WEB EXCLUSIVE: Top 13 Employment Law Stories From October 2019

Insights
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It's hard to keep up with all the recent changes to labor and employment law. While the law always seems to evolve at a rapid pace, there have been an unprecedented number of changes for the past few years—and this past month was no exception.

In fact, there were so many significant developments taking place during the past month that we were once again forced to expand our monthly summary well beyond the typical "Top 10" list. In order to make sure that you stay on top of the latest changes, here is a quick review of the Top 13 stories from last month that all employers need to know about:

1. **New California Law Prohibits Most Mandatory Arbitration Agreements—For Now** – Despite his predecessor vetoing two similar proposals, California Governor Gavin Newsom signed a bill into law on October 10 that will prohibit employers from entering into mandatory arbitration agreements for nearly all types of employment law claims in California. The new law could have significant impacts on California employers across all industries – if it ever goes into effect. There are significant questions around whether the new statute is invalid. We could see it scaled back or completely tossed out before ever being enforced based on an argument that it is preempted by federal law. Legal challenges are inevitable, and will likely require years of litigation before a final resolution. In the meantime, what do California employers need to know about this development? (read more here)
2. **Pendulum To Swing Back As SCOTUS Prepares For Exciting 2019-2020 Term** – Taking a three-year look back at the Supreme Court's workplace law decisions gives you the sense that the exciting cases only come down every other year. In the ho-hum term that ended in 2017, the Court handled relatively low-impact cases, but the docket heated up in the term ending in June 2018 when the Court issued rulings in blockbuster cases. Last term's decisions returned to the mind-numbing variety, for the most part. This history can only mean that we have exciting things in store for the coming 2019-2020 term, which kicked off on October 7. A sneak peek at the early docket confirms that you can expect to see fireworks over the next nine months, as the Supreme Court has loaded its term with interesting and impactful cases (read more here).
3. **Supreme Court Hears Arguments To Determine LGBT Workplace Bias Issues For The First Time** – On the second day of the Supreme Court's 2019 term, three consolidated cases were argued that will determine whether the nation's most prominent workplace discrimination

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statute prohibits employment discrimination against LGBT workers. The issue that was considered during the October 8 Court session: whether Title VII's ban against "sex" discrimination covers claims involving sexual orientation and gender identity. By the time the term ends in June 2020, employers will finally have a definitive answer regarding the contours of the federal primary civil rights law as it applies to members of the LGBT community (read more here).

4. **Supreme Court's Decision Not To Review California's Arbitration Framework Means We Have A Roadmap For Compliance** – The U.S. Supreme Court just did something that was more than just a bit out of character—it rejected the opportunity to find that California had once again overstepped its bounds by creating judicial rules disfavoring arbitration. It did so by rejecting the highly watched petition for certiorari that arose from Ramos v. Winston & Strawn. The October 7 determination not to take up the case for review means that we will have to live with the current state of affairs for the time being, but we now have a solid game plan for crafting arbitration agreements that comply with state law (read more here).
5. **Court Forces EEOC To Continue Collecting Pay Data In 2019** – A federal judge ordered the EEOC to continue its pay data collection efforts and complete its efforts into next year, ruling that an insufficient number of employers have submitted their revised EEO-1 reports. Although the agency tried to shut down the pay data collection process by pointing out that over 80% of eligible employers had turned in their 2017 and 2018 compensation information, the court said on October 29 that more could be done and ordered the agency to keep at it and complete its work by January 31, 2020 (read more here).
6. **California's Groundbreaking Privacy Law Amended** – Governor Gavin Newsom signed into law two amendments to the California Consumer Privacy Act (CCPA) that will have a direct impact on employers doing business in the state. The new amendments, signed on October 11 and taking effect on January 1, 2020, require covered businesses meeting a certain revenue threshold or other criteria to implement policies and procedures that provide consumers – which includes employees – certain privacy rights not previously available under existing law. The first relevant amendment, AB 25, postpones by one year, until January 1, 2021, all the CCPA's requirements pertaining to employee data except for two: (1) reasonable security measures to safeguard the data, and (2) disclosure of the categories of personal information collected about employees and job applicants and the business purposes for which the information is used. The second relevant amendment, AB 1355, excludes from coverage of the CCPA, until January 1, 2021, specified "business-to-business" communications or transactions. Even though enforcement by the California attorney general does not begin until July 1, 2020, the CCPA compliance deadline is just a few months away. Therefore, employers doing business in California should immediately consider whether the CCPA applies to them and if it does, determine what steps they should take to be ready (read more here).
7. **Labor Department Issues Proposed Changes To The Tip Credit Regulations** – Employers that utilize the "tip credit" in the federal Fair Labor Standards Act (FLSA), or whose employees receive tips, should carefully consider regulatory changes that were proposed by USDOL on

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October 7. While many of the proposed regulatory changes were expected, some were not, and even the expected changes will require employers to recalibrate some of their policies assuming that USDOL ultimately adopts the proposals into final law. Employers wishing to comment on these proposals have until December 7, 2019 to submit their comments (read more here).

8. **No-Rehire Provisions Are No More in California Settlement Agreements** – Between pumpkin carving and cookie baking, Californians now have one more thing to add to their holiday to-do lists: reviewing their standard settlement agreements to remove any no-rehire provisions. California employers have until the end of the year to revise their agreements to comply with AB 749, the legislation signed into effect by Governor Gavin Newsom on October 12. What do California employers need to know about this new law? (read more here)
9. **New Privacy Protections Introduced In Illinois** – Illinois has introduced new workplace privacy legislation governing the use of artificial intelligence during the job interview process. The state legislature unanimously passed the Artificial Intelligence Video Interview Act, HB2557, which imposes consent, transparency, and data destruction requirements on employers using AI technology during the job interview process. This comes at a time as many employers are beginning to take advantage of AI for hiring (read more here).
10. **California Makes Sweeping Changes to Lactation Accommodation Requirements** – Following San Francisco's lead, California will soon significantly expand the obligation of most employers to provide break time and a location to express breast milk. The new law, just signed into effect by Governor Newsom on October 10 and effective January 1, 2020, adopts a detailed list of requirements employers must oversee when it comes to lactation accommodations. What do California employers need to know about their new obligations? (read more here)
11. **Timeframe To File Workplace Bias Claims In California Extended By 2 Years** – A big focus of the #MeToo movement over the last several years has been on efforts to increase the statute of limitations for bringing sexual harassment claims. On October 10, Governor Newsom signed into law Assembly Bill 9, which will extend the deadline for filing an employment-related administrative complaint with the Department of Fair Employment and Housing (DFEH) by two years. Under existing law, individual employees have one year to file an administrative charge with DFEH (which is an administrative precursor to filing a civil lawsuit in court). AB 9 will extend that administrative filing period to three years, beginning on January 1, 2020. However, while the proposal was couched as a "sexual harassment" bill, it actually extends the statute of limitations for all employment claims under the Fair Employment and Housing Act (FEHA), not just sexual harassment claims (read more here).
12. **Congress Debates What "Future Of Work" Could Mean For Gig Economy** – Lawmakers have begun to hold a series of hearings to discuss the "future of work," and it may be no surprise that the two political parties have differing ideas about how that should impact the gig economy. The House Education and Labor Committee held the first of three such meetings on October 23, aiming to ensure that the law keeps up with modern developments such as automation, artificial intelligence, and the gig economy. While Democratic lawmakers seem to want to increase restrictions on the industry, their Republican counterparts are looking toward more flexible

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options. According to an article by Jaclyn Diaz of Bloomberg Law, the working subcommittees will recommend specific legislation early next year. What might such legislation look like, and what chances of success might it have? (read more here)

13. **Pay Your California Arbitration Fees On Time – Or Else!** – When it comes to paying your arbitration fees in whole and on time, the stakes for California employers just got more serious. Under legislation signed by Governor Newsom on October 13, a drafting party that fails to pay arbitration fees and costs in employment or consumer disputes is subject to some fairly significant ramifications. They include not being able to compel arbitration and being forced back into court. Did that get your attention? (read more here)

If you have any questions about these developments or how they may affect your business, please contact your Fisher Phillips attorney.

This Legal Alert provides an overview of specific legal developments. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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