The Year in Review: Labor and Employment Law Developments in 2015

Pittsburgh Employment Law Conference

Cami L. Davis
(412) 394-2357
cdavis@clarkhill.com

Kurt A. Miller
(412) 394-2363
kmiller@clarkhill.com

October 15, 2015

CLARK HILL

SAME SEX MARRIAGE

Obergefell v. Hodges, 576 U.S. (2015) Facebook postings including two employees' concerns about working late in unsafe neighborhoods

- 17 states had laws that specifically allow same-sex marriage
- 20 states had made same-sex marriage legal by federal court ruling
- 13 states had banned same-sex marriage

BACKGROUND

Obergefell v. Hodges

- Among those states that banned same-sex marriage
  - Michigan, Kentucky, Ohio, and Tennessee
- These states defined marriage as a union between one man and one woman
- Petitioners were 14 same-sex couples and two men whose same-sex partners were deceased
- Petitioners filed suit claiming that state officials violated the 14th Amendment by denying them the right to marry or to have marriages lawfully performed in another state given full recognition
- Each district court ruled in favor of the Petitioners, but Sixth Circuit consolidated the cases and reversed

HOLDING

Obergefell v. Hodges

- 5-to-4 decision
- U.S. Supreme Court effectively struck down state-law bans on same-sex marriage
- Holding
  - The 14th Amendment requires a state to license a marriage between two people of the same sex
  - The 14th Amendment requires a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state

IMPLICATIONS

Obergefell v. Hodges

- Implications are wide-ranging, in the employment law area and otherwise
- Employee benefits
  - Government plans
    - Where spousal coverage is provided, governmental plans must cover same-sex spouses the same as opposite-sex spouses
    - Employers should work with insurers to ensure that spousal benefits are extended to same-sex spouses
  - Private plans – Insured
    - If in state that previously recognized same-sex marriage, same-sex spouses are likely covered the same as opposite-sex spouses
    - If in state that did not recognize same-sex marriage, will see revised regulations that mandate the same coverage

IMPLICATIONS

Obergefell v. Hodges

- Employee benefits (cont'd)
  - Private plans – Insured (cont'd)
    - Employers must provide benefits to same-sex spouses the same as opposite-sex spouses, or face potential legal challenges
    - Employers should work with insurers to ensure that participants can add same-sex spouses
  - Private plans – Self-funded
    - Neither ERISA nor the Obergefell decision requires that ERISA plans be extended to same-sex spouses
    - However, employers that refuse to extend benefits could face claims of employment discrimination under Title VII, state or local laws
    - Employers should amend plans to include same-sex spouses and provide an enrollment period to enroll same-sex spouses

IMPLICATIONS

Obergefell v. Hodges

- Employee benefits (cont'd)
  - Imputed income
    - Employers will no longer be required to impute state income tax for benefits provided to same-sex couples
  - Domestic partners
    - *Obergefell* decision applies only to same-sex marriages, not to domestic partners
    - Employers may want to consider whether to continue to provide domestic partner benefit coverage now that same-sex marriage is legal in all states
  - Proof of marriage
    - Ensure that any proof of marriage requirements are uniformly applied to opposite- and same-sex spouses

IMPLICATIONS

Obergefell v. Hodges

- Family and Medical Leave Act (FMLA)
  - Confirms the DOL's final rule that will require eligible employees to take FMLA leave to care for same-sex spouses
- Employee handbooks and policies
  - Review policies to ensure that they do not unlawfully deny employees in same-sex marriages the rights available to employees in opposite-sex marriages
  - Some examples are FMLA, leaves of absences and bereavement policies
  - Ensure that description of benefit plans, including in summary plan descriptions and handbook descriptions, are consistent with the law

PROPOSED CHANGE IN OVERTIME EXEMPTION RULES – BACKGROUND

- "Exempt" refers to exemption from overtime pay requirements of FLSA
- White collar exemptions
  - Administrative
  - Executive
  - Professional
- Positions must meet both duties test and salary test to qualify for exemption

PROPOSED CHANGE IN OVERTIME EXEMPTION RULES

- Current Rule
  - Employees must earn $455 per week ($23,660 per year), plus satisfy the duties test, to qualify for the exemption
- Proposed New Rule
  - Employees must earn an amount equal to or greater than the 40th percentile of earnings for full-time salaried workers, plus satisfy the duties test, to qualify for the exemption
  - Amount is expected to be $970 per week ($50,440 per year)
  - Amount would increase on an annual basis, to remain at the 40th percentile, or based on increases in CPI

TIMING OF PROPOSED CHANGE IN OVERTIME EXEMPTION RULES

- In March 2014, President Obama directed DOL to reform white-collar exemptions to increase number of overtime-eligible employees
- DOL announced proposed change in rules on July 6, 2015
- Comment period ended on September 4, 2015
- Final Rules are expected to take effect in late 2015 or early 2016

EFFECT OF PROPOSED CHANGE IN OVERTIME EXEMPTION RULES

- Significantly increases the number of employees who will be eligible for overtime pay
- Impacts low-to-mid-level managers earning less than $50,440
- May result in employers' increasing employees' salaries to above the salary threshold, to avoid having to pay overtime pay
- May result in reduction of employees' hours, or result in employers' using part-time workers

NEW DOL GUIDANCE REGARDING INDEPENDENT CONTRACTOR STATUS – BACKGROUND

- Effect of Classification of Worker as "Employee"
  - Covered under employer's employee benefit plans
  - Pay overtime pay, if employee's position is non-exempt
  - Withhold payroll taxes
  - Provide workers' compensation coverage
- Effect of Classification of Worker as "Independent Contractor"
  - Not entitled to employee benefits
  - Not entitled to overtime pay
  - Issued 1099
  - Responsible for own insurance coverage

NEW DOL GUIDANCE REGARDING INDEPENDENT CONTRACTOR STATUS

- DOL Interpretative Guidance – July 15, 2015
- Most workers qualify as employees
- Workers who are economically dependent on the business of the employer are employees, regardless of skill level
- Workers who have economic independence from any employer and who are in business for themselves are independent contractors

NEW DOL GUIDANCE REGARDING INDEPENDENT CONTRACTOR STATUS – DETERMINATIVE FACTORS

- Extent to which the work is an integral part of the employer's business
- Worker's opportunity for profit or loss, depending on how well he or she manages the work relationship
- Relative investments of the employer and the worker
- Whether the work requires special skills and initiative
- Permanence of the relationship
- Degree of control exercised by the employer over the worker

EFFECT OF NEW DOL RULE ON INDEPENDENT CONTRACTOR STATUS

- More workers will be deemed to be employees
  - Permanent or near-permanent workers
  - Workers without their own business
  - Workers who are dependent upon a single employer
- More employers will be liable for failing to properly classify employees
- Employers need to review their independent contractor relationships

PREGNANCY DISCRIMINATION

Young v. United Parcel Service, Inc., 575 U.S. (2015) "[I]f something is not public information, you must not share it"

- Pregnancy Discrimination Act (PDA) requires employers to treat women affected by pregnancy the same for all employment-related purposes as other persons not so affected but similar in their ability or inability to work

FACTS AND ISSUES

Young v. United Parcel Service, Inc.

- Young was a pregnant employee with lifting restrictions
- Young requested that UPS accommodate her lifting restrictions by granting her a light duty job during her pregnancy
- UPS denied Young's request for light duty work
- UPS' basis for denying the request was that Young's reason for the request did not fall within one of the three categories for light duty assignments under UPS' light duty policy

Issue: How does the PDA apply to an employer's policy that accommodates many, but not all, workers with non-pregnancy-related disabilities?

HOLDING

Young v. United Parcel Service, Inc.

- A pregnant employee may establish a claim of pregnancy discrimination under the PDA by proving
  - She is/was pregnant
  - She sought accommodation
  - The employer did not accommodate her
  - The employer accommodated others with similar restrictions
- An employer then has the burden of demonstrating that its refusal to accommodate the pregnant employee was based on legitimate, non-discriminatory reasons
  - The employer's reason cannot normally consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those to be accommodated

HOLDING

Young v. United Parcel Service, Inc.

- An employee can show pretext by providing sufficient evidence that the employer's policies impose a significant burden on pregnant employees, and that the employer's reasons are not sufficiently strong enough to justify the burden

IMPLICATIONS

Young v. United Parcel Service, Inc.

- Employers should review light duty practices and policies to ensure that the light duty practices and policies are justifiable
- Employers should ensure that managers are trained to identify and escalate requests for accommodation from pregnant employees
- Employers should carefully consider requests for accommodation for pregnant employees

FMLA DEVELOPMENTS

Bonkowski v. Oberg Industries, Inc., 787 F.3d 190 (3rd Cir., May 22, 2015)

- Legal Background
  - FMLA-eligible employees are entitled to take FMLA leave for, among other things, their own "serious health condition"
  - The DOL regulations define "serious health condition" as a condition that involves inpatient care or continuing treatment by a healthcare provider
  - The DOL regulations define "inpatient care" as an overnight stay in a hospital, hospice, or residential medical care facility

FACTS AND ISSUE

Bonkowski v. Oberg Industries, Inc.

- Employee was a wire-cutter and machinist
- Employee began experiencing chest pains at work and left early, with permission
- Employee arrived at hospital before midnight, but was admitted to hospital shortly after midnight
- Employee was released from hospital 14 hours later
- Employee was fired for leaving work early

Issue: Did the employee's condition involve "inpatient care," and did he therefore have a "serious health condition" within the meaning of the FMLA?

HOLDING AND IMPLICATIONS

Bonkowski v. Oberg Industries, Inc.

- Holding
  - "Overnight stay" means a stay for a substantial period of time, from one calendar day to the next calendar day, measured from the employee's time of admission to the employee's time of discharge
  - Court suggested, but did not decide, that eight hours was enough
- Implications
  - For employees: Get admitted before midnight

FMLA DEVELOPMENTS

Hansler v. Lehigh Valley Hospital Network, 2015 U.S. App. LEXIS 14581 (3rd Cir., August 19, 2015)

- Legal Background
  - Employee seeking FMLA leave must provide medical certification to support leave, if certification is requested by employer
  - Employee must be given a minimum of 15 days to submit certification
  - If certification is incomplete or insufficient, employee must be given a period of seven days to cure
  - "Chronic serious health conditions," under FMLA, require periodic visits to health care provider, continue over extended period of time, and may cause episodic rather than continuing period of incapacity

FACTS AND ISSUE

Hansler v. Lehigh Valley Hospital Network

- Employee was experiencing shortness of breath and nausea
- Employee requested FMLA leave, and received FMLA paperwork
- Employee's physician completed medical certification stating that employee would need intermittent FMLA leave for one month
- Employer denied FMLA leave, on basis that certification stated that employee's condition would last for one month, and condition therefore did not constitute a "chronic serious health condition"
- Employer discharged employee for excessive absenteeism, based on five absences during a month

Issue: Did the FMLA require the employer to seek clarification of the FMLA certification?

HOLDING

Hansler v. Lehigh Valley Hospital Network

- FMLA certification that employee submitted was insufficient, because it was vague, ambiguous, or non-responsive
  - Certification did not indicate whether employee would need leave for one month or whether her condition would last for one month
- Employer was required to give employee notice of the insufficiency of the certification, and an opportunity to cure the insufficiency

IMPLICATIONS

Hansler v. Lehigh Valley Hospital Network

- Do not deny FMLA based on a medical certification, unless the certification is complete and sufficient, and reflects that the employee does not have a serious health condition
  - If a certification is incomplete or insufficient, give the employee seven days to cure

RELIGIOUS GARB

EEOC v. Abercrombie & Fitch Stores, Inc., 575 U.S. (2015)

- Legal Background
  - Title VII of the Civil Rights Act of 1964 prohibits religious discrimination against employees and applicants
  - Employers are not allowed to discriminate against applicants based on their religious belief or practice
  - Employers can have a policy against head coverings, but if an employee needs to wear one for religious reasons, employers are required to make an accommodation, unless the employer can prove that it will create an "undue hardship" on their business

FACTS

EEOC v. Abercrombie & Fitch Stores, Inc.

- Samantha Elauf is a practicing Muslim
- Elauf wore her headscarf to her interview at Abercrombie
- Elauf did not say, during the interview, that she was wearing the headscarf for religious reasons
- Elauf was given a rating by the hiring manager that qualified her to be hired, but hiring manager had concern that Elauf's headscarf did not comply with the "Look Policy," Abercrombie's dress code
- Hiring manager believed that Elauf wore the headscarf for religious reasons
- Abercrombie did not hire Elauf because her headscarf did not comply with the Look Policy, which prohibited "caps"

FACTS AND ISSUE

EEOC v. Abercrombie & Fitch Stores, Inc.

- EEOC brought suit on behalf of Elauf, alleging that its refusal to hire Elauf violated Title VII
- District court granted the EEOC summary judgment on the issue of liability
- Tenth Circuit reversed, holding that, ordinarily, an employer cannot be liable under Title VII for failing to accommodate a religious practice until the applicant (or employee) provides the employer with actual knowledge of his need for an accommodation

Issue: Must an employer have knowledge of the employee's need for religious accommodation in order to trigger a duty to accommodate the religious practice?

HOLDING

EEOC v. Abercrombie & Fitch Stores, Inc.

- 8-to-1 decision
- U.S. Supreme Court determined that, in a disparate-treatment claim based on a failure to accommodate a religious practice, an applicant need only show that the need for accommodation was a motivating factor in decision not to hire
- Holding
  - Disparate treatment provisions of Title VII forbid employers to:
    - "Fail…to hire" an applicant
    - "Because of"
    - "Such individual's…religion"
  - An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions

IMPLICATIONS

EEOC v. Abercrombie & Fitch Stores, Inc.

- Employers should train managers and individuals involved in employment decisions to not make assumptions about whether an applicant or employee might need a religious accommodation
- Employers should be careful not to assume that a religious accommodation is needed, but if an accommodation is requested, employers should work with an employee to evaluate whether an accommodation is reasonable
- Employers should consider incorporating a provision into dress code policies that references accommodation to the dress policy for religious reasons, and provide employees with a mechanism to make a request for accommodation

IMPLICATIONS

EEOC v. Abercrombie & Fitch Stores, Inc.

- Employers should carefully consider religious accommodation requests, as most employers do when considering disability accommodations
- Employers should accommodate when reasonable, explore alternatives to requested accommodations when the requested accommodation is not reasonable, and, if an employer is not able to make an accommodation, it should be sure that there is a clear record of the reasons
- Employers should ensure that there is no retaliation or perceived retaliation after an employee requests a religious accommodation

AMENDMENT TO NLRB ELECTION RULES – BACKGROUND

- Facility is unionized only if employer voluntarily recognizes union or union wins NLRB election
- Union can obtain an NLRB election by filing an election petition with NLRB and by making a 30% showing of interest
- Union wins an election only if it receives 50% plus one of the votes cast in an NLRB-conducted election
- Between the time of union's filing of petition and the date of election, employers typically engage in an intensive pro-company campaign

AMENDMENT TO NLRB ELECTION RULES – TIMING

- NLRB published final rules on December 15, 2014
- Rules took effect April 14, 2015
- Rules have survived several legal challenges to date

AMENDMENT TO NLRB ELECTION RULES – TIMING OF ELECTION

- Old Rule
  - Minimum of 25 days between petition and election
  - Median: 38 days
- New Rule
  - 25-day minimum time period eliminated
  - Between 10 and 21 days, based on streamlined procedures

EFFECT OF EARLIER ELECTIONS

- Less time for employers to campaign
- Less time for employees to be educated about the process and the pros and cons of unionization
- Greater need for employers to be pro-active in their union-avoidance efforts
- More union victories

AMENDMENT TO NLRB ELECTION RULES – UNION ACCESS TO INFORMATION

- Old Rule
  - Excelsior list of names and home addresses
  - Within seven days after approval of election agreement or direction of election
  - Provided to NLRB
  - Fax, mail, or electronically

AMENDMENT TO NLRB ELECTION RULES – UNION ACCESS TO INFORMATION

- New Rule
  - List of names, home addresses, personal telephone numbers, and personal email addresses
  - Work location, shift, and job classification
  - Within two days after direction of election
  - Provided to Union
  - Electronically

EFFECT OF INCREASED UNION ACCESS TO INFORMATION

- Increases unions' access to employees
- Shortens amount of time it takes for unions to contact employees
- Allows for mass electronic mailings by unions
- Decreases costs, to unions, of communicating with employees
- Allows unions to focus, in communications, on issues specific to work locations, shifts, or classifications

AMENDMENT TO NLRB ELECTION RULES – ELECTRONICALLY SIGNED AUTHORIZATION CARDS

- Guidance Memo by NLRB General Counsel
- Effective September 1, 2015
- Old Rule
  - Authorization cards needed to be signed, by hand

AMENDMENT TO NLRB ELECTION RULES – ELECTRONICALLY SIGNED AUTHORIZATION CARDS

- New Rule
  - NLRB will accept electronic signatures in support of showing of interest
  - Submissions must include signer's name, email address, and telephone number; name of employer; and date of electronic signature
  - Union must submit declaration identifying what electronic signature technology was used, and an explanation as to how the technology ensures that signature is authentic

EFFECT OF NLRB'S ACCEPTANCE OF ELECTRONICALLY – SIGNED AUTHORIZATION CARDS

- Makes it easier for unions to collect authorizations and to make 30% showing of interest
- Allows unions to collect authorizations more quickly
- Creates greater likelihood of fraudulent signatures
- Will result in more union elections

EMPLOYEE USE OF COMPANY EMAIL SYSTEMS FOR UNION ORGANIZING – THE PURPLE COMMUNICATIONS CASE

- Facts
  - Purple Communications ("PC") is engaged in the business of providing sign-language interpretation services
  - PC maintained an electronic communications policy that permitted employees to use the Company's email system only for business purposes
  - CWA filed a representation petition seeking to represent employees at seven PC call centers
  - After losing election, CWA filed objections, contending that PC's electronic communications policy interfered with employees' Section 7 rights

EMPLOYEE USE OF COMPANY EMAIL SYSTEMS FOR UNION ORGANIZING – RULE CHANGE

- Old Rule: *Register Guard*, 351 NLRB 1110 (2007)
  - Employers may limit employee use of the employer's email system to business purposes, and may prohibit use of email system for non-businesses purposes, including union organizing purposes
- New Rule: *Purple Communications*, 361 NLRB No. 126 (December 11, 2014)
  - NLRB will presume that employees who have rightful access to their employer's email system in the course of their work will have the right to use the email system to engage in Section 7 communications on non-working time

EMPLOYEE USE OF COMPANY EMAIL SYSTEMS FOR UNION ORGANIZING – LIMITATIONS ON NEW RULE

- Applies only to employees who already have access to employer's email system
- In rare cases, employers may be able to show that a total ban on the use of the employer's email system for non-business purposes is necessary to maintain production or discipline
- Employers may continue to prohibit sending of non-business emails during working time
- Employers may continue to monitor their email systems for legitimate management reasons

EMPLOYEE USE OF COMPANY EMAIL SYSTEMS FOR UNION ORGANIZING – IMPACT OF NEW RULE

- In most cases, employers may not prohibit employees from sending emails, for Section 7 purposes, during their non-working time
- Employers do not need to give access to the Company's email system, to employees who do not ordinarily have access
- Employers may enforce normal disciplinary policies relating to the use of working time for non-working purposes

GENETIC INFORMATION NONDISCRIMINATION ACT

Lowe v. Atlas Logistics Group Retail Services (Atlanta), LLC, Civil Action No. 1:13-cv-2425 (N.D. GA 2015)

- Legal Background
  - The Genetic Information Nondiscrimination Act (GINA) prohibits employers from requesting, requiring or purchasing genetic information with respect to an employee
  - Genetic information means
    - An individual's genetic tests,
    - The genetic tests of family members of the individual, and
    - The manifestation of a disease or disorder in family members of the individual
  - Genetic test means
    - An analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes

FACTS

Lowe v. Atlas Logistics Group Retail Services (Atlanta), LLC

- Atlas provides long-haul transportation services for the grocery industry and has several warehouses that store grocery items
- In 2012, one or more employees began defecating in one of its warehouses
- Atlas conducted an investigation and narrowed the list of possible employees, which included Jack Lowe and Dennis Reynolds

FACTS

Lowe v. Atlas Logistics Group Retail Services (Atlanta), LLC

- An outside lab was retained to perform a comparison of buccal swabs from the listed employees to the fecal matter that had been collected in the warehouse
- The analysis can be used to compare DNA from one sample to another, but cannot be used to determine an individual's propensity for disease or disorder
- The results were transmitted to Atlas
- No one was identified as a match

FACTS AND ISSUE

Lowe v. Atlas Logistics Group Retail Services (Atlanta), LLC

- Plaintiffs, Lowe and Reynolds, filed suit under GINA, alleging that Atlas had illegally requested and required them to provide their genetic information and had illegally disclosed their genetic information
- EEOC dismissed case with a finding of no probable cause
- The question for the district court was whether the information requested and obtained by Atlas was "genetic information" under GINA
- First case brought under GINA

Issue: Was the information requested and obtained by Atlas "genetic information" under GINA?

DECISION

Lowe v. Atlas Logistics Group Retail Services (Atlanta), LLC

- Holding
  - Court examined the language of GINA and determined that, based on the language of GINA, Atlas' request fell within GINA's definition of a genetic test
  - Court rejected Atlas' contention that the definition of genetic test should be interpreted to exclude testing that does not reveal an individual's propensity for disease
  - $2.2 million in damages to the plaintiffs

IMPLICATIONS

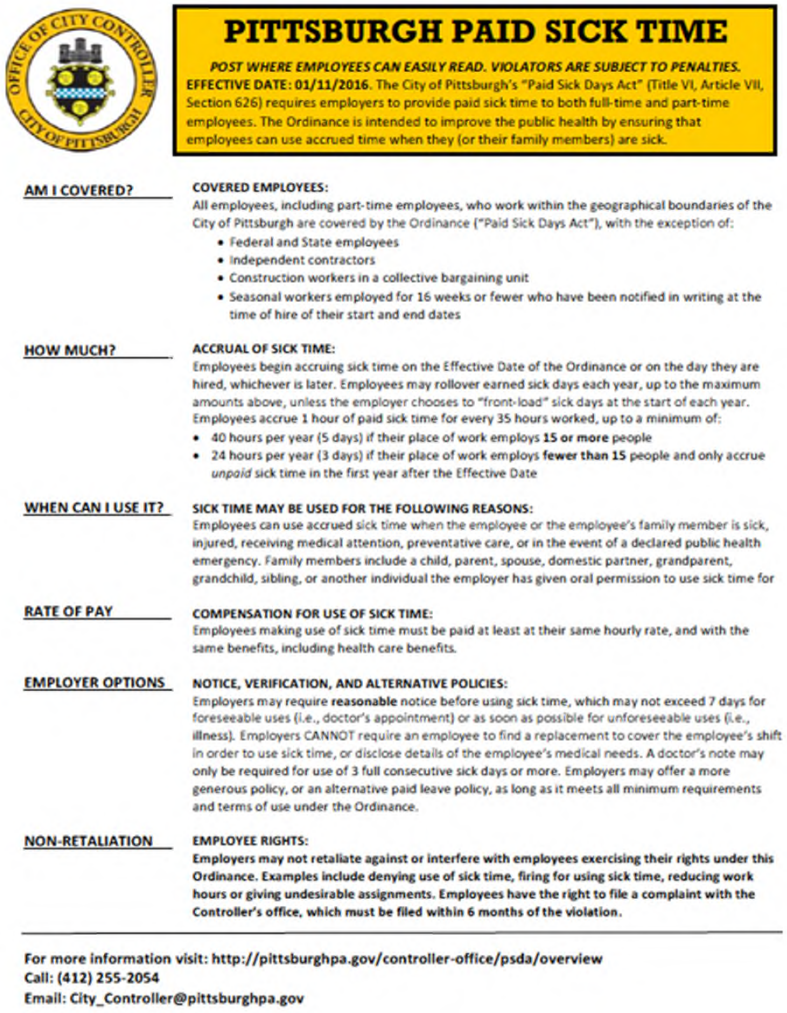
Lowe v. Atlas Logistics Group Retail Services (Atlanta), LLC

- Implications
  - Much commentary after the case has focused on the fact that this type of test was not what GINA was intended to prevent
  - Be cautious when dealing with any type of physical testing
  - Be aware that even the most straightforward issues can inadvertently implicate employment laws

PITTSBURGH PAID SICK DAYS ACT

- Effective January 11, 2016
- All employees who work in the City of Pittsburgh are covered, with some limited exceptions
- Employees begin accruing sick time on the effective date or date of hire, whichever is later
- Employees accrue 1 hour of paid sick time for every 35 hours worked, up to 40 hours per year for employers with 15 or more employees
- Employees can begin using sick leave on the 90th day of employment
- Employers must track hours and maintain records of hours
- Employers must post two notices in a place visible to all employees

PITTSBURGH PAID SICK DAYS ACT – REQUIRED NOTICE #1



PITTSBURGH PAID SICK TIME

POST WHERE EMPLOYEES CAN EASILY READ. VIOLATORS ARE SUBJECT TO PENALTIES.

EFFECTIVE DATE: 01/11/2016. The City of Pittsburgh's "Paid Sick Days Act" (Title VI, Article VII, Section 626) requires employers to provide paid sick time to both full-time and part-time employees. The Ordinance is intended to improve the public health by ensuring that employees can use accrued time when they (or their family members) are sick.

AM I COVERED?

COVERED EMPLOYEES:
All employees, including part-time employees, who work within the geographical boundaries of the City of Pittsburgh are covered by the Ordinance ("Paid Sick Days Act"), with the exception of:

- Federal and State employees
- Independent contractors
- Construction workers in a collective bargaining unit
- Seasonal workers employed for 16 weeks or fewer who have been notified in writing at the time of hire of their start and end dates

HOW MUCH?

ACCRUAL OF SICK TIME:
Employees begin accruing sick time on the Effective Date of the Ordinance or on the day they are hired, whichever is later. Employees may rollover earned sick days each year, up to the maximum amounts above, unless the employer chooses to "front-load" sick days at the start of each year. Employees accrue 1 hour of paid sick time for every 35 hours worked, up to a minimum of:

- 40 hours per year (5 days) if their place of work employs **15 or more** people
- 24 hours per year (3 days) if their place of work employs **fewer than 15** people and only accrue *unpaid* sick time in the first year after the Effective Date

WHEN CAN I USE IT?

SICK TIME MAY BE USED FOR THE FOLLOWING REASONS:
Employees can use accrued sick time when the employee or the employee's family member is sick, injured, receiving medical attention, preventative care, or in the event of a declared public health emergency. Family members include a child, parent, spouse, domestic partner, grandparent, grandchild, sibling, or another individual the employer has given oral permission to use sick time for

RATE OF PAY

COMPENSATION FOR USE OF SICK TIME:
Employees making use of sick time must be paid at least at their same hourly rate, and with the same benefits, including health care benefits.

EMPLOYER OPTIONS

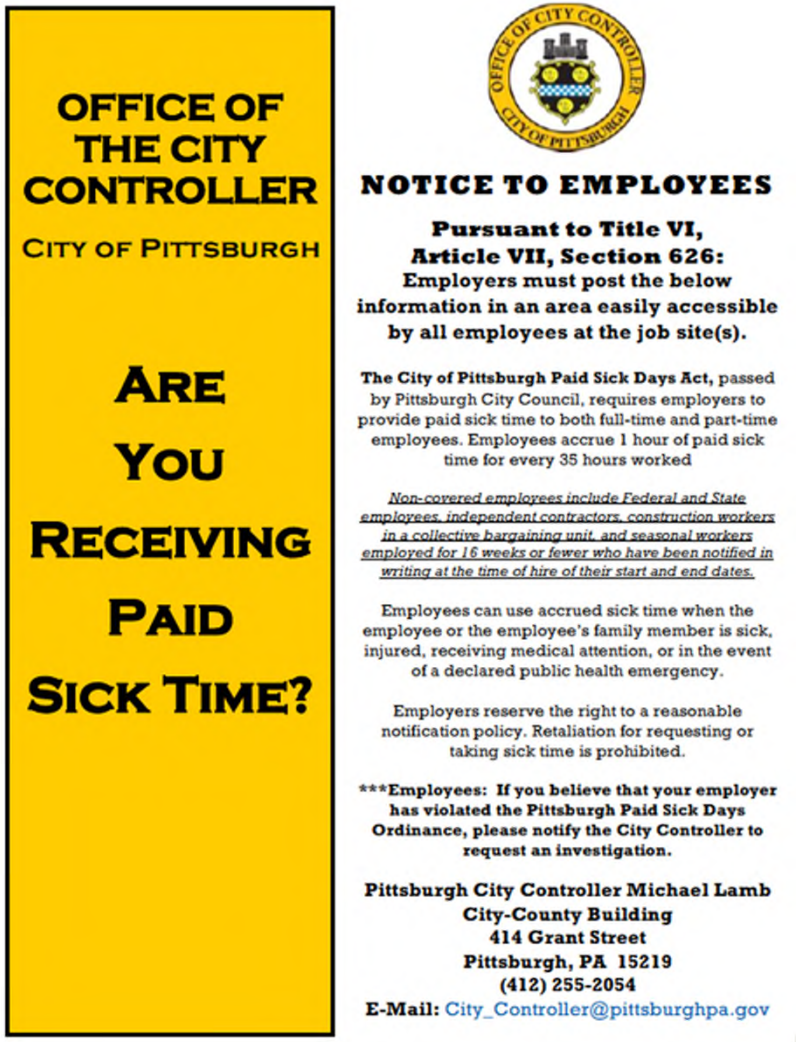
NOTICE, VERIFICATION, AND ALTERNATIVE POLICIES:
Employers may require **reasonable** notice before using sick time, which may not exceed 7 days for foreseeable uses (i.e., doctor's appointment) or as soon as possible for unforeseeable uses (i.e., illness). Employers CANNOT require an employee to find a replacement to cover the employee's shift in order to use sick time, or disclose details of the employee's medical needs. A doctor's note may only be required for use of 3 full consecutive sick days or more. Employers may offer a more generous policy, or an alternative paid leave policy, as long as it meets all minimum requirements and terms of use under the Ordinance.

NON-RETALIATION

EMPLOYEE RIGHTS:
Employers may not retaliate against or interfere with employees exercising their rights under this Ordinance. Examples include denying use of sick time, firing for using sick time, reducing work hours or giving undesirable assignments. Employees have the right to file a complaint with the Controller's office, which must be filed within 6 months of the violation.

For more information visit: http://pittsburghpa.gov/controller-office/psda/overview
Call: (412) 255-2054
Email: City_Controller@pittsburghpa.gov

PITTSBURGH PAID SICK DAYS ACT – REQUIRED NOTICE #2



OFFICE OF THE CITY CONTROLLER

CITY OF PITTSBURGH

ARE YOU RECEIVING PAID SICK TIME?

NOTICE TO EMPLOYEES

Pursuant to Title VI, Article VII, Section 626: Employers must post the below information in an area easily accessible by all employees at the job site(s).

The City of Pittsburgh Paid Sick Days Act, passed by Pittsburgh City Council, requires employers to provide paid sick time to both full-time and part-time employees. Employees accrue 1 hour of paid sick time for every 35 hours worked

Non-covered employees include Federal and State employees, independent contractors, construction workers in a collective bargaining unit, and seasonal workers employed for 16 weeks or fewer who have been notified in writing at the time of hire of their start and end dates.

Employees can use accrued sick time when the employee or the employee's family member is sick, injured, receiving medical attention, or in the event of a declared public health emergency.

Employers reserve the right to a reasonable notification policy. Retaliation for requesting or taking sick time is prohibited.

*****Employees: If you believe that your employer has violated the Pittsburgh Paid Sick Days Ordinance, please notify the City Controller to request an investigation.**

Pittsburgh City Controller Michael Lamb
City-County Building
414 Grant Street
Pittsburgh, PA 15219
(412) 255-2054
E-Mail: City_Controller@pittsburghpa.gov

CHANGE IN NLRB STANDARD FOR JOINT EMPLOYMENT – BACKGROUND

- Joint employment refers to situations in which employees are employed by one employer, but another entity exercises sufficient control over the employees so as to also be considered the employees' employer
- Typical joint employment situation: employer utilizes employees from temporary agency or staffing firm
- Effects of joint employment status
  - One joint employer can be responsible for the ULP's of the other joint employer
  - Non-union joint employer can be required to bargain over the terms and conditions of employment of unionized employees of unionized joint employer

CHANGE IN NLRB STANDARD FOR JOINT EMPLOYMENT

- NLRB decision in *Browning-Ferris Industries*, 362 NLRB No. 186 (August 27, 2015)
- BFI operated a recycling facility
- Leadpoint, a staffing firm, supplied employees to BFI's recycling operations
- BFI and Leadpoint had staffing agreement requiring BFI to pay each worker's wages, plus a specified mark-up
- Union sought to unionize Leadpoint's employees, and alleged that BFI was a joint employer

CHANGE IN NLRB STANDARD FOR JOINT EMPLOYMENT

- Old Standard: Joint employment relationship exists where the user employer exercises or has the right to exercise control over the labor relations policies of the supplier employer, or over the wages, hours, and working conditions of the supplier employer's employees

- New Standard: Joint employment relationship exists if user and supplier employer directly or indirectly share or codetermine matters governing the essential terms and conditions of employment

CHANGE IN NLRB'S STANDARD FOR JOINT EMPLOYMENT – FACTORS DETERMINATIVE OF JOINT EMPLOYER STATUS

- User employer's ability to hire, fire, discipline, and supervise the workforce
- User employer's ability to set wages, hours, and other terms and conditions of employment
- User employer's right to determine the number of workers supplied by the supplier firm
- User employer's right to control scheduling, seniority, and overtime
- User employer's right to assign work
- User employer's right to determine the manner of work performance

EFFECT OF NEW NLRB STANDARD FOR JOINT EMPLOYMENT

- Increases likelihood of finding of joint employment status
- Increases likelihood that user employer, even if non-union, will need to bargain over terms and conditions of employment of unionized employees of supplier employer
- Increases need for user firms to review and renegotiate contracts with supplier firms, to ensure no sharing or codetermination of matters governing the essential terms and conditions of the supplier firm's employees
- Increases need for user firms to ensure that firm's supervisors do not exercise direct or indirect control over supplier firm's employees

INCREASE IN MINIMUM WAGE FOR EMPLOYEES OF FEDERAL CONTRACTORS

- Current minimum wage for private sector employers: $7.25 per hour
  - Established by Congress in 2007
- Current minimum wage for federal contractors: $10.10
  - Established by DOL
  - Increased to $10.15 effective January 1, 2016
  - Applies to all federal contractors and subcontractors that are working on contracts that (1) are entered into on or after January 1, 2016; and (2) exceed $10,000 in value

AMENDMENTS TO HANDBOOKS FOR FEDERAL CONTRACTORS

- DOL issued regulation on September 1, 2015; rule takes effect January 11, 2016
  - Requires federal contractors to maintain policies providing that the employer will not discharge or discriminate against employees or applicants for inquiring about or discussing employee compensation
  - Exception for employees who have access to compensation information as part of essential job functions, and who disclose compensation information to individuals who do not otherwise have access to the information
  - Policies must be included in employees handbooks of federal contractors and must be physically or electronically posted
  - Applies to companies with federal contracts having a value that exceeds $10,000

QUESTIONS?

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THANK YOU

Cami Davis
(412) 394-2357
cdavis@clarkhill.com

Kurt Miller
(412) 394-2363
kmiller@clarkhill.com

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