

THE EMPLOYMENT LAW AFTERMATH

The background of the top section is a dark blue gradient with silhouettes of several business professionals in a meeting. They are standing around a table, some holding papers, and appear to be in a brightly lit room with large windows in the background, creating a professional and collaborative atmosphere.

with **Manesh Rath**

**AN EMPLOYMENT LAW UPDATE WITH
MANESH RATH
JANUARY 29TH, 2015**

THE EMPLOYMENT LAW AFTERMATH



with Manesh Rath

Please Don't Forget to Dial-In:

Conferencing Number: (800) 768-2983

Access Code: 434 4318

(View the slides via webinar, and the sound via phone, above)
Audio recording and slide deck will be provided post-webinar on
www.khlaw.com/aftermath

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D.C. Wage and Hour laws

- Expands Notice Requirements
 - Name of Employer;
 - Physical Address of employer's principal place of business or main office; and
 - Telephone number
- Employee's regular payday, pay rate and basis for pay rate (hourly, shift, daily, weekly, etc.)
 - Any tip credit or other allowances;
 - Any exemption from overtime;
 - Exemption from living wage; and
 - Applicable prevailing wage.

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NLRB v. Tiffany & Co.

- Tiffany & Co. had a “Policy for Protection of Confidential Info”
- Contact info, SSN, financial info of customer and employers
- All media requests forwarded to VP of Public Relations
- Info concerning wage, benefits can’t be disclosed outside of company
- Bd: Violates 8(a)(1) if an employee could reasonably construe the language to prohibit activity
- Bd: It prohibits disclosure of such data regardless of how it was obtained
- Media rule broadly includes statements to media about labor disputes

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NLRB v. Tiffany & Co. (cont'd)

- Savings clause: does not apply to speech protected by NLRA
 - Bd: That saves confidentiality, but not media and wages terms
 - Tip – put a savings clause after each term

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NLRB Ambush Rule

- Rule shortens time from union petition to election to as little as 14 days
- Final Rule, effective April 14, 2015
- Postpones gathering evidence of voter eligibility until after an election
- Eliminates 25-day automatic waiting period for Board review
- Current average = 38 days; 42 days is quite standard
- Time to gather facts, prepare a message, reach out to staff
- Shortening time for election restricts flow of information
- Unions win more than 50% of all elections

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Purple Communications, Inc.

- Employer policy that email is company property and should only be used for company business
- Bd rejected the Register Guard position in most part
- Bd: Employee has a Section 7 right to communicate terms and conditions of employment
- Email is now an essential means for protected communication
- Bd does not require an employer to provide email access; the holding only applies when an employee has access in the course of work

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Purple Communications, Inc. (cont'd)

- An employer may ban non-work use of email during non-work time if circumstances justify it
- Employer may issue limits to protect system integrity like limits on file size, use of attachments

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EEOC v. Honeywell International, Inc.

- EEOC sued Honeywell to enjoin use of its wellness policy
- Honeywell: Employees that undergo biometric testing = surcharges or lost contributions to HSA
- Workers and spouses screened for blood pressure, cholesterol, blood sugar, waist circumference and nicotine
- 2 employees complained

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EEOC v. Honeywell (cont'd)

- Honeywell doesn't see the data; it goes to a 3rd party vendor
- Imposed a \$1,000 tobacco surcharge if test isn't taken
- Third EEOC case
- Court rejected TRO

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EEOC v. Honeywell (cont'd)

- The ACA authorizes surcharges
- The GINA authorizes these tests
- EEOC is interested in appearance of violation
- Employers should consider carefully the need for surcharges and leave any questionnaire or exam to third party carrier
- Decision in 11th Circuit suggesting that ADA provides a safe harbor for a bona fide benefit plan
- Little guidance right now explaining EEOC's inexplicable enforcement strategy

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Busk v. Integrity Staffing Solutions

- Integrity policy: security clearance at end of shift
- Can take 25 minutes to clear
- Busk: should be compensated time to wait to leave facility

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Busk v. Integrity Staffing Solutions (cont'd)

- Supreme Ct: time spent waiting for screenings is not compensable
- Not the principal activity of company
- Not an intrinsic element of employee's activity
- Not as helpful to focus on whether task is required
- Instead focus on whether it is integral and indispensable
- Current DOL regs: checking in and out and waiting to do so are not compensable

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THANK YOU!

**THE NEXT EMPLOYMENT LAW AFTERMATH:
Thursday, April 30th at 12:00 pm**

**DO YOU KNOW ABOUT THE OSHA 30/30?
WWW.KHLAW.COM/OSHA3030
Next one: Wednesday, February 25th at 1:00 pm**

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