2024 LEGAL UPDATE

Liz Crosby

Buckley King LPA

LEGAL UPDATE

BUCKLEY KING

2023
FEDERAL LEGISLATION
AFFECTING THE WORKPLACE

Pregnant Workers Fairness Act (PWFA) (Took Effect 6/27/2023)

- Signed into law on December 29, 2022
- Applies to employers with 15 or more employees and job applicants applying for work with employers with 15 or more employees.
- Requires covered employers to provide accommodations for job applicants and employees who are experiencing **conditions related to pregnancy or childbirth**
- Prohibits employers from discriminating against applicants and employees because of their need for a pregnancy-related accommodation.

The definition of “reasonable accommodation” mirrors the requirements set forth in the ADA. The PWFA, however, would only provide protection on a temporary basis for the period of time in which the employee is pregnant or experiencing a condition related to childbirth.

REMINDER!

OHIO ADMINISTRATIVE CODE 4112-5-05| Sex discrimination.

(G) Pregnancy and childbirth.

(1) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is a prima facie violation of the prohibitions against sex discrimination contained in Chapter 4112. of the Revised Code.

(2) **Where termination of employment of an employee who is temporarily disabled due to pregnancy or a related medical condition is caused by an employment policy under which insufficient or no maternity leave is available, such termination shall constitute unlawful sex discrimination.**

(3) **Written and unwritten employment policies involving commencement and duration of maternity leave shall be so construed as to provide for individual capacities and the medical status of the woman involved.**

(4) Employment policies involving accrual of seniority and all other benefits and privileges of employment, including company-sponsored sickness and accident insurance plans, shall be applied to disability due to pregnancy and childbirth on the **same terms and conditions as they are applied to other temporary leaves of absence of the same classification under such employment policies.**

(5) **Women shall not be penalized in their conditions of employment because they require time away from work on account of childbearing**. When, under the employer's leave policy the female employee would qualify for leave, then childbearing must be considered by the employer to be a justification for leave of absence for female employees for a reasonable period of time. For example, if the female meets the equally applied minimum length of service requirements for leave time, she must be granted a reasonable leave on account of childbearing. Conditions applicable to her leave (other than its length) and to her return to employment shall be in accordance with the employer's leave policy.

(6) Notwithstanding paragraphs (G)(1) to (G)(5) of this rule, **if the employer has no leave policy, childbearing must be considered by the employer to be a justification for leave of absence for a female employee for a reasonable period of time. Following childbirth, and upon signifying her intent to return within a reasonable time, such female employee shall be reinstated to her original position or to a position of like status and pay, without loss of service credits.**

LEGAL UPDATE

BUCKLEY KING

H.R.3110 - PUMP for Nursing Mothers Act117th Congress (2021-2022)

PUMP ACT!

December 29, 2022

Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act

PUMP Act

Department of Labor Oversight

- Applies to all employers (hardship exceptions)
- Covers all breastfeeding employees for up to one year post birth
- Requires “reasonable” break time and “any break time spent pumping should be considered hours worked and compensated accordingly. ”
- Requires a “private space”

BUCKLEY KING

FINAL OSHA'S RECORDKEEPING REQUIREMENTS REQUIRED ELECTRONIC FILINGS

OSHA'S REQUIRED ELECTRONIC FILINGS

NEW **final rule takes effect on Jan. 1, 2024,** and now includes the following submission requirements:

•Establishments with ***100 or more employees*** in ***certain high-hazard industries must electronically submit information from their Form 300-Log*** of Work-Related Injuries and Illnesses, and Form 301-Injury and Illness Incident Report to OSHA once a year. These submissions are in addition to submission of Form 300A-Summary of Work-Related Injuries and Illnesses.

•To improve data quality, establishments are required to include their legal company name when making electronic submissions to OSHA from their injury and illness records.

OSHA'S REQUIRED ELECTRONIC FILINGS

1904.41(a)(2) *APPENDIX A to Subpart E:*

https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.41AppA

Includes construction, manufacturing, wholesale trade, most retail, grocery stores, trucking, most transit & transportation carriers and related occupations, real estate lessors, warehousing & storage, healthcare (including ambulatory, psychiatric, addiction, etc), spectator sports, museums, dry cleaning, machining…

OSHA'S REQUIRED ELECTRONIC FILINGS

HIGH HAZARD QUESTIONAIRE:

https://www.osha.gov/itareportapp

US	SB262

aka STOP SPYING BOSSES ACT

A bill to prohibit, or require disclosure of, the surveillance, monitoring, and collection of certain worker data by employers, and for other purposes.

This bill has just recently been introduced in the senate.

US	SB156

aka Accountability Through Verification Act

This bill expands the **E-Verify** program by **requiring all employers to use it** and permanently reauthorizes the program. Currently, E-Verify use is voluntary for most employers, although some states mandate its use.

This bill has had two readings by the Committee to the Judiciary.

US	SB1664

aka Healthy Families Act

An employer shall provide each employee employed by the employer not less than 1 hour of earned paid sick time for every 30 hours worked.

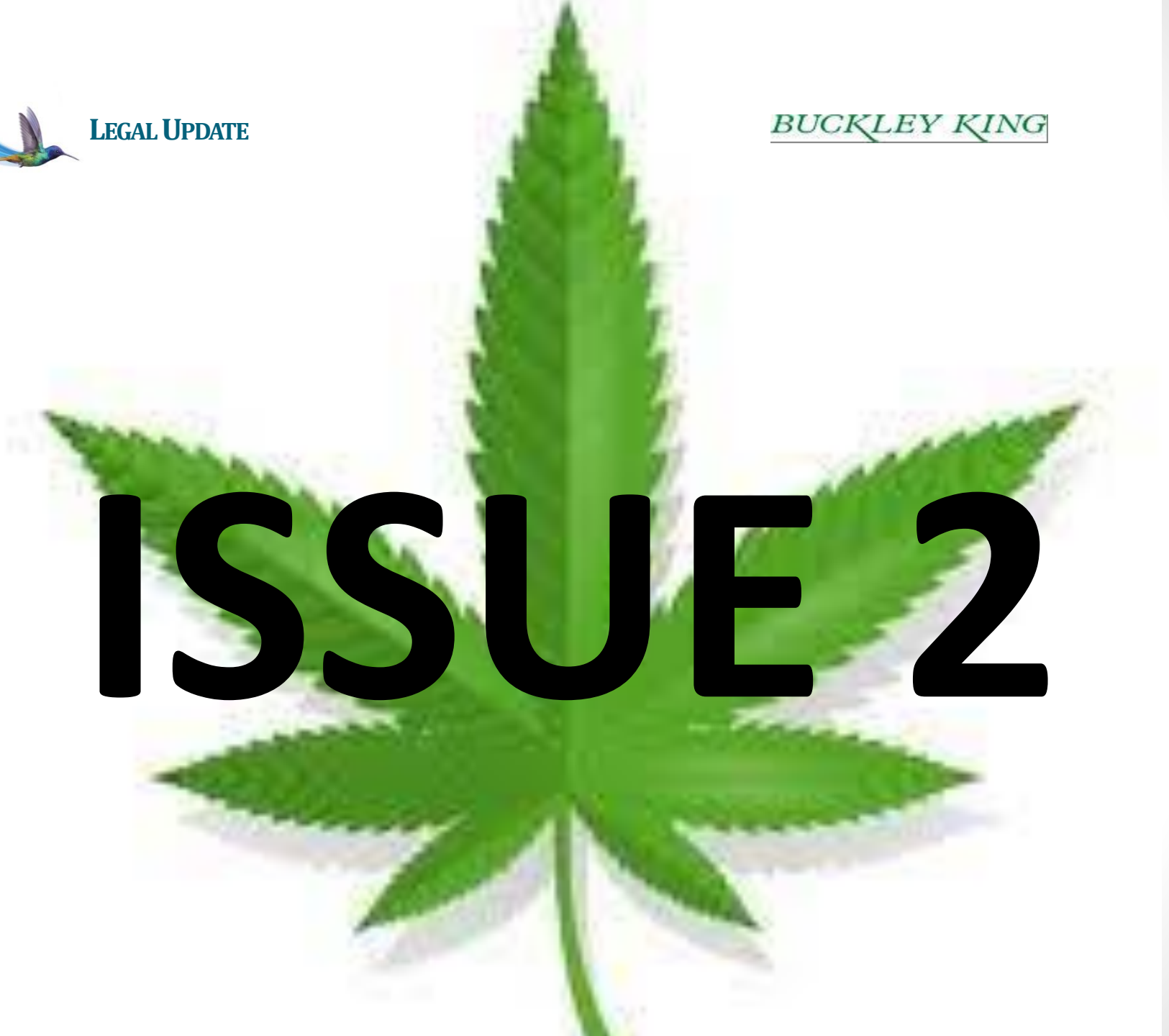
This bill has widespread support among democratic lawmakers. As of July it is on the Senate Legislative Calendar.

US	HB1447 SB710

Separate bills to prohibit an employer from terminating the coverage of an employee under a group health plan while the employer is engaged in a lock-out or while the employee is engaged in a lawful strike, and for other purposes.

Senate Bill has been referred to the House Committee on Education and Workforce.
House Bill has been read twice and referred to the Committee on Health, Education, Labor and Pensions.

OHIO LEGISLATION



ISSUE 2

ISSUE 2

An Act to Control and Regulate Adult Use Cannabis (the "Act")

- Went into effect on Dec. 7, 2023.
- Enacts **ORC Chapter 3780** to regulate the adult use, cultivation, processing, sale, purchase, possession and home grow of cannabis.
- Must be 21

ISSUE 2

ORC Chapter 3780

Intended purposes:

- **Reduce illegal marijuana sales**
- **Provide a safer and regulated cannabis product**
- **Limit out-of-state transportation of cannabis in the state**
- **Providing funding and social equity opportunities in the state.**

ISSUE 2

ORC Chapter 3780

Establishes the Division of Cannabis Control within the Department of Commerce

- **Licenses, regulates, investigates. Penalizes**
- **Authorizes the various permitted forms that can be used**
- **Establish and maintain a data base to monitor all adult-use cannabis through its seed or clone source**
- **Establish facility requirements**

ISSUE 2

ORC Chapter 3780

Establishes the Division of Cannabis Control within the Department of Commerce

- **Require license for adult-use operator or testing lab**
- **Require a criminal record check of persons desiring operator license or testing lab**
- **Establish various levels (I, II, III) of licensing for growers, cultivators, processors, distributors, and dispensaries**

ISSUE 2

ORC Chapter 3780

Establishes the Division of Cannabis Control within the Department of Commerce

- **For purposes of receiving and distributing revenue, establishment of the following FUNDS:**
  - **Adult use tax fund**
  - **Cannabis social equity and jobs fund**
  - **Host community cannabis fund**
  - **Substance abuse and addiction fund**
  - **Div. of Cannabis Control and Tax Commissioner fund**

ISSUE 2

ORC Chapter 3780

Establishes the Division of Cannabis Control within the Department of Commerce

- **Permits municipalities to prohibit or limit the number of adult use operators within the community limits.**

ISSUE 2

LAKEWOOD OHIO:

- Proposes the decriminalization of marijuana, allowing possession of up to 2.5 ounces, and reduces the penalty for misdemeanor-level possession of marijuana. This move echoes the state law's provisions and signals a shift towards more progressive cannabis policies.
- Amends the permitting process for adult-use dispensaries. This amendment aims to streamline the process, making it more conducive for businesses to establish adult-use dispensaries in Lakewood.
- Amends the zoning code to allow adult-use dispensaries in commercial districts, critical for integrating dispensaries into the community effectively and responsibly.
- **Temporary Pause on Dispensary Permits**
  Recognizing the need for a comprehensive and orderly transition to new policies, Lakewood recently imposed a temporary moratorium on dispensary permits. This pause will remain in effect while the city finalizes and implements the more permissive policies related to cannabis dispensaries.

ISSUE 2

ORC Chapter 3780

Establish regulations for Adult-Use consumers:

- **Cultivate not more than 6 plants at residence; 12 plants per person**
- **Limit of transfer of plants to no more than 6**
- **Establish storage guidelines**
- **PERMIT LANDLORDS TO BAN GROWING ON PROPERTY**

ISSUE 2

ORC Chapter 3780

Establish regulations for Adult-Use consumers:

- **Add protections for individuals/corporations licensed under the ACT (i.e., against criminal prosecution for possession, sale, etc.)**

ISSUE 2

ORC Chapter 3780

PROTECT AN EMPLOYER'S AUTHORITY TO ESTABLISH HIRING AND EMPLOYMENT POLICIES AND PRACTICES. SPECIFICALLY, AMONG OTHER PROTECTIONS, NOTHING IN THE ACT REQUIRES AN EMPLOYER TO PERMIT OR ACCOMMODATE AN EMPLOYEE'S USE, POSSESSION, OR DISTRIBUTION OF ADULT USE CANNABIS OTHERWISE IN COMPLIANCE WITH THE ACT.

PROPOSED SECTION 3780.35

ISSUE 2

ORC Chapter 3780

QUESTIONS ON RECREATIONAL MARIJUANA IN OHIO?

OTHER OHIO LEGISLATION

OTHER OHIO LEGISLATION

OHIO MINIMUM WAGE IS NOW $10.45/HR.

TIPPED EMPLOYEES $5.25/HR.

OTHER OHIO LEGISLATION

Senate Concurrent Resolution 2

Urge the Congress of the United States to make changes to the Fair Labor Standards Act to allow a person under 16 years of age to be employed between 7 p.m. and 9 p.m. during the school year if the person has approval to do so from the person's parent or legal guardian;

OTHER OHIO LEGISLATION

S.B. 30

The bill allows a 14- or 15-year-old to be employed between 7:00 p.m. and 9:00 p.m. at any time during the year if the minor has approval to do so from the minor's parent or legal guardian. Currently, a 14- or 15-year-old is allowed to work between 7:00 a.m. and 9:00 p.m. between June 1 and September 1 or during any school holiday of five school days or more.

OTHER OHIO LEGISLATION

S.B. 96

To amend sections 4109.08, 4111.09, 4112.07, 4115.07, 4123.54, 4123.83, and 4167.11 of the Revised Code to allow employers to post certain labor law notices on the internet.

This is currently in the House.

OTHER OHIO LEGISLATION

H.B. 106

To enact section 4113.14 of the Revised Code to enact the Pay Stub Protection Act requiring employers to provide earnings and deductions statements to each of the employer's employees.

This is currently in the Senate.

OTHER OHIO LEGISLATION

H.B. 115

To amend sections 4112.04 and 4117.08 and to enact sections 142.01, 142.02, 142.03, 142.04, 142.05, 142.06, 142.07, 142.08, 142.09, 142.10, 4113.12, 4113.43, 4117.141, 4145.01, 4145.02, 4145.03, 4145.04, 4145.05, 4145.06, 4145.07, 4145.08, and 4145.09 of the Revised Code to address wage disparities in public and private employment and to name this act the Ohio Equal Pay Act.

This Bill hasn't left the House.

OTHER OHIO LEGISLATION

H.B. 334

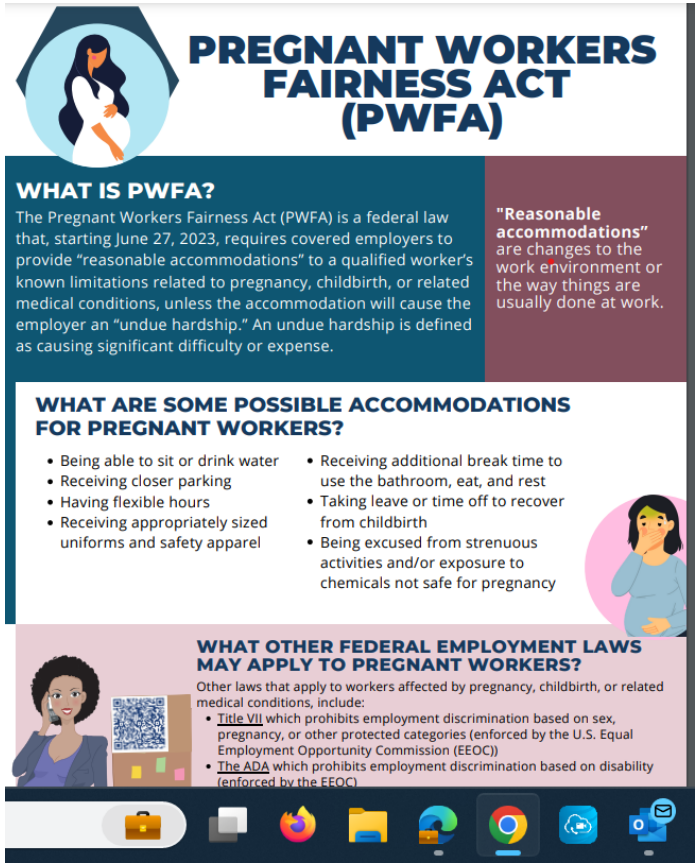
S.B. 180

Provide unemployment benefits to striking workers.

AGENCY RULEMAKING

AGENCY RULEMAKING

EEOC TECHNICAL ASSISTANCE: PWFA



PREGNANT WORKERS FAIRNESS ACT (PWFA)

WHAT IS PWFA?

The Pregnant Workers Fairness Act (PWFA) is a federal law that, starting June 27, 2023, requires covered employers to provide "reasonable accommodations" to a qualified worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship." An undue hardship is defined as causing significant difficulty or expense.

"Reasonable accommodations" are changes to the work environment or the way things are usually done at work.

WHAT ARE SOME POSSIBLE ACCOMMODATIONS FOR PREGNANT WORKERS?

- Being able to sit or drink water
- Receiving closer parking
- Having flexible hours
- Receiving appropriately sized uniforms and safety apparel
- Receiving additional break time to use the bathroom, eat, and rest
- Taking leave or time off to recover from childbirth
- Being excused from strenuous activities and/or exposure to chemicals not safe for pregnancy

WHAT OTHER FEDERAL EMPLOYMENT LAWS MAY APPLY TO PREGNANT WORKERS?

Other laws that apply to workers affected by pregnancy, childbirth, or related medical conditions, include:

- Title VII which prohibits employment discrimination based on sex, pregnancy, or other protected categories (enforced by the U.S. Equal Employment Opportunity Commission (EEOC))
- The ADA which prohibits employment discrimination based on disability (enforced by the EEOC)

AGENCY RULEMAKING
EEOC TECHNICAL ASSISTANCE: PWFA

- Effective June 27, 2023
- Affects Employers with at least 15 employees
- The Pregnant Workers Fairness Act (PWFA) is a new law that requires covered employers to provide "reasonable accommodations" to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship."
- The PWFA protects employees and applicants of "covered employers" who have **known limitations related to pregnancy, childbirth, or related medical conditions.**

AGENCY RULEMAKING

EEOC TECHNICAL ASSISTANCE: PWFA

The PWFA PROHIBITS:

- Requiring an employee to accept an accommodation without a discussion about the accommodation between the worker and the employer;
- Denial of a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation;
- Requiring an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working;
- Retaliation against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation); or
- Interfere with any individual's rights under the PWFA.

AGENCY RULEMAKING

NATIONAL LABOR RELATIONS BOARD

AGENCY RULEMAKING

NATIONAL LABOR RELATIONS BOARD

JOINT EMPLOYER RULING

Under the New Rule, two or more legal entities will be held to be joint employers of a group of employees if the entities share or codetermine one or more of the employees' essential terms and conditions of employment, which the New Rule defines as:

(1) wages, benefits, and other compensation;
(2) hours of work and scheduling;
(3) the assignment of duties to be performed;
(4) the supervision of the performance of duties;
(5) work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline;
(6) the tenure of employment, including hiring and discharge; and
(7) working conditions related to the safety and health of employees.

Entities are joint employers when they share or codetermine at least one of the "essential terms and conditions."

AGENCY RULEMAKING

NATIONAL LABOR RELATIONS BOARD

"QUICKIE ELECTIONS"

Unions will no longer be required to file for an election with the Board if they claim a majority of employees in the proposed bargaining unit want to be represented. **If a union demands recognition based on its claimed support of a majority of employees, an employer that refuses to recognize the union would violate the National Labor Relations Act unless the employer "promptly" files an RM petition with the Board requesting an election to test the union's majority status or the appropriateness of the unit.** ***Further, if the employer commits certain ill-defined unfair labor practices (ULP), the Board will dismiss the petition without an election and order the employer to recognize and bargain with the union.***

AGENCY RULEMAKING

U.S DEPARTMENT OF LABOR

AGENCY RULEMAKING

REVISITING INDEPENDENT CONTRACTOR REQUIREMENTS

MULTIPLE STATES HAVE ENACTED OR ARE CONSIDERING STATUTORY REQUIREMENTS GOVERNING INDEPENDENT CONTRACTORS, INCLUDING CALIFORNIA'S AB5 AND PROPOSITION 22

AGENCY RULEMAKING

On January 10, 2024, the U.S. Department of Labor published a final rule***, effective March 11, 2024***, revising the Department's guidance on how to analyze who is an employee or independent contractor under the Fair Labor Standards Act (FLSA). This final rule rescinds the Independent Contractor Status Under the Fair Labor Standards Act rule (2021 IC Rule), that was published on January 7, 2021 and replaces it with an analysis for determining employee or independent contractor status that is more consistent with the FLSA as interpreted by longstanding judicial precedent.

AGENCY RULEMAKING

This final rule returns to a totality-of-the-circumstances analysis of the economic reality test in which the factors do not have a predetermined weight and are considered in view of the economic reality of the whole activity.

AGENCY RULEMAKING

The test asks whether, as a matter of economic realities, the worker depends on the potential employer for continued employment or is operating an independent business.

6 FACTORS

1. The worker's opportunity for profit or loss;
2. Investments by the worker and potential employer;
3. The degree of permanence of the relationship;
4. The nature and degree of the potential employer's control over the work;
5. The extent to which the work is "integral" to the potential employer's business; and
6. The worker's skill or initiative.

AGENCY RULEMAKING/DOL WAGE & HOUR

On August 30, 2023, the DOL released a proposed rule that, if finalized, would increase the **minimum salary required to $1,059 per week in order for administrative, professional and executive** employees to be considered exempt from the FLSA overtime pay requirements.

OSHA

PROPOSAL: Permit union representatives to participate in Occupational Safety and Health Administration (OSHA) inspections. 88 Fed. Reg. 59825 (2023).

Under the proposed rule, employee-authorized third-party representatives would be permitted to accompany OSHA officials during facility inspections. The proposed regulation would pave the way for union representatives and interest groups to join the inspection, provided the OSHA official determines participation of the third party is “reasonably necessary.”

EEOC/AI

Guidance: The ADA and AI: Applicants and Employees (5/18/2023)

Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964," which is focused on preventing discrimination against job seekers and workers.

UNITED STATES SUPREME COURT

UNITED STATES SUPREME COURT

Helix Energy Solutions Group, Inc. v. Hewitt, 143 S.Ct. 677 (2023)

A divided court vacated an employer's summary judgment on a Fair Labor Standards Act (FLSA) overtime compensation claim brought by a highly compensated employee because the employee's daily pay rate did not satisfy the salary basis test for the highly paid executive "white collar" exemption in the FLSA regulations.

TAKE AWAY: There are three elements to EXEMPT STATUS CLASSIFICATION:

1. The Employee must meet one of the exempt status classifications;
2. The Employee must make at least $684/wk or $35,568/year
3. **THE EMPLOYEE MUST BE PAID ON A SALARY BASIS!**

UNITED STATES SUPREME COURT

Glacier NorthWest v. Teamsters Local 174

PRE-EMPTION - NLRB. Teamsters called a work stoppage which resulted in loaded cement trucks sitting idle, causing significant damage to the trucks.

Glacier sued Local 174 in state court for six tort claims arising from Local 174's alleged role that resulted in Glacier's loss of concrete. The trial court dismissed the claims arising before the CBA was reached, finding they were preempted by the federal National Labor Relations Act, and it granted summary judgment dismissal of the remaining claims primarily on state law grounds. The appellate court reversed as to the pre-CBA claims, finding the NLRA did not preempt those claims. The state supreme court reversed as to the preemption issue.

HELD: The U.S. Supreme Court ruled 8-1 that ***the National Labor Relations Act does not preempt a state tort claim regarding the destruction of property during a labor dispute if the union did not take reasonable precautions to avoid damage.*** The court reversed and remanded the decision of the Washington Supreme Court.

UNITED STATES SUPREME COURT

GROFF v. DEJOY, POSTMASTER GENERAL

Gerald Groff is a Christian and U.S. Postal Service worker. He refused to work on Sundays due to his religious beliefs. USPS offered to find employees to swap shifts with him, but on numerous occasions, no co-worker would swap, and Groff did not work. USPS subsequently fired him.

Groff sued USPS under Title VII of the Civil Rights Act of 1964, claiming USPS failed to reasonably accommodate his religion because the shift swaps did not fully eliminate the conflict. The district court concluded the requested accommodation would pose an undue hardship on USPS and granted summary judgment for USPS. The U.S. Court of Appeals for the Third Circuit affirmed.

HELD: For Grof. ***Title VII requires an employer that denies a religious accommodation to show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.***

UNITED STATES SUPREME COURT

303 CREATIVE LLC et al. v. ELENIS et al.

Lorie Smith is the owner and founder of a graphic design firm, 303 Creative LLC. She wants to expand her business to include wedding websites. However, she opposes same-sex marriage on religious grounds so does not want to design websites for same-sex weddings. She wants to post a message on her own website explaining her religious objections to same-sex weddings.

The Colorado AntiDiscrimination Act ("CADA") prohibits businesses that are open to the public from from discriminating on the basis of numerous characteristics, including sexual orientation. The law defines discrimination not only as refusing to provide goods or services, but also publishing any communication that says or implies that an individual's patronage is unwelcome because of a protected characteristic.

***HELD*: For 303 Creative. *The First Amendment prohibits Colorado from forcing a website designer to create expressive designs that convey messages with which the designer disagrees*.**

UNITED STATES SUPREME COURT

303 CREATIVE LLC et al. v. ELENIS et al.

Compare with…

Masterpiece Cakeshop v. Colorado Civil Rights Commission

The US Supreme Court ruled that the Commission did not employ religious neutrality, violating Masterpiece owner Jack Phillips's rights to free exercise, and reversed the Commission's decision. The Court did not rule on the broader intersection of anti-discrimination laws, free exercise of religion, and freedom of speech, due to the complications of the Commission's lack of religious neutrality.

See also Burwell v. Hobby Lobby

UNITED STATES SUPREME COURT

SIXTH CIRCUIT COURT OF APPEALS

ADA! SIXTH CIRCUIT COURT OF APPEALS

Parker v. Hankook Tire Mfg. Tenn., LP, 2023 U.S. App. LEXIS 34010

The trial court properly dismissed plaintiff's ADA discrimination claim for failure to exhaust **because he did not check the box on his EEOC complaint indicating that he had a disability that was the basis of discriminatory acts, and the narrative that he provided in support of his charged claims made no mention of disability discrimination or the ADA**; [2]-Plaintiff failed to state a discrimination claim under Title VII or the ADEA because he provided no basis for his belief that defendant was biased against older African American employees. Also, his allegation that he was terminated because his 30-day medical leave of absences expired, was a naked assertion devoid of further factual enhancement that was insufficient to state a claim.

Parker v. Hankook Tire Mfg. Tenn., LP, 2023 U.S. App. LEXIS 34010, *1

WAGE & HOUR!

SIXTH CIRCUIT COURT OF APPEALS

Walsh v. KDE Equine, LLC, 56 F.4th 409

This case was brought by the Department of Labor against the employer, KDE Equine, LLC.

Employer claimed it used a "fluctuating workweek" formula for calculating overtime. Because the employer did not track the employees' hours to properly compensate for overtime under 29 C.F.R. § 778.114(a), (c), the district court could not calculate overtime premiums using [a fluctuating workweek standard]; [2]-District court's grant of summary judgment on the willfulness issue in favor of the employer was inappropriate because genuine issues of material fact existed as to whether the employer willfully failed to pay its employees in compliance with the FLSA.

Walsh v. KDE Equine, LLC, 56 F.4th 409, 411

HARASSMENT!

SIXTH CIRCUIT COURT OF APPEALS

Rembert v. Swagelok Co., 2023 U.S. App. LEXIS 10333

[1]-The employee testified that his supervisors and coworkers used the N-word routinely and that one coworker threatened him with a noose, and if the jury were to credit the testimony about the N-word alone, it could reasonably conclude that the employee was subject to severe or pervasive **harassment**;
[2]-A reasonable jury could find that the employee subjectively perceived the environment to be abusive;
[3]-A jury could credit the employee's testimony and find the supervisor knew of the **harassment** and failed to act;
[4]-The employee's retaliation claim failed as he did not show that his supervisor knew about his racial **harassment** claims;
[5]-The employee did not produce sufficient evidence for a jury to conclude that the employer acted for any other reason in revoking his hiring offer for any other reason that its proffered one of the employee's domestic-violence conviction.

Rembert v. Swagelok Co., 2023 U.S. App. LEXIS 10333, *1

SIXTH CIRCUIT COURT OF APPEALS

FMLA

Milman v. Fieger & Fieger, P.C., 58 F.4th 860

[1]-Where a former employee claimed that she was fired for inquiring about and making a request to attend to her son's health issues amid the early uncertainty of a pandemic, request for leave was protected—even if she ultimately was not entitled to it—and the district court erred in concluding that her request fell outside the **FMLA**'s scope;

[2]-The employee plausibly alleged that she provided the requisite notice to suggest that she sought **FMLA** leave when she requested unpaid leave due to her son's health and the growing pandemic.

NON-COMPETE!

SIXTH CIRCUIT COURT OF APPEALS

Duane Ray v. Fifth Third Bank, N.A., 2023 U.S. App. LEXIS 712

… the Court starts from the well-settled proposition under Ohio law that courts must "presume that the intent of the parties is reflected in the plain language of the contract.“

What creates much of the confusion is that Fifth Third (or FTI, or Epic Agency) apparently was not always careful in specifying which Fifth Third entity (or entities) was a party (or parties) to a particular contract.

… it is undisputed that the APA did not involve the sale of "substantially all of Fifth Third's assets." Indeed, Fifth Third and FRP concede that point.

OHIO SUPREME COURT CASES

INDEPENDENT CONTRACTOR

OHIO SUPREME COURT CASES

State ex rel. Friendship Supported Living, Inc. v. Ohio Bureau of Workers' Comp., 2023-Ohio-957

The Bureau of Workers' Compensation abused its discretion in adopting its order by failing to sufficiently account for the relevant factors bearing on the work relationship between in-home health care company and its direct-care workers, finding them to be employees rather than independent contractors because, among other reasons, the company did not exert control over a facet of the work relationship with its direct-care workers by requiring that the workers carry their own automobile insurance, because even if the direct-care workers were not involved with the company, they would still be required by law to maintain insurance coverage per state-law requirements.

OHIO COURT OF APPEALS CASES

LEGAL UPDATE

BUCKLEY KING

SEX HARASSMENT

COURT OF APPEALS

Kubala v. Smith, 2023-Ohio-991

11TH Appellate District

Where a former employee sued a county and a former supervisor under R.C. 4112.01 et seq., alleging that the supervisor created a sexually hostile work environment by repeated and continuous comments about the employee's sexuality, which were allegedly outside the scope of the supervisor's **employment** as the comments did not promote the county's interest, there were disputed issues of material fact as to whether the supervisor acted manifestly outside the scope of **employment** and whether he acted with malicious purpose, in bad faith, or in a wanton or reckless manner, precluding summary judgment on the claims; [2]-In addition, as the employee repeatedly informed the supervisor that he did not want to hear these sexual comments, there was a disputed material fact as to whether the supervisor's conduct and comments were made to intentionally harm the employee.

RACE DISCRIMINATION

COURT OF APPEALS

Bostick v. Salvation Army, 2023-Ohio-933
8TH Appellate District

In an **employment** case, the trial court properly granted summary judgment in favor of appellee-employer under Civ.R. 56 because appellant failed to demonstrate a prima facie case of race **discrimination**. The record demonstrated that appellee-employer discharged appellant for a legitimate, nondiscriminatory reason; that being, her continual inability to get along with her coworkers; [2]-Appellant failed to demonstrate that she was terminated in retaliation for any protected activity she engaged in under R.C. 4112.02(I) because the record demonstrated that she neither applied for the position at the shelter nor complained about not getting it. Further, appellant was unable to cite examples of instances where her supervisor subjected her to undue criticism.

EEOC CASES

EEOC CASES

New federal data shows the U.S. Equal Employment Opportunity Commission (EEOC) is cracking down on unlawful workplace practices. The EEOC filed 143 discrimination or harassment lawsuits in fiscal year 2023, which began on Oct. 1, 2022, and ended Sept. 30, 2023, according to a recent report by the agency.

ADA

EEOC CASES

EEOC v. Ranew's Management Company (2022)

Ranew's Management Company, Inc., a provider of fabrication, coating, and assembly products to **pay $250,000 to settle** this ADA lawsuit in which an employee, diagnosed with severe depression, was terminated. The employee had requested and been granted time off to recuperate, per his doctor's recommendation. When the employee tried to return to work and presented a doctor's release, he was fired by the company's CEO and told he couldn't be trusted to perform his job. In addition to monetary relief, Ranew's agreed to take steps to implement and distribute an ADA policy, train its executives, managers, and employees on the ADA's obligations, and post a notice.

EQUAL PAY

EEOC CASES

•***EEOC v. Lacey's Place LLC Series Midlothian d/b/a Lacey's Place,***, No. 2:22-cv-02161 (C.D. Ill. May 26, 2023) (**gaming parlor chain resolves lawsuit alleging pay discrimination and retaliation against female workers**). EEOC filed a lawsuit alleging that the video gaming parlor paid female district managers less than men with similar experience and education and fired a female manager in retaliation for complaining of the pay disparity. The suit was resolved through a four-year consent decree providing **$92,964 in monetary relief** and requiring Lacey's Place to develop and distribute a written policy against sex-based pay discrimination and retaliation, as well as conduct anti-discrimination training and a pay equity study of current district manager pay. Lacey's Place must also post a notice at its worksite about the lawsuit and submit written reports twice a year to the EEOC.

NON-COMPETE AGREEMENTS AND THE FEDERAL TRADE COMMISSION

EQUAL PAY

EEOC CASES

•***EEOC v. Mechanical Design Systems, Inc.***, No. 8:22-cv-02463 (D. Md. May 9, 2023) (**HVAC company resolves lawsuit alleging discrimination against female employees paid less than men**). EEOC sued the HVAC design and installation services company, alleging that female project managers were paid much less than male colleagues performing equal work, and in many instances, had more experience and seniority. A three-year consent decree resolving the litigation provides **$210,000 in monetary relief to two female employees** and requires the company to implement enhanced compensation and discrimination policies, training for human resources and management officials, and notices to employees about their rights. The company also agreed to raise the pay of a still-employed female project manager to correspond with her male counterpart.

ADA

EEOC CASES

Remote-first global technology company Digital Arbitrage, Inc., doing business as Cloudbeds, will **pay $150,000** to resolve a disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

According to the EEOC's lawsuit, during their hiring process Cloudbeds failed to provide an accommodation to Peter St. John, a well-qualified candidate in IT administration who is deaf and uses American Sign Language (ASL) to communicate. Cloudbeds terminated his candidacy on the basis that verbal communication and hearing were job requirements for the position in a remote setting.

NON-COMPETE AGREEMENTS AND THE FEDERAL TRADE COMMISSION

RELIGION

EEOC CASES

(EEOC v. Triple Canopy, Inc., Civil Action No.1:23-cv-1500)

Triple Canopy denied a religious accommodation to an employee who held a Christian belief that men must wear beards because the employee was unable to provide additional substantiation of his beliefs or a supporting statement from a certified or documented religious leader and retaliated against him for filing an EEOC charge and subjected him to intolerable work conditions that resulted in his constructive discharge.

The alleged conduct violates Title VII of the Civil Rights Act of 1964, which requires employers to accommodate sincerely held religious beliefs absent undue hardship and prohibits retaliation against those who complain about discrimination. “Religion under Title VII is broadly defined; it applies not only to mainstream religious beliefs that are part of a formal religious group, but also to all aspects of an individual’s religious observance, practice, and belief. When religion conflicts with a work requirement, employers must provide an accommodation, unless doing so would cause an undue hardship.”

Questions?

2024 – HR Legal Update

presented by Elizabeth Crosby

January 11, 2024

Approved for Continuing Education Credits

Lake/Geauga Area Chapter, SHRM is recognized by SHRM to offer Professional Development Credits (PDCs) for SHRM-CP® or SHRM-SCP®. This program, ID No. ***24-NX4QJ*** *is valid for 2.0 PDCs for the SHRM-CP or SHRM-SCP.*

This program, ID No. ***655311****, has been approved for* ***2.0*** *HR (General) recertification credit hours toward aPHR™, PHR®, PHRca®, SPHR®, GPHR®, PHRi™ and SPHRi™ recertification through HR Certification Institute® (HRCI®)*