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Employer Alert

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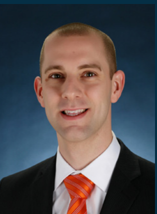

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EEOC and NLRB Impose New Rules on Employers

New state and federal laws add complications for employers almost every year. But sometimes these issues are created not by legislation, but by administrative fiat of one government agency or another. Several such changes have occurred just within the past few days.

The EEOC issued guidelines on April 25 warning employers that if they order or conduct a criminal background check on applicants, they must be prepared to prove that any criminal conviction or arrest that turns up and is used in making a hiring decision is related to the job for which the candidate is applying. Most employers disregard arrest records anyway, since they don't prove guilt, but the EEOC's guidelines create a new risk with respect to criminal conviction records. If an applicant with a conviction record is turned down, the employer will now have to prove that either the conviction was job related, or the applicant was turned down for some other lawful reason. It is also important to remember that Connecticut has a statute that encourages employers to hire those who have paid their debt to society.

Just a day earlier, the EEOC released a decision stating that Title VII's prohibition against sex discrimination covers transgender bias as well. "Transgender" is a term with a somewhat fluid definition, encompassing any individual who presents as, or identifies with, a gender other than that assigned genetically at birth. While various states (including Connecticut) have statutory prohibitions against transgender discrimination, the EEOC's position applies the same principles to federal law, even though it does not specifically mention transgender as a protected classification.

Undeterred by judicial action blocking its controversial employee rights posting requirement, on April 30 the NLRB adopted new procedures for the processing of union election petitions, clearing the way for what some have called "ambush" or "quickie" elections. In fact, while the new rules don't specifically include shortened timeframes, they do eliminate the longstanding policy that no election should be scheduled within 25 days of the date on which it is ordered.

Additionally, several other changes will inevitably speed up the process. These include:

- Limiting pre-election hearings to determining whether a question of representation exists;
- Requiring approval of the hearing officer in order to submit post-hearing briefs;
- Postponing appeals of regional office decisions until after the election is conducted; and
- Making NLRB review of post-election disputes discretionary.

Recent statistics show that on average, 38 days elapse between the filing of a union election petition and the date of the election. Observers predict a reduction of at least a week or two in that timeframe as a result of these changes, which will reduce the opportunity an employer has to communicate with employees about what life under a union could be like.

With Congress in gridlock over one issue after another, employers now have to look over their other shoulder to watch what federal agencies are doing to expand the scope of worker protections.

Questions or Assistance?

If you have questions regarding this alert, please contact Saranne Murray at (860) 251-5702, Eric Lubochinski at (203) 324-8124, or Jarad Lucan at (860) 251-5785.

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