BRYCE DOWNEY & LENKOV LLC

Labor & Employment Newsletter
March 2016

Upcoming Webinar!
3/8/16
Top 10 Employer Mistakes
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5 Ways To Help Address Employment Issues

Keeping employment issues out of courts and administrative agencies is certainly something employers should strive for. The following are effective ways to reduce litigation and minimize exposure once a suit or claim has been filed.

1/Early Intervention

Once you learn of an employee complaint of alleged harassment, discrimination or unfair treatment, promptly investigate the matter by talking with the employee and others involved. Many employment claims arise because the employee is upset the employer did not communicate with them promptly or at all.

2/Employee Handbooks And Manuals

A written employee handbook outlining important company rules, policies and regulations and the consequences for violating rules can help provide a basis for discipline and termination if necessary. In addition, addressing certain important state and federal laws such as the FMLA, ADA and a policy against discrimination and harassment practices might benefit the employer when faced with a future employment lawsuit. Two cautionary notes:

- Make sure to periodically review and update your handbook with significant changes in employment laws. (For example, under the NLRB you can no longer have a policy prohibiting employee criticisms or comments about non-proprietary or confidential information about the company and its management).
- If you include a progressive disciplinary process you could face legal hurdles if you do not consistently apply and follow each step with employees you discipline or terminate.

3/Document, Document, Document

Substantial written support for how and why an employer handled an issue with its employee makes for a stronger employment dispute.

4/Do Not Retaliate Against Employees

As tempting as it might be to take some form of retaliatory action against an employee who makes what seems like (and actually might be) a false claim of harassment or discrimination against their company, do not do so. Do not demote, fire, take adverse action or even threaten to do so because an employee makes a seemingly false or unreasonable claim. Many retaliation claims often result in greater awards for the underlying claim of discrimination or harassment. Fully investigate the employee's claim and advise the employee of the result of your investigation but do not punish them.

5/When In Doubt, Contact Your Attorney

If you are unsure on how to handle an employee's claim of discrimination or unfair treatment, how or whether to discipline an employee or an employment issue, strongly consider consulting with your employment attorney. The money you spend in consulting with your attorney will be well spent compared to having to pay him to defend a costly lawsuit in the future.

Get Smart About Employees' After Hours Smart Phone Use

In our January and November 2015 newsletters, we featured articles addressing some issues surrounding employee smart phone use in anticipation of the long-awaited decision in *Allen v. City of Chicago*.

In December 2015, the Court issued its much-anticipated decision, in *Allen v. City of Chicago*, No. 10 C 3183, 2015 WL 8493996, at *1 (N.D. Ill. Dec. 10, 2015). In *Allen*, a police officer sued his employer in a class action for unpaid overtime wages resulting from his work-related smartphone use after hours. While the City had a system involving time slips to pay overtime for employees who worked after hours, the officers alleged that there was an unwritten policy or culture that it was unacceptable to turn in time slips for work-related smart phone use after hours.

The court found that some of the time the officers used their smartphones for work-related purposes after hours constituted compensable work under the Fair Labor Standards Act (FLSA) because

it involved substantial duties pursued necessarily and primarily as a part of the officers' jobs, and was not merely *de minimus*. However, the court noted that the mere act of monitoring cell phones did not constitute compensable work under the FLSA, so long as the officers could still spend their time primarily for their own benefit without persistent interruption.

Despite this finding, the court also found that the City provided a reasonable process for employees to report after hours work in order to be compensated; as such, it was not liable for non-payment if the employee failed to follow the process and report time worked. As the officers failed to prove that the City knew or had reason to know that the officers were not receiving compensation, the court dismissed the case. The officers have appealed the case, which is currently pending.

Practice Tip:
This case makes clear that employers must carefully scrutinize their employees' after hours work-related smartphone use to determine whether it is compensable. Additionally, employers may help reduce their exposure by establishing procedures for employees to report and receive wages for after hours work.

NLRB Finds Policy Prohibiting Recording In The Workplace Unlawful

On 12/24/15, in *Whole Foods Market, Inc.*, 363 NLRB No. 87 (2015), the National Labor Relations Board (NLRB) held it is unlawful for an employer to prohibit employees from using recording devices in the workplace without company authorization. The NLRB relied on Section 7 of the National Labor Relations Act (NLRA), which protects employees' "concerted activity" concerning terms and conditions of employment. The NLRB reasoned that Whole Foods' policy prohibits recording of workplace activities relating to the terms and conditions of employment. The NLRB noted that its decision is limited to Whole Foods' policy. Additionally, the NLRB indicated that there are certain instances where legitimate reasons, such as patient privacy, would permit restrictions on recording in the workplace.

Practice Tip:
Employers should carefully review their policies regarding recording in the workplace and consider revising such policies as necessary.

Illinois & Federal Government Push Equal Pay Initiatives

On 1/1/16, the amended Illinois Equal Pay Act, 820 ILCS § 112/1 et seq., went into effect. The Act, which previously only applied to employers with more than three employees, was amended to apply to all employers of any size. The amended Act will also impose stiffer penalties on employers for violating the Act.

The Act prohibits employers from discriminating in pay on the basis of sex. Specifically, the Act prohibits paying wages to an employee at a rate less than it pays another employee of the opposite sex "for the same or substantially similar work on jobs the performance of which requires equal skill effort, and responsibility, and which are performed under similar working conditions." However, the Act allows for a difference in pay when it is based on a seniority system, merit system or a system measuring earnings by quantity or quality of production.

For employers with less than 4 employees, first offenders can be fined up to $500; fines for subsequent offenders and offenders with 4 or more employees can be as high as $5,000.

Demonstrating a growing trend in this area, on 1/29/16, the Obama administration announced a proposed law in collaboration with the Equal Employment Opportunity Commission (EEOC), which would require companies with 100 or more employees to report to the federal government how much they pay their employees, broken down by race, gender and ethnicity. The goal of this proposed regulation is to promote transparency to help reduce discrimination and the gender pay gap. The rule is expected to be finalized in September 2016 and employers will be required to submit their first pay reports in September 2017. We will continue to monitor and update you on this new development.

Practice Tip:
Illinois employers should closely review their payroll records to be sure that employees doing the same or substantially similar work are paid equally, unless one of the exceptions above applies. Recognizing the pending federal law requiring employers with 100 employees or more to report employee earnings, large employers in all states should begin to carefully review their payroll records and be prepared to address any pay trends that the federal government may view as problematic.

Recent Seventh Circuit Decisions Helpful To Employers Defending Against ADA Claims

Two recent Seventh Circuit decisions could be very helpful to employers defending against disability discrimination and accommodation claims under the Americans with Disabilities Act (ADA). The ADA prohibits employment disability discrimination and requires employers to attempt to reasonably accommodate qualified individuals with disabilities. Although the 2008 amendments to the ADA broadened the definition of what constitutes a disability under the ADA, in both cases, the employers were able to prevail by arguing that the employees were not "qualified individuals with disabilities" under the ADA.

First, in *Carothers v. City. of Cook,* 808 F.3d 1140 (7th Cir. 2015), Plaintiff alleged disability discrimination under the ADA, arguing that she was terminated from her juvenile hearing officer position because of her anxiety disorder, among other claims. The Seventh Circuit held that the district court did not err in granting Defendant's motion for summary judgment. It held that Plaintiff could not establish that she was disabled under the ADA when Plaintiff's disability, which prevented her from interacting with juvenile detainees, only prevented her from doing her own job, but did not restrict her from performing either a class of jobs or broad range of jobs in various classes compared to the average person having comparable training, skills and abilities.

Second, in *E.E.O.C. v. AutoZone, Inc.*, No. 15-1753, 2016 WL 29044 (7th Cir.), the EEOC sued Autozone on behalf of Margaret Zych, alleging that Autozone violated the ADA by failing to accommodate Zych's permanent lifting restriction and terminating her employment because of her restriction. A jury determined that Zych was not a qualified individual with a disability under the ADA and found in favor of Autozone. On appeal, the EEOC argued that lifting was not an essential function of Zych's position as a manager. The EEOC cited Autozone's handbook, which encouraged employees to "ask for help when needed." The Seventh Circuit disagreed, noting that an employer's promotion of team work does not constitute a reassignment of essential job functions. Autozone's evidence included a job description clearly indicating that heavy lifting is an essential job function and consistent testimony from current employees explaining the regularity and frequency at which heavy lifting occurs on the job. The Seventh Circuit found that lifting was an essential function of Zych's job, and given her work restriction, held that Zych was not a qualified individual under the ADA, ruling in Autozone's favor.

Practice Tip:

Remember, to determine whether an employee has a qualifying disability under the ADA that substantially limits his or her ability to work, employers should consider not only whether an employee is prevented from performing his or her specific job duties, but is also prevented from performing a broad range of jobs compared to similarly credentialed individuals. Borrowing an example from *Carothers,* if a juvenile hearing officer is prevented from working with juveniles, she would not be considered to have an ADA qualifying disability because she is able to work as an adult hearing officer, a position which would be held by similarly credentialed individuals.

Additionally, employers should bear in mind they only are required to accommodate an employee's permanent work restrictions when the employee can perform essential functions of the job. Therefore, when addressing accommodation issues, employers should carefully analyze which job functions are essential by reviewing the job description, nature of the job and duties of current employees.

What You Can Learn From Pactiv's Recent Agreement To Pay $1.7 Million To Settle An EEOC Disability Discrimination Class Investigation

On 11/5/15, the Equal Employment Opportunity Commission (EEOC) announced that Pactiv LLC agreed to pay $1.7 million to conciliate a discrimination charge filed with the EEOC. In addition to monetary relief, Pactiv also agreed to conduct ADA trainings at all of its locations and to revise and distribute its ADA and attendance policies. Pactiv also agreed to provide various periodic reports to the EEOC as part of the settlement.

The agreement stemmed from an EEOC investigation, which found reasonable cause to believe that Pactiv discriminated against individuals with disabilities. According to the EEOC, Pactiv violated the Americans with Disabilities Act (ADA) by disciplining and discharging employees according to its nationwide policies to issue attendance points for medical-related absences, not allowing intermittent leave as a reasonable accommodation and not allowing leave or an extension of leave as a reasonable accommodation. In a press release, EEOC Chicago District Director, Julianne Bowman, stated

"Employers need to get the message: Inflexible, strictly enforced leave policies can violate federal law. As an employer, make sure you have exceptions

for people with disabilities and assess each situation individually."

It is important that employers remember that the ADA not only requires employers to treat qualified individuals with disabilities the same as non-disabled employees, but also requires employers to provide reasonable accommodations to individuals, enabling them to enjoy equal employment. To determine whether a reasonable accommodation is appropriate, employers must engage in an interactive dialogue with the employee, known as the "interactive process." Reasonable accommodations may range from providing an employee with a stool to sit on to providing unpaid leave.

Many employers incorrectly believe that having an attendance policy assigning points to absences regardless of the cause complies with the ADA because it applies to all employees equally. However, such a policy runs afoul of the ADA because it does not make exceptions for legally protected absences.

Similarly, employers often believe that applying a strict leave policy is ADA compliant so long as it applies equally to all employees. However, a strict leave policy will likely violate the ADA because it does not provide parties with an opportunity to engage in the "interactive process" to address leave or additional leave as a reasonable accommodation. Determining how much leave to provide as a reasonable accommodation requires a careful assessment as the courts have not established a bright line rule defining how much leave employers must allow.

Practice Tip:

Carefully review your attendance policy to ensure that it does not assign points or provide for discipline for all absences without making exceptions for ADA protected absences. Take a look at your leave policy and confirm that it allows for some flexibility. Of course, a legally sound policy is worthless if it is not properly implemented. Make sure to train managers so they clearly understand how to administer your attendance and leave polices.

Lessons From Retaliatory Discharge Verdicts In Illinois & Indiana

Two recent jury verdicts involving workers who claimed retaliatory discharge remind us of the costly exposure employers might face when they terminate an employee who was injured at work.

In January 2016, a Cook County jury awarded an injured worker $2.6 million, including $2.5 million in punitive damages against his former employer, Dominick's. *Francek v. Safeway*, 14L9691. The former worker sued Dominick's alleging that after injuring his shoulder at work in May 2015 and January 2006, he was fired for subsequent alleged "no call/no show" absences. The Plaintiff's treating physician determined that he should remain off work, but an independent medical doctor, who examined him at Dominick's request, determined that he could return to work. The plaintiff's supervisor altered the existing absence codes in plaintiff's attendance records from "injured at work" to "no call no show." After his third such absence, he was terminated pursuant to the company's attendance policy. Plaintiff argued he was never notified of this company change in designation of his absences nor aware of its impact on his employment status. Pursuant to his collective bargaining agreement, he argued that he should have received a verbal warning before termination. He also argued that there was no written policy that an injured worker was required to continue to notify the company of his ongoing absences when his doctor said he could not work. Plaintiff also argued that his employer used a deficient and conflicting medical opinion as the sole basis to terminate him and he was fired on a false pretense. The jury agreed with the plaintiff and concluded that Dominick's fired him in retaliation for filing a workers' compensation claim.

We also refer you to another Illinois retaliatory discharge case that we previously reported on, *Holland v. Schwan's Home Service, Inc.*, 992 N.E.2d 43 (Ill. 2013), in which the Appellate Court affirmed a jury verdict of $4.26 million for an injured worker who was terminated after not applying for a specifically created position following his work accident. To read more, Click Here.

Similarly, an Indiana jury in Elkhart County held in favor of a machine operator on a retaliatory discharge claim and awarded him $412,680, including $75,000 in punitive damages. *Shoun v. Best Formed Plastics*, LLC, 20D04-1302-PL-45 (2/21/15). (The Indiana Appellate Court recently affirmed the jury's verdict. *Best Formed Plastics, LLC v. Shoun*, 20A3-1506-PL-65 (2/16/16). The plaintiff sustained a rotator cuff injury in March 2012. He returned to restricted work in August 2012, but was laid off six weeks later in September 2012. Thereafter,

plaintiff brought a civil lawsuit alleging retaliatory discharge because of his workers' compensation claim. Five days after he filed civil suit, an officer of the employer and the owner's wife posted a message on Facebook: "Isn't [sic] amazing how Jimmy (co-owner) experienced a 5 way heart bypass just one month ago and is back to work, especially when you consider George Shoun's shoulder injury kept him away from work for 11 months and now he is trying to sue us. Love for everyone to hear the real truth. What a loser!"

The employer argued that plaintiff was not fired, but simply laid off due to a downturn in sales and with the understanding he would be recalled if sales picked up. They never contacted him about any recall, but argued he abandoned his job.

In seemingly conflicting testimony, the employer also said plaintiff was fired because of two disciplinary incidents in late August 2012 (refusing to clean his work area and getting angry when asked to increase his quota of production one shift) after he had resumed working.

Practice Tips:

1. Employers should generally not alter attendance records to change the designation for an injured worker's absences from a work injury to unexcused absence.

2. Even if it might be reasonable to alter or modify attendance records as occurred here, the employer should provide advanced notice of such a practice to the employee so he is aware of same and has the opportunity to challenge it and/or take other action as to avoid losing his job.

3. If the Workers' Compensation Board finds that plaintiff's work accident was legitimate and he could not work, it is very risky for an employer to terminate an employee who does not work based on his own doctor's instructions not to work.

4. An employer should never put in writing or express verbally to anyone (besides its attorneys) or post on social media, any comments about the nature of an employee's alleged work injury (in *Shoun*, the jury also awarded plaintiff $25,000 for invasion of privacy by his employer!)

5. Make sure that when you are going to fire an employee for work rule violations – particularly if less than a month after they have resumed working – that such violations sufficiently egregious a large volume that it would be commonsense to expect such an employee to be fired.

6. Consult with your workers' compensation attorney or carrier and employment attorney before firing an employee who has a pending or recent workers' compensation claim or injury.

Illinois High Court Makes It Tougher To Deny Unemployment Benefits

In *Petrovic v. The Department of Employment Security*, 2016 IL 118562 (February 4, 2016), the Illinois Supreme Court held that when an employee is fired for a "common sense" violation of an unstated work rule or policy, they cannot be denied unemployment benefits unless the conduct constitutes "misconduct" under 602(A) of the Illinois Unemployment Insurance Act. The employee must have engaged in a "deliberate and willful violation" of an employer's "reasonable rule or policy" that harmed the employer or a fellow employee or was repeated despite a warning or explicit instruction from the employer.

The claimant in *Petrovic* worked for American Airlines and was fired after she vacated her work station, upgraded a friend to first class and provided the passenger with a free bottle of champagne. She was fired for company property theft and misrepresenting facts in the course of her employment. However, at her unemployment hearing the airline stated the bases for her termination were her breaking a rule limiting which staff can issue upgrades and vacating a work area during a shift.

The Illinois Unemployment Board denied her benefits as her behavior was "commonly accepted as wrong such that employers need not have rules covering them."

The Supreme Court found that the employer failed to delineate any existing company rule the employee violated. The Court held that while the "common sense exception" involving criminal conduct, harassment or a civil rights violation, such as sexual harassment, constitutes the type of misconduct an employee should be aware will likely result in termination, other less egregious behavior will not disqualify a former employee from receiving unemployment benefits unless it constitutes a violation of a specific, clearly delineated company rule.

Practice Tip:

This case is a cautionary note for all employers who choose to fire an employee for conduct for which there is no specific rule against such behavior. Employers will need to add or create written policies against work behaviors previously presumed to warrant termination or merely warn and otherwise discipline an employee the first time for such misconduct before later firing them for repeat behavior.

While this decision makes it more difficult for employers to successfully challenge fired employees' claims for unemployment benefits, it should not curtail employers from firing employees engaging in obvious misconduct warranting termination.

Employer Dilemma: Beware of Reverse Race Discrimination

In *Deets v. Massman Construction Co.*, No. 15-1411 (7th Cir. Feb. 3, 2016), Plaintiff alleged that he was laid off from his construction job because of his white race, in violation of Title VII, the federal statute prohibiting employment discrimination based on race and other protected classes. Plaintiff's superintendent allegedly stated that the reason for Plaintiff's layoff was because his "minority numbers weren't right." Additionally, a worker of a minority race was hired to replace Plaintiff. The district court granted the defendant-employer's motion for summary judgment. However, the Seventh Circuit reversed the district court's grant of summary judgment, finding that the factual conflict regarding direct evidence of discrimination could not be resolved by summary judgment.

Practice Tip:

As many construction contracts involve minority participation goals, employers are in a tricky spot: trying to comply with their minority goals requires employers to take employee and applicant's race into account; however, Title VII prohibits race discrimination. Employers must act cautiously when fulfilling contractual obligations to hire minorities to not discriminate against any employee on the basis of race or any other protected class.

DOL Issues Joint Employer Guidance

On 1/20/16, the U.S. Department of Labor (DOL) issued guidance on joint employment under the Fair Labor Standard Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). This new guidance aggressively expanded the definition of employment to include arrangements that employers may not commonly view as employment relationships, increasing employers' exposure for wage and hour liability. The guidance discusses two types of joint employment: horizontal and vertical joint employment.

Horizontal joint employment exists when multiple employers separately employ a worker, but are also closely associated with or related to each other. When horizontal employment exists, hours worked for each employer are combined for the purpose of determining whether overtime and minimum wage obligations are met. The guidance sets forth the following factors to help determine whether horizontal joint employment exists:

- Who owns the potential joint employers;
- Whether potential joint employers have overlapping officers, directors, executives or managers.
- Whether potential joint employers share operational control;
- Whether potential joint employers' operations are intermingled.
- Whether one potential joint employer supervises the work of the other.
- Whether the potential joint employers share supervisory authority for the employee.
- Whether the potential joint employers treat employees as a pool of employees available to both of them.
- Whether potential joint employers share clients or customers.
- Whether there are any agreements between the potential joint employers.

Vertical joint employment exists when an employee of one employer (the "intermediary employer") is economically dependent on another employer (the "potential joint employer") for work being paid by the intermediary employer. The DOL's guidance articulated the below factors to help analyze whether there is vertical joint employment:

- Whether work performed is controlled or supervised by the potential joint employer beyond a reasonable degree of contract performance oversight.
- Whether the potential joint employer has authority to hire or fire the employee, modify employment conditions or determine the rate or method of pay.
- The degree of permanency and duration of the relationship between parties.
- The extent to which the employee's work for the potential joint employer is repetitive and rote and requires little training.
- Whether activities performed by the employee are an integral part of the potential joint employer's business operation.
- Whether work is performed on premises owned or controlled by the potential joint employer.
- Extent to which the potential joint employer performs administrative functions for the employee.

Practice Tip:

Businesses, particularly those with arrangements with independent contractors, temp agencies and management companies should carefully review such arrangements in light of this guidance to help avoid liability for wage and hour violation committed by other entities, which can be very costly, including liquidated damages and attorney's fees.

‘Groundbreaking’ EEOC Suit Accusing Employers Of Gender Bias For Sexual Orientation Discrimination

On 3/1/16, the Equal Employment Opportunity Commission (EEOC) announced that it filed two federal lawsuits that it described as “groundbreaking” on behalf of two gay employees. One case involved allegations of various anti-gay epithets and highly offensive comments leading the employee to quit. In the second case, an employee was taunted by her supervisor because of her sexual orientation, complained and was subsequently fired.

Both cases alleged violations of Title VII, which prohibits employment discrimination based on race, religion, sex and national origin. Title VII does not explicitly protect against sexual orientation discrimination and historically, has not been interpreted to protect such discrimination. These are the first two cases that the EEOC has ever filed on behalf of gay employees, potentially expanding the reach of Title VII.

We will closely monitor developments in these two cases and continue to keep you updated.

EEOC Procedural Change: Unlevel Playing Field

As part of its investigation of a charge, the Equal Employment Opportunity Commission (EEOC) may request that the Respondent employer submit a position statement and documents supporting its position. Historically, the employer’s position statement has not been available to the charging employee. However, on 2/18/16, the EEOC announced that it has implemented new nationwide procedures that provide for the release of employer position statements and non-confidential attachments to a charging employee upon request during the investigation of his or her charge of discrimination. Additionally, the EEOC will provide the charging employee with an opportunity to respond within 20 days of receiving the employer’s position statement; however, the employee’s response will not be provided to the employer during the investigation.

BDL Is Growing!

BDL is pleased to welcome Werner Sabo and James Zahn.

Werner Sabo concentrates his practice in construction, copyright and real estate law. His clients include architects, owners, contractors, construction managers, engineers and consultants to the construction industry as well as other businesses.

Werner is also a licensed architect, having practiced architecture for a number of years prior to establishing his law practice in 1981. His architectural practice included work for large and small firms, as well as a large corporation. Projects ranged from large commercial structures, schools and offices, to smaller buildings and interior work. He is a member of the AIA, ALA and CSI, has been an officer and director of the Chicago Chapter AIA, President of the Chicago Chapter, Construction Specifications Institute from 1995-1996, and has written several articles for the Chicago Chapter Chicago Architect (formerly the AIA Focus), the National CSI Construction Specifier and other publications.

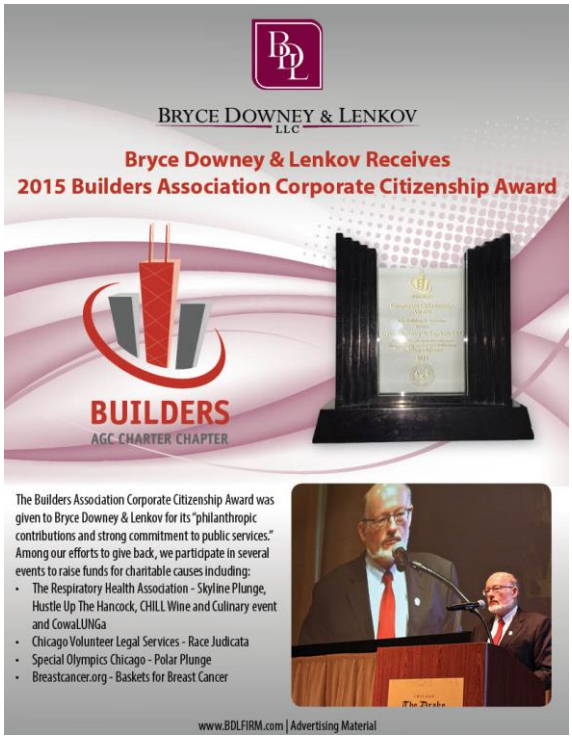
James K. Zahn is an attorney and architect. As a registered architect since 1971, he brings a unique depth of knowledge of the construction industry. Having chaired the Illinois Council AIA Registration and Education Task Force (1983-1988) he received the AIA's highest state award for assisting in the revision of the Illinois Architecture Act, now adopted into law. While working for some of Chicago's largest and most prestigious architectural firms, he was involved in all phases of the practice, including management of production, specifications, technical matters and legal concerns. His efforts involved planning and construction of several thousand architectural projects. This understanding of the profession and the industry gives him insight that few other attorneys bring to clients.

Recent Accomplishments

We are excited to announce that several of our attorneys have been recognized as industry leaders.

- **Storrs Downey** received the Premier 100 Designation from American Academy Of Trial Attorneys. This is a distinction reserved for attorneys who have established themselves through their professionalism and excellence in service. Less than 1% of the 1.2 million attorneys currently practicing in the U.S. will be selected to receive this important and prestigious designation.
- **Geoff Bryce**, **Storrs Downey**, **Rich Lenkov**, **Terrence Kiwala** and **Terrence Madden** were selected to the Leading Lawyers list. Leading Lawyers recognizes 5% of all lawyers licensed to practice law in Illinois.
- **Justin Nestor**, **Maital Savin** and **Michael Milstein** were selected to the Emerging Lawyers list. Emerging Lawyers recognizes the top 2% of lawyers of exceptional character and experience under the age of 40 in Illinois.
- **Rich Lenkov** was selected to the Super Lawyers List. The Super Lawyers designation is given to no more than 5% of lawyers in Illinois.
- **Maital Savin** and **Michael Milstein** were selected to Rising Stars. Rising Stars is an exclusive list, recognizing no more than 2.5% of lawyers in Illinois.
- BDL received the AV Preeminent rating. This rating recognizes that a lawyer's peers rank them at the highest level of professional excellence.
- Bryce Downey & Lenkov was listed in Best's Directory Of Recommended Insurance Attorneys. This is a prestigious list of over 3,000 client-recommended attorneys.

BDL Receives Corporate Citizenship Award



Bryce Downey & Lenkov received the 2015 Builders Association's Corporate Citizenship Award and was honored at the Annual Builders Connect Conference on 12/10/15. The award is given to a company for its philanthropic contributions and strong commitment to public services. Among our efforts to give back, we have participated in several events to raise funds for charitable causes:

- Chicago Volunteer Legal Services' Race Judicata
- Respiratory Health Association's: Skyline Plunge, Hustle Up The Hancock, Chill Wine and Culinary event, CowaLUNGa
- Chicago Special Olympics' Polar Plunge
- Baskets For Breast Cancer

Legal Face-Off On WGN Plus

Legal Face-Off on WGN Plus is a high energy, legal podcast covering current news stories from both the defense and plaintiff perspectives with expert opinions from industry leaders such as Rev. Jesse Jackson, Alan Dershowitz and Gloria Allred. Listeners subscribe in iTunes and listen online at: **http://wgnplus.com/category/legal-face-off.**

Co-hosted by Rich Lenkov and Jason Whiteside (Whiteside & Goldberg), Legal Face-Off started in September 2014 as a concept to provide listeners with quality legal education on today's breaking news. The bi-monthly podcast spotlights national headlines in news, sports, entertainment and politics, but delivers it with a unique perspective that is seldom found in traditional media.

BDL Hits Main Street

Bryce Downey & Lenkov sponsored Monday On Main Street at Sundance. This is an exclusive filmmaker social event taking place every year in Park City, UT during Sundance Film Festival. This event offers talented experts a chance to enjoy themselves in an upbeat, upscale setting in the heart of the fest. Attendees dined and networked at Butcher's Chophouse. This was Bryce Downey & Lenkov's third year sponsoring.

Giving Back

Geoff Bryce To Receive Martin Luther King Jr. Drum Major Honor

Geoff Bryce and Bryce Downey & Lenkov will be awarded the Martin Luther King Jr. Drum Major Honor, recognizing their philanthropic efforts and pro bono work. This award was created based on Martin Luther King's "Drum Major Instinct" sermon about the desire to lead with selfless motives. "Yes, if you want to say that I was a drum major, say that I was a drum major for justice; say that I was a drum major for peace; I was a drum major for righteousness… We all have the drum major instinct."

Student Mock Trial Competition

On **2/20/16**, **Kirsten Kaiser Kus** returned to help judge the Merrillville High School mock trial competition at the Hammond Federal Courthouse. Students were grouped into teams and prepared opening arguments, presented witnesses and evidence, made objections based on federal rules and presented closing arguments. This event gave students a great opportunity to expand their understanding of the legal system and enhance their critical thinking skills. This was in preparation for the state final competition, which will take place May 12-14. Click Here for more information.

Legal Prep 3 On 3

On **2/27/16**, 2 BDL teams played in the Chicago Legal Prep 3 on 3 Tournament. Players, supporters, students and faculty gathered together for fun competition and supported their athletic program.

Chicago Legal Prep Charter Academy is Chicago's first and only legal-themed charter high school. Rich Lenkov proudly serves on Legal Prep's Advisory Board. Bryce Downey & Lenkov was proud to sponsor this event and support Chicago Legal Prep.

Hustle Up The Hancock

On **2/28/16**, Team BDL participated in Hustle up the Hancock. This year, Team BDL raised $4,225.00 for lung disease research, advocacy and education. Our best times were Robert Olszanski, Subpoena Clerk (10:59) for the half climb (52 floors) and Jason Klika, Marketing Coordinator (16:39) for the full climb (92 floors.)

Team BDL Plunges

BRYCE DOWNEY & LENKOV LLC
www.BDLFIRM.com

PLUNGE WARS
RETURN OF THE JDs

On **3/6/16**, Plunge Wars will take the Polar Plunge into icy Lake Michigan. Last year, 9 Sharks raised over $3,000 for the Chicago Special Olympics. This will be our 4th year braving freezing temperatures at North Avenue beach to raise funds and awareness for the Special Olympics Chicago. Special Olympics is the world's largest program for sports training and athletic competition for children and adults with intellectual disabilities. Click Here to donate to our page.

Recent Seminars

- On **11/4/15**, **Rich Lenkov** and **Mitchell Dane-Henry** presented "Legal Issues Presented By Millennials" at the Central Ohio RIMS Partner Day.
- On **11/5/15, Storrs Downey** and **Maital Savin presented** "Hiring Do's And Don'ts (With Video Examples)."
- On **11/19/15, Justin Nestor** and **Kirsten Kaiser Kus** presented "Crossing The Border: Top 5 Issues In Illinois & Indiana WC."
- On **12/10/15, Rich Lenkov** and **Jeanmarie Calcagno** presented "Ask A Workers' Compensation Attorney ANYTHING."
- On **12/15/15**, **Geoff Bryce** and **Maital Savin** presented "Is Your Independent Contractor Actually An Employee."
- On **1/13/16**, **Tim Alberts** presented "Effective Statements" in Des Moines, IA for CEU Institute.
- On **1/27/16**, **Rich Lenkov** and **Maital Savin** presented "WC Issues Raised By Millennials."
- On **2/11/16**, **Justin Nestor** presented "A Day In The Life Of A Workers' Compensation Claim" at the Sixth Annual Beyond Safety Conference & Expo.

Upcoming Seminars

- On **4/7/16**, **Rich Lenkov** will present "Stratified General Liability Claims: Fast Tracking and Other Techniques" at the CLM 2016 Annual Conference in Orlando, FL with:
  - Eric Spalsbury (Director Of Risk Management, Stanley Steemer).
  - Michelle Middendorf (Manager, Stanley Steemer).
  - Joe Skinger (Account Manager, CorVel Corporation).
  - Click Here for more info and to register.

Free Webinars

Bryce Downey & Lenkov hosts monthly webinars on pressing issues and hot topics

What you said about our 11/5/15 webinar, "Hiring Do's And Don'ts (With Video Examples)"

"Well presented by the hosts. Very interesting situations were explored."
"Very detailed information."
"I liked the information on what you can ask and cannot ask during employment interviews. Very informative on discrimination."

Upcoming

3/8/16– Click Here to Register
Top 10 Employer Mistakes
Storrs Downey & Maital Savin

Recent

Is Your Independent Contractor Actually An Employee?
10 Tricky Employment Termination Questions Answered
Spills, Thrills & Bills: The True Story Behind Illinois & Indiana Premises Liability Law
Risky Business: Drugs, Sexual Orientation And Guns In The Illinois Workplace

If you would like a copy of any of our prior webinars, please email Marketing Coordinator Jason Klika at jklika@bdlfirm.com.

Contributors to the March 2016 Labor & Employment Newsletter

The Bryce Downey & Lenkov attorneys who contributed to this newsletter were Storrs Downey and Maital Savin.

Cutting Edge Legal Education

If You Would Like Us To Come In For A Free Seminar, Click Here Now 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.

Some of the topics we presented are:

- Risky Business: Drugs, Sexual Orientation And Guns In The Illinois Workplace.
- Spills, Thrills and Bills: The True Story Behind Illinois and Indiana Premises Liability Law.
- Subrogation Basics for Workers' Compensation Professionals.
- Employment Law Issues Every Workers' Compensation Professional Needs To Know About.

Who We Are

Bryce Downey & Lenkov is a firm of experienced business counselors and accomplished trial lawyers committed to delivering services, success and satisfaction. We exceed clients' expectations everyday while providing the highest caliber of service in a wide range of practice areas. With offices in Chicago, Schererville, IN, Memphis and Atlanta, and attorneys licensed in multiple states, we are able to serve our clients' needs with a regional concentration while maintaining a national practice.

Our attorneys represent small, mid-sized and Fortune 500 companies in all types of disputes. Many of our attorneys are trial bar certified by the federal court and have been named Leading Lawyers, AV Preeminent and were selected to Super Lawyers and Risings Stars lists. Our clients enjoy a handpicked team of attorneys supported by a world-class staff.

Our Practice Areas Include:

- Business Litigation
- Business Transactions & Counseling
- Corporate/LLC/Partnership Organization and Governance
- Construction
- Employment and Labor
- Counseling & Litigation
- Entertainment Law
- Insurance Coverage
- Insurance Litigation
- Intellectual Property
- Medical Malpractice
- Professional Liability
- Real Estate
- Transportation
- Workers' Compensation

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