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FYI® Roundup
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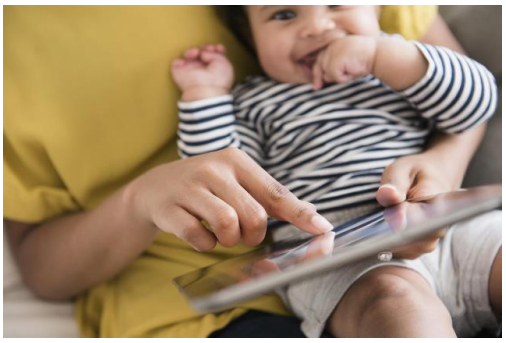
Labor and Employment Developments – 2017 in Review

This *FYI Roundup* recaps workplace issues that were front and center in 2017. As the trend toward localizing employment laws continued, Washington became the fifth state to approve paid family leave as New York prepared to phase in the new benefit. Rhode Island enacted a paid sick time law, as New York City expanded coverage under its law. Oregon enacted new equal pay protections, while the EEOC's expanded EEO-1 pay data collection was put on hold. State and local minimum wages continued to rise. Curbs on salary history inquiries and background screening ramped up on both coasts. Employment protections expanded for pregnant workers, medical marijuana users, and freelancers. Federal courts struck down the Obama administration's overtime and persuader rules, while the Trump administration withdrew prior guidance on independent contractors and joint employment and revoked the so-called "blacklisting" order. All in all, another busy year.

Ever-Growing Patchwork of State and Local Leave Laws

Employees saw new or expanded paid leave benefits as the trend toward localizing employment laws continued.

New York Adopts Final Paid Family Leave Rules and Sets Premium Rates



Last year, New York enacted a comprehensive Paid Family Leave law (PFL) that will provide employee-funded benefits administered through the state's temporary disability insurance program. In February, the New York Workers' Compensation Board issued proposed regulations to phase in the new benefit beginning in 2018, and revised them in May. On June 1, the state set the premium rate for PFL benefits and maximum employee contribution for coverage beginning January 1, 2018. Final regulations implementing the new law were

released in July, which were substantively unchanged from the revised regulations proposed in May. (See our March 29, 2017, June 19, 2017, and July 28, 2017 *For Your Information* publications.)

New York Releases Paid Family Leave Tax Guidance

On August 25, the New York State Department of Taxation and Finance issued guidance on the tax treatment of family leave contributions and benefits under the state's paid family leave program. The guidance confirms that employee contributions should be made on an after-tax basis, and paid family leave benefits that employees receive will be taxable income. (See our August 31, 2017 *For Your Information*.)

New York Releases Paid Family Leave Forms

The state Workers' Compensation Board released forms that are essential to implementing the New York Paid Family Leave Law effective January 1, 2018. The release included employee leave request and certification forms, a waiver for employees to opt out of benefits and avoid contributions, and forms for employers to voluntarily provide coverage. (See our November 22, 2017 *For Your Information*.)

Washington Becomes 5th State with Paid Family Leave

On July 5, Washington joined four other states and the District of Columbia in providing a paid family leave benefit. Under the state's new insurance program, workers will be eligible for up to 12 weeks of paid family or medical leave per year starting in 2020. Employer and employee contributions will fund the benefit, but businesses with fewer than 50 employees in the state will not be required to pay the employer portion. (See our July 18, 2017 *For Your Information*.)

Washington Proposes Paid Sick Leave Rules

Last November, voters in Washington approved a ballot initiative that will require employers throughout the state to provide a new employee benefit — paid sick leave — starting in 2018. On April 7, the state Department of Labor and Industries released proposed regulations to implement the requirement. (See our May 5, 2017 *For Your Information*.)

District of Columbia Paid Family Leave Advances

On December 20, 2016, the Council of the District of Columbia approved the Universal Paid Leave Amendment Act of 2016, which would allow individuals who work in the District to take up to eight weeks of parental leave, six weeks of family leave, and two weeks of medical leave, paid for by a 0.62% payroll tax on employers. The mayor allowed it to advance without her signature on February 16. (See our February 21, 2017 *For Your Information*.)

Rhode Island: 8th State to Enact Paid Sick Time Law

On September 28, Rhode Island enacted the Healthy and Safe Families and Workplaces Act, becoming the eighth state to require employers to provide paid sick leave benefits. Employers with at least 18 employees will have to provide up to three days of paid, job-protected sick or safe leave in 2018, four days in 2019 and five days in 2020. (See our October 5, 2017 *For Your Information*.)

NYC Amends Sick Leave Law to Include Safe Time

On November 6, Mayor Bill de Blasio signed the Earned Safe and Sick Time Act, expanding coverage under the city's paid sick leave law. The amended law broadens the definition of covered "family member," and adds family offenses, sexual offenses, stalking, and human trafficking to the list of permissible reasons for protected leave, effective May 5, 2018. (See our November 1, 2017 and November 27, 2018 *For Your Information* publications.)

Mounting Curbs on Salary History Inquiries

Restrictions on wage history inquiries ramped up on both coasts as state and local lawmakers sought ways to close the gender pay gap.

Delaware Bans Salary History Inquiries

On June 14, Delaware enacted a law barring employers from requesting the compensation history of job applicants, effective December 14. With that, Delaware became the latest jurisdiction to join a growing trend aimed at closing the gender pay gap by curbing inquiries about past wages. (See our June 21, 2017 *For Your Information*.)

San Francisco Bans Salary History Inquiries

On July 19, San Francisco became the third major city in the nation seeking to close the gender pay gap by curbing salary history inquiries. Starting in 2018, a new city ordinance will prohibit employers from inquiring about an applicant's salary history or disclosing current or former employees' history without their authorization. (See our July 25, 2017 *For Your Information*.)

NYC Mayor Signs Salary History Ban into Law

On May 4, Mayor Bill de Blasio signed a bill restricting employers with four or more employees from asking applicants about their salary history during the hiring process, making NYC the latest jurisdiction to bar employers from inquiring about job applicants' compensation and benefits history and from relying on salary history in formulating a job offer. Shortly before the new law took effect on October 31, the New York City Commission on Human Rights issued guidance for employers and applicants. (See our April 12, 2017, May 10, 2017, and October 20, 2017 *For Your Information* publications.)

Philadelphia's On-Again Off-Again Wage Equity Law

When Philadelphia enacted its so-called wage equity ordinance in January, it was poised to become the first city in the country to prohibit salary history inquiries during the hiring process. The ordinance, which barred employers from asking about, or requiring disclosure of, prospective hires' wage history, was slated to take effect May 23 but quickly faced a legal challenge by the Chamber of Commerce for Greater Philadelphia. A federal judge blocked enforcement before it could take effect. Following a flurry of legal proceedings, the law remains on hold pending resolution of a preliminary injunction motion. (See our June 19, 2017, June 9, 2017, April 28, 2017, and January 27, 2017 *For Your Information* publications.)

California Becomes 4th State to Ban Salary Inquiries

On October 12, California Governor Jerry Brown signed into law a bill that prohibits both public and private employers from seeking, considering or relying on a job applicant's salary history information during the hiring process. California joins Delaware, Massachusetts and Oregon in enacting statewide restrictions on salary history inquiries. (See our October 25, 2017 *For Your Information*.)

Pay Equity Protections

Oregon and New York put new equal pay protections in place, while OMB put the EEOC's expanded pay data collection on hold.

Oregon Enacts New Equal Pay Law

On June 1, Oregon Governor Kate Brown signed into law new equal pay protections for employees and restrictions for Oregon employers. The Oregon Equal Pay Act of 2017 curbs salary history inquiries by employers, and provides a limited safe harbor from liability for equal pay violations for employers that proactively evaluate their pay practices and take steps to eliminate wage disparities. (See our June15, 2017 *For Your Information*.)

NY State Targets Pay Equity

On January 9, New York Governor Andrew Cuomo issued a pair of executive orders extending new pay equity protections to employees of the state and its contractors. Aimed at narrowing the gender wage gap, one order bars state agencies from asking applicants for salary history during the hiring process while the other imposes new pay data disclosure requirements on state contractors. (See our February 2, 2017 *For Your Information*.)

Expanded EEO-1 Reporting Now on Hold

On August 29, the Office of Management and Budget issued an immediate stay of the pay and hours worked reporting requirements in the EEO-1 form that was revised last year. The EEOC subsequently confirmed that employers should not submit aggregate pay and hours worked data for 2017 and provided other important clarifications with respect to the EEO-1 filing due in March 2018. (See our August 30, 2017 *FYI Alert* and September 29, 2017 *For Your Information*.)

States and Cities Expand Employment Protections

Employment protections expanded for pregnant workers, medical marijuana users, freelancers, uniformed servicemembers and veterans, as employers faced new restrictions on scheduling practices and their use of credit and criminal history information.

D.C. Restricts Employer Use of Credit Information

On February 15, D.C. Mayor Muriel Bowser signed the Fair Credit in Employment Amendment Act of 2016, joining a growing number of jurisdictions that significantly limit the use of credit checks for employment purposes. The law became effective April 7, subject to appropriations. (See our February 27, 2017 and April 27, 2017 *For Your Information* publications.)

California Employers Face New Criminal History Rules

California's Fair Employment and Housing Council approved new regulations limiting employers' consideration of criminal history in employment decision-making. The regulations became enforceable on July 1, affecting applicant screening, hiring and other employment practices. (See our July 10, 2017 *For Your Information*.)

Los Angeles Becomes Latest City to Ban the Box

On January 22, Los Angeles became the latest in a growing list of jurisdictions to curb pre-hire inquiries into a job applicant's criminal history. Joining other cities like San Francisco and New York City that have "banned the box," Los Angeles' new ordinance bars private employers with at least 10 employees from asking about an applicant's criminal history prior to a conditional offer of employment. (See our January 24, 2017 *For Your Information*.)

California Joins Ban-the-Box Bandwagon

On October 14, California Governor Jerry Brown signed into law new workplace restrictions on employers' use of criminal records in employment decisions. Starting in 2018, California employers will generally be barred from seeking disclosure of job applicants' criminal conviction history or from considering such information prior to a conditional job offer. (See our October 24, 2017 *For Your Information*.)

NYC Enacts "Fair Workweek" Laws

On May 30, New York Mayor Bill de Blasio signed a package of five bills into law, imposing worker scheduling limitations on retail and fast food employers, effective November 26. The so-called "Fair Workweek" laws regulate shift scheduling and pay practices in the fast food industry, and effectively ban on-call scheduling by retailers. (See our June 16, 2017 *For Your Information*.)

NYC Freelancer Law Poised to Take Effect

In 2016, New York Mayor Bill de Blasio signed into law the Freelance Isn't Free Act. This first-of-its-kind law in the nation took effect on May 15, creating new rights and extending certain wage protections to freelancers and independent contractors in the city. (See our May 4, 2017 *For Your Information*.)

San Francisco Employer Annual Reporting Form Due May 1

San Francisco employers are required to pay a certain amount toward the healthcare costs of their employees who work in the city, and submit to the city an Annual Reporting Form summarizing their compliance with the healthcare requirement as well as San Francisco's Paid Parental Leave and Fair Chance (ban-the-box) Ordinances. (See our March 30, 2017 *For Your Information*.)

Massachusetts Expands Employment Protections for Pregnant Workers

On July 27, Massachusetts enacted the Pregnant Workers Fairness Act, joining a growing number of states expanding employment protections for pregnant workers. Slated to go into effect on April 1, 2018, the new law prohibits employment discrimination on the basis of pregnancy or pregnancy-related conditions and expands employer obligations to reasonably accommodate new and expectant mothers. (See our August 11, 2017 *For Your Information*.)

Oregon Becomes First State to Require Predictive Scheduling

On August 8, Oregon became the first state to enact a predictive scheduling law that will take effect in July 2018. The law will require large employers in the food service, hospitality, and retail industries to provide hourly employees with a written work schedule at least seven days in advance, timely notice of any schedule changes, and a 10-hour rest period between shifts. Employees will receive additional compensation for schedule changes without advance notice and for working during the rest period. (See our August 30, 2017 *For Your Information*.)

Oregon Revises Overtime Rules and Hour Restrictions

In August, Oregon enacted a new law clarifying state overtime requirements for manufacturers and revising limits on work hours for employees in mills, factories and manufacturing establishments. While the new overtime rules took effect immediately, the revised maximum hour restrictions are effective January 1, 2018. (See our September 20, 2017 *For Your Information*.)

NYC Enacts New Protections for Uniformed Servicemembers and Veterans

New York City enacted a law that adds uniformed service as a protected status under its Human Rights Law. The new protections for active military personnel and veterans against employment and other discrimination were effective November 19. (See our October 17, 2017 *For Your Information*.)

Courts Clarify Employer Obligations

Federal courts struck down the Obama administration's overtime rule and approved pay structure based on past salary, while state courts weighed in on employers' scheduling practices and accommodating medical marijuana use.

Massachusetts Employers May Have to Accommodate Medical Marijuana Use

In a first-of-its-kind ruling, the Massachusetts Supreme Judicial Court held that employers have a duty to reasonably accommodate employees' off-duty medical marijuana use under the Commonwealth's disability discrimination laws. In light of this decision, Massachusetts employers may have to alter their drug testing, zero-tolerance, and other employment policies, and ensure that they engage in an interactive process with medical marijuana users requesting an accommodation. (See our August 4, 2017 *For Your Information*.)

Ninth Circuit OKs Pay Structure Based on Prior Salary

On April 27, a panel of the San Francisco-based 9th Circuit Court of Appeals ruled that an employer may justify gender-based pay differentials when it uses salary history alone to set pay. Under the ruling, prior salary may qualify as "a factor other than sex" under the Equal Pay Act if its use is reasonable and serves the employer's business purposes. (See our May 12, 2017 *For Your Information*.)

California's "Day of Rest" Requirements Clarified

The California Supreme Court answered three unsettled questions concerning limitations on employers' scheduling practices under the California Labor Code's general prohibition against employees working "more than six days in seven" — the so-called "day of rest" requirements. On May 8, the court clarified that employees must receive at least one day of rest during each workweek but they may forgo their day of rest, subject to certain limitations. (See our May 18, 2017 *For Your Information*.)

Court Blocks HHS from Enforcing Prohibition on Transgender Discrimination

Just before they were to take effect, a Texas district court temporarily blocked provisions of the Obama administration's HHS regulation prohibiting certain health programs and activities from discriminating on the basis of gender identity and termination of pregnancy. The court later put the case on hold indefinitely while HHS reconsiders the rule. (See our January 13, 2017 and August 18, 2017 *For Your Information* publications.)

Obama DOL's Overtime Rule Overruled

On August 31, a Texas federal judge invalidated the Obama administration's rule that would have more than doubled the minimum salary threshold for the so-called "white-collar" exemptions from the Fair Labor Standards Act's overtime pay requirements. (See our September 22, 2017 *For Your Information*.)

DOL Appeals Ruling Invalidating Overtime Rule

On October 30, the DOL filed a notice to appeal the Texas federal judge's decision invalidating the Obama administration's final overtime rule. Once the appeal was docketed, the government asked the U.S. Court of Appeals for the 5th Circuit to hold the appeal in abeyance pending the DOL's further rulemaking. (See our November 1, 2017 *FYI Alert*.)

Wage Rates and Wage Payment Rules in Flux

State and local minimum wages continued to rise, and thresholds for overtime exemptions increased.

New Year, New Salary Thresholds for NY Overtime Exemptions and Minimum Wage Increases

Effective December 31, 2016, the New York Department of Labor amended the state's overtime regulations, substantially increasing the salary thresholds for the administrative and executive exemptions based on geographic location and employer size. Along with the higher thresholds, the state also increased minimum hourly wage rates for 2017. (See our January 12, 2017 *For Your Information*.)

New York Wage Payment Regulations Struck Down

In 2016, the New York State Department of Labor adopted new regulations governing the payment of wages by direct deposit or payroll debit card. On February 16, the New York Industrial Board of Appeals invalidated those regulations, which had been scheduled to take effect March 7. The New York State Department of Labor has filed an appeal challenging the Board's decision. (See our May 11, 2017 and March 2, 2017 *For Your Information* publications.)

California Increases 2018 Threshold for Computer Software Employee Exemption

California exempts certain computer professionals from its overtime pay requirements if they are compensated at or above the level set by the state each year and satisfy a stringent job duties test. Effective January 1, 2018, computer software employees will have to earn a salary of $90,790.07 annually or an hourly wage of $43.58 to qualify for the exemption. (See our October 18, 2017 *For Your Information*.)

New York Increases Minimum Wage and Salary Thresholds for Exemptions

New York state's minimum hourly wage rates and the salary thresholds for administrative and executive exemptions from state overtime pay requirements are scheduled to increase effective December 31, 2017. The new rates and thresholds will vary based on geographic location of the workplace and employer size, with businesses in New York City facing the highest minimum wages and salary floors. (See our December 28, 2017 *For Your Information*.)

DOL Has a Change of Heart

The DOL withdrew prior guidance on independent contractors and joint employment, revived its opinion letter practice, and moved to rescind the persuader rule and revoke the so-called "blacklisting" order.

DOL Brings Back Opinion Letters

On June 27, the DOL announced that it is reviving the long-standing practice of issuing opinion letters that the Obama administration eliminated in 2010. Wage and Hour Division opinion letters will replace the broader administrator interpretations, allowing businesses and workers to seek individualized guidance on their particular employment practices in order to ensure compliance. (See our June 30, 2017 *For Your Information*.)

DOL Withdraws Guidance on Joint Employers and Independent Contractors

On June 7, Secretary of Labor Alexander Acosta announced the withdrawal of two Obama-era Administrator's Interpretations concerning independent contracting and joint employment that took an expansive view of who is an employee or employer. Although the guidance no longer represents the DOL's interpretation of the law, its withdrawal does not change the law but may signal a shift in enforcement priorities. (See our June 8, 2017 *FYI Alert*.)

DOL Moves to Rescind Persuader Rule

In 2016, a Texas District Court permanently blocked the DOL from implementing and enforcing the Obama administration's final "persuader" rule that would have required employers and their labor relations advisors to disclose publicly agreements and arrangements that had long been exempt from reporting under the Labor-Management Reporting and Disclosure Act. On June 12, the DOL began the process of rescinding the rule. (See our June 20, 2017 *For Your Information*.)

DOL Hikes FLSA and Other Employer Penalties Again

For the second time in six months, the DOL increased the civil monetary penalties for violating federal minimum wage, overtime, posting and safety requirements. The increases apply to penalties assessed after January 13, 2017 for FLSA, FMLA and OSHAct violations occurring after November 2, 2015. (See our January 20, 2017 *For Your Information*.)

DOL, PBGC and HHS Increase Penalties for Violations

The DOL, PBGC, and HHS announced annual inflation penalty adjustments. (See our February 10, 2017 *For Your Information*.)

Federal Contractors Get Relief But….

The Trump administration revoked the so-called "blacklisting" order, but covered contractors faced a minimum wage increase.

"Blacklisting" Order Revoked and Final Rule Nullified

On March 27, President Trump issued an executive order revoking President Obama's Fair Pay and Safe Workplaces Executive Order — the so-called "blacklisting" order — that required prospective government contractors to disclose past labor law violations during the federal procurement process, and imposed other obligations and restrictions. The president also signed Congress' disapproval resolution, nullifying the final rule implementing the blacklisting order and permanently blocking the government from enforcing its requirements. (See our March 7, 2017 and March 28, 2017 issues of *FYI Alert*.)

Federal Contractors Face Minimum Wage Increase

On September 15, the DOL announced a minimum wage increase for covered federal contractors from $10.20 to $10.35 per hour effective January 1, 2018, as well as an increase in the minimum cash wage payable to tipped workers on or in connection with covered contracts from $6.80 to $7.25 per hour. (See our September 28, 2017 *For Your Information*.)

CEO Pay Under Scrutiny

Public companies faced continued focus on CEO pay ratios.

Portland to Impose Surtax on High CEO Pay Ratios

A new SEC rule will require publicly traded companies to disclose in their 2018 proxy how much their CEOs were paid relative to their median employees in fiscal year 2017. On December 7, 2016, Portland, Oregon approved a surtax on public companies reporting that they pay the CEO at least 100 times that of the median worker, becoming the first jurisdiction in the nation to impose a tax based on CEO pay ratios. (See our January 4, 2017 *For Your Information*.)

SEC Reconsiders CEO Pay Ratio Rule Implementation

The SEC announced its intent to reconsider implementation of the CEO pay ratio rule and requested comments on challenges issuers have encountered in attempting to implement the rule. (See our February 8, 2017 *For Your Information*.)

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