



HOT TOPICS IN EMPLOYMENT LAW (2017 EDITION)

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Hot Topics in Employment Law (2017 Edition)

Written by Sheryl Jaffee Halpern – 3/1/17

Change is typical whenever we transition into a new calendar year, and 2017 is no exception. A litany of new laws and regulations are in store for employers, as well as a laundry list of potential changes at the federal level brought on by the new administration (as discussed in this quarter's companion article), which will directly affect businesses and their workforces. Below are some of the more material changes in federal and state law for employers this year.

Changes to Overtime Exemptions

It's old news that, at the eleventh hour, a federal district court in Texas temporarily blocked the changes to the Fair Labor Standards Act (FLSA) overtime exemptions expected to be implemented by the United States Department of Labor (USDOL) effective December 1, 2016. Many employers who proactively implemented changes in anticipation of those changes — by increasing salaries of exempt employees or reclassifying certain employees as non-exempt — have been in a state of uncertainty ever since, unsure whether to unravel changes already implemented or to stay the course until a final decision is made on the issue.

As employers assess their options, they should bear in mind that (a) the injunction blocking the USDOL's changes is a temporary order that may be overturned, and (b) states may take matters into their own hands. For example, effective December 31, 2016 (presumably in response to the injunction blocking the USDOL's changes), the New

York Department of Labor adopted wage orders increasing the salary threshold for the administrative and executive exemptions.

Therefore, irrespective of whether the USDOL's changes are back on the table, New York employers must increase salaries for certain employees in order for them to remain exempt from overtime requirements. In New York City, for employers with 11 or more employees, exempt employees must earn no less than \$825.00 per week (\$42,900 annually); for employers with less than 11 employees, exempt employees must earn no less than \$787.50 per week (\$40,950 annually). In Nassau, Suffolk, and Westchester counties, this figure is \$750.00 per week (\$39,000 annually), and in all other New York counties it is \$727.50 per week (\$37,830 annually).

Similarly, last year, the California legislature passed a bill that had the effect of increasing, over the next five years, the salary threshold for employees to be considered exempt from California overtime requirements. Specifically, to remain exempt, employees of California employers with more than 25 employees must earn no less than \$840.00 per week (\$43,680 annually) in 2017, no less than \$880.00 per week (\$45,760 annually) in 2018, no less than \$960.00 per week (\$49,920 annually) in 2019, no less than \$1,040.00 per week (\$54,080 annually) in 2020, no less than \$1,120.00 per week (\$58,240 annually) in 2020, and no less than \$1,200.00 per week (\$62,400 annually) in 2021. Employers with 25 employees or less will be held to the same standards, but have one extra year to comply with each increase.

Only time will tell whether other states will follow suit. Therefore, when considering next steps, employers ought to be aware of the potential for further changes in the not-too-distant future.

Changes to the Federal EEO-1 Form

Beginning with the March 2018 filing deadline, all employers with 100 or more employees will be required to disclose on the federal Form EEO-1 detailed information about their pay practices. This requirement is part of the government's initiative to ferret out pay disparities based on gender and race/ethnicity. Bear in mind, however, that although the disclosures on that form will be based on 2017 data, now is the time for covered employers to conduct self-audits and make appropriate changes.

Changes for Illinois Employers

The following are among the changes applicable to Illinois employers:

No Non-Competes for Low-Wage Workers

As discussed in detail in our last Labor & Employment Client Alert, effective January 1, 2017, employers may not subject any Illinois employee who earns less than \$13.00 per hour (or the current minimum wage, if greater) to a non-compete agreement.

Illinois Sick Time

Effective January 1, 2017, all Illinois employers who offer paid sick time for their employees must permit each eligible employee to use that paid sick time not only for the employee's own illnesses, but also for the illness of the employee's family members (which includes the employee's spouse, child, parent, parent-in-law, sibling, grandparent, and grandchild).

Cook County and Chicago Sick Time

Effective July 1, 2017, eligible employees working for employers with a place of business in Cook County or the City of Chicago (subject to

employees in certain industries who are excluded) will be entitled to up to 40 hours of paid sick time each year. Employees are eligible once they work 80 hours for an employer within a four-month period, and perform at least two hours of that work in Cook County or Chicago during any two-week period. Employers must allow eligible employees to carry over up to 20 hours of unused sick time into the next year (40 hours if the employer is covered by the Family Medical Leave Act (FMLA), to be used for FMLA-eligible purposes), but are not required to pay out unused sick time upon employees' separation from employment.

Illinois Child Bereavement Leave

Effective July 29, 2016, employers with 50 or more employees must offer each eligible Illinois employee up to two weeks of unpaid bereavement leave in the event of the death of the employee's child. An employee is eligible for this leave if the employee has been employed with the employer for at least 12 continuous months and has worked at least 1,250 hours in the 12 months immediately preceding the leave.

Expanded VESSA Leave

Effective January 1, 2017, under amendments to Illinois' Victims' Economic Security and Safety Act, *all* employers — regardless of size — must offer Illinois employees unpaid leave if they or a member of their family or household is the victim of domestic or sexual abuse. Previously, only employers with 15 or more employees were covered by the statute. Now, employers with 50 or more employees must offer up to 12 weeks of unpaid leave; employers with 15 to 49 employees must offer up to eight weeks of unpaid leave; and employers with less than 15 employees must offer up to four weeks of unpaid leave.

Additional Social Media Protection

Effective January 1, 2017, amendments to Illinois' Right to Privacy in the Workplace Act prohibit employers from requiring or even asking Illinois employees to invite the employer to join an online group or to "friend" the employer. These prohibitions are in addition to the Act's existing provisions prohibiting employers from requiring or requesting employees to provide user names or passwords for their personal online accounts.

Changes for California Employers

This article could go on for pages listing the changes applicable to businesses that employ workers in California. Among them:

Legalization of Recreational Marijuana

Effective November 8, 2016, California joins Colorado and Washington in legalizing recreational marijuana use for adults age 21 and older. (But note that like other states who have relaxed their marijuana laws — whether for recreational or medicinal purposes — employers can still implement and enforce workplace policies that prohibit use of marijuana in the workplace or during working time.)

Venue and Choice of Law Provisions in Employment Agreements

For employment agreements entered into, modified, or extended on or after January 1, 2017, any clause that requires an employee to litigate California disputes in another state or under the laws of another state is voidable. The only exception is if the employee was represented by his/her own counsel and the clause was specifically negotiated.

Gender Neutrality for Single-User Restrooms:

Effective March 1, 2017, employers that offer single-user restrooms must label them as "all-gender."

Mandatory Retirement Accounts:

Once California's Secure Choice Retirement Savings Trust is established and certified by the state, employers with at least five employees will be required to either offer employees an employer-sponsored retirement savings plan or enroll workers in the new California Secure Choice Retirement Savings Program.

Naturally, this article is not intended to be an exhaustive list of new laws and ordinances applicable to employers, and other states across the nation also have implemented a variety of changes applicable to employers and employees in their own jurisdictions. We recognize that staying on top of changes can be a daunting task. Therefore, we recommend that employers (particularly those with multi-state operations) keep their eyes and ears open and seek the guidance of legal counsel to stay in tune with those changes.

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