



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

Insights

9.01.23

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. [Click here to learn more about how your policies may need to be updated.](#)

_____ **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. [Click here for your 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. [Click here for 10 steps you can take to ensure your organization doesn't befall the same fate as you adopt new AI technologies.](#)

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.* [Click here for more on the seven key steps you can take to prepare.](#)

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 [quickie union elections](#), an [overhaul of the representation process](#) to boost union organizing, and [limits on employer actions](#) during first contract negotiations and after a contract expires. [Click here to review our Labor Relations Insights.](#)

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. [Click here for the seven key takeaways you need to know about the proposal.](#)

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. [Click here for the five things employers need to know about this impending change – and what you can expect in the coming months.](#)

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 [pre-tax](#) "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 [after-tax](#) 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. [Click here to review the four steps should you consider taking now.](#)

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. [Click here to learn more.](#)

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

Related People



Alba V. Aviles
Partner
908.516.1058
[Email](#)



Brian Balonick
Regional Managing Partner
412.822.6633
[Email](#)



Steven M. Bernstein
Regional Managing Partner and Labor Relations Group Co-Chair
813.769.7513
[Email](#)



Raeann Burgo
Partner
412.822.6630
[Email](#)



Kathleen McLeod Caminiti

Partner and Co-Chair, Wage and Hour Practice Group

908.516.1062

Email



Michael D. Carrouth

Partner

803.255.0000

Email



Charles S. Caulkins

Partner

954.847.4700

Email



Jessica D. Causgrove

Partner

312.346.8061

Email



Steven R. Cupp

Partner

228.822.1440

Email



Patrick M. Dalin

Partner

610.230.6112

Email



J. Micah Dickie

Partner

404.260.3419

Email



Joseph W. Gagnon

Partner

713.292.5613

Email



Lonnie D. Giamela

Partner

213.330.4454

Email



Marty Heller

Partner

404.231.1400

Email



Brett Holubeck

Associate

713.292.5607

Email



Wendy Hughes

Partner

610.230.6104

Email



Corina Johnson

Associate

916.210.0389

Email



Jennifer S. Kiesewetter

Partner

615.488.2905

Email



Emily N. Litzinger

Partner

502.561.3978

Email



Todd B. Logsdon

Partner

502.561.3971

Email



Todd A. Lyon
Partner and Labor Relations Group Co-Chair
503.205.8095
[Email](#)



Eleanor F. Miller
Associate
202.916.7189
[Email](#)



George A. Reeves, III

Partner

803.255.0000

Email



Deniz Uzel Reilly

Partner

610.230.6102

Email



J. Hagood Tighe

Partner and Co-Chair, Wage and Hour Practice Group

803.740.7655

[Email](#)



Travis W. Vance

Regional Managing Partner

704.778.4164

[Email](#)



Melanie L. Webber

Partner

440.838.8800

Email



Sheila M. Abron

Partner

803.740.7676

Email

Service Focus

Affirmative Action and Federal Contract Compliance

AI, Data, and Analytics

Counseling and Advice

Employee Benefits and Tax

Employee Leaves and Accommodations

Employment Discrimination and Harassment

Labor Relations

Litigation and Trials

Wage and Hour

Workplace Safety and Catastrophe Management