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CCHRA
Cape Cod Human Resources Association

General Counsel Employment Law Report

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Program Overview
CCHRA Meeting
February 27, 2020

The CCHRA General Counsel, Attorney Michael Foley, will provide a highly interactive explanation of a holistic approach to Employment Law compliance and HR-related risk management within the entire life cycle of the employment relationship:

- Mike will test our understanding of both Massachusetts and Federal employment laws. For example, do you know the answer to these true or false questions:
  - Job descriptions are not required by law and are overrated.
  - If an employee has a "Manager" title and is paid on a salary basis he or she can be considered exempt from overtime.
  - If a worker is free from the employer's control and can use his/her discretion in performing services both under a contract and in fact, then he/she can be retained as an independent contractor and not an employee.
  - In Massachusetts, employers satisfy their obligation to prohibit sexual harassment by posting their sexual harassment policy for all to see.
  - The Commonwealth's Criminal Offender Record Information Law prohibits employers from inquiring about criminal records during the applicant screening process.
- He will outline best practices for developing a strategic approach to effective risk management.
- Mike will also provide compliance tools and resource information. Here is a link to the **2020 Synopsis of Massachusetts and Federal Employment Law and Workplace Regulations**. This is a very valuable and popular resource that will help your team meet your organization's compliance obligations and will prepare you for Mike's interactive presentation.

This is a presentation you do not want to miss.

It's 2020: I Want A Robot Maid, and the EEOC Wants to End Gender Discrimination

Ok Boomers–and non-Booomers who are mad at us–didn't you think by 2020 sexism would be as obsolete as road driving autos as we cruise along in our flying cars? With our robot maid? Was I too influenced by the Jetsons? That's fair.

Last year I blogged about gender preference in hiring: in that case it was failure to hire men for administrative jobs that had been held by women. Now a strip club refused to hire a male bartender! The EEOC stayed the course–gender preference in hiring is rarely allowed and the applicant was awarded $20,000. Hiring female dancers would probably fall into the limited gender bias exception at a "gentlemen's club" but pouring drinks does not.
Discriminating against men in hiring makes good copy but these cases do not belie the statistics on which gender bears the brunt of discrimination. A recent, comprehensive workplace study asserts what we already know: gender bias impacts women in far greater numbers.
If your gut tells you a particular gender should be hired for a job, ignore it. And I will give up my fantasy of a robot maid of either fake gender.

Questions? We can help.

Will Congress Agree that Pregnant Workers Need Protection? They Just Might

Last week the House Committee on Education and Labor voted to advance the Pregnant Workers Fairness Act (H.R. 2694) with bipartisan support. The bill will now go to a full vote in Congress with wide ranging support from the ACLU to the US Chamber of Commerce. The current federal law from 1978 addresses pregnancy discrimination and not accommodation. This legislation provides a framework for pregnant workers to receive accommodation in the workplace as women work longer into their pregnancies. Twenty seven states, DC and four cities already have the protections outlined below.
The Pregnant Workers Fairness Act would establish that:

• Private sector employers with more than 15 employees and public sector employers must make reasonable accommodations for pregnant employees, job applicants, and individuals with known limitations related to pregnancy, childbirth, or related medical conditions. *Similar to the Americans with Disabilities Act, employers are not required to make an accommodation if it imposes an undue hardship on an employer's business.*
• Pregnant workers and individuals with known limitations related to pregnancy, childbirth, or related medical conditions cannot be denied employment opportunities, retaliated against for requesting a reasonable accommodation, or forced take paid or unpaid leave if another reasonable accommodation is available.

• Workers denied a reasonable accommodation under the Pregnant Workers Fairness Act will have the same rights and remedies as those established under Title VII of the Civil Rights Act of 1964. These include lost pay, compensatory damages, and reasonable attorneys' fees.

Congress seems a little distracted right now. We will let you know if this legislation advances to law.

Put Me in Coach–And Pay Me

You have seen it here before: As California goes, so goes (most) of the nation. California passed the Fair Pay to Play Act last September. Taking effect in 2023, the law bars colleges from preventing athletes from hiring an agent and receiving money from third parties for use of their name, image and likeness. Other states are considering similar policies. The expectation is higher education will want to control the money and start paying athletes. The powerful NCAA is fighting like mad to retain control of a $14 billion dollar industry. And as California's Governor Newsom noted: Every college student can make money on YouTube or on their name except student athletes. Even the federal government is interested–doing what they do best in times of need: studying the issue.

Say you don't care about college athletics (just do not say it out loud). Why should paying college athletes matter? It is a seismic shift. Universities and colleges will pick up thousands of employees–the athletes. With that comes more obligation and compliance. The coach-athlete relationship becomes employer-employee. Between Title IX and equal pay laws, they would have to pay the women athletes too–wouldn't that be something. In the world outside higher education, the acceptance of college athletes as paid employees goes to the cultural trend of supporting workers. Support for work stoppages and now for paying student athletes was unthinkable just a few years ago. The times they are a changing? Keep your eyes on California and stay tuned.

General Counsel's Office Hours

Special Member Benefit

All CCHRA members in good standing will have the special benefit of being able to call Attorney Michael E. Foley, in his role as the CCHRA General Counsel, to obtain his guidance on employment law compliance issues and corresponding HR-related risk management during his CCHRA GC Office Hours – **at no cost**.

Click here for the description of the role of the CCHRA General Counsel. As General Counsel, Mike will be available within his virtual and gratis office hours for all CCHRA members from 2 pm to 3 pm on the first and third Tuesday of each month. The guidance Mike provides during his office hours will cover all issues that arise within the broad spectrum of the employment relationship to help CCHRA members achieve compliance with the extensive regulations that govern their workplace and to better understand best employment practices.

Issues related to the Internal Revenue Code/the Internal Revenue Service or ERISA-related issues will not be covered under this arrangement, nor will the interpretation, editing or drafting of documents. The office hours will be limited to providing guidance on employment law questions and corresponding HR-related risk management that can be answered in one telephone conversation. Mike can be reached during his CCHRA General Counsel Office Hours at 508-548-4888.

Mike Foley has been representing employers, small and large, for-profit and not-for-profit within all industry sectors and in all matters of labor and employment law for over 30 years. He draws on the breadth of his experience to offer employers an uncommon approach and practical solutions. Click here for Mike's bio.