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Newsletter

Volume 22 www.mattioni.com September 2016

Update on OSHA Penalties

*As published in Philly Biz Magazine and SJ Biz Magazine
- August 2016*

By: Eugene Mattioni, Esquire and Kira Rold, Esquire

Effective August 1, 2016, the Occupational Safety & Health Administration (OSHA) increased its civil penalties for violations of its regulations by 78%. This change comes in response to Congress' November 2015 legislation requiring federal agencies to increase civil penalties to account for inflation, an adjustment that has not been made since 1990. The new maximum penalty for all violations (except those that are willful or repeated) increased from \$7,000 to \$12,471 per violation. For those violations that are willful or repeated, the penalty increased from \$70,000 to \$124,709 per violation. With such a steep increase, business owners are left wondering how they can avoid incurring these penalties. Below are five ways business owners can reduce their risk of incurring these hefty fines.

1. Be Aware of Special Hazards in Your Industry

While every business owner must ensure that they implement general safety and health precautions, such as an exit plan in case of emergency, some industries involve more unique safety hazards. For those businesses involved in construction, manufacturing, agriculture, medicine, or maritime (to name a

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few) business owners must consider the special hazards of their industry and work to manage those hazards.

2. Train Employees and Encourage Reporting

One of the optimal ways any business can avoid OSHA citations is to train and educate employees regarding general health and safety procedures as well as those procedures unique to the business or industry. Business owners should also encourage employees to report safety and health hazards to avoid potential incidents.

3. Keep Records

OSHA regulations require many employers with more than 10 employees, except those in certain low-risk industries, to keep records of any work-related injury or illness requiring medical treatment beyond first aid. These records must be kept at the work-site for a minimum of five years.

4. If Your Business is Cited, Remedy the Problem and Learn from the Mistake

Safety and health violations can happen to even the most vigilant business. When a business receives a citation, it should immediately remedy the problem and ensure that the business does not repeat the violation. Under OSHA regulations, if a business is cited for two or more substantially similar violations, the maximum penalty increases from \$12,471 to \$124,709.

5. Get Advice

If you are concerned about your business' compliance with OSHA regulations, consult an attorney to review the business' policies and procedures or request a consultation with OSHA.

If you have any questions about this article, please contact either Eugene Mattioni at emattioni@mattioni.com or Kira Rold and krold@mattioni.com

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Mattioni, Ltd. is proud to announce it has been named Best Law Firm for Employment/Labor in the August 2016 SJ Biz Magazine. This is the third consecutive year that Mattioni has been named in the Best of Biz edition. This honor was chosen and voted on by the readers and the editors of the publication.

Eugene Mattioni and Kira Rold authored a feature article in the Philly Biz Magazine August 2016 issue. The full article can be found in this newsletter on the left. The column in the magazine is titled: **Take 5: New OSHA Standards Take Effect**

Deflate-gate Update

The G.O.A.T. or Just a Goat?

By: Josh Kobylarz, Esquire

On Wednesday July 13, 2016, the Second Circuit Court of Appeals denied Tom Brady's request for a rehearing of his four-game suspension for allegedly deflating footballs during a 2015 playoff game against the Indianapolis Colts. The "Deflategate" saga has been a long, drawn out process, but it appears Brady will finally give up and serve the four-game suspension handed down by NFL Commissioner Roger Goodell. Originally, Brady was suspended for the first six games of the 2015-2016 NFL season. However, Brady appealed the decision and his suspension was overturned in New York District Court. The NFL then appealed that decision to the Second Circuit.

Brady's contention with his suspension, and the basis of his appeal, were founded on his belief that Roger Goodell's powers as commissioner are too great. Essentially, in NFL disciplinary hearings, Goodell acts as the judge, jury, prosecutor and executioner. He has the sole and exclusive power to determine guilt and issue discipline. Such agreements—that governing associations internally handle disciplinary matters—are not uncommon. In fact, they govern most sporting organizations from high school through the pros. The stark difference between the NFL and other governing organizations is that most other organizations will appoint a neutral or third party arbitrator or panel (more than one) of arbitrators to hear disciplinary matters, as opposed to leaving the power solely in the hands of the head of the organization.

Goodell's powers stem from Article 46 of the Collective Bargaining Agreement entered between the NFL and the NFL

RECENT SUCCESSES

~ Mattioni attorneys successfully defended a property owner in a lawsuit filed by the employee of a subcontractor injured while working on the property.

~ Mattioni attorneys successfully defended a maritime client from a claim for specific performance and damages arising from the spudding of a crane barge in a New Jersey waterway, with the case being dismissed with no recovery.

~ Eugene Mattioni recently negotiated a successful settlement of a highly-contested federal court national origin discrimination case involving a contract employee of the Federal Aviation Administration.

~ Joseph Strampello and Joshua Kobylarz successfully obtained a judgment for specific performance for the sale of real property in Philadelphia. The judgment included an award of payment of expenses associated with the property and attorneys' fees by the Defendant.

Players' Association. Article 46 grants the Commissioner broad power to discipline players for "conduct detrimental to the integrity of, or public confidence, in the game of professional football." It is unclear, at best, what exactly that means. There is no definition for "conduct detrimental to the game" and there are no limits to Goodell's power.

In an ironic twist of fate, it was one of the Patriots biggest rivals, the Steelers, who warned Brady and other players about the problematic language of the Collective Bargaining Agreement before it was entered. When the Collective Bargaining Agreement was reached in 2011, the Steelers were the only NFL team to vote against it. The Second Circuit showed no sympathy for the players' decision to ratify the Collective Bargaining Agreement, stating: "If [the Players' Association] seriously believed that these procedures were deficient or prejudicial, the remedy was to address them during collective bargaining." Brady's only option moving forward is to appeal the Second Circuit's decision to the United States Supreme Court, something Brady has already stated he will not do. However, it is likely that the NFL Players' Association will appeal the decision, in an attempt to prevent setting the dangerous precedent of permitting Goodell's power and actions to continue.

NFL players should be upset with the Second Circuit's opinion. It subjects them to the whims of Goodell in all similar future disciplinary hearings. Goodell has a bad reputation with players, largely because of his decisions and power in disciplinary matters. However, as made clear by the Second Circuit, Goodell simply wields the power he was granted. Players should instead be upset with their union, who they trusted to represent and protect their interests.

Josh Kobylarz, Esquire is practicing in both the Pennsylvania and New Jersey offices. Josh's focus is on business matters, real estate and zoning matters. If you would like more information on

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this article, please contact Josh at jkobylarz@mattioni.com



AirbnbTM: Some Legal Concerns

*By: Stephen Galati, Esquire and
Elizabeth Tillou, Summer Legal Intern*

For those that are willing and able, Airbnb can be a simple pathway to earn income by utilizing houses, apartments, or even a single bedroom that is not being used. However, the users of the popular online community marketplace rarely take into consideration the legal ramifications of offering a property for use by others. Despite the quick, simple process of listing a property, or booking an accommodation, legal issues that arise can be relatively complicated, and if not properly planned for, can cause significant legal problems.

Airbnb, Inc. ("Airbnb") operates an online community marketplace for people to list, locate, and book accommodations worldwide online or from a mobile phone. Like many online marketplaces, in order to utilize Airbnb's services, the user is required to agree to its Terms of Service. Although the majority of account holders are unlikely to read the Terms of Services, courts have held that the Terms are legally enforceable even if the user did not read them, as long as the user had reasonable notice of the Terms and manifested assent to the agreement.

A fair reading of the Terms of Service associated with Airbnb, which is approximately sixty pages in length, reveals several legal issues that should be considered before listing or booking an accommodation.

The risks for the Guest are fairly limited. As long as a Guest

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OFFICES

PENNSYLVANIA NEW ADDRESS

Federal Reserve Bank Building
100 N. Independence Mall W. , Suite 5A NW
Philadelphia, PA 19106
Telephone (215) 629-1600
Fax (215) 923-2227

NEW JERSEY
1316 Kings Highway
Swedesboro, NJ 08085
Telephone (856) 241-9779
Fax (856) 241-9989

firmmail@mattioni.com

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complies with the Host's rules and regulations for the listed accommodation, there is little risk attenuated to booking an accommodation. However, it must be understood that the Guest is not entering into an agreement with Airbnb, but rather with the Host of the property. Airbnb disclaims all liability arising from the transaction with the exception of facilitating payment from the Guest to the Host.

The majority of the risk lies with the Host. The primary consideration is whether the Host has the legal right to list the property for accommodation by others. If the Host does not own the property, the lease may prohibit renting the property to others. Further, depending on the location, the municipality might have rules prohibiting or limiting home sharing. These rules could be contained within zoning, building, licensing, or tax codes, or in stand-alone statutes or regulations. Some municipalities may require that the Host register, or obtain a permit or license before listing the property or accepting guests. Home Owner, Condominium or Co-Op Associations or Boards may also prohibit or place restrictions on leasing accommodations through Airbnb. Therefore, these all need to be checked and complied with before listing an accommodation for use by others.

Regulations vary by municipality. In Philadelphia, for example, the Philadelphia Code was amended in July 2015 to permit short-term rentals in any dwelling unit provided that the operator of the short term rental complies with certain conditions, which include obtaining a permit if the listing is rented for more than 90 days a year. The Philadelphia Code also requires that Hosts renting any form of overnight temporary lodging in Philadelphia are required to collect certain hotel taxes from guests. While Airbnb states that it will collect and pay this tax, the ultimate responsibility if taxes are not paid is that of the Host.

and receipt of it does not constitute, a lawyer-client relationship, and readers should not act upon it without seeking professional counsel.

The Philadelphia Code also requires that the Host must have a valid rental license for any unit rented for an overnight stay. Although there is an exception for owners operating a short-term rental unit out of their primary home, this exception may not apply for others. There are also various building and housing standards that must be followed in order to comply with the Philadelphia Code.

A prospective Host must also consider safety issues that may arise from renting a space in one's own home to a stranger. A prospective Guest may have a similar safety concern. Although use of the site may subject the user to background and sex offender checks, Airbnb is not obligated to conduct such checks, and Airbnb makes it clear that renting an accommodation through the site is done at the user's own risk. Whether using the site as a Host, or a Guest, it is important to take appropriate safety precautions when entering another person's property, or allowing another to enter your property. Airbnb warns Hosts to take appropriate precautions to prevent theft or destruction of valuables.

Airbnb is simple to use for both the Host and the Guest. It allows a Host an easy and efficient way to earn extra income, and allows a Guest to obtain home-like accommodations at a price that may be lower than a hotel. A Host must go into this business with his eyes open, however, making sure to investigate and comply with all legal and contractual requirements.

Stephen Galati, Esquire practices in both the Pennsylvania and New Jersey offices. If you would like more information on this article, please contact Stephen at sgalati@mattioni.com Elizabeth Tillou is now in her final year at Thomas R. Kline School of Law at Drexel University.