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## OLMS REVISES FORM LM-21 SPECIAL ENFORCEMENT POLICY

On April 4, 2024, the U.S. Department of Labor's Office of Labor-Management Standards ("OLMS") revised its Form LM-21 Special Enforcement Policy affecting those required to file. Forms LM-20 and LM-21. The Labor-Management Reporting and Disclosure Act ("LMRDA") requires any person, including a labor relations consultant, to file a Form LM-20. That form is a report disclosing agreements with any employer to undertake certain activities to persuade employees about their collective bargaining or organizing rights or to obtain information concerning the activities of employees or unions in connection with labor disputes. Form LM-21 is required to be filed by anyone filing a LM-20. Form LM-21 is a report for receipts and disbursements showing payments made or received as result of the aforementioned activity requiring a Form LM-20 to be filed.

Under the revised policy, filers who file Form LM-20 who must also file a Form LM-21 are not required to complete two parts of the LM-21: Part B (Statement of Receipts): "Part B (Statement of Receipts): receipts from employers in connection with labor relations advice or services other than for advice or services subject to reporting on Form LM-20, and/or Part C (Statement of Disbursements): disbursements made by the reporting organization in connection with labor relations advice or services other than for advice or services subject to reporting on Form LM-20."

Form LM-21 must be signed by the president and treasurer of the consultant to certify for accuracy and completeness. As long as the revised policy is effective, a Form LM-21 that includes only the information noted above by Part B and C will be deemed complete. All individuals who are required to file Form LM-21 reports must maintain applicable records such as vouchers, worksheets, receipts and resolutions for at least five years. However, consultants need not maintain records regarding receipts and disbursements not required to be reported in Part B and C of Form LM-21.

The revised policy is effective for all Forms LM-21 on July 3, 2024.

## TIME IS A CONTINUUM, BUT NEW YORK JURISDICTION IS NOT, SAYS SECOND CIRCUIT

In *King v. Aramark Services, Inv.,* 2d Cir. No. 33-2347 (March 20, 2024), Judges Walker, Chin and Robinson of the U.S. Court of Appeals for the Second Circuit, limited

the reach of New York's Human Rights Law, while expanding the scope of Title VII's continuing violation doctrine.

Kristin King, a New York resident, worked for Aramark, a Delaware corporation headquartered in Pennsylvania, in a high managerial role handling over $20 million in accounts in Virginia and West Virginia where she primarily worked. Aramark permitted King to work remotely from her home in New York on occasion. In 2015, King changed her reports to a new district manager, Griffith Thomas, who immediately began setting her up for failure. For example, Thomas now negatively reviewed King compared to her prior similarly performing male peers, denied her raises granted men, "shamed" her for her weight unlike similarly hefty male managers, and insulted her in front of the district's male managers. Thomas fired King in 2017 for a $56 unauthorized reimbursement in accordance with his 'King-legal" file. Aramark never seriously investigated King's regular complaints about Thomas, including her discharge. King sued in New York, alleging hostile environment, sex discrimination and retaliation in violation of New York's Human Rights Law ("HRL") and Title VII of the federal Civil Rights Act of 1964 ("Title VII").

Judge Robinson, writing for the unanimous panel, affirmed dismissal of King's New York HRL claims because the "impact' of the alleged violations was only "tangential" in New York. King did most of her work in Virginia or West Virginia, the alleged violations occurred there, and Aramark was neither incorporated nor headquartered in New York, explained the Court. However, reversing the district court, the Appeals Court reinstated all of King's Title VII claims.

The Court ruled King's hostile environment claim timely based on the continuing violation doctrine - one or more "discrete, acts" of discrimination occurring within the Title VII 300 day limitation period for New York. "A discrete" discriminatory act, such as termination, within the limitations period may not only support a claim for damages, it may also render a hostile work environment claim timely *If shown to be part of the course of discriminatory conduct that underlies the hostile work environment claims,"* held the Court. "Our holding is consistent with how hostile environment claims work," explained Judge Robinson, "because a hostile environment is formed and shaped by an assemblage of discriminatory acts," including discrete acts that could support their own claim. While the continuing violation doctrine does not make an untimely discrete claim timely for that act, the discrete act can be part of the separate claim of hostile environment so long as "the discrete act was part of the ongoing … hostile work environment." Given this analytical framework, the panel easily concluded that Thomas's "derisive role" in King's discharge during the 300 days limitation period "contributed to his long-running enterprise of subjecting King to a pervasive, hostile work environment," rendering the entire hostile environment claim timely.

The Second Circuit also found sufficient evidence of discriminatory discharge and retaliation, "in light of Thomas' differential treatment of King as compared to her similarly situated male peers." Although none of these male peers was identical to King, they "shared enough commonalities with King that they can serve as adequate comparators." Indeed, deciding "whether the two were 'similarly situated' … is a fact-intensive task that should be left to the jury," observed the Court. And, added Judge Robinson, "a reasonable jury could conclude that Thomas' singling out King for weight-related remarks and conduct … reflected not only a bias against individuals with certain body types, but also a gender-based bias", pointedly noting that "women suffer from weight discrimination in far greater numbers than men in part because the societal standard for overweight women is more severe than for men and in part because women are employed in positions where, it is asserted, 'looks matter'." Finally, Aramark's defense of the faulty reimbursement as a legitimate reason fell before King's evidentiary wave of pretext, including Aramark's lame investigation of the facts and Thomas' "letter to terminate her employment even ***before*** the travel expense issue arose …" (emphasis in original). Accordingly, having clarified the appropriate analysis on these many issues, the Second Circuit vacated the district court's contrary rulings, and remanded the case for trial.

## HOTEL CANNOT UNILATERALLY INCREASE WORKLOAD, EVEN WHERE INCREASE IS INCIDENTAL TO MANAGEMENT DECISION, D.C. CIRCUIT AFFIRMS

In 2018, a Hilton Hotel ("Employer" or "Hotel") in Anchorage, Alaska began renovations with the intention of making its rooms more appealing to guests. Among these changes was the replacement of showers in about 300 rooms; the Hotel ditched bathtubs with fabric curtains for walk-in showers with glass doors. The Hotel also added sofa beds to more rooms, replaced pillows with larger pillows, and added an extra pillow to each double-sized bed.

Not surprisingly, these changes resulted in increased workloads for the Hotel's housekeepers. In general, housekeepers at the Hotel were required to clean 17 rooms per eight-hour shift, with a $4.95 bonus for each extra room cleaned. Despite complaints from housekeepers that the glass showers were more difficult and time-consuming to clean, that cleaning the new showers gave them physical pain, and that the new size and number of pillows increased the amount of time required to clean each room, the Hotel refused to adjust its room quotas. In 2022, the National Labor Relations Board ("NLRB" or "Board") held that the Hotel violated its duty to bargain over the change in working conditions because it unilaterally increased the housekeepers' workload without altering its room-cleaning quota.

The Court of Appeals for the D.C. Circuit agreed. Although it was permissible for the Hotel to unilaterally decide to renovate, it violated its duty to bargain because the result of the renovations was a unilateral increase in workload. Thus, while the Hotel argued that the increase in workload was merely an effect of a proper management decision; consequently, it said, the Hotel was only obligated to bargain over the "effects" of the decision. However, the Court said the difference between "decision" bargaining and "effects" bargaining was "of no real consequence" in this case. Even if only "effects" bargaining was required, the Hotel failed to provide the Union with notice and an opportunity to bargain, which is required where changes to working conditions are both substantial and foreseeable.

In addition to affirming the Board's decision that the Hotel violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing to notify the Union of and bargain over the changes, the Court also agreed that the Hotel violated the Act by threatening to discipline and fire housekeepers who failed to meet their quotas. Under the Board's order, the Hotel must readjust the housekeepers' workload, bargain over future changes, and pay housekeepers for lost overtime.

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