

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

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2017: New Laws and Uncertainty

2017 will bring **new workplace laws nationwide**. In November, many states, cities and counties approved minimum wage increases. Massachusetts became the first state to **restrict employers from asking about applicants' prior salaries**, helping to equalize pay regardless of age or gender. New state and local **sick leave measures** were enacted.

But the **November election has created uncertainty**: will the Trump Administration and Congress modify federal workplace laws and undo some of the recent changes? Andrew Puzder, President-elect Trump's selection to lead the U.S. Department of Labor ("DOL"), opposes workplace over-regulation, including an increase in the federal minimum wage and the threatened (but recently blocked) overtime exemption changes. Check out the summary of key 2017 laws and guidance below.

FEDERAL CHANGES AND "ALMOST" CHANGES

EEOC Issues Guidance and Best Practices on National Origin Discrimination

Long-awaited new guidelines on national origin discrimination were issued by the Equal Employment Opportunity Commission in late 2016. Title VII of the Civil Rights Act, which applies to employers with 15 or more full- or part-time employees, hasn't been updated since 2002 (just after the 9/11 attacks.) The guidelines provide examples of discrimination, plus "**promising practices**" that can help employers avoid it. Guidance also covers English fluency and English-only requirements, accent discrimination, human trafficking and harassment.

National origin discrimination, more than any other protected class, **overlaps with other forms of discrimination, particularly race, color and religion**. This creates legal issues for employers and the laws differ. While Title VII requires employers to accommodate certain religious practices, no accommodation exists for national origin.

Newly defined, national origin discrimination is "discrimination because an individual (or his or her ancestors) is from certain place or has the physical, cultural, or linguistic characteristics of a particular national origin group." The place of origin may be a country, including the U.S., a former country, or a geographic region. The law also bars **harassment**; discrimination based on the **belief** (even incorrect) that someone belongs to a certain national origin group; **association** with someone of a particular group; and even citizenship status **if** the purpose or effect is discrimination.

One “promising practice” is to **avoid exclusive use of word-of-mouth recruitment**. If you ask employees to tell their family, friends, or acquaintances about job openings and to refer potential candidates, it could reinforce the existing racial or ethnic makeup of the workplace.

With workplace diversity highlighted across the country, employers should educate their HR and other managers. In addition to the guidelines, the EEOC created a Q&A section and a **Fact Sheet aimed at small-business owners**.

The new guidance marks another notch in the **EEOC’s Strategic Enforcement Plan**, rolled out at the beginning of President Obama’s second term. Since then, the EEOC has been more active in filing lawsuits and issuing regulations on its **key priorities, including LGBT and transgender protections, criminal background checks, equal pay, leave** as a form of reasonable accommodation under the ADA, wellness programs and **accommodations** for religion and pregnancy.

Overtime Exemption Changes Blocked at the 11th Hour

For most of 2016 year, employers and employees (and their attorneys) anxiously anticipated and planned for significant changes in overtime compensation law (the Fair Labor Standards Act.) **Minimum salary levels** required for the exemption **were scheduled to more than double (from \$23,660 to \$47,476.)** Employers conducted **workforce audits** to make sure employees’ work duties met the applicable exemption test. Many employees who don’t qualify were converted to nonexempt. The truly exempt employees either received or were promised raises as of December 1, the scheduled effective date of the new law; others will be treated as nonexempt because raises are not feasible.

But on **November 22, a Texas court granted an injunction blocking the new law**. The judge, agreeing with many employer lobbyists, reasoned that the law **usurps state rights** to decide wages. Based on the language of the FLSA, he found that Congress intended the exemption to apply to employees doing actual executive, administrative, and professional duties, without any reference to or requirement of a minimum salary level. He concluded that if Congress intended the salary requirement to supplant the duties test, then **Congress, and not DOL, should make that change**.

DOL appealed on December 15 and the appeal has been **expedited**. But it won’t likely be decided before the change in Presidential administration in January. With the uncertainty and the new Labor Secretary’s negative opinion about the changes, it’s possible the appeal **may be dropped**.

STATE AND LOCAL LEAVE LAWS

Illinois, Chicago and Cook County employees will benefit from new state and local leave laws:

1. The **Illinois Employee Sick Leave Act** allows employees with personal sick leave benefits for their own illness, injury or medical appointment (paid or unpaid), to **use the accrued benefits to care for their children and other family members**. Employers are allowed to limit the use of personal sick leave benefits under the act to “not less than the personal sick leave that would be accrued during six months at the employee’s then-current rate of entitlement.”

Employers who have in place a paid time off (**PTO**) **policy that already allows** employees the **flexibility** to take time off to care for children or other family members **do not need to modify** their policies so long as they meet the requirements of the act. The act also prohibits employers

from retaliating against employees who use or attempt to use their personal sick leave benefits as allowed under the act.

2. Many employees, even part-time and short-term, can begin earning **paid sick leave** on July 1, 2017 under the **Chicago and Cook County Paid Sick Leave Ordinances**. The laws apply to employees who 1) perform at least 2 hours of work the city/county geographic boundaries in any 2-week period; and 2) work at least 80 hours for the employer in any 120-day period.

Employees will **earn 1 hour for every 40 hours worked, with a cap of 40 hours (5 days) a year**. Leave can be taken for one's own or a family member's illness, injury, or medical care, for an employee or family member who is a victim of domestic violence/sex offense, or if the business or school is closed for public health emergency. (Illinois voters showed overwhelming support for an advisory referendum in November for a similar state paid sick leave law; stay tuned.)

3. The **Illinois Child Bereavement Leave Act** allows employees 2 weeks of unpaid leave for the death of their son or daughter.
4. The **Victims' Economic Security and Safety Act (VESSA)** was expanded to cover all employers. Depending on workforce size, employees receive between 4-12 weeks of unpaid leave if they or family members are victims of domestic or sexual violence.

OTHER ILLINOIS LAWS

No non-competes for low-wage earners. The **Illinois Freedom to Work Act** will prohibit employers from entering into a non-compete agreement with employees who earn less than \$13 per hour (or the local, state or federal minimum wage if greater.*) This covers any agreement that restricts the employee from performing work for another employer for a specified period of time, or restricts the employee from working in a particular geographic area, or working for another employer that is similar to the employee's work for the employer. Such agreements will be illegal and void.

***Cook County and Chicago minimum wages will gradually increase to \$13** over the next few years. Cook County rate will increase to \$10 an hour on July 1, 2017, and \$1 more each July until \$13 in 2020. Chicago's current \$10.50 will increase to \$11 in July, \$12 in 2018, and \$13 in 2019.

Expanded social media protection. Adding to the current ban on requesting social media passwords of employees and applicants, Illinois employers will soon be **prohibited from "shoulder surfing"** and from requiring or coercing individuals to **invite the employer to join an online group or to friend an employer**. The amended Illinois Right to Privacy in the Workplace Act also expands employers' ability to monitor employer devices and accounts.

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. Please visit my website www.lorigoldsteinlaw.com for more information about the Law Office of Lori A. Goldstein, LLC. © 2016 Lori A. Goldstein