THE YEAR IN REVIEW: WAIT – WHAT JUST HAPPENED?

2017 Grand Rapids Labor & Employment Law Conference

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CASE LAW DEVELOPMENTS

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WHAT IS “SEX”?

- Title VII prohibits discrimination in the workplace because of an individual’s sex
- Whether the prohibition on sex discrimination extends to discrimination on the basis of sexual orientation is an issue of conflict among the federal courts

HIVELY V. IVY TECH COMMUNITY COLLEGE (04/04/17)

- The plaintiff is openly lesbian who worked part-time at the College as an adjunct professor
- Over the course of five years, she applied for six different positions at the College and was selected for none of them. In 2014, her position was eliminated.
- She filed a lawsuit claiming that she was discriminated against on the basis of her sexual orientation
- The College filed a motion to dismiss on the basis that she failed to state a claim for sex discrimination, because discrimination on the basis of sexual orientation is not protected by Title VII. The District Court granted the motion based on established legal precedent.
- On appeal, the Seventh Circuit overturned its prior precedent and held that discrimination on the basis of sexual orientation is discrimination based on sex for the purposes of Title VII

SCOPE OF EEOC SUBPOENA POWERS

- When the EEOC receives a charge, it must investigate to determine whether there is reasonable cause to believe the charge is true
- To enable the EEOC to make informed decisions, Title VII "confers a broad right of access to relevant evidence"
- It provides the EEOC "shall . . . have access to, for the purposes of examination, . . . any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by" Title VII and "is relevant to the charge under investigation." 42 U.S.C. § 2000e–8(a).
- The statute enables the EEOC to obtain that evidence by issuing subpoenas and to seek an order enforcing the subpoena
- If the EEOC seeks an order of enforcement, a District Court's role is to "satisfy itself that the charge is valid, that the subpoena is not 'too indefinite', has not been issued for an 'illegitimate purpose', is not unduly burdensome and that the material requested is 'relevant' to the charge'"

MCLANE CO., INC. V. EEOC (04/03/17)

- McLane requires employees taking physically demanding jobs—both new employees and employees returning from medical leave—to take a physical evaluation. According to McLane, the evaluation "tests . . . range of motion, resistance, and speed" and "is designed, administered, and validated by a third party."
- Upon returning from maternity leave, the plaintiff took the test three times, but failed each time. As a result, her employment was terminated.
- The plaintiff filed a charge alleging sex discrimination
- In response to the EEOC's request for information, McLane produced basic information about the evaluation, and a list of anonymous employees that McLane had asked to take the evaluation

MCLANE CO., INC. V. EEOC (CONT.)

- McLane's list included each employee's gender, role at the company, and evaluation score, as well as the reason each employee had been asked to take the evaluation
- But the company refused so-called "pedigree information": the names, Social Security numbers, last known addresses, and telephone numbers of the employees who had been asked to take the evaluation
- The EEOC issued a subpoena and sought enforcement in District Court
- In the District Court's view, the pedigree information was not "relevant" to the charges because "an individual's name, or even an interview he or she could provide if contacted, simply could not shed light on whether the [evaluation] represents a tool of . . . discrimination"

MCLANE CO., INC. V. EEOC (CONT.)

- Upon *de novo* review, the Ninth Circuit reversed
- The U.S. Supreme Court granted the petition for Writ of Certiorari to determine the issue
- HELD: A District Court's decision to enforce an EEOC subpoena should be reviewed for abuse of discretion, not *de novo*
- As a practical matter, this means that the real battle over subpoena enforcement will take place only once in the trial court
- Depending on the circumstances, it may make sense to try to negotiate a resolution, if possible, with the EEOC in the face of an overly broad request for information

EMPLOYER LIABILITY FOR OFF DUTY CONDUCT

- Most state laws provide that employers have a duty to act reasonably in hiring, supervising, and retaining their employees
- To recover for a breach of that duty, a plaintiff must prove:
  - The defendant-employer knew or should have known that an employee had a particular unfitness for his or her position so as to create a danger of harm to third persons
  - Such particular unfitness was known or should have been known at the time of the hiring, retention, or failure to supervise
  - This particular unfitness proximately caused the plaintiff's injury

ANICICH V. HOME DEPOT U.S.A., INC. (03/24/17)

- Male supervisor had a history of sexually harassing his young female subordinates
- He became fixated on one female employee in particular, Alisha. He started calling her his girlfriend, swearing and yelling at her, and calling her names in front of customers. These outbursts came to include throwing and slamming things.
- The supervisor's behavior was known to senior management. Alisha had repeatedly complained and expressed fear about being alone with him.
- The supervisor asked her to go to his sister's wedding with him. She refused. But, after he threatened to fire her if she did not go, she went.
- After the wedding, the supervisor took Alisha to a hotel room where he killed her and her unborn child and raped her

ANICICH V. HOME DEPOT U.S.A., INC. (CONT.)

- Home Depot filed a motion to dismiss on two bases:
  - First, it argued that it did not owe a duty of care to Alisha, because the murder occurred off premises and the supervisor didn't commit the crime using store property
  - Second, it argued that it was not reasonably foreseeable based on the supervisor's past conduct that he would commit such a horrendous act
- The District Court agreed and dismissed the case
- The Seventh Circuit reversed. While the murder occurred off-site, the supervisor misused his supervisory authority by threatening Alisha's job if she did not attend the wedding. The Court also held that it was a question of fact as to whether some harm was foreseeable based on what the employer knew about the supervisor's conduct.

PROMPT, REMEDIAL ACTION?

- To impose liability on an employer for the harassing conduct of a plaintiff's co-worker, a "plaintiff must show that the employer's response to the plaintiff's complaints manifested indifference or unreasonableness in light of the facts the employer knew or should have known"

- A plaintiff must therefore show that the employer "knew or should have known of the harassment" and "failed to take prompt and appropriate corrective action"

- Generally, a response is adequate if it is reasonably calculated to end the harassment

SMITH V. ROCK-TENN SERVICES, INC. (02/10/16)

- The plaintiff's male co-worker pinched and/or slapped his buttocks and grinded his pelvis into the plaintiff's backside
- The plaintiff reported the conduct, but was told nothing could be done until the Operations Manager returned from vacation the following week. Ten days later, the plaintiff wrote to management to document the incidents and request leave. Only then, did the defendant initiate an investigation.
- HELD: The employer failed to take prompt and remedial action based on its total inaction for 10 days

PAY DISPARITY IS A HOT TOPIC

- Equality in pay was a cornerstone on the Obama Administration's civil rights agenda (Lily Ledbetter Fair Pay Act of 2009)
- 100s of companies have signed the Equal Pay Pledge
- There has been a steady rise in the number of Equal Pay Act (EPA) EEOC charges filed
  - Over the past three years, the number of EPA charges filed rose by 15%

THE FUTURE OF COMPENSATION ISSUES

- Under the Trump Administration, employers can expect an increased EEOC interest in the reasons for gender pay differences
- On February 9, 2017, Acting EEOC Chair Victoria Lipnic stated:

  "I am very interested in equal pay issues. It's something I would consider a priority."

- EEO-1 Report
  - A revised report would have required private-sector employer employing 100 or more employees and covered federal contractors to provide information regarding employee compensation, hours worked and demographic information
  - BUT, Victoria Lipnic announced August 29, 2017, that the OIRA was initiating a review and immediate stay of the effectiveness of the pay data collection aspects of the EEO-1 Form revised on September 29, 2016

THE EQUAL PAY ACT (EPA)

- Equal Pay Act (EPA) requires that equal wages be paid to men and women who perform jobs that require **substantially equal skill, effort, and responsibility**
  - The "substantially equal" requirement does not mean identical!
- Equality of pay under the EPA includes all forms of compensation, including:
  - Wages, salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, allowances, reimbursements, benefits, etc.
- Equal Pay Prima Facie Case
  - Lower wages paid to employees of opposite sex in the same establishment
  - Employees perform substantially equal work
  - Jobs performed under similar working conditions when comparing job duties

AFFIRMATIVE DEFENSES

- If a plaintiff can show he or she is receiving different wages for equal work, the burden shifts to the employer to establish one of the EPA's four affirmative defenses
  - Seniority system
  - Merit system
  - Incentive system
  - Factors "other than sex"
- A seniority, merit or incentive system must be **bona fide**, meaning…
- Factors "other than sex" must be related to job requirements

RIZO V. YOVINO (04/27/17)

- The County had a step/level compensation policy. To determine which step within Level 1 a new employee would begin, the County considered the employee's most recent prior salary and placed the employee on the step corresponding to his or her prior salary, increased by 5%.
- This resulted in the female plaintiff being paid less than all of her male co-workers who performed the same job
- The County conceded the disparity, but filed a motion for summary judgment because the differential was based on a factor other than sex (i.e., prior salary)
- The District Court denied the motion. It said "prior salary alone can never qualify as a factor other than sex" because "a pay structure based exclusively on prior wages is so inherently fraught with the risk . . . that it will perpetuate a discriminatory wage disparity between men and women."

RIZO V. YOVINO (CONT.)

- On appeal, the Ninth Circuit reversed
- It held that an employer can maintain a pay differential based on prior salary (or based on any other facially gender-neutral factor), if it can show the factor "effectuates some business policy" and the employer "uses the factor reasonably in light of the employer's stated purpose as well as its other practices"
- The Court remanded the case for the District Court to evaluate the four business reasons offered by the County:
  - The policy is objective
  - The policy encourages candidates to leave their current jobs, because they will always receive a 5% pay increase over their current salary
  - The policy prevents favoritism and ensures consistency in application
  - The policy is a judicious use of taxpayer dollars
- On August 29, 2017, the Ninth Circuit agreed to reconsider this case!

SCENARIO #1

Ellen, a female, works for a computer services firm that has offices in numerous cities. She alleges that she is paid less than a male who performs the same job in a different branch office. The employer claims that the separate offices are separate establishments and that, therefore, the compensation rates in each office cannot be compared. The evidence shows that while the headquarters of the company exercises some control over the branches, the specific salaries offered to job applicants are determined by supervisors in each local office.

Can Ellen's salary be compared to the salary of a male employee in a different office?

A. Yes, the local branch offices constitute a single establishment

B. No, the local offices constitute separate establishments

ANSWER TO SCENARIO #1

- The correct answer choice is:

  B. No, the local offices constitute separate establishments

- Rationale:

  - Two or more physically separate portions of a business should be considered one "establishment" if personnel and pay decisions are determined centrally and the operations of the separate units are ***interconnected***

  - Here, there is no central administrative unit responsible for hiring employees, setting compensation, and determining work assignments

    - Because compensation and work distribution are determined by supervisors in the individual branch locations, the separate branch offices appear to operate as separate facilities of a larger chain

SCENARIO #2

Amy, a high school teacher, alleges that she is paid $5,000 less than a male teacher who performs substantially equal work. The school district responds that the compensation difference is due to its seniority system and that the male teacher has greater seniority. The school district also asserts that its seniority system is a systematic and formal process that was communicated to employees and is guided by sex-neutral, objective standards. An investigation reveals that the male teacher has worked at the school three years longer than Amy, which only justifies a $3,000 difference in pay under the seniority system.

Is there an EPA violation?

A. No, the school district's seniority system appears to be bona fide and the male employee has worked for the school district three years longer than Amy

B. Yes, the school district's seniority system may not operate as an affirmative defense

ANSWER TO SCENARIO #2

- The correct answer choice is:

  B. Yes, the school district's seniority system may not operate as an affirmative defense

- Rationale:

  - A seniority, merit, or incentive system operates as a defense only to the extent that it accounts for the compensation disparity

  - The investigation into the school district's seniority system reveals that seniority accounts for about a $3,000 difference in pay. Therefore, the seniority system alone cannot account for the $5,000 difference in pay.

  - If there is no other bona fide system in place to explain the additional $2,000 paid to Amy's male comparator, and the two have similar duties under similar working conditions, the school district may not assert its seniority system as an affirmative defense

SCENARIO #3

Pam, a certified public accountant (CPA), claims that ABC accounting firm violated the EPA by offering her a lower starting salary than it offered a male CPA. ABC claims it offered a higher salary to the male CPA because he had very favorable job references, he received other job offers at the higher salary, and he relied on those job offers as a bargaining tool for negotiating the higher salary with ABC. An investigation found that ABC began salary discussions with Pam with the same opening offer as given to the male CPA, and indicated it was "willing to go higher if necessary." But Pam did not bargain as assertively as the male CPA, and ended up with a lower starting salary. There is no evidence that ABC treated Pam any differently than the male CPA in salary negotiations.

Is there an EPA violation?

A. Yes, the compensation disparity is not based on a factor other than sex or any bona-fide seniority, merit or incentive system

B. No, the compensation disparity is based on the marketplace value of the male CPA's job-related qualifications

ANSWER TO SCENARIO #3

- The correct answer choice is:

  B. No, the compensation disparity is based on the marketplace value of the male CPA's job-related qualifications

- Rationale:

  - A difference in the relative market value of employees at the time of their hire qualifies as a "factor other than sex" only if the employer proves that it assessed the marketplace value of the particular individual's job-related qualifications, and that any compensation disparity is not based on sex

    - **NOTE:** An employer will likely not be able to rely on the affirmative defense if the employer bargains differently with men than with women (e.g., responds more favorably to men's demands than to women's demands)

ADMINISTRATIVE AGENCIES

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NLRB ACTION TOWARD NON-UNION EMPLOYEES

- Whether your workforce is represented by a union or not, most private employers are covered by the National Labor Relations Act

- Section 7 of the National Labor Relations Act guarantees employees:

  "the right to self-organization, the right to join, form or assist labor organizations, the right to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities"

- Activity must be **protected** (right to organize, statements or activity regarding wages, working conditions or other terms of employment) and **concerted**

- Concerted activity: when the employee is engaged with or on the authority of other employees, and not solely on behalf of the employee himself or individual employees seek to initiate or to induce or to prepare for group action

BANNER HEALTH SYSTEM V. NLRB (03/24/17)

- In 2012, the NLRB determined that Banner Health violated the NLRA by asking an employee who was the subject of an internal investigation to refrain from discussing it while the investigation was pending

- The Board held: "[T]o justify a prohibition on employee discussion of ongoing investigations, an employer must show that it has a legitimate business justification that outweighs employees' Section 7 rights"

BANNER HEALTH SYSTEM V. NLRB (CONT.)

- The NLRB held that in any given investigation, employer must first determine if:
  - Witnesses need protection
  - Evidence was in danger of being destroyed
  - Testimony was in danger of being fabricated
  - There was a need to prevent a cover up
- The Board found that a general assertion of protecting the integrity of an investigation "clearly failed to meet" that burden
- Compare – EEOC's position to keep harassment investigations as confidential as possible

BANNER HEALTH SYSTEM V. NLRB (CONT.)

- On March 25, 2017, the D.C. Circuit Court of Appeals refused to enforce the NLRB's Order
- The Court set forth a different, more employer-friendly test:
  - The employer must show, on a case by case basis, that confidentiality is necessary based on objectively reasonable grounds for believing that the integrity of the investigation will be compromised without confidentiality
  - The NLRB has a long tradition of ignoring decisions of the D.C. Circuit Court of Appeals

NLRB V. MURPHY OIL USA, INC. (01/13/17)

- In *Murphy Oil USA*, the NLRB held that the employer violated the NLRA by implementing and enforcing an arbitration policy that required employees to waive their right to pursue class actions for any employment-related disputes

- The Fifth Circuit rejected this position, but the Seventh and Ninth Circuit have agreed with the NLRB's position

NLRB V. MURPHY OIL USA, INC. (CONT.)

- On January 13, 2017, the U.S. Supreme Court agreed to review the following issue:
  - Whether arbitration agreements with individual employees that bar them from pursuing work-related claims on a collective or class basis in any forum are prohibited as an unfair labor practice under 29 U.S.C. § 158(a)(1), because they limit the employees' right under the National Labor Relations Act to engage in "concerted activities" in pursuit of their "mutual aid or protection," 29 U.S.C. § 157, and are therefore unenforceable under the savings clause of the Federal Arbitration Act, 9 U.S.C. § 2.
  - Oral argument scheduled for October 2, 2017

OSHA RULE ON RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

- On October 19, 2016, OSHA issued a Final Rule designed to improve tracking of workplace injuries and illnesses
- Requires that some of this information be submitted electronically for posting on OSHA website

OSHA REPORTING RULE

Employer Requirements:

- Employers must amend injury and illness policies to:
  - Expressly inform employees of their right to directly report work-related injuries and illnesses
  - Assure employees of non-discrimination and non-retaliation for doing so:
    - Must include an explicit prohibition
    - OSHA can issue direct citations for retaliation without an employee complaint
  - Clarify that the reporting method procedure for employees to report workplace injuries and illnesses must be reasonable

OSHA REPORTING RULE (CONT.)

Employer Requirements:

- Delete any rule deemed “unreasonable” restriction on reporting:
  - Rules requiring immediate reporting with discipline for failure to do so
  - Use a “as soon as reasonably known or recognized” standard
- Employer can not deter or discourage employees from reporting injuries and illnesses
- Rules may not contain any incentives or disincentives to cause a “reasonable” employee to fail to report a workplace injury or illness:
  - Raffle drawing or safety bonus when no injuries are reported
  - Perfect attendance bonuses

OSHA REPORTING RULE (CONT.)

- Automatic requirement (or threatening) submission to drug or alcohol tests, post accident is deemed an unreasonable restriction on reporting
  - OSHA comments target "blanket" post-injury drug testing policies
  - Need a "reasonable possibility" that drug use by the reporting employee was a contributing factor to the reported injury or illness
  - Individualized assessment now necessary

EEOC STRATEGIC ENFORCEMENT PLAN (SEP)

- On October 17, 2016, EEOC released its updated five year SEP
- Continued focus on many of the same issues from last five year plan (2012)
- Priorities:
  - Eliminating barriers in recruitment and hiring
  - Protecting vulnerable workers, including immigrant and migrant workers, and underserved communities from discrimination
  - Addressing selected emerging and developing issues
  - Ensuring equal pay protections for all workers
  - Preserving access to the legal system
  - Preventing systemic harassment

EEOC STRATEGIC ENFORCEMENT PLAN (SEP) (CONT.)

- The SEP adds two areas to the emerging and developing issues priority:
  - Issues related to complex employment relationships in the 21st century workplace
  - Joint employment
  - Gig economy (Series of short-term, temporary work performed as independent contractor or consultant)
  - Independent contractor vs. employee
  - Discrimination against those who are Muslim or Sikh, or persons of Arab, Middle Eastern or South Asian descent, as well as persons perceived to be members of these groups

EEOC STRATEGIC ENFORCEMENT PLAN (SEP) (CONT.)

- Eliminating barriers in recruitment and hiring includes the following “areas of particular concern”:
  - The growth of the temporary workforce
  - The increasing use of data-driven selection devices
  - The lack of diversity in certain industries and workplaces such as technology and policing

EEOC STRATEGIC ENFORCEMENT PLAN (SEP) (CONT.)

- Ensuring equal pay protections for all workers
  - EEOC will continue to focus on compensation systems and practices that discriminate based on sex under the Equal Pay Act and Title VII
  - "Because pay discrimination also persists based on race, ethnicity, age and for individuals with disabilities, and other protected groups, the Commission will also focus on compensation systems and practices that discriminate based on any protected basis, including the intersection of protected bases, under any of the federal anti-discrimination statutes"

EEOC STRATEGIC ENFORCEMENT PLAN (SEP) (CONT.)

- Preserving access to the legal system
- Focus on:
- Overbroad waivers, releases and mandatory arbitration provisions
- Employers' failure to maintain and retain applicant and employee data and records required by EEOC regulations
- Significant retaliatory practices that effectively dissuade others in the workplace from exercising their rights
- Preventing systematic harassment
  - Focus on strong enforcement through monetary and injunctive relief, as well as the promotion of training and outreach to deter future violations

EEOC RETALIATION GUIDANCE

- On August 25, 2016, the EEOC issued *EEOC Enforcement Guidance on Retaliation and Related Issues* which updates its 1998 Guidance
- 45% of discrimination claims brought before the EEOC are retaliation claims
- A retaliation claim challenging action taken because of EEO-related activity has three elements:
  - **Protected activity:** "participation" in an EEO process or "opposition" to discrimination
  - **Materially adverse action** taken by the employer
  - Requisite level of **causal connection** between the protected activity and the materially adverse action

EEOC RETALIATION GUIDANCE (CONT.)

- Two categories of **protected activity – Participation & Opposition**
  - Participation:
    - The anti-retaliation provisions make it unlawful to discriminate because an individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII, the ADEA, the EPA, the ADA, the Rehabilitation Act, or GINA
    - The participation clause broadly protects EEO participation regardless of whether an individual has a reasonable, good faith belief that the underlying allegations are, or could become, unlawful conduct
    - Playing any role in an internal investigation should be deemed to constitute protected participation

EEOC RETALIATION GUIDANCE (CONT.)

- Opposition:
  - An individual is protected from retaliation for opposing any practice made unlawful under the EEO laws
  - Protected "opposition" activity broadly includes the many ways in which an individual may communicate explicitly or implicitly opposition to perceived employment discrimination
    - The manner of opposition must be reasonable **AND**
    - The opposition must be based on reasonable good faith belief that the conduct opposed is, or could become, unlawful

EEOC RETALIATION GUIDANCE (CONT.)

- Materially Adverse Action
  - Any action that might well deter a reasonable person from engaging in protected activity
  - Examples provided:
    - Exclusion from team lunches
    - Workplace surveillance
    - Threats to report immigration status
    - Workplace sabotage, assignment to unfavorable location, and abusive scheduling practices
    - Disclosure of confidential EEO information and assignment of disproportionate workload

EEOC RETALIATION GUIDANCE (CONT.)

- Causation (perhaps the biggest change for employers in the Guidance)
  - A materially adverse action does not violate the EEO laws unless there is a causal connection between the action and the protected activity
  - The causation standard requires the evidence to show that "but for" a retaliatory motive, the employer would not have taken the adverse action
    - EEOC also adopts the position that retaliation can be established by creating "a 'convincing mosaic' of circumstantial evidence" that would support the inference of retaliation
    - This standard is less stringent than the "but for" test

EEOC RETALIATION GUIDANCE (CONT.)

- Suggested Best Practices:
  - Written Employment Policies
    - Written, plain-language anti-retaliation policies
    - Provide practical guidance on the employer's expectations with user-friendly examples of what to do and not to do
  - Training
    - For all managers, supervisors, and employees
  - Review Employment Actions
    - Consider designating an HR or EEO specialist, management official, in-house counsel, or other person to review proposed employment actions
  - Follow Up
    - HR or management to follow up with complaining party or others involved in protected activity

LOOKING AHEAD

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FATE OF THE DOL OVERTIME RULES

- Department of Labor issued Final Rule on overtime exemptions -- raising weekly salary level from $455 to $913 (highly compensated: $100,000 to $134,004), automatic adjustments every three years
- Rule was to take effect on December 1, 2016
- A nationwide injunction was issued by a federal judge in Texas in response to a challenge to the validity of the Final Rule
- Challenge based on allegations the DOL did not have the authority to:
  - Raise the minimum weekly salary level
  - Create automatic three year adjustments to minimum salary level

FATE OF THE DOL OVERTIME RULES (CONT.)

- USDOL-WHD appealed the issuance of the preliminary injunction, focusing primarily on the issue of whether it had authority to adjust the minimum salary level. USDOL-WHD did not request a stay of the lower court proceedings.
- On July 26, 2017, USDOL-WHD published Request for Information seeking public comment (comments were due September 25, 2017)
- On August 31, 2017, the same federal judge in Texas ruled that final rule was invalid because it relied exclusively on salary level as the basis to define which employees were covered by the minimum wage and overtime exemption

FATE OF THE DOL OVERTIME RULES (CONT.)

What to do?

- For employers that have already implemented changes, no need to take action, regardless of outcome of appeal
- For employers that have not implemented changes, stay tuned:
  - If the appeal is withdrawn or denied, no action need be taken
  - If the appeal is granted and the trial court decision reversed, there will be a period of time for employers to come into compliance

FATE OF THE NLRB

Composition of the Board

- NLRB currently consists of four members – two (D) and two (R)
  - Chair Philip Miscimarra (R)
  - Marvin Kaplan (R)
  - Mark Pearce (D) – Term expires August 27, 2018
  - Lauren McFerran (D) – Term expires December 16, 2019
- President Trump has one vacancy to fill
  - Nominee: William Emanuel (R)
- New Board could reverse many of the decisions of the Obama Board

PAID LEAVE – FEDERAL CONTRACTORS

- On September 7, 2015, President Obama signed Executive Order 13706 requiring paid leave for federal contractors
- Applies to certain federal construction, service, and concession contracts awarded on or after January 1, 2017
  - Does not apply to contracts for the manufacture or furnishing of materials, supplies, articles or equipment to the federal government
- Requires that employees accrue one hour of paid sick leave for every 30 hours worked on or in connection with a covered contract
- Contractors may limit accrual to 56 hours
- Paid leave must be allowed for illness, injury, preventative care, domestic violence, sexual assault, or stalking of employee or employee's child, parent, spouse, domestic partner, or closely-associated individual

PAID LEAVE – STATE AND LOCAL LAWS

- Over the last 10 years, more than 30 state and local laws have been enacted mandating that employers provide paid sick leave
- Varying requirements from jurisdiction to jurisdiction are making administration of leave programs increasingly complex for multistate employers
- In response to this trend, some states have enacted statewide bans on paid sick leave mandates

QUESTIONS?

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THANK YOU

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