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2020 Labor and Employment Law Checklist

Each year, LP's Labor & Employment Practice Group is pleased to provide a short checklist of steps that all companies should consider taking to measure their readiness for the coming year. We hope that you find our 2020 Labor and Employment Law Checklist to be a helpful guide to best practices for the year ahead.

◯ **Make sure anti-harassment training is on your 2020 calendar!**

Illinois employers now must conduct anti-harassment training annually. There isn't a required format for this training, though the statute specifies a number of topics that must be covered. It is important to determine the training that will work best for your business and a plan for how you will keep the training fresh in light of the new annual requirement (for instance, by doing in-person training one year and web-based the next). Regardless of what format you choose, get it on the calendar early to maximize attendance. If you are interested, we invite you talk to us about the training we offer.

◯ **Update standard employment agreements.**

Under a new law, certain employee agreements with non-disclosure and confidentiality covenants that are signed 1/1/2020 or later must make clear that they do not prohibit the employee from disclosing alleged unlawful employment practices or other unlawful conduct. These agreements also may not include any limitations on procedural rights or remedies – such as a jury waiver, reduced statute of limitations, or limitations on damages. Review all template agreements that contain confidentiality or non-disclosure covenants to ensure that they comply with this new legal requirement.

◯ **Update separation agreements.**

The same law that puts restrictions on confidentiality and non-disclosure agreements puts new requirements on Illinois separation agreements signed on or after January 1, 2020. To comply, confidentiality covenants in the separation agreement applicable to unlawful employment practices must be the preference of the employee, for the parties' mutual benefit, be in exchange for specific consideration, and meet certain other procedural requirements. In addition, various jurisdictions (including California) now prohibit no-rehire provisions in separation agreements. Employers in these jurisdictions should consider removing no-rehire provisions from template separation agreements.

◯ **Don't ask about or rely on compensation history.**

Effective September 29, 2019, Illinois joined a number of other jurisdictions in prohibiting employers from considering compensation history in any way during the hiring process – including in setting both base and incentive compensation. This can get particularly tricky when a senior employee is looking to be compensated for bonuses or equity they will be leaving behind if they take a new position. Employers operating in these jurisdictions need to update employment applications to delete questions regarding current or former pay and to train all involved in the recruiting process to instead ask about pay expectations.

◯ **Review Drug Free Workplace Policy.**

Recreational marijuana is now legal in Illinois, but employers still have a right to keep it out of the workplace so long as it's part of a Drug Free Workplace Policy. While the law as originally passed prohibited employers from taking employment action (including a refusal to hire) based on a positive marijuana test, in December 2019, Governor Pritzker signed into law an amendment to the Cannabis Act that specifically allows employers to refuse employment or take other employment action (such as discipline or termination) because of a positive test, so long as it's part of a reasonable Drug Free Workplace Policy. Employers need to decide if given the expanding prevalence of marijuana, they still want to test for its use. Those who do need to review their policies and ensure that they have a Drug Free Workplace Policy that prohibits drug use and abuse and specifically allows for pre-employment, reasonable suspicion and (if the employer wishes) random drug testing.

◯ **Check that exempt employees meet new salary threshold.**

Effective January 1st, the minimum salary threshold for an employee to be eligible for the administrative, executive and professional exemptions under the federal Fair Labor Standards Act (FLSA) increased to $684 per week ($35,568 per year). California's minimum salary requirement also increased significantly. Of course, meeting the minimum salary is only the first step in determining whether an employee is properly classified as exempt. The employer then needs to establish that the employee meets a job duties test. If your company hasn't worked with an attorney recently to review your positions and confirm that all employees being treated as exempt are properly classified, an audit should be a priority for 2020.

◯ **Re-consider classification of independent contractors.**

The standards around who can properly be considered an independent contractor continue to change. Federal standards are getting more flexible while many state ones are getting more difficult. In California in particular, new legislation makes it virtually impossible to treat an individual performing work that is part of the company's business offerings as an independent contractor, at least in most industries. We are also seeing a significant uptick in investigations by state unemployment authorities. In 2020, take a close look at the individuals who your company treats as an independent contractor to determine if they are property classified as such, and if you decide to keep them so-classified, make sure that both your agreement and reality support that classification.

◯ **Be aware of minimum wage increases and new family leave requirement.**

2020 will see minimum waged increases in 26 states and the District of Columbia. There are also increases in several municipalities, including New York City and Chicago. 2020 will also see new leave requirements, including paid newborn leave in D.C., new benefit requirements in Washington State and expanded rights in California and New Jersey. Make sure that you are aware of – and complying with – the minimum wage and leave requirements in your jurisdiction.

◯ **Make sure you are complying with new predictive scheduling requirements.**

Chicago's new predictive scheduling ordinance got a lot of press over the summer. The fact is that it impacts only certain larger employers in designated industries – including building services, healthcare, hotel, manufacturing, restaurant, retail and warehouse services. But for those covered, the new requirements are far reaching. If your company operates in Chicago, confirm whether you are covered by the ordinance and, if so, consult with legal counsel to make sure that you are complying with all of its intricacies.

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