LABOR & EMPLOYMENT WORKFORCE WATCH

A GUIDE TO THE EMPLOYMENT LAW DEVELOPMENTS MOST LIKELY TO IMPACT YOUR BUSINESS

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IN THIS ISSUE

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AB5: A Major Shift in CA Worker Classification

by Jonevin Sabado

On September 18, 2019, California Governor Gavin Newsom signed into law the controversial Assembly Bill 5 (AB5), which codified the California Supreme Court's *Dynamex* decision issued in April 2018. Governor Newsom hailed "AB5" as "landmark legislation for workers and our economy." But what does AB5's passage actually mean for companies and workers going forward?

The California Supreme Court's Landmark Decision in *Dynamex*

On April 30, 2018, the California Supreme Court issued its groundbreaking decision in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903. There, the Supreme Court upended decades of settled law in California by adopting a new legal standard for determining whether workers are employees or independent contractors. Specifically, the Supreme Court adopted the "ABC Test", requiring companies to satisfy each of three criteria to establish independent contractor status under certain California laws:

(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of his or her work, both contractually and in fact; *and*

(B) that the worker performs work outside the usual course of the hiring entity's business; *and*

(C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Prior to *Dynamex*, independent contractor status was determined by a multi-factor test derived from a 1989 case entitled *S.G. Borello & Sons Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341. The *Borello* Test called for an analysis of several factors, no one factor being determinative of independent contractor status.

In *Dynamex*, the Supreme Court rejected the *Borello* Test, holding that businesses were subject to the ABC Test for "wage order" claims (i.e., claims that arise from the California wage orders promulgated by the Industrial Welfare Commission). The decision predictably sent shockwaves throughout the business community, especially as it left open a host of questions, chief among them being whether businesses would be subject to the ABC Test for *non*-wage order claims as well. As Locke Lord Partner Richard Reibstein rightly noted, "*Dynamex* instantly turned tens of thousands of businesses in scores of industries that were operated for years in compliance with settled law into companies that, overnight, might be operating outside of the law." [See How to Operate in California with Independent Contractors After AB5 Bill Is Signed.]

AB5 Codifies and Further Clarifies the Reach of *Dynamex*

After several months of intense negotiations (and lobbying), and multiple rounds of revisions, the passage of AB5 now has codified the Supreme Court's *Dynamex* decision. Not only does AB5 enshrine *Dynamex*, it provides that *Dynamex* is applicable to both wage order claims *and* non-wage order claims, including claims under the unemployment and disability benefits laws in California. That means workers classified as employees under *Dynamex* may also be entitled to other employment benefits, such as paid sick days and claims for business expense reimbursements.

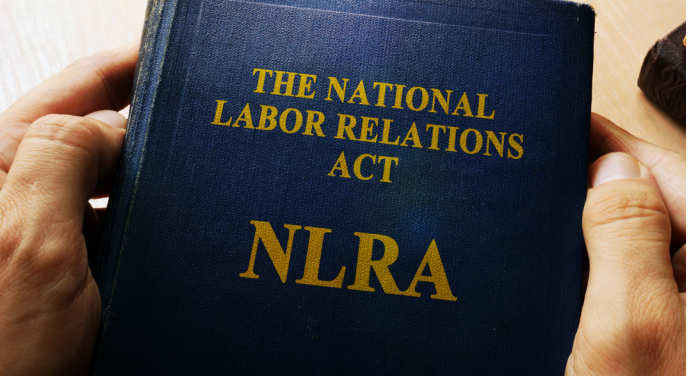
However, AB5 did not survive the lobbying process unscathed, as over 50 industries and types of businesses are exempt from AB5, including:

- licensed insurance agents;
- certain licensed healthcare professionals (e.g., physicians, surgeons, dentists, podiatrists, psychologists);
- other licensed professionals (e.g., lawyers, architects, engineers, and accountants);
- broker dealers, investment advisers, direct salespersons, private investigators, and commercial fisherman;
- certain professional service providers that meet all of six specific requirements in the following occupations: marketing contractors, human resources administrators, travel agents, graphic designers, grant writers, fine artists, enrolled tax agents, payment processing agents, still photographers, photojournalists, freelance writers, publication editors, and newspaper cartoonists;
- licensed real estate salespersons, repossession agents, estheticians, electrologists, manicurist, barbers and cosmetologists;
- business-to-business contractors that meet all of 12 specific requirements;
- selected construction subcontractors and motor club service providers;
- referral agencies connecting clients with service providers that met all of 10 specific requirements in the following industries: graphic design, photography, tutoring, event planning, minor home repair, moving, home cleaning errands, furniture assembly, animal services, dog walking, dog grooming, web design, picture hanging, pool cleaning, and yard cleanup.

Notably absent from the excepted list are drivers and couriers who work for ride-sharing applications such as Uber and Lyft. Critically, it is important to note that the exemption of a business from AB5 does not automatically establish that workers in that industry are classified properly. For those businesses, independent contractor status still must be established by satisfying the multi-factor *Borello* Test.

Navigating the Classification Issue After Passage of AB5

While the passage of AB5 means more companies will be subject to the stringent ABC Test for both wage order and non-wage order claims starting January 1, 2020, it also clarifies the scope of *Dynamex*. So it provides companies with the opportunity to rethink, reconfigure, and implement new policies and practices to reduce the likelihood of costly litigation. That is not to suggest AB5 is without ambiguity; how the courts actually apply it is evolving and presents its own set of challenges. However, AB5, if nothing else, reasserts California's pursuit of protecting employees in California. By planning ahead, companies can get a clearer picture of the risks to which their business model may expose them and adjust their approaches to worker classification to avoid problems down the road.



Worker Misclassification Is Not a *Per Se* NLRA Violation

by Rufino Gaytán III

In *Velox Express, Inc.*, 368 NLRB No. 61 (2019), the National Labor Relations Board ruled that misclassifying an employee as an independent contractor, standing alone, does not constitute a violation of the National Labor Relations Act.

The NLRA protects the rights of "employees," which it generally defines as individuals performing work for employers engaged in interstate commerce. It does not, however, cover independent contractors, supervisors, managers, and certain other workers.

In *Velox*, an employee argued that misclassification of workers as contractors, not employees, *per se* violated Section 8(a)(1) of the NLRA. That section makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed [by the NLRA]." The employee contended that misclassification "inherently coerces employees in the exercise of their [NLRA-protected] rights and does so regardless of the employer's intent."

The Board agreed that an illegal motive was not necessary to find a violation of the NLRA. It disagreed, however, that misclassifying an employee as an independent contractor, without more, constituted a violation. The Board decided that "[a]n employer's mere communication to its workers that they are classified as independent contractors does not expressly invoke the [NLRA]." It reasoned that such a communication does not prohibit employees from engaging in protected concerted activities, nor does it promise any benefit to individuals who refrain from exercising their NLRA rights.

The Board added that an employer's decision to classify a worker as an independent contractor represents a legal view of the person's status. The NLRA protects the expression of "any views, argument, or opinion, . . . if such expression contains no threat of reprisal or force or promise of benefit," it declared. The Board thus concluded that the NLRA protects an employer's expression of its classification of an employee, even if its opinion later is proven wrong.

The *Velox* decision gives employers comfort in knowing that misclassifying employees as independent contractors will not necessarily establish NLRA liability. Independent contractor issues are heavily litigated and are at the forefront of public policy battles. For example, California recently passed Assembly Bill 5, which further cemented the shifting landscape for employers in that state. As such, there are myriad reasons for employers to review the manner in which their workers are classified in order to avoid potential issues.

Arbitration Agreements May Violate the NLRA Absent Carve-outs

by Rufino Gaytán III

In *Prime Healthcare Paradise Valley LLC*, 368 NLRB No. 10 (2019), the National Labor Relations Board ruled that an arbitration agreement that did not explicitly limit an employee's ability to file charges with the Board nonetheless violated the National Labor Relations Act (the NLRA). The arbitration agreement at issue in *Prime Healthcare* stated:

> Except as otherwise provided in this Agreement, the Company and the Employee hereby consent to the resolution by binding arbitration of all claims or controversies for which a federal or state court would be authorized to grant relief, whether or not arising out of, relating to or associated with the Employee's employment with the Company.

In addition to specifying that the parties' agreement covered wage and hour, breach of contract, and discrimination and harassment claims under various federal and state laws, the agreement also applied to "claims for violation of any federal, state or other governmental constitution, statute, ordinance, regulation, or public policy[.]" The agreement carved out certain claims, including assertions for worker's compensation and unemployment compensation benefits, but it did not specifically reference claims under the NLRA.

The Board reviewed the agreement pursuant to the standard set in *Boeing Co.*, 365 NLRB No. 154 (2017), under which the Board first determines whether an employment policy could potentially interfere with an employee's NLRA rights, and if so, whether the employer's justification for the policy outweighs any potential interference with the employee's NLRA rights. In *Boeing*, the Board created three categories of policies: (1) those that are always lawful because, when reasonably interpreted, they do not interfere with NLRA rights or because any adverse impact on NLRA rights is outweighed by the employer's need for the

policy; (2) policies that require individualized review to determine their legality; and (3) policies that are always unlawful because they interfere with an employee's NLRA rights in a manner not justified by the employer's interest in the policy.

Under this analysis and despite the fact the agreement did "not explicitly prohibit charge filing (or the exercise of other [NLRA] rights)," the Board ruled that the Prime Healthcare agreement fell into category 3 and violated the NLRA. The Board arrived at this conclusion by reviewing the plain terms of the agreement, which (1) required the arbitration of "all claims or controversies for which a federal or state court would be authorized to grant relief[;]" (2) applied to claims under any federal statute; and (3) did not create an exception for claims under the NLRA. As such, the agreement "ma[d]e arbitration the *exclusive* forum for the resolution of all claims, including federal statutory claims under the [NLRA]."

Although the employer did not offer a justification for the agreement's interference with NLRA rights, the Board ruled that, "as a matter of law, there is not and cannot be a legitimate justification for provisions, in an arbitration agreement or otherwise, that restrict employees' access to the Board or its processes." According to the Board, a ruling to the contrary would undermine the entire purpose of, and policy behind, the NLRA, which empowers the Board to file complaints against parties engaged in unfair labor practices.

In light of this ruling, employers review their current arbitration agreements for compliance with the *Prime Healthcare* decision.

NLRB Approves Mandatory Arbitration Agreement Rollout During Pending Litigation

by Samantha Vasques

Last May, in *Epic Systems Corp. v. Lewis*, 584 U.S. __, 138 S.Ct. 1612 (2018), the United States Supreme Court held that employee agreements waiving workers' rights to class and collective actions, and requiring individualized arbitration to resolve employment disputes, did not violate the National Labor Relations Act. This summer, the National Labor Relations Board issued its first major decision post-*Epic Systems*. In *Cordúa Restaurants, Inc.*, 368 NLRB No. 43 (2019), an employer required its employees to sign an arbitration agreement that waived the right to file or participate in class and collective actions. Seven workers filed a collective action lawsuit claiming their employer violated state and federal wage laws, and at least one of the workers discussed the lawsuit and wage issues more generally with his coworkers. After other employees opted into the lawsuit, the employer updated its arbitration policy to require employees to agree not to opt in to collective actions. Many employees signed the new updated agreement. One of the employer's management staff then advised two holdout workers that he wouldn't "bite the hand that feeds me" and that he would "go ahead and sign it." These statements arguably implied consequences for the employees' failure to sign.

The Board concluded that under *Epic Systems*, the employer was free to have a policy requiring employees to agree to arbitration with collective action waivers, which was not surprising: *Epic Systems* blessed a similar policy. In addition, the Board concluded that, under *Epic Systems*, the employer was free to condition employment on signing such an agreement while a collective action was pending—and management was likewise free to advise workers, however colorfully, of the consequences of failing to sign. What the employer was not free to do, however, was fire a worker from engaging in protected activity, namely discussing wage issues with his coworkers and ultimately filing suit alleging violations of wage laws.

While *Epic Systems* offered employers a green light to institute mandatory arbitration agreements with class and collective action waivers, *Cordúa* takes that case one step further by allowing employers to roll those agreements out while a class or collective action against them is pending. At the same time, *Cordúa* confirms the Board's longstanding precedent of prohibiting adverse action against employees engaged in protected activity—including protected activity related to collective action—still exists. Employers should review their arbitration policies and practices in light of *Cordúa*.

Many States and Municipalities Now "Ban the Box"

by Jennifer McCoy

Over the last several years, the "ban the box" movement has gained an impressive amount of momentum and support from lawmakers and activists across the nation. With an aim to provide job applicants a chance to obtain employment without the stigma of a conviction or arrest, "ban the box" laws require employers to consider an applicant's qualifications before inquiring into or considering their criminal record. While employers may still consider an applicant's criminal record, they generally must wait until after the applicant's initial interview or until they extend a conditional job offer, depending on the laws of the particular jurisdiction.

At this time, 35 states and over 150 municipalities have "banned the box" for public employers, while 32 municipalities have extended their policies to government contractors. Perhaps most notably, the following 13 states have "banned the box" for private employers:

- California
- Colorado
- Connecticut
- Hawaii
- Illinois
- Massachusetts
- Minnesota
- New Jersey
- New Mexico
- Oregon
- Rhode Island
- Vermont
- Washington

18 municipalities have followed suit.

In addition to delaying any inquiry into an applicant's criminal history, several jurisdictions have incorporated the EEOC's guidance on the use of arrest and conviction records in employment decisions, which generally advises employers to make individualized assessments of potential employees. In other words, such jurisdictions require employers to consider the time elapsed since commission of the criminal offense and its relevance to the job when making hiring decisions.

The EEOC's role in enforcing its own guidance, however, may be limited. The United States Court of Appeals for the Fifth Circuit recently barred the EEOC from enforcing its guidance in connection with a Texas state hiring policy. See *Texas v. EEOC*, 933 F.3d 433 (5th Cir. 2019). That policy bars some felons from holding certain state jobs. In *Texas v. EEOC*, the Fifth Circuit ruled that the EEOC stepped outside its statutory authority by issuing arrest and conviction records guidance that amounted to a "substantive rule." At the same time, the court dismissed Texas's request for a judgment declaring it has the right to bar felons from holding certain state jobs.

Although the EEOC's guidance on the use of arrest and conviction records is not binding, employers should still review their hiring policies and practices in jurisdictions with "ban the box" laws.

CA Proposes Changes to CFRA, NPLA and Regulations

by Jordon R. Ferguson

On September 6, 2019, the California Fair Employment and Housing Council of the Department of Fair Employment and Housing proposed amendments to regulations regarding criminal history, the California Family Rights Act (CFRA), and the New Parent Leave Act (NPLA).

Employers may recall that AB 1008 and SB 63 (2017-2018 Reg. Sess.) added new sections to the Fair Employment and Housing Act that respectively "banned the box" by prohibiting employers from seeking criminal history information until a conditional offer of employment is made and enacted the New Parent Leave Act to expand parental leave rights for employers of 20-49 employees. The proposed regulations describe how those two laws operate and fit into the broader context of the FEHA. Specifically, the proposed amendments: (1) articulate the parameters of AB 1008 in the context of existing regulations regarding the consideration of criminal background histories in employment decisions; (2) distinguish between ban-the-box and the adverse impact theory of liability; (3) clarify ambiguities in AB 1008, particularly how to calculate "five business days"; (4) integrate SB 63 into existing regulations regarding the CFRA; and (5) identify differences between the CFRA and NPLA. A full copy of the proposed amendments can be found here.

Notably, because employers performing criminal history investigations may also obtain consumer reports such as background checks, employers should verify that their materials, policies, and practices all comply with the federal Fair Credit Reporting Act and the California Investigative Consumer Reporting Agencies Act. **Practice Tip:** The FCRA has an updated Summary of Rights that can be downloaded here.

On October 23, 2019, the Council will hold a public hearing regarding the proposed amendments. By that date, all written comments regarding the proposed amendments must be submitted to the Council for consideration.

Employers should review their employment applications and leave policies to ensure compliance with these anticipated amendments to the California Code of Regulations.

Paid Family and Medical Leave for MA Employers

by Douglas R. Sweeney

October 1, 2019 triggered Massachusetts employers' obligations to make deductions from wages and payments under the new Massachusetts Paid Family and Medical Leave law (MAPFML).

Signed into law by Governor Baker in June 2018, the MAPFML provides eligible employees with a maximum benefit of $850 per week for job-protected family or medical leave. Although MAPFML benefits do not begin until 2021, several key employer deadlines already have passed and more are on the horizon. In addition to the October 1, 2019, deduction deadline, starting September 30, 2019, the MAPFML required all employers to notify their employees about both the benefits of MAPFML and the contribution rates. Employers are obligated to display a workplace poster (available on the Department of Family and Medical Leave's website here) and provide written notice to each employee.

Employers' next deadline is January 31, 2020, when contributions for the fourth quarter of 2019 (i.e., October 1, 2019, to December 31, 2019) are due. Employers' contributions are submitted through the Department of Revenue's MassTaxConnect system. The Massachusetts Department of Family and Medical Leave is expected soon to announce reporting and documentation guidelines to commence in January, 2020.

MAPFML benefits are funded by a payroll tax of 0.75%, to be adjusted annually, split between certain employers and all employees. All employers must comply with the MAPFML. Those with fewer than 25 employees are not required to pay the employer portion, though they still need to deduct the tax from employees' wages and comply with certain reporting requirements. The MAPFML does not apply to temporary employees.

The MAPFML calls for employers with 25 or more employees to pay a minimum of 60% of the medical leave component of MAPFML benefits while being permitted to deduct the remaining 40% from employees' earnings. Those same employers, may deduct the entire amount of the family leave contributions from employees' earnings. Smaller employers may deduct 100% of both the medical and family leave contributions from employees' earnings.

MAPFML benefits for employees do not start until 2021. Beginning January 1, 2021, and for each eligible year thereafter, employees will be entitled to 12 weeks of paid family leave for the birth, adoption, or foster care placement of a child; 20 weeks of paid medical leave if the employee has a serious health condition that leaves him or her unable to work; and 26 weeks of paid family leave to care for a family member coping with a serious health condition relating to military service. In addition, beginning July 1, 2021, employees will receive 12 weeks of paid family leave to care for any family member with a serious medical condition. Employees may take a maximum 26 weeks of paid family and medical in each benefit year.

Keeping abreast of this new Massachusetts employment law is critical for employers; those that fail may be liable for up to 0.75% of their entire payroll. Employers should review their leave policies to ensure compliance with the MAPFML.

NY Employers: A Stormy Winter Approaches

by David Marshall

While vacations and barbecues were the order of business for many this summer, New York's lawmakers were busy at work serving up a broad, new set of legal protections for employees and applicants in the State of New York. Effective dates for these new workplace rights vary, with some having taken effect immediately in July 2019, some going into effect in October 2019, and the remaining becoming effective in February 2020. The cumulative result of this summer spurt of legislative activity is that, by the first quarter of 2020, New York employers will be subject to a dozen new rules and standards. A synopsis of the changes is as follows:

1. The New York State Human Rights Law (HRL) now applies to all employers in the State of New York, regardless of size.

2. The HRL's protections against harassment extend beyond sexual harassment to protect employees from harassment based on any of the many statutorily-protected classes or acts specified in the law.
3. The definition of prohibited harassment reaches beyond conduct that is severe or pervasive to include any "inferior terms, conditions or privileges of employment." A plaintiff now may not need to identify a comparator to show he or she was subjected to inferior terms of employment.
4. There may no longer be a defense to a harassment claim based on the employee's failure to notify the employer of the harassment or to invoke the employer's or a governmental agency's complaint procedures (i.e., there is no *Ellerth/Faragher* defense). Instead, employers may now assert an affirmative defense by showing that the alleged harassment "does not rise above the level of what a reasonable victim of discrimination … would consider petty slights or trivial inconveniences."
5. Unlawful race discrimination under the HRL now may be found in conduct or policies that discriminate based on "traits historically associated with race, including but not limited to, hair texture and protective hairstyles… such as braids, locks, and twists."
6. Unlawful discrimination under the HRL also may be found in an employer's requirement that an employee violate or forego a sincerely held practice of his or her religion relating to "wearing of any attire, clothing or facial hair in accordance with the requirements of his or her religion," unless a reasonable accommodation of the practice will cause undue hardship to the conduct of the employer's business.
7. The HRL's prohibition against the discriminatory practices defined in the statute also now protects non-employees in the employer's workplace (including contractors, subcontractors, vendors, consultants or any "other person providing services pursuant to a contract in the workplace"), when the employer, its agents or its supervisors "knew or should have known that such non-employee was subjected to an unlawful discriminatory practice in the employer's workplace, and the employer failed to take immediate and appropriate corrective action."
8. A private employer found liable for violating the HRL will be subject to injunctive relief and compensatory damages, including punitive damages and attorneys' fees.
9. A claim under New York's Pay Equity Law is available, not only to employees who claim a gender-based pay disparity, but also to an employee who is a member of any class or category protected under the HRL. A claimant can maintain a pay equity claim by showing a pay disparity between his or her job and a "substantially similar" job held by an employee outside the claimant's protected class, unless the employer can prove it is entitled to one of the statutory defenses, such as training, education, experience, or any other factor deemed *bona fide* under the law.
10. An employer cannot inquire about an applicant's or employee's previous wage or salary history or rely upon such information in determining whether to interview an applicant, make an offer employment, or determine a rate of pay.
11. An employer cannot include non-disclosure and confidentiality clauses in settlement agreements settling any type of discrimination or sexual harassment claim, unless the employer satisfies the specific pre-conditions set forth in the New York General Obligations Law.
12. Confidentiality and non-disclosure clauses are void unless it is clear they do not prohibit complaints to, or participation in investigations by, government agencies and that they permit disclosure of any facts necessary to obtain unemployment, Medicaid, or other public benefits.

Before winter comes, every employer in New York should review their policies and practices to ensure compliance with the changing employment law landscape in New York.

IL Passes Workplace Transparency Act

by Kevin D. Kelly

The Illinois Workplace Transparency Act (the Act), which passed the Illinois legislature in May and is effective January 1, 2020, amends the Illinois Human Rights Act in numerous ways with the goal of strengthening employee protections against workplace harassment. The Act includes, among other things, the following key features:

- It limits the ability of employers to require employees to keep the circumstances of any workplace harassment issue confidential as part of a settlement or separation agreement. Although the Act does not interfere with the ability of employers to require confidentiality with respect to the amount of a settlement (or the amount of a severance package to a terminated employee), the

Act prohibits confidentiality of the facts surrounding workplace harassment allegations except where the employee has agreed to such confidentiality after being provided 21 days to consider it and seven days to revoke the agreement.

- The Act prohibits any employment contracts or policies that restrain employees from reporting unlawful conduct (such as workplace harassment) to federal, state, or local officials.
- It requires all employers in the state to conduct annual harassment training for all employees. The training must meet specific requirements promulgated by the Illinois Department of Human Rights. Those requirements are expected to be issued late this year.
- The Act expands the coverage of the Illinois Human Rights Act to all employers in the state with one or more employees. Previously, most aspects of the Human Rights Act applied only to employers with 15 or more employees.
- The new Act expands the protections of the Illinois Human Rights Act to independent contractors. An independent contractor who experiences harassment while performing work now can bring a harassment claim against the entity that contracted with him or her.
- The Act limits the ability of employers to insist upon arbitration of harassment claims, except where the employee's agreement to arbitrate meets certain specific criteria set forth in the Act. Notably, the Act does not impact arbitration under a collective bargaining agreement. Employers should note that the Act's restrictions on arbitration may be preempted by the Federal Arbitration Act, which prohibits states from enforcing laws that treat arbitration agreements differently than other contracts.

Workplace Impact of Recreational Marijuana in IL

by Kevin D. Kelly

In the recently-passed Cannabis Regulation and Tax Act, Illinois legalized recreational marijuana effective January 1, 2020. The legalization of recreational marijuana will have a significant impact on workplace drug policies in Illinois. Marijuana is a drug that remains in a person's system for an extended period of time after use, which means that while a workplace drug test can determine if someone has used marijuana sometime in the recent past, the test cannot determine if the person was actually under the influence of marijuana or impaired by marijuana at work. Previously, employers in Illinois could test employees for marijuana and terminate an employee for a positive test as part of a zero-tolerance drug policy regardless of whether or not the employee was ever actually impaired at work. The new law changes this. Now, because marijuana will be considered a lawful product under the Illinois Right to Privacy in the Workplace Act, employers will not be allowed to take disciplinary action against employees who use marijuana off-duty and outside of the work premises. Furthermore, the Act specifies that employers can only take action against an employee who is impaired by marijuana at work. In practical terms, this means that, with the exception of testing that is required by some other federal or state law, employers will only be able to conduct marijuana testing where an employee appears to be under the influence at work, such as when the employee's behavior suggests impairment Although the Act does not expressly restrict pre-employment marijuana testing or random marijuana testing, employers will no longer be able to use the results of such tests against an employee or applicant because the tests will not be tied to any evidence of actual impairment.

IL Bans Salary History Inquiries

by Kevin D. Kelly

Following in the footsteps of numerous other states and localities, the Illinois legislature has amended the Illinois Equal Pay Act, effective September 29, 2019, to prohibit employers from inquiring about the wage or salary history of applicants for employment. The new law means that employers will not be able to seek wage or salary history from an applicant directly or from the applicant's former employers. Employers can, however, ask an applicant about the salary he or she desires and can inform an applicant about the salary range for the position. If an applicant discloses his or her salary history without prompting, an employer cannot rely on that information in making a hiring decision or in setting the applicant's salary upon hire. The Equal Pay Act amendments also make clear that employers cannot in any way restrain employees from discussing their wages amongst themselves. In light of this, employers will need to consider whether they need to make adjustments to their handbook policies or confidentiality agreements to ensure that confidentiality requirements cannot be interpreted as a restraint on employee wage disclosure.

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[Locke Lord QuickStudy: City of Dallas Provides Guidance on Paid Sick Time Ordinance Set to Take Effect August 1]

[Locke Lord QuickStudy: Massachusetts Paid Family and Medical Leave ("MAPFML") Overview]

[Locke Lord QuickStudy: New York Discrimination and Sexual Harassment Law Update: Another Round of New Laws Makes the State Most Progressive in the Nation]

[Locke Lord QuickStudy: Final Overtime Rules Issued]

[Locke Lord QuickStudy: Supreme Court Denies Review of ADA Website Accessibility Lawsuit, Highlighting Litigation Risks to Website and App Operators]

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Thursday, October 24, 2019 // 7:30 – 9:30 am CT

Join Locke Lord's Labor and Employment team in our Chicago office for a complimentary breakfast briefing to learn more about current legal issues facing employers.

Click HERE to Register

Part 2: Mixed Impact of Gender Pay Reporting
Tuesday 5 November // 1:30 to 2:00 pm GMT

Topics to be discussed include the mixed impact of gender pay reporting, the likely future introduction of pay reporting on the grounds of ethnicity and what can be done about the continuing disparities based on socio-economic background.

Click HERE to Register

Part 3: Latest Proposals on Reform of Discrimination Legislation
Tuesday 26 November // 1:30 to 2:00 pm GMT

This webinar will explore the flaws in the current system and the latest proposals on reform of discrimination legislation from Parliament's Women & Equalities Committee, as well as the proposals on maternity returners from the Equalities and Human Rights Commission.

Click HERE to Register

CONTACT US

For further information on any of the subjects covered in our WORKFORCE WATCH newsletter, please contact any member of our Labor & Employment team.

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