

LEGAL & LEGISLATIVE UPDATES

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NLRB: *Danbury Hospital*

- ▶ Within 2 business days after direction of election (or agreement), employer must provide: (*Excelsior* “plus” list):
 - Full names
 - Work locations
 - Shifts
 - Job classifications
 - Contact information
 - Home address
 - Available personal email
 - Available personal cellular or phone numbers



Danbury Hospital

- ▶ Union lost, filed objections
- ▶ Employer didn't provide all required information
- ▶ Relied upon 1 source
 - ▶ Other electronic sources available
 - ▶ Provided incomplete data
 - ▶ Did not confirm with employees
- ▶ Hearing officer ordered re-run election



Danbury Hospital

▶ Tips:

- Once an election petition is filed:
 - Anticipate the need for the list:
 - Check all available resources for required information
 - Consider update notices to employees
 - Caution: method used to contact and receive responses
 - If email, could result in a new “source”



Kaye v. Rosefielde, N.J. Supreme Court

- ▶ Employees owe a duty of loyalty
 - Fact sensitive inquiry
 - Employee must act in interests of an employer in all matters connected to that relationship
 - Employees in a position of trust/confidence owe higher duty of loyalty
- ▶ Employer unable to show actual economic loss caused by employee disloyalty
- ▶ N.J. S.Ct.: Employer entitled to recover salary paid (or retain salary due) during period of disloyalty



Kaye v. Rosefielde, N.J. Supreme Court

- ▶ Decided by a Judge (not jury)
- ▶ Four factors relevant to deciding breach of loyalty:
 - Contract provisions related to the employee's actions;
 - Employer knowledge of/agreement with employee's actions
 - Employee's status and position
 - Nature of the conduct and effect on the employer



Kaye v. Rosefielde, N.J. Supreme Court

- ▶ Willful and deliberate breach
 - Not entitled to ANY compensation even for properly performed services
- ▶ Employer can raise as *a claim* or a defense
- ▶ Tips:
 - Caution: retention of salary can result in wage and hour claims, investigations/audits.
 - Investigate: is the employee “judgment proof”?



THANK YOU!

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Labor/Employment Matters

Civil Litigation

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