

# SNIFFEN & SPELLMAN, P.A.

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## LABOR AND EMPLOYMENT ALERT

April 2014

### **National Labor Relations Board Considers Closure of Jacksonville Office**

The National Labor Relations Board's General Counsel, Richard F. Griffin, Jr., has announced that consideration is being given to close the NLRB's Jacksonville, Florida office. The Jacksonville office currently handles cases in Northern Florida and Southern Georgia, and is part of Region 12, which also has offices in Tampa, Miami and San Juan, Puerto Rico.

The NLRB's press release can be viewed at: [NLRB](#)

### **Decline in Federal Employment Lawsuits but One Florida District Still One of the Leading Districts in the Nation for Such Suits**

Federal lawsuits alleging violations of employment laws are down around the country according to data and analysis released by the Transactional Records Access Clearinghouse of Syracuse University. TRAC, as it's also known, monitors and analyzes data regarding the number of suits filed in federal district courts concerning labor and employment law matters. Federal labor and employment laws and matters brought under those laws that were subject of TRAC's analysis include: sex, race, age and other types of job discrimination including retaliatory practices under 42 USC 2000 and 2000e; violations of the Americans with Disabilities Act (42 USC 12101 and 12117); the Fair Labor Standards Act (29 USC 201); job discrimination related to rehabilitation and handicaps (29 USC 791 and 794); the Family and Medical Leave Act (29 USC 2601); and the Uniformed Services Employment and Reemployment Rights Act (38 USC 4301-4335), which concerns protections afforded to service members of the U.S. Military.

According to TRAC the monthly average number of federal employment lawsuits is under 1000 for the first five months of 2014, the lowest this number has been since TRAC has analyzed this data, 2006. The data indicates that the number of federal employment law suits is trending downward since 2011 and that that number is 15.1 percent lower than a year ago.

Notwithstanding this downward trend, the U.S. District Court for the Northern District of Florida, which covers North Central and Western Florida from Gainesville to Pensacola, is one of the leading districts in the nation for federal labor and employment suits on a per capita basis. Indeed, the Northern District of Florida ranked second for the incidence of such suits in the nation and has been generally one of the leading districts for federal employment law suits in the past few years.

More information can be found here: [Syracuse University](#)

## **Paycheck Fairness Act Fails in Congress, but President Obama Makes Equal Pay a Priority**

A measure in the United States Congress that would update the Equal Pay Act, originally enacted in 1963, has failed again due to opposition. The bill, entitled the Paycheck Fairness Act, would have prohibited employers from penalizing or taking some adverse action against employees for discussing their salary or wages and would require the Federal Government to collect information on employees' salaries from employers. While the Paycheck Fairness Act failed in the U.S. Congress, President Obama has used his executive powers to implement the same measures discussed above for those employers that are federal contractors. President Obama's measures prohibit federal contractors from retaliating against employees for discussing their pay and will result in the Department of Labor seeking data from those federal contractors on salaries organized by race and sex.

More information can be found at the following links: [Here](#) and [here](#).

## **OSHA Initiates Texting While Driving Initiative**

The Occupational Safety and Health Administration has launched an initiative designed to raise awareness of the dangers of texting while driving, as well as other distracted driving behaviors. OSHA has also issued a reminder to employers that they have an affirmative responsibility to protect their employees by prohibiting texting and driving. It is a violation of the Occupational Safety and Health Act for an employer to require employees to text and drive or to structure work so that texting and driving is a practical necessity.

For more information on the initiative see: [Distraction](#)

## **From the Lighter Side: Atheist Sues State of NJ Over Vanity Plate**

A New Jersey woman is less than pleased that her request for a vanity license plate advertising the fact that she is an atheist was denied by the state. The plate would have read the word "8theist" but this term was rejected by the state for being "objectionable" under its rules concerning what is appropriate for a vanity plate. She then filed a federal lawsuit, represented by Americans United for the Separation of Church and State claiming that her request for the Atheist plate was inappropriately denied, while other terms related to Christian religions were approved on the New Jersey website which processes vanity plate requests. The basis of the suit is the Establishment Clause of the Constitution and is founded in allegations that the rejection of her vanity plate was demeaning to her religious beliefs.

Story here: [ABC News](#)

## **SCOTUS Holds that Severance Payments are Generally Taxable as FICA Wages**

As a result of an involuntary Chapter 11 bankruptcy, Quality Stores terminated several employees, and provided them severance pay based on the position held and time employed with the company. After paying and withholding FICA taxes, Quality Stores sought a refund based on the proposition that severance pay did not constitute "wages" within the meaning of FICA. The District Court and Sixth Circuit Court of Appeals agreed that severance pay was not wages, and was thus, not taxable. In *United States v. Quality Stores, Inc., Et al.*, the United States Supreme Court reversed the appellate court's decision, holding that most severance payments are taxable "wages" for purposes of the Federal Insurance Contribution Act ("FICA").

The decision can be found here: [Supreme Court](#)

### **Northwestern University Football Team Advances Union Efforts and the Future of College Football Hangs in the Balance**

In late March, the NLRB Region 13 Director issued a landmark decision finding that Grant-in-Aid scholarship football players at Northwestern University were employees under the NLRA, and directed that an election take place. Predictably, the University requested the NLRB to review the decision, and on April 24, 2014, the Board granted the request, finding that the case “raises substantial issues warranting review.” The following day, pursuant to notice, the football players cast their votes whether to unionize, but the ballots will be impounded, and only opened if the Board sides with the players, a decision that could take months.

The NLRB docket can be found here: [NLRB](#)

### **New FMLA Chief Will Focus on More On-Site FMLA Investigations and Systemic Compliance Issues**

As 2014 began, the Department of Labor turned its FMLA enforcement over to a new leader without much fanfare. Helen Applewhaite is the new FMLA branch chief, where she will oversee the development of regulations and other guidance regarding the FMLA and will give direction to DOL investigators on FMLA matters. Ms. Applewhaite has been with the DOL for over 25 years. At a recent conference, Ms. Applewhaite, calling 2014 a “pivotal” year for FMLA enforcement, focused much of her presentation on the DOL’s renewed emphasis on conducting compliance investigations with an emphasis on on-site FMLA visits to ensure compliance. In this regard, she announced that on-site investigations are the new norm, and that employee interviews will become standard practice at on-site visits. She also reaffirmed that the DOL will be focusing its attention on systemic FMLA issues.

Read more here: [FMLA Insights](#)

### **Firm News**

**Terry J. Harmon** was interviewed on April 4, 2014, by WCTV (CBS) for its Eyewitness News at 6 story on sex discrimination cases brought against educational institutions under Title IX. A portion of Mr. Harmon’s interview was aired on Eyewitness News at 6. The story is available at the following link: [WCTV’s Title IX story](#).

### **Past Issues of the Labor and Employment Alert Available on Website**

You may view past issues of the Labor and Employment Alert on the Firm’s website: [www.sniffenlaw.com](http://www.sniffenlaw.com). After entering the Firm’s website, click on the “Publications” page. Our Firm also highlights various articles of interest on our official Twitter feed, @Sniffenlaw.