




EMPLOYMENT LAW UPDATE

Brad E. Bennett
Attorney and Certified Specialist in Labor & Employment Law







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Brad E. Bennett




- Over 20 years of experience as an employment and labor lawyer and human resources professional.
- Represents clients in litigation, collective bargaining, arbitrations, and administrative proceedings before the EEOC, OCRC, SERB, and SPBR.
- Assists clients with HR compliance, including day-to-day employment issues, discipline, handbook policies, job descriptions, internal investigations, leave issues, FLSA compliance, and HR audits.
- Listed in Best Lawyers in America.
- Selected to "Super Lawyers" every year since 2015.
- OSBA Certified Specialist in Labor and Employment Law.

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Agenda

1. Case Law Update
2. Wage and Hour Regulatory Update
3. U.S. Supreme Court Update
4. State Legislation Update
5. Labor Law Update



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ADA/Disability Case Update

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“Smoking Gun” Email Creates Issue of Fact for Jury

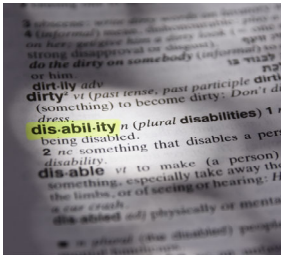
- *Paula Babb v. Maryville Anesthesiologists PC*, 942 F.3d 308 (6th Cir., Nov. 6, 2019)



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ADA Discrimination – Booth v. Nissan (6th Cir.)

- ADA covers a “qualified individual with a disability”
- E.g., “an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires”



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ADA and Constructive Discharge Cases

- Failure to accommodate and constructive discharge –
Morrissey v. Laurel Health Care Company, (6th Cir. Dec. 23, 2019)

- ADA Harassment and Constructive Discharge –
Rashida King v. Cincinnati Public Schools, 2019 WL 1275230 (March 13, 2019)

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FMLA
Family and Medical Leave Act

FMLA Case Update

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FMLA Case Update



1. No-Fault Attendance Policy Violated FMLA
Dyer v. Ventra Sandusky, LLC (6th Cir.)
2. Is Golfing While on FMLA Reason to Terminate?
LaBelle v. Cleveland Cliffs, Inc. (6th Cir.)

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**Parental Leave Class Action Settlement-
Rotondo v. JPMorgan Chase Bank**

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Nursing Mothers –Lactation Break

Nursing Mother Lactation Break – DOL Settlement

- *Acosta v. Allegiance Heath Management, Inc.*



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Age Discrimination Case Update



- *Hannon v. Louisiana-Pacific Corp* (6th Cir.)
- *Romano v. Hudson City School Dist.* (6th Cir.)

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Title VII Case Update

- Can employers shorten the timeline to file Title VII claims through employment contract?

Logan v. MGM Grand Detroit Casino (6th Cir.)

- Is filing with the EEOC a jurisdictional defense that cannot be waived?

Fort Bend County v. Davis (U.S. Supreme Court)



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First Amendment and Social Media

Coach Terminated in Violation of 1st Amendment?

- *Sensabaugh v. Halliburton (6th Cir. 2019)*



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DOL/WAGE AND HOUR UPDATE

- **Ohio Minimum Wage Increase**
 - \$8.70/hour (was \$8.55)
- **DOL Regular and Basic Rate Final Rule**
- **Opinion Letters:**
 - 7(k) exemption
 - Volunteers who perform extra duty for third parties

- **DOL Overtime Rule (effective 1/1/2020)**
 - Salary level increased from \$455/wk to \$684/wk (\$35,568/yr)
 - Non-discretionary bonuses can satisfy 10% of salary level
 - Highly Compensated Exemption increased to \$107,432 (was \$100k)

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DOL/WAGE AND HOUR UPDATE

- **DOL FMLA Opinion Letters:**
 - Intermittent leave for child's IEP Meetings
 - Delay of designation of FMLA when paid benefits utilized?

- **Proposed Rules:**
 - Tip Regulations
 - Joint Employer Test
 - Fluctuating Workweek
 - Labor Organization Financial Reporting

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U.S. Supreme Court Case Update

- Does Title VII prohibit discrimination based upon transgender status?
- Does Title VII prohibit discrimination based upon sexual orientation?
- Does Section 1981 race discrimination claim utilize "but-for" causation?

- What constitutes "materially adverse action" under Title VII?
- Religious Accommodation
 - What constitutes "undue hardship" and "de minimus cost"

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From the Statehouse . . .

- SB 57 – Hemp (effective 7/2019)
- HB 158 – Military Spouses Unemployment Comp. (effective 3/20/2019)
- HB 166 – Comp Time for Townships (effective 10/17/2019)
- Pending –
 - HB 352 (Ohio civil rights act amendment)



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Labor Law Update

- **Janus Cases**
- **NLRB Decisions:**
 - Restated Arbitration referral standard;
 - Reinstated employer's right to limit use of email
 - Employers may require investigation confidentiality
 - More . . .



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