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Leadership Note

From the Chair

by Spencer Silverglate

"Change is the only constant in life."
-Heraclitus

At the recent DRI Leadership Conference in Chicago, Keynote Speaker and Executive Coach Laura Goodrich explained that we tend to get whatever it is we focus on. The problem is, most of us focus more on what can go wrong instead of what can go right. This is especially true when it comes to change. Change can produce fear, anxiety and avoidance, but change can also produce excitement, motivation and opportunity. According to Ms. Goodrich, it's all a matter of perspective.

Change is ever-present in employment and labor law, one of the most fluid fields in the legal landscape. As trusted advisors and advocates, employment and labor law attorneys owe it to their clients to keep abreast of changes, not just in the law, but also in the latest best practices for managing human resources. Fortunately, the DRI Employment and Labor Law Committee has you covered. From its many excellent publications like this Newsletter, to brainstorming with colleagues through the Online Community, to the peerless Annual Employment and Labor Seminar which returns to the Omni Montelucia Resort in Scottsdale, AZ on May 6-8, 2015, the Committee gives you all the tools you need to stay ahead of the curve.

Change may be inevitable, but our reaction to it need not be. The best way to embrace change is together—as a group of like-minded professional committed to giving our clients the very best representation in the dynamic practice of employment and labor law. If you are interested in becoming more involved in the Committee, please contact me at ssilverglate@cspalaw.com.

Featured Article

Interactive Process – How Interactive Does It Have to Be?

by Jean Ohman Back

The Americans with Disabilities Act ("ADA") continues to be a significant area of liability for employers. The EEOC received 25,957 disability charges in fiscal year 2013. The ADA continues to present complex requirements for employers in working with and managing employees with disabilities. A significant number of the charges and lawsuits filed under the ADA involve allegations related to a failure to engage in the interactive process. Employers still struggle with understanding the requirement to engage in this open dialogue with their employees about possible accommodations. In many instances, employers do engage in the process, but then do not follow through with the obligation by continuing the dialogue. This article will outline best practices related to the interactive process.

The requirement for an interactive process appears in 29 CFR § 1630.2(o)(3), which provides that "[t]o determine the appropriate reasonable accommodation, it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation." The interactive process is further explained in the Interpretive Guidance to the ADA. *See* 29 CFR Pt, 1630, App 1630.9. In addition, caselaw interpreting the ADA has made it clear that employers who fail to participate in an interactive process will be liable for failing to provide a reasonable accommodation. *See, e.g.*, *Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1112 (9th Cir 200), *rev'd on other grounds*, 535 U.S. 391, 122 S.Ct. 1516, 152 L.Ed.2d 589 (2002).

Employer Best Practices

So what must an employer do to engage in a good faith interactive process? By following the best practices outlined in the steps below and training supervisors and managers, employers will demonstrate good faith efforts to engage in the interactive process that will reduce liability in failure to accommodate claims.

Step 1 – **Create a policy.** Informing employees that both the employee and the employer have a requirement to communicate in good faith regarding reasonable accommodations is a good first step. A good idea is to include a discussion of the interactive process as part of an ADA policy. At a minimum, employers should communicate that the process to request an accommodation includes: (1) reviewing the job description to determine the barriers that the disability causes in performing the essential job functions, and (2) brainstorming with the employee reasonable accommodations.

Step 2 – **Review job descriptions.** Employers should check that they have accurately described the essential job functions in job descriptions, and in any advertisements or job postings for the position. 29 CFR 1630.2(3) sets out the following criteria that provide evidence about whether a particular job function is essential:

- "The employer's judgment as to which functions are essential;
- Written job descriptions prepared before advertising or interviewing applicants for the job;
- The amount of time spent on performing the function;
- The consequence of not requiring the incumbent to perform the function;
- The terms of a collective bargaining agreement;
- The work experience of past incumbents in the job; and/or
- The current work experience of incumbents in similar jobs."

Step 3 – Train supervisors to recognize an accommodation request. Accommodation requests are not always obvious. There is no requirement that an employee request an accommodation in writing. A statement by an employee that he or she is having a problem performing his or her job because of a medical condition is likely sufficient to constitute an accommodation request. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1089 (9th Cir. 2002), citing *Barrett v. U.S. Air, Inc.*, 228 F.3d at 1112. Best practice is for employers to train supervisors to act on accommodation requests. The EEOC's "Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act" provides the following examples of accommodation requests:

- An employee tells his supervisor, "I'm having trouble getting to work at my regularly scheduled starting time because I am undergoing medical treatments."
- An employee tells his supervisor, "I need six weeks off to get treatment for a back problem."
- A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office.

However, a simple request for a new chair, or some other request, without information that the need is related to a medical condition is probably not sufficient to be an accommodation request.

Employers should also train supervisors not to ask questions about the medical condition or disability at issue.

Step 4 – **Arrange a personal meeting with the employee.** This is the heart of the interactive process. A lengthy meeting may not always be necessary. If the supervisor who is asked for an accommodation can easily provide one, then he or she should do so as soon as possible, and should also document carefully the interactive process and the accommodation provided. However, to establish that an employer has engaged in good faith in the interactive process, best practice is to schedule a meeting with the employee, the employee's supervisor, and someone from HR. A primary goal of this meeting is to determine what problems the employee is having in performing his or her job tasks because of a disability. This entails soliciting ideas from the employee about what the employer could provide that would enable the employee to perform his or her job duties. In addition to soliciting ideas, employers may also suggest solutions. The purpose of this brainstorming meeting is to come away with suggestions to enable the employee to continue working. A couple of suggestions:

- If the employee has a work-related injury, evaluate the resources provided by your state's workers' compensation division. Consider involving the employer's workers' compensation carrier to determine whether there are any monies from your state workers' compensation division to assist you in making workplace modifications. In Oregon, such funds may be available through the employer-at-injury program.
- If the employer is not sure of an accommodation, consider calling in an expert. This can be accomplished through a phone call to the Job Accommodation Network (JAN), or an employer can locate a vocational rehabilitation specialist to assist. If the employee has a work-related injury, the workers' compensation carrier may have someone who can assist.
- If an employer does consult an outside resource, like JAN, be careful about ensuring confidentiality. Do not disclose the employee's name and identifying information.
- Keep an open mind.
- In choosing the accommodation, it is a good idea to understand the employee's preference, but the employee does not get to choose the accommodation—the employer does. *EEOC v. Yellow Freight Sys.*, 2002 U.S. Dist. LEXIS 16826, *69 (SD NY Sept. 9, 2002), citing 29 CFR Pt, 1630, App. 1630.9 ("Although the employee's preference among equally reasonable accommodations 'should be given primary consideration,' the employer retains ?ultimate discretion to choose between effective accommodations.'"). The law requires only that the accommodation be reasonable. Eliminating the requirement to perform an essential job function is not a reasonable accommodation. The employee must still be able to perform the essential job function with an accommodation.

Examples of reasonable accommodations include:

- Job restructuring
- Equipment (i.e., sit-stand desks, lifting mechanisms, carts, new chairs, modified workstations, etc.)
- Leave of absence
- Change in work schedule
- Job reassignment to an available and suitable job
- Modified workplace policies

Step 5 – **Consider whether the employer needs information from the employee's physician.** Depending on the complexity of the issue, an employer may want to communicate through the employee with his or her physician to obtain information about the restrictions caused by the medical condition and any suggested accommodations. In any such communication, be sure to include the safe harbor language required by the Genetic Information Nondisclosure Act (GINA), and limit the request to information that is required as a matter of business necessity. Employers may consider conferring with counsel regarding the content of the letter.

Step 6 – Continue the dialogue. The interactive process does not end with the interactive process meeting. Once an employer has found and implemented a reasonable accommodation, best practice is to follow up with the employee on a regular basis to ensure that the accommodation is effective. It is often common that the first accommodation will not be effective and the parties need to try something else. An employer's workplace policy should inform the employee that he or she must inform his or her supervisor if the accommodation is not effective.

Step 7 – Document the process. Document every step throughout the interactive process. Even though documenting short conversations between the supervisor and the employee may seem trivial, when it comes to defending a claim that an employer did not provide a reasonable accommodation, this information is crucial. Document every conversation and the entire process. Keep the documentation in the employee's confidential medical file, and not the personnel file.

To conclude, the interactive process is an important and often missed obligation within the ADA. Employers who follow these suggested steps and best practices and who document their process will be in a better position if they are subject to an administrative charge or suit for failure to accommodate.

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Articles of Note

Where Worlds Collide: Relationships in the Workplace

by Megan R. Dimitt

In the summer of 2013, the Iowa Supreme Court determined that a dentist who fired his dental assistant because his wife viewed the assistant as a threat to their marriage did not engage in gender discrimination in violation of the Iowa's Civil Rights Act. *See Nelson v. James J. Knight, DDS, P.C.*, 834 N.W.2d 64 (Iowa 2013). Dr. James H. Knight, a dentist practicing in Fort Dodge, fired his dental assistant after 10 years of employment stating that, despite her valuable work as an employee, her presence in his dental practice was a threat to his marriage. Dr. Knight fired the assistant after his wife discovered the two had been texting outside of the office about both work and personal matters and insisted on the termination.

The fired assistant filed a complaint with the Iowa Civil Rights Commission, received a right-to-sue letter, and filed suit in state court for wrongful termination based on her sex. Specifically, the assistant alleged that she would not have been fired if she had been a male. The assistant did not assert any claim of sexual harassment. The district court granted summary judgment in favor of Dr. Knight stating the assistant was not fired because of her gender, but because she was a threat to Dr. Knight's marriage.

On appeal, the Iowa Supreme Court reviewed the facts of case, including Dr. Knight's admission that he terminated his assistant because he was afraid he would have an affair with her. The Court then reviewed an Eighth Circuit case where an employer was held not to have engaged in unlawful gender discrimination when he fired a female employee who engaged in behavior that suggested a consensual sexual relationship with the employer and that triggered jealousy in the employer's spouse. *See Tenge v. Phillips Modern Ag Co.*, 446 F.3d 903 (8th Cir. 2006). Distinguishing this case from the prior case law, the Iowa Supreme Court framed the issue as whether an employer could terminate an employee when she had not engaged in flirtatious conduct, but the employer's spouse merely viewed the relationship as a threat to the marriage. The court also acknowledged the oddity of analyzing the employee's conduct to determine the employer's intent and stated the Iowa Civil Rights Act existed not as a general fairness law, but to ensure the employer does not engage in discrimination.

Ultimately, the court determined that a distinction existed between an "isolated employment decision based on personal relations" and a decision based on gender itself: "Such a decision is not gender-based, nor is it based on factors that might be a proxy for gender." *Nelson*, 834 N.W.3d at 70. The court further acknowledged that adopting the assistant's viewpoint would contradict federal case law stating consensual workplace relationships, absent sexual harassment, were not actionable under Title VII. The assistant had argued that sexual harassment was a violation of antidiscrimination law and that firing an employee to *avoid* committing sexual harassment should be treated similarly. The court addressed this argument by pointing out that this employment decision did not create a hostile work environment or abusive atmosphere, even if the employment decision seemed unjust. From the beginning of its opinion the Iowa Supreme Court emphasized that the assistant did not make a sexual harassment claim—an indication that if such a claim had been made, the court's decision may have been very different.

While this case was a victory for the employer, the reality was that his personal and professional life was aired in public and picked up by national media. For small business owners operating in smaller towns and cities, the fallout from a legal battle can be devastating to his or her business, regardless of the outcome of the case. Thus, this case highlights the need for businesses of all sizes to adopt and follow written policies prohibiting relationships in the workplace. It protects the employer, and puts the employee on notice that such relationships are to be entered at their own risk. While written policies do not solve all problems and prevent all legal claims, a policy in this case would likely have saved Dr. Knight a legal battle and the dubious honor of setting a precedent under Iowa law.

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Retaliatory Termination Cases in At-Will Employment States

by W. Barry Montgomery

Lawsuits alleging wrongful termination against employers have become increasingly popular in recent years. While many such cases are based upon the numerous federal statutes prohibiting retaliatory discharge, there has also been a rise in retaliatory discharge actions based on state common law doctrines protecting employees from termination in violation of the state's public policy. Plaintiffs can use these common law causes of action to get around their state's "employment at will" doctrine, keep their cases out of federal court, and sometimes claim punitive damages. There seems to be a general consensus among the various states that even an at-will employee may not be subjected to adverse employment action in violation of a state's "public policy." The rationale is that an employer may not undermine the state's expressed public policy by threatening adverse employment action if the employee seeks to exercise those rights. In such cases, the employee or former employee will typically allege that he was fired or demoted as a direct result of his decision to exercise a protected right or because he refused to engage in conduct that is prohibited by state law. This article will examine those wrongful termination cases based on state common law theories and some of the practical implications of litigating these cases in state courts.

Wrongful Termination That Violates a State's "Public Policy"

A. Can You Fire an Employee For Exercising a Right That is Protected By Statute?

In most "at will" employment state, an employee can be fired for no reason or even an illogical or unfounded reason as long as federal or local discrimination laws are not violated. However, even in "at will" employment states, there are exceptions to the general rule. For example, in Virginia, an at will employee can sue for wrongful termination if he can prove that he was fired in retaliation for asserting his rights that are protected by a valid state law or policy. In the case of Bowman v. State Bank of Keysville, 229 Va. 534, 331 S.E.2d 797 (1985), a corporation had discharged an employee whom was also a shareholder because he refused to vote in accordance with the wishes of the corporation's board of directors. The corporation's coercion violated the Virginia public policy underlying a statute granting every shareholder the right to cast one vote for each share held. The Supreme Court decided that an employer may not lawfully use the threat of discharge of an at-will employee as a device to control the otherwise unfettered discretion of a shareholder to vote freely his or her stock in the corporation—in violation of established public policy.

Similar causes of action for wrongful discharge are recognized in states across the country that adhere to the employment at will doctrine. **Arizona:** Thompson v. Better-Bilt Aluminum Products, 832 P.2d 203 (Arizona 1992); **California**: Silo v. CHW Med. Found., (2002) 27 Cal.4th 1097, 1104; Haney v. Aramark Uniform Services, Inc., (2004) 121 Cal.App.4th 623 (2004); **Connecticut**: Morris v. Hartford Courant Co., 200 Conn. 676, 678-79, 513 A.2d 66 (1986); **Illinois:** Barr v. Kelso-Burnette Co., 478 N.E.2d 1354 (1985); **North Carolina:** Coman v. Thomas Mfg. Co., 381 S.E.2d 445 (1989); **Ohio**: Urban v. Osborn MFG., 165 Ohio App.3d 673 (2006); **Oklahoma:** Burk v. K-Mart Corp., 770 P.2d 24 (Oklahoma 1989); **Pennsylvania:** Weaver v. Harpster, 975 A.2d 555 (Pa. 2009).

The wrongful discharge cause of action based on retaliation was recently reaffirmed by a federal court in Virginia in September of 2012. The federal court upheld an "at will" salaried employee's state common law claim of wrongful retaliatory discharge. See Lester v. TMG, Inc., U.S District Court, Eastern District of Virginia, No.: 2:12cv421 (September 13, 2012). Lester argued that he was fired after he sent e-mails to his supervisors protesting the failure of his employer to pay certain wages. The court noted that Virginia's "Payment of Wages" law established a public policy that allows and encourages all employees to challenge the employers' determination of wages. The federal court held that if the employee could prove that he was terminated in direct retaliation for challenging his employer's determination of wages, then he could assert a wrongful termination claim despite his "at will" status. Simply put, the employer could not terminate Lester based on his decision to exercise his right conferred by statute to protest his employer's determination of wages. See also Katz v. Enterprise Solutions, Inc., 2005 U.S. Dist. LEXIS 37077 (E.D. Va. 2005).

It is worth noting that this exception to the general at will employment rule is a narrow one. It will only be applied in circumstances where an employee can show that he was fired or otherwise treated adversely in direct retaliation for exercising a right protected by a statute meant to protect public policy. For example, if a statute requires a sheriff's deputy or teacher to report the illegal conduct of his supervisor, the sheriff's deputy or teacher cannot be terminated in retaliation for performing his legal duty pursuant to the applicable statute. Moreover the employee is not required to prove that the employer's improper motive was the sole factor upon which the employer based its decision, only that is was a motivating factor.

Firing an Employee Whom Refuses to Engage in Prohibited Conduct

Many states will allow an employee to bring a claim from wrongful termination if she can prove that she was termination in retaliation for refusing to engage in prohibited or even criminal conduct. **California:** Tameny v. Atlantic Richfield Co., 27 Cal.3d 167 (Cal 1980); **Colorado:** Martin Marietts Corp. v. Lorenz, 823 P.2d 100 (Colo. 1992); **Missouri:** Fleshner v. Pepose Vision Inst., PC, 304 S.W.3d 81 (Mo. 2010); **Texas:** Winters v. Houston Chronicle Pub. Co., 795 S.W.2d 723 (Tex. 1990); **Virginia:** Mitchem v. Counts, 259 Va. 179, 190 (Virginia 2000).

Virginia recognized such a cause of action in the case of Mitchem v. Counts, 259 Va. 179, 190, 523 S.E.2d 246, 252 (2000). In Mitchem, the plaintiff alleged that her former employer had wrongfully discharged her from her after she refused to engage in a sexual relationship with him. Plaintiff alleged that because she steadfastly refused to enter into a sexual relationship with her employer he retaliated in several ways and ultimately fired her.

The plaintiff in Mitchem claimed that the Virginia's public policy was violated when a female employee was forced to either consent to the commission of a crime against her person, engage in a conspiracy to commit a crime, or both, in order to maintain her employment. Plaintiff cited several criminal statutes (Virginia Code §§ 18.2-57, -344, and -345) which criminalized fornication and lewd and lascivious conduct. Mitchem concluded that, because she refused to engage in the crimes of fornication and lewd conduct, she was fired. The Court agreed and found that these criminal statutes were enacted for the protection of the general public, and that Mitchem was a member of that class of persons whom these statutes were designed to protect. Accordingly, she could maintain her lawsuit by alleging that she was fired for refusing to engage in criminal conduct.

Other State Laws Prohibiting Retaliatory Discharge

Many states have statutes that contain express provisions prohibiting adverse employment actions. For example, most states have workers' compensation laws that prohibit an employer from firing or demoting an employee "solely" because she filed or intended to file or

testify in a workers' compensation claim. See **Virginia** Code § 65.2-308; **Oklahoma.** Stat. Tit. 40 §403(B); **Illinois** Work Comp. Act. 820 ILCS 305/1; **California** Labor Code §132a. Under most schemes, if an employee can show that he was fired in retaliation for filing a claim or because he intended to file a claim, the employer could be liable for back pay, front pay and even punitive damages and attorneys' fees. Similarly, some states maintain industrial safety laws to promote workplace safety. Such laws typically contain provisions providing an employee the right to sue if he is fired in direct retaliation for reporting violations of the workplace safety acts. See **Washington** Rev. Code §49.7.160(1); **Virginia** Code
§40.1-51.2:1

B. Practical Implications of State Common Law Wrongful Discharge Claims

These state common law claims can create headaches for employers and their insurance carriers for several reasons. Most states treat the above-referenced common law wrongful discharge claims as intentional tort claims. As such, an employee can seek not only back pay but also damages for pain and suffering and sometimes even punitive damages. Such damage claims can, in theory, lead to exposure of hundreds of thousands of dollars in damages even when the employee earned minimum wage.
Moreover, a plaintiff's attorney can take steps to add the individual supervisor or manager who made the decision to terminate as a defendant in the lawsuit in state court. Several state Supreme Courts have held that both the employer *as well as* the individual employee that terminated the plaintiff can now be held individually liable for the tort of wrongful discharge in violation of public policy. See: (**Virginia**) Vanburen v. Grubb, 2012 Va. Lexis 194 (November 1, 2012) (**D.C.**) Myers v. Alutiiq Int'l Solutions, LLC, 811 F.Supp.2d 261, 269 (D.D.C. 2011); (**Arizona**) Higgins v. Assmann Elecs., Inc., 217 Ariz. 289, 173 P.3d 453, 458 (Ariz. Ct. App. 2007); (**Iowa**) Jasper v. H. Nizam, Inc., 764 N.W.2d 751, 776 (Iowa 2009); (**New Jersey**) Ballinger v. Delaware River Port Auth., 172 N.J. 586, 800 A.2d 97, 110 (N.J. 2002); (**Pennsylvania**) Kamensky v. Roemer Inc., 1 Pa. D. & C. 4th 497, 499 (Pa. 1988); and (**West Virginia**) Harless v. First Nat'l Bank in Fairmont, 169 W. Va. 673, 289 S.E.2d 692, 698, 699 (W. Va. 1982). These states will not shield the manager or supervisor from liability under the theory of agency but will allow joint and several liability of the manager and the employer.

Imagine the headache of having to defend a wrongful discharge tort case in a state court where both the insured corporate entity and the individual manager are defendants. When the manager resides in the same state as the plaintiff (which will most often be the case), the defendants will most likely be unable to remove the case to the more favorable federal courts since there would not be complete diversity of citizenship between plaintiff and the two defendants—one being the local manager. Generally speaking, litigation in the state courts is more likely to proceed to a trial by jury where the outcome can be uncertain. Moreover, a conflict of interest may arise between the individual manager and the employer, thereby requiring separate counsel for each defendant. Both defendants might face punitive or exemplary damages which are not dischargeable in bankruptcy and sometimes not covered by their insurance policy.

Of course, the best policy is always prevention. Many plaintiffs in cases of wrongful retaliatory discharge rely on the timing of the discharge or other adverse action as a means to prove intent. The logic is that if the employee was fired immediately or soon after engaging in a certain protected act (i.e., complaining about some aspect of management), then the termination must have been motivated by the employees "protected" conduct. This argument is even more effective if there is no prior record of poor performance or disciplinary issues contained in the employee's human resources file. Accordingly, supervisors should avoid immediately terminating an employee until they have consulted with their Human Resources or Legal Department to determine the best course of action. Also, employers should be sure to always document any performance issues or disciplinary actions taken against an employee. Such documentation can often be used as strong evidence to counter the plaintiff's argument that his "protected" conduct was the motivating basis for the adverse employment action.

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A New Year Brings New Employment Laws . . . and DRI's Annual New Employment Laws Compendium

by Michael S. Kalt

A new calendar year brings new employment laws to contend with, and 2015 will be no exception. Although the ongoing legislative gridlock in Washington D.C. prevented Congress from passing any significant federal employment bills, the states continued to fill their role as "laboratories of democracy" enacting many new laws for employers to consider. And where some state legislatures also experienced gridlock, voter-approved ballot initiatives or municipal developments within the states filled this vacuum to enact many new laws.

A new year also brings new questions, including whether the slight legislative downturn in 2014 simply reflected election year maneuvering, such that 2015 may reflect a return to normal with representatives free to vote without fear of recall? Or, to the extent increased GOP control of various Governor's mansions and state legislatures means this legislative downturn is "the new normal," will this result in further usage of ballot initiatives, municipal laws, or regulatory enactments to change employment law?

While these questions remain to be answered, and while 2014 was less active than prior years, there were a number of significant legislative developments, as well as some fairly discernible trends. Fortunately, DRI's 2015 New Laws Compendium will soon be available providing a detailed overview of the new laws enacted in each state and at the federal level, as well as a preview for what to expect in 2015. This Compendium will be available on the DRI Employment and Labor Law Committee webpage (http://dri.org/Committee?code=0080), and many thanks are owed to the 51 committee members who tracked these legislative developments in their respective states and at the federal level.

Some of the more discernible legislative trends discussed in this compendium include the following:

Minimum Wage Increases. While efforts to increase the federal minimum wage stalled, nearly two dozen states increased their state minimum wage, including often by voter ballot initiative. Indeed also, many municipalities also increased their minimum wages still further creating a veritable hodgepodge of minimum wage laws for employers to consider, and this trend will almost certainly increase in 2014.

Paid Sick Leave Apparently is Contagious. Two other states (California and Massachusetts) joined Connecticut in enacting paid sick leave laws, and many other municipalities also enacted such laws, suggesting similar state-wide measures may spread in 2015.

"Ban the Box" Initiatives are Gaining Momentum . In 2014, three additional states and many municipalities enacted laws limiting an employer's ability to obtain criminal records information concerning applicants and employees, thus continuing the advances made in 2013, and suggesting similar measures will appear in 2015. Interestingly, at least three states (Michigan, Tennessee and Georgia) enacted measures to provide at least limited immunity to employers who hire rehabilitated felons, which may help assuage employer concerns about hiring individuals with criminal backgrounds.

Pregnancy Discrimination and Accommodation Laws. While many legal commentators await the Supreme Court's decision concerning an employer's accommodation duties for pregnant employees, at least five states and some municipalities have enacted new pregnancy protections, including accommodation obligations. (On this point, Minnesota also enacted "familial status" protections which may presage similar efforts to enact "caregiver responsibility"-type laws).

Intern Protections. While wage and hour suits on behalf of interns dominated the legal headlines, at least three states also amended their discrimination and harassment laws to include protections for interns.

Veterans Protections and Preferences. Defending the rights of those who defended our freedom remained important, with many states prohibiting discrimination against veterans, and a handful authorizing preferences for veterans during the hiring process.

Social Media Guidelines. Continuing the trend from 2013, another five states enacted laws limiting an employer's ability to obtain social media passwords for applicants or employees.

Payroll Cards Increasingly Permitted. In an effort to catch up with technological advances, at least three states enacted laws permitting employers to pay wages via payroll cards provided certain criteria are met.

Preempting Municipal Developments. Two states (Alabama and Oklahoma) engaged in a preemptive move against municipal-level developments by enacting statutes precluding cities and other political subdivisions from passing laws requiring additional benefits beyond those codified at the state level.

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