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Q&A With Crowell & Moring's Kris Meade

Law360, New York (April 17, 2013, 2:59 PM ET) -- At Crowell & Moring LLP, Kris D. Meade counsels and represents employers in employment and traditional labor law matters, including individual and class action lawsuits filed under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, Employee Retirement Income Security Act and companion state statutes. He represents employers in connection with union organizing campaigns, collective bargaining, labor arbitrations and unfair labor practice litigation. Meade also counsels and represents employers in affirmative action compliance matters, business tort cases, Sarbanes-Oxley whistleblower retaliation matters, matters involving the protection of trade secrets and litigation over noncompetition agreements and other restrictive covenants.

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

A: A matter involving a government investigation of a particular client's pay practices. The compensation system at issue was quite complex (even for the labor economists who helped us analyze it), the employee population was very large, and the government investigators were not well schooled in statistics. On top of that, we came into the matter at the midpoint, rather than from the outset, so some of the work was already set in stone.

The first challenge was to identify the causes of the variances in pay that we saw, which was difficult, given the pay system at issue. The next challenge was to satisfy ourselves that the explanations were valid. The final challenge was to convince the government investigators that the substantial differences they saw in average compensation were not meaningful when analyzed properly. We accomplished all of this in a compressed time period, satisfying both the client and the government.

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

A: I would like to see an evolution of the "self-critical" privilege and broader recognition of that privilege in the employment arena. We represent very-well-intentioned employers who now have the tools available to analyze employment decisions and trends within their workplace in a very reliable way. Those tools would permit employers — large and small — to diagnose trends and make adjustments to their policies and practices to address any potentially problematic trends.

All too often, though, employers are hesitant to either use those tools or maximize their use because the analyses that flow from those tools are often subject to discovery disputes, both in government investigations and in private litigation. If federal agencies and the courts would recognize a broader self-critical privilege, more employers would use these tools more broadly.

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

A: This one is easy — the D.C. Circuit's recent decision in Noel Canning. It is fascinating from a constitutional, political, intellectual and — most particularly — a practical perspective. The National Labor Relations Board appointment process has been the subject of criticism for years, from members of both parties, and the Canning decision only adds fuel to that fire.

But the decision has also unleashed a torrent of unanswered questions with which all of us who toil in this field are wrestling. While much focus has been on the status of certain decisions and rules issued by the board (after the appointments that have been invalidated), there are equally compelling issues regarding the authority of not just the current board but of the general counsel's office, to which the board — decades ago — delegated authority.

These questions, ranging from the authority of the general counsel's office (through the regional offices) to investigate unfair labor practice (ULP) charges and process representation cases to its authority to seek injunctive relief in federal courts and issue complaints in ULP cases are unanswered but arising daily. There does not appear to be a political solution readily available, and it may take years for these practical issues to wind their way through the courts.

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

A: This one is easy, too. Judge Rosemary M. Collyer, a federal district court judge here in the District of Columbia. I practiced with Judge Collyer after she served as general counsel of the NLRB and have been keeping tabs on her since she joined the bench. Judge Collyer impresses all of us with her intellectual curiosity, her sense of right and wrong, her impeccable judgment and her humility.

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

A: When I was a junior lawyer, I was traveling to a client site and had with me a basic, unlabeled black binder that contained highly sensitive strategy documents relating to the matter on which I was working. I had used various modes of transportation to get to the client site, and when I was leaving the hotel the next morning to go to the client site, the black binder was nowhere to be found. As I tried to figure out where it could be, it dawned on me that it could have been at the train station, still be on the train, at the rental car counter, or it could have been somewhere in the hotel.

As it turned out, I had put it on the counter at the hotel check-in desk after I checked in, and the clerk put the binder on the shelf behind the desk next to a dozen other basic black binders. Fortunately, I was able to retrieve the binder and all was well. The lesson learned? Go paperless.

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