



ATLANTA BAR ASSOCIATION

LAWYERS WHO SERVE

Labor & Employment Law Section

Labor & Employment Law Newsletter

Spring 2017

Official Publication of the Atlanta Bar Association Labor & Employment Law Section

Labor & Employment Law Section Happy Hour

Thursday, May 18, 2017
6:00 pm to 8:00 pm
The Lawyers Club



\$20 per person

Includes gourmet catering and two drink tickets. Pre-registration is required. Payments will not be taken at the door.

[Register here](#)

AVLF Seeks Volunteers for Employment Cases

Can you help a worker recover the wages that her employer refused to pay? The Atlanta Volunteer Lawyers Foundation (AVLF) helps low-income workers with unpaid wage problems find pro bono representation.

Currently, we have several strong unpaid wage cases that desperately need volunteer attorneys. A house painter, an administrative assistant, a coach, a truck driver, a teacher – each of these workers contacted AVLF for help recovering what they are owed.

AVLF supports our volunteer attorneys by providing sample demand letters, pleadings, and other documents, as well as help from accountants, mediators, process servers, and more. Many of our cases are resolved in ten hours of attorney time or less. If you are willing to consider accepting a case, please contact **Cole Thaler** at cthaler@avlf.org to review summaries of available cases.

Message from the Editor

Daniel P. Hart, *Seyfarth Shaw LLP*

“May you be blessed to live in interesting times,” wishes an

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old Chinese proverb.

For labor and employment lawyers, the times are certainly interesting. From a historic Presidential election last November to the continuing uncertainty surrounding Brexit and impending elections throughout Europe, assumptions that have governed global politics and business for the past seventy years appear less certain. Rapid developments in technology create radical changes to the workplace and new challenges to employers. Meanwhile, legislators, courts, and regulatory agencies face continued challenges in applying existing law to new economic realities.

The Spring 2017 newsletter focuses on hot topics in light of these rapid changes. Following-up on their presentation at the Section's March 17 Advanced Employment Law Seminar, **Evan Rosen** and **Severin Roberts** share their thoughts on the likely impact of the Trump Administration on labor and employment law in *"The Impact of the Trump Administration on Labor and Employment Law: A Conversation with Evan Rosen and Severin Roberts."*

Kenneth M. Winkler and **Daniel Park** discuss the latest developments in sexual harassment law in *"Sexual Harassment Update: Uber's Latest Controversy and the EEOC's Renewed Focus on Workplace Harassment Policies and Training."* **William D. Goren** surveys the history and current trends in providing affirmative action to persons with disabilities in *"Affirmative-Action and Persons with Disabilities: Navigating the OFCCP and EEOC Regulations."*

Finally, **Benjamin I. Fink** and **Daniel Park** discuss recent developments on an important, but little known, Georgia statute in *"No Punitive Damages under the GCSPA: What Employment Litigators should Know about the Georgia Supreme Court's Recent Decision."*

I want to thank the contributors to the newsletter. A special thanks goes to Jodie Gray with the Atlanta Bar Association for her assistance in putting the newsletter together. If you would like to submit an article for a future newsletter, or if you have any feedback regarding the newsletter, please feel free to send me an email to dhart@seyfarth.com.

Message from the Chair

Amanda Farahany, *Barrett & Farahany, LLP*



Interesting times indeed.

The past year has seen new regulations for overtime implemented, and then withdrawn. Appointments to the district, appellate and Supreme Court that will change the course of the nation, some say for good and others say for bad. What is certain, however, is that there will always be employers and employees, and that employment law will continue to be relevant to guide and



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monitor these relationships.

Within these interesting times, the educational resources and networking opportunities provided by the Labor and Employment Section are of increasing value to our members. I encourage each of you to participate by submitting articles for publication in the newsletter, attending our meetings and CLE's, and attending our social events. Our final event for this bar year is a happy hour at the Lawyer's Club on May 18th at 6 p.m. If you'd like to discuss how you might increase your involvement in the section, please reach out to me or to any of the board members.

I want to thank the Labor & Employment board for their dedication this past year, to **Dan Hart** for putting together the newsletter, and to the Atlanta Bar staff for all of their hard work and assistance in making everything possible.

The Impact of the Trump Administration on Labor and Employment Law: A Conversation with Evan Rosen and Severin Roberts

by Evan M. Rosen, *Jackson Lewis LLP*, and V. Severin Roberts, *Barrett & Farahany, LLP*



*During the Section's Advanced Employment Law Seminar on March 17, **Evan Rosen** and **Severin Roberts** presented their views on the likely impact of the new Trump Administration on labor and employment law. Following their presentation, Evan and Severin shared their views on this important topic with Section Communications Director **Dan Hart**.*

Dan: From what you can tell so far, what do you see as the major priorities of the Trump Administration on labor and employment laws and how, if at all, might those priorities differ from prior Republican administrations?

Evan: The Trump Administration is intent on freeing employers from the "shackles" of onerous regulation. We expect to see government budgets cut, or at most kept flat, which may result in less aggressive enforcement efforts by the Department of Labor's Wage-Hour Division, the EEOC, and the NLRB. The one exception to this is with immigration law, where we expect to see more regulation and enforcement efforts through the hiring of additional ICE officers and harsher penalties. One area that may differ from past Republican administrations is there is a sentiment that President Trump may support paid maternity leave, an initiative his daughter, **Ivanka Trump**, has championed.

Dan: President Trump has nominated Alexander Acosta to head the Department of Labor after his first nominee, Andrew Puzder, withdrew from consideration. What can you tell us about Mr. Acosta and what his nomination signals about the future of the DOL?

Evan: Mr. Acosta is a conservative appointment, but far more moderate in his views than Mr. Puzder. Mr. Acosta served on the National Labor Relations Board and participated in approximately 125 opinions. Those opinions evidence an employer-friendly approach, but more even-handed than Puzder. For example, in testimony before the Senate in 2011, Mr. Acosta stated he considered it important for the President to defend the rights of Muslim Americans and recognize that the overwhelming majority of Muslims are peaceful and bear no will to the United States. He explained that when he was with the Department of Justice, his office intervened to protect Muslims from discrimination.

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Sexual Harassment Update: Uber's Latest Controversy and the EEOC's Renewed Focus on Workplace Harassment Policies and Training

by Kenneth M. Winkler and Daniel H. Park,
Berman Fink Van Horn P.C.



Uber's meteoric rise as a ride-sharing company over the past few years has not come without controversy. Whether triggering taxi protests in cities throughout the world or coming under fire after CEO **Travis Kalanick** joined President Trump's economic council last year, Uber has often been at the center of controversies that have dominated the headlines. Uber's latest controversy arises out of sexual harassment claims made by a former Uber female engineer. In a blog post, the engineer described systemic issues of sexual harassment and recounted instances in which she and other female employees were openly propositioned by a manager. By her account, when she brought the behavior to the attention of Uber's HR department, she was told the manager would not be punished because he was a "high performer" and it was his "first offense."

Kalanick quickly responded to the blog post, stating "What's described here is abhorrent and against

everything we believe in. Anyone who behaves this way or thinks this is OK will be fired.” Uber hired former U.S. attorney general **Eric H. Holder, Jr.** to conduct an investigation into the sexual harassment claims. It remains to be seen if Uber’s attempts at damage control will succeed or if this latest controversy will damage the company’s business.

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Affirmative-Action and Persons with Disabilities: Navigating the OFCCP and EEOC Regulations

by William D. Goren, *William D. Goren, J.D., LL.M., LLC*



The promise of the Americans with Disabilities Act was the improvement of workforce participation of persons with disabilities. It hasn’t happened. Therefore, the federal government is beginning to go further. This article will explore the Office of Federal Contracting Compliance Programs’ affirmative-action regulations and EEOC’s regulations implementing §501 of the Rehabilitation Act. It will discuss some of the requirements and also discuss whether both of these regulations are subject to a successful constitutional challenge

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No Punitive Damages under the GCSPA: What Employment Litigators should Know about the Georgia Supreme Court's Recent Decision

by Benjamin I. Fink and Daniel H. Park, *Berman Fink Van Horn P.C.*



In the digital age, unfair competition cases between employers and former employees often involve computer misconduct and claims under the state and federal statutes that regulate such behavior. One such statute is the Georgia Computer Systems Protection Act, O.C.G.A. § 16-9-90, et. seq. (“GCSPA”).

The GCSPA is a criminal statute prohibiting computer theft, computer trespass and other computer related misconduct. The GCSPA also allows for civil remedies for violations of its provisions, providing that “[a]ny person whose property or person is injured by reason of a violation of any provision of this article may sue therefor and recover for any damages sustained and the costs of suit.”

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The logo for Robly, featuring the word "Robly" in a bold, sans-serif font. The letter "o" is stylized with a white dot in the center, resembling an eye or a camera lens.