August 2011

Municipal Law News

Foster Swift Administrative & Municipal Group

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UPCOMING WEBINAR
Social Media: Developing and Implementing an Effective Policy for YOUR Municipality

JOIN FOSTER SWIFT'S MUNICIPAL TEAM FOR A FREE WEBINAR.

The use of social media is expanding rapidly every day. How does an employer manage the workplace and the legal consequences of regulating and using these mediums?

During this webinar you will collect strategies to help optimize Facebook, LinkedIn, Twitter, YouTube, Flickr and other social media sites as great business tools instead of employee productivity drains.

THIS WEBINAR WILL COVER:

- Why your municipality needs to have a social media policy.
- What needs to be included in your social media policy.
- Monitoring the use of social media.
- How to handle abuse as it relates to the policy.
- Relevant acts and laws.
- Identifying volunteer liability as it pertains to their use of social media in communication regarding your municipality.

DATE
Tuesday, August 16, 2011

TIME
2:00 p.m. - 3:00 p.m. EST

PRESENTERS
Melissa Jackson
Employment Law Attorney
Samuel Frederick
Information Technology Attorney

COST
Free

SIMPLE STEPS TO REGISTER
Go to https://www1.gotomeeting.com/register/310882632 and complete the registration form.

Q&A
Have your questions answered throughout the webinar and during a Q&A session following the presentation.

Are Your Employees Still WILBing[1] On Municipal Time?

by: Melissa J. Jackson

Internet use continues to be a hot topic in the workplace, and it seems like there is no end in sight to the discussion. Facebook, MySpace, LinkedIn, and Twitter have become commonplace – not only on employees' personal computers, but also on employers' computers. Blogging has become a marketing tool for companies – as well as a tool that employees are using to seek revenge against their employers.

IN VIEW OF THIS, YOUR MUNICIPALITY SHOULD BE ASKING ITSELF THESE QUESTIONS:

1. Should an employer be concerned?
2. What should a concerned employer do?

The answer to the first question is, in our view, yes. All employers should be concerned. Potential negative consequences of unregulated Internet use by employees include losing employee productivity, damaging the employer's reputation, and breaching confidentiality. But consider, also, the growing trend for the National Labor Relations Board (NLRB) to become involved in protecting employees. Yes, the NLRB can be a threat to even non-union employers, and MERC often follows the NLRB's lead.

As to the second question, employers can minimize these risks by letting employees know what is and is not prohibited. The easiest way to inform them is to put a policy in the employee handbook. An effective policy will allow effective monitoring. Such a policy could, for example, inform employees that social media may not be used to harass or discriminate against others. It also serves as a defense to claims of defamation, improper discipline, wrongful termination, and invasion of privacy. Finally, it will help establish consistency and uniformity in enforcement.

Municipal employers should also carefully draft their policies so as to avoid being overly general. For example, a policy that broadly prohibits employees from making disparaging remarks about the municipality or supervisors over the Internet may be too broad. Further refinement is likely warranted, to allow for meaningful enforcement.

So, don't risk being IBT (In Between Technology) on this issue. Be proactive and, if you have questions about regulating employees' Internet use at work, please contact Melissa Jackson at (517) 371-8106 or mjackson@fosterswift.com.

[1] A translation for the "uninitiated" is "**Workplace Internet Leisure Browsing**"

Governor Snyder Has Signed Legislation Changing the Process for Arbitration of Public Safety Labor Disputes

by: Michael R. Blum

Since 1969, Michigan has relied on binding arbitration as a way of resolving contract disputes in police and fire departments operated by a city, county, village, or township. Under Act 312, an arbitration panel must issue an award containing findings of fact, opinions and an order concerning disputed issues, which is binding on the parties. Act 312 requires the arbitration panel to base its findings, opinions and orders upon specific factors, which include the interests and welfare of the public. However, a local unit of government's ability to pay did not need to be taken into account. As a result, Act 312 frequently resulted in unaffordable collective bargaining agreements being forced upon municipalities.

On July 20, 2011, Gov. Rick Snyder signed legislation that changes the arbitration process and should result in more realistic agreements. This legislation amends Act 312 to do the following:

- Require an arbitration panel to give priority to the financial ability of the unit of government to pay.

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- Allow an arbitration panel to compare wages, hours, and conditions of employment of employees of a unit of government outside of the bargaining unit in question.
- Set limits on the extension of deadlines during the arbitration process.
- Require the Employment Relations Commission to establish qualifications for individuals to chair an arbitration panel.
- Shift the State share of arbitration costs to the parties.

This legislation also expands the reach of Act 312. Previously, Act 312 applied only to police officers, firefighters, and emergency medical service personnel employed by a city, county, village, or township. As amended, the Act also applies to those employees of an authority, district, board, or any other entity created by the authorization of one or more cities, counties, villages, or townships, whether the entity was created by statute, ordinance, contract, delegation, resolution, or other mechanism. However, employees of an authority that was in existence on June 1, 2011 are exempt, unless they were represented by a union on that date or a contract was in effect on that date specifically providing the employees with coverage under the Act.

Please contact Michael Blum at (248) 785-4722 or mblum@fosterswift.com with any questions or for further information regarding Act 312 arbitration.

Michigan Legislature Reinstates "Very Serious Consequences" Rule for Mining Operations

by: Laura J. Garlinghouse

As Foster Swift reported in its January 2011 *Municipal Law News*, the Michigan Supreme Court recently eliminated the "very serious consequences" rule for mineral extraction cases in *Kyser v Kasson Township*, 486 Mich 514; 786 NW2d 543 (2010). Under the "very serious consequences rule," zoning ordinances or decisions that prevented extraction of natural resources were invalid if no very serious consequences would result from the proposed extraction. *Kyser* held that the "very serious consequences" rule was unconstitutional and replaced it with a "reasonableness" standard – which is the standard that courts apply to gauge all other challenges to zoning ordinances and decisions.

Now, the Michigan Legislature has legislatively overruled *Kyser* and reinstated the "very serious consequences" rule. Governor Snyder signed the new law (Public Act 113 of 2011) on July 20, 2011. The new law highlights the following:

- An ordinance may not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources.
- The burden is on the property owner to show the municipality erred. Specifically, a person who challenges a zoning ordinance or decision as violating the above rule must show three things: (1) that there are valuable natural resources on the property, (2) that there is a need for the natural resources by the person or in the market served by the person, and (3) that no very serious consequences would result from the extraction, by mining, of the natural resources.

The new law does attempt to give some guidance as to when "very serious consequences" would result from the extraction. The new law says that these specific six factors are relevant:

1. The relationship of extraction and associated activities with existing land uses.
2. The impact on existing land uses in the vicinity of the property.

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1. The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.

2. The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.

3. The impact on other identifiable health, safety, and welfare interests in the local unit of government.

4. The overall public interest in the extraction of the specific natural resources on the property.

Municipalities should keep these factors in mind when enacting zoning regulations or making zoning decisions on extractions.

On the positive side, the new law confirms a municipality's right to regulate hours of operation, blasting hours, noise levels, dust control measures, and traffic in connection with mining operations – as long as the municipality's regulations are not preempted by other laws and as long as the regulations are "reasonable in accommodating customary mining operations."

This new law effectively takes municipalities back to the days before *Kyser*, which limits municipalities' regulatory authority. If you have questions about how Act 113 affects your municipality and its zoning decisions, please feel free to contact Foster Swift's municipal attorneys.

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