4 KEY TAKEAWAYS

Employment Law Update: What You Need to Know Now and Next

Kilpatrick's Brodie Erwin and Sarah Spangenburg recently presented an **"Employment Law Update: What You Need to Know Now and Next"** at the firm's annual **In-House Counsel Summit** in Raleigh. Mr. Erwin and Ms. Spangenburg explored recent significant legal developments impacting the relationship employers have with their employees, coupled with best practices for navigating these changes. Plus, a look forward at several issues that employers can proactively prepare for now.

Four key takeaways from their presentation include:

1

Remember the Intersection Between Disability and Leave Laws. The intersection between disability and leave laws poses a complex analysis employers must navigate. Employers faced with employees requesting leave or disability accommodation have long considered the Americans with Disabilities Act, the Family Medical Leave Act, state disability statutes, and state workers' compensation laws. With the passage of the Pregnant Workers Fairness Act in June 2023, an additional law has now been added to the mix. The PWFA protects employees and applicants of covered employers who have known limitations related to pregnancy, childbirth, and related medical conditions and gives applicable pregnant workers the right to reasonable accommodations, similar to the ADA, which can include periods of unpaid leave that extend past the expiration of FMLA or state law medical leave entitlement. Employers should review the various disability and leave laws that they must consider when an employee presents with a medical or other leave issue. When employees need time off because of a medical or disability-related issue, it is important to remember that they may have rights under all the above-mentioned laws, and others, at the same time.

2

Ensure Compliance With New Salary Thresholds for FLSA Exemption. In April 2024, the Department of Labor issued a final rule raising the salary thresholds for the executive, administrative, and professional exemptions under the Fair Labor Standards Act ("FLSA"). The previous salary threshold was $684.00/week (equivalent to $35,568.00/year). The first salary threshold increase was implemented July 1, 2024, to $844.00/week (equivalent to $43,888.00/year). The next salary threshold increase occurs on January 1, 2025, to $1,128.00/week (equivalent to $58,656.00/year). After January 2025, the salary threshold remains in place until July 1, 2027. The salary threshold increase in July 2027 is not enumerated in the rule but is identified as the calculation of the 35th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage Census Region. Thereafter, the salary threshold is calculated every three years according to this methodology. It is likely that employees previously classified as exempt are now non-exempt under these new salary thresholds. Employers should strategize for how to treat previously exempt employees who are not above the new threshold going forward and implement business logistics in response to any increase in non-exempt employees, including new training programs for employees and managers on timekeeping and company timekeeping policies and procedures.

3

Draft Restrictive Covenants for Success. In April 2024, the Federal Trade Commission voted to ban non-compete agreements nationwide. Subsequent litigation stayed the ban and the FTC's rule failed to take effect on September 4, 2024, as planned. However, employers are not out of the woods. Drafting valid and enforceable non-competes and other restrictive covenants has only gotten more difficult in the wake of the growing national opinion disfavoring their use. The FTC's rule will not be the last attempt by state and federal governments to curtail the use of such restrictions. Employers should start looking now at whether other restrictive covenants, like narrowly tailored customer and employee non-solicitation provisions, can be employed effectively in lieu of traditional non-competes. As with all restrictive covenants, employers should remember to not get greedy when drafting their agreements. Employers should identify their legitimate business interests, like the protection of trade secret and confidential information, and create a short-term restriction that is no more expansive than necessary to accomplish that well-defined goal.

4

Recent SCOTUS Case Expands Employees' Protections Under Title VII. In April 2024, SCOTUS issued a ruling in *Muldrow v. St. Louis*, resolving a circuit split and holding Title VII of the Civil Rights Act of 1964 ("Title VII") which prohibits discriminatory job transfers where the transfers cause some harm, regardless of whether that harm is considered significant or serious, with respect to an identifiable term or condition of employment. From 2008 to 2017, Sergeant Muldrow served as a female sergeant in the St. Louis Police Department's specialized Intelligence Division. In 2017, a new male commander transferred Sergeant Muldrow to a different unit and replaced her with a male officer. As a result of this transfer, and in contrast to her previous position, Sergeant Muldrow performed administrative duties and patrol work, lost her FBI credentials and take-home vehicle, and was required to work a rotating schedule that included working weekends. Employers should be aware of this new standard for discrimination claims brought under Title VII and arising out of job transfers.

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