LAW OFFICE OF LORI A. GOLDSTEIN, LLC

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Social Media Update: Illinois Bans Password Demands

Illinois recently became the **second state** (joining Maryland) to ban employers from asking a current or prospective employee to provide login information to their social media accounts or profiles. State legislatures, federal agencies and the U.S. Senate are all considering legal restrictions on this employment practice.

The **Illinois Right to Privacy in the Workplace Act,** which will become **effective on January 1, 2013**, prohibits employers from: 1) requesting or requiring that any employee or applicant provide their passwords or "related account information" to any social networking site, to an employer who wants to gain access to that account; or 2) demanding access "in any manner" to an employee's or applicant's account or profile on a social networking website. Therefore, unless the information is already shared publicly, employers can no longer seek access to social media content.

Practical Tips: Companies should review their social media and information technology policies to ensure they comply with the new law. Since employers can still search publicly available social media sites, employees should carefully review the public content on their sites.

General Anti-Bullying Legislation in the Works

Employees across the nation regularly complain about bullying by their supervisors and managers. Yet most have **no legal recourse** under federal or state law **unless** the bullying is based on a **"protected class"**: a characteristic that is **statutorily protected from discrimination**, such as race, gender, age, disability, or national origin.

35% percent of the American workforce has reported being bullied at work. Common examples include verbal abuse and behavior that may be intimidating, threatening, or humiliating. Not only can workplace bullying interfere with work performance, but it can lead to medical and mental health issues, attendance and morale problems, and turnover.

Legislation pending in many states would make workplace bullying unlawful, even if not based on a protected category. Since 2003, twenty-one states (including Illinois last year) introduced

the **Healthy Workplace Bill (HWB**); however, no laws have yet been enacted. The HWB would allow employees to sue employers for "creating an abusive environment." Stay tuned as legislatures adopt new legislation in 2013.

Minorities Becoming Majority in U.S.

Related to "protected class", the 2010 U.S. census revealed that for the first time, racial and ethnic **minorities make up more than half the children born in the U.S**., a result of decades of immigration growth that is now slowing. For 2011, census estimates highlight sweeping changes in the nation's racial makeup and the prolonged impact of a weak economy, with fewer Hispanics entering the U.S.

This news comes as the Supreme Court prepares to rule on the legality of Arizona's strict immigration law, with many states considering similar get-tough measures. Minorities made up roughly 2.02 million, or **50.4 percent, of U.S. births in the 12-month period ending July 2011. That compares with 37 percent in 1990.**

EEOC Extends Discrimination Protection to Transgender Workers

In my last Client Bulletin, I reported a **growing trend toward discrimination protection** for transgender individuals, **despite the absence of a federal ban on sexual orientation discrimination.** In a recent groundbreaking decision this summer, the U.S. Equal Employment Opportunity Commission found that **discrimination against transgender employees is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.**

In the case of Macy v. Holder, an applicant was assured a position, subject only to a background check. He later disclosed during the hire process that he was in the process of transforming to a female. Suddenly, the "position was no longer available for budget reasons," yet another applicant was hired. Macy, now a transgender woman, filed a discrimination complaint, **claiming the employer failed to hire her based on "gender identity" and "sex stereotyping."**

The EEOC relied on a 1989 U.S. Supreme Court landmark decision, Price Waterhouse v. Hopkins, in determining that **discrimination against transgender workers equates to sex discrimination.** In Price Waterhouse, the Supreme Court held that Title VII applied to discrimination based on biological sex as well as based on gender stereotyping.

Although courts are not bound by the EEOC's decision, it essentially creates a new "protected class" in EEOC cases and courts frequently defer to the EEOC's interpretations. It should therefore have a significant impact on workers and employers. In addition, some federal courts have already held that Title VII protects transgender employees and some state laws prohibit transgender discrimination. Companies should educate their managers and review and update handbooks and policies.

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