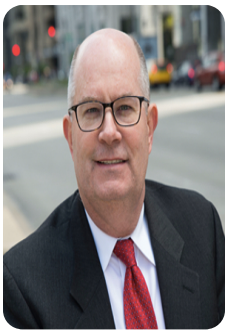
BRYCE DOWNEY & LENKOV LLC

Labor & Employment Newsletter
February 2018

BDL Illinois & Indiana Labor & Employment Team



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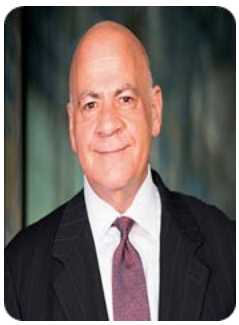

Cary S. Schwimmer

Hollywood and Celebrity Sex Scandals and Harassment Claims on the Upswing

Harvey Weinstein, Kevin Spacey and Matt Lauer just a few of the names on the long list of celebrities recently accused of sexual misconduct. Hollywood has been flooded with sexual harassment allegations in the last few months. Actresses, actors, professional athletes and others throughout Tinseltown and beyond have come forward, some waiting decades, to tell their personal stories of sexual harassment and assault. Ranging from pats on the behind to rape, the allegations have inundated the media, even prompting the #MeToo social media movement.

The Weinstein scandal first made headlines in October when the New York Times published an article detailing allegations of sexual harassment against Harvey Weinstein spanning decades. Actresses Rose McGowan, Ashley Judd and Mira Sorvino are among the women who came forward. Weinstein has been accused of forcing women to massage him and watch him naked. He also promised to help advance their careers in return for sexual favors. It has also been alleged that he “blacklisted” actresses who refused his advances.

After the Weinstein scandal came to light, the floodgates opened for other public allegations of sexual misconduct and harassment. One of the more prominent cases exposed in the media has been the Dr. Larry Nasser, the former Michigan

State sports and USA Gymnastics physician. Nasser has been sentenced to up to 175 years in prison for sexually abusing patients, including student athletes and former Olympians, during the course of medical treatment. Over 100 accusers have come forward alleging sexual abuse and misconduct by Nasser. As a result of Nasser's misconduct, criminal lawsuit, and a number of associated civil lawsuits, Michigan State's president and athletic director have resigned. Michigan State and USA Gymnastics are among the defendants in a number of civil lawsuits by Nasser's accusers.

Practice Pointer:

Amid the celebrity and public figure scandals, employers should be reexamining their own sexual harassment policies, trainings and procedures. It is critical for companies to be proactive and update their internal policies and procedures to help reduce liability and litigation.

At a minimum, employers should consider annual sexual harassment trainings. Further, employers should asses their complaint procedures and ensure that there are alternative avenues for employees to complain (i.e. in the event the alleged harasser is the employee's supervisor). Importantly, employers should communicate the company's anti-retaliation policies to make sure employees clearly understand that they will not face retaliation for bringing complaints of harassment to the attention of the company.

If you have any questions about how to better train your employees, or if you need assistance drafting policies, please contact us. We regularly present seminars and webinars on this and other important topics. For example, Storrs Downey will be presenting "Identifying, Investigating and Reducing Sexual Harassment in the Workplace" before the Illinois Manufacturers Association on February 2, 2018.

9th Circuit Judicial Sexual Misconduct and Investigation

It seems as though you cannot change the channel or flip the page of a newspaper without hearing about a new high-profile claim of sexual harassment. Celebrities have topped the list of alleged offenders, but also those in sitting in powerful government position and in the corporate world have been named.

One of the latest headlines includes Judge Alex Kozinski, 67, formerly of the 9th Circuit Court of Appeals. Amid sexual harassment accusations from 15 women, Kozinski resigned from the bench in December 2017. Kozinski was appointed by President Reagan, and was considered to be one of the highest-profile judges in the federal appeals court system.

The first report of sexual misconduct against Kozinski was published by the Washington Post on December 8th, in which six former clerks or staffers accused the judge of sexually-based inappropriate conduct, including allegations that he invited his clerks into his chambers to show them porn and told another clerk she should exercise naked.

On December 14th, the 9th Circuit's chief judge ordered a judicial misconduct inquiry regarding the claims against Kozinksi on December 14th. The following day, 7 more women accused the judge of sexual misconduct spanning over decades. Four of the accusers claim he inappropriately touched them.

Kozinski apologized in a statement saying that he "may not have been mindful enough of the special challenges and pressures that women face in the workplace." He further explained that he was retiring because he "cannot be an effective judge and simultaneously fight this battle."

The day prior to Kozinski's resignation, the 9th Circuit Court assigned a committee to investigate workplace conditions. An employment lawyer along with 4 judges have been named to the committee, which will review policies to protect employees and recommend changes if necessary.

Retaliation Claims Account for Almost Half of EEOC Charges in Fiscal Year 2017

The EEOC released its fiscal year (FY) 2017 enforcement and litigation data in late January, and unsurprisingly, the data confirms that nearly half (48.8%) of the charges filed with the agency in FY 2017, which ended September 30, 2017, were for retaliation. The large percentage represents 41,097 charges filed alleging some sort of workplace retaliation.

Race and disability discrimination charges followed retaliation claims as the second and third most frequently filed charges. The EEOC also received 6,696 sexual harassment charges and obtained $46.3 million for sexual harassment victims.

The number of charges received by the EEOC in FY 2017 are broken down as follows:

- Retaliation: 41,097 (48.8 percent of all charges filed)
- Race: 28,528 (33.9 percent)
- Disability: 26,838 (31.9 percent)
- Sex: 25,605 (30.4 percent)
- Age: 18,376 (21.8 percent)
- National Origin: 8,299 (9.8 percent)
- Religion: 3,436 (4.1 percent)
- Color: 3,240 (3.8 percent)
- Equal Pay Act: 996 (1.2 percent)
- Genetic Information: 206 (.2 percent)

The EEOC also reported to have resolved 99,109 charges in FY 2017. It noted that it reduced the charge workload by 16.2 percent to 61,621, the lowest level of inventory in 10 years. It partially attributes the reduction in workload to new strategies related to quicker resolution of claims.

Practice Pointer:

Because retaliation is high on the EEOC's agenda, employers should review their current policies to ensure that they include a strong non-retaliation policy that is well-communicated to their employees. Additionally, because of the influx of sexual harassment headlines, we expect to see more sexually-based claims over the course of this year. We encourage employers to review their internal harassment protocols to ensure that an efficient and well-organized complaint and investigation procedure is in place for their employees. If your company is in need of assistance drafting or reviewing existing policies and procedures, please contact us.

Employee Declined Vaccinations and Religious Beliefs: Employer Obligation to Accommodate

We have previously written an article on religious accommodations,"Religious Accommodations In The Workplace: Practical Lessons," *DRI's In-House Defense Quarterly Magazine, Summer 2016*, and continue to keep a close eye on how the courts are addressing religious protections within the context of the employment setting.

In 2016 Mission Hospital, Inc., a North Carolina corporation, was sued by the EEOC for failing to accommodate the religious beliefs of employees who declined to undergo annual flu vaccinations and three such employees were fired as result. *EEOC v. Mission Hospital, Inc.*, 1:16-cv-00118 (Western District of North Carolina, Asheville Division). The plaintiffs have argued they were fired because of their religious beliefs. The employer argues that they discharged the employees for failing to follow the hospital's accommodation procedure for the vaccine.

The discharged employees religious beliefs on not getting vaccinated ranged from the position that injecting a flu vaccine was morally or spiritually wrong to healing only occurs with plants, fruits and grains. Each of them submitted requests for religious accommodations but were denied for untimely filing same. The plaintiffs

denied receiving any such submission deadlines.

In denying the hospital's motion for summary judgment thereby requiring this case proceed to trial, the court held that a jury could find that the hospital treated individuals with religiously held beliefs differently and did not accommodate those beliefs.

If the hospital had been more flexible with its vaccination schedule and allowed these plaintiffs to skip the vaccines, consistent with their religious beliefs, this case would not exist.This case, like many other religious accommodations cases, will need to be closely monitored.

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Biometrics Update and Case Law Development

In our August 7, 2017 blog post, we highlighted recent litigation involving biometrics, particularly related to timekeeping procedures.

Since early fall, dozens of employers in Illinois have been sued for alleged violations of the Illinois Biometric Information Privacy Act ("BIPA"). BIPA provides for a private right of action and liquidated damages of $1,000 per violation (or $5,000 for intentional or reckless violations) to persons "aggrieved by a violation" of its restrictions on the collection, use and sharing of certain biometric data.

On December 21, 2017, in *Rosenbach v. Six Flags Entertainment Corp.*, No. 2-17-0317, 2017 IL App (2d) 170317, the Illinois Appellate Court issued an impactful ruling under this statute. The court held that to state a claim under BIPA, a plaintiff must allege more than a mere failure to comply with BIPA's requirements to provide notice and obtain consent before collecting biometric data.

Although *Rosenbach* is not an employment case, the allegations are very similar to those being alleged against employers related to timekeeping procedures. For example, the plaintiff, a minor, alleged that Six Flags scanned his thumbprint for security purposes using a biometric scanner, and that before scanning his thumbprint, Six Flags did not provide the plaintiff with a written disclosure that stated the purpose of the collection and provided a destruction schedule, nor did it ask him to sign a written release.

Six Flags moved to dismiss the plaintiff's BIPA claims arguing that the plaintiff was not an "aggrieved" person under the statute because he did not allege any actual injury as a result of the collection of his biometric data without prior notice or consent. The lower court denied the motion and certified an interlocutory appeal.

On appeal, the court analyzed whether a plaintiff is "aggrieved" under BIPA, a term which is not defined in the statute. As such, the court looked to the plain meaning of the word and held that "aggrieved" requires "an actual injury, adverse effect, or harm in order for the person to be aggrieved." The court held that "a plaintiff who alleges only a technical violation of the statute without alleging some injury or adverse effect is not an aggrieved person under section 20 of the Act." Accordingly, the company's failure to provide notice or to obtain plaintiff's consent before collecting his thumbprint, on its own, was not sufficient to meet this standard.

Practice Pointer:

This decision is important for employers in Illinois because it helps clarify the standard by which employers can expect the courts to utilize in future biometrics litigation. This decision is also an important reminder to Illinois employers that they should always obtain written consent from employees before collecting their biometric data.

Medical Marijuana in Indiana's Future?

There has been much debate recently, in Indiana, concerning the possibility of legalizing medical marijuana. Indiana lawmakers and prosecutors each have their own views concerning medical marijuana.

Some lawmakers in Indiana believe marijuana could provide medical relief to residents who are currently suffering. One specific group that lawmakers believe could benefit from the legalization of medical marijuana is veterans. Many veterans suffer from post-traumatic stress disorder. In states where marijuana is legal veterans can obtain a medicinal dose to help deal with symptoms associated with post-traumatic stress disorder.

Indiana prosecutors and law enforcement officials on the other hand could not disagree more. In addition to remaining a crime under federal law to possess or sue marijuana, they maintain that medical marijuana would increase the risk of the abuse of opioids and other controlled substances, marijuana was not a medicine, and marijuana has had devastating effects in other states.

More recently, Midwest states have begun introducing legislation limiting the introduction of medical marijuana which went into effect January 1, 2014. Illinois is one of those states. Illinois introduced a "Pilot Program Act." The act allowed the introduction of medical marijuana to a specific group of individuals for a specific period of time. (See our April 2014 newsletter for a further discussion on same).

Some states have gone further in judicial decisions. Recently, the Massachusetts Supreme Court ruled that the Massachusetts' law on anti-discrimination required employers to reasonably accommodate their employee's off-site use of medically prescribed marijuana and prohibits employers from terminating employees solely because they use medical marijuana outside the workplace. *Barbuto v. Advantage Sales & Mktg., LLC,* 477 Mass. 456 (Mass. 2017).

Indiana may look to Illinois for guidance in determining their decision on medical marijuana. Illinois instituted a pilot program to ensure the roll out of medical marijuana was contained. Originally the act was set to last four years. However, Governor Bruce Rauner since extended the act to July 1, 2020. Indiana will have to decide if marijuana is a medicine or a drug. If a medicine, do the benefits of helping suffering residents outweigh the possible opioid abuse.

Indiana will hear proposed medical marijuana legislation from Representative Jim Lucas during the 2018 Legislative Session that begins in January.

This must be balanced against the recent professed war on legalization of marijuana raised by the Trump administration. He has rescinded former President Obama's practice of allowing states to legalize marijuana with minimal federal interference. U.S. Attorney General Sessions is now encouraging federal prosecutors to crack down on marijuana business in states which have legalized marijuana for recreational purposes. Eight such states have done so in addition to 29 states which have legalized medicinal use of marijuana.

Practice Pointer:
We will need to closely monitor both state and federal policies which continue to be in conflict.

Legal Developments Impacting the LGBTQ Community

Decisions and directives by the Trump administration in 2017 has greatly impacted the LGBTQ community. Below is a summary of the legislation and proposed changes by the current government:

Anti-discrimination laws

During the Obama-era, the EEOC adopted the position that discrimination based on sexual orientation was covered by Title VII. In 2017, the Trump administration disagreed and argued that discrimination laws do not protect LGBTQ people from workplace discrimination based on their sexual orientation. Most recently, in November 2017, the Supreme Court refused to hear a case that would decide this divided issue. (See BDL September, 2017 Labor & Employment Newsletter for further details related to this result).

What lies ahead? In 2018, we may see the Supreme Court asked to hear another case to decide this issue. We will monitor the Court's agenda and provide any updates as they develop.

Military

In July 2017, President Trump issued a directive that would have banned all new transgender recruits from enlisting in the military, as well as removing those transgender service members from currently serving in the military. (See BDL September, 2017 Labor & Employment Newsletter for more information on the POTUS directive). It further sought to prohibit transition-related surgery for service members. Courts, however, have not enforced the directive.

In 2018, we expect to see the Trump administration continue to fight against transgender citizens serving in the military.

Other legislation

Since the inception of the Trump administration, it has sought to repeal the Affordable Care Act, a program which greatly benefits the LGBTQ community. In October 2017, Trump signed an executive order to begin the repeal process.

In November 2017, the government passed a tax bill which made deep cuts in LGBTQ people's access to healthcare.

In 2018, Trump is expected to roll back Section 1557 of the Affordable Care Act, the nondiscrimination provision which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities. The elimination of Section 1557 would allow insurers to discriminate against its insurers on the basis of sexual and gender identity.

We will continue to monitor any new developments impacting the LGBTQ community.

Practice Pointer:

The Seventh Circuit Court of Appeals has previously ruled that Title VII protections apply to sexual orientation, and as such, employers in this Circuit are prohibited from discriminating against LGBTQ employees (See our April 4, 2017 Labor & Employment Blog post for discussion for this case). But we may have to see whether the Supreme Court addresses this issue this year. If you have any questions related to policies in your workplace which may impact your LGBTQ employees, please contact us.

Supreme Court Declines to Decide Whether Anti-Gay Bias is Prohibited Under Title VII

The Supreme Court declined to review an Eleventh Circuit ruling affirming dismissal of a lesbian security guard's allegations that a Georgia hospital violated Title VII by firing her because of her sexuality. This December 11, 2017 ruling leaves in place a circuit split over whether federal law bars discrimination against gay workers.

In 2015, Jameka Evans sued Georgia Regional Hospital at Savannah, a psychiatric facility, and several of its officials. She alleged that during her employment, her supervisor tried to force her to quit because she wore a male uniform and did not conform to female gender stereotypes. Evans alleged that the supervisor asked questions about her relationships, promoted a junior employee above her, and physically slammed a door into her body.

In March 2017, the Eleventh Circuit Court of Appeals ruled in the hospital's favor finding that Title VII does not protect against discrimination based on sexual orientation. The court relied

heavily on the Fifth Circuit's 1979 holding in *Blum v. Gulf Oil Corp*. which held "discharge for homosexuality is not prohibited by Title VII."

Evans, who is represented by Lambda Legal Defense and Education Fund, an LGBTQ legal advocacy group, thereafter appealed to the Supreme Court. In her petition for certiorari, she argued that Title VII's ban on "discrimination because of … sex" includes sexual orientation, citing the Seventh Circuit's decision in *Hively v. Ivy Tech Community College* wherein the court called it "common-sense reality that it is actually impossible to discriminate on the basis of sexual orientation without discriminating on the basis of sex." (See BDL September, 2017 Labor & Employment Newsletter).

Ms. Evan's lawyer, Gregory R. Nevins, said the Supreme Court's decision not to hear her case "is delaying the inevitable and leaving a split in the circuits that will cause confusion across the country."

Since 2012, under the Obama administration, the EEOC has argued that discriminating against gay workers violates the law. In July 2017, however, President Trump's administration gravely declared the opposite in a separate case involving a skydiving instructor who said he lost his job after telling a customer he was gay. That case is currently pending before a New York federal appeals court.

Practice Pointer:
Because the Seventh Circuit Court of Appeals has ruled that Title VII protections apply to sexual orientation, employers in this Circuit are prohibited from discriminating against LGBTQ employees.

The Uncertain Future of Class Action Waivers

In October, 2017, the Supreme Court of the United States heard oral argument in three consolidated cases (*National Labor Relations Board v. Murphy Oil USA, Inc., Epic Systems Corp. v. Lewis*, and *Ernst & Young LLP v. Morris*) that will determine the future of class action waivers in the employment context.

SCOTUS is charged with deciding whether the National Labor Relations Board (NLRB) correctly held that the National Labor Relations Act (NLRA) bans class action waivers in employment arbitration agreements. The NLRB's decision has been at odds with many courts of appeals decisions for the last several years.

As we reported in our July 2016 and April 2017 newsletters, the Seventh Circuit has held that such waivers are not enforceable, determining that they violate employees' rights to engage in protected activity under the NLRA. Notably, the Seventh Circuit's decision conflicts with the decisions of other Circuits on this point.

NLRB Overturns Obama-Era Joint-Employer Test

In 2017, President Trump appointed two Republicans to the five-member NLRB, giving Republicans a 3-2 majority for the first time in a decade. The Board has since overruled several Obama-era rulings.

Most prominent of those rulings was its decision on December 14, 2017. On that date, the NLRB overturned an Obama-era ruling that had made it easier for unions and workers to hold companies accountable for practices of contractors and franchisees.

The 3-2 decision reversed the standard it had set in a 2015 case involving Browning-Ferris Industries Inc. The decision reinstated a previous test that says companies are "joint employers" only when they exercise direct control over workers. The ruling changes the standard for holding a company responsible for labor law violations that occur at another company, like a contractor or franchisee, with which it has a relationship.

In the 2015 *Browning-Ferris* decision, the NLRB held that even when a company has never

exercised control over the terms and conditions of employment, and even when control is not direct and immediate, the company can still be a joint employer based on indirect control. Many companies, especially in the fast-food industry, interpreted this decision as confusing in regards to franchising which generally allows companies to avoid the costs of directly employing workers.

The NLRB commented that the former Democratic majority overstepped its authority by altering the legal definitions of employment. The board called the standard created by *Browning-Ferris* "a distortion of common law."

The ruling also impacts whether such a corporation would have to bargain with workers at a franchise if they unionized, or whether only the owners of the franchise would have to do so.

Practice Pointer:
The Court appears to be divided over the issue. The Court is expected to issue its decision sometime in 2018, which, no matter the outcome, will impact employers nationwide. We will continue to monitor these cases and provide timely updates.

Impact of New Federal Tax Bill on Sexual Harassment Settlements

In the wake of the wave of publicity surrounding sexual harassment claims, it is no surprise that there has been increased attention in the media about nondisclosure agreements contained in sexual harassment settlement agreements.

On December 22, 2017, President Trump signed the Tax Cuts and Jobs Act into law. Section 13307 of the new tax bill amends Section 162 of the tax code, which generally allows businesses to deduct certain ordinary and necessary expenses paid or incurred during the year as part of running the business, to provide the following exclusion:

PAYMENTS RELATED TO SEXUAL HARASSMENT AND SEXUAL ABUSE.

—No deduction shall be allowed under this chapter for—
(1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or
(2) attorney's fees related to such a settlement or payment.

Going forward, the exclusion will prevent a business deduction for the amounts paid to settle such harassment claims if the settlement contains a nondisclosure agreement.

Importantly, the law omits any definitions for what constitutes "sexual harassment or sexual abuse" nor does it define "employers" or "payers." The law further fails to specifically address the deduction in situations in which sexual harassment is just one element of a claim (i.e. the claimant alleges sexual harassment in addition to other employment claims such as race or religious discrimination). The broad language of law does not appear to carve out any exceptions if another type of workplace claim is presented. So long as an employee claims sexual harassment and there is a non-disclosure element to an agreement (no matter which party requests the inclusion of the non-disclosure clause), it will trigger the deduction exclusion.

Practice Pointer:
Because the new tax bill seemingly will complicate sexual harassment settlements, employers are encouraged to engage in litigation prevention tactics, including trainings and implementation of workplace policies and procedures.

The EEOC's EEO-1 Survey for 2017 is Now Open

On January 24, 2018, the EEOC announced that it has completed its mailing of the 2017 EEO-1 survey Notification Letters.

The EEO-1 is an annual survey that requires all private sector employers with 100 or more employees and federal government contractors or first-tier subcontractors with 50 or more employees and a contract/subcontract of $50,000 or more to file the EEO-1 report. The EEO-1 report provides employment data by race/ethnicity, gender and job categories. The filing of the EEO-1 report is required by federal law and the annual filing deadline is March 31, 2018.

Practice Pointer:

For eligible employers, filing of the EEO-1 report is not voluntary and must be done by the March 31st deadline. If you are an eligible employer and have not yet received the 2017 EEO-1 Notification Letter, the EEOC has advised that you should immediately contact the EEO-1 Joint Reporting Committee at 1-877-392-4647 (toll-free) or by e-mailing e1.techassistance@eeoc.gov. The EEOC's EEO-1 Survey website at https://www.eeoc.gov/employers/eeo1survey contains reference documents such as a EEO-1 User's Guide, sample form, instructions, FAQs, a fact sheet and a EEO-1 Job Classification Guide.

Paid Family Leave Update: Tax Credit to Employers

In our September 2017 Employment & Labor Newsletter, we reported that the new administration discussed the possibility of implementing mandatory paid family leave. Although no such paid family leave laws have been enacted by the government, the new federal tax bill does address an associated tax credit to employers who offer paid family and medical leave.

The applicable section in the tax code is called the "*Employer Credit For Paid Family And Medical Leave." Employers who offer paid family and medical leave will be eligible to claim a tax credit equal to* 12.5% of the wages they pay to employees when they take family and medical leave (for reasons enumerated under the established Family and Medical Leave Act).

In order to be eligible for the tax credit, employers must provide at least two weeks of paid family and medical leave per year to both its full-time and part-time employees, and pay employees at least half of their hourly rate while on leave. If, however, the employer chooses to pay their employees more than half of their hourly rate while on leave, they would be entitled to a higher tax credit. The tax credit will apply to wages paid starting in 2018.

Firm News

BDL Leading Lawyers 2018

We are proud to announce Geoff Bryce, Storrs Downey, Rich Lenkov, Jeanne Hoffmann, Margery Newman, Werner Sabo, James Zahn, Brian Rosenblatt, Terry Kiwala, and James McConkey have been selected as Leading Lawyers for 2018. In addition, Michael Milstein has been selected as Emerging Lawyer for 2018.

Leading Lawyers are recommended by their peers to be among the top lawyers in their areas of practice. Less than 5% of all lawyers licensed in each state receive this distinction. Emerging Lawyers have been identified by their peers to be among the top lawyers age 40 or younger unless they have practiced for no more than 10 years. Less than 2% of all lawyers licensed in each state receive this distinction.

BDL Super Lawyers 2018

We are proud to announce Rich Lenkov, Margery Newman, Jeanmarie Calcagno, and Brian Rosenblatt have been selected as Super Lawyers for 2018. The Super Lawyers designation is given to no more than 5% of lawyers in Illinois.

In addition, Michael Milstein, Kirsten L. Kaiser Kus and Renée Day were selected to Rising Stars. Rising Stars is an exclusive list, recognizing no more than 2.5% of lawyers in Illinois.

BDL Announces New Income Members

We are proud to announce Michael Milstein and Kirsten Kaiser Kus have been elected as Income Members.

Michael Milstein (Chicago) joined the firm in 2011 and concentrates his practice in workers' compensation. For the last four years, Michael was named a Rising Star by Super Lawyers and an Emerging Lawyer by Leading Lawyers. His clients include retailers, staffing agencies, construction-related firms, trucking companies, manufacturers and insurance companies.

Kirsten Kaiser Kus (Schererville) joined the firm in 2014 and concentrates her practice in workers' compensation, general liability and criminal defense. This year, Kirsten was named a Rising Star by Super Lawyers. Kirsten represents a wide range of clients including construction based companies, manufacturers, retail establishments, governmental agencies, casinos and insurance companies.

Both Michael and Kirsten embody firm culture and values with a client-focused approach and commitment to their communities. We are thrilled to welcome Michael and Kirsten as Income Members.

Storrs Downey Obtains Dismissal on Discrimination and Harassment Charges

Storrs Downey obtained a dismissal on four separate discrimination and harassment charges filed by former female employees with the EEOC in Indianapolis. Storrs established that the employer did not have the requisite 15 or more employees necessary for a Title VII action.

Storrs Downey Obtains Dismissal for Restaurant Owner

On behalf of a restaurant owner, Storrs Downey obtained a dismissal of an eighteen count claim (*everything but the kitchen sink alleged*) filed by a former restaurant server with the Illinois Department of Human Rights "IDHR". After hearing the testimony of the claimant and restaurant proprietor and reviewing substantial documentation from the employer, the IDHR found there was insufficient evidence to support any of the employee's claims.

BDL Obtains Dismissal on National Origin & Retaliation

After presenting testimony and documentary evidence at a fact finding conference, BDL obtained a dismissal from the Illinois Department of Human Rights on a claim of national origin and retaliation brought by a former branch manager for a company in the service industry in the Chicago area.

Upcoming Seminars

- On **2/2/18**, Storrs Downey will present "Identifying, Investigating & Reducing Sexual Harassment In The Workplace" at the Illinois Manufacturers' Association's *Small Manufacturers Council Meeting* in Oak Brook, IL. For more information or to register, click here.

- On **2/23/18-2/24/18**, Jeanne Hoffmann and Geoff Bryce will attend the 36th

Annual CAI Illinois Condo-HOA Conference & Expo at the Donald E. Stephens Convention Center in Rosemont, IL. Be sure to stop by our booth! For more information or to register, click here.

Recent Webinars

Bryce Downey & Lenkov hosts monthly webinars on pressing issues and hot topics in various practice areas. If you would like a recording of any of our prior webinars, please email Marketing Director, Stuart Fisher at sfisher@bdlfirm.com.

Recent Seminars

- On **10/4/17** Cary Schwimmer presented, "Additional Leave as an Accommodation Under the ADA" at the Memphis Bar Association.

- On **12/28/17** Cary Schwimmer presented, "Firing Employees Who Take the Employer's Stuff to Build a Case" at the Memphis Bar Association.

- On **1/24/18**, Bryce Downey & Lenkov co-hosted "Forecast For 2018" with Willis Towers Watson. Robert Bramlette moderated the bankers' roundtable featuring leaders from Busey Bank, CIBC, West Suburban Bank and Cook County Department of Economic Development. The seminar also included presentations from Geoff Bryce, Jeanne Hoffmann and Margery Newman.

- On **1/30/18**, Storrs Downey moderated "Avoiding Claims of Race, Religion or National Origin Discrimination in the Current Political Climate" at the American Conference Institute: 26th National Conference on Employment Practices Liability Insurance.

Contributors to the February 2018 Labor & Employment Newsletter

The Bryce Downey & Lenkov attorneys who contributed to this newsletter were Storrs Downey, Jessica Jackler and Emily Gant.

Cutting Edge Legal Education

If You Would Like Us To Come In For A Free Seminar, Click Here Or Email Storrs Downey At sdowney@bdlfirm.com

Our attorneys regularly provide free seminars on a wide range of labor and employment law topics. We speak to a few people or dozens, to companies of all sizes and large national organizations. Among the national conference at which we've presented:

- 12th Annual Employment Practices Liability Insurance ExecuSummit
- National Association of Security Companies (NASCO)

- American Conference Institute (ACI)
- Claims and Litigation Management Alliance Annual Conference
- CLM Retail, Restaurant & Hospitality Committee Mini-conference
- National Workers' Compensation and Disability Conference® & Expo
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- RIMS Annual Conference

Some of our previous seminars include:

- Religious & Disability Discrimination & Accomodations.
- Recent DOL & NLRB Developments.
- Approaching LGBT Issues In Today's Workplace.
- Hiring Do's And Don'ts (With Video Examples).
- Is your Independent Contractor Actually An Employee?
- 10 Tricky Employment Termination Questions Answered.
- Risky Business: Drugs, Sexual Orientation And Guns In The Illinois Workplace.
- Employment Law Issues Every Workers' Compensation Professional Needs To Know About.

Other Newsletters

Bryce Downey & Lenkov regularly issues several practice area newsletters. If you would like a copy of any of the below articles from other BDL newsletters, please email our Marketing Director Stuart Fisher at sfisher@bdlfirm.com.

General Liability

- Indiana Court Of Appeals Holds Children's Claims Are Not Time Barred As Derivative Claims In A Medical Malpractice Action
- Illinois Supreme Court Holds Six Person Jury Limitation Unconstitutional

Corporate & Construction

- Will Interest Rates Rise? Economic Slow Down? Time To Talk To Your Banker
- Parties May Be Entitled To A Lien Even If The Project Never Proceeds

Workers' Compensation

- Wage Differential May Not Necessarily Require Wage Loss
- Accident Date Trumps Hearing Date In Wage-Diff Award
- Collateral Source Rule Does Not Apply To Workers' Compensation Cases

Disclaimer: