Articles + Publications | February 28, 2024

# Labor & Employment Workforce Watch February 2024

A guide to the employment law developments most likely to impact your business.

In This Issue:

**Employers Beware: Impending SCOTUS Ruling Could Impact Title VII Discrimination Standard**
Is the transfer of an employee to a different position with the same base pay and benefits an adverse employment action under Title VII of the Civil Rights Act of 1964? The answer is a resounding ***probably***. read more

**Less Is More When It Comes to Employee Monitoring**
With the increase in remote work, employers' concerns over the security of proprietary company information and employee productivity have increased their reliance on technologies to manage and monitor employees. read more

**Keepin' It Real: Considerations for Employers Using Artificial Intelligence**
Artificial intelligence ("AI") enjoys headline limelight every day it seems, as its uses continue to expand. Notably, employers are using the latest in technology too. Not insignificantly, the usage of AI tools has raised concerns about triggering anti-discrimination laws and jeopardizing a company's proprietary and confidential information. We previously addressed these concerns, but as the popularity of AI in the workplace grows, and as the controlling body of law develops, these issues continue to heat up. Employers, beware! read more

**New Requirement for Texas Employers: Notice for Reporting Workplace Violence or Suspicious Activity**
On June 14, 2023, the Texas legislature added Chapter 104A, "Reporting Workplace Violence" law to the Texas Labor Code, which created a new worksite notice requirement for Texas employers. The law, which became effective on September 1, 2023, requires all Texas employers, regardless of the number of employees, to post a notice relating to reporting to the Department of Public Safety workplace violence or suspicious activity. read more

**Court Challenges Filed to Final Independent Contractor Rule – But Does It Really Matter?**
As discussed in our QuickStudy of January 9, the U.S. Department of Labor has issued its long-awaited final rule setting forth its version of the test for independent contractor status under the federal Fair Labor Standards Act (FLSA). The regulation issued by the Biden Administration effectively rescinded and replaced the prior final rule on the same subject issued by the Trump Administration Labor Department. As we note below in our "Upshot," the Biden final rule will, as a legal matter, have little or no impact, for the reasons we identified in the QuickStudy. read more

**Recent Changes to California's Anti Non-Competition Laws Take Effect**
As we previously noted, California recently expanded its restrictions on non-competes under California Senate Bill No. 699 by rendering void and unenforceable all restrictive covenants that would be void under California law

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"whether the contract was signed, and the employment was maintained outside of California," and further providing California resident employees additional remedies to challenge unenforceable non-competes. read more

**DOJ Weighs in on Transgender Employment Rights: Gender Dysphoria Can Be Covered by the ADA**
On January 8, 2024, the United States Department of Justice filed a statement of interest, explaining that gender dysphoria can be a covered disability under the Americans with Disabilities Act ("ADA"). The DOJ's statement supports a 2022 holding by a federal appellate court that, in a first-of-its kind decision, likewise found that individuals with gender dysphoria are entitled to the protections of the ADA and the Rehabilitation Act of 1973. read more

**IRS Issues Proposed Regulations On Long-Term, Part-Time Employee Participation In 401(K) Plans**
The Internal Revenue Service ("IRS") recently released proposed regulations addressing the eligibility requirements for long-term, part-time ("LTPT") employees to participate in employer-sponsored 401(k) plans. Rules governing the eligibility of LTPT employees were first introduced in the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act") and later modified by SECURE 2.0 Act of 2022 ("SECURE 2.0 Act"). read more

**Texas Requires Workplace Violence Prevention Plans for Healthcare Facilities**
On September 1, 2023, Chapter 331 of the Texas Healthcare and Safety Code, the "Workplace Violence Prevention" ("WVP") law went into effect, which requires healthcare facilities in Texas to adopt workplace violence prevention policies and plans by September 1, 2024. read more

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