

The Record Reporter

SINCE 1914

Where Arizona Law and Business Connect

Monday, April 20, 2015

Vol. 101 / No. 45 / \$1.75

Published Monday, Wednesday & Friday

Phoenix, Arizona 85004

WHAT'S NEWS

Governor vetoes justice of the peace rules

Arizona Gov. Doug Ducey vetoed House Bill 2592 on April 14 that would set new requirements for justice of the peace candidates.

The bill would have required candidates to live within the precinct they want to serve in at the time they file nomination papers. It also required the candidates to have lived in that precinct for at least a year. The bill was sponsored by Republican Rep. Heather Carter of Cave Creek.

Obama's effort to slow climate change heads to court

President Barack Obama's most far-reaching regulation to slow climate change had its first day in court April 16, which is the beginning of what is expected to be a multiyear legal battle, according to The New York Times.

In two separate but related cases to be jointly argued in the U.S. Court of Appeals for the District of Columbia Circuit, the country's two largest coal companies, along with 14 coal-producing states, have challenged a proposed Environmental Protection Agency regulation, which the agency issued under the authority of the Clean Air Act, to curb planet-warming carbon pollution from coal-fired power plants.

Former Federal Reserve chairman signs with Citadel

For eight years, Ben Bernanke, the former Federal Reserve chairman, was steward of the world's largest economy. Now he has signed on to advise one of Wall Street's biggest hedge funds, according to The New York Times.

Bernanke will become a senior adviser to the Citadel Investment Group, the \$25 billion hedge fund founded by billionaire Kenneth Griffin. He will offer his analysis of global economic and financial issues to Citadel's investment committees. He will also meet with Citadel's investors. It is the latest and most prominent move by a Washington insider through the revolving door into the financial industry.

Five Arizona company equity deals in first quarter alone top last year

According to a recent report by Dow Jones VentureSource, five Arizona companies raised more than \$259 million in equity financing during the first quarter of 2015, which ranks Arizona No. 7 on a national list with California leading the way at No. 1 with \$8.05 billion raised.

Four companies were identified in the report as raising a total of \$255 million, which include Imaging Advantage LLC, Emallage LLC, Orb Health and AppVirality Inc.

SMALL BUSINESS PROFILE

A Place for Work



PHOTO BY CHRIS L. GILFILLAN

Robert Renteria is the founder of Lab Phoenix, a 1,100-square-foot office space for people to set up shop and work on their businesses in Phoenix.

By CHRIS L. GILFILLAN

Tucked away just off Phoenix's arts district, Roosevelt Row, Robert Renteria taps away at a keyboard in a bright 1,100 square foot office.

For a while, it was just his office. But in January, he opened it up to other professionals as a coworking space, Lab Phoenix. Now with more than 50 people coming and going, he's inviting different groups of "coworkers" to join him.

"I always wanted to turn it into more of a collaborative space, geared specifically towards creatives," he said. "Because, while we don't necessarily have a specific need in terms of equipment or space, generally, creatives like an atmosphere."

So, there is music playing in the background, there's general chatter about projects and sometimes — because the location is just a block away from Phoenix Public Market — they even take an office trip to Food Truck Fridays.

"Roosevelt Row, specifically with the restaurants right in the area, literally in between three coffee shops, it just works really well personally for me. I love it," he said. "So I figured if I like it this much, there may be

Robert Renteria	
Position:	Founder
Company:	Lab Phoenix
Location:	Phoenix

other people who like the same vibe and being in this part of town."

Renteria, himself a graphic designer, threw a "Dribbble" meetup in January, which brought in designers across the Valley. And now he's working with the Arizona State University Master's in Visual Communications Design to bring in poster shows and small classes.

"What I'm getting at is that what I want for people to get from the place is not just that it's a place to work, but it's a place where you can come together and have a workshop to help better your community, whatever it is," he said.

And after first growing his own company while coworking at CO+HOOTS and working in the design space for more than five years, Renteria said that he tries to direct his cowork-

See **RENTERIA**, Page 3

ARIZONA ATTORNEY COLUMN

NLRB lawyer dishes out common employer handbook mistakes

On March 18, the general counsel of the National Labor Relations Board issued a report discussing the legality of common employer handbook policies. The stated intent of the report is to "help employers to review their handbooks and other rules, and conform them, if necessary, to ensure that they are lawful."



Kristy Peters, Littler Mendelson, PC

Section 7 of the National Labor Relations Act protects the right of an employee to engage in protected concerted activity. An employer violates Section 8(a)(1) of the act if it maintains rules or policies that interfere with, restrain, or coerce employees in the exercise of rights guaranteed under Section 7 of the Act, even if the employer did not adopt them in response to union or protected concerted activity. The Act applies to both union and nonunion employees.

In *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004), the board set forth a test for determining whether an employer policy or rule violates the Act.

Under *Lutheran Heritage*, even if the policy or rule does not explicitly restrict union or protected concerted activity, it will be found unlawful if (1) employees would reasonably construe the rule's language to prohibit Section

See **PETERS**, Page 32

WHAT'S INSIDE

Section	Page
Local News	3
Event Calendar	4
CLE Calendar	4
Public Notices	5-28
Crossword/Sudoku Puzzle	29



Visit Us Online
www.RecordReporter.com



INSIDE: Fennemore Craig announces new leadership team. **PAGE 2**

INSIDE: As baby boomers look to exit, partners try to shore up clients and balance sheets. **PAGE 3**

Peters

Continued from Page 1

7 activity; (2) the rule was promulgated in response to union or other Section 7 activity; or (3) the rule was actually applied to restrict the exercise of Section 7 rights. The vast majority of employer violations occur under the first prong of the test.

The GC report focused on common employer policies that frequently violate the act, and provided examples of both unlawful and lawful language.

The policies examined in the report include confidentiality rules, collegiality and professionalism rules, anti-harassment rules, trademark rules, photography/recording rules, and media contact rules.

Rules regarding confidentiality

Employees have a right to discuss wages, hours, and other terms and conditions of employment. An employer can be found in violation of the act if it maintains a confidentiality policy that either expressly prohibits such discussions, or could be reasonably construed to prohibit such discussions. In contrast, prohibitions on disclosing confidential information are lawful so long as they do not reference information regarding employees or anything that would reasonably be considered a term or condition of employment.

Rules regarding employee conduct toward the company and supervisors

Employees have a right to criticize or protest their employer's labor policies or treatment of employees.

The board will consider policies to be overbroad if they prohibit employees from engaging in "disrespectful," "negative," "inappropriate," or "rude" conduct towards the employer or management without sufficient clarification or context.

Additionally, the GC takes the position that employee criticism of an employer is protected even if it is false or defamatory.

Rules regarding employee conduct towards fellow employees

Employees have the right to argue and debate with each other about unions, management, and the terms and conditions of their employment. Therefore, the GC takes the position that policies that ban "negative" or "inappropriate" discussions among its employees, without



Antonio Cathey, of Memphis, Tenn., expresses his opinion during an open mic brain-storming session at the first-ever convention of fast food workers in Addison, Ill., July 26, 2014. With the comments from the general counsel of the NLRB, employers can craft handbooks that provide guidance on employee communication.

further clarification, are unlawful.

Rules regarding employee interaction with third parties

Employees have the right to communicate with the media, government agencies, and other third parties about wages, benefits, and the terms and conditions of employment. Accordingly, employers need to be careful that their policies would not be reasonably read to ban employees from speaking to the media or other third parties.

Rules restricting use of company logos, copyrights, and trademarks

In the report, the GC acknowledges that copyright holders have a clear interest in protecting their intellectual property; however, handbook rules cannot prohibit employees from engaging in fair protected use of the property. Examples of fair protected use include using the employer's name and logo on picket signs, leaflets, and other protest material.

Rules restricting photography and recording

The GC takes the position that employees

have the right to photograph and make recordings in the workplace, including the right to use personal devices for that purpose during non-working times.

As a result, rules placing a total ban on recordings, or banning possession of personal cameras or recording devices are overbroad when they would be read to prohibit taking pictures or recordings during non-working time.

Rules restricting employees from leaving work

Employees have the right under the act to go on strike.

Therefore, if an employer rule can reasonably be read to forbid employees from strikes or walkouts, it will be held to be overly broad.

Rules regarding conflict-of-interest

The GC takes the position that employees have the right to engage in concerted activity to improve their terms and conditions of employment, even if the activity conflicts with the employer's interests. Examples of protected activity include protesting in front of the company, organizing a boycott, or soliciting union support on non-work time. Conflict of

interest policies must therefore clarify that the restrictions are limited to legitimate business interests.

Violations

A charge alleging that a rule or policy interferes with employee rights can result in an action by the GC to compel the employer to remove that language and post and distribute notices to all employees previously covered by the rule or policy. In the notices, management must acknowledge the overbreadth of previous rules, inform employees the provisions will be removed or replaced and will not be maintained in the future, and provide information to employees about their rights under the NLRA.

Conclusion

Employers should carefully evaluate their employment policies to determine if they are lawful under the GC's report. Although NLRB case law is rapidly evolving in this area, the GC's Report provides valuable guidance on what the board currently views as both lawful and unlawful.

Kristy Peters is an attorney with Littler Mendelson, P.C., a national labor and employment law firm. She represents and counsels employers regarding all types of labor and employment matters arising under federal and state law, including unfair competition, restrictive covenants, and claims based on Title VII, FMLA, ADA, ADEA, and the Arizona Civil Rights Act. She also represents employers in front of the Equal Employment Opportunity Commission, the National Labor Relations Board, and the Arizona fair employment practices agency. In addition to litigation, her practice includes drafting employer policies and handbooks, conducting employee training, implementing workforce audits, and conducting investigations.

get INVOLVED

Want to write for us?

Begin or join the discussion.

We're looking for attorneys from around the state to contribute to our Forum Discussions that focus on a wide variety of issues – particularly new or pending opinions, laws and regulations.

connect • discuss • engage **The Record Reporter**

CONTACT:
Christopher L. Gillfillan,
Editor, J.D.
(602) 417-9900
christopher.gillfillan@
recordreporter.com

- Forum Discussions
- Profiles
- News
- Essays & Commentary