

## Year-End Update



### **Final HR Update For Year-End 2020**

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First and

foremost, we want to wish each of you and your families a healthy and happy New Year as 2020 finally comes to a close later this week. Throughout this unprecedented year, many of you have been in regular contact with us and have asked to receive our periodic Client Alerts focusing on new laws and regulations which are already having a dramatic impact on the employer-employee relationship.

For those who attended our December 16th HR webinar, "Preparing Employers for Change in 2021," we thank you for contributing to our lively discussion regarding some of the most pressing issues facing employers throughout the United States: mandatory paid leave, enhanced administrative oversight from federal agencies, growing resistance to non-compete agreements, changes to overtime laws, 1099 misclassification and the perils of unpaid internships. Towards the end of the webinar, we promised to check in one more time before year-end to keep you apprised of the following significant developments:

#### **NEW EEOC GUIDANCE ON WORKPLACE VACCINATIONS**

As we predicted and just hours after we concluded our webinar, the U.S. Equal Employment Opportunity Commission ("EEOC") finally released guidance regarding COVID-19 vaccines in the context of the workplace. In short, the EEOC confirmed that the vaccine is not, in and of itself, a "medical examination" under the Americans with Disabilities Act of 1990 ("ADA") and employers may, subject to certain limitations, implement a mandatory vaccination policy and require proof of vaccination without running afoul of the ADA. In so doing, however, the EEOC cautioned employers that they must still abide by rules which generally (1) prohibit inappropriate pre-screening questions which directly implicate the ADA's provisions on disability-related inquiries unless such questions meet the standard for being "job-related and consistent with business necessity," and (2) require individualized evaluations of vaccine opt-out requests (i.e., requests for accommodation) based upon a disability or religious beliefs. The EEOC provided further guidance on legal nuances within the confines of the ADA, Title VII of the Civil Rights Act of 1964 and the Genetic Information Nondiscrimination Act of 2008. Each of these nuances must be appropriately considered at such time when vaccines become widely available but, for now, all employers should at least commence the process of thoroughly evaluating whether or not a mandatory vaccination policy makes sense for their respective businesses.

#### **EXPIRATION OF FAMILIES FIRST CORONAVIRUS RESPONSE ACT ("FFCRA")**

This past Sunday evening, President Trump signed into law the \$900 billion pandemic-aid bill (5,593 pages) which had recently cleared both chambers of Congress with overwhelming bipartisan support. As expected, the new legislation includes unemployment assistance, vaccine and school funding, small-business aid and \$600 stimulus checks for most Americans. However, in a somewhat surprising turn of events, the bill does not contain any extension of the paid leave mandates of the FFCRA beyond the existing sunset date of December 31, 2020. In short, this means that paid leave under the FFCRA will no longer be required after December 31, 2020. However, tax credits may be available for employers who voluntarily provide these paid leave benefits through March 31, 2021.

### **INCREASE IN FLORIDA MINIMUM WAGE**

Effective January 1, 2021, the Florida minimum wage will increase to \$8.65 per hour—a \$.09 increase from the 2020 minimum wage (i.e., \$8.56 per hour). With respect to “tipped employees” in the service and hospitality industries, companies will now be required to pay these employees a direct wage of at least \$5.63 per hour, and may avail themselves of a maximum tip credit of \$3.02 per hour.

Employers must also be cognizant of the fact that in the past election cycle, Florida voters approved a constitutional amendment to gradually increase the state’s minimum wage to \$15.00/hour by 2026. This amendment does not take effect immediately but rather mandates incremental increases to the state’s minimum wage which are currently expected to begin September 30, 2021. On September 30, 2021, the state’s minimum wage will increase to \$10.00/hour (i.e., another \$1.35 per hour increase).

### **MANDATORY E-VERIFY LAW IN FLORIDA**

Effective January 1, 2021, all Florida public employers (including state and local agencies, public universities and colleges, and local school districts) and their private contractors must use E-Verify as part of their hiring process. As many of you are already aware, E-Verify is a federal web-based system which allows enrolled employers to confirm the eligibility of their employees to work in the United States. Private employers are not, at this time, similarly required to use the E-Verify system unless they are contracted by a public employer or receive certain taxpayer-funded incentives through the Florida Department of Economic Opportunity. However, Florida private employers who choose not to use E-Verify are still required to complete and maintain in a timely manner accurate Employment Eligibility Verification forms (a/k/a the USCIS Form I-9) for each of their employees and, under the new law, are now required to keep copies of the documents used to complete the forms for at least three years (currently optional under federal law).

### **MANDATORY HUMAN TRAFFICKING AWARENESS TRAINING AND POLICIES**

Effective January 1, 2021 and pursuant to Section 509.096 of the Florida Statutes, Florida public lodging establishments (including hotels, motels and apartment communities) are required to (1) provide annual training regarding human trafficking awareness to those employees who perform housekeeping duties or who work at the front desk or reception area where guests ordinarily check in or check out, (2) implement a procedure for reporting suspected human trafficking to the National Human Trafficking Hotline or to a local law enforcement agency, and (3) post in a conspicuous location a human trafficking public awareness sign which has been approved by the Florida Department of Business and Professional Regulation. With respect to the state-mandated training requirements, new employees must receive such training within sixty days from date of hire or by January 1, 2021 (whichever occurs later). Finally, it should be noted that although the new law does not establish a private cause of action, the Florida Department of Business and Professional Regulation is in charge of enforcement and lodging establishments found not to be in compliance will be subject to an administrative fine of \$2,000 per day.

The Labor and Employment Team at Greenspoon Marder remains committed to advising businesses (regardless of size, sector and location) on how best to manage today’s workplace during these unprecedented times. We will continue to stay in touch and, in the meantime, feel to reach out with any questions as we work together towards our goal of ensuring HR compliance and minimizing the risk of employee lawsuits.

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