LEGISLATIVE UPDATE – JULY 2024

RECENTLY ENACTED LAWS		
California	As a reminder, beginning on July 1, 2024, California businesses are prohibited from advertising, displaying, or offering "a price for a good or service that does not include all mandatory fees or other charges" other than taxes and shipping. *See* 2023 CA S.B. No. 478, *available at* this LINK.	Effective: 7.1.24
	On July 1, 2024, California overhauled its Private Attorneys General Act (PAGA), which allows employees to file lawsuits to recover civil penalties on behalf of themselves and other employees for state labor code violations. Under the new law, which resulted from extensive negotiations between business and labor groups as well as the governor's office, companies can see up to an 85% reduction in penalties if they take "all reasonable steps" to be in compliance before receiving a PAGA notice or employee records request. Even if employers miss this cutoff, they still have an incentive to fix the issue, a 70% penalty reduction, if they take similar steps to be in compliance within 60 days of receiving a PAGA notice. The law defines "all reasonable steps" to include such steps as: (1) disseminating lawful, written policies; (2) training supervisors on the applicable law; (3) taking appropriate corrective action with supervisors; and (4) conducting periodic payroll audits. *See* 2024 CA A.B. 2288, *available at* this LINK.	Effective: 7.1.24
Colorado	On May 31, 2024, Colorado passed a new law making it harder for employers to enter Training Repayment Agreement Provisions (TRAPs) with employees. These agreements generally require employees to repay education and training expenses once their employment is terminated. The new law will treat TRAPs similar to other consumer/student debt and allows the state attorney general to draft and enforce regulations to implement the bill, though it is unclear as to when these regulations will be released. *See* 2024 CO H.B. No. 24-1324, *available at* this LINK.	Effective: 8.7.24
Connecticut	Connecticut amends its paid sick leave law to cover nearly all private sector employees. The law will apply to employers with at least 25 employees in 2025, those with at least 11 employees in 2026, and those with at least one employee in 2027. In the past, the state's sick leave law only applied to "service workers" of employers with 50 or more employees. *See* 2024 CT Pub. Act No. 24-8, *available at* this LINK.	Effective: 1.1.25
Florida	Florida amends its child labor laws to relax restrictions on work hours and break periods for minors who are sixteen (16) and seventeen (17) years old. *See* 2024 FL H.B. No. 49.	Effective: 7.1.24
Idaho	Idaho recently granted employers immunity from civil damages for claims arising from "polic[ies] of an employer to either specifically allow or not prohibit the lawful carrying of a firearm on an employee's person." The state previously granted immunity to employers that allowed employees to store firearms in their personal motor vehicles on business premises. *See* 2024 ID S.B. No. 1275, *available at* this LINK.	Effective: 7.1.24
Kentucky	The state legislature recently reduced the time employees have to bring certain employment related claims, including discrimination, retaliation, wrongful discharge, and wage and hour claims. Beginning July 15, 2024, employees will only have three years instead of five to bring claims under the Kentucky Civil Rights Act and the corresponding state wage and hour laws. *See* 2024 KY H.B. No. 320.	Effective: 7.15.24
Louisiana	As a reminder, Louisiana's new firearms law goes went effect on July 4, 2024. The state now allows permitless concealed carry, though some locations and classes of persons are excluded from the law's application. As for the law's effect on businesses, an employer has the right to prohibit guns on its premises as long as a sign is posted. On the other hand, anyone can lawfully possess a firearm in their vehicle, even if the vehicle is on your property. For a list of prohibited locations, visit this LINK.	Effective: 7.4.24
	Louisiana amends its Labor and Worker's Compensation law to provide that compensation in the form of commissions, incentive pay, or a bonus is considered due in final wages if, at the time of separation, the compensation has been earned and not modified by a written policy. *See* 2024 LA H.B. 352, *available at* this LINK.	Effective: 8.1.24
	Louisiana enacts a law prohibiting the enforcement of nondisclosure clauses that are required by an employer and agreed to prior to a hostile work environment or sexual harassment dispute. The law does not prohibit confidential settlement agreements after a report of hostility or harassment is filed or a hostile work environment or sexual harassment dispute has occurred. *See* 2024 LA H.B. 161, *available at* this LINK.	Effective: 8.1.24

Minnesota	The state recently amended its voting leave laws to allow an employee to take time off to vote during the early voting period prior to election day. *See* 2024 MN H.B. 1830, *available at* this LINK.	Effective 7.1.24
Nevada	As a reminder, Nevada's two-tier minimum wage system will be replaced on July 1, 2024. In the past, employers who did not offer health care were required to pay $1.00 per hour above minimum wage. Now the minimum wage for all Nevada employees will be $12.00 per hour. Note that Nevada law also requires employers to pay overtime whenever an employee works more than 8 hours in a "workday" if the employee's rate of pay is less than 1.5 times the applicable minimum wage, *i.e.*, $18.00, though there are exceptions to compliant alternate work schedule agreements such as when an employee is scheduled to work 10 hours per day for four days of the workweek.	Effective: 7.1.24
South Dakota	South Dakota's legislature recently adopted a definition of antisemitism to be used when determining whether discrimination has occurred. *See* 2024 SD H.B. No. 1076, *available at* this LINK.	Effective: 7.1.24
Texas	Beginning July 1, 2024, the Texas Data Privacy and Security Act (TDPSA) goes into effect. The TDPSA requires businesses operating in the state to update their privacy notices on their websites, conduct data protection assessments, and update contracts with vendors acting as data processors. Most notably, the TDPSA also requires businesses to implement a process for consumers to exercise their rights under the law. Unlike California, however, the law specifically excludes data collected during employment.	Effective: 7.1.24
Washington	As a reminder, effective July 1, 2024, certain employers of warehouse workers in the state (as defined in greater detail below) must provide employees with a written description of information pertaining to production quotas. To be subject to the new law, employers must either employ 100 or more at a single warehouse distribution center or 1,000 or more at one or more warehouse distribution centers in the state. *See* 2023-24 WA H.B. 1762, *available at* this LINK.	Effective: 7.1.24
West Virginia	Beginning June 6, 2024, employers can no longer terminate or otherwise take an adverse employment action against an employee for lawfully storing a firearm in their vehicle while in a parking lot at work. *See* 2024 WV H.B. 5232, *available at* this LINK.	Effective: 6.1.24

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RECENT COURT & ADMINISTRATIVE DECISIONS

FEDERAL COURTS

- **United States Supreme Court**
  - On April 12, 2024, the U.S. Supreme Court issued a unanimous decision that a transportation worker does not need to work in the transportation industry to be exempt from coverage under the Federal Arbitration Act (FAA). Previously, courts limited this exception to the FAA's application to employees within certain industries such as airlines and railroads. In this case, however, the Supreme Court ruled the exception also applied to distributors of baked goods, *i.e.*, drivers who were part of a "direct-store-delivery" system who picked up bread from a warehouse and distributed the goods to local shops. *Bissonnette v. LePage Bakeries Park St., LLC*, No. 23-51 (April 12, 2024), *available at* this LINK.
  - On June 28, 2024, the Supreme Court sent shockwaves through the legal community when it overruled the *Chevron* doctrine. This doctrine required courts to defer to a federal agency's, *e.g.*, EEOC, NLRB, DOL, OHSA, FDA, FTC, and EPA, "permissible" interpretation of a law that it was entrusted to administer. In other words, the old rule gave federal agencies the benefit of the doubt whenever a statute was somewhat ambiguous about an issue. Now courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous. *See Loper Bright Enters. V. Raimondo*, No. 22-451 (U.S. June 28, 2024), *available at* this LINK.
  - On July 13, 2024, the Supreme Court issued an opinion concerning the National Labor Relations Board (NLRB). It ruled that courts should use the same standard is used in other cases, as opposed to a more deferential standard advanced by the NLRB, when deciding whether to grant an injunction to prevent an allegedly unfair labor practice. In this case, Starbucks fired multiple employees who were involved in a media event they organized after hours at the store. The NLRB sought an injunction that would require Starbucks to reinstate the employees. Lower courts used a more deferential standard and ordered Starbucks to rehire the employees. The Supreme Court overturned that decision and sent the case back down for further review. *Starbucks v. McKinney*, No. 23-367 (July 13, 2024), *available at* this LINK.
- **U.S. Court of Appeals for the Third Circuit (Delaware, New Jersey, and Pennsylvania)**
  - The Third Circuit just reminded lower courts that a plaintiff is no longer required to show a "significant" or "serious and tangible" employment-related harm to prove an adverse employment action. To the contrary, "an adverse employment action means simply that the employee suffered 'some harm' to a term or condition of employment—in other words, that the employer treated the employee 'worse' because of a protected characteristic." This decision is one of the first to apply the Supreme Court's recent decision in *Muldrow v. St. Louis* and shows that it is now easier for disgruntled employees to establish an adverse employment action. *See Peifer v. Pennsylvania Bd. of Probation& Parole*, No. 23-1081 (3d Cir. July 3, 2024), *available at* this LINK.
- **U.S. Court of Appeals for the Fifth Circuit (Louisiana, Mississippi, & Texas)**
  - The Fifth Circuit recently admonished a lower court for rushing to dismiss a plaintiff's discrimination lawsuit. In the case, the plaintiff alleged that she was terminated because of her race, gender, and age. Her employer, Dallas Independent School District, asked the trial court to dismiss the case, which the court did. On appeal, the Fifth Circuit reminded trial courts that plaintiffs are not required prove their case within their complaint; rather, a plaintiff must only plead: "(1) an 'adverse employment action,' [and] (2) taken against a plaintiff '*because of* her protected status.'" *Thomas v. Dallas Ind. Sch. Dist.*, No. 23-10882 (5th Cir. June 7, 2024, *available at* this LINK.
- **U.S. Court of Appeals for the Sixth Circuit (Kentucky, Michigan, Ohio, & Tennessee)**
  - In April, the Sixth Circuit reiterated that there are no magic words that an employee must use to request an accommodation under the Americans with Disabilities Act (ADA). In this case, an employee took a four (4) month leave of absence for breast cancer treatment. Upon her return, she said that she "was struggling and needed some time to get back to normal," and that working overtime the week before was "hard for [her] physically." After receiving an ultimatum from the store manager who threatened to discipline or fire her if things continued, the employee decided to step down to a lower position. The court held that an employee does not need to use the words "disability" or "accommodation." Rather, the question is "whether the employee communicated a need for an adjustment at work because of a disability." It specifically noted that "context matters," and "[e]mployers must draw reasonable inferences from what an employee says, bearing in mind the statements' context." *Yanick v. The Kroger Co. of Mich.*, No. 23-1439 (6th Cir. April 29, 2024), *available at* this LINK.
  - The Sixth Circuit recently emphasized how important it is for employers to take employees and job applicants' religious beliefs seriously. In this case, a job applicant "prayed to God specifically about the COVID-19 vaccine" and said that God told her that "she would suffer spiritual harm if she received the . . . vaccine." Afterwards, the applicant interviewed for a management position at a Michigan-based in-home medical care company. The interview appeared to be going great, but the employer abruptly ended the interview when the applicant mentioned her religious views regarding the vaccine. On appeal, the Sixth Circuit held the applicant alleged enough facts to proceed and admonished the lower court for questioning the sincerity of the applicant's beliefs. *Lucky v. Landmark Med. of Mich., P.C.*, No. 23-2030 (6th Cir. June 12, 2024), *available at* this LINK.

- **U.S. Court of Appeals for the Ninth Circuit (California & 8 Additional Western States)**
  - The Ninth Circuit recently emphasized that destroying evidence can have profound consequences. The case concerned a plaintiff's Title VII lawsuit against her former employer. When the employer requested her text messages, it learned that they had been deleted. After the plaintiff refused to turn her phone over to a forensic expert, the court dismissed the lawsuit and made her pay her former employer's attorney's fees. *See Jones v. Riot Hospitality Group, LLC*, 95 F.4th 730 (9th Cir. 2024), *available at* this LINK.
- **U.S. District Court for the Middle District of Louisiana**
  - A federal court in Louisiana recently ruled that a single incident, *i.e.*, a supervisor calling a black employee a "stupid [expletive] [n-word]," was enough to create a hostile work environment. What's more, the court also held that the fact the supervisor did not make the alleged comment in the employee's presence was a "distinction . . . without a difference." *Sharper v. Right Away Maintenance Co.*, No. 22-560-SDJ (M.D. La. May 8, 2024), *available at* this LINK.
- **U.S. District Court for the Eastern District of Texas**
  - A federal district court recently held that the U.S. Department of Labor exceeded its authority when it implemented new minimum salary thresholds and overtime regulations for exempt (salaried) employees under the Fair Labor Standards Act (FLSA). While this ruling currently only affects employees in the state of Texas, similar cases are pending in other federal courts that may strike down the rule completely. As it stands, however, the rule went into effect for all other employers on July 1, 2024. *See Texas v. U.S. Dep't of Labor*, No. 4:24-CV-499-SDJ (E.D. Tex. June 28, 2024), *available at* this LINK.
- **U.S. District Court for the Northern District of Texas**
  - On July 3, 2024, a federal judge issued a preliminary injunction, *i.e.*, a judicial order preventing some act, that blocks the FTC from enforcing its new rule banning non-compete agreements. That said, there is a significant caveat: The court's ruling is limited to the parties who brought the lawsuit. While the court declined to block nationwide enforcement of the rule, it indicated that it would issue a final ruling on the issue – whether the FTC has the authority to issue the ban on non-compete agreements – by the end of August, and this later ruling may strike down the FTC's rule in its entirety. Either way, employers should have clarity before the FTC's non-compete ban goes into effect on September 4, 2024. *See Ryan LLC v. Fed. Trade Comm'n*, No. 3:24-CV-00986-E (N. D. Tex. July 3, 2024), *available at* this LINK.
- **U.S. District Court for the Eastern District of Virginia**
  - A federal court in Virginia recently ruled that a school was not required to accept a resource teacher's proposed ADA accommodation. The teacher suffered from a respiratory disease that prevented her from being around mold or dust. While the school offered to relocate her workspace and conduct air quality testing, the teacher requested full-time remote work, which the school denied. The court agreed with the school and held that not only was spending time at school an essential function of the job, but the ADA does not require employers to reassign essential job functions to other employees as an ADA accommodation. *Jones v. Fairfax Cnty. Sch. Bd.*, No. 1:23-cv-00359 (E.D. Va. April 19, 2024), *available at* this LINK.

FEDERAL AGENCIES

- **EEOC (Equal Employment Opportunity Commission)**
  - Pregnant Workers Fairness Act (PWFA): The EEOC's final regulations to implement the PWFA went into effect on June 18, 2024. A portion of these rules, those concerning "elective abortions," were challenged in various courts. On the one hand, a federal court in Arkansas dismissed a challenge brought by 17 states seeking to have the rules struck down. On the other hand, a federal court in Louisiana held the EEOC cannot enforce the PWFA's rules regarding "elective abortions." The latter court's ruling, however, is limited to Mississippi and Louisiana. Both decisions will likely be appealed in the coming months. Simply put, no one knows what the final outcome will be, and employers should be very careful, which includes seeking guidance from their attorney, if an employee requests an accommodation for an "elective abortion." *See Louisiana v. EEOC*, No. 2:24-cv-00629-TPL (W.D. La. June 17, 2024) (holding that the EEOC cannot enforce the PWFA's rules regarding "elective abortions" in Louisiana or Mississippi), *available at* this LINK; *Tennessee v. EEOC*, No. 2:24-cv-00084-DPM (E.D. Ark. June 14, 2024) (dismissing a lawsuit brought by 17 states to the same "elective abortions" rules), *available at* this LINK.
  - EEO-1: In late May, the EEOC filed suit against 15 companies for failing to complete EEO-1 Component 1 reports for both 2021 and 2022. These suits were filed just ahead of the deadline for employers to file their EEO-1 reports for the 2023 calendar year on June 4, 2024, which is not a coincidence. While the EEOC could not assess fines for the companies' non-compliance, it asked the courts to compel the companies into complying. The EEOC's press release is available at this LINK.
  - On April 29, 2024, the EEOC published its final guidance on workplace harassment, which took effect immediately. The new guidance supersedes earlier agency policy and addresses areas such as gender identity, virtual work environments, and systemic discrimination. The final guidance largely tracks the proposed version from October 2023, with some additions (including more hypotheticals) and clarifications. The full text is available at this LINK.
  - The EEOC recently announced that a construction company agreed to pay $99,000 to settle a sex discrimination and retaliation lawsuit. The claim concerned a company that played music with sexually derogatory slurs throughout its Dallas facility. When a sales representative complained, she was terminated. *EEOC v. Erie Constr. Mid-West LLC*, No. 3:23-CV-02060-K (N.D. Tex. 2023).

- **FTC (Federal Trade Commission)**
  - Earlier this year, the FTC announced a $16.5 million dollar settlement with software provider Avast, which provides cross-platform internet security applications. In its complaint, the FTC alleged Avast unfairly collected, stored, and sold consumers' browsing information without adequate consent or notice. This should serve as a warning for any business that sells, discloses, or licenses any of its consumers' web browsing data and highlights the importance of reviewing website data collection practices, including the method of obtaining affirmative, express consent from consumers at the point of data collection. For the FTC's Press Release, visit this LINK.
- **NLRB (National Labor Relations Board)**
  - The NLRB recently ruled that an employer, an Apple store in New York City, violated the National Labor Relations Act (NLRA) when it disposed of union flyers that were placed (and left) on a breakroom table after a union organizing campaign. As background, the NLRA generally protects an employee's right to distribute union materials during non-working time in non-work areas. In this case, the NLRB held that neither the company's non-solicitation policy, which prohibited employees from distributing material during work time or in a work area, nor its housekeeping standard provided a basis for removing the flyers. As for the latter, the employer allowed non-union materials, *e.g.*, baskets of fruit, coupons, newspapers, to remain on the table at other times. Simply put, employers should be wary when dealing with union materials in employee breakrooms. *In re Apple, Inc.*, Case No. 02-CA-295979 (NLRB May 6, 2024), *available at* this LINK.
  - The NLRB joined the Federal Trade Commission in its attack on non-compete and non-solicitation provisions. On June 13, 2024, a NLRB administrative law judge ruled an employer violated the NLRA by utilizing these provisions in employment agreements, even though the employer was ***not*** unionized. Specifically, the judge ruled that provisions, which would prevent soliciting employees from the company for 24 months after leaving employment and competing against the company in the same or contiguous counties for 12 months, would dissuade a reasonable employee from engaging in activities protected under the NLRA. *In re J.O. Mory, Inc.*, Case No. 25-CA-309577, slip op. (NLRB-ALJ June 13, 2024, *available at* this LINK.
  - In late June, an administrative law judge (ALJ) for the NLRB issued a cease-and-desist order forcing an employer to rescind overly broad non-disparagement and confidentiality language from its severance agreement and notify all former employees who signed them. While this ruling follows a current trend against such agreements, the outcome could have been avoided. Not only did the agreement explicitly state it was "intended to be as broad as possible," but it also prohibited former employees from "making personal contact" with their fellow coworkers. *See In re Prime Comm'n, LP*, Case No. 16-CA-309916 (NLRB-ALJ June 26, 2024), *available at* this LINK.
- **OSHA (Occupational Safety and Health Administration)**
  - On July 2, 2024, OSHA announced proposed regulations governing heat safety. The rule would apply to all employers though employees who are only exposed to heat for a short duration and sedentary and remote employees are excluded. The proposed OSHA heat safety rule introduces several key requirements aimed at protecting workers from the hazards of excessive heat, including requiring employers to designate a heat safety coordinator and identify heat hazards in both outdoor and indoor worksites. These regulations are designed to address both immediate and long-term risks associated with heat exposure. For more information on the proposed rules, please visit this LINK.

STATE & LOCAL

- **California Occupational Safety and Health Standards Board**
  - On June 20, 2024, the California Occupational Safety and Health Standards Board (the "Board") approved an indoor heat standard that requires workplaces to be cooled below 87 or 82 degrees Fahrenheit and requires employers to provide water, rest, cool-down areas, methods for cooling down work areas, and training. The state's Office of Administrative Law ("OAL") has 30 working days to review and approve/deny the proposal. The Board has requested that the regulation take effective immediately after OAL approval. The new regulation could be implemented as soon as August 1, 2024. *See* California Code of Regulations, Title 8, § 3396, "Heat Illness Prevention in Indoor Places of Employment," *available at* this LINK.
- **Connecticut Supreme Court**
  - Bucking the trend of other states who have made it harder to enforce non-compete agreements, the Connecticut Supreme Court ruled that "a promise of indefinite, continued employment for an at-will employee in exchange for the employee's promise not to compete constitutes adequate consideration to form an enforceable agreement." In other words, Connecticut allows non-compete agreements so long as employees are not employed at-will. *See Dur-A-Flex, Inc. v. Dy*, SC 20821, SC 20823 (Conn. July 2, 2024), *available at* this LINK.
- **Colorado Court of Appeals**
  - A Colorado state court recently held that an employer cannot terminate an employee if it violates public policy, which includes requiring an employee to perform an illegal act or prohibiting the employee from exercising a public right or duty. In this case, the employee reported her employer to the state for perceived shortcomings of its childcare facility. This is an exception to the traditional rule that employers can terminate an at-will employee for any reason. *See Potts v. Gaia Children LLC*, No. 23CA1008 (Co. Ct. App. May 23, 2024), *available at* this LINK.

- **Illinois: Chicago**
  - As a reminder, the first phase of Chicago's eventual elimination of the tip credit goes into effect. That day, the tip credit amount an employer can claim decreases from 40% to 32% of the applicable minimum wage. Every year thereafter, on July 1, the tip credit will decrease by 8% until July 1, 2028. At that time, the standard minimum wage rate will apply to all employees, including those in occupations that customarily receive tips. Those employees will still be entitled to earn and retain their tips. For more information on Chicago's "One Fair Wage" Ordinance, visit this LINK.
- **New York City's Department Consumer and Worker Protection (DCWP)**
  - As a reminder, NYC employers must both post in a conspicuous place and provide each employee a copy of the city's new "Know Your Rights at Work" poster by July 1, 2024. The multilingual poster contains a QR code that links to the city's "Workers' Bill of Rights," which provides summaries of city, New York State, and federal employment laws. Employers also must provide a copy of the poster to each new employee on or before their first day of work. For a copy of the poster, please visit the following LINK.

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