OVB LAW & CONSULTING, S.C.

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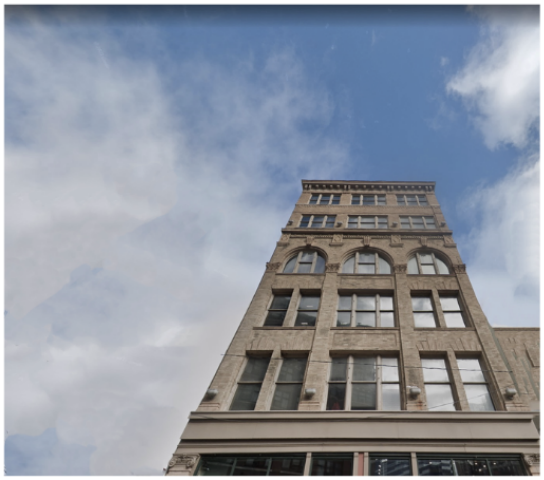
NEWSLETTER

Monthly Newsletter - Your Legal Nook!

What's in this Issue?

Firm Update:

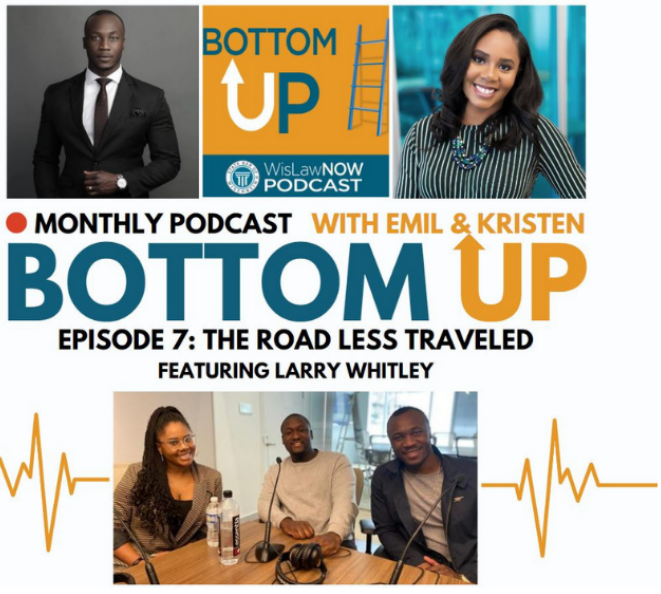


As the snow melts, we're gearing up for the move into our new building.

Keep an eye out for future issues of this newsletter to find out more about our new office!

In the latest episode of the Bottom Up Podcast, co-hosts Kristen Hardy and Emil Ovbiagele chat with Attorney Larry Whitley about his journey becoming in-house counsel for Northwestern Mutual. Larry began working on billion dollar deals in real estate almost immediately after law school. His advice to young lawyers? "There's no wrong path, just your path," Whitley states.

This podcast is available on all platforms, and don't forget to click the link below to subscribe!



LEGALLY ACTIONABLE RETALIATION IN THE WORKPLACE

Workplace retaliation is a common basis of discrimination in employment cases, and state and federal laws provide protections for employees who oppose illegal discriminatory practices. Employees have the right to communicate with supervisors or managers about discrimination, inquiring about salary information, resist sexual advances, request accommodation for disabilities or religious practices, and file a discrimination case without fear of retaliation.

Though this is not an exhaustive list of all protected activities, it serves as an example of what actions employees and former employees can engage in and be protected from receiving retaliation from their employers. Retaliation can take many forms, including demotion, reprimand, transfer, threat, scrutiny, and termination, and employers who engage in such behavior can be held liable. These types of adverse actions can lead to affected employees filing a claim with the ERD and/or EEOC.

To preserve their claims, employees are required to file a claim with the ERD and/or EEOC within 180 days (or up to 300 days in some cases if the retaliation violates both state and federal law).

Though the employer is well within their rights to give honest performance evaluations, lying on the evaluation or unfairly scrutinizing an employee after engaging in a protected activity could lead to claims of retaliation.

To prove retaliation, employees must provide thorough documentation, including dates, times, and people involved. Keeping track of conversations, emails, calls, documents, or other relevant events is crucial, and witnesses who can testify about the event in question can also strengthen a case. It is also important to remember that participating in a discrimination case is a protected activity, so witnesses can feel safe they are covered by the same laws.

Workplace discrimination and retaliation can lead to low morale, low productivity, and poor job satisfaction, but there are ways to address the problem. Mutual respect and honest communication can go a long way. Further timely, fair, and proper investigations can also help stem or prevent continued discrimination and prevent acts of retaliation. At our law firm, we offer free legal consultation with our employment attorneys who can help employees and employers, alike, navigate their legal options. Call us today to schedule an appointment.

"ONE OF THE MOST SIGNIFICANT ADVANTAGES OF CHAT GPT IS ITS ABILITY TO LEARN AND ADAPT TO NEW CONTEXTS AND DOMAINS. UNLIKE TRADITIONAL CHATBOTS, WHICH REQUIRE MANUAL PROGRAMMING AND UPDATING, CHAT GPT CAN CONTINUALLY IMPROVE ITS RESPONSES THROUGH EXPOSURE TO NEW DATA AND USER INTERACTIONS."

— -CONAN MERCER, "THE RISE OF CHAT GPT: THE FUTURE OF CONVERSATIONAL AI"

ChatGPT IN THE LEGAL FIELD

The legal profession has undergone several changes in the recent years with the advent of technology. Although lawyers have increasingly come to rely on technology over the past decade, the use of technology in the law has always been dependent on the minds of human lawyers. Artificial Intelligence, however, aims to disrupt the legal community.

By the time this blog is published, most readers will have already seen the swam of articles touting Chat GPT as the revolutionary tool that will change the way we learn, write, read, and think. It's ability to understand natural language and respond in a coherent and accurate manner is astonishing and a little off-putting for most. And while Chat GPT and other artificial intelligence bots may allow content creators, marketing professionals, and students to cut corners on assignments, the effect on the legal community is not likely to be as life altering as some suggest.

That's not to say that artificial intelligence can't be a useful tool for attorneys in crafting contracts and developing arguments for litigation. The legal world is already abound with technology that will propose alternative contract clauses and auto-fill legal templates for attorneys, making task management and proof-reading less cumbersome. But the difference between that technology and Chat GPT is that the former still requires a human legal mind to analyze the final product in light of recent legislation and case law. Rubber-stamped legal documents drafted by Chat GPT can't offer such peace of mind, at least not yet.

Until technology provides us a way to ensure that every piece of information stored on the world wide web is true and accurate, information which Chat GPT and other A.I. sources rely on in crafting their written work, the chance for error is too high to place total confidence in a robot's legal analysis and contract drafting abilities . In any event, even if we do get there at some point in the future, someone will need to write the laws and policies governing the use of artificial intelligence in the legal profession, and that someone is likely to be a lawyer.

IMPACT OF NLRB DECISION ON EMPLOYEE CONFIDENTIALITY AND NON-DISPARAGEMENT CLAUSES

The National Labor Relations Board (the "Board") recently issued a decision that has profound impacts on the validity of confidentiality and non-disparagement clauses in employment contracts, McLaren Macomb et al, Case 07-CA-263041. The case involved an employer that offered severance agreements to some employees it had permanently laid off. The severance agreement, which conditioned payment of a monetary severance upon the employee's signing of the agreement, contained among other things, a confidentiality clause and a non-disparagement clause. The language of the clauses at issue was as follows:

Confidentiality Agreement. The Employee acknowledges that the terms of this Agreement are confidential and agrees not to disclose them to any third person, other than spouse, or as necessary to professional advisors for the purposes of obtaining legal counsel or tax advice, or unless legally compelled to do so by a court or administrative agency of competent jurisdiction.

Non-Disclosure. At all times hereafter, the Employee promises and agrees not to disclose information, knowledge or materials of a confidential, privileged, or proprietary nature of which the Employee has or had knowledge of, or involvement with, by reason of the Employee's employment. At all times hereafter, the Employee agrees not to make statements to Employer's employees or to the general public which could disparage or harm the image of the Employer, its parent and affiliated entities and their officers, directors, employees, agents, and representatives.

In reviewing the two clauses against the protections of the National Labor Relations Act ("NLRA"), the Board held that both clauses were unlawful for causing chilling tendencies on employees' rights, namely the employees' rights to discuss terms and conditions of employment with co-workers and their rights to critique the employer and discuss ongoing labor disputes. After finding the clauses unlawful, the Board went on to rule that merely offering an agreement containing these clauses constituted an unlawful interference with employees' statutory rights and that the agreement becomes void as a whole because of the invalid clauses.

The Board's ruling in McLaren is bound to have significant reach on the viability of similar confidentiality and non-disparagement clauses in any employment contract, not just severance agreements. Further, despite the common conception that the NLRA applies only when there is an employee union, the NLRA has a far reach and applies in employment settings even when there is no unionization present. As such, an employer offering employment or severance contracts containing confidentiality or non-disparagement clauses should proceed with caution in light of this new ruling.

To employers, we recommend that you have counsel review your current employment contracts and severance agreements for revisions in line with the new NLRB ruling. At OVB Law & Consulting, S.C., our experienced employment attorneys are able to offer you insight in to the applicability of the NLRA to your agreements, and draft and propose revisions to your current contracts to best reduce the possibility that you end up like the employer in McLaren (who ended up being ordered to reinstate all the furloughed employees and compensate them for the lost wages and other damages incurred). Call us today to set up an appointment.