



Boulder Area Human Resource Association

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2019—The Year Ahead

“Legal Minute” – January 17, 2019

It’s a New Year. We have a new Democrat-led statehouse and a new Democrat-controlled Congress. Here are some thoughts on what that may mean for employers:

COLORADO:

With the Democrats in control in the statehouse and the governor’s mansion, we are expecting activity on a number of bills that got stalled last year. Principal among them are (referenced by last year’s bill number):

House Bill 18-1377. This bill would amend the Colorado Anti-Discrimination Act (“CADA”) to make it an unfair employment practice to ask job applicants for compensation history. The main justification for this bill is equal pay, the idea being that employers are likely offer compensation that is comparable to past compensation, which would perpetuate historically lower compensation received by women. Opponents feel that recruiters should be able to quickly identify applicants whose compensation needs are not in alignment with the position.

House Bill 18-1378. This is referred to as the Equal Pay for Equal Work Act and would amend in several ways the existing Wage Equality Regardless of Sex Act, which prohibits discrimination in compensation based on sex. It would authorize lawsuits by employees and entitle them to recover actual damages, liquidated damages (in the amount of the actual damages), and attorneys’ fees. Currently only the Department of Labor has authority to enforce this law, and it would continue to have enforcement authority. Employers would have a good faith defense and could pay differentials if they could prove that the differential was based on a bona fide seniority, merit, or similar system. The bill would also prohibit retaliation against employees who exercise their rights under the act. It also requires recordkeeping for job descriptions and wage rates for all employees for the duration of the employee’s tenure and three years thereafter. In addition, the bill would require employers to announce all opportunities for promotion simultaneously to all existing employees, to disclose a salary or wage range in all job listings, and to select a salary or wage within the posted range. If the employer intended to select a salary or wage outside the published range, it would have to republish the job listing.

THE FEDERAL DOL OVERTIME-PAY EXEMPTIONS RULE:

You will recall the angst employers went through in 2016 getting prepared for the implementation of the Obama-DOL’s changes to the rules governing the “white collar” exemptions to the overtime-pay rule. Under the Obama-DOL rule, the minimum salary threshold would have been raised to the annual equivalent of \$47,476. Well, that rule was struck down by a Texas federal court in late 2016. Since then, the Trump-DOL has indicated its intention to re-craft the rule, and some hints have been given, ranging from different minimum salary thresholds for different regions of the country, to indexing the minimum salary threshold to inflation, to even eliminating the salary threshold entirely (and relying only on the nature of the tasks performed)! The DOL’s stated intention is to issue proposed draft of its rule this month—January 2019.

DON’T EXPECT SIGNIFICANT FEDERAL EMPLOYMENT LEGISLATION:

The Democrat-controlled House and the Republican-controlled Senate make it unlikely that any meaningful employment legislation will become law, absent an aggressive effort by President Trump to lean on his fellow Republicans in the Senate. While it always is a gamble trying to determine what President Trump might do, in the past he has spoken favorably about paid family and sick leave, and that may be a potential area for compromise at the federal level



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DO EXPECT MORE CLASS ACTION LITIGATION:

Class and “collective” actions in the wage-hour area will continue apace. This includes claims under the federal FLSA, the Equal Pay Act, and related state laws. If you haven’t considered yet whether you have any vulnerabilities to wage-hour or “pay equity” claims, now would be a good time to conduct an audit of your vulnerability to such claims.

HUNGRY FOR MORE?

Go to https://www.jacksonlewis.com/sites/default/files/docs/JL_Year Ahead 2019.pdf and download “The Year Ahead for Employers,” a 39-page overview of what lies ahead in 2019 in the areas of paid leave, affirmative action, cybersecurity and privacy, drugs and alcohol, employment litigation, benefits, healthcare, immigration, non-competes and unfair practice protection, OSHA, wage-hour, union-related issues, and more!

Please contact BAHRA, your attorney, or Pete Bulmer (BulmerP@jacksonlewis.com) if you wish further information.

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