

Top 10 Labor and Employment Developments for 2022

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Rise in Remote Work

- Employer's candidate pools have increased with the normalization of remote work.
- Employers should be aware of legal issues that may arise when hiring remote workers.
 - Examples:
 - Increased employee protections under state law
 - Mandatory paid leave laws
 - Wage & hour issues
 - Accommodation obligations

The Great Resignation

- The Department of Labor reported that nearly 4.3 million people quit their jobs in January 2022.
- There is also an increased demand for workers, with nearly 11.3 million job openings reported in January 2022.
- Employers should assess their recruitment, hiring, training and retention strategies can be modified or improved to address the competitive labor market.

Diversity Equity and Inclusion

- Many businesses are prioritizing Diversity, Equity and Inclusion in the workplace.
- Employers implementing DEI-related initiatives and recruitment practices should be cognizant of anti-discrimination laws.
- Attorney Shannon Toole will address this issue later in the program.

Increased Restrictions on Restrictive Covenants

- Recent trends show States have been active on passing new non-competition statutes and that trend is expected to continue.
- The FTC is also exploring rulemaking regarding employee non-competes.
- Attorney Matthew DeLange will address these issues in today's program.

New Limits on Mandatory Arbitration Provisions

- On Thursday, March 3, 2022, President Biden signed into law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021.
 - Bans the application of mandatory arbitration clauses present in employment contracts to cases of sexual assault and sexual harassment.
 - Allows individuals to elect to bring sexual assault and sexual harassment claims in federal, state, or tribal court.
- We will likely continue to see additional restrictions on mandatory arbitration provisions at the state level.

Shift in NLRB Policy

- The National Labor Relations Board, which consists of five appointees, recently shifted in favor of the Democratic Party.
- The Board now has three Democrat appointees and two Republican appointees.
- This shift could lead to potential changes in the joint employer standard and union organizing rules, as well as a lower threshold for unfair labor practice claims.

Cybersecurity in the Workplace

- New national attempts to regulate data privacy and security from Congress and federal agencies.
- Issue has become a bigger priority following Russia's invasion of Ukraine.
- Michael Gentry will discuss these topics, along with the implication of forthcoming state data privacy laws

COVID as a Disability

- The EEOC has clarified that individuals with COVID may be disabled under the Americans with Disabilities Act.
- Not every case of COVID-19 will qualify as a disability.
- Employers should individually assess each COVID-related accommodation request to determine if the individual meets the appropriate standards.

COVID-19 and Workplace Safety under OSHA

- OSHA withdrew its Vaccination or Testing Emergency Temporary Standard following the United States Supreme Court's decision to stay the ETS.
- Under the OSH Act, employers still have a general duty to provide a work environment “free from recognized hazards that are causing or are likely to cause death or serious physical harm.”
- OSHA is preparing to issue a permanent regulation would replace the emergency temporary standard that applied to health care employers.

Supreme Court Decisions to Watch

- *Viking River Cruises, Inc. v. Moriana*.
 - Question: whether workers in California can circumvent arbitration by filing lawsuits for wage violations on behalf of the state.
- *Virgin America Inc v. Bernstein*.
 - Question: whether California wage law covers the airline's flight attendants based in the state.