2024 Employment Law Update

DAVIS & CAMPBELL L.L.C.

AAIM

Today's Agenda

- Introductions
- Pregnant Workers Fairness Act
- PUMP Act
- EEOC's Guidance on Harassment in the Workplace
- New Compensation Thresholds
- Immigration Update
- NLRB Updates
- FTC Non-Compete Ban

Today's Agenda

- Paid Time Off for Voting
- Risks & Benefits of DEI
- Corporate Transparency Act
- Florida Law Update
- Indiana Law Update
- Illinois Laws
- Open Q&A

Pregnant Workers Fairness Act

Julie A. Noel

Davis & Campbell L.L.C.

Overview

- The Pregnant Workers Fairness Act ("PWFA") requires a reasonable accommodation to a **known limitation** related to, affected by, or arising out of **pregnancy, childbirth, or related medical conditions**, unless the accommodation will cause an undue hardship.

- PWFA requires accommodations that may include a **temporary suspension of one or more essential job functions,** barring undue hardship.

Background

- The Pregnant Workers Fairness Act ("PWFA") went into effect June 27, 2023.
- **Who is a Covered Employer?**
  - The PWFA applies to private employers and public sector employers (state and local governments) with 15 or more employees.
- **What leads to trouble?**
  - Failure to make reasonable accommodation(s)
  - Skipping the interactive process or requiring the wrong documentation
  - Requiring employee to take leave (paid or unpaid) if another accommodation is available
  - Taking an adverse action against employee for requesting or using reasonable accommodation under PWFA.

Pregnancy, Childbirth, and Related Conditions

Pregnancy and Childbirth

- Current pregnancy
- Past pregnancy
- "Potential" or "intended" pregnancy (including fertility and use of contraception)
- Labor
- Childbirth

Related Medical Conditions

- Miscarriage, stillbirth, etc.
- Postpartum depression, anxiety, etc.
- Vision changes, dehydration, migraines
- High blood pressure
- Menstruation
- Lactation (including mastitis and common infections)
- "Other conditions"

Pregnancy, Childbirth, and Related Conditions

- **Menstruation:** Are monthly periods actually covered?

COMMENTS AND RESPONSE TO COMMENTS REGARDING COVERAGE OF SPECIFIC CONDITIONS—MENSTRUATION

A number of comments argued for or against the inclusion of menstruation in the list of "related medical conditions." While the limited number of Federal courts that have addressed the issue of whether menstruation falls within the Title VII definition of "related medical conditions" have not always held that it does, read together, the majority of these cases illustrate that, at a minimum, menstruation is covered under Title VII when it has a nexus to a current or prior pregnancy or childbirth. Accordingly, as with many conditions that can be "related medical conditions," this determination will be made on a case-by-case basis.[40]

Requesting Accommodations

- Employees are responsible for communicating limitations and their need for an adjustment or change at work.
- “Known limitation” = communicated to employer.
- Plain language request is sufficient.
- Interactive process takes center stage.
- No unreasonable delays.

Documentation

- Employers cannot use their ADA paperwork asking for diagnosis of serious health condition.
- Employer is limited to requiring reasonable documentation (the “minimum that is sufficient through a simple statement”).
- Medical documentation from a “health care provider” is acceptable.

Confirm

- Confirm the limitation

Confirm

- Confirm that the limitation is related to pregnancy, childbirth, or a related condition

Describe

- Describe the needed accommodation(s) or possible accommodation(s)

Documentation

- Documentation can only be requested when it is reasonable under the circumstances for the employer to determine whether the employee has a condition related to pregnancy.
- Documentation cannot be requested when the condition or limitation is obvious, and the employee provides self-confirmation.
- Examples where documentation **cannot** be requested:
  - Employee asks for larger uniforms;
  - Pumping at work or nursing during working hours;
  - Additional snacks;
  - If documentation would not be requested for a non-pregnant worker; or
  - Any of the regulation's "predictable assessments" which *per se* do not pose an undue hardship

What is reasonable?

- Regulations provide four accommodations that are presumed reasonable when requested by a pregnant employee (referred to as “predictable assessments”), which *per se* do not constitute an undue hardship:
  - Allowing employee to carry water and drink in their work area;
  - Additional restroom breaks;
  - Allowing an employee whose work requires standing to sit and whose work requires sitting to stand; and
  - Breaks “as needed” to eat and drink.

What is reasonable?

- If an employee cannot perform the essential functions of the job with or without a reasonable accommodation, an employee can be qualified for a reasonable accommodation under the PWFA so long as:
  - The inability is "temporary;"
  - The employee can perform the functions "in the near future;" and
    - Pregnancy – Proposed rule defined this as 40 weeks (length of pregnancy), final rule states "case by case basis."
    - Conditions after childbirth – A period greater than 6 months may be "in the near future" when it is not indefinite.
  - The inability to perform the essential functions can be reasonably accommodated.

Undue Hardship

- An employer may lawfully deny any requested accommodation that would impose significant difficulty or expense on its operations, as defined under the ADA.
- **ADA Undue Hardship Definition:** An action requiring significant difficulty or expense when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation.

Litigation

- Already several cases alleging violation of PWFA (although none in Seventh Circuit, yet).
- *Louisiana v. Equal Emp. Opportunity Comm'n*, 705 F. Supp. 3d 643, 650 (W.D. La. 2024)
  - The U.S. District Court for the Western District of Louisiana issued a preliminary injunction blocking enforcement of the EEOC's final rule interpreting the PWFA to require abortion-related accommodations.
  - Applies only to employers in Louisiana and Mississippi.

Practical Advice

- **Our employee requested telework as a reasonable accommodation. Is this required under PWFA?**
  - Is it feasible?
  - Morning sickness?
  - Nursing child multiple times per day?
  - Potential Hurdles:
    - Commute to Work – Perhaps no longer a slam dunk argument. *See Equal Emp. Opportunity Comm'n v. Charter Commc'ns, LLC, 75 F.4th 729, 740 (7th Cir. 2023).*

PUMP Act

Julie A. Noel

Davis & Campbell L.L.C.

PUMP Act

- Largely mirrors existing Illinois Nursing Mothers in the Workplace Act.
- Amends FLSA to provide employees with the right to take reasonable break time to express breast milk for their nursing child.
- Eligible up to **one year after birth** of child.
- Reasonable break time available “each time such employee has the need to express milk.”
- Employees are entitled to a **private space** other than a bathroom.
- Employers with fewer than 50 employees are not subject to the FLSA break time and space requirements if compliance with the provision would impose an undue hardship.

Practical Advice

- Sample Employee Handbook Language:

  "It is the Company's policy to comply with the all federal, state, and local laws regarding lactation breaks in the workplace. Eligible employees will be provided reasonable break periods to express breast milk each time the need arises during their scheduled shift for up to one (1) year after their child's birth. Nursing break times must run concurrently with rest break times already provided, and additional break times may be requested as needed. Nursing break times that do not run concurrently with rest break times already provided will be unpaid for non-exempt hourly employees. As such, non-exempt hourly employees will be relieved from all work duties during unpaid nursing break time. The Company will provide a private location other than a restroom for the purposes of expressing breast milk, to the extent required by applicable law. For more information regarding pregnancy rights in the workplace, see **Appendix A**."

Thank You!

Julie A. Noel

DAVIS & CAMPBELL L.L.C.

(309) 673-1681

janoel@dcamplaw.com

EEOC Guidance on Harassment in the Workplace

Abby J. Clark

Davis & Campbell L.L.C.

EEOC Guidance on Harassment in the Workplace

- First update in 25 years
- Replaces five prior guidance documents
- Incorporates *Bostock v. Clayton County* decision regarding sexual orientation and gender identity
- Additional materials
  - Summary of Key Provisions (https://www.eeoc.gov/summary-key-provisions-eeoc-enforcement-guidance-harassment-workplace)
  - Questions and Answers for Employees: Harassment at Work (https://www.eeoc.gov/questions-and-answers-employees-harassment-work)
  - Small Business Fact Sheet: Harassment in the Workplace (https://www.eeoc.gov/small-business-fact-sheet-harassment-workplace)

EEOC Guidance on Harassment in the Workplace

- Three-Part Structure
  - Was the harassing conduct based on the individual's **legally protected characteristic** under the federal EEO statutes?
  - Did the harassing conduct constitute or result in **discrimination with respect to a term, condition, or privilege of employment**?
  - Is there a basis for holding the employer **liable** for the conduct?

EEOC Guidance on Harassment in the Workplace

- Pregnancy & Pregnancy-Related Medical Conditions
- Misgendering
  - Repeated and intentional use of a name or pronoun inconsistent with the individual's known gender identity
- Outing
  - Disclosure of an individual's sexual orientation or gender identity without permission
- Bathrooms & Sex-Segregated Facilities
- Virtual Work Environments

Thank You!

Abby J. Clark

DAVIS & CAMPBELL L.L.C.

ajclark@dcamplaw.com

New Compensation Thresholds (Federal)

Brittany Miller

Davis & Campbell L.L.C.

Increased Compensation Thresholds

- Final Rule became effective July 1, 2024
  - Proposed Rule was issued in September 2023
    - Resulting in thousands of comments
  - Bottomline:
    - Increases standard salary level
    - Increases highly compensated employee level
    - Sets forth mechanism to increase salary and compensation thresholds

Increase to Standard Salary Level

- Before July 1, 2024
  - Exempt employees had to be paid a salary of $684 per week
- July 1, 2024 - December 31, 2024
  - Exempt employees had to be paid a salary of $844 per week
- January 1, 2025 - June 30, 2027
  - Exempt employees had to be paid a salary of $1,128 per week

Increase to Highly Compensated Employee Levels

- Before July 1, 2024
  - Total annual compensation of $107,432 or more
- July 1, 2024 - December 31, 2024
  - Total annual compensation of $132,964 or more
- January 1, 2025 - June 30, 2027
  - Total annual compensation of $151,164 or more

Increase to Salary/Compensation Levels

- As of July 1, 2027, and every 3 years thereafter
  - Standard salary level will be updated to reflect current earnings data
  - Highly compensated employee level will be updated to reflect current earnings data

NEXT STEPS

- Analyze the salaries of current exempt employees
  - Identify how many employees will be impacted by the standard salary increase
    - For employees that will earn less than the standard salary level do you:
      - Reclassify them as non-exempt
      - Increase salary to meet level
- Review benefits, policies, job descriptions, etc.
- Work with counsel on any issues related to these increases

Thank You!

Brittany Miller

DAVIS & CAMPBELL L.L.C.

Immigration Updates

Maria Cabrales

Davis & Campbell L.L.C.

Overview

- New Developments in Immigration
  - Increase of STEM based NIW filing
  - Second H-1B lottery
  - Immigrant & Employee Rights (IER) investigations
- Effect of Pay Transparency on PERM Process
  - Placing a wage ranges on all ads as of January 1, 2025
- Employment Visa Types
  - Common visas: H-1B, L-1, O-1, and other humanitarian based work authorizations
- New USCIS Guidance on Student Classifications
  - Guidance provides greater clarity on existing policy
  - Eligibility requirements, school transfers, practical training, and on and off campus employment

New Developments in Immigration

- Increase of STEM based NIW filing
  - PERM processing time keeps increasing so employers are turning to other green card categories like NIW.
- Second H-1B lottery
  - USCIS conducted a second lottery in late July and selected an additional 14k registrations
- Immigrant & Employee Rights (IER) investigations
  - Flexing their investigation muscle – going after employers who ask for proof of permission to work, cannot treat foreign national workers differently from U.S. workers. More lawsuits are being filed against employers for mistakes.

Effect and Pay Transparency on PERM Process

- Effective January 1, 2025, the amendment requires all public and private employers in Illinois with 15 or more employees to provide pay scale and benefits information in all open job postings.
- For PERMs, recommendation to post wage range that is above the prevailing wage
- Require to follow state compliance on wage transparency rules, although the DOL may override them but have said they will not
- To determine the wage range for PERM, treat them as if it were a normal non-PERM role

Employment Visa Types
Common visas: H-1B, L-1, TN, O-1, and other humanitarian based work authorizations

- H-1B: Require that individual have at least a bachelor's degree and that degree must be related to the position they hold.
  - Lottery held every year in March, this year there were over 400,000 registrations for only 85,000 H-1B visas
  - H-1B selection rate is low, about 20%-25% selection rate
- L-1
  - Intracompany transfers – for employers with related entities abroad
  - Requires 1 year of continuous employment abroad
  - Can bring managers and employees with "specialized or advanced knowledge"

- TN: For employees holding Mexican or Canadian citizenship.
  - List of occupations available provide by USMCA which include engineers, computer system analysts, economists
  - Do not have a max out, so can extend TN status indefinitely

- O-1: Individual possesses extraordinary ability in the sciences, arts, education, business, or athletics.
  - Initial Period of Stay: 3 years.
  - Can extend indefinitely at 1-year increments.

- Humanitarian based work authorization
  - Most common are: Asylee, DACA, L-2D, and H-4 EAD.
  - Individuals who have EADs do not need sponsorship of a visa or green card.
  - Each EAD has different requirements for extensions. It's important to ensure the expiration date of these EADs are tracked to ensure the individual files for an EAD extension in a timely manner.
  - Some will receive automatic extension and can continue working while the EAD is pending. Other categories like DACA do not have automatic extension for their EAD. This means they will lose work authorization once the EAD expires, if they do not receive the new EAD on time.

New USCIS Guidance on Student Classifications

- Guidance provides greater clarity on existing F-1 policy such as:
- Correcting the period during which students may apply for STEM OPT extensions and explained options available to individuals during the 60-day grace period following completion of OPT.
- Clarified when nonimmigrant students may count credit for online/distance learning classes and their eligibility for post-completion OPT after finishing an associate's, bachelor's, master's or doctoral degree programs.
- Explained transfer options between Student and Exchange Visitor Program-certified schools and education levels.

Recap

- New Developments in Immigration
  - Seek alternative visa options for employees not selected in the H-1B lottery
  - Seek alternative green card options like the NIW for qualified employees
  - Continuously train HR personal on ensuring they ask non-discriminatory questions
- Effect of Pay Transparency on PERM Process
  - Treat PERM salary ranges as if they were any other job posting
  - Have a plan on how wage ranges will be determined and stick to those policies when conducting PERM recruitment
- Common visas
  - Do not discriminate candidates with employment authorization documents
- New USCIS Guidance on Student Classifications
  - Ensure employees holding CPT, OPT, and STEM OPT work authorization and HR and managers are aware of new policy guidelines

Thank You!

Maria D. Cabrales

DAVIS & CAMPBELL L.L.C.

(312) 995-7125

mdcabrales@dcamplaw.com

National Labor Relations Board 2024 Update

Gaetano Urgo

Davis & Campbell L.L.C.

OSHA Walkaround Rule

- Effective May 31, 2024
- OSH Act allows a representative of both an employer and employee to accompany an OSHA inspector during a physical onsite inspection of the employer's worksite.

- Old Rule: limited employee representatives to current employees of the employer.

- New Rule: gives OSHA additional authority to permit third parties, including union representatives, to join OSHA inspectors during onsite walkaround inspections of employer worksites
  - This is true even if your worksite is non-union.

- OSHA inspectors now only need to have "good cause" to believe that employees have authorized a given third-party to be their representative and that the third-party's presence is "reasonably necessary" for on an effective onsite inspection.
  - Essentially, OSHA inspector has all the power in determining who may accompany the employee.

Role of the Third-Party Representative

- May accompany the inspector for the entire inspection and ask clarifying questions.
- Cannot take photos during the inspection unless approved by the employer or under the terms of a collective bargaining agreement.
- Cannot discuss matters unelated to inspection during walkaround.
- May attend the opening and closing conferences.
- Not entitled to be present for private employee interviews unless the employee specifically requests the presence of the Representative.
- May wear pro-Union clothing unless it disrupts the walkaround.

What Can You Do?

- Require third party representative to sign a confidentiality agreement.
- Impose workplace rules/policies on third party representative, in a non-discriminatory manner.
- Seek the end of inspection or removal of third-party representative if it creates an unreasonable disruption in the workplace.
- Restrict third-party representative to only the areas of the facility being inspected.
- Maintain right to require warrant for inspection and use of third-party representative.

The Biden Administration and its Impact on the NLRB

- NLRB composed of five Board members
- President appoints a majority of Board members representing his party
- The current NLRB has four of five members appointed. It was fully in place through the first
  years of the administration.
- McFerran was made Chair on February 17, 2021

In order to create a viable opinion, the Board must have a majority (3) of its Board members sitting. The Supreme Court addressed this issue in 2014.

Purpose of the NLRB

- Enforce federal laws regarding employees' rights to engage in concerted activity to advance wages hours and conditions of work
- Prevent interference in workers' rights under the National Labor Relations Act by Employers and Unions
- Regulate elections for unions and hold union elections per the Act

Here are some of the actions prohibited by the Act

- Threaten workers who act to form a union or advocate for better working conditions
- Promise benefits to reject unionization
- Question employees about their support for a union or question about other employee's support of a union
- Poll employees about the union
- Prevent employees from talking about a union on work time, if they can talk about other non-work topics
- Spy on employees, or make it appear that the employer is spying on employees regarding union activities

TRADITIONAL MEANS OF UNION ELECTION- *Pre-Cemex*

- Employees file a petition for an election with the National Labor Relations Board
- In order to call for an election, the union must show that it has at least 30% of the employees' support
- The Board calls for an election that typically occurs 21 - 60 days following the filing of the petition
- Employees vote in the election by secret ballot
- If there are more 'yes' votes for the union, than 'no' votes, there is a union voted in
- Union and employer begin bargaining

How does Cemex change the previous means for union elections and recognition?

Cemex, in a nutshell, replaces a secret ballot election.
When an employer is confronted with a verbal or written demand for recognition, which should clearly state to an employer's representative or agent the unit for which the Union is claiming majority support, may:

- Agree to recognize a union that enjoys majority support (that means bargain); or
- Promptly file an RM petition to test the union's majority support or challenge the appropriateness of the unit.
    - This is generally going to be through either a petition or authorization cards;
    - However, the term 'verbal' casts some confusion on the way a demand to recognize a union and commence bargaining.

An employer's representative is anyone "acting as an agent of the employer". The demand does not need to be made on any particular officer or registered agent of an employer so long as it is on a person "acting as an agent of an employer" under Sections 2(2) and 2(13) of the Act.

The Cemex Union Recognition Process Now What?

What is the process for determining recognition under Cemex?

- A union or group of employees approaches management and provides evidence of 'majority status' of employees desire to form a union.
- Once presented with the petition demonstrating a majority of employees want to have union representation, then the employer may:
  - Recognize the Union and begin bargaining with the employee group; or
  - Within two weeks of receiving the petition file a RM petition (a management petition regarding union recognition) with the NLRB region where the employer sits.
- Assuming the RM petition is approved by the Region, an election will be held shortly thereafter, and generally in 21 days.
- Also note that any requirement to show loss of majority status is not required to file a RM petition in response to a card check under Cemex cases.

Tips for the RM Petition

- The RM petition is located on the NLRB website. The link to it is:
- https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-3040/Form NLRB-502 (RM) - RM Petition.pdf
- In 2(a) and 2(b), make sure to fill out the proper name of the employer and the exact location of the site which the employer is petitioning for an election. Many employers have multiple sites and it is important to have the correct location.
- Typically, in 5(a), use the unit description the Union provided. There may not be one, so review the petition and determine the job classification(s) if possible.
- Do not answer 8 through 11. Those are for currently recognized bargaining units!
- Parts 12 through 14 are self explanatory and provide the contact information.
- For 13(a) it is recommended to do a manual election, on site of the employer.
- Note that the RM petition should be filed online through the NLRB E-filing system.

Following the filing of the RM Petition

- First and foremost, if the RM petition route is used, then the employer should not engage in any behavior that could be deemed an unfair labor practice charge. Any activity that is deemed as such is grounds to set aside the election results and a Gissel bargaining order will be issued.
- This includes activity in the 'critical period', meaning before the RM petition is filed, the time from its filing to the election and even after the election.
- Activity cited by the Board that Cemex engaged in during that case included: disciplining employees for pro-union activity, preventing employees from wearing pro-union insignia and threatening employees with closure of the business if they unionize.
- The process is fairly similar to the previous method. The parties should try to work out a stipulated election agreement. At this point, if there are concerns about unit composition, those should be raised to the NLRB agent handling the election.
- The parties may file a position statement and go to hearing, as needed.

What to Do Now?

- Prepare, Prepare, Prepare, Prepare!
  - You need to develop a strategy for how you will react to receiving a Cemex petition – Time is of the essence and those two weeks will fly by.
- Train, Train, Train, Train!
  - You need to train your managers now on the do's and don'ts.
  - *Any* unfair labor practice can result in an affirmative bargaining order.
  - No one intends to commit an unfair labor practice.
- All it takes is one wrong comment
  - The employee-friendly structure of the Board makes training more important now than ever.

Flip Side: NLRB's Blocking Charge Policy is Back

- The Board has amended its rules to resurrect the Block Charge
- While Cemex primarily focuses on non-unionized workforces and what happens when the union wants to get in, the NLRB's Blocking Charge Policy deals with what happens when your employees (and you) want to get the union OUT.
- As its name leads on, it is a way for the union to "block" an employer's RM petition from processing.

What is a Blocking Charge?

- Under the Blocking Charge Policy, regional directors have the authority to delay processing election petitions if there are pending unfair labor practice charges pending.
- “Charges” not “violations”
  - It does not matter if your company has not yet been found guilty of any violation - if there is a pending charge, then the Regional Director can block your RM petition.
  - It can do so on a blocking request from the union

2020 Amendment

- In April of 2020, the “employer-friendly” Board substantially eliminated its Blocking Charge Policy.
- Instead of blocking the RM petition, Regional Directors were generally required to conduct the election, even if there were pending unfair labor practice charges and a blocking request filed.
- Regional Director would immediately open and count the ballots, aside from limited circumstances where the ballots would be impounded for at most 60 days.
- If there was a pending charge, however, certification of the results would not be issued until there was a final disposition of the case and a determination of the effect, if any, on the election.
- Part of the Board’s reasoning was to prevent unions from filing frivolous unfair labor practice charges in attempts to block a decertification petition.

2024 Amendment

- Now, if a party to a representation proceeding wishes to block the processing of an election petition, the party must simultaneously file a written offer of proof listing names of witnesses who will testify in support of the charge.
- If the Regional Director determines that this offer is sufficient, the decertification/election petition will be held in abeyance.
- The Regional Director can even deny the petition outright!
  - This depends on whether the director believes certain unfair labor practice charges have merit
  - The director could also continue to process the petition if the offer of proof is not sufficient
  - It is entirely up to the Region

Stericycle, Inc and Employee Policies 372 NLRB No. 113

Back at the workplace rules …

From the NLRB, in an August 2023 statement:

Under the new standard adopted in *Stericycle*,

- The Board must prove that a challenged rule has a reasonable tendency to chill employees from exercising their rights.
- If so, then the rule is presumptively unlawful.
- However, the employer may rebut the presumption by proving that the rule advances a legitimate and substantial business interest, and that the employer is unable to advance that interest with a more narrowly tailored rule.
- If the employer proves its defense, then the work rule will be found lawful to maintain.
- In line with this framework, the Board rejected the categorical approach of *Boeing* in favor of case-specific consideration of work rules. Meaning, the rules may not be overbroad so as to be interpreted as chilling an employee's rights under the NLRA.

How the Board Looks at a Workplace Rule

- This new standard drastically lowers the threshold that the Government needs to meet to demonstrate that a rule is unlawful.
- Board interprets the rule from the perspective of a reasonable employee who is economically dependent on their employer and there inclined to interpret an ambiguous rule as restricting protected activity.
- Board views a “reasonable” employee as one who is ALWAYS contemplating engaging protected activity.
- The reasonable employee interprets the rule as a layperson
  - If an employee *could* reasonably interpret a rule to restrict protected activity, then the Government has met its burden and the rule is presumptively unlawful
  - Does not matter if the rule *could also reasonably* be interpreted to NOT restrict any protected activity.
    - Employer’s intent does NOT matter.

Employer's Obligations

- The new standard essentially provides employers with an affirmative defense:
  - If the GC proves that a reasonable employee *could* interpret the rule as restricting protected activity, then the employer must rebut the presumption by proving:
    - the rule advances a legitimate and substantial business interest; and
    - the employer is unable to advance that interest with a more narrowly tailored rule
- Case-by-case approach where the Board examines:
  - the specific wording of the rule;
  - the specific industry of the rule;
  - the specific employer interests it may advance; and
  - the specific statutory rights it may may infringe upon.

Application of *Stericycle* since its adoption by the NLRB *General Motors Components Holding, LLC,*____ NLRB ___ (2024); 07-CA-293340

- In a Union setting, rules may be invalidated even if agreed to by the Union! The rationale for invalidating a rule even though its included in a collective-bargaining agreement is that, as a general proposition, parties cannot by agreement render lawful that which is unlawful. *Kelly-Springfield Tire Co*., 223 NLRB 878, 881 (1976).
- Rules found unlawful, in this likely first application of *Stericycle*:
  - Rule prohibiting "distracting the attention of others." – ALJ found it ambiguous because it did not specify the type of conduct that is considered a distraction
  - Rule prohibiting "wasting time or loitering on any company property during working hours." – ALJ found it unlawfully overly broad because the term "working hours" could encompass time that the employee could engage in protected activity (such as during breaks)
  - "Unauthorized soliciting or collecting contributions for any purpose whatsoever during workin hours." – Again, ALJ found "working hours" to be unlawfully broad.

Application of *Stericycle* since its adoption by the NLRB *General Motors Components Holding, LLC,*____ NLRB ___(2024); 07-CA-293340

- "making or publishing of malicious statements concerning any employee, the company, or its products." – ALJ found this unlawfully, overly broad because employees could interpret it as restricting Section 7 activity because the Board has held that "false, vicious or malicious statements" include false statements that may nonetheless be protected.
- "misuse or removal from the premises without proper authorization of employee lists, blueprints, company records, or confidential information of any nature." – ALJ found this clearly unlawful as (1) employees would not be permitted to share lists of employees with union representatives and (2) "confidential information" and "misuse" are undefined and therefore subject to the Employer's sole determination and could easily include information related to terms and conditions

Application of *Stericycle* since its adoption by the NLRB *General Motors Components Holding, LLC,*____ NLRB ___ (2024); 07-CA-293340

Rules Found Lawful:

- Rule prohibiting "falsification of personnel or other records." – ALJ found this to be lawful because no economically dependent employee would reasonably interpret it to prohibit protected activity since the plain language prohibits falsification of personnel and other company records which the Employer has a legitimate interest in ensuring are accurate.
- Rule prohibiting "threatening, intimidating, coercing, or interfering with employees or supervision at any time." – ALJ found this rule lawful under *Palms Hotel & Casino*, 344 NLRB 1363, because "it is not so amorphous that a reasonable employee would be incapable of grasping the expectation that they comport themselves with general notions of civility and decorum in the workplace."
- Rule prohibiting "abusive language to any employee or supervision." – ALJ found this to be lawful under *Lutheran Heritage Village-Livonia*, 343 NLRB 646 and Lion Elastomers, 372 NLRB No. 83 (2023), because employees lose protection of the Act through outbursts and an opposite ruling would insulate from consequence any employee speech, no matter how inflammatory, if it's done during protected activity.

BLM and the NLRB
Home Depot USA, 373 NLRB No. 25 (2/21/24)

- The NLRB wants you to know that it applies the Act to more than just Union activity!
- Home Depot violated the National Labor Relations Act when it discharged an employee for refusing to remove the hand-drawn letters “BLM” — the acronym for “Black Lives Matter” — from their work apron.
- Several other employees also had the BLM on their work gear
- The Board ruled that the employee’s refusal to remove the BLM marking was “concerted” because it was a “logical outgrowth” of prior concerted employee protests about racial discrimination in their workplace.
- It was an attempt to bring those group complaints to the attention of Home Depot managers. The employee’s conduct was also “for mutual aid or protection” because the issue of racial discrimination involved employees’ working conditions.
- As such, the Board ruled it was applicable to the NLRB, as these employees used the BLM markings to work together to combat perceived racial discrimination in the workplace, (a working condition).

Where, What and Who Does this Apply?

- Not just unionized workforces
  - This applies to ALL employees across the country
- Not just union activity
  - This applies to ALL activity protected under Section 7
- Not just employee handbooks
  - This applies to ANY and ALL workplace rules that you have
  - Policies, past practices, verbal instructions,

What Should You Do Now?

- Where they are headed now is to outlaw employee handbooks completely.
- If you have an employee handbook, policies, or employment agreements, you must bring counsel in and have them thoroughly go through it.
  - Nearly every provision can be found unlawful – confidentiality provisions, social media policies, you name it.
- The NLRB is getting FLOODED with cases since this new standard came – everyone is throwing in an unlawful workplace rule allegation.
- What can you do? Savings clause!
- As decisions have been coming out, Judges have been ruling on these rules in a variety of ways – what is lawful for one employer may not be lawful for the next.
- Counsel will help identify which rules may be deemed “overly broad” and identify ways that you could more narrowly draft it.

Federal Trade Commission Non-Compete Ban

Gaetano Urgo

Davis & Campbell L.L.C.

Most Recent Decision

- Good news! On August 20, a Federal Judge in the Fifth Circuit struck down the FTC's non-compete ban.
- The rule sough to invalidate nearly 30 million non-compete agreements, aside from in those very limited circumstances of a "senior executive."
- The Judge stated that the FTC lacked the authority to enact the ban and describe the ban as "unreasonably overbroad without a reasonable explanation."

Where We Stand Now

- This ruling likely will be appealed by the FTC to the 5th Circuit Court of Appeals.
- Meanwhile, there is still the Pennsylvania ruling lingering in the background for a potential circuit split.
- Either way, this rule did not go into effect on September 4, nor will it in the foreseeable future.
- Employers do not need to send out notices to their employees.
- Employers are encouraged to continue having their employees sign non-compete agreements
  - Even if the rule ultimately is resurrected, having non-compete agreements signed now can still prove beneficial to employers in the future.

Thank You!

Gaetano Urgo

DAVIS & CAMPBELL L.L.C.

(312) 995-7128

gurgo@dcamplaw.com

Paid Time Off to Vote

Chris Jump

Davis & Campbell L.L.C.

Paid Time Off to Vote

- Any person entitled to vote is also entitled to be absent from work for two hours to vote while polls are open

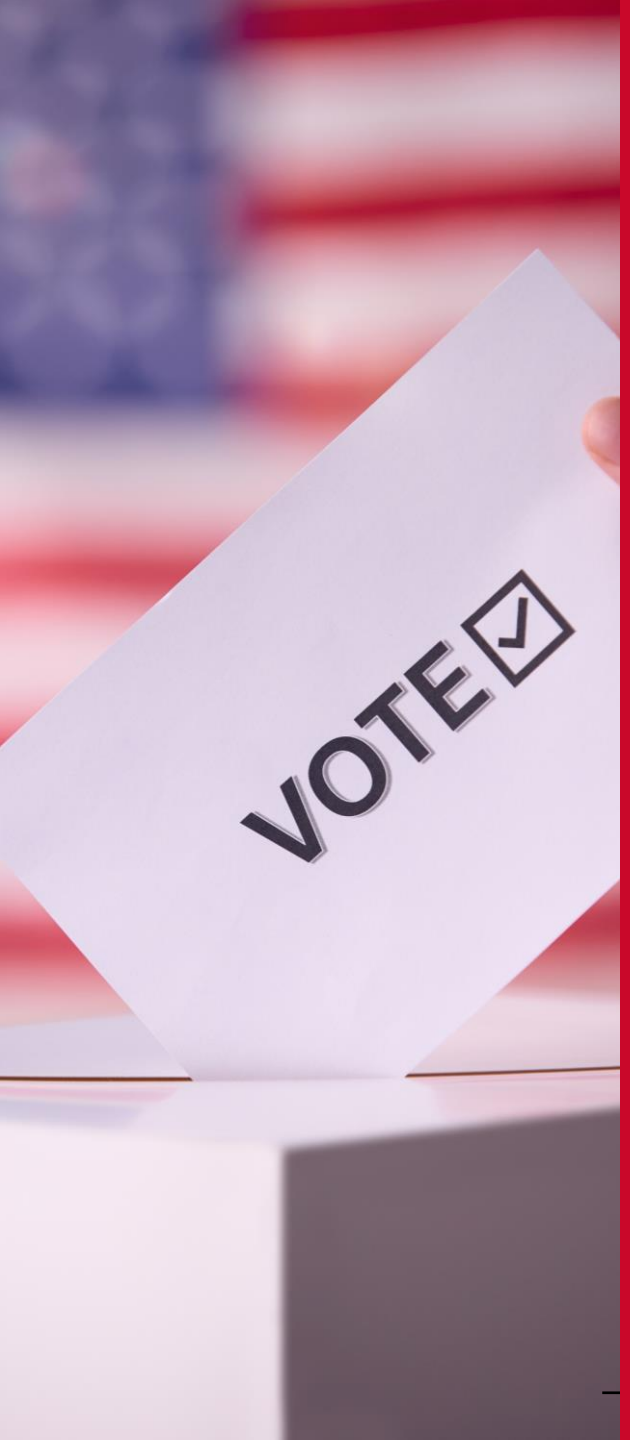
- If an employee's work hours begin less than two hours before polls open and end less than two hours before polls close, the employee is entitled to time off – two hours, with pay

Tuesday November 5 2024

Polls open 6:00 a.m. to 7:00 p.m.

Paid Time Off to Vote

- If employee is schedule to start work at 8:00 a.m. or after, or end work at 5:00pm or earlier, the employee is not entitled to time off.
- The employer may require prior notice from the employee, may designate the hours off, and may require proof of voting.



Voting Policies

- Check your policies, determine whether to provide minimum amount, or additional time off
- Review work schedules
- Inform employees of prior notice requirements, hours designated for voting, and any other applicable requirements (if they must prove that they voted)

Risks & Benefits of DEI

Jay H. Scholl

Davis & Campbell L.L.C.

Supreme Court Addresses Affirmative Action

- Supreme Court holds that race-based affirmative action in higher education violates the Equal Protection Clause of the Fourteenth Amendment and Title VI
- Case involves student admissions decisions of higher education institutions

Direct Impact on Employers?

Not on private employers

- Title VI does not apply to private employers
- 14th Amendment does not apply to private employers
- SFFA cases are not about employment

The cases may impact governmental employers and laws and ordinances requiring use of race as employment factor, including for contractors doing business with governments

Indirect Impact on Employers?

Possibly in the future

- Title VII generally prohibits use of race in employment decisions
- *U.S. v. Weber (1979):* voluntary affirmative action programs permissible where (1) remedial in nature and designed to eliminate imbalance in segregated job categories, (2) do not hinder interests of non-diverse candidates, and (3) are temporary with goal to reach balanced workforce

EEOC Guidance

- Voluntary affirmative action programs must meet three requirements
- A reasonable self-analysis by the employer to determine whether its practices limit, exclude, or restrict employment opportunities for minorities and/or women
- A reasonable basis for believing affirmative action is appropriate
- A plan containing specific goals and objectives, designed to address the reasonable basis, for a temporary time to achieve the objective, that avoids unnecessary restrictions on opportunities for the workforce as a whole

Will the EEOC Issue New Guidance?

Probably not

- Voluntary affirmative action plans are relatively unusual
- SFAA cases do not directly apply
- Not in the EEOC agenda

Will the EEOC See More "Reverse Discrimination" Charges?

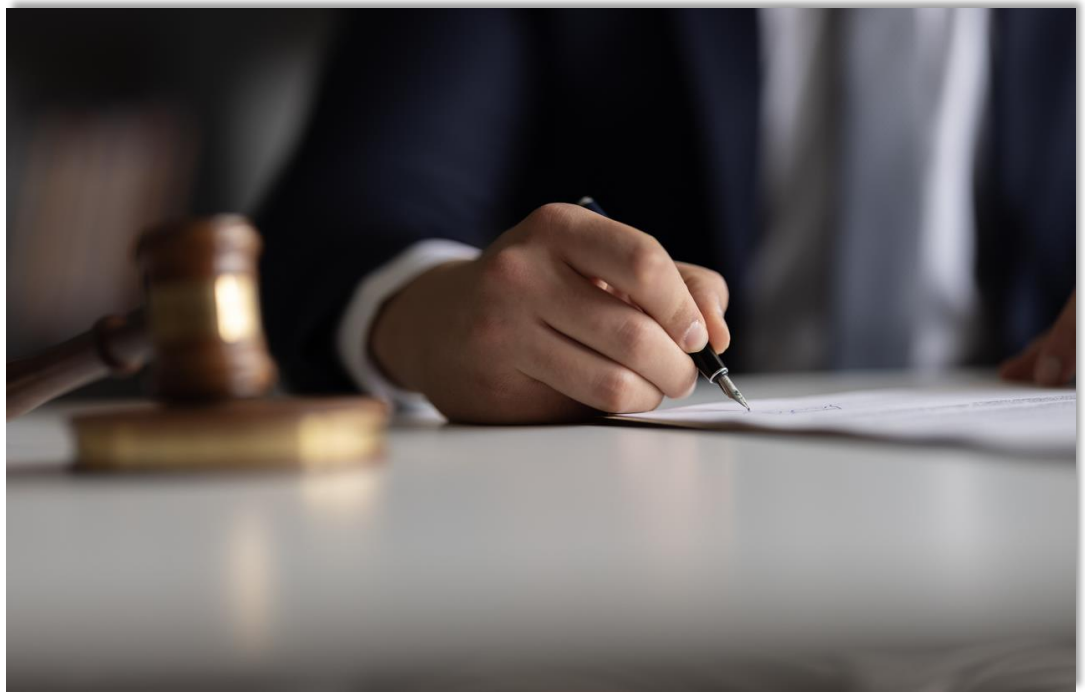
Probably

- But handling of them unlikely to change during this administration
- EEOC does occasionally file "reverse discrimination" cases (Baron HR/Radiant Services) and will continue to do so

Direct Impact on Federal Contractors?

No

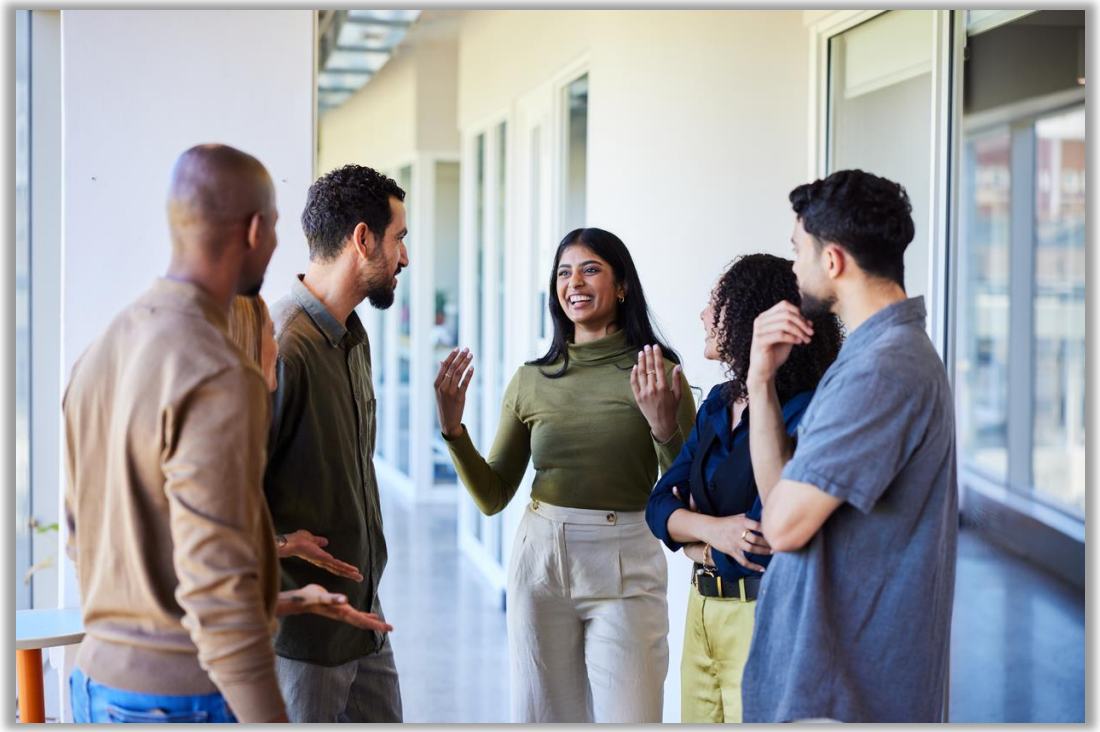
- Federal contractors already prohibited from using race as factor in hiring and employment decisions
- Can only use race as statistical tool for measuring effectiveness of recruitment efforts



Impact on DEI?

Employer initiatives like updating job descriptions and requirements that limit applicant pools, broadening recruitment outreach, implementation of mentorship programs to expand access not directly affected by Supreme Court decision.

Decision may indirectly foster challenges to DEI programs.



Corporate Transparency Act

Jay H. Scholl

Davis & Campbell L.L.C.

Federal Corporate Transparency Act

- Intended to prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity
- Requires certain “Reporting Companies” to report “Beneficial Owner Information” to “FinCEN”
- Penalties
  - Civil up to $500 for each day; and/or
  - Criminal imprisonment for up to two years and/or a fine of up to $10,000

Who Is A Reporting Company?

- Any company created or registered by filing a document with a secretary of state, including:
  - Limited liability companies
  - Corporations;
  - Limited partnerships
- There are exceptions, including:
  - Tax-exempt entity;
  - Large operating company;
  - Subsidiary of certain exempt entities; and
  - Inactive entity.

https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

Who Is A Beneficial Owner?

- Owns or controls 25 percent or more of the ownership interests

-OR-

- Exercises “substantial control,” such as:
  - President;
  - Chief Executive Officer (CEO);
  - Chief Financial Officer (CFO);
  - General Counsel (GC); and
  - Chief Operating Officer (COO).

What Information Is Reported?

- Company:
  - EIN
  - Principal place of business, and
  - Registration information
- Beneficial Owners:
  - Residential address;
  - Driver's license or passport number
  - Copy of driver's license or passport

Thank You!

Jay Scholl

DAVIS & CAMPBELL L.L.C.

Florida Law Update

DAVIS & CAMPBELL L.L.C.

Florida Employment Law Update

- New statute, CS/HB 433, went into effect July 1, 2024
- Local ordinances on employment are preempted by state law
- New regulations on heat exposure in workplace will be developed
- Local governments are prohibited from giving preferential treatment in publicly bid projects on the basis of wages and benefits paid to employees
- New state laws reduce restrictions on working hours and allowed type of for 16- and 17-year-olds
- Persons under 21 years of age may not work in adult entertainment places
- Sexual activity in massage parlors prohibited

Indiana Law Update

DAVIS & CAMPBELL L.L.C.

Indiana Employment Law Update

- New poster requirement – Veteran's Benefits and Services – for employers with 50 or more employees
- Poster available on IN DOL website
- Employers must report all new hires and rehires on Indiana New Hire Reporting Center within 20 days after hire
- https://in-newhire.com/faqs
- Both changes effective July 1, 2024

New Illinois Employment Laws

David Lubben
Davis & Campbell L.L.C.

Paid Leave Update

Chris Jump

Davis & Campbell L.L.C.

Reminders

- Effective January 1, 2024, employees entitled to minimum of 40 hours of paid leave as a matter of state law
- Limited and specified exemptions
- Employers must choose between frontloading all 40 or accruing at rate of one hour paid leave for every 40 hours worked
- Statutory paid leave does not have to be paid out at termination of employment – but “vacation” time does under the Wage Payment and Collection Act
- Employers can provide more generous leave, but not less

IDOL Regulations

- Illinois Department of Labor regulations on paid leave are now final
- If employer frontloads all 40 hours, employer does not have to allow carryover of unused leave to the next 12-month period
- If employer ‘s policy is accrual of paid leave as hours are worked, employer has to allow carryover of unused paid leave to next period
- DOL regulations allow employers to limit the number of carried over hours to 40 in a reasonable written policy

Reminders

- Employees can use statutory paid leave for any reason of employee's choosing
- Without finding a replacement for their assigned shift
- Employers cannot require the use of statutory paid leave when employee has right to unpaid leave, except for FMLA
- If employer has more generous policy, and allows additional paid vacation time beyond the statutory 40 hours of paid leave, the employer can require employees to use the additional, non-statutory paid time off when employee has right to unpaid leave
- Chicago has its own paid leave – and paid sick leave – ordinance that applies to covered employers in the city; Cook County has a paid leave ordinance
- Be sure you know the rules that apply to each workplace

Reminders

- Employers can deny use of paid leave at particular times due to operational necessity; be prepared to justify that and make a record of the denial
- Employers are required to maintain records of hours worked, paid leave accrued/frontloaded, paid leave taken, and remaining paid leave balance, for a period of three years
- Remember the required poster – also available in ten other languages in addition to English on the IDOL website

Thank You!

Chris Jump

DAVIS & CAMPBELL L.L.C.

(309) 673-1681

cjjump@dcamplaw.com

Pay Transparency (Illinois)

Brittany Miller

Davis & Campbell L.L.C.

Amendment to Illinois Equal Pay Act

- Enacted August 11, 2023
  - By Public Act 103-0539
- Bottomline:
  - Requires certain employers to provide pay scale/benefits information in job postings
- Effective January 1, 2025
  - Illinois joins a growing list of states enacting this legislation

Applicability

- Employers with 15+ employees
- Positions that:
  - Will be physically performed (at least in part) in Illinois OR
  - Will be physically performed outside Illinois, but the employee reports to a supervisor, office, or work site in Illinois
- Job postings posted after January 1, 2025

2011-2012			
Step	BA	BA+12	BA+24
1	$ 43,747.00	$ 44,225.00	$ 44,704.00
2	$ 45,298.00	$ 45,774.00	$ 46,251.00
3	$ 46,849.00	$ 47,324.00	$ 47,798.00
4	$ 48,402.00	$ 48,873.00	$ 49,345.00
5	$ 49,953.00	$ 50,422.00	$ 50,892.00
6	$ 51,757.00	$ 52,184.00	$ 52,611.00
7	$ 53,561.00	$ 53,946.00	$ 54,330.00
8	$ 55,365.00	$ 55,708.00	$ 56,050.00
9		$ 57,470.00	$ 57,770.00
10		$ 59,232.00	$ 59,489.00
11		$ 61,208.00	$ 61,420.00
12		$ 63,183.00	$ 63,352.00
13		$ 65,158.00	$ 65,284.00
14		$ 67,134.00	$ 67,215.00
15			$ 69,147.00
16			$ 71,924.00
17			$ 74,703.00
18			$ 77,480.00
19			$ 80,258.00
20			$ 83,035.00

2012-2013			
Step	BA	BA+12	BA+24
1	$ 44,709.00	$ 45,198.00	$ 45,687.00
2	$ 46,295.00	$ 46,781.00	$ 47,268.00
3	$ 47,880.00	$ 48,365.00	$ 4,849.00
4	$ 49,467.00	$ 49,948.00	$ 50,430.00
5	$ 51,052.00	$ 51,531.00	$ 52,011.00
6	$ 52,896.00	$ 53,332.00	$ 53,768.00
7	$ 54,740.00	$ 55,133.00	$ 55,526.00
8	$ 56,583.00	$ 56,933.00	$ 57,283.00
9		$ 58,734.00	$ 59,041.00
10		$ 60,535.00	$ 60,798.00
11		$ 62,554.00	$ 62,772.00
12		$ 64,573.00	$ 64,746.00
13		$ 66,592.00	$ 66,720.00
14		$ 68,611.00	$ 68,694.00
15			$ 70,668.00
16			$ 73,506.00
17			$ 76,346.00
18			$ 79,185.00
19			$ 82,023.00
20			$ 84,862.00

Job Postings

- Covered Employers must include the “pay scale and benefits” for a posting
- “Pay scale and benefits”
  - Wage or salary or the wage or salary range
  - General description of the benefits and other compensation, including, but not limited to bonuses, stock options, or other incentives
    - Set by reference to:
      - Any applicable pay scale
      - Previously determined range for position
      - Actual range of others currently holding equivalent positions
      - Budgeted amount for position

Posting Requirements

- Unlawful for Covered Employers to fail to include the “pay scale and benefits” for a posting
- Can include a hyperlink to a public webpage that includes the “pay scale and benefits”
- In the job posting itself, can refer to a separate posting of a relevant and current general benefits description on employer’s website

Using Third Parties for Postings

- Provide the “pay scale and benefits,” or a hyperlink to same to the third party
  - The third party must include the “pay scale and benefits” or the hyperlink in the posting
- Failure to include in posting:
  - The third party is liable UNLESS they can show employer did not provide the “pay scale and benefits”

Promotions

- An employer must inform all current employees of opportunities for promotion no later than 14 calendar days after making an external job posting for the position
  - This does not apply to State of Illinois workforce positions designated as exempt from competitive selection

Protections

- Must disclose the “pay scale and benefits” to be offered for the position prior to any offer or discussion of compensation
- Cannot refuse to interview, hire, promote, or employ, and cannot otherwise retaliate against an applicant for employment or an employee for exercising any rights related to the job positing provisions

Enforcement / Violations

- Those aggrieved can file a complaint with IDOL
  - Within one year after violation date
- IDOL can initiate an investigation after a complaint or at its discretion.
- Job posting that is in violation, is only considered as one violating job posting, regardless of duplicative postings that list the job opening
- Penalties are based on whether the violating job posting is active or inactive

Penalties – Active Postings

- Based on number of offenses:
  - 1st: After a 14-day cure period, a fine not to exceed $500
  - 2nd: After 7-day cure period, a fine not to exceed $2,500
  - 3rd or more: No cure period, a fine not to exceed $10,000
    - If Company has a third offense, it shall incur automatic penalties without a cure period for a period of 5 years, afterward any future offense counts as a first offense
    - The 5-year period restarts if receive a subsequent violation

Penalties – Inactive Postings

- Based on number of offenses:
  - 1st: Fine not to exceed $250
  - 2nd: Fine not to exceed $2,500
  - 3rd or more: Fine not to exceed $10,000
- Active vs. Inactive Postings
  - IDOL decides whether a posting is not active based on a totality of the circumstances

Recordkeeping Requirements for Job Postings

- In addition to all recordkeeping requirements under the Act, employers must preserve records that document the "pay scale and benefits" for each position and job posting for each position
  - Preserve for no less than 5-years
    - Unless there is an ongoing investigation or enforcement action
  - Must provide a report, if prescribed by rule or order of the Director of IDOL

Illinois Gender Violence Act Amendments

DAVIS & CAMPBELL L.L.C.

Illinois Gender Violence Act Amendments

- Illinois Gender Violence Act (2004)
  - Civil cause of action for anyone subjected to gender-related violence
- Amendments (effective January 1, 2024)
  - Employers liable when the interaction giving rise to the gender-related violence arises out of and in the course of employment
    - While the employee was directly performing their job duties
    - Where the agent of the employer was directly involved in the performance of the contracted work
  - Four-year statute of limitations
  - Safe Harbor
    - Providing adequate training
      - IDHR sexual harassment training is an affirmative defense
    - Investigating complains/reports and taking remedial measures

Illinois Employment Statutory Changes

DAVIS & CAMPBELL L.L.C.

More Illinois Employment Statutory Changes

- Illinois Human Rights Act
  - Amended Four Times!
- Restrictions on E-Verify & I-9 issues
- Wage Payment Act – Pay Stubs
- Captive Audience Ban
- Personnel Record Review Act
- Whistleblower Act
- BIPA
- Temp Employees & Independent Contractors

Human Rights Act Statute of Limitations

- Extended from 300 days to two years from the date of the alleged unlawful employment action
- The amendment does not state whether it applies retroactively
- Retain personnel files for *at least* 2 years!

This affects how "far back" a charge of discrimination can reach and how much time the employee has to complain to the state agency

The change does not affect the time to file a charge with the EEOC

Effective date – immediately!

Human Rights Act
"Family Responsibilities"

- New protected category for discrimination claims
- Family responsibilities means an employee's actual or perceived provision of personal care to a family member
- Refers to definitions in Employee Sick Leave Act

Personal care means ensuring that basic medical, hygiene, nutritional or safety needs are met, or providing transportation to medical appointments, or providing emotional support to a family member receiving inpatient or home care

Family member means the employee's child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or stepparent

Human Rights Act
“Family Responsibilities”

- This does not require reasonable accommodations based on family responsibilities
- Workplace rules related to leave, scheduling, productivity, attendance, absenteeism, timeliness, work performance, referrals from labor union hall and benefits can still be enforced consistently and neutrally

Train your managers and supervisors on this new prohibition

Check your policies and handbooks

Human Rights Act
“Artificial Intelligence”

Definitions

- AI defined as a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments, includes generative AI
- Generative AI means an automated computing system that when prompted by human inputs, produces output simulating human-produced content, including textual compositions, image-based outputs, multimedia outputs, etc.

New “Artificial Intelligence” Claims

- Making employment decisions using AI that has the effect of discriminating on the basis of any protected category
- Using zip codes as a proxy for protected categories
- Failing to provide notice to employees that AI is being used for these purposes

Effective date January 1, 2025

Evaluate your AI system/software providers

Review all uses of AI in any employment processes (hiring, evaluations, promotions, discipline)

Human Rights Act
“Reproductive Health Decisions”

- A person’s decisions regarding the person’s use of: contraception; fertility or sterilization care; assisted reproductive technologies; miscarriage management care; healthcare related to the continuation or termination of pregnancy; or prenatal, intranatal, or postnatal care

New protected category, effective January 1, 2025

Train your managers and supervisors

Review your policies and handbooks

DAVIS & CAMPBELL L.L.C.

Human Rights Act
"Reproductive Health Decisions"

- Impacts the scope of health insurance and policies related to travel for same
- May create conflicts with other State laws
- May lead to conflicts with federal law in future
- Some employers may claim that this new discrimination prohibition conflicts with exercise of religion

Right to Privacy in the Workplace Act E-Verify

- “An employer shall not impose work authorization verification or re-verification requirements greater than those required by federal law”
- Federal law only requires use of E-Verify for federal contractors
- Some States require all employers to use E-Verify; some require public employers to use it
- Some counties and municipalities require it

This language creates question whether Illinois employers can use E-Verify

Effective date – January 1, 2025

Right to Privacy in the Workplace Act E-Verify

- Requires notice to employees if employer contends there is discrepancy in employee's employment verification information
- If employer receives notification from any federal or state agency of work authorization discrepancy, "the employer must not take any adverse action against the employee, including re-verification, based on receipt of the verification" and must notify employee of his/her rights
- Requires posting notice of any I-9 inspection by ICE

Right to Privacy in the Workplace Act E-Verify

- If ICE provides notice to employer that documents do not establish an employee's work authorization, the employer must notify the employee by personal delivery if possible, or by mail and email, of the government notice, the time period for the employee to contest it, the time and date of any meeting related to correction of the determination, and the right to representation at such meeting.
- If the employee contests the government notice, the employer must notify the employee within 72 hours of receipt of any final determination.

Right to Privacy in the Workplace Act E-Verify

- Penalties for any violation of the statute of between $2,000 and $5,000 for first violation, and between $5,000 and $10,000 for subsequent violations
- Plus, attorney's fees and actual damages
- Claims for violation may be brought in circuit court

Right to Privacy in the Workplace Act E-Verify

- If you don't use E-Verify and are considering switching to it, review the new law and evaluate the risks
- If you use E-Verify, comply with new notice requirements related to I-9 documents, ICE inspections, and government notices
- If you receive notice of an ICE I-9 inspection, post notice in your workplace

Wage Payment and Collection Act Pay Stubs

- Itemized statement of hours worked, rate of pay, overtime pay, overtime hours worked, gross wages earned, deductions, and total wages and deductions year to date
- Employer must retain copies for at least 3 years after date of payment
- Must provide copies to both current and former employees upon written request

Pay stubs can be provided physically or electronically; former employees have choice of how to receive; if only available electronically in way that former employees cannot access, employer must offer pay stubs for past year

Enforceable by fines of up to $500 per violation, considering the size of the employer and gravity of the violation

Effective date – January 1, 2025

Personnel Record Review Act Amendments

- Expands documents that employees have right to inspect, copy and receive:
- Employee Benefits documents
- Employment agreements
- Employee handbooks made available to the employee
- Employment policies and procedures

Department of Labor has 180 days to resolve before lawsuit may be filed

New exception for employer's trade secrets, client lists, sales projections and financial data

Effective date January 1, 2025

Personnel Record Review Act Amendments

- Employees may make 2 requests per year, in writing, and:
- Identify what records are requested
- Specify if employee wants to inspect, to copy, or to receive documents
- Specify whether documents will be provided hardcopy or electronically
- Specify whether inspection, copying or receipt will be by employee's representative, including family members, lawyers, union representatives, or translators
- If records including medical information, employee must include a signed waiver to release

Worker Freedom of Speech Act

- Prohibits discipline against employee because employee refuses to attend or participate in employer-sponsored meeting or refuses to listen to employee messages about religious matters or "political matters"
- "Political matters" includes decision to join or support labor union, as well as political elections, and proposals to change legislation, regulations, or public policy

Employees may file lawsuits within 1 year

Conflicts with traditional balance of rights under the NLRA

Effective date January 1, 2025

Worker Freedom of Speech Act

- Although statute bans mandatory employee meetings about the employer's opinion on religious matters, there is an exception creating uncertainty:
- Nothing in act prohibits a religious organization from requiring its employees to attend an employer-sponsored meeting or participate in any communication with the employer or employer's agent or representative for the purpose of communicating the employer's religious beliefs, practices, or tenets

Whistleblower Act Expanded

- Broadens the statute to include retaliation for reporting on violations of the law to supervisors, principal officers, board members of employer
- Expands definition of retaliatory acts to include contacting U.S. immigration authorities
- Authorizes lawsuits directly by Attorney General to enforce

New injunctive relief for reinstatement of employment

New liquidated damages of up to $10,000 plus civil penalties of up to $10,000

Effective date January 1, 2025

DAVIS & CAMPBELL L.L.C.

Biometric Information Privacy Act

- Employees can provide written consents electronically
- A private company that more than collects the same biometric information from the same person using the same methods of collection more than once commits only a single violation of BIPA
- The amendment does not state whether it applies retroactively

Changes were effective when Governor signed the bill

DAVIS & CAMPBELL L.L.C.

Day & Temporary Labor Services Act Amended Again

- If temporary employee works for same client more than 720 hours in 12-month period starting April 1, 2024, must receive:
- Compensation and benefits not less than lowest paid directly hired comparative employee of client
- Or at discretion of client, not less than median base rate for workers in same job classification using Bureau of Labor statistics

Modification of the equal pay for equal work provisions of the Act

Client may use BLS statistics for temporary employees who worked more than 4,160 hours

Exception for unionized workplaces

Freelance Worker Protection Act

- Public Act 103-0417 (effective July 1, 2024)
- “Freelance Worker”:
  - **A natural person who is hired or retained as an independent contractor** by a contracting entity to provide products or services **in Illinois** or for a contracting entity located **in Illinois** in exchange for **an amount equal to or greater than $500.00**, either in a single contract or when aggregated with all contracts for products or services between the same contracting entity and the freelance worker during the **immediately preceding 120 days.**

Freelance Worker Protection Act

- Sets deadlines for payments (on or before due date in contract or 30 days if no date is specified)
- Once work is commenced, the contracting entity shall not condition timely payment on freelance worker accepting less than the amount of the contracted compensation
- Must enter into written contracts as specified by statute and retain for 2 years
- Nondiscrimination provisions for workers exercising their rights

Freelance Worker Protection Act

- Freelance Workers may file Complaint with Department of Labor
  - Department does not assess penalties
- Attorney General may file civil action
  - 1st Offense: Up to $5,000 per violation
  - Repeat Violations within 5 years: Up to $10,000 per violation
- Freelance Workers may file civil action in court (not required to exhaust administrative remedies)
  - Entitled to recover double the amount of any underpayments + attorney's fees and costs
  - Additional penalties for other violations
    - (e.g., discrimination = amount of the underlying contract)
  - 2-year statute of limitations

Thank You

AAIM & Davis & Campbell L.L.C. are here to help.

If you have any questions or concerns, please contact us at the information below.

314-754-0236

Solutions.Team@aaimea.org

aaimea.linkedin