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North Dakota
Employment Law Letter

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WORKPLACE ISSUES

North Dakota: the place for Millennials to live, work, and play

by Vanessa Lystad

This year, North Dakota gained the honor of being the best state for Millennials. You betcha! Two different financial websites compared various factors from the 50 states and the District of Columbia to determine where this generational cluster has thrived and withered. According to their data, North Dakota topped both lists. You can use the information to target (or retain) the Millennial population for your workforce.

How did North Dakota top the rest?

Millennials, also known as Generation Y, are individuals ranging from approximately 20 to 36 years old who are either new to the workforce or have been immersed in the workforce for several years. Although rural communities have been plagued by an exodus of their younger members for larger cities, North Dakota—a primarily rural state—has been named the best state for Millennials. Why, you ask?

Two financial websites compiled information about the Millennial generation and compared data from the 50 states and the District of Columbia. WalletHub evaluated 24 key metrics related to (1) affordability, (2) education and health, (3) quality of life, (4) economic health, and (5) civic engagement. On a 100-point scale using those factors, North Dakota topped the list, ahead of the second-place state by nearly 10 points.

North Dakota earned its ranking, in relevant part, by having the highest quality of life and economic health among the states. The fact that North Dakota maintains the lowest Millennial unemployment rate was a strong contributor to its first-place finish. In fact, Millennials and non-Millennials alike enjoy a low unemployment rate in North Dakota, with the state rate at only 2.9% as of February 2017, compared to the national average of 4.7%, according to the U.S. Bureau of Labor Statistics (BLS).

WalletHub further found that North Dakota has the lowest percentage of Millennials living with their parents—only 15.57%. That's 2.9 times lower than in New Jersey, where a whopping 44.95% of Millennials haven't yet left the nest.

The financial website MoneyRates conducted a similar review of the best and worst states for Millennials, looking to several factors, including the job market for young adults, the young adult population, college affordability, residential rental availability and affordability, access to the Internet, and the concentration of bars and fitness facilities compared to the young adult population. After those factors were

AGENCY ACTION

Agency releases employee compensation costs. The U.S. Bureau of Labor Statistics (BLS) reports that employer costs for employee compensation averaged $34.90 per hour worked in December 2016. Wages and salaries averaged $23.87 per hour worked and accounted for 68.4 percent of the costs, while benefits averaged $11.03 and accounted for the remaining 31.6 percent. Total employer compensation costs for private-industry workers averaged $32.76 per hour worked in December 2016. Total employer compensation costs for state and local government workers averaged $47.85 per hour worked in December 2016. Employer Costs for Employee Compensation, a product of the National Compensation Survey, measures employer costs for wages, salaries, and employee benefits for nonfarm private and state and local government workers.

DOL, Disney reach $3.8 million agreement on back wages. The U.S. Department of Labor (DOL) announced in March that it had reached an agreement with two subsidiaries of The Walt Disney Co. that provides $3.8 million in back wages to ensure compliance with the Fair Labor Standards Act (FLSA). The agreement calls for back wages for 16,339 employees of the Disney Vacation Club Management Corp. and Walt Disney Parks and Resorts U.S. Inc., both in Florida. The DOL's Wage and Hour Division (WHD) found violations of the minimum wage, overtime, and record-keeping provisions of the FLSA. The DOL found that the employers deducted a uniform or "costume" expense that caused some employees' hourly rates to fall below the federal minimum wage. Also, the DOL said the resorts didn't compensate employees for performing duties during a period before the designated start of their shifts and during a postshift period.

OSHA launches safety campaign. The Occupational Safety and Health Administration (OSHA) announced a "Safe and Sound Campaign" calling on employers to review their safety and health programs to protect workers and reduce workplace injuries and deaths. The announcement follows the initiation of 12 fatality inspections in Kansas, Missouri, and Nebraska since October 1, 2016—up from seven for the same period of October 1, 2015, through February 1, 2016. The inspections found a significant increase in fatalities associated with confined space entry as well as trenching and excavating. Fatalities involving workers being struck by motor vehicles also doubled from two to four for the same time period. OSHA directs employers to its "Recommended Practices for Safety and Health Programs" webpage (www.osha.gov/shpguidelines) for advice on how they can integrate safety and health programs. Each state has its own On-site Consultation Program, which is a free and confidential program aimed at small businesses. ✤

tallied, North Dakota earned MoneyRates' "Best State" designation for 2017.

The primary draw again: the job market. While Millennials in other states across the nation face higher unemployment rates, North Dakota's unemployment rate for the younger generation is considerably lower. Favorable job prospects, combined with high availability of residential rentals and a large young adult population, make North Dakota an enticing choice for Millennials.

What does this mean?

Employers in North Dakota can capitalize on WalletHub's and MoneyRates' findings in two different ways. First, you might consider whether it's time to seek out more Millennials either from within the state or by reaching out to potential employees in other states and draw them to your company by touting the stability of the job market, the affordability of housing, and the general quality of life rankings. Second, if you're already seeking Millennials to bolster the long-term growth or sustainability of your organization, the rankings from these websites can help you persuade Millennials to pursue employment opportunities here.

Of course, it's important not to solely seek Millennials for your workforce. Targeting members of this group alone could be viewed as having a disparate impact on other age groups, particularly employees or applicants who are 40 or older, meaning they fall within the protections of the Age Discrimination in Employment Act (ADEA) and the North Dakota Human Rights Act (NDHRA). In other words, while it's vital to seek out new blood to either revitalize your company or put a good succession plan in place, don't discount other employees, and don't make age the only reason for your employment decisions.

With that said, North Dakota cannot be too complacent about its current "Best State" status. Our neighbors to the east and the south trailed closely behind us in the WalletHub survey, with Minnesota ranking second overall and South Dakota ranking third. MoneyRates reached a similar conclusion, giving

South Dakota a close second place. To keep its first-place ranking and continue to attract and retain Millennials, North Dakota has to maintain its affordability and good job prospects.

Bottom line

Millennials have simultaneously been viewed as the most popular and the most unpopular generation. They are frequently perceived as having a sense of entitlement, yet they have unprecedented access to and understanding of information technology and contribute greatly to consumer spending in our country. Regardless of your views on this generation, they are the future. If you aren't already seeking to retain Millennials in your workforce, you should be. North Dakota offers a wide array of benefits to younger workers, making our state an attractive place for Millennials to live, work, and play.

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SEX DISCRIMINATION

In 'landmark' ruling, appeals court says sexual orientation discrimination is illegal

In a landmark decision, a federal court of appeals has ruled that sexual orientation is a protected class under Title VII of the Civil Rights Act of 1964. The decision comes from the U.S. 7th Circuit Court of Appeals (whose rulings apply to employers in Illinois, Indiana, and Wisconsin). Although the decision doesn't apply to employers within the 8th Circuit (whose rulings apply throughout North Dakota), it indicates a change in how federal courts have typically viewed sexual orientation discrimination. Therefore, the 7th Circuit's ruling may have set the stage for the U.S. Supreme Court to review whether sexual orientation is a protected class under Title VII.

Background

Last summer, a three-judge panel of the 7th Circuit held—somewhat begrudgingly—that the prohibition on sex discrimination in Title VII didn't extend to sexual orientation. At the time, the panel hearing *Hively v. Ivy Tech Community College of Indiana* said it was bound by 7th Circuit precedent. To rule otherwise, it would need (1) new legislation; (2) Supreme Court intervention; or (3) a finding that, as the high court stated in a 1992 decision, its previous interpretation "has proved to be intolerable simply in defying practical workability."

The panel noted that perhaps the issue was nearing a tipping point on the third factor. It's well settled that discrimination based on gender nonconformity qualifies as prohibited sex discrimination, the panel said, and as a practical matter, it is difficult to discuss sexual orientation without looking at gender nonconformity. But controlling precedent separated the two issues. "This court must continue to extricate the gender nonconformity claims from the sexual orientation claims," the panel concluded.

WORKPLACE TRENDS

Survey finds staff conflicts monopolizing bosses' time. A survey from financial staffing firm Accountemps has found that CFOs say they spend, on average, 15% of their time managing staff conflicts. "It's unrealistic to expect workers to get along all the time. But not every issue needs to be escalated to management," Mike Steinitz, Accountemps executive director, says. Accountemps suggests four ways for employees to handle work conflicts: (1) Show empathy and try to understand the situation from a coworker's perspective, (2) act fast since conflicts allowed to fester can disrupt others, (3) bring in a third party such as a manager or an HR representative who can recommend a productive way forward, and (4) don't hold a grudge.

Research finds more women than men postpone children to focus on career. A survey from CareerBuilder finds that 83% of women over 25 who plan to have children are postponing starting a family to focus on their career, compared to 79% of men. Wanting to earn and save enough money to provide for their family was the top reason given by both women and men who plan to have children, followed by the desire to become more established and get ahead in their career. Fifteen percent of women who plan to have children said they are waiting until at least age 35 to start a family. Thirty percent of men said they would postpone having children until at least age 35.

More employers focusing on behavioral health, survey finds. A new survey from Willis Towers Watson finds that 88% of U.S. employers say behavioral health is an important priority over the next three years. With anxiety, depression, and substance abuse on the rise, many of the employers surveyed are planning to take steps to improve the effectiveness of their programs. Among employers' top priorities over the next three years are locating more timely and effective treatment of behavioral health issues, integrating behavioral health case management with medical and disability case management for a more holistic view of employee health, providing better support for complex behavioral health conditions, and expanding access to care.

Glassdoor reveals tough interview questions. Think your organization has come up with some challenging job interview questions? Glassdoor has released a list of some real stumpers, such as "How do you explain a vending machine to someone who hasn't seen or used one before?" (for a global data analyst position), "Prove that hoop stress is twice the longitudinal stress in a cylindrical pressure vessel" (for a test operations engineer), and "Name a brand that represents you as a person" (for a brand strategist). ✤

The panel acknowledged that 7th Circuit precedent created an "uncomfortable result": The more visibly and stereotypically gay or lesbian an employee behaves and looks, the more likely a court will recognize a claim of gender nonconformity. "[Employees] who do not look, act, or appear to be gender non-conforming but are merely known to be or perceived to be gay or lesbian do not fare as well in the federal courts," it said, calling the result an "odd state of affairs."

The employee asked the full 7th Circuit to rehear her case, and it agreed to do so. After rehearing the case *en banc,* the full court reversed the panel's ruling.

En banc ruling

Sexual orientation discrimination is in fact sex discrimination, according to the majority of the judges on the 7th Circuit. Kimberly Hively alleged that she was fired because she is a lesbian. If you imagine the exact same situation with a male employee, she was clearly subjected to sex discrimination, the court said in addressing one of her arguments.

The employee alleged that she was denied full-time employment and promotions because she was seen kissing her girlfriend good-bye in her employer's parking lot. If the employer had seen a man kissing his girlfriend good-bye, it wouldn't have subjected him to the same discrimination, she alleged. Therefore, the discrimination was based solely on her gender.

The court explained that this was the ultimate case of failure to conform to the female stereotype of heterosexuality. A distinction between gender nonconformity and sexual orientation "does not exist at all," Chief Judge Diana Wood wrote for eight of the 11 judges. "It would require considerable calisthenics to remove the 'sex' from 'sexual orientation,'" she said.

"The time has come to overrule our previous cases," the majority continued. In a 1998 decision, the Supreme Court concluded that the fact that Congress may not have anticipated a particular application of a law cannot stand in the way of the provisions of the law that are on the books. "It is therefore neither here nor there that the Congress that enacted the Civil Rights Act in 1964 and chose to include sex as a prohibited basis for employment discrimination (no matter why it did so) may not have realized or understood the full scope of the words it chose," Wood wrote.

In a dissent, however, three judges took issue with the majority's decision. "It's understandable that the court is impatient to protect lesbians and gay men from workplace discrimination without waiting for Congress to act. Legislative change is arduous and can be slow to come," the dissenting judges said. "But we're not authorized to amend Title VII by interpretation." *Hively v. Ivy Tech Community College of Indiana,* No. 15-1720 (7th Cir., April 4, 2017).

Employer take-home points

Although the 7th Circuit's decision technically affects only three states (and North Dakota isn't one of them), the ruling is significant for employers nationwide. First, the Equal Employment Opportunity Commission (EEOC), which is tasked with enforcing Title VII, has already taken the stance that the law prohibits sexual orientation discrimination, and it has been pursuing such claims against employers.

Second, the decision in *Hively* is now at odds with rulings from other federal courts of appeal. Most of the courts that have considered the issue have held that Title VII doesn't protect sexual orientation discrimination. Consequently, a circuit split may lead the Supreme Court to weigh in on the issue, although it's unknown if (or when) the high court would choose to do so.

The 8th Circuit has held that sexual orientation is not a protected characteristic or status under Title VII. In addition, the North Dakota Human Rights Act (NDHRA) doesn't list sexual orientation as a protected characteristic, and the North Dakota Supreme Court has never held that sexual orientation is protected under the NDHRA. Nevertheless, in light of the EEOC's position and the potential for the issue to reach the U.S. Supreme Court, you may want to consider adding prohibitions on sexual orientation discrimination or harassment to your handbooks and any training materials. Actively prohibiting discrimination or harassment based on sexual orientation may, at the very least, help you avoid having to litigate the issue as the law is evolving.

If you have questions about this topic, you may contact Vogel Law Firm at 701-258-7899. ✤

HARASSMENT

Civility training can help prevent workplace harassment

In the Equal Employment Opportunity Commission's (EEOC) proposed guidance on harassment, the commission suggests "civility training" and "bystander intervention training" as proactive measures employers can take to prevent workplace harassment.

But is there any support for the notion that civility training would be an effective tool to prevent harassment? The EEOC included it in the "Promising Practices" section of the guidance, so clearly the agency seems to think it's worthwhile.

Incivility linked to harassment

In a footnote, the guidance refers to the testimony of Lilia Cortina, a professor of psychology and women's studies at the University of Michigan. At an EEOC meeting in June 2016, Cortina provided written testimony outlining the value of workplace civility training.

In her testimony, Cortina acknowledges that courts have made it clear that Title VII of the Civil Rights Act of 1964 and other federal antidiscrimination statutes aren't general civility codes. However, she says her research indicates that "so-called 'general incivility' is not always so general after all" but instead can represent a covert expression of bias based on social identity (people's sense of who they are based on their group membership).

Cortina also posits that everyday incivility "seems to go hand in hand with more overt harassment. . . . Where there is one, you virtually always find the other." She refers to general incivility as a possible "gateway drug" to more egregious forms of abuse. Because of that, she proposes that a reduction in workplace incivility might help reduce workplace harassment.

CREW

Cortina suggests using "respectful workplace interventions," which she says have helped organizations cultivate climates of civility and respect. As an example, she cites an intervention developed in Canada called "civility, respect, and engagement in the workforce" (CREW).

As it turns out, CREW has been used by workgroups in the United States—specifically, by the U.S. Department of Veterans Affairs (VA). The Veterans Health Administration's National Center for Organization Development (NCOD) describes CREW as a "culture change initiative" that was launched in response to employee feedback that low levels of civility in the workplace affected job satisfaction.

On its webpage describing CREW, NCOD provides the following information:

- **Civility** is an essential behavior of all employees in all organizations. These are the interpersonal "rules of engagement" for how we relate to each other, our customers, and our stakeholders and are the fundamentals of courtesy, politeness, and consideration.
- **Respect** connects us at a personal level. It reflects an attitude developed from deep listening and understanding, cultural and personal sensitivity, and compassion. It honors all the participants in an interaction by creating a safe place to have difficult conversations and leads to an environment of honesty and mutual trust.
- **Engagement** is the result of respectful relationships within an atmosphere of trust. It provides all staff with the charge, the parameters, the training, and the support to make decisions "on the spot" in the best interest of the veteran.

Clearly those are commendable standards, and they require time and resources to achieve. NCOD points out that "CREW is not magic; the changes will not happen overnight." The program requires regular meetings with workgroups for about six months. The meetings are with skilled facilitators who facilitate discussions, encourage problem-solving skills, and conduct exercises that help participants relate to one another.

Bottom line

It appears that CREW isn't for the faint of heart, but perhaps—particularly in these times of divisive rhetoric and snide tweets—you may want to consider some form of civility training to remind employees of the professional conduct and respect you require in the workplace. While there's no guarantee that civility training will eliminate workplace harassment, it seems like a logical step in the right direction. ✤

WAGE AND HOUR LAW

Salaried employees can be exempt or nonexempt

Determining whether to classify salaried employees as exempt or nonexempt can be tricky. We often think of salaried employees as being exempt from overtime. But salaried employees can fall into either the exempt or nonexempt categories depending on several key factors. On the other hand, hourly employees are generally nonexempt, with a few very specific exceptions.

Under the federal Fair Labor Standards Act (FLSA), employers must pay overtime to employees who work in excess of 40 hours per week. However, FLSA regulations exempt certain salaried employees from the overtime pay laws if:

- *The employees are paid on a "salary basis" and receive at least a prescribed minimum salary.*
- *They meet special duty criteria established by the U.S. Department of Labor (DOL).*

Executive employees, professionals, and administrative employees may be classified as exempt from federal overtime requirements if they are paid on a salary basis.

Defining 'salary basis'

The DOL enforces regulations that define the salary-basis requirement for exempt status. The FLSA exempts broad categories of "white-collar" jobs from the minimum wage and overtime requirements if they meet certain tests regarding job duties and responsibilities and are paid a certain minimum salary.

Those categories of employees are commonly known as "exempt" employees and include executive, administrative, and professional employees. The FLSA also provides exemptions for outside sales personnel, certain specialized computer personnel, certain highly compensated employees (HCEs), certain retail sales employees, and employees covered by the Motor Carrier Act (MCA).

To be exempt, administrative, executive, and professional employees generally must be paid a predetermined amount each pay period that is at least the minimum weekly salary required by the regulations. The

amount paid may not be reduced because of a variation in the quality or quantity of the work performed.

With few exceptions, the employee must receive her full salary for any week in which she performs any work, regardless of the number of days or hours worked.

The three tests

Some salaried employees are entitled to overtime pay for hours worked in excess of 40 in a workweek. The salary-level test, the salary-basis test, and the duties tests must be met for an employee to be exempt from the overtime requirements. Failure to meet the salary-basis requirement—for example, by making impermissible deductions—will negate an employee's or a group of employees' exempt status. Such employees may sue for retroactive overtime pay.

Whether an employee is entitled to time and a half for overtime will depend not only on whether she is paid on a salary basis but also on whether she meets all other exemption requirements, especially the duty criteria.

Deductions from pay

Employers often confuse exempt employees with nonexempt salaried and nonexempt hourly employees when it comes to deducting pay for working fewer hours in a certain week.

Exempt employees must be paid their full salary in any week they work at all, even if they work only one hour—with a few exceptions.

Nonexempt salaried employees are paid on a salary basis, but if they work less than their standard hours—for example, 40 hours per week—the employer may deduct from their pay for working fewer hours in a given week.

Nonexempt hourly employees are paid by the hour. No deductions are needed for working fewer hours in a week. The employer simply adds up the hours worked in the week and pays the employees on that basis.

Things to watch for

Attaching enhanced job titles to nonexempt jobs and paying a fixed salary won't transform a nonexempt position into an exempt one. For example, an employer doesn't escape the overtime requirements simply by calling an employee an engineer.

Similarly, the mere fact that an employee is paid a salary doesn't place him in the exempt category. Many nonexempt employees are paid on a salary basis, so an audit of each employee's salary and duties is necessary.

In addition, you should periodically review the duties of exempt employees to ensure they still qualify for exempt status, especially if the company has undergone restructuring or downsizing. ✤

EMPLOYER LIABILITY

8th Circuit burns Chipotle in one case, douses the flames in another

The 8th Circuit recently decided two separate cases filed against Chipotle Mexican Grill, Inc., and a subsidiary. Each case provides a good review of key concerns for North Dakota employers: the National Labor Relations Board's (NLRB) protection of employees' concerted activity and the prohibition against retaliation based on an employee's opposition to discrimination. Read on for the peppery details!

NLRB finds worker was fired for concerted activity

Shortly before he was fired, a crew member who worked the register at a Chipotle restaurant in St. Louis, Missouri, was involved in the campaign for higher wages in the fast-food industry. As part of Mid-South Organizing Committee's effort to raise workers' pay, the crew member had engaged his coworkers in discussions about their wages.

Mid-South brought an NLRB charge alleging that Chipotle fired the crew member for his union activities and unlawfully threatened and discouraged employees from discussing their wages, talking with union representatives, and engaging in other protected activities. Chipotle said it fired the crew member because he missed a mandatory meeting, had a history of poor performance, and lacked motivation.

The NLRB ruled against Chipotle and petitioned the 8th Circuit to enforce its decision. Chipotle tried to convince the 8th Circuit that the Board had used the wrong standard to determine whether it engaged in unlawful practices. To prevail, the NLRB had to show that the crew member's protected conduct was a substantial or motivating factor in the decision to fire him. If so, the burden shifted to Chipotle to prove it would have fired him anyway.

Although the motivating factor test is the standard established by NLRB precedent, the General Counsel described the Board's burden during the proceedings as having to "demonstrat[e] that (1) the employee engaged in union activity; (2) the employer had knowledge of that union activity; and (3) the employer harbored antiunion animus." Chipotle argued the NLRB erred by stating the wrong standard. To reinforce its argument, the company cited another 8th Circuit case issued before the NLRB ruled against Chipotle.

However, the 8th Circuit rejected the company's argument because it failed to raise the issue before the NLRB. It was too late to raise the "wrong standard" argument for the first time in defense of the petition for

enforcement. As a result, the petition for enforcement was granted against Chipotle. *NLRB v. Chipotle Services, LLC*, No. 15-3925 (8th Cir., Mar. 6, 2017).

Manager claims firing was retaliatory

A general manager of a Chipotle performed so well that he was promoted three times, eventually becoming a "restaurateur," meaning he had achieved certain high standards and was tasked with mentoring two other general managers at different locations. About a year after his third promotion, his area manager and the team director for the entire state visited him. Based on their observations of his performance, they removed one location from his responsibilities.

The manager claimed that approximately a year later, the team director told him that he was hiring "too many Hmong people." The manager defended his hiring practices. He didn't file a formal complaint based on the director's comment, however. About a month later, his responsibilities were again reduced, and he was demoted to managing just one location. A month after that, he was terminated.

The manager sued Chipotle for retaliation, age discrimination, and sexual orientation discrimination. After the trial court ruled against him on all claims, he appealed the dismissal of his retaliation claim to the 8th Circuit.

An employee can establish unlawful retaliation by showing that he engaged in statutorily protected activity, he was subjected to an adverse employment action, and there was a causal connection between the two. The employer then has the opportunity to articulate a legitimate nonretaliatory reason for the adverse action. If it can do that, the burden shifts back to the employee to show that the proffered reason was a pretext, or excuse, for retaliation.

The 8th Circuit had to decide whether there was evidence of pretext because Chipotle offered legitimate performance-based reasons for firing the manager. Pretext may be established if the employer's explanation lacks a basis in fact or if it's more likely that a prohibited reason motivated the adverse action. Pretext can also be shown if the employer cited shifting reasons for the adverse action, the employee received a favorable review shortly before the adverse action, or the employer deviated from its established policies.

Chipotle's reasons for firing the manager included:

(1) The expression of concern by the area manager and the team director about his performance a year before his objection to the "too many Hmong people" comment;

(2) The decrease in his responsibilities a year before;

(3) An operations summary and e-mail several months before his termination and about one month before the controversial comment that raised concerns about operations at the locations he supervised; and

(4) A safety and risk audit conducted after the comment at one of his locations that revealed objective risks, which he apologized for and promised to rectify.

The court noted that Chipotle had documented concerns about the manager's job performance both before and after he engaged in the allegedly protected activity. That undercut the significance of any close timing between his protected activity in April 2013 and his termination in June 2013.

In response, the manager noted that he received a positive performance review shortly before his termination and had a history of positive performance reviews. The court pointed out that his final performance review showed a drop in his rating and cited major issues that needed to be corrected. The previous performance reviews were afforded less weight because an employer may "rely on recent performance reviews more heavily" in making employment decisions without necessarily engaging in pretext.

The court also rejected the manager's other arguments in favor of pretext—e.g., he was subjected to increased scrutiny after he engaged in the protected activity and Chipotle failed to follow its disciplinary procedures—for lack of evidentiary support. Further, Chipotle's reasons for the termination didn't shift even if the company was able to elaborate on its reasons in greater detail as the case progressed. Additional explanation doesn't amount to a shift in reasons.

Lastly, the fact that Chipotle relied mostly on subjective factors to assess the manager's performance didn't mean those factors were due less weight if the reasons for its adverse action were consistent and based on concerns that existed long before his protected activity. Chipotle also relied on objective bases for the termination, such as the safety and risk audit.

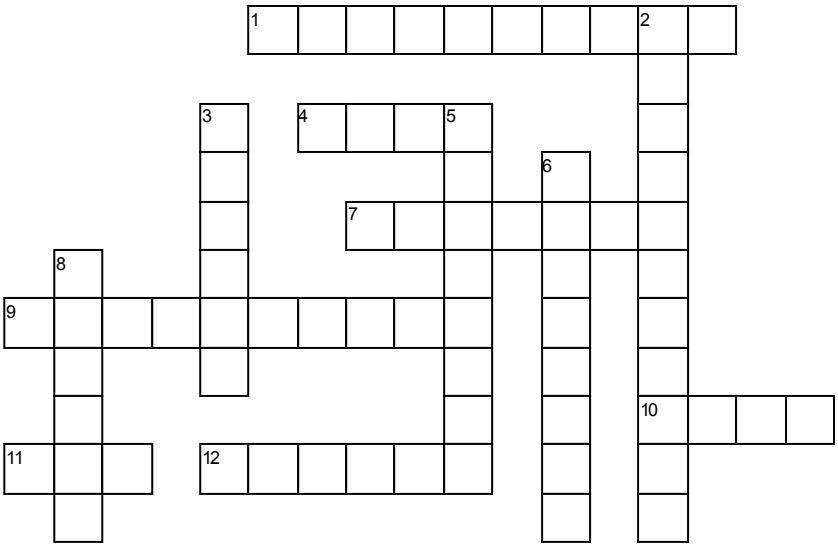
Based on all of that, the court affirmed the judgment of the lower court that Chipotle had not engaged in unlawful retaliation. *Seiden v. Chipotle Mexican Grill, Inc.*, No. 16-1065 (8th Cir., Jan 26, 2017).

Takeaway for employers

Whether the concern is employees' efforts to organize or improve their working conditions, which might implicate the NLRB, or other protected activity, like opposition to race discrimination, which might implicate the North Dakota Department of Labor and Human Rights or the Equal Employment Opportunity Commission (EEOC), North Dakota employers must always be aware of their obligations as well as employees' rights under the law. It's often wise to consult with an experienced labor and employment attorney when complicated issues like those faced by Chipotle arise in your workplace. ✤

JUST FOR FUN

Mindteaser of the month



DOWN

2 _____ _____ was just ranked the best state for Millennials (two words).

3 Walt _____ Company has reached an agreement to settle claims that it improperly deducted expenses from employees' pay.

5 The EEOC recommends that employers conduct _____ training to prevent workplace harassment.

6 The agreement referenced in 3 Down involved deductions for expenses related to employee _____.

8 Kimberly _____ filed a sexual orientation discrimination case that has potentially far-reaching implications.

ACROSS

1 Employers may make certain _____ from employees' salaries.

4 The ____ recently recommended that employers provide civility training.

7 The _____ Circuit has issued a landmark decision in a sexual orientation discrimination case.

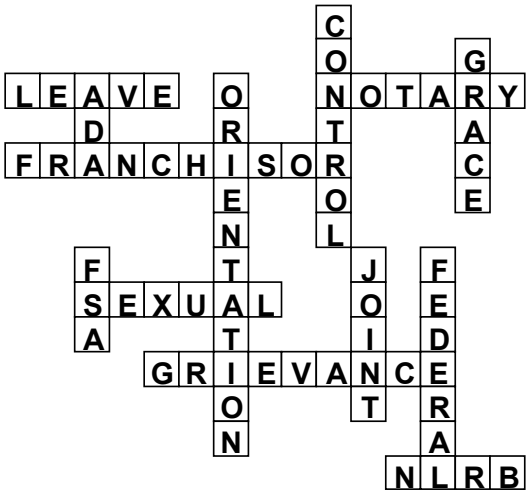
9 Members of the _____ generation should be flocking to North Dakota.

10 ____ recently announced its "Safe and Sound Campaign."

11 ___, another federal agency, recently examined employee compensation costs.

12 Executive, administrative, and professional employees are typically paid on a _____ basis

Solution for April's puzzle



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