person shall be primarily liable with respect to injuries suffered by third persons.

E. The limitation of liability provided by this Section shall not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol.

The trial court granted motions for summary judgment, dismissing with prejudice all claims against Boogie's Lounge, L.L.C., its owner and its insurer. Plaintiffs appealed, alleging, *inter alia,* that the bartender did not have a valid license.

In its ruling, the 5th Circuit quoted *Zapata v. Cormier*, 02-1801 (La. App. 1 Cir. 6/27/08), 858 So.2d 601, 606-07:

> For the immunity provisions of La. R.S. 9:2800.1 to apply, the following requirements must be met: 1) the bar owner must hold a permit under Title 26 of the Louisiana Revised Statutes; 2) the bar owner, its agents and servants or employees sell or serve intoxicating beverages to a person over the age for lawful purchase thereof; 3) the purchaser thereof suffers an injury off the premises; and 4) this injury or accident was caused by the intoxication of the person to whom the intoxicating beverages were sold or served.

Finding all these requirements were indisputably met, the court affirmed the trial court's dismissal of the defendants, with prejudice.

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Updates in Labor and Employment Law

It was a busy summer for labor and employment law, both judicially and administratively. This article provides information on what labor and employment practitioners need to know about the ever-changing state of law and changes ahead.

New Overtime Regulations Ahead?

On Nov. 22, 2016, the Eastern District of Texas issued a last-minute injunction on the new Fair Labor Standards Act Regulations, which would have doubled the salary requirement for the "white collar" exemptions. *Nevada v. U.S. Dep't of Labor*, 218 F. Supp. 3d 520 (E.D. Tex. 2016). However, changes to the overtime exemptions are still possible. In July 2017, the DOL filed a Request for Information in the Federal Register seeking public comment on setting an appropriate salary level for the exemptions and several other interesting issues, including the possibility of instituting multiple salary levels depending on geographic regions and employer size, as well as reverting to a duties-only test. Wage and Hour Division, U.S. Department of Labor; Request for Information; Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 82 FR 34616, (July 26, 2017). The comment period closed on Sept. 25.

Tip-Pooling Regulations Rescinded

On June 20, 2017, the federal government's Unified Agenda of Regulatory and Deregulatory Actions announced plans to rescind the DOL's 2011 tip-pooling restriction. Before the restriction, employers could collect employees' tips and redistribute them among the other staff members, typically those working in the "back of the house." In 2011, the DOL restricted employers from tip pooling and redistributing tips among a larger group of employees, even if the employer provided a "tip credit" ensuring that employees were paid at least minimum wage. 29 U.S.C. § 203(m); 76 Fed.Reg. 18,832, 18,841-42 (April 5, 2011). Numerous lawsuits across the country followed, and, at one point, the regulation's validity was poised for Supreme Court review. *See, Oregon Rest. & Lodging Ass'n v. Perez*, 816 F.3d 1080 (9 Cir. 2016), *petition for cert. filed,* 2017 WL 360483 (U.S. No. 16-920) (Jan. 19, 2017). The DOL's Notice of Proposed Rulemaking suggests rescinding the 2011 restrictions on tip pooling for employers who pay tipped employees the full minimum wage directly. Department of Labor, Wage and Hour Division; Tip Regulations Under the Fair Labor Standards Act (FLSA), RIN 1235-AA21.

DOL Administrator Interpretations Redacted

The Wage and Hour Division's "Administrator's Interpretations" were issued by the DOL but did not carry the force of law. In a June 7, 2017, news release, the DOL announced the redaction of two of its controversial Interpretations on "Joint Employment" and "Independent Contractors" and promptly removed the Interpretations from the Department's website. The Department cautioned that these withdrawals do not alter an employer's obligations under the FLSA's regulations and case law.

Wage and Hour Opinion Letters Reinstated

On June 27, 2017, the DOL announced it would resume issuing Opinion Letters on wage-and-hour matters, which was suspended in 2010. Opinion Letters are penned by the Wage and Hour Division in response to questions it receives about the laws it enforces, such as the FLSA. Employers and employees alike can now submit requests for opinion letters through the Department's website or by mail to receive an official written opinion on how the DOL interprets the law.

Sexual Orientation Discrimination under Title VII

As the Labor and Employment Law Section reported in the August/September 2017 *Louisiana Bar Journal*, the 7th Circuit issued an en banc opinion on April 4, 2017, holding that Title VII of the Civil Rights Act of 1964's prohibition on discrimination "because of . . . sex" covers sexual-orientation discrimination. *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339 (7 Cir. 2017), 42 U.S.C. § 2000e-2(a)(1). Meanwhile, the 11th Circuit Court of Appeal issued a panel decision in the case of *Evans v. Georgia Regional Hospital* denying Title VII coverage of sexual-orientation discrimination. 850 F.3d 1248 (11 Cir. 2017). Developments in federal courts this summer signal that the Supreme Court may rule on this legal question soon.

First, the 11th Circuit denied en banc review in *Evans* on July 6, 2017. As a result, there is officially a circuit split between the 11th and 7th Circuits on this matter and Lambda Legal, who represents Evans, quickly announced it would appeal the decision to the Supreme Court.

Second, the circuit split may widen or narrow depending on the outcome of *Zarda v. Altitude Express*, a similar case pending in the 2nd Circuit. 855 F.3d 76 (2 Cir. 2017). The district court and appellate court ruled that sexual-orientation discrimination is not covered by Title VII. *Id.* at 79. The 2nd Circuit granted en banc review on May 25, 2017, and the plot is beginning to thicken as *amicus curiae* briefs are filed. On July 26, 2017, the Department of Justice filed an *amicus curiae* brief stating its position that sex discrimination does not include sexual-orientation discrimination. This opinion, which directly contradicts the EEOC's 2017-2021 Strategic Enforcement Plan, adds to the state of confusion over this legal issue. Given the circuit split and uncertainty among federal agencies, this legal question will likely be before the Supreme Court soon.

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Mineral Law

Well Cost Reporting Statutes

La. R.S. 30:103.1 provides that, if a compulsory unit includes "lands . . . upon which the operator . . . has no valid . . . lease," the operator must provide certain financial reports to any unleased owner who requests them. Next, La. R.S. 30:103.2 provides that, if the operator fails to send those reports within a specified time, and the operator also fails to timely correct the omission after written notice, the operator will forfeit its right to demand contribution from the unleased owner for drilling costs.

In *Miller v. J-W Operating Co.*, No. 16-0764 (W.D. La. July 28, 2017), 2017 WL 3261113, Miller wrote to J-W Operating Co. to request financial reports. The plaintiff described herself as the owner of an unleased oil-and-gas interest in Bossier Parish, but she did not identify the interest that she owned or the unit in which the interest was located. J-W, which operates a number of wells in Bossier Parish, responded by requesting more information. Miller wrote a second letter to J-W, but the second letter similarly failed to identify the plaintiff's interest. Again, J-W responded by requesting more information.

The plaintiff then sent a third letter to J-W, finally identifying a five-acre tract that she owned. J-W responded by sending the plaintiff financial reports and a check for plaintiff's share of production, minus her share of drilling costs. J-W's response was timely if its obligation to provide financial reports was triggered by the plaintiff's third letter, but not if its obligation was triggered by the earlier letters. The plaintiff brought suit, asserting that J-W had forfeited its right to deduct well costs because the company failed to timely send the financial reports she requested.

The court disagreed. The court noted that the well-cost reporting statute does not specify what information must be contained in an unleased owner's request for financial reports. The court reasoned, however, that it would be unreasonable to interpret the statute as imposing a potentially harsh penalty on an operator for failing to send reports in response to a request that does not even identify the unleased interest that is at issue. Accordingly, J-W's reporting duty was not triggered until it had received the request in which the plaintiff identified her interest.

Liability of Lessee's Lender for Lease Obligations

In 2004, Gloria's Ranch granted an oil-and-gas lease to Tauren Exploration. Later, Tauren assigned portions of its lease rights to Cubic Energy and EXCO USA. *Gloria's Ranch, L.L.C. v. Tauren Exploration, Inc.*, 51,077 (La. App. 2 Cir. 6/2/17), ____ So.3d ____, 2017 WL 2391927.

In 2007, Cubic borrowed money from Wells Fargo Energy Capital and executed a credit agreement. The agreement required that the borrowed money be used for certain purposes, such as drilling. It also provided that Wells Fargo retained the right to approve the location and depth of wells, as well as certain actions that Cubic might take, such as its entry into new operating agreements or its alienation of its oil-and-gas lease rights. Wells Fargo also received certain other rights, but not a working interest.

The lease covered portions of five sections in Caddo Parish. Tauren drilled wells on the leased premises in three of the sections. In the other two sections, an unrelated company drilled wells that served as unit wells for units that included the portion of the leased premises in those sections. Gloria's Ranch eventually concluded that the lease had terminated for lack of production in paying quantities. In early 2010, it wrote a letter to the lessees (Tauren, Cubic and EXCO) and to Wells Fargo, demanding that they execute a recordable act recognizing that the lease had terminated. They declined