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Q&A With Anderson Kill's Bennett Pine

Law360, New York (April 16, 2013, 2:19 PM ET) -- Bennett Pine is a shareholder in the Newark, N.J., and New York offices of Anderson Kill & Olick PC and chairman of the firm's employment and labor group. Pine has experience advising and representing management in all aspects of the employment relationship, including negotiating and drafting employment and separation agreements, defending employment discrimination claims, compliance with current legislation such as the Americans with Disabilities Act and the Family and Medical Leave Act, sexual harassment, organizational restructuring and reductions in force, employee discipline and discharge, restrictive covenants, mergers and acquisitions, union relations and union avoidance.

Q: What is the most challenging case you have worked on and what made it challenging?

A: One difficult but satisfying assignment was on behalf of a large, nationally known paper company. The company planned to make a substantial investment in a large plant in New Jersey, purchasing a high-speed paper machine. This plant was unionized, and relations between the company and the union were contentious and hostile.

If the company did not make this investment, that plant would have been at a competitive disadvantage that would probably have resulted in layoffs and eventually, perhaps, in the closing of the plant. As a condition of investment, the company insisted on substantial concessions in wages, job classifications and work rules. Work conditions were, in fact, rigid — there were dozens of narrow job classifications, and the prevailing mentality was “you can’t touch that machine — that’s my job.”

The union didn’t trust the company and challenged it at every turn. I and a partner, counsel to the company, were caught in the middle. Over time, we were able to gain the union’s trust and to negotiate substantial changes from the union. The company kept saying, “not good enough, we’ve got to get more” — and we did, in fact, win further concessions. Eventually, though, we had to convince the company that this was the best they were going to be able to do.

We succeeded in that. We negotiated multiskilled trade classifications as well as wage concessions, and the plant was able to operate much more efficiently. The company made its multimillion-dollar investment in the high-speed machine, and the plant thrived.

Q: What aspects of your practice area are in need of reform and why?

A: In the labor and employment realm today, there is a plethora not only of discrimination but of wage/hour claims. A host of plaintiffs' attorneys devote their energies to finding some employee somewhere who is not getting paid overtime, bringing a claim against the company and if possible, seeking to morph it into a class action suit.

In one such case, I represented a nonprofit accused of not paying overtime properly. In the settlement we negotiated, one employee was entitled to only $860 in overtime pay, while the attorney got almost 10 times as much. There are scores of such cases; the courts are overrun, but perhaps not well suited to such disputes, and there has to be a better way to handle them. Maybe we need a labor court or a special arbitration panel — something efficient and proportionate to the typical infraction — at least for suits seeking amounts below a certain threshold.

Q: What is an important issue or case relevant to your practice area and why?

A: If successful, the challenges now pending before the U.S. Supreme Court seeking to strike down the federal Defense of Marriage Act and California's Proposition 8, which amended the state constitution to ban same-sex marriage, will have enormous impact on employer policies and benefits.

At present, while 38 states and many municipalities prohibit discrimination based on sex orientation, such discrimination is not yet recognized in federal law. Title VII of the Civil Rights Act, which bans discrimination in various forms, does not yet include discrimination on the basis of sexual orientation. It's been estimated that there are more than 1,100 places in federal law that would be impacted by federal recognition of same-sex marriage from inheritance to health insurance to Social Security benefits.

For example, thanks to DOMA, health benefits that employers extend to same-sex spouses are not tax deductible, and Employee Retirement Income Security Act rules governing spousal benefits are limited by DOMA's definition of marriage. Conversely, if DOMA is overturned, employers in states that recognize gay marriage will most likely be compelled to offer spousal benefits to same-sex spouses. Overturning DOMA could also call into question state laws that prevent the extension of state-level marriage benefits to legally recognized same-sex couples.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: I have long admired my former colleague at Anderson Kill, Gregory Homer, now at Drinker Biddle, for his encyclopedic knowledge of developments and decisions in our field. Long before the Internet put data at our fingertips, Greg maintained his own database and was an information resource for a wide circle of clients and colleagues. It started, I think, with our role conducting employment law seminars every few months: To keep the case cites up to date, he developed tracking methods that kept him constantly current. He has maintained that habit, and he is generous with his knowledge.

Q: What is a mistake you made early in your career and what did you learn from it?

A: When I was first practicing as a lawyer, I quickly learned that being fast isn't everything. Asked to research relevant case law for a brief, I found a case with a holding that was directly on point for our client. What I didn't pay attention to was that three paragraphs later, the arbitrator said, "however, if the case were x, the answer would be different." Guess what? X was our situation exactly — as the decision-maker in our case made pointedly clear in his ruling. The moral was clear: Read the whole case before citing it.

I am reminded of the old writer's excuse that a senior partner used to cite to me when I was a novice lawyer: “sorry I didn’t have time to make it shorter.” In this case, it was, "sorry I didn't read slower." What I never forgot was it's more important to be right than fast.

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