



Week Ahead in Employment

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Tuesday, Nov. 9

9 a.m. - A panel of the 9th U.S. Circuit Court of Appeals will consider whether Oregon law requires Amazon.com Inc to pay warehouse workers for time spent going through security screenings at the end of their shifts. A federal judge said the time was not compensable because the screenings were not an integral part of the workers' jobs. Named plaintiff Lindsey Buero says in the appeal that the judge wrongly applied the standard under federal wage law, while Oregon law provides broader protections to workers.

The case is Buero v. Amazon.com Services Inc, 9th U.S. Circuit Court of Appeals, No. 20-35633. For the plaintiffs: Lisa Hunt of Law Office of Lisa T. Hunt. For Amazon: Michael Kenneally of Morgan Lewis & Bockius.

9:30 a.m. - A Pennsylvania hospital operator will ask a 3rd U.S. Circuit Court of Appeals panel to require a Black doctor to arbitrate claims that she was sexually harassed by a female supervisor who then falsely accused her of sexual assault, leading to her firing. Prospect CCMC LLC says a judge was wrong to find that because the company was not a party to an arbitration agreement between plaintiff Dina Abdurahman and a "sister" company that operated the hospital where she worked, it could not compel arbitration of her discrimination and retaliation claims.

The case is *Abdurahman v. Prospect CCMC LLC*, 3rd U.S. Circuit Court of Appeals, No. 20-3459. For Abdurahman: Julie Uebler of Console Mattiacci Law. For Prospect: Tara Param of Littler Mendelson.

3 p.m. - The U.S. House of Representatives Committee on House Administration will hold an oversight hearing on workplace rights for congressional staffers. The hearing will focus on lessons learned since the 2018 adoption of the Congressional Accountability Act of 1995 Reform Act, which updated dispute resolution procedures to make it easier for staffers to file harassment and discrimination complaints.

Wednesday, Nov. 10

9:30 a.m. - A panel of the 3rd U.S. Circuit Court of Appeals will consider whether the publisher of conservative news website *The Federalist* violated federal labor law by tweeting that he would send employees "back to the salt mine" if they unionized. The National Labor Relations Board found that the tweet could discourage workers from organizing and joining unions, but *The Federalist* in its appeal says the tweet was clearly intended as a joke and publisher Ben Domenech was exercising his free-speech rights by posting it. The company is backed by amicus briefs from the National Federation of Independent Business and conservative groups including the Cato Institute.

The case is *FDRLST Media LLC v. NLRB*, 3rd U.S. Circuit Court of Appeals, No. 20-3434. For FDRLST: Jared McLain of New Civil Liberties Alliance. For the NLRB: David Habenstreit.

10 a.m. - Lawyers for a UnitedHealth Group Inc insurance plan member will ask a 9th U.S. Circuit Court of Appeals panel to revive a proposed class action claiming the insurance giant unlawfully declined to cover the costs of treatment for substance abuse disorder. A judge said the named plaintiff, identified as Ryan S., lacked standing because he failed to connect UnitedHealth's allegedly unlawful practices to an injury he suffered. Ryan S. claims the treatment for drug abuse that UnitedHealth refused to cover cost him hundreds of thousands of dollars.

The case is *Ryan S. v. UnitedHealth Group Inc*, 9th U.S. Circuit Court of Appeals, No. 20-56310. For Ryan S.: Elizabeth Hopkins of Kantor & Kantor. For UnitedHealth: April Ross of Crowell & Moring.

2 p.m. - A 2nd U.S. Circuit Court of Appeals panel will consider reviving a securities class action claiming New York investment bank Jefferies Financial Group LLC failed to adequately

address executives' excessive personal use of company aircraft. The shareholder plaintiff, Stanley Rubenstein, claims the misuse of company planes cost Jefferies nearly \$27 million from 2015 to 2019. A judge said an internal probe that led to changes in Jefferies' jet-usage policies and the chairman of the board paying back \$236,000 was adequate.

The case is Rubenstein v. Adamany, 2nd U.S. Circuit Court of Appeals, No. 21-905. For Rubenstein: Hung Ta of HGT Law. For the defendants: George Wang of Simpson Thacher & Bartlett.