Employment law updates to account for in 2016

Many employers use the summer months to focus on updating and re-vamping their policies, planning for implementation of upcoming adjustments, and taking stock of potential changes in the pipeline. Here’s a primer on a few of the most significant changes in 2016.

**Overtime and salary levels**

The U.S. Department of Labor has long held that in order for an employee to qualify as "exempt" for salary, not subject to the requirements of overtime pay, he or she must receive a minimum salary of $23,660 per year (in addition to other qualifications relating to how they are paid and their job duties). Effective Dec. 1, 2016, this minimum salary level is more than doubling, to $47,476 per year. This means that salaried employees who are paid less than this amount will now be entitled to overtime pay, regardless of their title, duties or pay structure. To comply with these rules, employers may choose to increase salaries to meet the new threshold, pay overtime for weekly hours in excess of 40, or reduce hours to avoid overtime.

**Minimum wage increase**

Effective July 1, 2016, Oregon’s base rate minimum wage increased to $9.75 per hour. In addition to the increase, Oregon moved to a tiered system, providing for different minimum wage rates in different areas of the state. Rates are pegged to the population density for particular counties. Areas defined as low density must now pay employees at least $9.50 per hour, and areas of high density must pay $9.75 per hour. The rate is determined by the area in which the work is performed, which could differ from where the employer is located, and could also differ from one employee to the next. The new structure has also defined a system for future increases, which are set to take effect on July 1 of each year. The absolute figures have been calculated through June 30, 2023, at which point the base rate will be $13.29 per hour. Thereafter, the base rate will be adjusted based on the Consumer Price Index, with low density areas below the base rate by $1 per hour, and high density areas above the base rate by $1.25 per hour.

**Transgender issues in workplaces**

In Oregon, employers cannot discriminate on the basis of sexual orientation, which is defined by regulation to include gender expression and gender identity, "whether or not that identity is different from that traditionally associated with an individual's assigned sex at birth." With significant media attention surrounding accessibility to restroom facilities, this is an emerging topic for many employers to consider and effectively plan for. It's clear that in Oregon, individuals must be allowed to use the restroom consistent with their expressed gender identity.

**Itemized paystubs**

Effective Jan. 1, 2017, employers in Oregon must include additional categories of information on itemized paystubs. Part of the intention is to provide greater transparency in pay practices and expose employer wrongdoing. Among other details, the paystub must provide information about rates of pay whether the employee is paid by the hour, shift, day or week, or on a salary, piece, or commission basis the amount and purpose of each deduction made during the respective pay period; the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked and pay for those hours, and the number of overtime hours worked and pay for those hours; and the piece rate, the number of pieces completed at each rate, and the total pay for each rate. For those employers providing this itemized information in electronic form, the employee must have expressly agreed to that delivery method, and he or she must have the ability to print or store the statement at the time of receipt. These time and pay records must also now be retained by the employer for three years from an employee's date of termination, and must be provided to the employee for inspection upon request.

**Litigation and production requests**

A recent Multnomah County case, in which a jury awarded a former Daimler employee $1.2 million, provides a timely reminder of the importance of production requests in litigation. Daimler was not permitted to defend itself against the employee's age discrimination claim because the judge found bad faith for failure to provide evidence requested by the employee's attorneys. This was a sanction for failing in their obligation to comply with discovery requests as part of the litigation. Particularly as the world of electronic information grows in diversity and complexity, where most employees have multiple devices and some use their devices for both business and personal uses, it is increasingly important for companies to carefully outline and organize their discovery obligations as part of litigation. Not only is it required by the rules of civil procedure, but failure to comply can result in disastrous consequences.

The employment arena is one of frequent changes to laws and regulations. Effective compliance requires regular updates and strategic planning. Employers should follow developments in the law closely to remain in compliance. Reviewing changes and incorporating adjustments during the summer is a wise investment.

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