

Telecommuting Employees: How Nonprofits Can Avoid the Legal Pitfalls

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Introduction

- What is telecommuting?
- Benefits of telecommuting
- Policy and practice challenges raised by telecommuting
- Legal risks of telecommuting



Objectives

- At the close of this seminar, you will be able to:
 - Identify the types of positions suitable for telecommuting
 - Describe the characteristics an employee must have to be a successful telecommuter
 - Identify legal implications and considerations in any telecommuting arrangement
 - Identify policy considerations for any telecommuting policy/practice and agreement



Positions Suitable for Telecommuting

- Not all positions are suitable for telecommuting
 - Employers must consider whether the job purpose and respective duties are location-specific
 - Positions where the majority of the work involves the electronic transmission of information or documents may be suitable for telecommuting, when the organization or client privacy or confidentiality are not at risk
 - Other characteristics that make a position suitable for telecommuting include minimal supervision requirements or limited face-to-face contact with customers or clients
- A position's suitability does not guarantee that the employee is suitable for telecommuting



Employees Suitable to Telecommuting

- Generally, the best telecommuters possess the following characteristics:
 - Organized
 - Excellent time management skills
 - Self-motivated/self-starter
 - Strong written and verbal communication skills
 - Work well with limited supervision
 - Self-disciplined
 - Strong performance record and job knowledge
 - Successfully completed their training phase
 - Comfortable using telecommuting equipment
 - Comfortable working alone
 - Resourceful when handling technology issues
 - Ability to communicate effectively using mixed media such as phones, email and video conferencing
 - Ability to establish work life/home life boundaries
 - Supportive home environment free from household distractions



Wage and Hour Laws

- Overtime laws still apply to non-exempt telecommuting employees
- Telecommuting increases difficulty monitoring hours worked



Wage and Hour Laws (cont'd)

- Policy considerations
 - Whether to make telecommuting available to exempt workers only
 - Must weigh potential for disparate impact
 - Whether to prohibit overtime without prior authorization
 - Whether to require telecommuting employees to clock or log in/out via telephone or email



Occupational Safety and Health

- Work-related injuries are subject to OSHA recordkeeping requirements even if they occur in a telecommuter's home
- Employers remain responsible for hazards caused by all materials, equipment, or work processes they provide or require to be used in a telecommuter's home
- As per OSHA guidance, employers are not expected to inspect home worksites
- Policy considerations
 - Whether to require telecommuting employees to comply with all workplace safety policies



Workers' Compensation Laws

- Workers' compensation laws vary across states
- Generally, the injury must be sustained in the course and scope of the employee's job duties to be compensable
- Work-related injuries in a home worksite raise unique problems:
 - Not as many witnesses (if any) to injury
 - More difficult to investigate
 - May need to visit employee's home worksite and take statement



Workers' Compensation Laws (cont'd)

- Policy considerations
 - Whether to require telecommuting employees to sign agreement authorizing periodic investigations of home worksite
 - Whether to require telecommuting employees to sign agreement authorizing mandatory on-site investigations if injury takes place



Americans with Disabilities Act Implications

- If telecommuting is requested by a “disabled” employee, employers must consider whether telecommuting is a reasonable accommodation
- Can the employee perform the essential functions of his/her job from home?
- The more an employer permits telecommuting, the more difficult it will be to show that allowing a disabled employee to telecommute constitutes an “undue hardship”



Americans with Disabilities Act Implications (Cont'd)

- Policy considerations
 - Review job descriptions
 - Engage in interactive process and consider in-office accommodations
 - Require medical certification



Administering Your Telecommuting Policy in a Non-Discriminatory Manner

- Federal, state and local anti-discrimination laws prohibit adverse employment decisions motivated by an employee's membership in a protected class
- Disparate treatment
- Disparate impact



Administering Your Telecommuting Policy in a Non-Discriminatory Manner (cont'd)

■ Policy considerations

- Identify positions for which telecommuting is available
- Determine telecommuting availability in light of business needs – all, none, or first come/first serve?
- Document the process
- Ensure uniformity for compensation schedules and benefit programs
- Evaluate likelihood of disparate treatment or disparate impact



FMLA and Sick Leave

- Qualified employees permitted up to 12 weeks per 12 month period
- Need 50 or more employees at or within 75 miles of the employee's "worksite"
- Tempting to ask an employee on leave to telecommute, but may be a violation of FMLA
- Can offer reduced leave schedule with telecommuting, but cannot be mandatory



FMLA and Sick Leave (cont'd)

- Policy considerations
 - May be appropriate for employees who take FMLA leave to care for a sick parent or child – e.g., telecommute for 2 hours per day while parent or child with serious health condition remains under temporary care of another person
 - Not appropriate for employees recovering from serious health condition or with a need to administer full-time care of a parent or child



Privacy Concerns

- Privacy right only when “reasonable expectation” of privacy
- Any company property or work product is subject to review, such as:
 - Files/Documents
 - Computers
 - Blackberrys, iPhones, PDAs
 - Telephone lines – cellular or landline



Privacy Concerns (cont'd)

- Policy considerations
 - Consider consent to allowing monitoring of the home worksite, such as:
 - Electronic monitoring of IP address during work hours
 - Video monitoring
 - Required check-in times
 - Consider signed waivers and acknowledgement forms



Protecting Confidential and Proprietary Information

- Extra precautions are needed for sensitive information taken out of the traditional worksite
- Policy considerations
 - Consider mandatory nondisclosure and/or confidentiality agreements for telecommuting employees
 - Mandate passwords and other security measures on computers and other equipment used at the home worksite
 - Coordinate with IT personnel
 - Consider additional restrictive covenants for telecommuting employees
 - Geographic scope of non-compete and non-solicitation clauses may lose significance for telecommuting employees
 - Consider inquiring who, if anyone, will be present at the home worksite during telecommuting hours



Tax and Other Wage Deduction Issues

- Tax issues arise if the telecommuting employee works from home in another state than the employer's office
- Unemployment benefits may be owed in the telecommuting employee's home state
- Reimbursement issues arise for travel expenses – for example, should employees be reimbursed for traveling to destinations closer to home worksite than if they had to travel to the employer's worksite?



Tort Liability

- Generally, employers are liable for injuries to third parties caused by employees' negligence
- Homeowner's insurance likely does not cover torts committed in the course of a telecommuting employee's job duties
- Some states require that an employer's liability insurance cover telecommuting employees' homes
- Policy consideration
 - Consider requiring that telecommuting employees purchase extra insurance



Zoning Laws

- Zoning laws may prohibit operation of a business within a residential home
- Policy considerations
 - Consider whether employer or employee must pay for zoning application, permit, or other necessary license
 - Require inspection of necessary documents



Must Haves in Any Telecommuting Policy

- Clear definition of telecommuting
- Clear definition of eligibility requirements
- Information on how to identify telecommuting-eligible positions
- Procedures for establishing a telecommuting arrangement (e.g., application, approval levels, timeline for approval/denial, training requirements (if any), written agreement, etc.)



Must Haves in Any Telecommuting Policy and Agreement

- Emphasize that:
 - telecommuting is an arrangement established first and foremost to facilitate the accomplishment of work
 - the right to telecommute is not an entitlement and can be revoked at any time
 - the abuse of telecommuting privileges can result in termination of employment
- Expectation that the employee will be required to meet the same performance standards as do on-site employees
- Expectation that the employee is responsible for ensuring a safe work environment, reporting work-related injuries, and obtaining insurance for injuries to third parties on the employee's property
- Employer's right to monitor and inspect worksite
- Non-disclosure and confidentiality agreement
- Return of company property
- Statement that employer has discretion to impose additional terms and conditions on a telecommuting arrangement



Must Haves in Any Telecommuting Agreement

- Responsibilities of telecommuting employee
- Responsibilities of supervisors/managers of telecommuting employees
- Expectation regarding communication between employees and supervisors; employees and co-workers; employees and customers/clients; and others
- Specifics regarding the employee's work schedule (including overtime work) and reporting requirements
- Support, materials, and equipment the employer is providing to the telecommuting employee; what the employer will not provide; and what may be shared between the employer and the employee



Questions?

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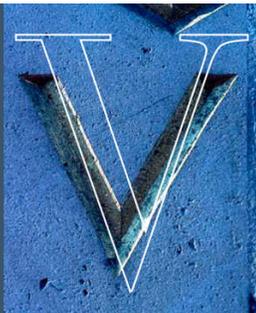
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Speaker Biographies



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AREAS OF PRACTICE

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 Tax Policy
 Tax-Exempt Organizations
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INDUSTRIES

Nonprofit Organizations and Associations
 Credit Counseling and Debt Services
 Financial Services
 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, D.C. office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting trade and professional associations, charities, foundations, think tanks, credit and housing counseling agencies, 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.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, the inaugural (2004) recipient of the *Washington Business Journal's* Top Washington Lawyers Award, 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. He also was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. He 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.

REPRESENTATIVE CLIENTS

AARP
 American Academy of Physician Assistants
 American Association for the Advancement of Science
 American Association of Museums
 American College of Radiology
 American Institute of Architects
 Air Conditioning Contractors of America
 American Society for Microbiology
 American Society for Training and Development
 American Society of Anesthesiologists
 American Society of Association Executives
 American Society of Civil Engineers
 American Society of Clinical Oncology
 American Staffing Association
 Association for Healthcare Philanthropy
 Association of Corporate Counsel
 Association of Private Sector Colleges and Universities
 Automotive Aftermarket Industry Association
 The College Board
 Council on Foundations
 Cruise Lines International Association
 Foundation for the Malcolm Baldrige National Quality Award

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

Homeownership Preservation Foundation
The Humane Society of the United States
Independent Insurance Agents and Brokers of America
LeadingAge
Lions Club International
Money Management International
National Association of Chain Drug Stores
National Athletic Trainers' Association
National Coalition for Cancer Survivorship
National Defense Industrial Association
National Fallen Firefighters Foundation
National Hot Rod Association
National Propane Gas Association
National Retail Federation
National Student Clearinghouse
National Telecommunications Cooperative Association
The Nature Conservancy
NeighborWorks America
New York Blood Bank
Peterson Institute for International Economics
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
Texas Association of School Boards
Trust for Architectural Easements
Volunteers of America

HONORS

Fellow, Bar Association of the District of Columbia, 2008-09

Recipient, American Bar Association Outstanding Nonprofit Lawyer of the Year Award, 2006

Recipient, *Washington Business Journal* Top Washington Lawyers Award, 2004

Recipient, The Center for Association Leadership Chairman's Award, 2004

Recipient, Greater Washington Society of Association Executives Chairman's Award, 1997

Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95

AV® Peer-Review Rated by *Martindale-Hubbell*

Listed in *Who's Who in American Law* and *Who's Who in America*, 2005-present editions

ACTIVITIES

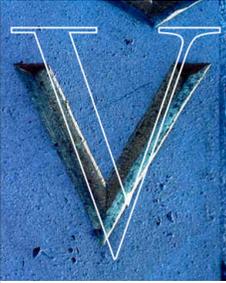
Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Editorial Advisory Board of the American Society of Association Executives' *Association Law & Policy* legal journal, the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter, and the 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*, published by the American Society of Association Executives, and 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. He also is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. In addition, he is a frequent author for ASAE and many of the other principal nonprofit industry organizations and publications, having written more than 400 articles on nonprofit legal topics.

SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer for ASAE and many of the major nonprofit industry organizations, conducting over 40 speaking presentations each year, including many with top Internal Revenue Service, Federal Trade Commission, U.S. Department of Justice, Federal Communications Commission, and other federal and government officials. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *The New York Times*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine* and other periodicals. He also has been interviewed on nonprofit legal issues on Voice of America Business Radio and Nonprofit Spark Radio.



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 U.S. District Court for the District
 of Columbia
 U.S. Court of Appeals for the
 Fourth Circuit
 U.S. District Court for the Northern
 District of Florida

EDUCATION

David Warner's practice focuses on the resolution and litigation of complex labor, employment, and business disputes. He represents and counsels both private and public sector clients, with a particular emphasis on the government contractor and non-profit industries.

Employment Counseling: A substantial portion of Mr. Warner's practice is devoted to counseling employers on labor and employment related matters in order to minimize potential litigation risk. In addition to day-to-day counseling on employment actions, Mr. Warner provides guidance regarding the design and implementation of effective and defensible application, hiring, promotion, and compensation practices, including conducting comprehensive audits of personnel practices to proactively identify and remediate issues that could give rise to class claims. Mr. Warner also advises companies in cross-border employment matters, including the design and implementation of expatriate employment agreements, application of U.S. laws to foreign-based employees, and related issues. Representative engagements include:

- Design and implementation of ex-pat employment agreements for employees located in Iraq, Afghanistan, Africa, Central and South America, and the Caribbean
- Investigation and resolution of harassment allegations of foreign employees in Africa
- Negotiation of 70% reduction of back-pay and benefits demanded by United Mine Workers of America under the federal Worker Adjustment and Retraining Notification ("WARN") Act following shutdown of mining facility
- Design and implementation of strategic corporate diversity initiatives for company with 100,000+ employees
- Design and implementation of application and selection processes for 5,000+ management positions at Fortune 100 company
- Training of executives and senior leadership regarding talent management best practices at Fortune 100 company
- Comprehensive equity analysis of management pay at Fortune 500 company, including implementation of remedial adjustments to employee compensation

Employment Litigation: Mr. Warner routinely represents employers in litigation concerning alleged violations of Title VII, the ADA, ADEA, and other federal and state laws prohibiting discrimination and retaliation. Mr. Warner's litigation experience includes complex class action litigation, brought by both private claimants and government agencies, involving extensive electronic discovery and statistical analyses. Representative engagements include:

- Serving as lead defense counsel in nationwide promotions class action pending before the Equal Employment Opportunity Commission (EEOC)
- Lead defense counsel in successful opposition to class certification in five putative class actions before the EEOC

J.D., *cum laude*, Georgetown University Law Center, 1996

Editor, Articles and Notes, *American Criminal Law Review*

B.A., *cum laude*, Georgetown University, 1993

MEMBERSHIPS

American Bar Association

Maryland Bar Association

Virginia Bar Association

District of Columbia Bar Association

Maryland Defense Counsel, Inc.

- Member of defense trial team for what would have been the largest employment discrimination class action ever tried to a jury had the matter not resolved – following a significant defense victory on motions *in limine* – on the eve of trial
- Lead defense counsel for successful defense of several discrimination and wrongful termination claims filed in the District of Columbia against national hotel chain under private ADR agreement

Business Litigation: Mr. Warner also routinely represents companies in litigation concerning the enforcement of management rights in regard to restrictive covenants, trade secrets, business conspiracy and procurement integrity laws. Representative engagements include:

- Representation of telecommunications contractor in prosecution of business conspiracy, copyright, breach of duty of loyalty, and trade secrets claims against former employee and competitor; matter resolved prior to trial with more than \$4 million paid to client
- First-chair counsel for government contractor in breach of contract, Unfair Trade Practices Act, and fraud claims against prime contractor; matter resolved before filing of complaint with full recovery of more than \$750,000 paid to client
- First-chair counsel in prosecution of breach of duty of loyalty and trade secret claims against medical supply sales representative in Maryland
- First-chair counsel in prosecution of breach of duty of loyalty and non-compete violation against sales representative in Maryland

Government Contractor Compliance and Audits: Mr. Warner has extensive experience advising government contractors in compliance matters, audits, and litigation with the federal government. Representative engagements include:

- Lead attorney in negotiation of 75% reduction of multi-million dollar back pay demand (levied prior to client's engagement of Venable) on behalf of one of the fifty largest private employers in the United States; directed compliance efforts resulting in successful conclusion of multi-year conciliation agreement
- Lead attorney in successful resolution of defense contractor audit, which included significant issues concerning pay equity in salaried ranks
- Lead attorney in training of executives and senior leadership regarding affirmative action, diversity, and talent management best practices at Fortune 100 company
- Represented client in successful resolution of OFCCP glass ceiling audit of multi-billion dollar services company
- Represented client in successful resolution of glass ceiling audit of multi-billion dollar food manufacturing company
- Represented client in defense of claims of systemic hiring discrimination brought by OFCCP against national financial services company

PUBLICATIONS

- August 11, 2011, Focus on Misclassification: Are Your Association's Workers "Employees," "Volunteers," or "Contractors?"
- May 18, 2011, Focus on Misclassification: Are Your Nonprofit's Workers 'Employees' or 'Independent Contractors?'
- March 29, 2011, Dangers and Opportunities: Navigating Nonprofit Partnerships, Collaborations, Joint Ventures and More
- December 6, 2010, Mergers, Alliances, Affiliations and Acquisitions for Nonprofit Organizations: Financial and Legal Issues
- 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
- May 12, 2010, Nonprofit Labor and Employment: Challenges, Solutions and Legal Pitfalls
- May 6, 2010, Proactive Strategies for Minimizing HR and Other Legal Risks in Mergers and Joint Ventures (PowerPoint presentation)
- May 6, 2010, Proactive Strategies for Minimizing HR and Other Legal Risks in

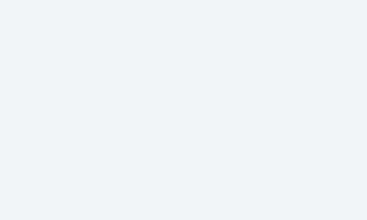
Mergers and Joint Ventures (handouts)

- April 2010, "What Are You, People? On [State-Licensed Medical Marijuana]?– The Hazy Intersection of State Medical Marijuana Laws, Federal Authorities and Employer Drug Free Workplace and Testing Policies, Labor & Employment News Alert
- April 19, 2010, Comments to EEOC Notice of Public Rulemaking Regarding "Reasonable Factor Other Than Age" Under the Federal Age Discrimination in Employment Act
- Summer 2009, "Spiraling Costs and Crashing Markets – Who Will Be Left Holding the (Empty) Bag for Depleted Pensions and Unfunded Health Care Liabilities?" in *Law Journal of the Energy and Mineral Law Institute*, 30th volume
- January 4, 2010, December "Payroll Surprise" Waiting for Some Employers in 2010, Labor & Employment News Alert
- May 21, 2009, Nonprofits in Lean Times: Employment and Labor Challenges for Nonprofits in the Economic Downturn
- February 2, 2009, President Obama Issues Three Labor-Friendly Executive Orders, Labor & Employment News Alert
- February 2008, IP News & Comment - February 2008, IP Buzz
- August 2005, Legal Trends: E-Mail and Electronic Discovery – Ignore Now, Pay Later, *HR Magazine*
- April 1, 1999, Avoiding Liability in Discipline and Termination Decisions - A Reverse Engineering Analysis

SPEAKING ENGAGEMENTS

Mr. Warner is a frequent lecturer on topics including compliance with the McNamara-O'Hara Service Contract Act, the Davis-Bacon Act, the Family and Medical Leave Act, the Fair Labor Standards Act, reasonable accommodation under the Americans with Disabilities Act, OFCCP compliance, hiring, firing, discipline and other aspects of the employer/employee relationship touched upon by state and federal law.

- September 14, 2011, Telecommuting Employees: How Nonprofits Can Avoid the Legal Pitfalls
- August 11, 2011, "Focus on Misclassification: Are Your Association's Workers 'Employees,' 'Volunteers' or 'Contractors?'" Audioconference for Association TRENDS
- May 19, 2011, Performance Assessment and Management: Principles, PIPs, and Pointers (Oh, my!)
- May 18, 2011, Focus on Misclassification: Are Your Nonprofit's Workers 'Employees' or 'Independent Contractors?'
- March 29, 2011, "Dangers and Opportunities: Navigating Nonprofit Partnerships, Collaborations, Joint Ventures and More" for Better Business Bureau New York
- March 17, 2011, "Employee Handbooks – Fundamentals and Follies," hosted by Venable
- December 6, 2010, Mergers, Alliances, Affiliations and Acquisitions for Nonprofit Organizations: Financial and Legal Issues
- September 14, 2010, Legal Quick Hit: "Employee Privacy and Employer Liability in the Age of Texting, 'Sexting,' Facebook, and Other Social Media Phenomena" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- May 13, 2010, "Nonprofit Labor and Employment: Challenges, Solutions and Legal Pitfalls" audioconference presented by *Association TRENDS*
- May 11, 2010, Legal Quick Hit: "What the Developing Federal Legislative and Regulatory Agenda Means to Your Nonprofit as an Employer," for the Association of Corporate Counsel's Nonprofit Organizations Committee
- May 6, 2010, "Proactive Strategies for Minimizing HR and Other Legal Risks in Mergers, Outsourcing and Shared-Staffing" at the 2010 Finance and Business Operations Symposium, sponsored by the American Society of Association Executives

- 
- July 21, 2009, "Labor and Employment: Challenges, Solutions and Legal Pitfalls" at an audioconference held by AssociationExecs.com
 - May 21, 2009, Nonprofits in Lean Times: Employment and Labor Challenges for Nonprofits in the Economic Downturn
 - January 13, 2009, Legal Quick Hit: Reductions in Force - Planning, Implementation and Communication
 - December 18, 2008, RAFFA's "Managing the Economic Downturn"



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Kristine Sova is a trusted advisor and litigator concentrating in the areas of employment and labor law and business litigation.

Employment Litigation: Ms. Sova defends employers against allegations of federal, state and local equal employment opportunity, reasonable accommodation, leave, and wage-and-hour law violations. Representative matters include:

- Securing dismissal of claims of sexual harassment, gender discrimination, and retaliation against a transportation employer on a motion for summary judgment.
- Securing dismissal of Americans with Disabilities Act and Family and Medical Leave Act claims against a health care employer on a motion for summary judgment.
- Securing dismissal of whistleblower claims against two employing institutions and their board of directors after a briefing on the law.
- Securing dismissal of claims of discrimination relating to a national hotel chain's efforts to reorganize its banquet server assignment system after a hearing on the merits.

Business Litigation: Ms. Sova also litigates and tries business disputes in state and federal courts, ADR forums, and before administrative agencies. Representative matters include:

- Representation of a major investment bank in litigation arising from a failed collateralized loan obligation transaction.
- Representation of an international cosmetics company in litigation relating to the use of its own brand within the United States.
- The defense of a health care institution against claims for breach of contract in which \$7+ million were sought as damages. Ms. Sova second chaired the trial team that secured dismissal of the claims after a two-week trial. Dismissal has been affirmed on appeal.

Employment and Business Counseling: Ms. Sova devotes a substantial portion of her practice to counseling employers on ways to avoid litigation through business decisions. She advises on issues pertaining to employee relations, policy and practice development and implementation, employment contracts and separation agreements, termination of employment, and reductions in force, and regularly trains managerial and rank-and-file employees on harassment, discrimination and retaliation prevention. Ms. Sova also structures and conducts preventative self-audits for employers.

Labor Law and Collective Bargaining: Ms. Sova's practice also includes the representation of management in union negotiations as well as in collective bargaining and related disputes before the National Labor Relations Board and in arbitral forums.

Government Audits and Investigations: Ms. Sova represents clients in audits and investigations conducted by the U.S. Department of Labor, U.S. Department of

EDUCATION

J.D., Fordham University School of Law, 2002

Fordham International Law Journal, *ADR & the Law* Editor, 2001-2002

B.A., *magna cum laude*, New York University, 1999

Homeland Security, the New York State Department of Labor, and other governmental agencies. Much of her experience in this area relates to I-9s and employment eligibility as well as misclassification of employees as independent contractors.

HOSPITALITY INDUSTRY FOCUS

Ms. Sovo focuses a large part of her practice on the hospitality industry. As a graduate of the French Culinary Institute's Restaurant Management Program, she has a unique insider's perspective on the business of hotels, restaurants, taverns, and caterers. Ms. Sovo draws upon this insight to provide practical, real-world advice and counsel that is tailored to suit her hospitality clients' business needs.

ACTIVITIES

Ms. Sovo is a member of the New York State Bar Association Labor and Employment Law Section Committee on Legislation. Ms. Sovo is also a member of the New York State Restaurant Association.

PUBLICATIONS

- 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
- March 2011, New York Wage Theft Prevention Act Increases Obligations and Penalties for Employers Effective April 9, 2011, Labor & Employment News Alert
- December 2010, New York Issues New Wage Order for Hotels and Restaurants Effective January 1, 2011, Labor & Employment News Alert
- April 13, 2010, "'Bright-Line' Rules on E-Discovery Misconduct Still Not So Bright" in the April 8, 2010 issue of the *New York Law Journal*
- September 9, 2009, The E-Verify Mandate Has Arrived: It's Time For Federal Contractors To Comply, Labor & Employment News Alert
- July 13, 2009, Mandatory E-Verify for Federal Contractors Appears Likely; Senate Blocks DHS Plan to Rescind Contested "No-Match" Rule, Labor & Employment News Alert
- January 14, 2009, Mandatory E-Verify for Federal Contractors on Hold Until February 20, 2009 Pending Court Challenge, Government Contracts Update
- December 19, 2008, Navigating the Wage and Hour Law Maze of Unpaid Internships at Nonprofit Organizations
- November 19, 2008, Final E-Verify Rule Amends FAR for Federal Contractors, Labor & Employment News Alert
- June 12, 2008, President Bush Signs Executive Order Requiring Federal Contractors to Confirm Employment Eligibility Using "E-Verify", Labor & Employment News Alert
- October 16, 2007, Federal District Court Halts Implementation of DHS "No-Match" Rule, Labor & Employment News Alert
- August 17, 2007, DHS Publishes Final Regulation Outlining Procedures for Employers Who Receive SSA "No-Match" Letters and DHS Notices, Labor & Employment News Alert
- April 25, 2007, New York's Highest Court Holds That Absolute Immunity Applies To Form U-5s, Labor & Employment News Alert
- 2003, Editor, Labor Arbitration - What You Need to Know, *American Arbitration Association*

SPEAKING ENGAGEMENTS

Ms. Sovo frequently conducts seminars designed to help employers maintain compliance with various labor and employment laws on topics such as the

investigation of employee misconduct, sexual harassment, I-9 compliance, alcohol and substance abuse testing, COBRA continuation coverage, and wage and hour compliance.

- September 14, 2011, Telecommuting Employees: How Nonprofits Can Avoid the Legal Pitfalls
- June 22, 2011, "Complying with the New Hospitality Industry Wage Order and New Federal Rules" for the United Restaurant & Tavern Owners Association of New York
- June 16, 2011, "I-9s and Employment Eligibility: What to Do Before (and After) the Government Comes Knocking," Venable Management Employment Education and Training Series (M.E.E.T.S.)
- 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
- June 20, 2008, What are the Implications of Adopting an English-Only or English Fluency Policy?



Nicholas M. Reiter

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AREAS OF PRACTICE

Labor and Employment
Litigation

INDUSTRIES

Hospitality and Lodging
Life Sciences
Financial Services

BAR ADMISSIONS

New York

COURT ADMISSIONS

U.S. District Court for the Eastern
District of New York
U.S. District Court for the Northern
District of New York
U.S. District Court for the Southern
District of New York
U.S. District Court for the Western
District of New York

EDUCATION

J.D., *cum laude*, Brooklyn Law
School, 2008
B.A., College of William and Mary,
2004

Nicholas Reiter focuses his practice on labor and employment matters and commercial litigation.

His areas of concentration include:

- Representing clients in employment litigation matters such as claims of discrimination, harassment, retaliation, constructive discharge, and wage and hour violations
- Providing advice and counsel regarding employment practices and procedures, including employee handbooks, termination and hiring decisions, disability accommodations, and worker classification issues
- Evaluating non-compete clauses and other restrictive covenants
- Defending health care companies against federal False Claims Act allegations
- Litigating commercial actions such as breach of contract claims and unfair competition matters

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

- 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

- September 14, 2011, Telecommuting Employees: How Nonprofits Can Avoid the Legal Pitfalls

JUDICIAL CLERKSHIPS

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