Kennerly, Montgomery & Finley, P.C.

KM Newsletter

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Tennessee Court Decision Diminishes Summary Judgment Prospects in Slip-and-Fall Cases

By Briton S. Collins, Esq.

A decision in 2015 by the Tennessee Court of Appeals has diminished the prospects for property owners obtaining summary judgment in future "slip-and-fall" cases based on a lack of notice defense.

In *Beverly v. Hardee's Food Systems, LLC*, the plaintiff sued the defendant fast food restaurant for injuries sustained after the plaintiff slipped and fell on a substance that had spilled onto the restaurant's floor. The undisputed proof showed that (i) the spill had occurred only 3 minutes and 11 seconds prior to the plaintiff's fall, (ii) none of the restaurant's employees were alerted to the substance on the floor, and (iii) none of the restaurant's employees were in the area when the substance spilled or between the time of the spill and the fall. The defendant restaurant moved for summary judgment, arguing that, under these facts, the plaintiff could not establish that the defendant had any knowledge of the dangerous condition prior to the plaintiff's fall. Despite acknowledging the facts, the court nevertheless found that "there was material evidence from which the trier of fact could infer that the dangerous condition existed for such a length of time that one exercising reasonable care would have discovered it." The court cited numerous factors in support of its decision, including the nature of the defendant's business, the revolving number of patrons, and the nature of the danger, its location, and foreseeable consequences.

In light of this decision, the prospects appear dim for property owners to obtain summary judgment in future slip-and-fall cases based on a lack of notice defense. While the conditions necessary for notice will always vary from case-to-case, future plaintiffs now have a case to point to in arguing that 3 minutes is sufficient time for a property owner exercising reasonable care to discover a dangerous condition.

Briton S. Collins focuses his practice on civil litigation and appeals, construction law, and representing local governmental agencies. If you have questions or for more information, please call Briton S. Collins at (865)-546-7311 or email bcollins@kmfpc.com.

Recent Proposed Changes to the FLSA's Overtime Exemptions

By Ben Cunningham, Esq.

In 2015 the Department of Labor ("DOL") announced in a "Notice of Proposed Rule Making" their intent to make substantial changes to certain exempt employees' compensation under the Fair Labor Standards Act ("FLSA"). The FLSA generally requires that employers pay employees overtime pay of at least straight time, plus one-half times their regular rate of pay for every hour they work in excess of 40 hours in a particular workweek. The FLSA, and its interpretative regulations published by the DOL, however, exempt certain groups of employees from the overtime pay requirements. The most commonly used exemption relates to employees working in jobs that the FLSA describes as executive, administrative, or professional. These are referred to as the "white collar" exemptions. In order for employees to fall within one of the white collar exemptions, they must perform executive, administrative, or professional duties and be paid a threshold weekly salary amount. Currently, the threshold weekly salary amount is $455 per week (or $23,660 per year).

The biggest change proposed to the DOL's regulations is an increase to the threshold weekly salary amount to "the 40th percentile of weekly earnings for full-time salaried workers." The 40th percentile of weekly earnings will be based on Bureau of Labor Statistics data. To illustrate the significant change this represents, in 2014, the 40th percentile of weekly earnings equaled $933 per week (or $48,516 per year). Furthermore, the DOL projects that the 2016 level will increase to $970 per week (or $50,440 per year). Perhaps more importantly, for the first time in the FLSA's history, the salary and compensation levels would be indexed to this Bureau of Labor statistical data and updated annually. Thus, employers will be responsible for making annual updates to their exempt employees' compensation.

Because these are proposed rules, nothing changes today; but the impact of these rules will be far reaching. The DOL estimates that the Final Rule resulting from the Proposed Rule will not be released until mid-2016, since the DOL plans to rely on data from the first quarter of 2016 in setting the salary level. Once the Final Rule is in place, employers will likely have 120 days within which to bring their payroll into compliance.

For employers, now is the time to act. The Final Rule may require substantial changes to some employers' current payroll system. For instance, some employers may need to convert their current salaried, exempt employees over to hourly workers. Employers need to have a plan in place before the Final Rule goes into effect in order to implement any changes needed to adapt their payroll to the new rules.

Ben D. Cunningham focuses his practice on representing businesses and individuals in the areas of business and corporate law, labor and employment law, civil litigation and appeals, and construction law. If you have questions about overtime or for more information on Employment Law, please call Ben Cunningham at (865)-546-7311 or email bcunningham@kmfpc.com.

Social Security COLA and Increasing Medicare Part B Premiums

By Michael R. Crowder, Esq.

Individuals who have claimed Social Security benefits and are enrolled in Medicare Part B are required to have their Part B premiums withheld from their Social Security payments, if their monthly Social Security benefit covers the deduction. (If the monthly benefit does not cover the full deduction, the beneficiary is billed.)

The Social Security Act also has a "hold harmless" provision. This rule provides that Social Security benefits cannot decrease because of increases in the Medicare Part B premiums from year-to-year. The hold-harmless provision does not apply to about 25%-30% of Part B enrollees. Specifically, the hold-harmless provision does not apply for (1) New enrollees in Part B; (2) Higher-income enrollees who are subject to an income-related premium, and (3) Individuals who do not have the Part B premium withheld from their Social Security benefit (for example, those individuals who are not yet taking Social Security, or those people with low-incomes who have their premiums paid by the state).

Normally, this is not a problem when it comes to increasing Medicare premiums because of cost of living adjustments (COLAs). In those years that the Social Security Administration (SSA) applies a COLA to Social Security benefits, increases to Medicare Part B premiums can be taken out of beneficiaries' increased Social Security benefits without decreasing the Social Security benefit below the previous year amount.

However, when there is no COLA, as is the case for 2016, Medicare beneficiaries whose Part B premiums are deducted from their Social Security benefits can't be required to pay any premium increases, because doing so would decrease their Social Security benefit.

Unfortunately, Medicare is not able to absorb all the projected 2016 increases in Part B expenses. Because it can't collect the increases from the beneficiaries who are held harmless, it must seek to collect more from those people who aren't held harmless (the 25-30% of Part B enrollees listed above).

Therefore, the Centers for Medicare & Medicaid Services reported that the individuals listed above will pay 16% more in Part B premiums in 2016.[1] New enrollees and Medicare beneficiaries who aren't on Social Security and who do not have high incomes (modified adjusted gross income in 2014 of $85,000 or less if filing individual tax return; $170,000 or less if filing jointly) will pay not $104.90 a month but $121.80 a month in 2016. People in the higher-income premium groups have similar percentage hikes, ranging from $170.50 to $389.80 in 2016.

Once COLAs resume, Part B premiums will "normalize" over time. People held harmless will pay more, and people not held harmless will see their premiums decrease. Assuming normal COLAs, after a few years, everyone (without an income-based premium surcharge) once again will pay the same Part B premium.

Michael Crowder works primarily in the firm's employee benefits and business & corporate law practices. If you have questions or for more information about Social Security Benefits, please call Michael R. Crowder at (865)-546-7311 or email mcrowder@kmfpc.com.

[1] Original estimates predicted an increase in premiums of around 52%. In the Bipartisan Budget Act of 2015, passed in November 2015, Congress lent money from the U.S. Treasury to the Medicare trust fund in order to limit this potential increase.

Upcoming Programs

Kennerly Montgomery routinely produces programs on topics of current interest. All programs last one hour and are free and open for all clients and friends. If you or someone you know would be interested in attending any or all of these programs, we would be glad to have you. Click here for more information on these programs and to view materials from previous seminars.

Employers

Family Medical Leave Act
Affordable Care Act
Retirement Plan Legislation
QDROs for Government Employers

Workers' Comp

Tennessee Workers' Compensation Reform Act of 2013
Working with employees on workers' comp claims
How workers' comp affects hiring and firing employees

Independent Contractors

New rules on determination of Independent Contractors vs. Common Law Employees

Overtime

Fair Labor Standards Act proposed changes on overtime

Tax-Exempt Entities

Retirement plans for exempt entities
Special rules under §§ 403(b), 457, 409A
Common errors & corrections

Churches

Legal organizational and governance structure
Steps to limit personal liability of church volunteers
Retirement plans of church-related organizations

Kennerly Montgomery is a general practice law firm providing diverse professional services for almost 100 years both inside and outside the courtroom to a wide variety of individual, corporate and governmental clients. Our attorneys practice in all state and federal trial and appellate courts, as well as before administrative boards and panels and alternative dispute tribunals. We provide assistance in a variety of areas, including business and corporate law, governmental affairs and public utilities, employment law, worker's compensation, construction law and litigation, employee benefits, civil litigation and appeals, insurance defense and coverage litigation, taxation, wills and estate management, real property, healthcare, insurance defense and governance for churches and church-associated entities, technology transfer, and intellectual property.

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