Fair Labor Standards Act

- The FLSA is the federal law that sets minimum wage, overtime requirements, equal pay, record keeping, and child labor standards for employers covered by the Act.

- Applies to municipal employees. 29 U.S.C. § 203(S)(1)(c)

Fair Labor Standards Act

- Overtime
  - 1.5 times the regular rate for hours over 40 per week

- Exemptions
  - White Collar Exemptions (focus of DOL regulations)
  - Other Exemptions
**Fair Labor Standards Act**

- Three requirements of White Collar Exemptions
  - Duties Test (no changes)
    - Considers employees’ "primary duties"
  - Salary Basis Test (no changes)
    - Paid full salary for week they perform work
  - Salary Level Test (significant changes)

**Fair Labor Standards Act**

- Changes to Salary Level Test
  - Current minimum weekly salary requirements
    - $455/week ($23,660 annually; $11.38/hr)
  - Proposed weekly salary requirements
    - $913/week ($47,476 annually; $22.83/hr)
  - Amount to change every three years

**Fair Labor Standards Act**

- How do I deal with the increased salary requirement?
  - Evaluate exempt status
    - Meet duties test?
    - How many hours are they actually working?
  - Raise salary v. convert to hourly
Fair Labor Standards Act

- Challenges to DOL’s changes to salary threshold
  - Filed in E.D. Texas on September 20, 2016
  - 50 business groups and 21 states
  - Challenges constitutionality of final DOL rule

“Comp. Time”

- Only applies to public employees
- Offered in lieu of overtime for non-exempt employees
- Must be the same rate as overtime
  - 1.5 hours of comp. time for each hour of overtime
- Employees must agree
- Capped at 240 hours

Minimum Wage in Colorado

- FLSA minimum wage - $7.25/hr
- Colorado Minimum Wage Order 32 - $8.31/hr
- Proposed Amendment 70 to Colorado Constitution
  - Raises minimum wage to $12/hr by 2020
  - On the ballot in November
EEOC Strategic Enforcement Priorities

- Addressing Emerging and Developing Issues
  - EEOC will target emerging issues in equal employment law, including issues associated with significant events, demographic changes, developing theories, new legislation, judicial decisions, and administrative interpretations.

EEOC’s Retaliation Guidance

- Proposed guidance – comment until July 5, 2016
- First guidance since 1998
- Reviews each element of the claim
- Best practices

Transgender Employees

- In 2015, the EEOC received 1,412 charges involving allegations relating to sexual orientation and/or gender identity and transgender status
  - 34% increase from 2014
- Title VII – prohibition of sex discrimination
- Stereotyping discrimination
Sexual Orientation Discrimination

• Circuit Decisions
  – Rene v. MGM Grand Hotel, Inc., 305 F.3d 1061 (9th Cir. 2002)
    • Sexual orientation discrimination not actionable under Title VII, but physical assault might be because of sex and so violate Title VII.
    • Sexual orientation discrimination not actionable under Title VII but name calling might be because of sexual stereotyping.

Sexual Orientation Discrimination

• Circuit Decisions
  • Smith v. City of Salem, 378 F.3d 566 (6th Cir. 2004).
    – “Sex stereotyping based on a person’s gender non-conforming behavior is impermissible discrimination, irrespective of the cause of that behavior; a label, such as ‘transsexual,’ is not fatal to a sex discrimination claim where the victim has suffered discrimination because of his or her gender non-conformity.”

Sexual Orientation Discrimination

• Etsitty v. Utah Transit Auth., 502 F.3d 1215 (10th Cir. 2007).
  – Requiring employees to use restrooms that matched their biological sex was a legitimate non-discriminatory reason, and Ms. Etsitty failed to show pretext.
  – No sex stereotyping claim based on comments that plaintiff looked unprofessional, had unruly hair, a style of dress that appeared disheveled, and that she had “unique/odd mannerism, style and interactions.”
Sexual Orientation Discrimination

• Two new cases:
  – EEOC v. Scott Medical Health Center (W.D. Pa.).
  – EEOC v. Pallet Companies (D. Md.).

• Allegation:
  – "[The] aforementioned conduct . . . was motivated by [the aggrieved individual's] sex in that sexual orientation discrimination necessarily entails treating an employee less favorably because of his sex."

Sexual Orientation Discrimination

• Future of transgender cases?
  – EEOC Interpretation

• Constitutional considerations

Q&A

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