

Legal Updates September 2014

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Lupyan v. Corinthian Colleges, Inc.

3rd Circuit (Aug. 5, 2014)

- ▶ FMLA notice sent via first class mail
- ▶ Terminated after 14 weeks of absence
- ▶ Claimed non-receipt
- ▶ Handbook's general summary insufficient
- ▶ Interference claim
 - "Could've" stretched out the leave
 - Ragsdale v. Wolverine, U.S. – S.Ct. (2002)



Lupyan (Cont'd)

- ▶ Retaliation claim
 - Refusal to reinstate after FMLA leave expired
 - Employee was ready to return to work as of week 14
 - Close proximity of termination and end of FMLA leave (2 weeks)
- ▶ Confirm the employee's address!
 - Sign off or other acknowledgement
- ▶ ALL notices:
 - Certified and regular mail
 - OR other method that provides proof of receipt
 - Preserve evidence!





Opportunity to Compete Act (a/k/a “Ban the Box”)

- ▶ Effective March 1, 2015
- ▶ 15 or more employees
- ▶ Cant:
 - Advertise that applicants will be excluded based on “priors” (arrest or conviction)
 - Inquire or require disclosure of information regarding criminal record
 - Posting through first interview
- ▶ Does not prohibit:
 - “Voluntary” disclosures



▶ Does not prohibit:

◦ Exempt:

- law enforcement, corrections, judiciary, homeland security, emergency management
- positions for which another law requires a criminal background check
 - working with minors
 - teachers/certificated professionals under Title 18A

◦ Reliance after the first interview (unless expunged)

◦ No right to civil action

- \$1,000; \$5,000; \$10,000
- EEOC Guidelines
 - Individualized assessments
- “Move it”
 - NOT “post offer, pre-employment” phase!!



NJ-DCR Poster

- ▶ Revised Discrimination in Employment poster
 - Pregnancy as a protected class
 - Removes reference to closed DCR offices
 - Public Accommodation poster also revised
- ▶ HRA-SNJ website



THANK YOU!

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