

Legislative Update December 2010-January 2011

FEDERAL UPDATES

Public Comments on Break Time for Nursing Mothers Law

On March 23, 2010, the Break Time for Nursing Mothers Law was passed to require employers to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk. **The DOL is accepting public comments in response to a request for information on its preliminary interpretations for the next 60 days — with a deadline of Feb. 22, 2011 — via <http://www.regulations.gov>.**

The department has launched a Web page at <http://www.dol.gov/whd/nursingmothers> and employers and employees are encouraged to visit the site. It provides general information and guidance that has been issued by the department on the new break time requirements for nursing mothers in the workplace, as well as a compilation of resources that employers, employees and other interested stakeholders might find useful as they develop workplace lactation programs.

Public Comment on NLRB Proposed Posting

The National Labor Relations Board (NLRB) announced on Dec. 21 that most private employers will soon have to display a new poster in their workplaces that notifies workers of their right to form and join a union. The NLRB proposed rule would require the poster be placed “where other workplace notices are typically posted. If an employer communicates with employees primarily by e-mail or other electronic means, the notice would be posted electronically as well.”

Interested parties have 60 days to comment on the NLRB proposal. Comments on the proposed rule are due by February 22, 2011 and should be identified by 3142-AA07. Comments can be sent electronically to www.regulations.gov, or mailed to Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th St. NW, Washington, DC 20570. After February 22, 2011, look for the NLRB to issue final rules, plus a date by which employers must display the poster in their workplaces. Employers will be able to download the poster from the NLRB web site.

For more details on the NLRB proposal, visit www.regulations.gov.

GINA Final Regulations

The Equal Employment Opportunity Commission (EEOC) has issued final regulations implementing the employment-based protections under Title II of the Genetic Information Non-Discrimination Act of 2008 (GINA). The regulations took effect on January 10, 2011 and additional information regarding the final regulations can be found at www.eeoc.gov.

Legislative Update December 2010-January 2011

STATE UPDATES

Wage Theft Prevention Act

On December 21, 2010, New York Governor David Paterson signed into law the Wage Theft Prevention Act. The new law does the following:

- Enacts more stringent and transparent record-keeping and employee notification requirements.
- Increases the amount of wages that can be recovered as damages in a suit for non-payment over and above the lost wages themselves - from 25 percent to 100 percent, the amount allowable under Federal law;
- Creates stronger collection tools;
- Raises criminal penalties for failure to pay minimum wage to up to a year in prison and \$5,000 fine; and
- Strengthens protections for whistleblowers in cases involving wage violations.

The law will become effective on or about April 12, 2011. For additional information on the new law visit <http://www.labor.ny.gov/home>.

Hospitality Wage Order

Effective January 1, 2011, the Hospitality Wage Order covers employees in both the Hotel and Restaurant industries and provides the following:

- Simplifies and increases the minimum wage requirements for tipped employees;
- Requires hourly rates of pay for all hospitality employees, except executives, administrators, professionals and commissioned sales people;
- Requires that whenever a work shift is long enough to invoke the meal period law, employers will have to either allow employees to bring their own food or give them a meal at a cost no greater than the meal credit amount in the wage order.

For additional information on the wage order, visit www.labor.ny.gov.

ON THE LOOKOUT

“In 2010, the Equal Employment Opportunity Commission (EEOC) won the largest American with Disabilities Act (ADA) settlement in a single lawsuit in EEOC history. The case, EEOC vs. Sear Roebuck & Co., No. 04-c-7282 (N.D. III. 2010), concluded the employer had an inflexible leave policy and universally applied leave limits without seriously considering reasonable accommodations requirements of the ADA. Another case in 2010, EEOC v. Beverage Solutions, Inc., No. 09-cv-3829 (N.D.III.2010), found that the employer created inflexible leave policies that blocked out periods of time when individuals cannot take ADA leave if necessary during certain critical periods.”

(Schuman, Esq.- Littler, 2011) *Takeaway*: When creating and enforcing leave policies, make sure that ADA requirements are considered and followed.

On 12/6/2010, the NLRB approved broader use of agreements between employers and unions designed to encourage the organization of an employer's non-union represented workforce- also known as the Dana Decision (Schuman, Esq. - Littler, 2011).

Legislative Update December 2010-January 2011

“In 2011, the EEOC is expected to do the following:

- Issue a proposed rule to update the race and ethnicity data collection method rule by making self identification the preferred method;
- Issue final ADAAA rules.
- Issue final rules on reasonable factors other than age defense.” (Schuman, Esq. - Littler, 2011)