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HR Insights

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Important Employment Law Changes in 2023

The year 2023 brought about significant shifts in the employment law landscape, impacting how organizations navigate the complex web of regulations governing workplaces. The U.S. Supreme Court issued several consequential decisions in 2023, and these and other rulings may have major impacts on employers, altering established labor and employment laws and workplace practices.

As 2024 begins, it's crucial for employers to be well-versed in employment law changes to ensure compliance and mitigate legal risks. This article highlights important employment law changes that occurred in 2023, equipping employers with the knowledge needed to navigate the evolving landscape.

Religious Accommodations Standard

On June 29, 2023, in *Groff v. DeJoy,* the Supreme Court ruled that Title VII of the Civil Rights Act (Title VII) requires employers to meet a heightened standard for undue hardship when denying employees' requests for religious accommodations, making it more difficult to deny such requests. Title VII prohibits employers with 15 or more employees from discriminating against employees and job applicants on the basis of race, color, religion, national origin or sex. It also requires employers to provide reasonable accommodations for an individual's religious observance or practice unless an employer is "unable" to do so "without undue hardship" on the conduct of its business.

Previously, the undue hardship standard for denying religious accommodations only required an employer to show that any accommodation under Title VII would cause the employer to bear "more than a de minimis cost." The Supreme Court's 2023 decision alters the undue hardship standard, holding that if an employer denies religious accommodations, it must show that the burden of granting an accommodation would result in "substantial increased costs in relation to the conduct of its particular business."

Employers subject to Title VII should become familiar with this new standard. They may also need to review their employment policies and practices to ensure they can meet the heightened undue hardship standard outlined in *Groff* for any denials of their employees' or applicants' requests for religious accommodations.

Form I-9

Since Nov. 1, 2023, employers are required to use the newest version of the Employment Eligibility Verification form (Form I-9) provided by the U.S. Department of Homeland Security's Citizenship and Immigration Services. Employers continuing to use the outdated Form I-9 are subject to penalties.

The new Form I-9 includes updated instructions and many notable changes, including the following:

- Sections 1 and 2 have been reduced to a single sheet.
- The preparer/translator certification area has been moved to a standalone supplement (Supplement A) that employers can use as necessary for initial verification or recertification.

- Section 3 (Reverification and Rehire sections) has been moved to a standalone supplement (Supplement B) that employers can use as necessary.

- The list of acceptable documents now includes some acceptable receipts, guidance and links to information on automatic extensions of employment authorization documentation.

Among other changes, the new Form I-9 includes alternative remote verification procedures employers enrolled in E-Verify can use to comply with their Form I-9 obligations.

Complying with Form I-9 requirements can be challenging, but failing to do so can result in costly fines and penalties. The Form I-9 revisions provide employers with the opportunity to review their current training and policies regarding the Form I-9 and E-Verify processes.

Affirmative Action

The Supreme Court struck down affirmative action programs at the University of North Carolina and Harvard University, likely ending the systematic consideration of race in college admissions. In a 6-3 vote in *Students for Fair Admissions Inc. v. University of North Carolina* and a 6-2 vote in *Students for Fair Admission Inc. v. President & Fellows of Harvard College*, the Supreme Court ruled that both universities' affirmative action programs violate the Equal Protection Clause of the U.S. Constitution. These decisions effectively overturn the Court's 2003 decision of *Grutter v. Bollinger*, which allowed universities to consider race, among other factors, in university admissions because diversity in education is a legitimate aim.

The Supreme Court's rulings in these cases will likely not directly affect employers. However, they could impact workplace diversity, equity, inclusion and belonging initiatives, including the ways organizations promote and implement these initiatives in the future, as well as employers' affirmative action programs.

Proposed Overtime Rule

On Aug. 30, 2023, the U.S. Department of Labor (DOL) announced a proposed rule to amend current requirements that executive, administrative and professional employees (EAPs) must satisfy to be exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements. The proposed rule to amend the FLSA white-collar exemptions was published in the Federal Register on Sept. 8, 2023, and the comment period closed on Nov. 7, 2023. This proposed overtime rule is expected to become final during the first part of 2024.

Under the FLSA, covered employers must pay employees at least the federal minimum wage for all hours worked and overtime pay—at a rate of 1.5 times their regular pay rate—for all hours worked over 40 in a workweek. However, the FLSA provides several exemptions from minimum wage and overtime pay requirements. The most common are "white-collar" exemptions. These exemptions mainly apply to EAPs but include outside sales personnel and certain computer and highly compensated employees (HCEs). To qualify for a white-collar exemption, employees must satisfy three tests: the salary basis test, the salary level test and the duties test. The proposed overtime rule doesn't impact the duties test for the white-collar FLSA exemptions. However, the DOL is proposing to increase the standard salary level from $684 to $1,059 per week ($35,568 to $55,068 per year) for EAPs and from $107,432 to $143,988 per year for HCEs. The rule would also enable the DOL to update salary levels automatically every three years without having to rely on the rulemaking process. If the rule is finalized and implemented, the FLSA overtime protections will extend to approximately 3.6 million more workers in the country and increase the salary threshold by nearly 55%.

While the agency's new overtime rule doesn't impose any new requirements on employers at this time, it could significantly affect organizations' operational and compliance costs and increase their litigation risks. Therefore, employers should become familiar with the proposed overtime rule and evaluate what changes they may need to adopt if the rule is implemented as proposed.

Joint-employer Rule

On Oct. 26, 2023, the National Labor Relations Board (NLRB) announced a final rule establishing new criteria for determining joint-employer status. Joint employment situations can happen when two or more employers share personnel hiring, supervision and management practices. When a joint employment status exists, joint employers are equally responsible for compliance with applicable laws and regulations.

To determine whether a joint-employer relationship exists, employers must evaluate the degree of control they exert over "essential terms and conditions of employment." Essential terms and conditions of employment include wages, benefits, hours of work and employee hirings, discharges, discipline, supervision and direction. The new rule rescinds the prior standard established in 2020 and clarifies the definition of "essential terms and conditions of employment," identifies the types of control necessary to establish joint-employer status and describes the collective bargaining obligations of joint employers.

The final rule was published in the Federal Register on Oct. 27, 2023, with an effective date of Dec. 26, 2023. However, the NLRB extended the date to Feb. 26, 2024. Employers should note that the NLRB will apply the new standard only to cases that are filed with the agency after the final rule effective date. Employers, particularly contractors and subcontractors, should become familiar with the new rule and determine whether a more inclusive joint-employer standard would reclassify them as joint employers in their operations by the rule's effective date. Employers affected by the new standard should also take precautionary steps to ensure other joint employers comply with regulations regarding labor and employment laws for joint employees.

Pregnant Workers Fairness Act

The Pregnant Workers Fairness Act (PWFA) became effective on June 27, 2023. Under this law, employers with at least 15 employees must provide reasonable accommodations to workers with known limitations related to pregnancy, childbirth or related medical conditions unless the accommodation will cause the employer an "undue hardship." Industry experts expect an increase in accommodation requests by pregnant employees because of the PWFA.

The PWFA amends the Americans with Disabilities Act to require reasonable accommodations for a qualified individual's limitations related to pregnancy, childbirth or related medical conditions. Employers should become familiar with the law and review their existing accommodation policies and revise them according to the PWFA's requirements. Employers can also begin engaging in the interactive process with covered employees and applicants who may need accommodations pursuant to the PWFA. This can help employers avoid fines and lawsuits and make accommodations that allow their employees to be productive and comfortable at work.

Conclusion

This year, a proactive approach to understanding and implementing these significant employment law changes is paramount. Recognizing Supreme Court decisions and other employment-related changes and their potential impacts can help employers navigate any changes to existing labor and employment laws and workplace practices, as well as aid in supporting their employees.

Staying informed and revising policies will not only mitigate legal risks but also contribute to a positive and inclusive workplace. By embracing these changes, employers can position themselves as leaders in the evolving landscape of employment law and foster a resilient and legally sound organization.

Employers are encouraged to seek legal counsel to discuss specific issues and concerns. Contact us today for more workplace guidance.