

THE LAST 60 DAYS OF ACTION IN EMPLOYMENT LAW

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Federal

The National Labor Relation Board (NLRB) found that requiring employees to resolve employment-related claims through arbitration instead of collective action did not restrict the employees' rights under Section 7 of the National Labor Relations Act (which protects employees' collective bargaining rights). See Tarlton & Son, Inc. v. NLRB, No. 32-CA-119054 and 32-CA-126896, 2019 NLRB LEXIS 564 (N.L.R.B. October 30, 2019).

The Seventh Circuit Court of Appeals found that the "regarded as" prong of the Americans with Disabilities Act (ADA) pertains only to current impairments and not possible future ones. Thus, the court found that an employer's refusal to extend a job offer to an applicant over concerns about future possible impairments that could develop because of the applicant's weight did not violate the ADA. See Shell v. Burlington Northern Santa Fe Ry., 941 F.3d 331, 337 (7th Cir. Oct. 29, 2019).

The NLRB concluded that the test for whether an employer's rule restricts or interferes with employees' Section 7 rights is whether an objective employee would reasonably interpret the rule to restrict protected activities. See LA Specialty

Produce Co. v. NLRB, No. 32-CA-207919, 2019 NLRB LEXIS 554 (October 10, 2019).

The Sixth Circuit Court of Appeals found that the 300-day statutory limitation period to sue under Title VII cannot be waived by contract because it affects a claimant's substantive rights. See Logan v. MGM Grand Detroit Casino, 939 F.3d 824, 839 (6th Cir. Sept. 25, 2019).

Alaska

On September 26, 2019, Alaska increased its minimum wage from \$9.89 to \$10.19 per hour. The increase is effective January 1, 2020.

California

California amended its organ donation leave law on October 31, 2019 to provide eligible employees with an additional 30 days of unpaid leave (for a total of 60 days) in a one-year period for the purpose of donating his/her organ to another person. See Cal. Labor Code § 1510. The change is effective January 1, 2010.

On October 22, 2019, California's Department of Industrial Relations adjusted the overtime exemption rate for computer software employees from \$45.41 to \$46.55; the minimum monthly salary exemption

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from \$7,883.62 to \$8,080.71; and the minimum annual salary exemption from \$94,603.25 to \$96,968.33, effective January 1, 2020, to reflect the 2.5% increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

On October 12, 2019, California passed a law prohibiting no-rehire provisions in settlement agreements between employers and employees who have filed a claim or complaint against their employer. See 2019 Cal AB 749. The law is effective January 1, 2020.

In 2018, California passed the Consumer Privacy Act to give consumers more control over the data that businesses collect from them and about them. The Act's definition of "consumer" is so broad that it would cover employees and job applicants – two categories of people not ordinarily considered "consumers." To address this problem, on October 11, 2019, the legislature passed Assembly Bill 25, which exempts employers, until January 1, 2021, from complying with the Consumer Privacy Act. See 2018 Cal AB 25.

On October 10, 2019, and effective January 1, 2020:

- California extended the period to file an administrative complaint under the Fair Employment and Housing Act from one year to three years. See 2018 Cal AB 9.
- California amended its lactation accommodation law to require that an employer provide break time each time an employee needs to express milk. See Cal. Lab. Code § 1030.
- California prohibited employers from requiring employees to sign mandatory arbitration agreements for

claims arising under the Fair Employment and Housing Act or the California Labor Code. See Cal. Gov. Code § 12953; Cal. Labor Code § 432.6.

On October 9, 2019, a California appellate court held that, for meal and rest period premiums under California Labor Code section 226.7, an employee's "regular rate of compensation" is one hour of the employee's base hourly wage, not the regular rate of pay used for calculating overtime premiums under section 510 of the Code. See Ferra v. Loews Hollywood Hotel, LLC, 40 Cal. App. 5th 1239 (Ct. App. Oct. 9. 2019).

On September 24, 2019, the City of Menlo Park set minimum wage at \$15.00 per hour, effective January 1, 2020. See <https://www.menlopark.org/1582/Local-minimum-wage-ordinance>.

Connecticut

Effective October 1, 2019, a new Connecticut law provides anti-discrimination employment protections for civil air patrol members and ensures they can participate in emergency services training and leave regular employment for civil air patrol emergencies without fear of losing their jobs. See 2019 Ct. S.B. 863.

Connecticut also expanded its sexual harassment training and notice requirements for employers. Effective October 1, 2019, any employer with as few as three employees must provide sexual harassment training to all employees by October 1, 2020. Employers with fewer than three employees must train their supervisors. See Conn. Gen. Stat. § 46a-54(15).

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Also effective October 1, 2019, Connecticut enacted a law that will gradually increase the minimum wage to \$15.00 an hour over the next few years and then require the minimum wage to increase according to federal economic indicators. The new minimum wage will increase from \$10.10 to \$11.00 on October 1, 2019; \$12.00 on September 1, 2020; \$13.00 on August 1, 2021; \$14.00 on July 1, 2022; and \$15.00 on June 1, 2023. See Conn. Gen. Stat. § 31-58(i).

Florida

The Florida Minimum Wage Law requires the Florida Department of Economic Opportunity to calculate the minimum wage rate each year on September 30.

Accordingly, effective January 1, 2020, Florida's minimum wage will increase from \$8.46 to \$8.56 per hour. See Fl. State Const., Art. X, Sect. 24; Fl. Stat. § 448.110; <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notice>.

Illinois

Effective September 29, 2019, Illinois amended its Equal Pay Act to disallow: (1) screening applicants based on wage or salary history (including benefits); (2) requesting or requiring applicants to provide their salary history as a condition of employment; and (3) requesting or requiring that applicants disclose their salary history as a condition of employment. Employers cannot seek such information directly from an applicant's current or former employer. Additionally, employers cannot require employees to sign a contract that would prevent them from discussing or disclosing their compensation. See 820 Ill. Comp. Stat. 112/10; 112/30 (2019 Ill. HB 834).

Maryland

On November 7, 2019, the County of Montgomery amended its anti-discrimination law to prohibit discrimination based on traits historically associated with race, including hair texture and hairstyles. The amendment is effective in February 2020. See Montgomery County Code Sec. 27-6.

Effective October 1, 2019, Maryland amended its equal pay statute to provide that, if an employer is found to have violated the statute two or more times in three years, it can be required to pay the equivalent of 10% of the amount of damages owed as an additional civil penalty. See 2019 Md. HB 790.

Maryland enacted a law banning non-competes or conflict of interest provisions in agreements with low wage workers. If a worker makes less than \$15 per hour or \$31,200 annually, effective October 1, 2019, it is against Maryland public policy to enforce a non-compete against them. See 2019 Md. SB 329.

Maryland also expanded its unpaid leave requirements for employers with 15 or more employees. Effective October 1, 2019, such employers must allow their employees unpaid leave to serve as organ or bone marrow donors, and this leave cannot run concurrently with any leave to which the employee is entitled under the Family and Medical Leave Act. The leave also cannot be considered a break in service for the purpose of calculating length of service; employees must be restored to the same or equivalent position after returning from leave; and employees must be allowed to maintain their health benefits as if they had been working during the leave. See 2019 Md. HB 1284.

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Maryland updated its anti-discrimination statute to include independent contractors in the definition of employees as of October 1, 2019. See 2019 Md. HB 679.

In another update to the anti-discrimination statute effective October 1, Maryland expressly forbids harassment and imposes strict liability for employers when a supervisor harasses an employee, gives employees more time to file a harassment complaint (extended from six months to two years), and expands anti-harassment coverage to include employers with as few as one employee. See 2019 Md. HB 679.

Missouri

Effective October 31, 2019, Kansas City instituted a ban on requesting employment applicants' salary history information, discriminating against applicants who do not provide it, or relying on this information to make hiring decisions. See Kansas City, Mo., Municipal Code § 38-102.

Nevada

Effective October 1, 2019, Nevada updated its Equal Opportunities for Employment statute to make the remedies available under Title VII available for employees with state law claims and to allow employees to request a right-to-sue notice from the Nevada Equal Rights Commission if over 180 days have lapsed since the employee filed their complaint. See 2019 Bill Text NV S.B. 177.

New Jersey

Following a highly publicized incident at a high school wrestling match that raised awareness of race-based hairstyle discrimination, on September 30, 2019, New Jersey clarified and issued guidance to explain that the definition of race

discrimination under the New Jersey Law against Discrimination includes discrimination based on hairstyles that are closely associated with race. See N.J.S.A. 10:5-12(d); [New Jersey Division on Civil Rights, Guidance on Race Discrimination Based on Hairstyle](#).

New York

New York expanded protections for domestic violence victims by amending the Human Rights Law, effective November 18, 2019, to require employers to give reasonable accommodations to domestic violence victims who are absent from work. See N.Y. Exec. Law § 296(22).

New York City has expanded its human rights law. Freelancers and independent contractors are now covered under the New York City Human Rights Law, effective January 11, 2020. See NYC Admin. Code 8-107, subd. 23. As of November 11, 2019, New York City employers are prohibited from retaliating against anyone who requests a reasonable accommodation. See NYC Admin. Code 8-107, subd. 7. Finally, the New York City Commission on Human Rights recently issued guidance clarifying that using the terms 'illegal alien' and 'illegals' with the intent to demean, humiliate, or offend person(s) in the workplace constitutes unlawful discrimination, as does threatening to call immigration authorities if the threat is based on a person's perceived immigration status or national origin. See <https://www1.nyc.gov/assets/cchr/download/pdf/publications/immigration-guidance.pdf>; https://www1.nyc.gov/assets/cchr/download/pdf/materials/ImmigrationGuidance_OnePager.pdf.

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New York enacted a law, effective November 8, 2019, that prohibits discrimination and retaliation based on the reproductive health decision-making of an employee or the employee's dependent. See N.Y. Lab. Law §203-e.

Westchester County issued an ordinance to provide safe leave for victims of domestic violence or human trafficking as of October 30, 2019. See Westchester County, New York Code of Ordinances Sec. 586.01, et seq.

Effective October 27, 2019, New York amended its Labor Law to prohibit employers from retaliating against employees who complain of a violation of the Labor Law. The amendment clarifies that the part of the statute that says an employer may not "threaten, penalize, or in any manner discriminate or retaliate against an employee" explicitly includes an employer's threat to contact, or actual contact with, United States immigration authorities about an employee's suspected immigration status or the status of an employee's family. See N.Y. Lab. Law § 215 (2019 N.Y. SB 5791).

New York expanded harassment protections for domestic workers and non-employees. In addition, effective October 11, 2019, other amendments to New York's employment discrimination and harassment laws lower the burden of proof for harassment claims, extend the statute of limitations for sexual harassment claims to three years, and prohibit non-disclosure provisions in settlement agreements and mandatory arbitration provisions in discrimination claims. See 2019 N.Y. AB 8421.

New York amended the New York Human Rights Law to prevent discrimination against an employee's religiously based clothing or facial hair as of October 8, 2019. See 2019 N.Y. AB 4204.

All employees who perform "substantially similar work" must now receive equal pay under New York's newly amended equal pay law, effective October 8, 2019. The amendments also require equal pay among all protected groups, including age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, rather than just between men and women. See 2019 N.Y. SB 5248.

Ohio

On September 30, 2019, Ohio increased its minimum wage, effective January 1, 2020. Non-tipped employees will earn a minimum of \$8.70 an hour and tipped employees will earn a minimum of \$4.35 an hour. These increases will apply to businesses with annual gross receipts of more than \$319,000. See [Ohio Department of Commerce, 2020 Minimum Wage](#).

Oklahoma

Oklahoma enacted the Protection from Workplace Harassment and Violence Act, which took effect November 1, 2019. It allows an employer to seek an injunction to protect its employees. The injunction can restrain an individual from coming near the employer's property or from contacting the employer, an employee, or another person while the employee or other person is on the employer's property. See 2019 OK. SB 715.

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Pennsylvania

On November 26, 2019, the City of Philadelphia enacted a Domestic Worker Bill of Rights that requires domestic workers to have a written contract that defines their job duties, schedule, hourly and overtime wages, meal and rest periods, time off, and other benefits. The Bill of Rights goes into effect in May 2020. See Philadelphia Code § 9-4501, et seq.

Construction industry employers in Pennsylvania will be required to use a system called E-Verify starting on October 7, 2020. E-Verify is a web-based program that will allow employers to verify a construction worker's work authorization. See 2019 Pa. HB 1170.

Texas

On November 22, 2019, a Texas judge blocked the City of San Antonio's paid sick leave ordinance, which was scheduled to go into effect on December 1, 2019. The ordinance would have required private

employers to grant employees one hour of sick leave for every 30 hours worked, with a maximum of 56 hours per year. Dozens of business groups and the Texas Attorney General opposed the ordinance. The business groups argued that the ordinance is unconstitutional and is preempted by the Texas Minimum Wage Act because it requires employers to pay an hourly wage above the state's threshold. The Attorney General argued that the state's constitution allows the Texas Legislature to determine minimum wages and minimum paid time off, and that the ordinance attempts to circumvent that authority. See Assoc. Builders & Contractors of South Texas, Inc. v. San Antonio, No. 2019CI13921, in the 408th District Court in Bexar County, Texas.

To discuss any of these changes, contact Patricia Tsipras at 610.408.2029 or ptsipras@rubinformunato.com, or contact Eliese Herzl-Betz at 610.408.2035 or eherzlbetz@rubinformunato.com.

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