



Boulder Area Human Resource Association

BAHRA Legal Minute February 2021

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MORE THAN 40 EXECUTIVE ORDERS

- » **Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (EO 13985)**
 - » Specifically REVOKES controversial EO 13950 -- Combating Race and Sex Stereotyping – dated 9/22/20 which limited diversity training; companion EOs re housing, private prisons, tribal sovereignty, protecting Asian Americans
- » **Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (EO 13988)** adopts *Bostock*, addresses Title IX
- » Several immigration actions, including eliminating Muslim/African travel bans, reinforcing DACA, and a task force to consider reforms
 - » A proposed US Citizenship Act of 2021: Pathways to citizenship

UNDOING THE TRUMP ADMINISTRATION

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- » New NLRB General Counsel rescinded 10 policy directives of Trump administration: Return to Obama-era NLRA enforcement, renewed scrutiny of handbook provisions?
- » OSHA issued more-detailed COVID-19 guidance on January 29, 2021: Will OSHA publish a COVID emergency standard?
- » DOL withdrew independent contractor, tip pool opinion letters: Now delayed, but will DOL undo Independent Contractor Final Rule scheduled to take effect on 3/8/21?

PANDEMIC LEGAL ISSUES

- » **Mandating the vaccine vs. incenting the vaccine**
 - » EEOC does not prohibit mandatory vaccines, BUT must consider safety objections and religious/pregnancy/disability accommodations
 - » Incentives can raise discrimination issues and, if too high, can violate EEOC ADA wellness plan guidelines
- » DOL: Telemedicine visits can be FMLA-qualifying; can provide FMLA postings electronically for remote workers

FINALLY, HR DEEP THOUGHTS

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“I am not a cat.” Can, and should, employers regulate employee conduct during virtual meetings?

- » If you provide masks to employees/customers, consider providing transparent face masks and pen and paper to accommodate the deaf and hearing-impaired. *Bunn v. Nike, Inc.* (N.D. Cal., Jan. 27, 2021)

THANKS!

Cat got your tongue?

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