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Drone Technologies: Business Opportunities and Legal Risks

By Alan S. Wernick, Esq.

Unmanned aerial vehicles (UAVs) or unmanned aircraft systems (UASs), referred to collectively as “drones” in this article, are currently used for law enforcement, national security, property security, commercial and scientific purposes, photography, and for a variety of businesses. Other examples include:

- retail (e.g., package delivery, inventory inspection);
- real estate (e.g., selling and buying homes, surveying land);
- insurance (e.g., evaluating claims, inspecting property for underwriting);
- manufacturing (e.g., facilities inspections);
- oil and gas companies; utility and power line companies (e.g., delivery of tools and parts to field engineers, inspecting distribution lines); and
- agricultural (e.g., crop management).

The Federal Aviation Administration (FAA) regulates the national airspace in the United States. On Aug. 29, 2016, the FAA-issued “Small Unmanned Aircraft Rule” (14 C.F.R. Part 107) became effective. A summary of this new regulation is available at www.faa.gov/uas/media/Part_107_Summary.pdf. It outlines (in part):

- certain operational limitations (e.g., requirements to maintain a visual line of sight, to operate in daylight only, and to yield right of way to other aircraft, etc.);
- remote pilot-in-command certification and responsibilities (e.g., requirement that a pilot must hold a remote pilot airman certificate with a small UAS rating or be under the direct supervision of someone who holds a remote pilot certificate);
- aircraft requirements (e.g., a pre-flight check of the small UAS to ensure that it is in a condition for safe operation); and



DRONE GUIDELINES

- applicability to model aircraft (e.g., prohibiting model aircraft operators from endangering the safety of the National Airspace System).

If your business wants to use drones for commercial purposes, you must either contract with an individual who is an FAA-licensed remote pilot, or with another company that can provide individuals with a current FAA remote pilot certificate, or arrange for one or more of your own employees to qualify for and obtain a remote pilot certificate. You can also try to obtain the remote pilot certificate yourself or you can contact a lawyer for assistance with the

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Staying on the EEOC’s “Nice” List in the Coming Year

By Anne McNab, Esq.

To be sure you have not missed any of the Equal Opportunity Commission’s (EEOC) many “gifts of guidance” for 2016, review the highlights below and follow up with your counsel about the impact the EEOC’s guidance may have on your workforce.

The EEOC has changed its policy for disclosing employer position statements. Charging parties may now receive employer statements immediately on request. This means they can begin building a case against their employer without waiting for a completed EEOC investigation or a “right-to-sue” letter, and anything the employer submits to the EEOC will be shared with the charging party.

The EEOC issued a resource document on employer-provided leave as an accommodation for disabled employees. This guidance reminds employers to consider

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licensing process. Information about the FAA licensing process is available from the FAA.GOV website or from a local FAA Flight Standards District Office.

While drones offer many new opportunities for businesses, they also present new risks and regulatory compliance requirements. Before using drone technology for your business, at a minimum you should consider these questions:

1. Does your business have employees with a remote pilot certificate?
2. Does your business have appropriate insurance coverage for use of drones (e.g., for damage or harm to people or property caused by the drone)?
3. What are the protocols in place to avoid liability for privacy violations?
4. If the drone will be taking photographs, who will own the copy-rights to the photos?
5. What precautions are in place to minimize the risk of a cyber-attack on the drone during flight?
6. What written processes and procedures do you have in place to address drone maintenance procedures, recordkeeping (e.g., maintenance, flight times, etc.), and other airworthiness aspects of your drone(s)?
7. In addition to the FAA regulations, does your drone operation comply with other local, state, and federal laws and regulations?

The bottom line is that, like cell phone technology, use of drone technologies in business will become more ubiquitous. If your business plans to use drones, you and your lawyers should be mindful of the legal landscape you are flying into before releasing a drone over the physical landscape.

offering leave as a way to accommodate employees with disabilities. It also suggests allowing employees to use available personal days to accommodate a disability, even if they are not typically permitted to use personal days for that purpose; encourages employers to offer unpaid leave as an accommodation after the employee's leave balance has expired; and reminds employers to always engage in an interactive process with each individual instead of strictly adhering to its leave policy.

The EEOC issued its final rule on wellness programs, effective on Jan. 1, 2017. The final rule requires that employer wellness programs be voluntary, and sets limits on the incentives employers may use to encourage employees' participation. Wellness programs that ask questions about employees' health or include medical examinations may offer incentives of up to 30 percent of the total cost of self-only coverage, whether the incentive is a reward or a penalty. Also, employers may determine the value of in-kind incentives as long as the method is reasonable.

The EEOC issued a final rule under the Genetic Information Nondiscrimination Act (GINA). The rule applies to wellness programs that offer incentives to employees based on the employee's spouse providing genetic information as part of a health risk assessment. This final rule largely tracks the ADA rule, requiring programs to be voluntary, confidential, and limiting incentives to 30 percent. Also, an employer cannot deny ac-

cess to health insurance (or a specific benefit package) based on a spouse's refusal to provide information to a wellness program.

The EEOC has provided technical guidance regarding religious and national origin discrimination, particularly as to individuals who are, or are perceived to be, Muslim or Middle Eastern. This guidance addresses measures employers should undertake to avoid Title VII violations and provides insight for making religious accommodations related to time-off requests for religious holidays and exceptions to dress and grooming codes.

The EEOC has issued new enforcement guidance on retaliation. The basics of a retaliation claim have not changed, but the EEOC offers new detailed definitions and examples of key terms, which are broader than the definitions courts have used to interpret those terms. The EEOC has also issued a list of "Promising Practices" to help employers avoid retaliation, as well as a fact sheet specific to small businesses.

Review this guidance and any policy updates (see www.eeoc.gov) to make sure your business is acting in compliance with the law and stays off the EEOC's radar. Contact legal counsel with any questions about how this guidance applies to your business or how to implement new policies consistent with the EEOC's guidance.

Ann McNab is a senior associate at Frost Brown Todd LLC.

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You Should Know:

The Department of Labor (Wage and Hour Division) has issued its final overtime rules, which will go into effect Dec. 1, 2016. The overtime regulations will automatically

extend overtime pay protections to more than 4 million workers within the first year of its implementation. To review the new rules, visit <https://www.dol.gov/whd/overtime/final2016/>.