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Ground Rules: Three major employment law changes that may impact your business (https://www.utahbusiness.com/ground-rules-three-major-employment-law-changes-may-impact-business/)

Christina Jepson Jan 27, 2017

This article will cover three big changes in employment law this last year impacting Utah employers: (1) the enactment and then pause on federal overtime and minimum salary rules; (2) the enactment of the new Utah non-compete law, and (3) the enactment of the new Utah accommodation requirements regarding pregnancy.

Federal overtime and minimum salary rules

The U.S. District Court for the Eastern District of Texas granted a preliminary injunction stopping the U.S. Department of Labor (DOL) from implementing new overtime regulations that were set to begin on December 1, 2016. The current salary threshold of $23,660 for most exempt employees would have been raised to $47,476 if the new rule had taken effect. Employers had the option of raising salaries to meet the new exempt threshold or reclassifying exempt employees to non-exempt and paying overtime.

The preliminary injunction applies nationwide and is intended simply to preserve the status quo until the court can resolve the issues raised in the lawsuit. It is important to remember that the merits of the lawsuit and whether or not the new regulation will stand will not be resolved until later.

Employers are under no legal obligation to unwind changes they have already implemented. Though, if an employer is in a position to reverse changes it can legally do so. These employers must weigh the pros and cons of unwinding changes, looking at impacts to employee morale, maintaining a competitive edge and budgetary issues.

If an employer has not made any changes, it may consider holding off for the time being. Some employers may still choose to implement scheduled changes, especially if the company is taking the opportunity to address misclassification issues or simply wishes to avoid uncertainty with its employees and not rock the boat with already communicated changes.

Utah non-compete legislation

In the 2016, the Utah Legislature passed the Post-Employment Restrictions Act, which applies to any non-compete agreements entered into starting May 10, 2016. After this date, non-compete agreements cannot exceed one year. If an agreement is over the one-year limitation, the agreement is "void," suggesting that a court cannot fix the agreement by limiting it to one year.

Also, if an employer tries to enforce a non-compete which is invalid, the employer is liable to the employee for arbitration costs, court costs and/or attorneys' fees.

Besides including non-competes in agreements with employees, companies often include strong non-competes in two other situations: (1) when a company is paying severance to a departing employee; and (2) when a company buys a business and wants to make sure the prior owners do not compete. The new law is muddy when it comes to the issue of non-competes in the sale of a business or in a severance agreement. The statute says that it does not "prohibit a reasonable severance agreement … that includes a post-employment restrictive covenant."

Similarly, the statute provides that it "does not prohibit a post-employment restrictive covenant related to or arising out of the sale of a business …" But the statute does not say whether the one-year limitation applies to severance agreements or in the sale of a business (which involves ongoing employment).

The legislature may be addressing these ambiguities and other issues with the non-compete law in the 2017 legislative session. If this is an important issue to your company, make sure you contact your representatives and get involved in the legislative session.

New Utah pregnancy accommodation legislation

In 2016, the Utah Legislature also passed a new law requiring accommodation of pregnant or breastfeeding employees, effective as of May 10, 2016. The new law amends the Utah Antidiscrimination Act to also require any employer of 15 or more employees to accommodate pregnancy, childbirth, breastfeeding and related conditions if it is "medically advisable."

Employers are also required to provide written notice concerning an employee's rights to reasonable accommodations (a) in an employee handbook or (b) posted in a conspicuous place in the employer's place of business.

An employer may require certification from an employee's healthcare provider of the "medical advisability" of the requested accommodation. The certification only needs to provide the date the accommodation becomes medically advisable, the probable duration of the accommodation and an "explanatory statement" as to the medical advisability.

An employer cannot refuse a request for a reasonable accommodation unless it can show undue hardship, which is defined as significant difficulty or expense in relation to the size, financial resources, nature and structure of the operation.

An employee who is denied a reasonable accommodation may file a charge of discrimination with the Utah Labor Commission and seek damages available under the Utah Antidiscrimination Act, which include reinstatement, back pay and benefits, attorney fees and costs.

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