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News & Types: Employment, Labor & Benefits Update

Report from Springfield and Government Agencies

3/6/2013

Practices: Employment, Labor & Benefits

In Springfield

The Illinois State Legislature will be considering several employment laws. The Workplace Violence Prevention Act allows companies to seek a "stay away order" or an injunction against an employee or an individual engaging in or threatening violence. The violence or threat of violence must have taken place at the company's facility. The law would not apply to labor disputes with unions. As in 2012, a bill has been introduced to regulate non-competition agreements. Called the Employment Noncompete Agreement Act, the law would allow restrictions on former employees from soliciting existing and prospective customers. The periods of restrictions would need to be reasonably related to the employee's position and salary. For example, the maximum period of the restriction would be 6 months, if the employee's annualized compensation is less than $50,000. If the employee's annualized compensation is over $150,000, the maximum period of the restriction would be 18 months. Finally, changes to the Illinois Human Rights Act are also being considered. One issue is the definition of a supervisor and whether the Illinois law should be the same as the federal law. Under the federal definition, employers should have additional arguments to defend themselves in discrimination cases. Other new laws would affect the ability of companies to consider arrests when making employment-related decisions.

FMLA & Adult Children

The U.S. Department of Labor has clarified the use of Family & Medical Leave for the adult children of eligible employees. Employees have always had the right to take FMLA leave to care for an adult child, but clarification was needed. The U. S. Department of Labor has now clarified that employees may use FMLA leave to care for a son or daughter over the age of 18 with a serious health condition, if the child has a disability as defined by the Americans With Disabilities Act, the child is incapable of self-care, the child has a serious health condition, and the child is in need of care. According to the USDOL, the child may have developed the disability either before or after turning 18 years of age.

Revised FMLA Poster

In addition, the U.S. Department of Labor has issued a new poster for the FMLA. The new poster reflects changes in the definition of veteran. In addition, the poster defines "serious injury or illness" for service members and veterans. We recommend contacting a service provider or vendor to obtain the new poster. However, be careful not to post the poster issued by the National Labor Relations Board which includes an explanation of the rights of employees to unionize. The lawsuit contesting the issuance of this poster is still

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pending, although some vendors are still including this poster as part of the group posters they sell to companies.

EEOC's Statistics

The Equal Employment Opportunity Commission reported its statistics for Fiscal Year 2012. Individuals filed approximately the same number of charges in FY2012 as filed in FY2010 and FY2011. In each of these three years, individuals filed between 99,412 and 99,947 charges. The EEOC is engaged in "systemic investigations" in which it is determining whether a pattern or practice or a policy has a broad impact on an industry, profession, company or geographic area. During FY2012, the EEOC filed half the number of lawsuits as in FY 2011 but collected four times the amount of damages. Specifically, the EEOC filed 12 lawsuits in FY2012 and collected $36.2 million in damages. The majority of lawsuits alleged violations of the Americans With Disabilities Act, which is consistent with the questions most frequently received from the Firm's clients.

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