

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

CLIENT BULLETIN Winter 2014

2014 Welcomes Obamacare, Vocal College Athletes, and Older Workers – The Economic Impact on Employers and Employees

Obamacare Becomes Law for Some, Midsize Employers Get Relief, and Millions Expected to Voluntarily Leave Employment

Hurry up and wait seems to be the norm for the Affordable Care Act. For the second time, the U.S. Department of Treasury and the I.R.S. delayed the employer “pay or play” mandate – but only for certain employers. Originally scheduled to take effect January 1, 2014, the employer mandates were delayed last summer until 2015. They have now been **pushed to 2016 for employers with 50 to 99 employees** who satisfy certain requirements.

This relief will not apply to employers who reduce their workforce or overall work hours between February 9 and December 31, 2014, or to an employer that eliminates or materially reduces health coverage as of February 9, 2014. Small employers (fewer than 50 employees) are not subject to the employer mandate and special rules apply to new employers. Large employers (more than 99 employees) must comply beginning on January 1, 2015.

Meanwhile, the law is expected to cause several million employees to **voluntarily reduce their hours or leave the workforce entirely because of incentives** built into the health care overhaul. Based on incentives, people will opt to keep their income low to stay eligible for federal health care subsidies or Medicaid.

College Athletes Seek to Unionize

In an unprecedented move, the Northwestern University football team is seeking to unionize, an important step for collegiate athletes. In late February, the National Labor Relations Board heard testimony from NU’s quarterback against the University and on behalf of fellow football players and potentially other college athletes. With the assistance of lawyers and the National College Players Association, players are trying to revolutionize the way collegiate athletes are treated. The students feel they don't have a voice, and that the NCAA acts like a dictatorship, imposing rules on students without their input. The athletes want the right to bargain for things they have never had, such as stipends, medical coverage after graduation, increased concussion testing and maybe a share of this multibillion dollar industry’s profits.

The University and other **opponents argue that college sports are not a commercial venue**, and that efforts to turn student-athletes into paid employees undermines the educational purpose of college. Time out until the NLRB rules.

Older Workers: Many Hit Hard by Lengthy Unemployment, But Employers Benefit from Retention

While Illinois has the 4th highest unemployment rate in the nation, surprisingly the **national unemployment rate for Americans over 55 is lower** than for other age groups. But, the number unemployed since the recession began in 2007 has grown tremendously: 31.6 million people aged 55+ unemployed last summer, compared to 25.9 million in July 2007.

Additionally, for an older worker who loses a job, the **amount of time he will stay unemployed is generally much longer**. The median duration of unemployment for 55- to 64-year-olds was 22.3 weeks last summer, according to the Bureau of Labor Statistics, significantly above the overall median duration of joblessness of 13.8 weeks for all age groups.

The explanation is no longer simply demographics (more baby boomers entering this age group.) **Workers are working longer**. Average retirement age is now 61, and more are working into their 70's and beyond. Many want to keep working, are healthy enough to do so, and cannot afford risk falling through the cracks, without enough savings to retire but too young to collect Social Security and Medicare. Another issue is that many simply cannot get the kind of job that they lost, because many of the well-paying jobs that once existed have been automated or outsourced.

Older workers continue to battle societal attitudes and employers' perceptions that they are out of touch, have obsolete skills, and are not worth employing. But many **employers recognize the benefits of hiring and keeping older workers**, including retaining their investment, maintaining a positive morale, and having well-respected expert mature employees with experience, work ethic, motivation and good judgment, who know the company and can help run the business and mentor successors.

An **aging workforce will continue to present a number of issues**. Increased health care costs and health care issues are common, including leaves of absence, disability accommodations and discrimination, flexible work arrangements, and workers compensation. Employers and managers should be sensitive to, and trained on, obligations regarding age, disability, and other unlawful discrimination, harassment, and retaliation. Age diversity can also trigger conflicts, as different generations work together, often with different attitudes about corporate culture.

Older and younger workers seeking job search assistance are encouraged to check out the Career Resource Center in Lake Forest at careerresourcecenter.org or (847)295-5626.

Updates and Follow-ups from 2013

Our Fall Client Bulletin covered the Supreme Court's 2013 landmark legal changes on same sex marriage and noted the 13 states which then had same sex marriage laws on their books. Since then, **Illinois** joined the ranks: Gov. Quinn signed the law in November, with an effective date of June 1, 2014. In December, however, a judge ruled that same-sex couples with partners who have a life-threatening illness can marry immediately. On February 21, a federal judge extended the ruling, deciding that **all same-sex couples can marry now in Cook County, without waiting until June**.

Because same-sex spouses are now ‘spouses’ under federal law if they are ‘spouses’ under state law, Illinois same sex couples will enjoy federal benefits, including protection under the federal Family and Medical Leave Act (FMLA.)

The Bulletin also noted pending legislation to ban employment discrimination based on sexual orientation and gender identity - **Employment Nondiscrimination Act (ENDA)**. The law has now been approved by the Senate and awaits a House vote. Stay tuned.

Also new in 2014, the Illinois Concealed Carry License online application went live in January, with Illinois State Police issuing licenses to approved applicants within 90 days. During the first week, more than 15,000 people had applied. Meanwhile, many employers and property owners are posting signs and banning employees and others from carrying firearms.

The National Labor Relations Board (NLRB) finally gave up on its fight to require all employers to post a **notice informing employees of their right to form a union**. The NLRB’s mandatory poster rule was **invalidated** by two U.S. Courts of Appeals, and its prospects of winning at the Supreme Court were slim. This brings a conclusion to a fight that began in 2011 when the NLRB ordered all employers to post the notice, which many argued was biased in favor of unions.

* * * * *
EMPLOYERS: Ask me if your severance agreements are enforceable, and avoid expensive defense litigation facing companies like Caremark.

EMPLOYEES: Ask me about your obligations and rights under your noncompetes and nonsolicitation agreements.

Law Firm News

Please join a few of my North Shore LAW colleagues and me for a workshop – Legal Issues for Small Businesses - hosted by the Skokie Public Library in its Business Center, 5215 Oakton Street, on March 25, 7-8:30 p.m. Hear from our panel and meet with experienced local attorneys to learn more about your legal rights or business concerns on issues including employees vs. independent contractors, employment contracts, partnership agreements, LLC vs. corporation, commercial leases, copyrights and trademarks.

Thanks to my wonderful clients, mentors, network connection and friends, I am thrilled to be celebrating my firm’s 3-year anniversary in February.

I am proud to be a new member of the Skokie Chamber of Commerce.

* * * * *
This bulletin is an advertisement intended to provide clients and others with general information and is not intended to provide specific legal advice or opinions. Employers and workers seeking assistance with topics addressed in this bulletin or other workplace issues should contact Lori Goldstein at (847) 624-6640 or lori.a.goldstein@gmail.com. Visit www.lorigoldsteinlaw.com for more information about the Law Office of Lori A. Goldstein, LLC, which represents employers and employees.

© 2014 Lori A. Goldstein