Employment Law Update: What's New and What You Need to Know
Tina Harkness, Esq., SPHR
Mountain States Employers Council

Supreme Court Update

- Contraceptive mandate
- Same-sex marriage bans
- Public employee testimony
- Recess appointments invalid

Cases Worth Watching

- Pregnancy accommodation?
- EEOC settlement efforts reviewed?
- DOL administrative process?
- Does ACA authorize tax subsidies?
**Same-Sex Marriage**

- 35 states and D.C. recognize same-sex marriage
- 10/14 - USSCT refuses review of same-sex marriage ban cases - no controversy
- 11/14 - *DeBoer v. Snyder* (6th Cir. 2014)
- FMLA definition of spouse

**Pregnancy Accommodation?**

- EEOC issued guidance 7/14/14
- PDA requires pregnancy accommodation
  - Light-duty cannot be restricted to work injuries
  - Non-binding, will be challenged as regulatory overreach
- But, USSCT to decide *Young v. UPS*

**Health Care Reform**

- Employer mandate effective for employers with 100 or more FTEs
- Data collection for 6055 and 6055 reporting
- But, USSCT to decide *King v. Burwell*
Employment Law Update 2015

Immigration Reform
- 8/14 - Surprising stall in Senate, would not have passed House
- Executive orders issued 11/20/14
  - H-4 spouses
  - STEM student work extensions
  - Intra-company transferees
  - Pending permanent residency

Federal Contractors
- New vets and disabled regs
- EO 13658 requires minimum wage increase to $10.10 per hour
- EO 13672 prohibits LGBT discrimination
- EO 13673 requires disclosure of workplace violations
- Rule requires annual compensation disclosures

FLSA Exemption Changes
- Expect changes to:
  - Salary level $455/week, $23,660/year
  - “primarily engaged”
  - May designate certain jobs nonexempt
Employment Law Update 2015

FLSA Exemption Changes
- Presidential announcement 3/13/14
- DOL delays proposed regulations to early 2015
- Restoring Overtime Pay for Working Americans Act proposed June 2014

EEOC’s Strategic Enforcement Plan
1. Eliminating barriers in recruitment and hiring
2. Protecting immigrant, migrant and other vulnerable workers
3. Addressing emerging and developing issues
4. Enforcing equal pay laws
5. Preserving access to the legal system
6. Preventing harassment through systemic enforcement and targeted outreach

EEOC Update
- Congress questions enforcement tactics
- Wellness program challenges
- First transgender cases
- More ADA cases
- Pregnancy accommodation
- Informal letter on permissible medical history inquiries
2014 Colorado Legislative Session

• “Fixer” bills on same-sex tax filing and Employment Opportunity Act
• Wage Protection Act
• Workers’ compensation changes
• FAML bill

Wage Protection Act

• Effective 1/1/15
• Sets up CDLE process to adjudicate wage claims < $7,500
• Employees can recover attorneys fees
• Employers maintain pay statements for 3 years, CDLE can fine for recordkeeping violations
• Mail of final check to last known address within 60 days, if cannot deliver otherwise

Common Wage Disputes

• Vacation pay at termination
• Commissions and bonuses
  – Reduced to writing
  – Clarify when “earned” and when paid
• Unpaid overtime
Employment Law Update 2015

To Prepare for WPA

- Review pay practices for federal and state law compliance
- Make sure employees understand how they are paid
- Communicate internal process to resolve wage disputes

Civil Rights Enforcement Act

- Cases accruing on or after January 1, 2015
- Expands CADA remedies
  - Comp/punitive damages
  - Attorneys fees and costs
  - Front/back pay, interest, and reinstatement
- Damage limits
- Defend with good faith efforts

To Prepare for CREA

- Review harassment and retaliation policies and procedures
- Train supervisors and employee in harassment prevention
- Document prevention and correction efforts
**Independent Contractors**

Two Main Factors

- Independent Business
- Direction and Control

**Independent Contractors**

- CO Supreme Court says works for others is not determinative
  - ICAO v. Softrock Geological
  - Western Logistics v. ICAO

- Weigh totality of circumstances
- Agreement creates presumption of IC status

**C.R.S. 8-70-115(1)(c) Factors**

- No exclusive work required
- No established quality standard
- Paid fixed or contract rate
- No at-will termination
- No more than minimal training
- No tools/benefits
- No set time
- Pay to trade or business name
- No combined business operations
Marijuana

- Controlled Substances Act
- Not required to “accommodate”
- Coats v. Dish Network

Questions?

For more information about MSEC:
- Call (303) 839-5177
- Email memsvc@msec.org
- Visit www.msec.org

Thank you!