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OVB LAW & CONSULTING, S.C.

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NEWSLETTER

Monthly Newsletter - Your Legal Nook!

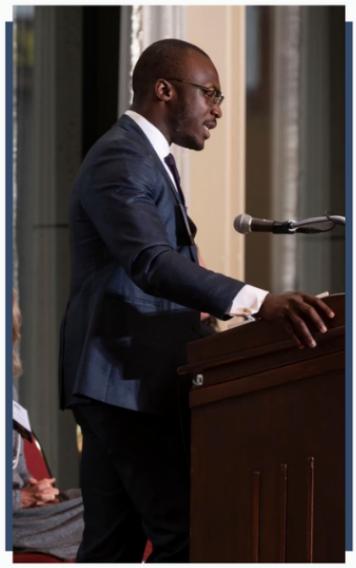
What's in this Issue?

Firm Update:

EMIL OVBIAGELE

President of the

MBA
1858
MILWAUKEE BAR ASSOCIATION



Congratulations to the newly elected President of the Milwaukee Bar Association, Attorney Emil Ovbiagele, for making history as the youngest president of the association!

This is a remarkable achievement and a testament to his hard work, dedication, and commitment to excellence in the legal profession. This appointment is not only a personal accomplishment, but also a significant milestone for diversity and inclusion in the legal field.

Tune in to the latest episode of the Bottom Up Podcast!

In this episode, your hosts, Emil Ovbiagele and Kristen Hardy, engage in a compelling discussion with civil rights litigator, Atty. Nate Cade, founder of Cade Law Group.

With a distinguished record of high-profile cases under his belt, Atty. Cade exemplifies the essence of owning one's career.

His advice to the next generation of lawyers? Take ownership of your career!

EMPLOYEE NON-COMPETE AGREEMENTS MAY BE DEEMED A VIOLATION OF U.S. LABOR LAW

Nearly one-in-five Americans are bound by a non-compete agreement.[1] A non-compete agreement is an agreement between an employee and employer that "prohibits the employee from competing with the business directly or indirectly for a specific duration of time after their employment has ended." These agreements are typically signed prior to an employee starting their position with the company and are often presented as a condition of employment.

Companies say non-compete agreements are a critical way to promote competition and protect their trade secrets. Conversely, worker advocates say, "the agreements suppress wages and make workers less mobile." In January, the U.S. Federal Trade Commission ("FTC"), proposed a rule that would put an end to companies requiring employees to sign a non-compete agreement as a condition of employment. This proposal is currently pending before the FTC.

The FTC was expected to provide a decision this year; however, they received nearly 27,000 comments from the public on the proposed rule. Thus, the FTC is now expected to vote in April 2024 for a final rule. If passed, all states across the U.S. would be affected, the rule will preempt any state law that conflicts with the rule. Keep in mind, the proposed rule does not outright ban all non-compete agreements. Instead, a "functional test" to determine whether the agreement prohibits an employer from changing employment or operating their own business will be applied. Additionally, the proposed rule would not only affect future non-competes, but also potentially rescind, or invalidate, current non-competes. The proposed rule would apply to anyone hired to perform work, including employees, independent contractors, interns, and even volunteers.

Recently, General Counsel for the National Labor Relations Board (NLRB), Jennifer Abruzzo authored a memo[2] stating she believes non-compete agreements violate U.S. Labor Laws. General Counsel Abruzzo, who was appointed by President Joe Biden, "acts as a prosecutor and brings unfair labor practice cases to the separate five-member board." Her concern stems from the belief that non-compete agreements stop employees from exercising their rights under Section 7 of the National Labor Relations Act. Specifically, General Counsel Abruzzo believes non-compete agreements interfere with an employee's ability to resign or threaten to resign to secure better working conditions; seek or accept employment with a local competitor to obtain better working conditions; solicit their co-workers to do the same; and to engage in protected activities such as union organizing at an employer's workplace.

This aligns with the concerns raised by many – that is, non-competes are becoming too commonplace, affecting positions requiring little to no education or training, and creating unnecessary barriers to employment.

As General Counsel Abruzzo also recognizes, a complete eradication of non-competes is not likely to be well-received. Thus, there should be exceptions to a bright-line prohibition on non-compete agreements. For example, employers should be able to impose restrictions on competition on individuals having a managerial and ownership interest in the company or in agreements with true independent contractors.

If you are an employer or employee, it is crucial to consult with an experienced attorney to determine if your non-compete agreement is enforceable. Our attorneys at OVB Law & Consulting S.C. have years of experience helping clients review and draft non-compete agreements. Call our office today at (414) 585-0588 to schedule an appointment.

NEW LAWS WILL EXPAND PREGNANCY PROTECTIONS AT WORK

Not long after Mother's Day, working mothers will finally be given the gift of the right to fair treatment and accommodations for pregnancy, childbirth, nursing, and related health conditions. Two major federal laws are soon to go into effect which will provide greater expansion into the rights of pregnant and nursing workers: The PUMP for Nursing Mothers Act ("PUMP Act") and the Pregnancy Workers Fairness Act ("PWFA"). Employers and employees alike need to take note of these new laws and their requirements to ensure workers' rights are not impeded on.

What are the New Requirements?

The PUMP Act is a part of the Fair Labor Standards Act ("FLSA"), and as such applies to employers of all sizes that are otherwise covered by the FLSA. Under the PUMP Act and FLSA, employers are required provide reasonable break time for an employee to express breast milk for their nursing child for up to one year after the child's birth each time the employee has need to express. During this break time, the employee must be either: (i) completely relieved of work duties OR (ii) compensated for the time as hours worked, including for over time hours. Employers must compensate break times the same that it does for other employees. For example, if an employer already offers a paid break time to all employees and a nursing employee uses that time to express their breast milk, then that time must equally be paid.

Additionally, under the PUMP Act, employers need to provide employees space to express, and that space needs to be shielded from view, free from intrusion from co-workers and public, needs to be a functional space for pumping milk (meaning place to sit, flat surface to pump, electrical outlet, sinks nearby, and must have a space to store milk), and CANNOT be a bathroom. Employers with less than 50 total employees can avoid the PUMP Act requirements if they can show that the break time and space requirements would impose an undue hardship. Employers with 50 or more employees, however, cannot avoid the requirements. Consequences for failing to comply with the PUMP Act can be costly for employers, as the PUMP Act expands the remedies available for violations.

The PWFA will apply to all federal, state, and local employers, employment agencies, labor organization AND all private employers who employ 15 or more employees. The PWFA will serve to bridge a gap between current requirements of the Americans with Disabilities Act ("ADA") and the Family and Medical Leave Act to afford employees greater protections when they are pregnant, give birth, or have related medical conditions. The PWFA will require employers to provide "reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee." While what constitutes a "reasonable accommodation" will depend on the facts of each situation, some accommodations can look like light duty, working from home, longer or additional breaks, leave etc. For those familiar with the ADA, this language may seem familiar, but don't be fooled, the requirements of the PWFA include some unique expansions to what constitutes a "qualified employee" to provide even greater protection. In the PWFA setting, an employee who cannot perform essential functions of the job, remains "qualified," when the inability is temporary, performance can occur in the near future, or the inability can be reasonably accommodated.

Some other keys things to keep in mind with the PWFA, employers cannot force an employee to accept an unrequested accommodation, cannot force an employee out on leave if there is another accommodation available, and employers cannot retaliate or coerce an employee for requesting accommodation or opposing practices which violate the PWFA.

When Do these Requirements Start?

The PUMP Act began on April 28, 2023, and the PWFA went into effect on June 27, 2023, so employers and employees alike should be on alert for handling pregnancy, pregnancy-related conditions, and nursing. Our skilled team and employment experts at OVB Law & Consulting, S.C. can help you navigate these new laws and rights for both employers and employees. Contact us today to schedule a consult if you have concerns about the PUMP Act, the PWFA, or any of the rights or obligations thereunder.

INTELLECTUAL PROPERTY RIGHTS AND YOUR BUSINESS

Intellectual property (IP) refers to intangible creations of the human mind that have commercial value. It encompasses various forms of creative works, including inventions, literary and artistic works, symbols, names, images, and designs. Four primary types of IP rights exist: patents, trademarks, copyrights, and trade secrets. Intellectual property rights play a crucial role in fostering innovation, creativity, and economic growth. In today's knowledge-based economy, businesses must understand the importance of protecting their inventions, trademarks, copyrights, and trade secrets.

Patents protect new inventions or technological advancements. They grant inventors exclusive rights to their inventions for a limited period. To obtain a patent, inventors must file a detailed application with the United States Patent and Trademark Office. The application should include a description of the invention's technical aspects and its potential applications. The patent office examines applications to ensure they meet specific criteria such as novelty, non-obviousness, and industrial applicability.

Trademarks are distinctive signs that identify products or services provided by a particular business. They can include words, logos, slogans, and more! Registering a trademark provides legal protection against unauthorized use by others in the same or related industries. Businesses seeking trademark protection must file an application with the appropriate trademark office. The application should demonstrate that the mark is distinctive and not likely to cause confusion with existing trademarks.

Copyrights protect original works of authorship such as literature, music, art, films, software code, and architectural designs. Unlike patents or trademarks, copyrights arise automatically upon creation of the work and do not require registration to be enforceable. However, registering copyrights with relevant authorities strengthens legal protection and provides evidence of ownership. Copyright holders have exclusive rights to reproduce, distribute, display, perform, and create derivative works based on their original creations.

Trade secrets encompass confidential business information that provides a competitive advantage. Examples include formulas, manufacturing processes, customer lists, and marketing strategies. Unlike patents or copyrights, trade secrets are not publicly disclosed. Businesses must take reasonable measures to maintain secrecy and restrict access to trade secret information. This can involve implementing non-disclosure agreements (NDAs) with employees and business partners.

IP violations have significant consequences for both individuals and businesses. They undermine the incentive to create and innovate by depriving creators of the rewards and protections they deserve. These violations can lead to financial losses for rights holders, hinder economic growth, and discourage investment in research and development. To combat IP violations, legal frameworks have been established at national and international levels. These remedies may include injunctions, damages, accountings of profits, and even criminal penalties in some cases. If you are currently facing any instances of infringement or if you wish to enhance the protection of your brand, please contact our office for further assistance.