



RAISING THE BAR

Recent Awards

- Six GableGotwals attorneys and the Firm overall have been recognized by Benchmark Litigation as displaying the ability to consistently handle complex, high-stakes cases in multiple jurisdictions. Overall, GableGotwals has been named a Highly Recommended Firm by Benchmark Litigation. In addition, attorneys David Bryant, David Keglovits, Graydon Dean Luthey, Rob Robertson and James Sturdivant, have been identified as Local Litigation Stars. Brad Welsh was included this year as a "Future Star". Oklahoma had a total of seven "Future Stars" and 45 "Local Litigation Stars" selected.
- For the third year in a row, GableGotwals has been selected as a Go-To Firm for the top Fortune 500 companies. The selection is based on data gathered from companies' General Counsel in addition to various key databases. According to Corporate Counsel magazine, less than one half of 1% of all law firms are included in the magazine's "Go-To Law Firm" list.
- Timothy A. Carney has been awarded the 2014 Power Attorney distinction by the Tulsa Business Journal and Lori Sears was recognized among the legal professionals being honored.
- Forty-six GableGotwals attorneys have been named as Oklahoma's 2014 Top Rated Lawyers. LexisNexis Martindale-Hubbell

Jeff Hassell Transitions from General Counsel to Shareholder



Jeff Hassell brings a unique perspective to his banking clients. He has spent the majority of his career as a GableGotwals shareholder. However, this past year he has navigated the legal intricacies of the banking industry from a general counsel position at The F&M Bank & Trust Company. After the recent merger of F&M Bank and Prosperity Bank, Jeff is returning full-time to the firm as a shareholder. With additional knowledge of the banking industry's legal, operational, financial, compliance and regulatory environment, Jeff is distinctively qualified to assist both large and small banks. *Jeff can be reached at jhassell@gablelaw.com or 918-595-4823.*

New Attorneys Join Oklahoma City Office as Of Counsel



Leo J. Portman brings over thirty years of experience to the Firm in the areas of title examination and oil and gas law. He and also practices in the areas of corporate liquidation, estate planning, and corporate and securities law. Prior to joining GableGotwals, Leo was a sole practitioner at Portman & Associates. He has previously served as president of an oil and gas company during bankruptcy liquidation and payment of creditors, all of whom were paid in full under his direction. He also fulfilled the role of sole practitioner for oil and gas corporations and outlined estate planning programs for clients. *Leo can be reached at lportman@gablelaw.com or 405-568-3305.*



Rex E. Herren brings over forty years of experience to GableGotwals in the areas of title examination, oil and gas, real estate law, Indian law and probate law. He has worked with both the Five Civilized Tribes in Eastern Oklahoma and the General Allotment Indians in Western Oklahoma. Rex has also served as Assistant Regional Solicitor with the Office of the Solicitor in Tulsa, Oklahoma. *Rex can be reached at rherren@gablelaw.com or 580-515-1184.*

Oklahoma Supreme Court Upholds New Discrimination Damages Caps as Constitutional

A blog by Timothy A. Carney



In late February 2014, the Oklahoma Supreme Court, in *MacDonald v. Integrus Health*, 2014 OK 10, upheld November 2011 amendments to the Oklahoma Anti-Discrimination Act (OADA), which abrogated common law remedies for victims of status-based employment discrimination and established exclusive statutory remedies in their place.

In *MacDonald*, the plaintiff alleged her employer terminated her because of her gender and age in May 2012 (after the effective date of the amendments), in violation of federal and state law. She claimed that she was entitled not only to the remedies available under the ADEA and Title VII, but also the full range of normal tort damages under Oklahoma common law for a “public policy” wrongful discharge. Anticipating that the employer would raise the OADA’s recently enacted exclusive remedial scheme as a defense, the *MacDonald* plaintiff alleged that the scheme was unconstitutional as a “special law” under Article V, Sections 46 and 59 of the Oklahoma Constitution.

In addressing whether the OADA’s abrogation of common law remedies and imposition of damages caps was constitutional, the Oklahoma Supreme Court noted that the state’s public policy against discrimination is established by the OADA. Accordingly, the Court found, the state legislature would act within its power to

create limited statutory remedies to vindicate this public policy as long as (i) it treats all victims of status-based discrimination uniformly, and (ii) the statutory remedies are sufficient to protect Oklahoma’s public policy. The Court found that the legislative amendments to the OADA do treat all victims of status-based discrimination (defined as race, color, religion, sex, national origin, age, disability, or genetic information) the same by providing the same remedies to each. The Court further found that the amendments, which allow for injunctions against unlawful practices, reinstatement to employment, back pay and liquidated damages, provide an “adequate remedy” sufficient to vindicate Oklahoma’s public policy. Therefore, the Court found, the amendments do not violate Article V, Sections 46 and 59 of the Oklahoma Constitution.

This is certainly good news for employers, as the statutory scheme provides more certainty in dealing with state-based claims of discrimination, and precludes recovery of compensatory damages for emotional distress and punitive damages. However, we may see additional challenges to the OADA in the future as the law develops.

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A Journal Record Viewpoint by David L. Kearney:

Gavel to Gavel: E-cig regulations will develop

Published February 26, 2014

We've all grown accustomed to the sight of lonely smokers, standing a discreet distance from building entrances as they satisfy their need for nicotine. These Oklahomans may soon be joined by their more modern brothers and sisters, the e-cigarette users.

E-cigarettes are electronic devices designed to deliver a dose of vaporized propylene glycol or vegetable glycerin, both common food additives. This vapor comes in hundreds of different flavors and can be infused with nicotine to provide a dose of nicotine similar to what is obtained by smoking a cigarette.

Although e-cigarettes have some laudable benefits according to their proponents, they have not been welcomed by cities and states throughout the country. New York City and Chicago, for example, have banned the use of e-cigarettes indoors in the same fashion that regular cigarettes are prohibited. This trend has reached Oklahoma City, where at least one city council member wants e-cigarettes banned. This step has already been taken by the city of Ada, which has banned the use of e-cigarettes on public property. The University of Central Oklahoma and the University of Oklahoma have banned the use of e-cigarettes on campus. Governor Mary Fallin has also issued an executive order that bans the use of the devices on state property as of January 1, 2014.

Given the attention e-cigarettes have garnered, it should be no surprise that the Oklahoma Legislature is also looking at various measures to regulate the sale and use of e-cigarettes. Oklahoma businesses are also considering how to regulate e-cigarette usage on company property. Clearly, e-cigarettes will continue to garner regulatory and legislative attention until such time as their benefits and drawbacks are more fully understood by the public and the regulatory bodies that exert jurisdiction over these products.

Businesses interested in controlling e-cigarette usage in and around their facilities should consider creating a new policy or modifying their current tobacco use policy to specifically address e-cigarettes. The policy could, if desired, set the same standards for e-cigarette usage as are currently in place for other tobacco products. Until regulators and legislatures determine how these products are classified and supervised, businesses would be wise to treat e-cigarettes as distinct and separate from traditional cigarettes.

Businesses interested in controlling e-cigarette usage in and around their facilities should consider creating a new policy or modifying their current tobacco use policy to specifically address e-cigarettes.

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A Blog by Erin Dailey

Proposed Family and Medical Leave Enhancement Act Would Have Large Impact on Employers

U.S. House Representative Carolyn B. Maloney of New York has introduced H.R. 3999, which would provide for a far-reaching expansion of the Family and Medical Leave Act (“FMLA”). The bill introduces two big changes to the current Act.

First, the FMLA would be expanded to cover employees whose employers have 25 or more employees within a 75-mile radius. The FMLA currently covers only employers with 50 or more employees.

Second, the “enhanced” FMLA would allow employees to take intermittent, “parental involvement leave to participate in or attend their children’s and grandchildren’s educational and extracurricular activities” and would also allow FMLA-protected leave to cover “routine family medical needs and to assist elderly relatives.” See <https://www.govtrack.us/congress/bills/113/hr3999/text>. Currently, the FMLA generally allows for job-protected, unpaid leave only for “serious health conditions,” including pregnancy and childbirth.

There are some limitations on the additional leave provided by the amendment. An employee would be limited to 4 hours of leave in a 30-day period, and 24 hours of leave in a 12-month period.

In promoting the bill, Representative Maloney referred to President Obama’s statement in his recent State of the Union address that “it’s time to eliminate workplace policies that belong in an episode of Mad Men.” See <http://maloney.house.gov/press-releases/anniversary-family-medical-leave-act-maloney-introduces-bill-expand-rights-millions>. The President also endorsed the components of the proposed bill in a June 2008 speech in Albuquerque, New Mexico. See *id.* Representative Maloney’s press release did not address any potential impact on employers.

The proposed bill has been sent to the House Oversight and Government Reform and House Administration Committees.

The Family and Medical Leave Act (FMLA) currently covers only employers with 50 or more employees. A proposed bill would provide for a far-reaching expansion of the FMLA.

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The Oklahoman talks with Tom Gruber about how employee corruption can catch up to businesses

2014 Officers and Directors for GableGotwals

- *David Keglovits—Chair and CEO*
- *Sid Swinson—President*
- *Dale Cottingham—Treasurer*
- *Amy Stipe—Secretary*
- *John Dale*
- *Terry Ragsdale*
- *Rob Robertson*
- *Scott Rowland*

White-collar crimes can cause liability for criminal's employer

Q: What is a white-collar crime?

A: While there is no legal definition, “white collar” is generally used to describe a non-violent, business-related crime committed for financial gain. Antitrust fraud, tax evasion, bribery, securities fraud and kickbacks are just a few examples of offenses that can be classified as white-collar crimes.

Q: Can a business or its owner be exposed to civil or criminal liabilities when one of the business' employees is accused of committing a corporate crime?

A: This could be an instance where the cover-up is worse than the crime. A business owner could face civil liability if she tries to hide the fraud from shareholders/investors and might be exposed to a criminal charge of accessory after the fact if she attempts to hide a crime from law enforcement.

Q: How can a business protect itself from these liabilities?

A: It's important for a business to establish an appropriate command and control structure with a proper separation of duties so there are checks and balances. This is especially vital when it comes to the handling of funds. It's also a good idea to occasionally conduct an internal review that includes outside experts who come in and look at your operations. This should include experts in law, tax and accounting.

Q: How can a business owner protect herself from personal liability if she suspects some sort of criminal behavior within the company?

A: If a business owner suspects some sort of criminal behavior within the company, she should secure the situation within the business, like restricting access to information and funds, and at the same time alert the proper authorities.

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Quail Living talks with Greg Metcalfe about electronic records

It's a New World for Records

Published January 2014

What is electronic record?

The possibilities for what may be considered a record are virtually endless. Electronic records, also known as electronically stored information (ESI), can be anything stored in an electronic medium such as a text document, an email, a digital photograph, a voice message, a file saved on a USB drive or even coordinates stored on a car's navigation system. Copies of documents stored in a fax or copy machine cache can be a record, as well as text messages on a mobile phone. Even drafts of a document that a user thinks have been deleted can often be discovered on a computer hard drive in litigation.

Why should a business owner be concerned with ESI?

The sheer volume of records that are created on a daily basis makes a well-reasoned ESI and document retention policy a must for businesses of all sizes. In the past, a business owner only needed to be concerned with retaining and storing paper records. Because of today's technologies, businesses must address methods of record creation and retention that did not even exist a few years ago. For example, text messages, social media postings, entries in a smartphone app and metadata associated with the creation of a document may all be subject to discovery in a lawsuit.

How can a business manage electronic records?

We encourage our clients to implement a thorough, tailored document retention policy that includes a document destruction component. The policy should be specific as to what records must be kept and for what length of time. The policy should take into account any state or federal document retention laws that may apply to the business, like tax records.

How have the courts addressed electronically stored information?

The court system has struggled with how to best handle ESI in lawsuits. The courts and procedural rules have taken the position that if you implemented and followed a proper document retention policy before litigation began, you will generally not be required to locate, restore and produce previously deleted information.

What about document retention in litigation?

The courts have ruled that businesses or individuals who anticipate being a party to a lawsuit should preserve ESI. To protect against the inadvertent loss of evidence, we counsel our clients to develop a "litigation hold" that is specific to the evidence in the case. A litigation hold is simply a document retention policy that is specific to the facts and circumstances of their case. It defines the relevant documents that must be retained and how they are to be retained.

Do you see any ESI trends that will impact the business owner?

I have witnessed trends over the past decade that have generally decreased the burden on businesses when it comes to managing and producing electronic records. Because the courts and legal profession are adapting to the electronic world in which we now live, there are increasing expectations on the business owner to actively manage electronic records and react responsively to anticipated litigation.

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GableGotwals is a full-service law firm of over 70 attorneys representing a diversified client base across the nation. Though Oklahoma-based, our connections and reach are global. Fortune 500 corporations, entrepreneurs, privately owned companies, foundations and individuals entrust us every day with the stewardship and strategic management of their legal challenges. GableGotwals is well known for its high quality legal services provided by a highly experienced group of litigators and transactional attorneys who have been recognized by Chambers USA, Best Lawyers In America, Oklahoma Super Lawyers and a number of federal, state and county bar associations.

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