

The logo for Astrachan Gunst Thomas features a stylized, swirling blue graphic to the left of the firm's name. The name "astrachan gunst thomas" is written in a lowercase, sans-serif font, with "astrachan" and "thomas" in a darker blue and "gunst" in a lighter blue.

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Keep Your Chestnuts Out of the Fire

By: Julie R. Rubin

Caramelized cipolline onions with chestnuts and figs in cognac butter. Any attempt to describe the gastronomic pleasure of this dish would do violence to the senses. You have no idea. I know it's still hot out and Thanksgiving seems far off in the distance, but I'm a planner. And as anyone who has prepared a Thanksgiving feast for double-digit diners will tell you, planning ahead is a must. My Thanksgiving binder (yes, binder) bears witness to my love affair with the chestnut, the *Castanea*. Last year, I discovered Delmarvelous Farms, an east coast, family owned chestnut farm. But, alas, my order was placed too late for the holiday. I nearly wept. But, this year, I would not be a dawdling fool. This Thanksgiving would be my chestnuttiest. As I logged on to place my order, wouldn't you know it, the dang phone rang.

I could hardly be perturbed, though. It was a call from one of my favorite clients. George is top banana at a mid-size advertising agency in the city. It's been around forever, has weathered years of ad business ups and downs, and deservedly enjoys the admiration of its competitors and clients alike. George gets my admiration too, because he keeps a tidy house. He doesn't shy away from spending a few bucks on legal services to avoid problems, because, like most long-time business execs, he's been through legal battles and has the attorneys' fees scars to prove it. He gets it: Spend a little, save a lot.

"Julie," George began, "it's about that time again. We need to get you in here to do some management training. The usual, hiring and firing dos and don'ts, and whatever new scary stuff is out there my managers and I need to know." In-house training. Can you stand the excitement? I know it's not the most exciting way to spend your time, but, if you read my last column, you know it's got to be done. We scheduled a training session for the following week and I got to work updating my usual bag of tricks to thrill and chill George's managers on employment and business management legal issues.

George's words were prophetic. I might as well have done a search for "new scary stuff," because that's a good description of what I found. Consider this your warning: this column may not be suitable for tender audiences. Aside from chestnuts, here's what's coming this fall. Two biggies: a new law regarding "Pay Disparity Data" (House Bill 1156, Chapter 114) and another called the "Flexible Leave Act" (House Bill 40, Chapter 644). Both are effective October 1, 2008. Grab some coffee if you need to, but stay with me, people.

Delegate Kathleen Dumais, one of House Bill's 1156's two legislative sponsors, describes the new legislation on Pay Disparity Data as "an important next step to break through the glass ceiling." Here's what you need to know. Maryland employers are already required to maintain records on employee compensation and job classifications. House Bill 1156 amends the law to require that all Maryland employers – regardless of size or industry – also keep records of the racial and gender classification of all employees. Why? So the Labor Commissioner can study pay disparities across racial and gender lines. This is old hat for government contractors, who have long been required to report this data, but it's new territory for everyone else.

Interestingly (okay, it's interesting to me), the legislation has a sunset of December 31, 2013. Maryland's Commissioner has the authority to audit your employment records for purposes of a long-term study on pay disparities, which will be presented to the General Assembly in October 2013. The Commissioner's office is expected to issue regulations about how to maintain and report the data. I know you're waiting with bated breath.

Aside from being a do-bee, law abiding company, there are serious reasons you should take measures to make sure your company follows this law to the letter. Your Pay Disparity Data may be fair game as evidence in a discrimination suit. If you've kept good records (and haven't engaged in discrimination), the records could materially aid in your defense. Failure to maintain the data will, at best, make you look sloppy; at worst, it will help a plaintiff establish that you engaged in unlawful discrimination. Either way, the absence of these records will not bode well in court or before the EEOC.

You 'wake? If you have 15 or more employees, rise and shine! The Flexible Leave Act – the second stop on this thrill seeker's dream ride – is less onerous than the PDD legislation, but poses its own pitfalls for the unwary. This legislation amends Maryland's current law that puts adopting families on a level playing field with natural birth families regarding paid leave for the birth of a child. The amendment entitles employees of employers with 15 or more employees to take leave with pay (whether vacation, sick leave or compensatory time) for the death or illness of an "immediate family member," defined as a spouse, child or parent.

I might have oversold this as "scary" – the leave is only available if it has been earned in accordance with your employment policy (or collective bargaining agreement). It has no bearing whatsoever on the Family and Medical Leave Act (which only pertains to employers with 50 or more employees within a 75-mile radius) and doesn't have employee eligibility standards like the FMLA – although I suspect regulations will be forthcoming, so stay tuned.

So, why have I kept you from your siesta for this? Because, like the Pay Disparity Data legislation, this has teeth for would-be plaintiffs. As with other employee-rights laws, the Flexible Leave Act protects employees from retaliation for invoking its benefits. "An employer may not discharge, demote, suspend, discipline, or otherwise discriminate against an employee or threaten to take any of these actions against an employee who exercises rights granted under this section or who files a complaint, testifies against, or assists in an action brought against the employer for a violation of this section." And don't forget – an employee might lose a claim for

violation of the Flexible Pay Act, but still win a claim that your company retaliated against her for complaining of a violation. Cha-ching. So, add this to the heap of reasons to get a good policy manual in place and to keep your files chock full of “memos to file” on your employees’ performance and related issues to make sure your termination and discipline decisions are well documented and beyond reproach.

Take steps now to put proper record keeping measures in place and get your HR directors up to speed. This new legislation is pretty straightforward, but it has the potential to do serious harm if not followed closely. Keep your chestnuts out of the fire.