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Work & Family:
What Nonprofit Employers
Should Know about Family-Oriented
Employment Laws

December 5, 2013

Venable LLP

Washington, DC

Moderator:

Jeffrey S. Tenenbaum, Esq., Venable LLP

Panelists:

Megan H. Mann, Esq., Venable LLP

Nicholas M. Reiter, Esq., Venable LLP



Presentation





Work & Family: What Nonprofit Employers Should Know about Family-Oriented Employment Laws

Thursday, December 5, 2013, 12:30 p.m. – 2:00 p.m. ET

Venable LLP, Washington, DC

Moderator:
Jeffrey S. Tenenbaum, Esq., Venable LLP

Panelists:
Megan H. Mann, Esq., Venable LLP
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- Joe Stephens, Staff Writer for the Washington Post and author of "Inside the Hidden World of Thefts, Scams and Phantom Purchases at the Nation's Nonprofits"
- Nidhi Rao, CPA, CFE, CFF, CIA, Director, BDO USA LLP

February 19, 2014 - [Implementing a Bring-Your-Own-Device Policy: What Your Nonprofit Needs to Know](#)



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Today's Topics

- Overview of the Family and Medical Leave Act (“FMLA”)
 - Eligibility
 - Leave
 - Care of Covered Military Service Members
 - Intermittent Leave and Reduced Schedule
- Pregnancy and Childbirth
- Lactation and Nursing
- Common Family Caregiver Legal Claims
- Employment Policy Tips



Eligibility for Leave under the Family and Medical Leave Act (“FMLA”)

- Leave for eligible employees of covered employers
- Covered employers
 - Private sector employers with at least 50 employees for 20 or more workweeks
 - All public sector employers
 - All public or private schools
- Eligible employees
 - Employed at least 12 months
 - Worked at least 1,250 hours during the prior 12-month period
 - Worksite has at least 50 employees within 75 miles



Leave Entitlement under the FMLA

- Up to 12 weeks of unpaid leave in a 12-month period for any qualifying reason:
 - Birth of a child or to care for newborn
 - Adoption/foster care of a child or to care for newly adopted child
 - To care for a spouse, child, or parent with serious health condition
 - Employee's serious health condition prevents the employee from performing his/her job
 - “Qualifying exigency” due to employee's spouse, child, or parent having been called to active military duty



Additional Leave for Care of Covered Military Service Members

- Eligible employees may take up to **26 weeks** of leave during a 12-month period to care for a covered military service member who has a serious injury or illness
- Employee must be spouse, child, parent, or next of kin of the covered military service member



Understanding the Qualified | For Leave under the FMLA



- New child
- Serious health condition
- Qualifying exigency (call to active duty)
- Serious injury or illness (care of covered military service member)



Newborn Child, Adoption of Child, or Placement in Foster Care

- No distinction between newborn child, adopted child, or placement in foster care
- Under 18 years of age, or incapable of self-care because of mental or physical disability



Serious Health Condition

- Illness, injury, impairment, or physical or mental condition that involves either:
 - Inpatient care, or
 - Continuing treatment by a health care provider.
- Colds, flu, dental work, etc. are not included unless complications arise
- Cosmetic treatments also excluded



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Qualifying Exigency for Covered Military Service Member

- Covered Military Service Member
 - Member of armed forces, including reserves
 - On active duty or notified of impending call to active duty
 - Deployment in foreign country
 - Spouse, child, or parent of employee



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Qualifying Exigency for Covered Military Service Member (cont'd.)

- Qualifying exigencies
 - Issues due to 7 or less days' notice of deployment
 - Attend military-sponsored events
 - Arrange for alternative childcare
 - Enrollment in a new school or day care facility
 - Attend meetings with school or day care staff
 - Make financial arrangements
 - Attend counseling sessions
 - Rest and recuperation leave during deployment
 - Funeral and other post-death arrangements
 - Care for parent of covered military member
 - Other exigencies agreed-upon between employee and employer



Serious Injury or Illness of Covered Military Service Member (26 weeks)

- Covered Military Service Member
 - No deployment necessary
 - Either a service member or veteran who is undergoing medical treatment, on outpatient status, or on temporary disability retired list
 - Leave must be taken within five years of the veteran's last day of active duty service



Serious Injury or Illness of Covered Military Service Member (cont'd.)

- Serious injury or illness
 - Injury or illness incurred either during active duty or prior condition aggravated during active duty
 - Renders the service member or veteran unfit to perform duties of his/her rank or office
- Other ways veterans' injury or illness will qualify
 - USVA Service-Related Disability Rating of at least 50%
 - Unable to secure employment due to qualifying injury or illness
 - Enrollment in the USVA Program of Comprehensive Assistance for Family Caregivers



Leave to Care for a Family Member

- Common issues when a need for leave arises
 - Designation of FMLA leave
 - Intermittent leave or reduced schedule?
 - Scheduling when leave is taken
 - Calculating leave
 - A special note about “maternity leave” policies



Designation of FMLA-Qualifying Leave

- Employee's responsibilities
 - 30 days' notice to the employer, to the extent possible
 - Sufficient information for the employer to decide whether the leave qualifies under the FMLA
 - Provide certification upon request
- Employer's responsibilities
 - Inquire with the employee if insufficient information
 - Notify the employee of his/her rights and responsibilities under the FMLA
 - Request certification upon notice of need for leave
 - Discuss and document disputes with the employee
 - Issue written decision of whether leave granted under the FMLA



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Intermittent Leave and Reduced Schedule

- Intermittent Leave
 - Leave taken in separate blocks of time due to a single qualifying reason
 - Typically a condition which requires periodic treatment by health care provider
 - E.g., prenatal exams, chemotherapy
- Reduced Schedule
 - Reduction in employee's usual work hours due to qualifying reason
 - Typically involves converting the employee from full-time to part-time status
 - E.g., employee cannot work 8 consecutive hours because of the need to recover from surgery



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Intermittent Leave and Reduced Schedule (cont'd.)

- When **must** the employer make intermittent leave or reduced schedule available?
 - Medical necessity for serious health condition
 - Medical necessity for serious injury or illness of covered military service member
 - Any qualifying exigency for notice of covered military service member being called to active duty
- When **may** the employer permit the employee to take intermittent leave or reduced schedule?
 - Birth of a new child, adoption, or placement in foster care



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Scheduling FMLA Leave

- Employee must make reasonable effort not to unduly disrupt the employer's operations
- Employer may require a temporary transfer which better accommodates recurring periods of leave or a reduced schedule
 - Must have equivalent pay and benefits
 - May proportionately reduce accrued vacation if normal practice ties vacation to work hours
 - Transfer may not be used to discourage leave
 - Reinstatement to same or equivalent job required



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Calculating the Amount of Available Leave

- The employer chooses the 12-month period*
 - Calendar year
 - Fixed 12-month period, e.g., the fiscal year or anniversary of hire
 - 12-month period after the first day of leave
 - “Rolling” 12-month period before the first day of leave
 - * Leave to care for covered service members is 12 months from the first day of leave
- Consistent application required
- 60 days’ notice of any change
- Most beneficial option is the default



Calculating the Amount of Leave Taken

- Intermittent leave or reduced schedule is measured in increments
- The increment may be no greater than the smallest increment for other leave, but not greater than one hour
- Examples:
 - Employer measures paid vacation time in 1 hour increments and paid sick time in ½ hour increments
 - Employer measures paid vacation time in ½ days and does not provide paid sick time



Calculating the Amount of Leave Taken (cont'd.)

- Pro-rata equivalent of the employee's workweek
- Examples:
 - 40 hour workweek less 8 hours of intermittent leave → employee used 1/5 of a week of FMLA leave
 - 40 hour workweek where employee works half days on a reduced schedule → employee used ½ of a week of FMLA leave
 - 30 hour workweek less 10 hours of intermittent leave → employee used 1/3 of a week of FMLA leave
- 12-month averages may be used for employees with varying weekly schedules

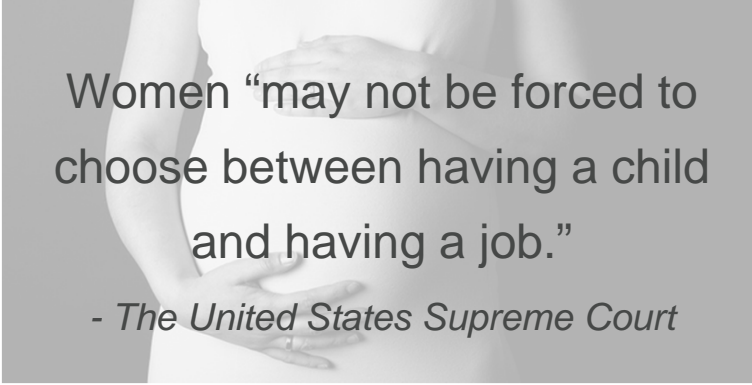


Parental Leave

- “Maternity” and “Paternity” leave
- Discrimination issues
 - Paid time off generally not required, but if you have a policy, it should be administered equally between male and female employees
 - In addition to any paid time off policy, either parent may take unpaid FMLA leave
- Notice requirement still applies
- Same employer limitation
 - 12 weeks per child, not per parent



Pregnancy, Childbirth, & Lactation



Women “may not be forced to choose between having a child and having a job.”

- *The United States Supreme Court*



Pregnancy and Childbirth: PDA

- Pregnancy Discrimination Act: amended Title VII of the Civil Rights Act of 1964, which prohibits, among other things, discrimination in employment on the basis of “sex,” so that “because of or on the basis of sex,” includes “because of or on the basis of pregnancy, childbirth or related medical conditions.”
- The basic principle is that women affected by pregnancy and related conditions must be treated the same as other applicants and employees on the basis of their ability or inability to work, and discrimination in employment, because of pregnancy, is prohibited by the Act.



Pregnancy and Childbirth: PDA (cont'd.)

- A woman is therefore protected against such practices as being fired, or refused a job or promotion, merely because she can be/contemplates/is pregnant or had an abortion (regardless of marital status).
- A woman generally cannot be forced to go on leave as long as she can still work.
- Although the PDA does not impose a duty to accommodate pregnant employees, if other employees who take disability leave are entitled to get their jobs back when they are able to work again, so are women who have been unable to work because of pregnancy.
- Women cannot be discriminated against in the area of fringe benefits, due to pregnancy or related medical conditions.



PDA: Benefits

- In the area of fringe benefits, such as disability benefits, sick leave and health insurance, the same principle applies.
- A woman unable to work for pregnancy-related reasons is entitled to disability benefits or sick leave on the same basis as employees unable to work for other medical reasons.
 - Additionally, she must be accorded the same seniority and vacation retention and accrual accorded those on other disability leaves.
- Any health insurance provided must cover expenses for pregnancy-related conditions on the same basis as expenses for other medical conditions.
 - Abortion exception



PDA and Infertility

- Infertility, by itself, can affect a man or a woman, and is therefore not protected by the PDA.
- However, child-bearing capacity and medical procedures related to infertility that can only be performed on a woman, are protected by the PDA.
 - Therefore, an employer violates the Act if it terminates a woman's employment for taking time off to undergo in vitro fertilization procedures.



PDA: Abortion

- An employer cannot discriminate in its employment practices against a woman who has had (or is contemplating) an abortion.
- Health insurance for typical expenses arising from abortion may be elected but is not required except where:
 - The life of the mother would be endangered if the fetus were carried to term; or
 - Where medical complications have arisen from an abortion.
- However, an employer's health insurance plan must cover *additional* costs due to *complications* arising during an abortion (e.g., excessive hemorrhaging).



Is Pregnancy A Disability? The ADA:

- Normal pregnancy is not considered a “disability” under the Americans With Disabilities Act (ADA).
 - However, complications resulting from pregnancy can be impairments for ADA purposes, if it affects a major life activity and the major life activity is substantially limited.
- If circumstances surrounding an unusual pregnancy trigger ADA coverage, an employer may have an affirmative duty to accommodate the disabled employee, if the accommodation is reasonable and does not pose an undue hardship on the employer.



Pregnancy and Disability: the PDA

- Under the PDA, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions shall be treated the same as disabilities caused or contributed to by other medical conditions for health insurance plans, leave benefits (including type of leave), other benefits, and employer policies.
 - If an employee is unable to perform the functions of her job, the PDA requires that she be treated the same as other temporarily disabled employees (e.g., light duty, alternate position).

Pregnancy & FMLA

- A mother can use 12 weeks of FMLA leave for the birth of a child, for prenatal care and incapacity related to pregnancy (including morning sickness), and for her own serious health condition following the birth of a child.
- A father can use FMLA leave for the birth of a child and to care for his spouse who is incapacitated (due to pregnancy or child birth).



Lactation and Nursing

- The Patient Protection and Affordable Care Act amended the Fair Labor Standards Act (FLSA) to require employers to provide a nursing mother with:
 - Break time;
 - A private place; and
 - The ability to store breast milk.
- This applies to all employers and employees covered by the FLSA's overtime provisions, unless:
 - There are fewer than 50 employees; and
 - The employer can demonstrate that these requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.



Reasonable Break Time

- Reasonable break time to express milk for 1 year after the nursing child's birth (throughout the day each time she needs to express milk)
 - Employers are not required to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, if the employer permits short breaks, usually 20 minutes or less, the time must be counted as hours worked under the FLSA. An employee using such breaks to express milk must be paid in the same way that other employees are compensated for break time. Additional time beyond authorized paid break time may be uncompensated.
 - Cannot be counted against FMLA entitlement
- What is "reasonable"?
 - Consider the frequency, number, and length of the breaks that a nursing mother might need (based on various factors such as the age of the child); and
 - Related factors (e.g., time it takes to walk to lactation space, to gather breast pump, etc.).



Lactation Space & Storage Ability

- A place, other than a bathroom, that is shielded from view and free from coworker and public intrusion, that may be used to express milk
 - Need not be permanent
 - Consider the number of nursing mothers at any given time (may need multiple spaces; large space with privacy screens)
 - Must include a place for the mother to sit, a flat surface other than the floor (for the pump), and ideally, electricity access for the pump
- Ability to store breast milk and pump: refrigerator or place for insulated container and pump



Common Family Caregiver Legal Claims

- Pregnancy
 - Return after pregnancy or parental leave
 - Decisions based upon potential pregnancies
 - Title VII: unpaid leave policies must not discriminate against mothers
- Disability discrimination by association
 - Employees with disabled children, parents, or spouses
 - Employer may worry their employee will be less productive because of his/her family member's disability



Common Family Caregiver Legal Claims (cont'd.)

- Transfer or reinstatement issues
 - Same or substantially the same position?
 - Same location?
 - Same shift or work schedule?
 - Is the employee a “key employee?”
- Termination after notice of leave
 - Problematic employee gives notice of need for FMLA leave
 - Can the employer terminate an employee after notice?
 - What are the employer's other options?



Employment Policy Tips



- Check all relevant state and local laws!
- Hiring:
 - Do not ask female applicants questions regarding pregnancy, childbearing, or child care.
 - Do not make decisions based on caregiver responsibilities or pregnancy-related factors.
- Pregnancy and caregiver leave:
 - Outline your family and/or medical leave policies. Know whether you are covered by state and/or federal laws and include relevant handbook language.
 - Outline other policies: vacation, sick, personal (paid/unpaid).
 - Outline parental leave policies for new fathers and mothers.



Employment Policy Tips (cont'd.)

- Pregnancy considerations:
 - Title VII (PDA); FMLA; ADA – Know your rights and your employee's rights, under each relevant law, based on the circumstances at hand.
 - Ensure the neutrality of benefits, including fringe benefits.
 - Know your return-to-work policy and how it is affected by relevant laws.
 - State laws may afford pregnant women or new mothers additional benefits beyond those afforded to other employees.
- Ensure your nursing mothers have break time and space.
 - Include language in the handbook.
 - Discuss lactation needs with your breastfeeding employee.



Questions?

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Speaker Biographies





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 Tax Policy
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 Wealth Planning
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 Credit Counseling and Debt Services
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 Consumer Financial Protection Bureau Task Force

GOVERNMENT EXPERIENCE

Legislative Assistant, United States House of Representatives

BAR ADMISSIONS

District of Columbia

Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is an accomplished author, lecturer, and commentator on nonprofit legal matters. Based in the firm's Washington, DC office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting charities, foundations, trade and professional associations, think tanks, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media. He also has served as an expert witness in several court cases on nonprofit legal issues.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, and was an inaugural (2004) recipient of the *Washington Business Journal's* Top Washington Lawyers Award. He was one of only seven "Leading Lawyers" in the Not-for-Profit category in the prestigious 2012 *Legal 500* rankings, and one of only eight in the 2013 rankings. Mr. Tenenbaum was recognized in 2013 as a Top Rated Lawyer in Tax Law by *The American Lawyer* and *Corporate Counsel*. He was the 2004 recipient of The Center for Association Leadership's Chairman's Award, and the 1997 recipient of the Greater Washington Society of Association Executives' Chairman's Award. Mr. Tenenbaum was listed in the 2012-14 editions of *The Best Lawyers in America* for Non-Profit/Charities Law, and was named as one of Washington, DC's "Legal Elite" in 2011 by *SmartCEO Magazine*. He was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. Mr. Tenenbaum started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill as a legislative assistant.

REPRESENTATIVE CLIENTS

AARP
 Air Conditioning Contractors of America
 American Academy of Physician Assistants
 American Alliance of Museums
 American Association for the Advancement of Science
 American Bar Association
 American Bureau of Shipping
 American Cancer Society
 American College of Radiology
 American Institute of Architects
 American Society for Microbiology
 American Society for Training and Development
 American Society of Anesthesiologists
 American Society of Association Executives

EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1996

B.A., Political Science, University of Pennsylvania, 1990

MEMBERSHIPS

American Society of Association Executives

California Society of Association Executives

New York Society of Association Executives

Association for Healthcare Philanthropy
Association of Corporate Counsel
Association of Private Sector Colleges and Universities
Automotive Aftermarket Industry Association
Biotechnology Industry Organization
Brookings Institution
Carbon War Room
The College Board
Council on CyberSecurity
Council on Foundations
CropLife America
Cruise Lines International Association
Design-Build Institute of America
Foundation for the Malcolm Baldrige National Quality Award
Gerontological Society of America
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Independent Insurance Agents and Brokers of America
Institute of International Education
International Association of Fire Chiefs
International Sleep Products Association
Jazz at Lincoln Center
LeadingAge
Lincoln Center for the Performing Arts
Lions Club International
Money Management International
National Association of Chain Drug Stores
National Association of College and University Attorneys
National Association of Music Merchants
National Athletic Trainers' Association
National Board of Medical Examiners
National Coalition for Cancer Survivorship
National Defense Industrial Association
National Fallen Firefighters Foundation
National Fish and Wildlife Foundation
National Hot Rod Association
National Propane Gas Association
National Quality Forum
National Retail Federation
National Student Clearinghouse
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NeighborWorks America
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Professional Liability Underwriting Society
Project Management Institute
Public Health Accreditation Board
Public Relations Society of America
Recording Industry Association of America
Romance Writers of America
Trust for Architectural Easements
The Tyra Banks TZONE Foundation
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HONORS

Recognized as "Leading Lawyer" in the 2012 and 2013 editions of *Legal 500*, Not-For-Profit

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Washington DC's Legal Elite, *SmartCEO Magazine*, 2011

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ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Editorial Advisory Board of the American Society of Association Executives' *Association Law & Policy* legal journal, the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter, and the ASAE Public Policy Committee. He previously served as Chairman of the *AL&P* Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's *Nonprofit Tax & Financial Strategies* newsletter.

PUBLICATIONS

Mr. Tenenbaum is the author of the book, *Association Tax Compliance Guide*, now in its second edition, published by the American Society of Association Executives. He also is a contributor to numerous ASAE books, including *Professional Practices in Association Management*, *Association Law Compendium*, *The Power of Partnership*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. In addition, he is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. Mr. Tenenbaum is a frequent author on nonprofit legal topics, having written or co-written more than 500 articles.

SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer on nonprofit legal topics, having delivered over 500 speaking presentations. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *NBC News*, *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *ESPN.com*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine*, *The Chronicle of Philanthropy*, *The NonProfit Times* and other periodicals. He also has been interviewed on nonprofit legal topics on Fox 5 television's (Washington, DC) morning news program, Voice of America Business Radio, Nonprofit Spark Radio, and The Inner Loop Radio.



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EDUCATION

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Merit Scholar
Moot Court Honor Society
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Vice-President

Megan Mann's practice areas include employment counseling and litigation, labor relations, and commercial litigation. Ms. Mann represents clients in a vast array of industries, including hospitality, food service, education, construction, security, real estate, pharmaceutical services and financial services.

Employment Counseling

Ms. Mann regularly works with clients to ensure compliance with relevant laws, including but not limited to Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans With Disabilities Act, and the Fair Labor Standards Act, as well as various state and local laws; and she likewise works with clients to improve the quality and efficacy of various employment-related practices, policies and documents. This type of counseling includes:

- Drafting new or updating existing employment documents, such as personnel handbooks, offer and termination letters, restrictive covenant agreements, and discipline or grievance procedure documents
- Rendering advice related to the hiring and termination processes, including group lay-offs, to ensure compliance with applicable laws and to appropriately protect clients' interests
- Advice and counseling related to harassment in the workplace, which includes onsite harassment training, drafting of sound anti-harassment policies and investigation guidelines, and counseling following reported harassment
- Rendering advice related to workplace practices, including employee classification, wage and hour practices, and disability accommodations

Employment Litigation

Ms. Mann also frequently represents clients in the defense of employment litigation matters, including those involving claims of discrimination and harassment, and wage and hour violations. She frequently handles matters pending before the Equal Employment Opportunity Commission and related agencies, and in both state and federal court.

Labor Relations

Ms. Mann likewise devotes a substantial portion of her practice to assisting and counseling employers in the face of union elections, collective bargaining and labor hearings. For example, she has worked on the negotiations and redrafting of a renewed and revised collective bargaining agreement, and represented employers in disputes with the union over discipline, discharge and work assignments.

Commercial Litigation

Ms. Mann also represents clients' interests in commercial litigation matters, including class action defense, involving claims of breach of contract and unjust enrichment, fraud and negligent misrepresentation, and violation of state consumer protection statutes.

HONORS

1st Place, American Association for Justice Regional Mock Trial

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PUBLICATIONS

- November 12, 2013, Employee Benefits for Same-Sex Couples: What Your Nonprofit Needs to Know
- September 10, 2013, Employee Leaves of Absence and Other Accommodations under the Law: What Every Nonprofit Needs to Know
- June 25, 2013, Employee Leaves of Absence and Other Accommodations under the Law: What Every Nonprofit Needs to Know
- September 20, 2012, Payroll Pitfalls: How Nonprofit Employers Can Avoid Big Problems
- June 2010, Turns Out, There's No Such Thing As "Free Labor" Either: Why Most Employers Should be Paying Interns or Modifying/Abandoning Their Unpaid Internship Programs, Labor & Employment News Alert
- December 19, 2008, Navigating the Wage and Hour Law Maze of Unpaid Internships at Nonprofit Organizations
- December 2008, The New York WARN Act Covers More Employers Than Its Federal Counterpart, Labor & Employment News Alert

SPEAKING ENGAGEMENTS

- December 5, 2013, Work & Family: What Nonprofit Employers Should Know about Family-Oriented Employment Laws
- November 12, 2013, Legal Quick Hit: "Employee Benefits for Same-Sex Couples: What Your Nonprofit Needs to Know" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- September 10, 2013, Legal Quick Hit: "Employee Leaves of Absence and Other Accommodations under the Law: What Every Nonprofit Needs to Know" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- June 25, 2013, Employee Leaves of Absence and Other Accommodations under the Law: What Every Nonprofit Needs to Know
- September 20, 2012, "Payroll Pitfalls: How Nonprofit Employers Can Avoid Big Problems" for the Better Business Bureau of Metropolitan New York
- April 17, 2012, Venable Breakfast Briefing: Updates for Restaurant Industry Employers
- September 9, 2009, Panel Speaker for Brooklyn Law School's orientation class on September 9
- June 17, 2009, "A Guide to Preventative Human Resources and Labor Relations Audits," hosted by Venable LLP
- February 10, 2009, Employment Issues In The Economic Downturn: Avoiding Liability in Lean Times



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District of New York
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EDUCATION

J.D., *cum laude*, Brooklyn Law
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Nicholas Reiter focuses his practice on labor and employment matters and commercial litigation. He regularly advises and litigates on behalf of clients in the restaurant, hospitality, construction, healthcare, and financial services industries.

His areas of concentration include:

- Representing employers in employment litigation matters in state and federal courts such as claims of discrimination, harassment, retaliation, constructive discharge, and wage and hour violations
- Advising and counseling employers regarding their workplace practices and procedures, including employee handbooks, termination and hiring decisions, and disability accommodations
- Conducting company-wide audits of employee classifications to ensure compliance with federal and state wage and hour laws
- Evaluating non-compete clauses and other restrictive covenants
- Representing employers in connection with audits and investigations initiated by governmental agencies, including the U.S. Department of Labor, the U.S. Department of Homeland Security, and the New York State Department of Labor
- Negotiating collective bargaining agreements and representing employers in other labor union disputes
- Litigating commercial actions such as breach of contract claims, misappropriation of trade secrets, and unfair competition matters

SIGNIFICANT MATTERS

- Successfully defended employer against breach of employment contract claim during four-day trial in the United States District Court for the Southern District of New York
- Defeated labor union's bid for recognition as collective bargaining representative after advising and coordinating employer's five-month anti-union campaign

ACTIVITIES

Prior to joining Venable, Mr. Reiter was a law clerk for United States District Judge David N. Hurd of the Northern District of New York.

While attending law school, Mr. Reiter was Editor-in-Chief of the Journal of Law and Policy.

PUBLICATIONS

- November 18, 2013, 5 Steps to Head Off Workplace Bullying, *Restaurant Hospitality*

B.A., College of William and Mary,
2004

JUDICIAL CLERKSHIPS

Honorable David N. Hurd, U.S.
District Court for the Northern
District of New York

- November 2013, Takeaways from the Miami Dolphins' Locker Room: The Legal Risks of Workplace Bullying, *Daily Business Review*, Labor & Employment News Alert
- January 8, 2013, Exempt or Non-Exempt? The Ten Most Common Employee Classification Pitfalls Faced by Nonprofits
- September 20, 2012, Payroll Pitfalls: How Nonprofit Employers Can Avoid Big Problems
- June 2012, Seventh Circuit Answers Question of First Impression: Cat's Paw Theory Exposes Co-Workers to Individual Liability for Retaliation Claims under Section 1981, Labor & Employment News Alert
- February 21, 2012, How Nonprofits Can Avoid the Legal Pitfalls of Telecommuting Employees
- September 12, 2011, Telecommuting Employees: How Nonprofits Can Avoid the Legal Pitfalls
- July 25, 2011, A Nonprofit's Guide to Properly Characterizing Workers as Employees, Interns and Volunteers
- June 2011, New York Department of Labor Clarifies that Employers Have Until Next Regularly Scheduled Pay Day to Pay Out Employees' Credit Card Tips, Labor & Employment News Alert

SPEAKING ENGAGEMENTS

- December 5, 2013, Work & Family: What Nonprofit Employers Should Know about Family-Oriented Employment Laws
- March 4, 2013, "The New Health Care Law Has Arrived: What Restaurants and Foodservice Employers Need To Know" at the International Restaurant & Foodservice Show of New York
- January 8, 2013, Exempt or Non-Exempt? The Ten Most Common Employee Classification Pitfalls Faced by Nonprofits
- September 20, 2012, "Payroll Pitfalls: How Nonprofit Employers Can Avoid Big Problems" for the Better Business Bureau of Metropolitan New York
- April 17, 2012, Venable Breakfast Briefing: Updates for Restaurant Industry Employers
- September 14, 2011, Telecommuting Employees: How Nonprofits Can Avoid the Legal Pitfalls