Ryan&Ryan
The Employer's Lawyers

Eye On The Law

New State Legislation and Biden Executive Actions

And

Is it Time to Update Your Handbook Policies and HR forms?

LEGAL UPDATE

EMPLOYMENT APPLICATIONS – NEW REQUIREMENTS

The Connecticut legislature recently passed a variety of bills during its regular legislative session, that affect employment practices. P.A. 21-69, generally prohibits **employers from requesting or requiring a prospective employee to disclose his or her age, date of birth, dates of attendance at (or graduation from) an educational institution on an employment application.** Exceptions are only granted if the employer can show that age is a bona fide occupational qualification for the position (not an easy burden) and when the information is required to comply with state or federal law.

Another off limits topic on employment applications, under existing Connecticut law, is a prospective employee's salary history. This law went into effect in 2019 and was passed in an effort to address pay inequities for women and people of color. This session, the State Legislature furthered its efforts to combat pay disparities by passing P.A. 21-30. **The law goes into effect on October 1st and requires that employers disclose to applicants the pay range for the position for which the applicant is applying:**

- P.A. 21-30 also requires employers to disclose a pay range to current employees upon **transfer** or **promotion** to a new position.
- **The law allows for recovery of actual damages as well as attorneys' fees and punitive damages.**
- **Although not required by the Act, it is recommended that salary ranges be included in applications as well as in offer letters.**

INDEPENDENT CONTRACTOR OR EMPLOYEE?

On the federal level, the U.S. Department of Labor recently announced a Final Rule clarifying the standard to determine whether a worker is an employee or an independent contractor under the Fair Labor Standards Act. The Rule reaffirms the "economic reality" test to determine whether the individual is in business for himself or herself or, instead, is economically dependent on the employing entity. The Biden Administration issued a regulatory freeze upon taking office so the Rule does not currently have an effective date. ***However, since the Biden administration in general reportedly wants workers to be designated as employees for purposes of union representation, medical benefits and overtime pay it is a good time to examine whether individuals working as independent contractors would meet the economic reality test.*** Employers should also consider state laws on the subject in making the determination of whether an individual is properly classified as an independent contractor.

Also on the federal level, President Biden recently signed an Executive Order that encourages the Federal Trade Commission to ban or limit noncompete agreements. Although, at this time, it is unknown how broad any future ban on noncompete agreements might be, it is a good time to take a hard look at your noncompete agreements. For example, if all employees are currently required to sign a noncompete agreement, employers should consider limiting the requirement to only higher-level management team employees. Currently, many states and their trial courts are unlikely to enforce a noncompete agreement signed by a lower-level employee, because it is viewed as an unfair restriction on the employee's ability to obtain work.

THE IMPORTANCE OF UPDATING HANDBOOK POLICIES AND HR FORMS

Clearly written policies that comply with current law and are enforced consistently, are an asset in avoiding, or resolving, a myriad of workplace problems. Additionally, almost without exception, **they are a crucial piece of evidence – for or against the employer – in any legal dispute.**

State and federal laws are constantly changing. In recent years, both Connecticut and New York, as well as a number of other states, have enacted paid sick leave laws. In Connecticut, employees will soon be able to apply for benefits under the state's paid Family Medical Leave Act. Do your

leave policies comply with these new requirements? Should employers consider limiting their paid time off accruals for employees? Another example of a potential outdated policy exists in the area of confidentiality. In the past, many employers had policies telling employees not to discuss their salaries. Many states, including New York and Connecticut, now prohibit employers from requiring employees to keep their salaries confidential.

In reviewing your current policies, you should also consider how operations have changed since the policies were drafted. **Is remote work now permitted? If so, the employer should have a policy that outlines the expectations for employees working from home.** Have the organizational structure or complaint procedures changed? These changes should also be addressed so the policies accurately reflect current practices.

What about your employment application forms?:

- Are all of the questions asked of applicants permissible under current law?
- Even if not prohibited, could asking applicants for certain types of information lead to potential problems if these topics are discussed in an interview?

THE NEXT ISSUE OF EYE ON THE LAW (NEXT WEEK) WILL DISCUSS THE DELTA VARIANT, CONNECTICUT'S NEW MARIJUANA LAWS, AND RECENT LEGISLATION REGARDING RECALL OF LAID OFF EMPLOYEES

If you have concerns about this or any other workplace or litigation issue, please contact David Ryan at david.ryan@ryan-ryan.net or by telephone at 860.460.7139 (mobile) or 203.752.9794 (office).