



An Employment Law Update

HHRAM
May 2017




What we know so far from President Trump's admin

- Very little change in employment and labor law so far:
 - DOL obtained an extension to appeal the injunction putting the 12/1/16 salary/overtime requirements on hold - Will the appeal ever happen?



What we know so far from President Trump's admin

- Repealed the DOL/OFCCP's proposed "Fair Pay and Safe Workplaces" regulations applicable to some federal government contractors



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What we know so far from President Trump's admin

- No news yet on the new EEO-1 requirements:
 - New EEO-1 reporting requirements effective for calendar year 2017
 - Reporting deadline: March 31, 2018
 - No EEO-1 filing during 2017 under the new requirements

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What we know so far from President Trump's admin

- For calendar year 2017:
 - For employers with 99 or fewer total employees and not covered by federal affirmative action requirements:
 - No EEO-1

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What we know so far from President Trump's admin

- For employers with 50-99 employees covered by federal affirmative action requirements:
 - EEO-1 is required:
 - Report total number of employees by sex and race/ethnicity
 - In each of 10 job categories

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What we know so far from President Trump's admin

- For all employers with 100 or more total employees:
 - EEO-1 is required:
 - Report total number of employees by sex and race/ethnicity
 - In each of 10 job categories
 - Report total annual pay data in 12 pay bands
 - Report total hours worked for the year in 12 pay bands

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What we know so far from President Trump's admin

- NLRB changes will be slow in coming:
 - NLRB currently has two vacancies that President Trump can fill by nomination and approval by the Senate
 - Current Board Chair is "employer friendly"
 - Other two current Board members are "labor friendly"

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What we know so far from President Trump's admin

- NLRB will be able to "roll back" some of the more "labor friendly" rulings only upon hearing new cases that go to the Board for decision
- But President Trump can issue Executive Orders rolling back prior Executive Orders

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What we know so far from President Trump's admin

- Watch for action and updates:
 - Paid maternity/family leave?
 - Mandatory E-verify use?
 - More I-9 audits?
 - EEO-1 requirements
 - NLRB appointments
 - Other?

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Minnesota Affirmative Action Requirements for Healthcare

- Applies to
 - All companies with 41 or more full-time employees that
 - Receive more than \$100,000 annually in state money
 - For healthcare providers, that includes Medical Assistance reimbursement

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Minnesota Affirmative Action Requirements for Healthcare

- Written affirmative action plan (AAP)
 - Narrative:
 - Women, minorities & disabled
 - Statistical analyses:
 - Women & minorities

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Minnesota Affirmative Action Requirements for Healthcare

- Submit AAP to the Minnesota Department of Human Rights (MDHR) for review and certification
 - Every 4 years
 - Annual compliance report

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Minnesota Affirmative Action Requirements for Healthcare

- MDHR Audit
 - 20 written requests
 - One request of concern:
 - Correspondence to the Minnesota Department of Employment and Economic Development for referrals of qualified individuals with disabilities.

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Minnesota Affirmative Action Requirements for Healthcare

- Other requests of concern:
 - Documents from top management expressing support of commitment to create EEO
 - Documents from hiring managers to HR documenting efforts to create EEO
 - Documents from HR to top management concerning the company's progress in implementing its AAP

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**Disability Accommodation –
A Brief Refresher**

- WHO?
 - Employee, supervisor, HR
- WHAT?
 - Interactive process
 - In-person, verbal, written communication

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**Disability Accommodation –
A Brief Refresher**

- WHEN?
 - Employee request, OR
 - Employer recognition of employee's difficulty meeting job requirements, OR
 - After eligible employee has used all FMLA but is physically unable to return

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**Disability Accommodation –
A Brief Refresher**

- WHY?
 - Determine if a "reasonable accommodation" can enable the employee to perform the essential functions of the job now or in near future
- HOW OFTEN?
 - As needed; not a "one and done" process

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**Disability Accommodation –
A Brief Refresher**

- **HOW?**
 - Try, try, and try

 - Document and provide a copy of the documentation to the employee

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**Disability Accommodation –
A Brief Refresher**

- **FOR HOW LONG?**
 - Until “undue hardship” to the employer

 - Not just a “hardship”

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**Mpls. and St. Paul Paid Sick
Leave – An Overview**

- Currently being challenged by the Minnesota State Legislature
- Watch to see if Governor Dayton signs or vetoes the bill to disallow any city or other local paid sick leave, minimum wage or other employment-related ordinances

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Mpls. and St. Paul Paid Sick Leave – An Overview

- If the State law override fails:
 - Start July 1, 2017
 - For companies with 6 or more (Mpls.) or 24 or more (St. Paul) employees
 - In Mpls., unpaid leave if under 6 employees
 - In St. Paul, will apply to companies with 1 or more employees as of 1-1-18

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Mpls. and St. Paul Paid Sick Leave – An Overview

- Accrual:
 - One hour accrued paid sick leave per 30 hours "worked"
 - But be careful – May include some, but not all, hours "paid" but not "worked"
 - Up to 48 hours accrual per 12-month period designated by the company

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Mpls. and St. Paul Paid Sick Leave – An Overview

- If the State law override fails:
 - Mandatory carryover from one year to the next
 - Maximum accrual is 80 hours
 - But can continue to accrue concurrently with using
 - No payout at termination

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Mpls. and St. Paul Paid Sick Leave – An Overview

- If the State law override fails:
 - Use is for
 - Employee
 - Employee's child (any age), spouse, registered domestic partner, sibling, parent, grandparent, grandchild, parent in-law, ward, guardian, or member of household

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Mpls. and St. Paul Paid Sick Leave – An Overview

- If the State law override fails:
 - Use is for
 - All aspects of medical or mental health condition, illness or injury
 - Absence due to legal proceedings, counseling, or other services necessitated by domestic abuse, sexual assault, or stalking
 - Public health closure of employee's work site
 - Care of family member due to unexpected closure of their school or place of care

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Mpls. and St. Paul Paid Sick Leave – An Overview


- If the State law override fails
 - Consult the ordinances for notices, recordkeeping, etc., requirements
 - For all: Watch for more cities/counties to implement paid sick leave requirements

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Your Questions

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