is likely that more jurisdictions will follow suit and enact salary history inquiry bans. Many states and localities have such legislation pending, and it is likely that some of these laws will pass.

JE: What further steps can employers take to improve equity in compensation decisions in jurisdictions with bans on salary history inquiries?

LW: Companies may want to implement written policies and procedures regarding compensation decisions. In those policies, employers can identify legitimate factors (that comply with applicable laws) that may be considered in making pay decisions. Although pay ranges may not work for all businesses, having pay ranges applicable to particular jobs limits discretion and, thus, limits variations in pay. For this reason, companies may want to use pay ranges. In doing so, the company can provide decision-makers with guidance on making pay decisions within the applicable ranges, using objective factors wherever possible, and requiring decision-makers to articulate any subjective factors that were considered. Another proactive compliance step is to consider conducting an attorney-client privileged pay equity audit that incorporates legitimate factors and identifies potentially problematic disparities. Doing so can provide the company with an opportunity to correct problems before they lead to liability.

DOL DEVELOPMENTS: AN UPDATE ON RECENT ACTIONS BY THE WAGE AND HOUR DIVISION

by Martin C. Brook (Detroit (Metro)) and Alfred B. Robinson, Jr. (Washington, D.C.)

The U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) has been busy. In March of this year, the WHD announced a new nationwide initiative—the Payroll Audit Independent Determination (PAID) program—under which employers can conduct self-audits to assess Fair Labor Standards Act (FLSA) compliance and voluntarily report violations to the WHD. In April, the WHD issued guidance through several opinion letters. These letters tackle issues regarding travel time and rest breaks in addition to clearing up confusion about whether employer payments made in response to garnishment orders are protected by deduction caps. Below we provide an update on two significant DOL developments: the PAID program and the opinion letter regarding garnishments.

PAID Program Allows Employers to Voluntarily Report Wage and Hour Violations

On March 6, 2018, the DOL/WHD announced a new nationwide program to resolve minimum wage and overtime violations under the FLSA. Referred to as the PAID program, it is expected to be a six-month pilot initiative that allows employers to conduct self-audits of their payroll practices and voluntarily report underpayments to the DOL/WHD which, in turn, will supervise the back wage payments.

To participate in the PAID program, an employer first must identify the violations, the impacted employees, and the time periods of the violations. The employer must also compute the back wages due each impacted employee. Then the employer can request to participate in the program and have the DOL/WHD supervise the payment of the back wages due. The FLSA expressly authorizes the Secretary of Labor to supervise the payment of unpaid minimum wages and/or unpaid overtime compensation owed employees, in addition to providing for a private right of action to remedy FLSA violations. The statute further provides that the acceptance by any employee of this DOL/WHD supervised settlement amount acts as a waiver by that employee of his or her right to file an action to recover any alleged unpaid wages, liquidated damages, and attorneys' fees.

The PAID program website includes information for an employer to determine the criteria for participating in the program, a brief description of compliance assistance materials, and the required elements of a self-audit. The WHD is anxious to implement this initiative as a means to bring more employers in compliance with the FLSA and to recover additional back wages due to employees. Employers that are not confident about their compliance with the FLSA should consider evaluating whether to conduct a self-audit and, depending on the results of an audit, should consider discussing with their counsel whether to participate in this initiative.

WHD Opinion Letter Resolves Question Surrounding Lump-Sum Payments and Garnishments

Most employers receive a garnishment from time to time, and some employers receive a lot of them. It is the employer's legal obligation to administer garnishments exactly, and employer liability arises to the employee for over-deducting or to the judgment creditor for under-deducting.

There has been an ongoing question for decades about the interpretation of the deduction caps contained in the Consumer Credit Protection Act (CCPA). The big question was whether payments from employers made in a lump sum were protected earnings. Under the CCPA, if the employer payment is "earnings," then it is protected from over-garnishment. Some case law supported the approach that such payments were not earnings and were not protected by the CCPA, and thus they were subject to 100 percent deduction if the state law provided as such. Some states routinely ordered employers to deduct 100 percent of lump-sum payments when the employee had an arrears in child support payments. Other times, creditors attempted to hold employers directly liable for not deducting 100 percent of lump-sum payments.

The new opinion letter, which may have some force of law if courts find it persuasive, brings clarity to garnishment practices. Early in 2017, the WHD issued a fact sheet on this topic, but it is less specific and does not have any force of law. The new opinion letter presents a general rule for when an employer payment is "earnings" and when it is not. It also applies this general rule to 18 different types of payments and opines on whether those types of payments are earnings—for instance, "severance pay" is earnings.

According to the WHD, "the central inquiry is whether the amounts are paid by the employer in exchange for personal services. If the lump-sum payment is made in exchange for personal services rendered, then like payments received periodically, it will be subject to the CCPA's garnishment limitations…Conversely, lump-sum payments that are unrelated to personal services rendered are not earnings."

One area employers may want to note is how the WHD treats payments for settlement of employment claims. Specifically, any part of a settlement payment that is to replace lost wages (both back and front pay) is protected by the caps provided in the CCPA. Conversely, payments for compensatory or punitive damages are not earnings and are not protected by the CCPA caps. Thus, in states that provide that their garnishment orders cover payments beyond just earnings, any part of a settlement payment that is characterized and paid on an Internal Revenue Service Form 1099 may be subject to full garnishment.

TOP 10

TOP 10 FMLA MISTAKES—AND HOW TO AVOID THEM

by Nonnie L. Shivers (Phoenix)

The federal Family and Medical Leave Act (FMLA) can be daunting but many answers are found within the FMLA regulations themselves. Despite many courts' attempts to make the FMLA into the next statute where attorneys utter the dreaded answer of "it depends," some common mistakes can be avoided by learning from the schadenfreude-esque experiences of others, as illustrated below.

1 Failing to Meet Employer Obligations

The FMLA places many technical obligations on employers, and even the simplest mistakes can result in legal liability. A few of the most common mistakes can be readily cured by employers: posting the most updated FMLA poster at every worksite; having an FMLA policy and distributing it (via handbook if one exists); advising employees in writing whether their request for leave is approved or denied, including all required designation notices, within the limited time frame required by the FMLA; properly tracking FMLA and advising of the amount of leave remaining when requested; and not retaliating or interfering with an employee's right to take FMLA leave.

2 Not Including All Time Worked When Calculating FMLA Eligibility

Remember that the employee's actual workweek is the basis for determining FMLA leave entitlement. Specific categories that may ultimately need to be factored into FMLA eligibility calculations include overtime, working lunches, and temporary work for the company.

3 Not Recognizing a Request for Leave

There are no magic words required for an FMLA leave request and the right to take FMLA leave is not limited to medical emergencies. If you need more information from the employee to determine whether the absence might be covered, then ask. Even general reports of something that looks like a serious health condition may be sufficient to trigger FMLA obligations. For example, if the employee's sick log identifies a "headache" where the employee has a history of migraines, be aware that this potentially may be an FMLA-qualifying condition or request for leave.

4 Failing to Give an Employee the Chance to Provide Certification

Employees have 15 calendar days after the employer's request to provide certification from a health care provider to support the employee's need for FMLA leave. Keep in mind that at the same time as the request for certification is made, employers must also advise employees of the consequences of failing to provide an adequate certification.

5 Calculating the Amount of FMLA Used With the Incorrect Increment

The FMLA requires that leave be calculated using the smallest increment of time and actual days worked. Employers are required to allow employees to use FMLA in the smallest increment allowed for other leave. The increment may be weeks, days, hours, or even less than an hour. However, it is permissible to exclude days an employee would not be scheduled or expected to work. Examples include weekends, temporary plant closures, furloughs, and holidays.

6 Requiring Inflexible Notice Procedures

An employer can (and should) require compliance with its customary notice procedure for absences but there are caveats. Because the FMLA states the notice is due "as soon as practicable," however, there are circumstances in which employees may be entitled to leave, even if notice was given outside the employer's prescribed period or methodology. When determining whether notice was given in a timely manner, take into account whether the need for leave was foreseeable and the facts and circumstances of the particular case. Be flexible where the circumstances call for it.

7 Making Derogatory Remarks About an Employee's Use of Leave

Derogatory remarks can be the basis of a finding of intent to retaliate. For example, in a case in which an employee was suspended without pay the day after returning from leave and ultimately was fired, the employee stated a claim for FMLA retaliation because his supervisor had told him he was on "thin ice" and he was "burying himself" by making an FMLA request.

8 Treating an Employee Differently Before and After Leave

An employee may potentially have grounds for a retaliation claim if he or she is subjected to stricter scrutiny after returning from leave or where the employee receives a poor performance review after returning from leave while reviews before the leave were good. Though a performance appraisal should reflect poor performance where it exists, the standards by which the employee is being judged should be the same as those used before the leave.

9 Keeping Time-Sensitive Goals Steady

Failure to reasonably adjust goals and standards downward to account for the leave period can result in an FMLA retaliation claim. For example, an account executive who took intermittent leave stated a claim for retaliation where her employer failed to adjust her sales goals to account for the time she was on leave and then based the decision to terminate her employment on her failure to meet the unadjusted sales goals.

10 Carefully Investigate Perceived Abuse

In a recent poll, 65 percent of companies stated that intermittent FMLA leave is taken unpredictably. However, not every deviation from the original certification is indicative of abuse. Employers should be vigilant but tread carefully. Employers can reduce the risk of abuse by making sure to get medical certification, clarification and verification of the condition, periodic recertification, recertification when usage significantly differs from the original certification, and information on any changed circumstances.

SPOTLIGHT ON OGLETREE DEAKINS' MERGERS AND ACQUISITIONS PRACTICE GROUP

Ogletree Deakins recently launched its Mergers and Acquisitions Practice Group. The group—led by shareholders Kevin Kinney (Milwaukee), Diana Nehro (International Practice Group), and Jonathan Wilson (Dallas)—has years of experience advising clients across many industries on the wide-ranging labor and employment issues that can arise during corporate acquisitions and restructurings. Our attorneys often work in partnership with general practice firms to handle the employment law aspects of a transaction, thereby helping companies accomplish the business objectives of the transaction while avoiding disruptions caused by decisions impacting employees.

Below we highlight some interesting facts about the group and common labor and employment issues that may arise during mergers and acquisitions.

- Labor and employment issues can have a significant impact on transactions, including the potential for inherited liabilities, the need for escrow holdbacks, or even adjustments to the purchase price. Identifying the pertinent labor and employment issues during the due diligence process is key.
- Due diligence involves reviewing and assessing the labor and employment law matters that could impact the parties' rights and obligations. For example, attorneys in the Mergers and Acquisitions Practice Group routinely help clients assess areas such as existing employment policies and practices, compliance with wage and hour and other employment laws, the enforceability of noncompetition agreements, and employee benefits issues that could create actual or potential liability.
- Co-chair Jonathan Wilson notes that post-close considerations are often overlooked—yet these considerations are just as important because when the deal is over, the buyer and its new employees must begin a productive relationship. Important matters to examine after the deal closes include rolling out policies and procedures, integrating benefit plans, and assimilating the new workforce into the buyer's culture, human resources systems, and management structures and styles.
- In today's global economy, most corporate transactions involve employees in more than one country. In cross-border matters, it is essential to recognize the material issues and business drivers of the transaction, as well as the practical considerations in getting the deal done, all while complying with the nuances of local law. According to co-chair Diana Nehro, one of the most important initial tasks during the transaction is reviewing the seller's compliance with local labor and employment obligations and the impact under laws and ethics protocols applicable to the buyer. This includes reviewing compliance with the Foreign Corrupt Practices Act as well as wage and hour and workplace safety issues, privacy matters, and discrimination/harassment laws.

53

OFFICES OF OGLETREE DEAKINS

Atlanta | Austin | Berlin | Birmingham | Boston | Charleston | Charlotte | Chicago | Cleveland | Columbia | Dallas | Denver | Detroit (Metro) | Greenville | Houston | Indianapolis

Jackson | Kansas City | Las Vegas | London | Los Angeles | Memphis | Mexico City | Miami | Milwaukee | Minneapolis | Morristown | Nashville | New Orleans | New York City

Oklahoma City | Orange County | Paris | Philadelphia | Phoenix | Pittsburgh | Portland (ME) | Portland (OR) | Raleigh | Richmond | Sacramento | San Antonio | San Diego

San Francisco | Seattle | St. Louis | St. Thomas | Stamford | Tampa | Toronto | Torrance | Tucson | Washington, D.C.

www.ogletree.com

Ogletree Deakins

Editor in Chief
Jansen A. Ellis

Managing Editor
Stephanie A. Henry

Articles Editor
Hera S. Arsen

Additional Information
To request further information or to comment on an article, please contact Stephanie Henry at (310) 217-0130. For additional copies or address changes, contact Marilu Oliver at (404) 870-1755.

Attending the 2018 SHRM Conference in Chicago?

JUNE 17 – 20, 2018

VISIT THE OGLETREE DEAKINS BOOTH FOR GREAT PRIZES AND JOIN US FOR A SPECIAL RECEPTION BEFORE PENTATONIX SHOW

SPECIAL DRAWINGS — BOOTH #1845

- **Sunday, June 17**
  $200 American Express Gift Card
- **Monday, June 18**
  Six-Month Premier Series Membership in the California Wine Club
  (Enjoy two bottles of award-winning wine shipped directly to your door each month.)
- **Tuesday, June 19**
  Apple Watch

Prize drawing winners will be notified by email.

Stop by the Ogletree Deakins booth to pick up a ticket for the preshow reception and register for special drawings.

Clients who present this flyer will receive a special gift.

Ogletree Deakins

PRESHOW RECEPTION

Join us for a special reception for our clients prior to the Pentatonix concert!

TUESDAY, JUNE 19 ▪ 5:00 P.M. – 7:30 P.M.

THE SCOUT WATERHOUSE + KITCHEN
1301 South Wabash Avenue, Chicago, IL 60605
(The SHRM Conference is at McCormick Place, which is about 1.5 miles from The Scout.)

June

June 7	Tampa	OD Works! – Auditing Your Employee Handbook and Workplace Policies
June 8	St. Louis	Professional Responsibility in Employment Litigation: Best Practices and Worst Mistakes
June 12	Webinar	Workplace Violence: Best Practices for Keeping Employees Safe in the Workplace
June 15	Pensacola, FL	All About Leave: From FMLA Requests to Benefit Plans and ADA Obstacles in Between
June 15	Metairie, LA	Employment Law Briefing: Medical Marijuana and Prescription Drugs in the Workplace
June 20	Nashville	The Latest on Pay Equity Legislation, Audits, and Litigation
June 21	Webinar	An Ounce of Prevention: Ensuring I-9 Compliance in an Era of Aggressive Enforcement
June 21	Las Vegas	Stay Connected: The New Nevada—Operating Under Recent Wage and Hour Court Decisions

July

July 10	Greenville	The South Carolina Pregnancy Accommodations Act
July 10	Tampa	OD Works! – 2018 Labor and Employment Law Update
July 11	Minneapolis	How In-House Counsel and HR Professionals Can Work Together to Reduce Burnout
July 12	Spartanburg, SC	The South Carolina Pregnancy Accommodations Act
July 19	Sioux Falls, SD	Remedying Your Employee Handbook

September

Sept 13	Pittsburgh	What You Need to Know About Labor and Employment Law to Stay a Step Ahead
Sept 20	Indianapolis	Managing a Workforce in 2019
Sept 20-21	Kohler, WI	Managing a Workforce in 2019
Sept 27	Philadelphia	Employment Law Briefing
Sept 28	Denver	Managing a Workforce in 2019