LIBN: Court puts brakes on Oyster Bay's apprenticeship law

On February 7, 2018 a preliminary injunction was issued against the Town of Oyster Bay, preventing the Town from enforcing apprenticeship program requirements as set forth in the Town Code against private construction projects for the duration of the case.

In a decision of significant economic consequence to every contractor who operates in the Town of Oyster Bay, Meltzer Lippe's Labor & Employment legal team previously won a temporary restraining order against the Town of Oyster Bay, which last September passed an ordinance which imposed a new requirement on contractors and developers seeking to perform work for which a permit is required on commercial properties of 100,000 square feet or more. The Federal Court extended the TRO into the preliminary injunction. This permits all contractors to work on wholly private construction projects of any size within the Town regardless of whether they are affiliated with an apprenticeship program which meets the Town's new requirements.

Meltzer Lippe's litigation and the court's decision has been recognized as a key victory and is strongly supported by Long Island businesses. Both the Association for a Better Long Island and the Long Island Builders Institute have issued public statements supporting the litigation and court's decision. To read the full article, please click on the link below:

https://libn.com/2018/02/08/court-puts-brakes-on-oyster-bays-apprenticeship-law/

The Griggs Fable Ignored: The Far-Reaching Impact of a False Premise

This articlewas published in the Hofstra Labor & Employment Law Journal and can be found by clicking the link below:
http://www.hofstralelj.org/wp-content/uploads/2016/04/Douglas-Final.pdf

Prominent arbitrator Robert L. Douglas, and his son, Jeffrey Douglas, a Meltzer Lippe associate discuss the role of the fable in the landmark Griggs decision.

WESTLAW: Retaliation claims on the rise

Adina Genn form LIBN Interviews Gerald Waters for LIBN – Retaliation claims on the rise.

WESTLAW Waters: Top five "fouls" to avoid during March Madness

Gerald Waters addresses “March Madness” in the workplace.

Thomson Reuters Employment Alert: ERR on the side of Accomodating Pregnant Employees

“Companies would be smart to realize that failure to provide accommodations to pregnant women, or a failure to truly understand what it means to provide these accommodations, could result in pricey lawsuits not just in compensatory and punitive damages if the plainti! wins, but also in attorneys’ fees even if the employer prevails. In contrast, providing accommodations to pregnant women are usually relatively short-term and probably inexpensive for the employer. So why not accommodate?”

The Past Two Years Has Shown A Significant Increase in Costly Wage / Hour Litigation

By Peter A. Schneider

The Federal Fair Labor Standards Act (FLSA), and state law equivalent mandate payment of a minimum wage and payment of time and one half of a non exempt employee's hourly wage for hours worked in access of 40 in a week. The concepts appear straightforward, yet for an increasing number of employers, particularly those in the food industry, the past two years has shown a significant increase in costly wage/hour litigation. All indicators point to a continuation, if not escalation, of this trend for a number of reasons.

First, recovery in a wage hour lawsuit is not limited to a single complaining employee. Typically, suits are filed on behalf of multiple plaintiffs or as a class or collective action. In addition to the recovery of damages equal to the unpaid wages, a successful plaintiff also receives statutory damages (equaling up to 125% of actual damages) and their attorney's fees. Multiple claimants and enhanced recovery have made wage/hour lawsuits a haven for plaintiff's lawyers.

Second, because of a less than stellar history of compliance, the food industry has been targeted by the U.S. Department of Labor (USDOL). "Fact Sheet #2 Restaurants and Fast Food Establishments" on the USDOL website specifies issues for scrutiny and investigation…

Food Industry Targeted

By Peter A. Schneider

The plaintiff's bar and the U.S. Department of Labor (DOL) are targeting the food industry for enforcement of the Fair Labor Standards Act (FLSA). It is important that businesses in the food service industry understand their requirements under the FLSA or risk facing litigation and the associated costs and penalties.

The FLSA and New York State Labor Law, for example, mandate payment of a minimum hourly wage (NYS – $7.15, FLSA $7.25 effective 7/24/09) and payment of overtime at 1½ times the regular hourly rate for hours worked in excess of 40 in a week. An employer who loses a wage/hour claim may pay double the unpaid wages due to a statutory penalty plus interest and the plaintiff's attorney's fees. Worse, many cases involve multiple plaintiffs or a class/ collective action.

Following are key concepts food service businesses should understand…

Employers: Don't Blow Your Employee's Covenant Not to Compete!

By Loretta A. Gasatwirth

Recently, the home health industry has been the Paul worked at a New York insurance brokerage firm for 33 years until his termination in 1995. He was employed pursuant to an employment contract containing a standard covenant-not-to-compete clause. Pursuant to the terms of that provision, Paul promised that for three years following his termination, he would not solicit any of the firm's customers or work anyplace where he would be performing comparable duties. Before the three-year period expired however, Paul earned a position with another insurance brokerage firm where he was in fact engaged in the same type of work. As a result, Paul's previous employer sued for breach of the restrictive covenant clause present in the original employment contract. To the surprise of Paul's employer, Paul won.

The outcome of Paul's case is surely not good news for New York employers who wish to protect their companies from competition by recently terminated employees. Whether termed a restrictive covenant, covenant-not-to-compete, or a non-competition provision, typically an employer will include this type of clause in their employee's employment contracts which forbid the employee from obtaining employment with a competitive company. These clauses are included because terminated employees hold a wealth of valuable and confidential information such as customer lists, trade secrets, and knowledge of the inner workings of a company, all of which could be used to an employer's disadvantage. Although, the inclusion of a restrictive covenant in an employment contract is designed to protect an employer from terminated employees who wished to capitalize on their termination by using the knowledge gained from their previous employment with a new employer, and courts would often enforce them, an employer can unwittingly undermine that enforceability.

Paul was victorious in his lawsuit brought by his previous employer because he was terminated without cause. In New York, when a restrictive covenant is present in an employment contract, the enforceability of that clause turns on whether the employee is terminated with cause or without cause. If the employee is terminated with cause, the restrictive covenant remains wholly enforceable. However, if the employee is discharged without cause, any restrictive covenant is rendered unenforceable by the employer. This rule was made law in 1979 by New York's highest court, the New York Court of Appeals, in Post v. Merrill Lynch, et. al. The Post Court reasoned that it would be unfair to allow an employer to unilaterally destroy an employment contract while at the same time preventing an employee from engaging in his chosen livelihood. Surprisingly, New York is the only State in the country to adopt this rule in its current form.

What about situations where the employer's termination without cause is inevitable, or even seemingly justifiable? Is Post still triggered? Recent decisions suggest that all terminations made "without cause" are treated alike under Post. Even in instances where a factory was forced to shut down, or a where a company was nearing bankruptcy and these companies had no choice but to incur layoffs, courts have held restrictive covenants to be unenforceable since terminations for these reasons did not constitute "cause." The employee did not cause his own firing.

Post is also applicable to non-solicitation agreements, that is, a clause that forbids solicitation of company customers for several years following an employee's termination. It has also been applied to a contract provision withholding employee benefit payments from employees who engage in competition with their employer. The contract provision, termed a "forfeiture-of-benefits" clause, can be rendered invalid when

an employee is terminated without cause.

The Post decision as well as recent cases should send a clear warning to employers who want to protect their businesses. Employment agreements containing covenants not to compete must not only be carefully drafted, but if possible, the employer should terminate an employee pursuant to such an agreement only for cause.

Unfortunately, as with most areas of the law, ambiguities remain. It is still unclear whether a restrictive covenant will stand when an employee is fired without cause pursuant to an employment contract that explicitly allows for such termination. If you have any doubt as to the effectiveness and/or enforceability of your employment contract provisions, it is recommended that you seek advice from an attorney.