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LEGAL AND LEGISLATIVE UPDATE

The following is provided as a complimentary service to the firm's clients. It is designed to assist the reader in keeping informed of selected developments in employment law. It is not intended to be nor is it a treatment of all new developments in the field of labor and employment law. Applicability to a particular situation depends upon an investigation of the specific facts and more exhaustive study of the applicable laws than can be provided in this format. This summary is not intended to be a substitute for legal advice.

Florida

Minimum Wage Increase

Florida's minimum wage increases by 6-cents on June 1, 2011 to \$7.31.

Florida's Fourth District Court of Appeals Allowed Sexual Harassment Tort Claim

A receptionist at a hair salon complained that the owner touched her inappropriately on many occasions, essentially making her life miserable. She filed a sexual harassment charge with the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act and the Florida Commission on Civil Rights. Without waiting for the EEOC determination, she filed in state court, charging several torts. She claimed the employer had negligently retained and supervised her harasser, and that it was vicariously liable for the owner's

behavior. She also sued the owner himself for battery. The employer countered that plaintiff was actually complaining about sexual harassment and discrimination, so she should have sued under the civil rights laws. The judge agreed, and he dismissed her claims. He also awarded attorney's fees and costs to the employer. The plaintiff appealed to the 4th District Court of Appeals. The Court ruled that the trial judge's dismissal of the plaintiff's complaint improperly foreclosed her from pursuing her tort claims against the employer. Further, they said Florida law permits a plaintiff to state as many claims as she has in the same lawsuit. The tort complaints can proceed and plaintiff can add her Title VII and Florida Civil Rights Act complaints when the EEOC completes its investigation. Plaintiff's tort complaints were sent back to the trial court for reconsideration. *Gerber v. Vincent's Men's Hairstyling*, No. 4D09-5059 (Fla. 4th DCA March 30, 2011)

Miscellaneous

Signed Releases Don't Prohibit EEOC from Obtaining Monetary Relief

Former employees of a shipping company on whose behalf EEOC filed a racial discrimination action each signed a waiver when they were laid off releasing the company from all claims. All of these employees had lost their jobs when the company discontinued its domestic services, and they all participated in voluntary separation programs negotiated by their union that required them to sign a release of claims against the company in exchange for an increased payout and extended benefits. The employer defended that the EEOC was not permitted to seek monetary relief when employees voluntarily signed releases. The Court disagreed. However, the Court refused to permit employees who intervened in the EEOC's case to proceed with their individual claims regardless of the fact that some of them had EEOC charges pending against the company at the time. *EEOC v. DHL Express (USA)*, No. 10 C 6139 (N.D. Ill., 4/7/11)

Department of Labor Says, "Yup, There's an App for That"

The U.S. Department of Labor announced the launch of its first application for smart phones, a timesheet to help employees independently track the hours they work and determine the wages they are owed. Available in English and Spanish, users conveniently can track regular work hours, break time and any overtime hours for one or more employers. This new technology is significant because, instead of relying on

their employers' records, workers now can keep their own records. This information could prove to be problematic for employers during a Wage and Hour Division investigation when an employer has failed to maintain accurate employment records.

The free app is currently compatible with the iPhone and iPod Touch. The Labor Department will explore updates that could enable similar versions for other smartphone platforms, such as Android and BlackBerry, and other pay features not currently provided for, such as tips, commissions, bonuses, deductions, holiday pay, pay for weekends, shift differentials and pay for regular days of rest.

For workers without a smart phone, the Wage and Hour Division has a printable work hours calendar in English and Spanish to track rate of pay, work start and stop times, and arrival and departure times. The calendar also includes easy-to-understand information about workers' rights and how to file a wage violation complaint.

Hostile Work Environment and Harassment Claims not Viable under USERRA

Pilots who alleged that Continental Airlines Inc. subjected them to harassment because of their military service failed to state a viable claim under the Uniformed Services Employment and Reemployment Rights Act because the act does not provide a cause of action for a hostile work environment. *Carder v Continental Airlines, Inc.*, No. 10-20105 (5th Cir. 3/11)