

Workplace Law Update: 10 Essential Items on Your September To-Do List

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It's hard to keep up with all the recent changes to labor and employment law, especially since the law always seems to evolve at a rapid pace. In order to ensure you stay on top of the latest changes and have an action plan for compliance, here is a quick review of the latest developments we tracked in August and a checklist of the essential items you should consider addressing in September and beyond.

Review your pay practices to prepare for a potentially significant bump in the salary threshold for exempt employees under the Fair Labor Standards Act's (FLSA's) white-collar exemptions. The Labor Department announced on August 30 that it intends to significantly raise the exempt salary threshold from \$684 per week to \$1,059, meaning employees would need to earn \$55,068 or more per year to be exempt from OT pay – a change the agency says would impact 3.6 million workers. Read our comprehensive guide here.

Determine whether your employee handbook's workplace conduct policies need to be modified in light of the National Labor Relations Board's August 2 ruling in *Stericycle*, *Inc.* That decision changed the legal standards that for the past six years have provided a commonsense solution for evaluating workplace misconduct rules. Employers must now show such rules are narrowly tailored to special circumstances justifying any infringement on employee rights. <u>Click here to learn more about how your policies may need to be updated</u>.

Make sure your anti-bias policies and practices are up to date and effectively administered. The full 5th Circuit Court of Appeals – which oversees cases arising out of Texas, Louisiana, and Mississippi – expanded the scope of the Title VII claims and opened the door for plaintiffs to file more discrimination charges and lawsuits. <u>Click here for your</u> 10 biggest takeaways from the August 18 *Hamilton v. Dallas County* decision.

Also ensure your business doesn't run afoul of anti-bias laws when using artificial intelligence for employment-related reasons. The Equal Employment Opportunity Commission (EEOC) recorded its first-ever settlement on August 9 in a case involving AI

discrimination in the workplace. <u>Click here for 10 steps you can take to ensure your</u> <u>organization doesn't befall the same fate as you adopt new AI technologies</u>.

Revisit your procedures for when the Occupational Safety and Health Administration (OSHA) shows up to conduct an inspection. A proposed rule OSHA announced on August 29 would give a designated union representative the right to accompany an OSHA inspector during a facility walkaround — *regardless of whether the representative is your employee or the facility is a union shop*. <u>Click here for more on the seven key steps you can take to</u> <u>prepare</u>.

____ Discuss the potential impact of recent NLRB decisions with your labor counsel. The Board kept its foot on the gas in August, issuing decision after decision – each further weighing the scales in labor's favor – leading up to the expiration of Democratic Board member Gwynne Wilcox's term. Decisions include the return of <u>quickie union elections</u>, an <u>overhaul of the representation process</u> to boost union organizing, and <u>limits on employer</u> <u>actions</u> during first contract negotiations and after a contract expires. <u>Click here to review</u> <u>our Labor Relations Insights</u>.

Consider submitting a comment on the EEOC's proposed regulations for the Pregnant Workers Fairness Act (PWFA), a new law that requires employers to broadly consider pregnancy-related accommodation requests from job applicants and employees. The proposed rule – which was published in the Federal Register on August 11 – provides more detail about how the EEOC will interpret and enforce the new law. But you still have time to provide meaningful feedback about how it may impact your workplace. <u>Click here</u> <u>for the seven key takeaways you need to know about the proposal</u>.

Prepare for California's minimum wage to increase again In January 2024. The Director of California's Department of Finance recently published a letter stating that the minimum wage needed to rise by 3.5% to account for an inflation adjustment effective the beginning of next year. <u>Click here for the five things employers need to know about this impending change – and what you can expect in the coming months</u>.

Develop a plan to comply with mandatory Roth catch-up contributions under the SECURE Act 2.0. Employees who are at least 50 years old are currently able to make <u>pre-tax</u> "catch-up contributions" to their employer-sponsored retirement plans, including 401(k) plans – but certain higher earners will soon be required to make such contributions to an <u>after-tax</u> Roth account. This provision takes effect on January 1, 2024, but the IRS announced in August that there will be a two-year transition period, giving employers a pass until the beginning of 2026. <u>Click here to review the four steps should you consider taking now</u>.

Prepare for changes to the way the Office of Federal Contract Compliance Programs (OFCCP) audits federal contractors and conciliates disputes over alleged discriminatory practices. The OFCCP released a final rule on August 4 removing much of the clarity and transparency that contractors have enjoyed the past several years when it comes to pre-enforcement notices and conciliation procedures, generally making things more complicated for the employer community. The rule becomes effective on September 5 – meaning now is the time for federal contractors to understand what is changing and what it means for them. <u>Click here to learn more</u>.

We will continue to monitor developments related to all aspects of workplace law. Make sure you are subscribed to <u>Fisher Phillips' Insight System</u> to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney.

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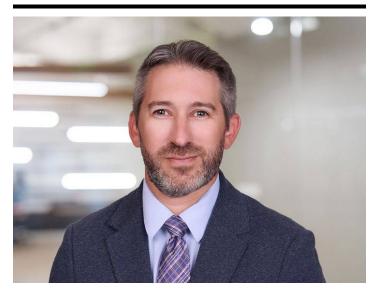
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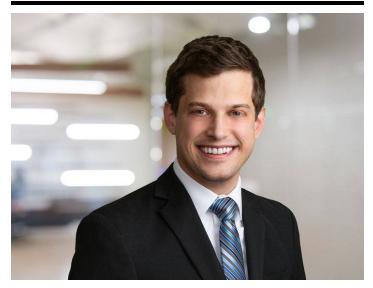
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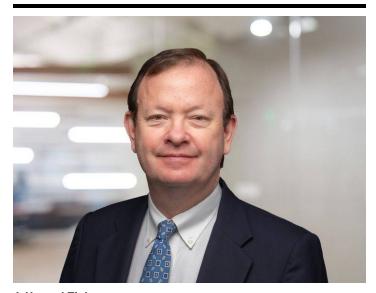
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