



Labor & Employment Law Section Newsletter

Volume 1, Issue 2

May 2014

Inside this issue:

Upcoming Events 1

General Membership Meeting and Agenda 1

Nominations for Officer Positions 1

Executive Board 2

Journal Updates 2

Receiving Content 2

On the Horizon 3

Passing it Along 3

Contributors Wanted 3

Recent EMRB Cases of Note 4

Upcoming Events

June CLE Seminar, General Membership Meeting, Section Officer Elections and Social!

By Edwin A. Keller, Jr., Esq.

Please block your calendars for the afternoon of Thursday, June 19, 2014 from 3:00 p.m. to 5:30 p.m. to participate in three important section events to be held at the Hard Rock Hotel & Casino with a bit of socializing and fun afterwards.

The afternoon starts with a section CLE presentation on **Practicing Before the NERC and the EEOC**. We are very proud to have as guest presenters NERC Administrator Kara Jenkins, NERC Chief Compliance Investigator Michael Baltz, EEOC Local Director Amy Burkholder, EEOC Regional Attorney Anna Park and EEOC Intake Supervisor Chase White. Please [visit the state bar's website to register](#) for this very informative CLE event. Section members will receive a 50 percent discount for this CLE. For our northern Nevada members who wish to participate in the CLE and/or general membership meeting, there will be an audio feed to the state bar's Northern Nevada Bar Office.

Immediately following the CLE presentation, we will have a short section general membership meeting and our section elections, during which you will have the chance to help elect the new section officers who will join our Chairperson-Elect,

JP Kemp, for two-year terms. The seven officer positions to be filled are: Vice Chairman, Secretary, Treasurer, CLE Subcommittee Chairperson, Membership and Communications Subcommittee Chairperson, Journal Subcommittee Chairperson and Northern Nevada Representative.

Afterwards, you are invited to join your fellow section members for some appetizers and drinks on the Pink Taco's patio! The menu by Chef James Mendoza will include: warm tortilla chips and salsa, guacamole, queso fundido rajas, Vegas quesadillas, churrasco skewers, taquitos, asada fries and honey chipotle wings. ([Please note that you must RSVP separately for this social event via the section's webpage](#) on the state bar's website by June 9, 2014.)

General Membership Meeting and Agenda

By Edwin A. Keller, Jr., Esq.

Pursuant to Article IV of the section's bylaws, written notice of the section's first general membership meeting for 2014 is hereby given. The meeting will take place on June 19, 2014 at approximately 4:30 p.m. at the Hard Rock Hotel & Casino in Artist Halls 1-2.

The agenda for the general membership meeting is as follows: (1) Consideration of the state bar's requested amendments to the section's bylaws addressing dues, CLEs and legislation; (2) Update on the section's Amicus Brief Standing Committee; (3) Section newsletter and journal reports; (4) financial report; and (5) election of new section officers.

Nominations and Expressions of Interest for Officer Positions

The section is now accepting nominations and expressions of interest for the seven officer positions to be elected on June 19, 2014. Each position has a two-year term. Please submit your nominations and expressions of interest to the section's Membership Chairperson, Montgomery Paek, at mpaek@littler.com. For more information concerning the duties of these positions, please see Article VI of the section's bylaws.

Labor and Employment Law Section Executive Board



Edwin A. Keller, Jr.
Chairperson
Partner at Kamer Zucker
Abbott
Management-side
employment and labor law



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



Rachel Silverstein
Secretary
Associate at Ogletree
Deakins
Management-side
employment and labor law



Bryan J. Cohen
Treasurer
Associate at Kamer Zucker
Abbott
Management-side
employment and labor law



Rebecca Bruch
Northern Nevada
Representative
Partner at Erickson, Thorpe &
Swainston
Management-side
employment and labor law



Jacquelyn S. Leleu
CLE Subcommittee
Chairperson
Partner at McDonald Carano
Wilson
Management-side
employment and labor law



Montgomery Y. Paek
Membership and
Communications Chairperson
Associate at Littler Mendelson
Management-side
employment and labor law

Communications News

Journal Updates

By Edwin A. Keller, Jr., Esq.

First Associate Editor of the Nevada Practitioners' Journal of Labor and Employment Law Appointed

Please help us welcome William Werner as the first Associate Editor appointed to the Nevada Practitioners' Journal of Labor and Employment Law. Mr. Werner is a seasoned attorney and an Associate Professor at UNLV's College of Hotel Administration. He is a welcome addition to the team working to launch the inaugural issue of the Journal.

The section is hoping to secure at least three additional Associate Editors. If you are interested in serving as an Associate Editor, please e-mail the section's Chairperson at ekeller@kzalaw.com before July 1, 2014.

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

We are pleased to have a number of section members already committed to preparing articles for the first volume of the newly created Nevada Practitioners' Journal of Labor and Employment Law and are seeking additional article submissions and expressions of interest.

Article submissions are being accepted now through June 30, 2014. Articles of any length will be considered, but should not generally exceed 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 Publications Department to finalize their articles for a targeted publication date of September 30, 2014.

Article submissions and expressions of interest should be sent via e-mail to the section's Chairperson at: ekeller@kzalaw.com.

Receiving Content?

By Montgomery Y. Paek, Esq.

Some Labor & Employment Law Section members did not receive our last newsletter, which was distributed by the state bar via e-mail. The state bar uses Constant Contact to electronically distribute newsletters and other bar-related information. Certain members may have firewall or security programs that block emails from Constant Contact. These members can remove this block by telling their security system that email from constantcontact.com is "OK" to receive or by putting Constant Con-

tact on a whitelist or "safe" list. Email from Constant Contact can be found by the following envelope characteristics for whitelisting: @in.constantcontact.com or @in.confirmedcc.com. Members are also encouraged to white list publications@nvbar.org. Should any member continue to experience difficulty in receiving the newsletter, please contact the state bar's Publication Department or Montgomery Paek at mpaek@littler.com.

On the Horizon

Nevada Supreme Court to Resolve Issue of State Exemptions to Minimum Wage

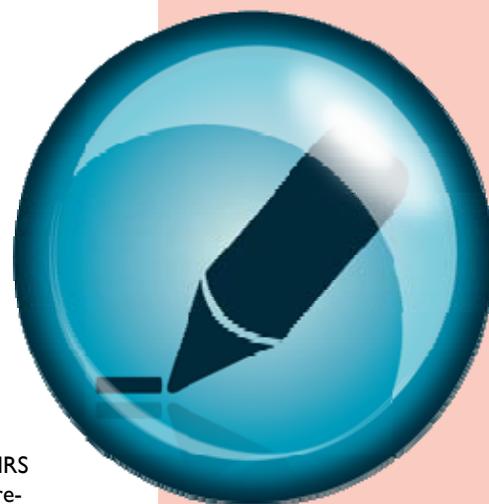
By Bryan J. Cohen, Esq.

The Nevada Supreme Court is expected to rule shortly on the issue of whether the exemptions to the payment of the state-mandated minimum wage contained in NRS 608.250 were invalidated by the passage of the constitutional amendment that added Article 15, Section 16 to the Nevada Constitution. See *Thomas v. Yellow Cab Corp.*, No. 61681 (Nev.). Under NRS 608.250(2), certain occupations are exempt from the payment of the state-mandated minimum wage, such as casual babysitters, certain domestic service employees, commissioned outside salespersons and taxicab drivers. In 2006, the citizenry of Nevada passed a ballot initiative amending the Nevada Constitution to provide for an increase in the state minimum wage relative to the federal minimum wage. Article 15, Subsection 16 of the Nevada Constitution sets forth the state minimum wage and the provisions under which the minimum wage shall be in-

creased. It further provides that the minimum wage only applies to “employees,” which does not include persons “under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days.” The constitutional provision makes no reference to the exemptions provided in NRS 608.250 (2).

In *Thomas*, a class of taxicab drivers filed suit claiming their employer failed to pay them the minimum hourly compensation required by the Nevada Constitution. The District Court dismissed the case, having found NRS 608.250(2) exempted taxicab drivers from the payment of minimum wage. In their appeal to the Nevada Supreme Court, the taxicab drivers argue that NRS 608.250 is inapplicable as their claim arises from a failure to pay the minimum wage under Nevada’s

Constitution. Alternatively, the appellants assert that the constitutional amendment implicitly repealed the provisions of NRS 608.250(2). In response, the employer argues that the amendment to the Nevada Constitution made no reference to NRS 608.250, and that when Nevada voters went to the polls they were not informed, nor was it their intention, that their vote would be repealing or amending NRS 608.250. The Nevada Supreme Court heard oral argument in the case on October 8, 2013. The Court’s pending decision should ultimately resolve the conflict between the Nevada Constitution and NRS 608.250 that has existed for nearly a decade.



Contributors Wanted!

By Montgomery Y. Paek, Esq.

Do you know of a pending case decision, regulation or other event that would be of interest to the members of the Labor and Employment Law Section? If so, become a content contributor to *On the Horizon*, a new section of the Section’s Newsletter.

Or, if you know of a recent order/decision or have a practice tip that would be useful to the members of the Labor and Employment Law Section, become a content contributor to *Passing It Along*.

Email your submissions to: Montgomery Paek at mpaek@littler.com.

Passing it Along

Subpoenaing Pre-Employment and Post-Employment Personnel Records

By Edwin A. Keller, Jr., Esq.

Several years ago, in a contentious sexual harassment and gender discrimination case, U.S. Magistrate Judge Lawrence Leavitt issued a discovery order addressing the standards associated with subpoenaing pre-employment and post-employment personnel records from third-party companies with whom the plaintiff worked. See *Cannata v. Wyndham Worldwide Corp.*, No. 2:10-cv-00068-PMP-LRL, 2011 WL

3794254 (Aug. 25, 2011). Finding plaintiffs have a privacy interest in such personnel records, Magistrate Judge Leavitt held they are not discoverable unless the defendant makes a specific showing of relevancy and the inability to secure the sought after information by less intrusive means. *Id.* at *2-4.

Recently, a rationale similar to the one set forth in the *Cannata* discovery order was utilized

by the Discovery Commissioner for the Eighth Judicial Court of Nevada when resolving a dispute over pre-employment and post-employment personnel records. Thus, employment law practitioners facing similar disputes, whether in state or federal court, may want to review the *Cannata* discovery order and related legal authority.



Recent EMRB Cases of Note

By Edwin A. Keller, Jr., Esq.

The EMRB is a division of the Nevada Department of Business and Industry involved in the process of collective bargaining and labor relations for local government employers, local government employees and employee associations or unions. It provides resolution of unfair labor practices; resolution of issues related to mandatory bargaining subjects; resolution of disputes related to recognition and determinations regarding appropriate bargaining units.

Pamela Vos v. City of Las Vegas and Las Vegas Peace Officers Association, AI-046000

Ms. Vos filed a complaint against her employer, the City of Las Vegas, claiming that her layoff in 2010 was in violation of law. Specifically, she alleged that the layoff was not in compliance with a prior Board order from the 1990's about the reclassification of her Senior Corrections Officer position, that the City had engaged in bad faith bargaining over the layoff, that her layoff was due to discrimination on the basis of her age and race, and that

her layoff was due to personal reasons. Her complaint further alleged various violations of federal and state law as well as breach of contract claims. The complaint also was against her union, the LVPOA, alleging that they breached the duty of fair representation in their representation of her with respect to her layoff. The Board found in favor of the employer and union in all respects. Because the case touches on so many areas, the opinion, which is seventeen pages long, is a primer on many aspects of EMRB law and therefore is a must read for those either representing claimants or those defending similar allegations. [The link to this Order is attached here.](#)

Clark County Deputy Marshals Association v. Clark County, AI-046058

In this case the Board determined that Clark County Deputy Marshals were not local government employees and therefore were not entitled to collective bargaining rights under NRS 288. In its decision, the Board reaffirmed its prior holding that courts are not local government employers and thus employees who work for the courts are not local government employees.

The Board also rejected a request to adopt what is known as the Washington model, which would have permitted at least some limited degree of collective bargaining over those items within the control of the County. The Board concluded that it is bound by the act and therefore could not divide the list of mandatory subjects of bargaining into those which could be bargained and those which could not. Instead, the Board opined that the proper remedy would be a change to the act itself. The Board also stated that adopting the Washington model would tend to infringe upon the inherent rights and powers of the courts as expressed in both a prior EMRB decision as well as a recent Nevada Supreme Court opinion involving the City of Sparks and its courts.

The above case summaries are reprinted with permission from the February 2014 and April 2014 issues of the Local Government Employee-Management Relations Board E-Newsletter. The Section wishes to express its thanks to EMRB Commissioner Bruce K. Snyder for his assistance in providing us access to the above case summaries.

Newsletter Editors

By Montgomery Y. Paek, Esq.

The Labor & Employment Section Newsletter is still in need of editors. Associate Editors will coordinate with contributors and work with the designers and publishers at the State Bar of Nevada in finalizing the newsletter.

If you are interested in becoming an Associate Editor, please email Montgomery at mpaek@littler.com.