



EMPLOYMENT LAW HOT TOPICS

Presenter



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Intelligence at Work.





HOT TOPICS

- Work from Home Issues
- Onboarding Challenges
- Wage & Hour Updates
- Gender Identity & Sexual Orientation
- New State Law



Remote & Telework

- Status of Policy
- How do you determine eligibility?
- Living with the Precedent



Remote & Telework Compliance Concerns

- Jurisdiction
 - Tax Withholdings
- Wage & Hour
 - Tools & Equipment
- Workers' Compensation
- Privacy & Data Security
- Culture/Moonlighting



Onboarding Challenges

- Remote v In-Person
- More rigorous safety policies
- Vaccination
 - EEOC – Direct Threat
 - ADA – Reasonable Accommodation
 - Proof of Vaccination
 - Religious Accommodation

Wage & Hour Updates

- Independent Contractor Rule – Withdrawn
 - Modified the “economic realities test”
 - Two “core factors” – Control and Profit or Loss
 - Lesser Factors: Skill, Permanent, and Integration
- Joint Employer Test Rule – Withdrawn
 - Test for two employers
 - Four clear factors

Gender Identity & Sexual Orientation

- New EEOC Guidance
- 1 year after *Bostock* - *"An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undistinguishable role in the decision, exactly what Title VII forbids."*
- Why do you care?



Gender Identity & Sexual Orientation

Key Takeaways

- Bathroom Guidance: all men (including transgender men) should be allowed to use the men's facilities and all women (including transgender women) should be allowed to use the women's facilities (Beyond *Bostock*)
- Prohibiting a transgender person from dressing or presenting consistent with that person's gender identity would constitute sex discrimination



Gender Identity & Sexual Orientation

- Whether or not an employer knows an employee's sexual orientation or gender identity, employers are not permitted to discriminate against an employee because that employee does not conform to sex-based stereotypes about traditional feminine or masculine behavior
- Intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment



Pregnancy Accommodation

- New **STATE** Law
- 25 or more employees
- Unlawful employment practice is “to fail or refuse to make reasonable accommodations for an applicant or employee with [pregnancy-related limitations] unless the employer can demonstrate the accommodation would pose an undue hardship on the operation of the business of the employer.”

Pregnancy Accommodation

Non-Exhaustive List of Accommodations

- Providing scheduled and more frequent or longer compensated break periods
- Providing more frequent bathroom breaks
- Providing a private place, other than a bathroom stall, for the purpose of expressing breast milk
- Modifying food or drink policy
- Providing seating or allowing the employee to sit more frequently if the job requires the employee to stand
- Providing assistance with manual labor and limits on lifting
- Temporarily transferring the employee to a less strenuous or hazardous vacant position, if qualified
- Providing job restructuring or light duty, if available
- Acquiring or modifying equipment or devices necessary for performing essential job functions
- Modifying work schedules



Pregnancy Accommodation

- How does essential job functions fit in?
- Posting the Notice



Ban the Box – Act 406

- EEOC Guidance
- 20 or more employees working in the state
- Arrests/Charges that do not result in conviction
- Criminal History – “direct and adverse relationship”
- Provide Copies of Background Checks

Questions?



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THANK YOU!

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New Office!

Phone numbers coming soon!

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