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LAW FIRM

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Inside this issue:

CHANGES IN LAWS THAT MAY AFFECT YOU

IWPCA Regulation Changes

The Illinois Wage Payment & Collection Act (IWPCA) Regulations have been modified, creating substantial changes.

First of all, the Act now redefines an "agreement" to include those policies contained in an employee handbook that could be covered by the Illinois Wage Payment & Collection Act, even with an appropriate disclaimer confirming that no agreement or contract has been reached.

The new Regulations define an "agreement" as a meeting of the minds, which can be evidenced by a policy or an employee handbook. This does not mean that you should burn your employee handbook. Remember, the Illinois Wage Payment & Collection Act really deals with a limited number of employer/employee issues. Things like employment for a specific duration, progressive discipline etc.., really are not covered by the Act. On the other hand, to make sure that you handbook does not create an "agreement" under these new regulations, I suggest you eliminate references to overtime, hourly rates and compensation policies.

In addition, the new Regulations require employers to notify employees in writing, at the time of hiring, their rate of pay. Furthermore, if rates of pay change over the course of an employee's tenure with the company, which of course they do, you are required to advise or confirm the change in writing. So, if you have a staff meeting where you advise your entire staff that there will be an across the board compensation increase of 2% and don't follow up in writing, these regulations would suggest that the 2% increase is void and cannot be implemented until such time as you put this in writing.

The Regulations have also been changed to require an employer to keep track of all time an employee works whether the employee is exempt from overtime or not. In other words, even those salaried exempt employees that we historically did not track as far as time now have to record their hours. These employees need to keep track of the actual hours they work. Quite frankly, I believe this is a "backdoor" method for the Department of Labor to find that employees are not being paid minimum wage based on their compensation rate as compared to the hours they work. This will be something you need to keep track of to ensure you don't violate minimum wage requirements. These records are required to be kept for all employees for a period of at least three years.

EEOC v. Abercrombie & Fitch

On June 1, 2015, the United States Supreme Court found against Abercrombie & Fitch in a religious discrimination case brought by the EEOC. The facts are very interesting. In this case, a 17 year old applicant, a Muslim, wore a head scarf for religious reasons. She applied for a sales floor position at an Abercrombie & Fitch store in Oklahoma. She wore the head scarf to the interview but said nothing to the interviewer indicating that she was Muslim or that she would need any religious accommodations.

Abercrombie had a "look" policy which governed or guided how sales staff looked while working at the store. The head scarf was not consistent with the look policy. While no one testified that there was a specific discussion regarding the head scarf, the interviewer did testify that she assumed the applicant was Muslim and wore the head covering for religious reasons. This was evidence that head scarf influenced the company's decision not to hire her.

Throughout the course of the case, Abercrombie took the position that it was incumbent upon the applicant to ask for a religious accommodation to wear the head scarf. The evidence was uncontested that she did not even mentioned the head scarf, let alone ask for an accommodation. Nonetheless, the EEOC, and ultimately the United States Supreme Court, found that a specific request by an individual is not required. The Court's holding was that an applicant needs only show that his need for accommodation was a motivating factor in the employers decision. In other words, Title VII does not required "knowledge" of a need for religious accommodation.

EMPLOYERS IN A CATCH 22

Good employment law advice has been to not inquire into an applicant's religious practices. Indeed, the EEOC guidance that is offered to employers encourages that approach.

Nonetheless, since it is now certain that an employer can be held liable for religious discrimination when the need for a religious accommodation was not even known, inquiry becomes the better practice. Specifically, like disability, I encourage you, if you have any reason to believe or even suspect that an accommodation may be necessary, to consider further inquiry into an applicant's religious accommodation needs. Similar to the interactive process required by the American's with Disabilities Act, it may be that an employer should explain to an applicant the relevant work rule and inquire as to whether the applicant can comply with the work rule or will he need an accommodation.

This makes hiring/interviewing much more difficult to manage insofar as the questions posed may actually be different from applicant to applicant.

Department of Labor— Proposed Rule Making

On June 30th, the United States Department of Labor released its Notice of Proposed Rule Making. With Proposed Rule Making, there is a comment period in which interested parties can comment to the Department of Labor and ultimately the Rule Making is adopted with or without modifications. Based on President Obama's directives to the Department of Labor, I anticipate the following Proposed Rules will become Rules for the Department of Labor later this year:

The DOL has proposed to set the standard salary level at 40% of earnings for full-time salaried workers based on Bureau of Labor Statistics information.

In 2013 that amount would have been $921.00/week or $47,892.00 annually for a full-time employee. Again, the Proposed Rule Making would require automatic adjustments annually using either a fixed percentile of wages (40th percentile for example) or the CPI. That means, if the proposed changes are adopted, the Department of Labor has projected the salary minimum for exempt status will be $50,440 at the time of Rule implementation.

The Department of Labor also has a Proposal that sets the highly compensated employee annual earnings at $122,148, up from the current $100,000.

While this is only in the Rule Making stage, it seems clear that some modification in the minimum salary or exempt status will be implemented. To prepare, employers should begin reviewing those positions that are close to the current exemption level to ascertain the best approach for the future.