



Labor & Employment Law Section Newsletter

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Supreme Court Decides Donning and Doffing Case

By Rachel Silverstein, Esq.

On January 27, 2014, the United States Supreme Court announced its decision in *Sandifer vs. United States Steel Corp.*, 134 S. Ct. 870 (2014). U.S. Steel employees filed suit under the Fair Labor Standards Act ("FLSA") for back pay for time spent donning and doffing various pieces of protective gear necessary to work in the employer-defendant's steelmaking facilities.

The FLSA, 29 USC §203(o), allows parties to bargain for whether time spent changing clothes at the beginning or end of each workday is compensable. In this case, the parties had a collective bargaining agreement that stated that time spent

"changing clothes" was non-compensable. However, the employees argued that the donning and doffing of protective gear did not qualify as "changing clothes."

The Court examined prior FLSA donning and doffing cases and evaluated the possible meanings of "changing" and "clothes." The Court concluded that the statutory context of the FLSA demonstrates that "clothes" was intended to include all items necessary for job performance, including the protective gear at issue in this case. Accordingly, the employees were not entitled to back pay under the FLSA for changing in or out of their protective gear.

Amended Section Bylaws

By Edwin A. Keller, Jr., Esq.

For those of you unable to attend the Section's December 5, 2013 General Membership Meeting, the Section's Bylaws were amended by a unanimous vote of the quorum present. These Bylaw changes were part of the Executive Committee's required annual review of the mission, goals, objectives and

priorities of the Section and recommendations to the General Membership for any needed changes. The Section's Amended Bylaws were subsequently approved by the State Bar Governors. You can access a copy of the Amended Bylaws from the Section's page of the State Bar's [website](#).

CLE Q&A with the Reno Magistrate Judges on April 10, 2014

By Rebecca Bruch, Esq.

Please join us on April 10, 2014 from noon to 1:30 for a Q&A with Reno Magistrate Judges, the Honorable Valerie Cooke, the Honorable William Cobb, and the Honorable Robert McQuaid. The Judges will be leading us in a discussion of recurring discovery issues in employment cases. The event will be held in the jury assembly room at the Bruce Thompson Federal Courthouse located at 400 S. Virginia Street, Reno, NV. 1.5 hours of CLE have been approved.

There will be no charge for the event, and lunch will be provided. Registration is through the Nevada State Bar website, located at nvbarcle.org. Call Rebecca Bruch at Erickson, Thorpe and Swainston if you have questions – 775-786-3930.

Published?

The Labor and Employment Section is currently accepting submissions for its next newsletter. If you have a topic you would like to write about, please contact Montgomery at Montgomery.paek@jacksonlewis.com

Meet Your New Board!



Edwin A. Keller, Jr.
President
Partner at Kamer Zucker
Abbott
Management-side employ-
ment and labor law



J.P. Kemp
Vice-President/President-Elect
Partner at Kemp & Kemp
Employee-side employment
and labor law



Rachel Silverstein
Secretary
Associate at Fox Rothschild
Management-side employ-
ment and labor law



Bryan J. Cohen
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Associate at Kamer Zucker
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ment and labor law



Rebecca Bruch
Northern Nevada Chair
Partner at Erickson, Thorpe &
Swainston
Management-side employ-
ment and labor law



Jacquelyn S. Leleu
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Partner at McDonald Carano
Wilson
Management-side employ-
ment and labor law



Montgomery Y. Paek
Membership Chair
Associate at Jackson Lewis
Management-side employ-
ment and labor law

Labor & Employment Section Newsletter

Message from the Chair

By Edwin A. Keller, Jr., Esq.

Welcome to the first issue of the Labor & Employment Section's Newsletter! I hope you will find it to be a useful tool for keeping up to date with the Section's activities and events, as well as a source of practice-related information and insight from contributing authors.

Section members will receive an e-mail from the State Bar with a link to each new issue of the Newsletter, which will also be accessible to the public on the Section's page of the State Bar's website.

Please send the Executive Committee feedback and suggestions concerning the Newsletter by way of the Section's Membership and Communications Subcommittee Chairperson, Montgomery Paek, who is responsible for the Newsletter's publication. Those interested in contributing short articles and case summaries, as well as anyone wishing to serve as Associate Editors of the Newsletter should also contact

Montgomery via e-mail at Montgomery.Paek@jacksonlewis.com.

I am also pleased to announce the launching of the Section's e-journal called the Nevada Practitioners' Journal of Labor and Employment Law. It is designed to enhance the knowledge of Nevada's labor and employment law practitioners, as well as foster the advancement of the fields of labor and employment law through the professional exchange of ideas and critical analysis. The target publication date is September 30, 2014. If you are interested submitting an article or serving as an Associate Editor, please see the Newsletter article on the Journal's inaugural volume for more information.

In the next issue of the Newsletter, please look for information concerning the election of new Section Executive Committee members to be held in June after the Section's next CLE program.

Newsletter Editors

By Montgomery Y. Paek, Esq.

As you are now well-aware, the Labor & Employment Section has just launched its inaugural issue of this Newsletter. We hope that the Newsletter will grow into the primary means of communication with the membership as well as becoming a valuable resource for all labor and employment law practitioners. In this regard, we are currently seeking

articles and submissions regarding the latest developments or interesting issues in labor and employment law. Additionally, we are also seeking Associate Editors to help update and maintain the Newsletter. If you are interested in submitting articles or becoming an Associate Editor, please email Montgomery.Paek@jacksonlewis.com.

Spread the Word! Renew Your Section Membership and Encourage Your Colleagues to Join

By J.P. Kemp, Esq.

Now is the time to remember to renew your membership in the Section on Labor and Employment. At a mere \$25.00 for the next year, the Section dues are an excellent value. You will have the opportunity to join your colleagues for informative continuing legal education (CLE) presentations that are scheduled throughout the year at reduced cost, and in some instances at no cost. Recent

favorite CLE presentations have included Nevada Wage and Hour Employment Update and Ask the Magistrates. Additionally, social gatherings put on by the Section offer a terrific opportunity to get together and get to know your colleagues in an informal and friendly setting. Now is an excellent time to ask your colleagues at work and opposing counsel on the cases

you are working on if they are members of the State Bar of Nevada Section on Labor and Employment. If not, encourage them to join. We look forward to seeing everyone at our CLE and social gatherings in 2014!

Seeking Articles and Associate Editors for the Inaugural Volume of the Nevada Practitioners' Journal of Labor and Employment Law

By Edwin A. Keller, Jr., Esq.

Join your colleagues and be part of the team working to successfully launch the newly created Nevada Practitioners' Journal of Labor and Employment Law. This e-journal is a collaborative effort of the Section and the State Bar's Publications Department and will be published on the State Bar's website.

Article submissions are being accepted now through June 30, 2014. Articles of any length will be considered, but should not generally exceed eighty (80) double-spaced, letter size pages

with one inch margins. Topics should focus on labor and employment issues of interest to legal professionals in Nevada, including those related to the practice of law in Nevada's state court system, the United States District Court for the District of Nevada and the United States Court of Appeals for the Ninth Circuit.

Selected article authors will work with the Section and the Bar's Publication Department to finalize their articles for a targeted publication date of September 30, 2014.

The Section's Executive Committee is also seeking candidates willing to serve as Associate Editors of the Journal. Up to ten (10) such Associate Editors will be appointed to work with article authors and the Bar's Publication Department to finalize selected articles for a targeted publication date of September 30, 2014.

Article submissions and expressions of interest in serving as an Associate Editor should be sent via e-mail to the Section's Chair at ekeller@kzalaw.com.

Next Section Executive Committee Meeting

The Executive Committee is scheduled to meet again on March 25, 2014 at 5:30 p.m. in the offices of Kameron Zucker Abbott. Any General Member of the Section is able to attend meetings of the Executive Committee. Advance notice is requested to make sure appropriate meeting space is available.

Amicus Brief Standing Committee Update

By Edwin A. Keller, Jr., Esq.

The Executive Committee is hard at work on completing a draft of the policies and procedures that will govern the Section's soon-to-be-implemented Amicus Brief Standing Committee. As discussed in Section 11 of the Amended Bylaws, the Amicus Brief Standing Committee assists when called upon by the Executive Committee to respond in a timely and appropriate manner to all written requests and/or notices from the Nevada Supreme Court for legal analysis or an amicus brief on labor and employment law issues presented to the Executive Committee by the Court.

The Amicus Brief Standing Committee is designed to consist of not more than ten (10) members appointed by the Executive Committee for three (3) years terms. The Executive Committee is charged with making all reasonable efforts to ensure that the composition of the Amicus Brief Standing Committee is as equally composed of defense-side and plaintiff-side practitioners.

If you are a General Member of the Section interested in providing input concerning the Amicus Brief Standing Committee's policies and procedures or would like to be considered for one of the Amicus Brief Standing Committee member positions, please contact the Section's Chair at ekeller@kzalaw.com.