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FYI® Roundup
For Your Information®

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Labor and Employment Developments 2015 – A Mid-Year Recap

This *FYI Roundup* recaps workplace issues that were front and center during the first half of 2015. Employees in California and Massachusetts saw new leave entitlements, as did workers in Philadelphia. States and cities across the country took steps to hike their minimum wage rates, while the federal minimum remained unchanged. Employers had to retool their hiring practices as ban-the-box laws spread and credit checks were curbed. The DOL proposed long-awaited changes to its overtime regulations, and the SEC proposed new executive compensation disclosure rules for public companies. The Supreme Court issued important decisions on pregnancy discrimination, religious accommodation and the EEOC's conciliation obligations.

Growing Patchwork of Leave Laws

Massachusetts Extends Parental Leave Rights to Men

In January, Governor Deval Patrick signed into law a parental leave bill, amending and replacing the state's Maternity Leave Act. The new gender-neutral law took effect on April 7, 2015, extending the right to job-protected leave for the birth or adoption of a child to male and female employees alike. (See our January 29, 2015 *For Your Information*.)

Philadelphia Adopts Paid Sick Leave Law

In February, Mayor Michael Nutter signed the Promoting Healthy Families and Workplaces Ordinance into law. The ordinance requires employers with at least 10 employees to provide paid sick leave and smaller employers to provide unpaid leave. (See our *For Your Information* from February 25, 2015.) The new law took effect on May 13, triggering employee accruals of sick time and employer notice obligations as Philadelphia joined a growing number of major cities with similar mandates. (See our May 21, 2015 *For Your Information*.)

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DOL Updates FMLA Notices and Certification Forms

The DOL released updated model FMLA notices and medical certification forms for immediate use by employers in administering FMLA leave. The new forms will be effective through May 31, 2018. (See our June 4, 2015 *For Your Information*.)

California and Massachusetts Employers Feverishly Prepare for Paid Sick Leave

Employees in California and Massachusetts who previously were not entitled to paid sick leave became eligible when new statewide mandates took effect on July 1. California employers are required to provide nearly all employees with three paid sick days per year. Massachusetts employers have to provide employees with five days of sick leave per year, paid or unpaid depending on the employer's size. (See our July 1, 2015 *FYI In-Depth*.)

Focus on Executive Compensation

FICA Case May Have Broad Implications for Deferred Compensation Plans

An employer was held responsible for not obtaining optimal FICA tax withholding on nonqualified deferred compensation, resulting in steeper tax bills for retirees. The fact that the court pointed to language to support the retirees' cause of action suggests that plan language aiming to save the plan from inadvertent mistakes may cause more harm than good for employers. (See our February 11, 2015 *For Your Information*.)

SEC Proposes Pay Versus Performance Disclosures

In May, the Securities and Exchange Commission issued a proposed rule under the Dodd-Frank Act that would require public companies to disclose the relationship between compensation actually paid to executives and the company's financial performance. The "pay versus performance" rule would require disclosure of the chief executive's actual pay, the average pay of other named executive officers, total shareholder return, and peer group comparisons. The proposed changes would be phased in over a three-year period. (See our *For Your Information* from June 9, 2015.)

Labor and Employment Compliance

IRS Releases Guidance on Retroactive Increase to 2014 Transit Benefits

In January, the IRS issued guidance on the retroactive increase of the 2014 monthly limit on excludable transit benefits from $130 to $250. The guidance addressed employer questions on the retroactive increase, established a special administrative procedure to alleviate reporting burdens for certain employers, and instructed employers on Form W-2 adjustments. (See our January 9, 2015 *FYI Alert*.)

Weeding Out Connecticut Convictions for Marijuana Possession

In March, the Connecticut Supreme Court ruled that persons who were previously convicted of possessing less than one-half ounce of marijuana are now entitled to get those records erased. As these conviction records are expunged from public records, employers will no longer be able to access the information through background checks and factor it into their hiring and other employment decisions. (See our April 2, 2015 *For Your Information*.)

President Vetoes Congressional Resolution Blocking NLRB Election Rule

In March, President Barack Obama vetoed a joint resolution of Congress disapproving the NLRB's new union election rule, paving the way for the rule to take effect on April 14. The rule significantly alters how the agency administers representation elections. (See our April 6, 2015 *For Your Information*.)

Telecommuting: A Reasonable Accommodation?

The Sixth Circuit Court of Appeals recently considered whether telecommuting is a reasonable — and workable — accommodation under the Americans with Disabilities Act. In an important ruling for employers, the court confirmed that regular on-site presence is an essential function of most jobs — particularly interactive jobs — and that an employer is not required to remove an essential job function to accommodate an individual with a disability. In other circumstances, however, telecommuting may be a viable reasonable accommodation. (See our May 7, 2015 *For Your Information*.)

Supreme Court Decisions

Supreme Court Says Federal Agencies Can Change Regulatory Interpretations without Formal Rulemaking

When the DOL reversed a 2006 opinion letter and reclassified mortgage loan officers as nonexempt under the FLSA, its action was challenged. In March, the Supreme Court ruled that changes to interpretive rules do not require "notice-and-comment" rulemaking, making it easier for regulatory agencies to shift course and more complicated for employers to develop effective compliance strategies. (See our March 18, 2015 *For Your Information*.)

Supreme Court Gives New Life to Pregnancy Discrimination Claim

In March, a divided Supreme Court allowed a delivery driver to pursue a discrimination claim based on her employer's denial of a request for light duty due to pregnancy-related lifting restrictions. Without deciding the merits of her claim, the Court sent the case back to the Fourth Circuit Court of Appeals to determine whether the company failed to reasonably accommodate this driver. The decision left open questions on the extent to which employers must accommodate pregnant workers — and what types of accommodations they must provide. (See our March 26, 2015 *FYI Alert*.)

Supreme Court OKs Judicial Review of EEOC's Conciliation Efforts

In a unanimous decision issued in April, the Supreme Court acknowledged that the EEOC has wide — but not sole — discretion in deciding how to conciliate employment discrimination claims, and endorsed limited federal court review of the agency's efforts to achieve an employer's voluntary compliance. Whether the ruling will affect EEOC litigation strategies or give employers more leverage to reach pre-suit settlements with the agency remains to be seen. (See our May 11, 2015 *For Your Information*.)

Supreme Court Clarifies Employers' Religious Accommodation Obligations

In June, the Supreme Court ruled that an employer may not refuse to hire a job applicant if the applicant's need for a religious accommodation was a motivating factor in that decision. Reversing a lower court ruling, the Court

affirmed that that an employer could be liable for intentional discrimination regardless of whether it had actual knowledge of the need for an accommodation. (See our June 22, 2015 *For Your Information*.)

Emerging Trend to "Ban the Box" … and Credit Checks too

Illinois and Chicago Ban-the-Box Laws Now In Effect

New state and local laws that impact the private sector hiring process took effect on January 1. Both the Illinois and Chicago laws restrict employers' ability to inquire about a job applicant's criminal background, but they have important differences. While the state law bans the box only for employers with 15 or more employees, the Chicago ordinance applies to employers in the city regardless of size and requires employers to inform applicants if their criminal history caused or influenced the decision not to hire. (See our January 21, 2015 *For Your Information*.)

New Jersey Ban-the-Box Law Takes Effect

In March, New Jersey became the latest state to ban the box for private employers when its Opportunity to Compete Act took effect. The law prohibits both public and private employers with 15 or more employees from inquiring into an applicant's criminal history during the initial stages of the hiring process. (See our March 12, 2015 *For Your Information*.)

NYC to Ban Credit Checks by Employers

In May, Mayor Bill de Blasio signed into law a bill prohibiting most employers from running credit checks or considering an applicant's or employee's consumer credit history in making employment decisions. When the new law takes effect on September 3, NYC will join a growing number of jurisdictions that restrict employers' use of credit history for employment purposes. (See our May 12, 2015 *For Your Information*.)

NYC to Ban the Box for Private Employers

In 2011, New York City barred city agencies from asking about an individual's criminal history on job applications and during the early stages of the hiring process. In June, the city council passed the Fair Chance Act prohibiting inquiries into an applicant's criminal history before a conditional offer of private employment is made. (See our *For Your Information* from June 18, 2015.)

Continued Focus on Wage and Hour Issues

New York's Annual Wage Notice Requirement Eliminated

New York's Wage Theft Prevention Act requires employers to provide annual wage notices to current employees by February 1 of each year and to new employees at the time of hire. In December, Governor Andrew Cuomo signed a bill eliminating the annual notice requirement for 2015 and beyond. (See our January 6, 2015 *For Your Information*.) The bill also increased penalties for wage theft and expanded liability for wage payment violations, effective February 27. (See our March 6, 2015 *For Your Information*.)

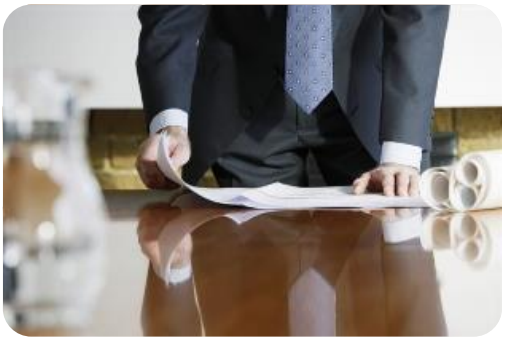
Majority of State Minimum Wages Higher Than Federal Rate for 2015

On January 1, nearly half of the states raised rates for 2015, with other increases to follow. For the first time, a majority of states now have higher minimum wages than the federal minimum. Multistate employers in particular will

have to factor the new rates into overtime pay calculations and, in some cases, employee exemptions from overtime requirements. (See our January 20, 2015 *For Your Information*.)

Illinois Rescinds Minimum Wage Hike for State Contractors

In January, before leaving office, former Illinois Governor Pat Quinn signed an executive order increasing the minimum wage to $10.00 per hour for all state government contracts. By executive order, Governor Bruce Rauner rescinded the increase, restoring the minimum wage for Illinois government contractors to $8.25 per hour — the same rate that applies to Illinois employers generally. (See our February 9, 2015 *For Your Information*.)



District of Columbia's Amended Wage Theft Prevention Act Takes Effect February 26

Mayor Vincent Gray signed the Wage Theft Prevention Amendment Act of 2014 into law last September, and approved emergency amendments on December 29 to clarify its employee notice and recordkeeping requirements and penalties for noncompliance. The DC Council later approved additional amendments to avoid several unintended consequences of the new law. (See our February 20, 2015 *For Your Information*.) The law took effect on February 26, 2015, triggering employer posting and pay notice requirements. (See our March 30, 2015 *For Your Information*.)

DOL Proposes Significant Expansion of Overtime Eligibility

More than a year ago, the president directed the secretary of labor to "modernize" long-standing overtime regulations and "restore the common sense principles" governing who is entitled to overtime pay. For fifteen months, the DOL worked on proposed revisions to the FLSA's white-collar exemptions. (See our March 31, 2015 *For Your Information*.) In June, the DOL unveiled a proposal that would significantly expand overtime eligibility by more than doubling the salary threshold for the so-called "white-collar" exemptions in 2016 to an estimated $970 per week, or $50,440 annually. (See our *FYI Alert* from June 30, 2015.)

Chicago Hikes Minimum Wage

On July 1, new minimum wage rates that exceed the state minimum took effect for most private-sector employees who work in Chicago and for city employees. Employers will have to factor the new $10 minimum wage rate for non-tipped employees and $5.45 rate for tipped employees — and scheduled increases — into their compensation plans and overtime pay calculations. (See our July 10, 2015 *For Your Information*.)

Same-Sex Marriage

DOL Extends FMLA Rights to Same-Sex Spouses

In February, the DOL issued a final rule that revises the definition of "spouse" under the federal Family and Medical Leave Act to cover all legally married, same-sex spouses regardless of where they live. (See our February 27, 2015 *For Your Information*.)

Federal Judge Blocks FMLA's Expanded Definition of Spouse

In March, the attorneys general of Texas, Arkansas, Louisiana and Nebraska filed suit to strike down the DOL's final rule redefining "spouse" under the federal Family and Medical Leave Act as contrary to their state laws. A federal judge in Texas granted a preliminary injunction to stop DOL enforcement of that rule. (See our

April 7 2015 *For Your Information*.) The DOL unsuccessfully sought to dissolve the injunction at an April hearing. (See our April 13, 2015 *For Your Information*.)

Love and Marriage: The Evolving Landscape

Last November, the Sixth Circuit Court of Appeals became the first federal appeals court to uphold state bans on same-sex marriage since the Supreme Court decided *US v. Windsor* in 2013. With four other federal appellate courts — and more than 30 district courts — having struck down bans, the Supreme Court agreed to hear same-sex marriage cases from Kentucky, Michigan, Ohio and Tennessee. The Court set oral argument for April 28 on whether a state must issue marriage licenses to same-sex couples and recognize same-sex marriages performed elsewhere. (See our April 27, 2015 *FYI In-Depth*.)

High Court Says "I Do" to Same-Sex Marriage

In June, the Supreme Court ruled in a 5-4 decision that same-sex couples have a constitutional right to marry. The Court held that the 14th Amendment's equal protection and due process clauses guarantee this right, and thus require all states to permit and recognize same-sex marriages. (See our June 26, 2015 *FYI Alert*.)

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