RubinFortunato

A Law Firm of Action

THE LAST 60 DAYS OF ACTION IN EMPLOYMENT LAW
Part V – Other Important Changes

July 31, 2019

Patricia Tsipras, Esquire

The courts and legislatures have been busy over the last two months. Thus, this installment of our 60-day newsletter is broken down by subject-matter, with this fifth and last part dealing with important changes not covered in the previous parts.

Federal

On June 3, 2019, the United States Supreme Court held that the administrative exhaustion requirement under Title VII is a procedural, not a jurisdictional, requirement that a party can waive if not timely raised. Fort Bend Cty. v. Davis, 2019 U.S. LEXIS 3891 (June 3, 2019); see also Rubin, Fortunato & Harbison P.C. Client Alert, June 2019, FAILURE TO TIMELY ASSERT "FAILURE TO EXHAUST" MEANS FAILURE FOR YOUR ARGUMENT: The United States Supreme Court Rules That the "Failure to Exhaust Administrative Remedies" Defense Is Not Jurisdictional and Can Be Waived.[1]

Connecticut

On June 18, 2019, Connecticut amended its Fair Employment Practices Act to require employers with three or more employees to provide sexual harassment training to all employees and to require employers with less than three employees to provide such training to supervisory employees. The amendment is effective on October 1, 2019. See Conn. Gen. Stat. § 46a-54(15).

Kentucky

The following changes were effective in Kentucky as of June 27, 2019:

As a condition or precondition of employment, employers may require an employee or applicant to execute an agreement reasonably reducing the statute of limitations for filing a claim against the employer, as long as the agreement does not reduce the limitations period by more than 50% of the time provided under applicable law. See Ky. Rev. Stat. Ann. § 336.700(3)(C).

Employers may require a former employee to waive existing claims as a condition or precondition of rehiring the employee as part of a settlement of litigation or administrative or other proceeding. See Ky. Rev. Stat. Ann. § 336.700(3)(B).

---

[1] https://www.rubinfortunato.com/article/failure-to-timely-assert-failure-to-exhaust-means-failure-for-your-argument-the-united-states-supreme-court-rules-that-the-failure-to-exhaust-administrative-remedies/

Maine

On May 16, 2019, Maine amended its mini-WARN notice requirements. Effective September 17, 2019, employers must issue a written notice within 90 days before closing or relocating a worksite. The amendment also clarifies additional penalties for noncompliance. See Me. Rev. Stat. tit. 26, § 625-B.

Nevada

On May 21, 2019, Nevada enacted a law requiring mandatory health and safety training for workers at sites where exhibitions, conventions, or trade shows occur. Effective January 1, 2020, the new law requires affected employers to provide certain training to covered workers and more extensive training to supervisors. The new law requires all employees to complete an OSHA-certified course within 15 days of hire. See Nev. SB 119.

On May 21, 2019, Nevada amended its Equal Opportunities for Employment statute. Effective October 1, 2019, employees pursuing employment discrimination claims in state court may be awarded the same remedies currently available under Title VII. However, it is unclear whether the statutory caps applicable to Title VII claims based on the size of the employer will also be imposed for state claims. Additionally, the revised bill requires the Nevada Equal Rights Commission to notify charging parties that they may request a right-to-sue notice if at least 180 days have passed since the employee filed the complaint. See 2019 Bill Text NV S.B. 177.

New Jersey

On June 11, 2019, New Jersey enacted a law, effective in January 2020, that requires employers in the hospitality industry to provide panic buttons to employees working alone performing housekeeping or room service duties. See 2018 Bill Text NJ S.B. 2986.

New Mexico

Effective June 14, 2019, New Mexico amended its Human Rights Act to include sexual orientation and gender identity among the classes protected from unlawful discrimination by all employers (previously, the law extended only to those employers with 15 or more employees). See N.M. Stat. Ann. § 28-1-7(A).

New York

On July 12, 2019, New York amended its Human Rights Law to prohibit discrimination based on traits historically associated with race, including hair texture or protective hairstyles. "Protective hairstyles" include, but are not limited to, braids, locks, and twists. See N.Y. Exec. Law § 292(37)-(38).

New York City's January 2019 amendment to its Human Rights Law became effective May 20, 2019. No employer in New York may discriminate against any person on the basis of that person's "sexual and reproductive health decisions." Examples of health decisions identified in the amendments include fertility-related medical procedures; emergency contraception; abortion procedures; sterilization procedures; and pregnancy testing. See NYC Administrative Code 8-107.

Virginia

Effective July 1, 2019, Virginia enacted a law that requires employers, upon request, to provide current and former employees with their employment records within 30 days of

a written request. See Va. Code Ann. § 8.01-413.1. An employer must provide records reflecting (1) the employee's dates of employment with the employer; (2) the employee's wages or salary during employment; (3) the employee's job description and job title during employment; and (4) any injuries sustained by the employee during the course of employment. Such records may be withheld only if the employee's treating physician or clinical psychologist states in writing that providing the records to the employee would be reasonably likely to endanger the life or physical safety of the employee or another person.

Washington

In mid-May, Washington amended its Law Against Discrimination to require employers in the hospitality industry to adopt policies, conduct training, and provide panic buttons in an effort to prevent sexual harassment and sexual assault of certain workers. The requirements are effective on January 1, 2020 for hotel and motels with 60 or more rooms and January 1, 2021 for all other covered businesses. See 2019 Wa. SB 5258.

To discuss any of these changes, contact Patricia Tsipras at 610.408.2029 or ptsipras@rubinfortunato.com.

Tricia thanks Jomana Abdallah, the Firm's Summer Associate, for her assistance with this newsletter.