PRESENTATION

Labor and Employment Law Update: 2014 Year In Review and Looking Ahead to 2015

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Agenda

- Legislative Trends
- Notable Employment Decisions
- Agency Updates: Immigration Enforcement, EEOC, NLRB, & U.S. DOL Action
- 2015 Employment Law Trends
  - Equal Pay Enforcement
  - Workplace Flexibility & Telecommuting
  - Employee Wellness Programs
  - Paid Sick Leave
  - LGBT Discrimination
  - Joint Employment/Contingent Workforce Issues
  - Cyber-Security & BYOD Policies

U.S. Legislature

- Mid-Term Elections
- Republicans now lead both Senate and House

2014 Notable U.S. Supreme Court Cases

- Hobby Lobby
- Busk
- United Airlines

2014 Notable Cases: *Burwell v. Hobby Lobby Stores, Inc.*, Case No. 13-354

- Dropped coverage for "morning after" pills and IUDs based on the religious objection of "the Company."

- Holding: In a 5-4 vote, the Court found that a closely held, for-profit corporations may be exempt from a law to which its owners religiously object if there is a less restrictive means of furthering the law's interest. The decision struck down the Affordable Care Act's contraceptive mandate that required employers to cover certain contraceptives for their female employees.

2014 Notable Cases: *Integrity Staffing Solutions, Inc. v. Busk, et al.*, No. 13-433 (FLSA)

- Defendant was a staffing company that provides warehouse workers to Amazon.com. The workers "retrieved products from the shelves and packaged those products for delivery to Amazon customers."
- At the end of each day, in an effort to prevent theft, Integrity required the employees to go through a security screening before allowing the employees to leave the warehouse. As part of the screening, "employees removed items such as wallets, keys, and belts from their persons and passed through metal detectors."
- Question certified: Is screening time compensable time for purposes of the FLSA?
- **Holding:** The Supreme Court held that post-shift screening time was not compensable.

Integrity Staffing Solutions v. Busk (Cont.)

- First, the Portal-to-Portal Act exempts employers from FLSA liability for claims based on "activities which are preliminary to or postliminary to" the performance of the employees' principal activities.
- Second, security screenings were not "integral and indispensable" to the warehouse worker position. The Court rejected the Ninth Circuit's focus on the fact that the security screenings were required by the employer.
- Last, the Court rejected the argument that the time waiting for the security screening should be compensable because Integrity Staffing could have, but failed to, reduced the wait-time to a *de minimus* amount.

Take-aways: This decision highlights the case-by-case nature of FLSA issues. Specifically, the focus was on the actual activities needed to accomplish the nature of the work. Notably, the Supreme Court did NOT adopt a *carte blanche* rule that post-shift security screenings are not compensable under the FLSA.

2014 Notable Cases: *EEOC v. United Airlines* (ADA)

- The U.S. Supreme Court declined to review a Seventh Circuit decision holding that the ADA may require preferential treatment for disabled employees seeking reassignment to an open position when she/he cannot be accommodated in his/her current position.
- The EEOC challenged United Airlines' policy under which employees with disabilities seeking a reassignment not be given preference when filling vacant positions.
- Under UA's policy, disabled employees were a guaranteed an interview, but would only be selected for the position if the disabled employee was *equally qualified* as other candidates for the position.
- The EEOC alleged that the policy violated the ADA by requiring workers with disabilities to compete for vacant positions for which they were qualified, and which they needed in order to continue working.

EEOC v. United Airlines (Cont.)

- The Seventh Circuit ruled in favor of the EEOC, holding that "the ADA does indeed mandate that an employer appoint employees with disabilities to vacant positions for which they are qualified, provided that such accommodations would be ordinarily reasonable and would not present an undue hardship to the employer."
- In so holding, the Seventh Circuit expanded upon the concept that providing *preferential treatment* to an employee with a disability may be a warranted accommodation under the ADA.
- **Take-Aways:** When engaging in the interactive process, employers should, as a reasonable accommodation, consider reassignment to a vacant position when an employee with a disability cannot be given a different accommodated in his or her current position.

U.S. Supreme Court Cases to Watch

- *EEOC v. Abercrombie & Fitch Stores Inc*., Case No. 14-86 (U.S.) The U.S. Supreme Court will hear the EEOC's challenge to Abercrombie's use of its "Look Policy“ to reject candidates who wear religious garb at work. Per the EEOC, the policy unlawfully prevents religious accommodations for sincerely held religious beliefs.

U.S. Supreme Court Cases to Watch (Cont.)
EEOC Conciliation Oversight

Mach Mining LLC v. EEOC, Case No. 13-1019 (U.S.). On January 13, 2015, the Supreme Court heard oral arguments as to whether the EEOC's pre-suit conciliation efforts should be subject to judicial review.

- The Seventh Circuit, along with many others held that courts may not review whether the EEOC has satisfied its statutory conciliation obligation to try to informally resolve claims before suing an employer.
  - "I am very troubled by the idea that the government can do something and we can't even look at whether they've complied with the law," Chief Justice Roberts said.
  - "I think, as the other side points out, there is considerable incentive on the EEOC to fail in conciliation so that it can bring a big-deal lawsuit and get a lot of press and put a lot of pressure on this employer and on other employers. There are real incentives to have conciliation fail," Justice Scalia said.

Executive Branch Update

- Immigration Enforcement
- NLRB
- U.S. DOL
- EEOC
- OFCCP

Executive Action: Immigration

Executive Orders on Immigration: Shield 4-5 Million undocumented immigrants from deportation.

What this means for employers:

- Impacted individuals will receive work authorization documents.
- National interest waiver categories will expand and increase immigration options for foreign entrepreneurs, researchers, inventors, and founders who meet criteria for creating jobs, attracting investment, and generating revenue in the U.S.
- Expansion and extension of the STEM-based Optional Practical Training (OPT) Program. Changes will likely allow employers to employ highly skilled workers beyond the current 29-month maximum.
- Clarification of rules for L-1B Intra-Company Transferee Petitions/Specialized Knowledge Visas for foreign workers who transfer from a company's foreign office to its U.S. office.
- Modernization of PERM Labor Certification Process identifying labor force occupational shortages and surpluses, and Immigrant Visa System to more efficiently use current allotment of immigrant visas.

NLRB UPDATE

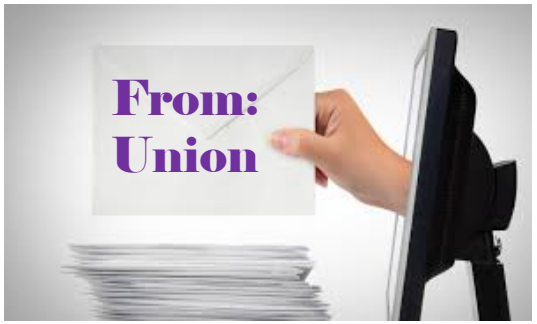
- Union use of employer email systems.
- Micro-Units,
- Ambush Election Rule.
- Decency Policies.

NLRB Update: Increased Access To Employer Email Systems For Union Activities

- *Purple Communications, Inc., et al*.; No. 21-CA-095151. On December 11, 2014, the NLRB, through a divided panel, held that employees may use employer-provided email systems for union organizing activities. Specifically, the NLRB held:

"Employee use of email for statutorily-protected communications on nonworking time must be presumptively be permitted by employers who have chosen to give employees access to their email systems."

- *Purple Communications* does not require employers to grant employees access to its email system when it is not otherwise allowed.
- Employers are also not prohibited from establishing uniform and consistently enforced restrictions, such as prohibiting large attachments or audio/video segments, if the employer can demonstrate they would interfere with the email system's efficient functioning.



NLRB Update: Micro-Units

The recent *Specialty Healthcare, Macy's, and Neiman Marcus* decisions allow unions to subdivide an employer's workforce into smaller units and: (a) organize small pieces at a time; or (b) permit multiple unions to represent sub-sets of your workforce.

- Important to understand the threat created by the new paradigm created with these cases. *E.g.* The time, expense, and disruption caused: (i) by multiple union organizing campaigns of micro-units; (ii) negotiating multiple labor contracts; (iii) multiple union representation in a single department or job classification within your operation; and (iv) competitive bargaining amongst the various micro units.
- The Macy's and Bergdorf decisions establish that the critical factors in the NLRB's bargaining unit analysis: Common supervision and have common or overlapping job duties as well as the degree of interchange between departments or job classifications
- Take-aways: Important for employers to **t**ake proactive steps to counter the expected surge in union organizing Consider combining job classifications, cross-training employees in multiple job duties and rotating employees among classifications or jobs.

NLRB's Ambush Election Rule

On December 15, 2014, the NLRB issued its Final Rule amending its Procedures for Representation Elections.

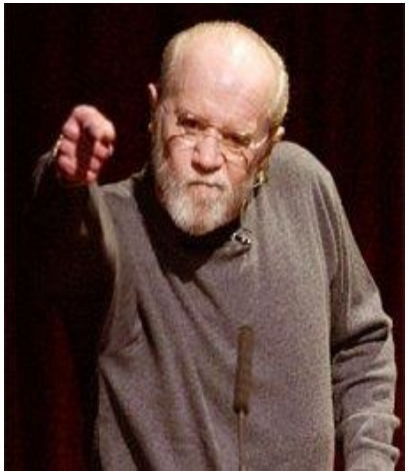
- The changes to the election procedures will shorten the time between petition filing and secret ballot election.
  - Currently: 35-42 days between those two events.
  - New rule: As few as 14 days, but more likely around 21 days.
- Result is that if an employer is not ready for an election petition the moment it is filed, it will present significant tactical and strategic challenges for the employer.
- Unless successfully challenged, the Rule will go into effect April 14, 2015. The National Association of Manufacturers has noted that it "will be pushing back on this ill-advised and completely unjustifiable regulation."

NLRB Workplace Decency Restrictions

Care One at Madison Avenue, 361 NLRB No. 159 (Dec. 16, 2014).

- Holding: Employer violated the law by posting a memorandum shortly after a union election, urging employees to treat each other with "dignity and respect" and reiterating its workplace violence policy, even though the policy itself was lawful and the memorandum specifically acknowledged employees' Section 7 right to support a union. Memo "suggested that the employer believed that employees did not treat each other with dignity and respect when they engaged in protected union activity."
  - The employer failed to demonstrate a legitimate basis for issuing the memo because: (1) no evidence that threats actually occurred or were investigated; and (2) the memo specifically referenced the recent union election and the "differences that arose in the workplace during the union's campaign."

BOTTOM-LINE: The NLRB will scrutinize common workplace respect rules and may deem them unlawful, if they find they are implemented or more strictly enforced following protected activity (elections, strikes, unfair labor practice charges).



NLRB Workplace Decency Restrictions: Take-Aways

If you feel the need to issue similar guidance:

(1) Gather & document evidence of harassment or other threatening activity – anything that will establish that the company is motivated by legitimate workplace concerns, and not any union or other protected activity;

(2) Avoid referring to any protected activity or suggesting that employees generally failed to treat each other with "dignity and respect" by participating in the protected activity;

(3) Explicitly acknowledge the employees' right to support a union *and engage in protected activity in furtherance of their views* on work terms and conditions.

2014 Wage & Hour Enforcement

- Executive Order No. 13658: New minimum wage for federal contractors ($10.10/hr).

- State level changes: State and local legislators made boosting lower-paid employees' wages a priority this year. In 2015, the minimum wage rates in at least 25 states will change.

2014 Wage & Hour Update
Record Number of Collective Actions Filed in 2014!

- 2007 – 5,302
- 2008 – 5,644
- 2009 – 6,081
- 2010 – 7,006
- 2011 – 7,064
- 2012 – 7,764
- 2013 – 7,882
- **2014 – 8,066**
- Plaintiffs in FLSA collective action cases won approximately 70 percent of conditional certification motions, and approximately 52% of decertification motions.

U.S. Department of Labor: 2015 Predictions

- White Collar Overtime Exemption Regulations: The DOL has set a deadline of the end of February for a proposed rule to implement President Obama's directive to modernize and streamline the white collar exemptions. What to expect?
  - Increase of the minimum salary level.
  - Duties test: Possibly remove concurrent duties section under executive exemption and implement a quantitative test similar to California that requires an exempt manager to spend more than 50% of his/her time supervising employees.
  - Clarification of computer professional employee exemption.
- Industry-Specific Enforcement Initiatives: In October 2014, the Department of Labor also announced that it would delay enforcement of its final rule providing minimum wage and overtime protections for most home care workers from January 1, 2015 to June 30, 2015.

EEOC in 2014

- 88,778 private sector charges filed in FY 2014, 5,000 fewer than FY2013.
- 87,442 charges resolved in FY 2014, 9,810 fewer than FY2013.
- Recovered $296.1 Million through mediations, conciliations and enforcements.
- Successfully mediated 7,846 **out of 10,221 conducted** (recovered $144.6 Million).
- Completed 260 systemic investigations, resulting in 78 settlements and conciliation agreements. $13 million in monetary relief.
- Filed 133 merits lawsuits during FY 2014 (105 individual suits, 11 non-systemic class suits, 17 systemic lawsuits). Resolved 136 merits lawsuits for a total recovery of over $100 million for employees and applicants.
- Reasonable Cause found in 45% of systemic investigations in 2014, compared to 35% in 2013.

July 2014- EEOC's Pregnancy Guidance

- "Despite much progress, we continue to see a significant number of charges alleging pregnancy discrimination, and our investigations have revealed the persistence of overt pregnancy discrimination, as well as the emergence of more subtle discriminatory practices." EEOC Chairwoman Jacqueline A. Berrien.

EEOC's Pregnancy Discrimination Guidance

- Part One of the Guidance's four parts discusses the prohibitions under Title VII of the Civil Rights Act, as clarified by the Pregnancy Discrimination Act of 1978 (PDA).

- Part Two discusses the application of the ADAAA's accommodation and non-discrimination requirements and the definition of disability to pregnancy-related impairments.

- Part Three discusses other legal requirements affecting pregnant workers, including the FMLA.

- Part Four describes "Best Practices" for employers.

http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm

EEOC Background Checks & State "Ban The Box" Laws

- Significant increase in legislation over the last several years, however, limiting employers' ability to request and obtain information about the creditworthiness and criminal histories of employees and job applicants, largely driven by the EEOC.
- On the state level, we've seen a huge uptick in adoption of "ban-the-box" laws prohibiting private sector employers from seeking information about an applicant's criminal history on job applications. In most cases, employers can engage in a limited inquiry once the employer has selected the job applicant as a potential candidate, conducted an initial interview and/or made a conditional offer or employment.

Take-aways:

- Continue to strictly limit use of criminal background check results for screening purposes.
- Do not employ a blanket hiring prohibition for convicted individuals.
- Review job applications to ensure they do not request forbidden information and that their background check forms (including forms provided to them by outside vendors) are legally compliant.

EEOC 2015: Strategic Enforcement Plan

The SEP identifies six national priorities as the focus of this integrated enforcement effort. These are:

1. Enforcing equal pay laws;
2. Eliminating barriers in recruitment and hiring (background checks);
3. Addressing emerging and developing employment discrimination issues (LGBT issues, employee wellness programs);
4. Protecting immigrant, migrant and other vulnerable workers;
5. Preserving access to the legal system; and
6. Preventing harassment through systemic enforcement and targeted outreach.

Gazing into the Crystal Ball: 2015 Employment Law Trend Predictions

2015 Equal Pay Enforcement

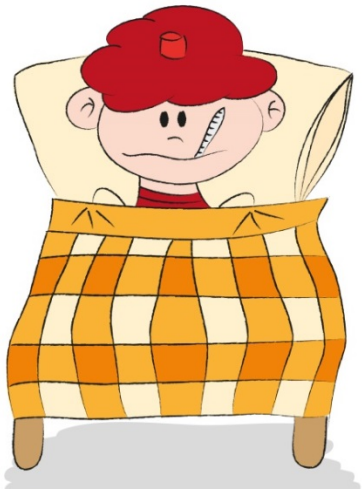
- Efforts are being made at the federal level to collect private sector employment data through its various agencies.
- The OFCCP has proposed a requirement that federal contractors file an "Equal Pay Report" providing information on the salaries, wages, and benefits of their employees. (covers 20% of private sector workforce).
- The EEOC is attempting to increase these data collection efforts.
  - Sage Computing, Inc., an IT services firm based in Virginia, is conducting a 12- to 18-month pilot study to determine:
    - the best ways to collect private sector compensation data;
    - the burden that would be imposed on employers and the EEOC by collecting this information; and
    - how to best analyze the data and identify true pay disparities while controlling for the various legitimate factors that go into setting an employee's compensation.
- The ultimate goal is to require employers with 100 or more employees to provide compensation data that can be screened for pay disparities even when there is no complaint.

Equal Pay Enforcement

- Thus, instead of relying on employee complaints to reveal discriminatory pay practices, the agency has decided that it must screen for pay disparities even where there is no complaint.
- As for the collection instrument, the EEOC will likely require employers to complete revised versions of its EEO-1, EEO-4, and EEOC-5 forms, which Sage has also been asked to draft.
- The EEOC is at least a couple of years away from implementing this requirement for most private employers. What should employers do in the meantime? **Analyze your compensation data before the EEOC does.**

2015 Employee LOAs and Accommodations

- President Obama's recent State-Of-The-Union Address championed the idea of paid sick leave for all workers, and proposed $2.2 billion in mandatory funds for the Paid Leave Partnership Initiative.
- Federal legislation requiring private-sector employers to provide their employees with paid sick time off would likely fail this congressional term. However, states and localities are passing mandatory paid sick leave laws at an increasing rate.
- California and Massachusetts passed paid sick leave laws that will take effect in 2015, joining Connecticut and the District of Columbia, and a large number of municipalities requiring paid sick leave.
- Employers who already provide paid sick leave may still be impacted by this trend, since many of these laws impose requirements different from those typically adopted by private sector employers.



2015 Employee LOAs and Accommodations

Many jurisdictions have expanded employee rights to take various types of unpaid leave. E.g.,

- Emergency responder leave and expanded crime victim/domestic violence leave in California;
- Expanded domestic violence leave in New Jersey;
- Expanded pregnancy leave under New York City's Human Rights Law; and
- The adoption of the nation's first mandatory bereavement leave law in Oregon.

It is important for multi-state employers to stay apprised of these developments so that they do not improperly deny state-mandated leave requests.

Workplace Flexibility & Telecommuting

- In *EEOC v. Ford Motor Co.* (6th Cir.)(en banc), the Court is currently reviewing when and whether employers must provide telecommuting as a reasonable accommodation under the ADA.
- This case is important because it deals with the employer's role in deciding whether physical presence at work is an essential job function.
- An earlier panel decision noted that due to advances in technology, the workplace can no longer be assumed to mean the employer's physical location, and that "the 'workplace' is anywhere that an employee can perform her job duties."
- Another commenter noted: "The ADA is all about challenging our assumptions about how work is traditionally done versus what ultimately needs to get done in order to perform the job."
- **Bottom line:** Technology is game-changer when it comes to telecommuting. Employers should begin reviewing their job descriptions to determine when "physical presence" is an essential job function.

2015 Wellness Programs

- Another ADA-related issue the EEOC is set to deal with in 2015 is the legality of some corporate wellness programs.
- The ACA incentivizes employers to create wellness programs for their workforce, and approximately 18% of private-sector employers already use outcome-based wellness incentives to promote employee health.
- The ACA and the EEOC appear to be on a collision course on this issue because many of these programs involve medical inquiries.
- The EEOC is promising to issue new regulations in 2015 to provide employers guidance on how to offer wellness programs without running afoul of the ADA and GINA (although that hasn't prevented them bringing 3 lawsuits already)
- Focus will be on:
  - Incentives v. Penalties
  - Voluntary v. Involuntary Participation

2015 Wellness Programs

- Focus will be on:
  - Incentives v. Penalties
  - Voluntary v. Involuntary Participation
- It's unclear whether a program that provides financial incentives or penalties for employees who participate is in fact truly voluntary.
- Voluntary wellness programs are not subject to the ADA's limitations on medical queries based a current ADA "safe harbor" provision that allows employers to establish, sponsor, observe, or administer the terms of a "bona fide benefit plan" that is based on "underwriting risks, classifying risks, or administering risks based on or consistent with state law."
- The 11th Cir. has already ruled that outcome-based employee wellness programs are "voluntary programs" exempted under the ADA's safe harbor provision.

LGBT ANTI-DISCRIMINATION PROTECTIONS

2015 Supreme Court Watch
Same-Sex Marriage Bans

Obergefell v. Hodges. Last month, the U.S. Supreme Court agreed to decide whether state bans on same-sex marriage are unconstitutional, a longawaited development that could finally resolve one of the nation's largest circuit splits in recent history.

- The Court will review a Sixth Circuit decision that upheld the same-sex marriage bans in four states, creating a split with four other circuit courts that have ruled the other way. 36 U.S. states currently recognize same-sex marriages.
- Two questions certified:

  1. Whether the 14th Amendment's due process and equal protection clauses require states to license same-sex marriages.

  2. Whether the 14th Amendment requires states to recognize same-sex marriages lawfully performed in other states.

- The U.S. DOJ announced that it would file an amicus brief supporting the petitioners, stating, "it is time for our nation to take another critical step forward to ensure the fundamental equality of all Americans."

U.S. DOL : Definition of “Spouse” under the FMLA.

In light of Sup. Ct.’s decision in *US v. Windsor*, the FMLA has issued a Notice of Proposed Rule Making regarding the definition of “spouse" for FMLA Purposes. Comment period ended Aug. 11, 2014.

- Proposed definitional change to encompass eligible employees in legal same-sex marriages, as well as common law marriages, to take FMLA leave to care for their spouse, regardless of what state they live in.
- Under the current definition of spouse, eligible employees may take FMLA leave to care for a same-sex spouse only if they reside in a State that recognizes same-sex marriages.

Executive Action- Executive Order No. 11478, Amended; Bars LGBT discrimination by federal contractors.

Significantly, the Final Rule does not:

- Define “sexual orientation” or “gender identity.”
- Mention “transgender status,” as does OFCCP’s Directive 2014-02, but the Final Rule does make clear that transgender status is a form of sex discrimination.
- Require any changes to the text of written affirmative action programs (AAPs) under Executive Order 11246, which will continue to be limited to gender, race, and ethnicity.
- Change the existing religious exemption contained in Executive Order 11246 and the implementing regulations.
- Require voluntary self-identification of sexual orientation or gender identity; or require contractors to set placement goals, collect statistical data, or perform any statistical analysis on the bases of sexual orientation or gender identity.

EEOC's Position re LGBT Discrimination

- The EEOC published "What You Should Know about EEOC and the Enforcement Protections for LGBT Workers" and "Fact Sheet on Recent EEOC Litigation-Related Developments Regarding Coverage of LGBT-Related Discrimination under Title VII."

Therein, it states:

- "The Commission has instructed our investigators and attorneys that discrimination against an individual because that person is transgender is a violation of Title VII's prohibition of sex discrimination in employment."
- "In addition, investigators and attorneys were instructed that lesbian, gay, and bisexual individuals may also bring valid Title VII sex discrimination claims, and the EEOC should accept charges alleging sexual-orientation-related discrimination.

Protections for Transitioning Employees

- The transition for transgendered employees is not just anatomical, it is manifested in the employees' physical appearance -- including their work attire.
- Therefore, gender-specific dress codes must be enforced consistently with respect to transgendered employees. According to the EEOC:
  - Supervisors who are aware of a transgendered employee's transition from female to male should not require such an employee to wear feminine clothes to work.
  - Employers who try to prevent transgendered workers from using a gender specific bathroom may violate the law. Instead, transitioning employees should be able to use the restroom of their choice, for the gender they are presenting.

Extension of the EEOC's interpretation by the Courts:

- Despite the absence of any federal law expanding Title VII protection to gender identity and sexual orientation, the EEOC's "gender stereotype" theory is also being applied by district courts to protect LGBT employees from employment discrimination.
- Recently, the EEOC brought sex discrimination lawsuits on behalf of two transgendered employees who were fired after notifying their employers of their transitions. In one of the cases, a funeral director was fired after she informed her employer, in writing, that she would be transitioning from male to female and would wear different clothing to work. The second EEOC lawsuit involves a director at an eye clinic who was fired after wearing feminine clothes to work while making her transition from male to female.

In light of increased protections afforded LGBT employees, here are some helpful tips for employers:

- Ensure compliance with state and local laws, as well as some federal provisions by ensuring that anti-discrimination and non-harassment policies include protections against discrimination and harassment based on sexual orientation and gender identity.
- Communicate these policies to employees during orientation or team meetings, and encourage employees to address any questions to HR or other appropriate personnel.
- Train managers and supervisors on internal procedures to address discrimination or harassment complaints from LGBT employees.
- Consider a gender neutral dress code to avoid the risk of supervisors or managers inconsistently enforcing gender-specific dress codes against transgendered employees.
- For employees undergoing a transition, offer to discuss issues such as: (1) the timing of his or her gender re-assignment surgery, (2) the employee's new name, or (3) whether co-workers should be informed about his or transition.

2015 Look Ahead
Joint Employer / Contingent Worker Issues

- In July 2014, the NLRB's General Counsel determined that McDonald's Corp. could be treated as a joint employer with its franchisees in a series of worker complaints over employment conditions.
- McDonald's and some business groups argue that holding the franchiser accountable for franchisees' actions is unfair because franchisees set wages and control working conditions in their restaurants.
- According to the NLRB, its investigation found that McDonald's, through its franchise relationship and its use of tools, resources and technology, "engages in sufficient control over its franchisees' operations, beyond protection of the brand, to make it a putative joint employer."
- The GC's reasoning challenges conventional understanding of franchisor-franchisee law and joint employment issues.

2015 Look Ahead
Joint Employer / Contingent Worker Issues

- The NLRB then issued complaints naming McDonald's Corp. along with its franchisees for allegedly violating rights of restaurant workers who participated in activities to improve wages and working conditions.
- Jan 2015: Ten former restaurant workers sued McDonald's Corp. along with one of its franchisees for alleged wrongful termination, in a move that tests the legal implications of a recent decision by the NLRB's holding.
- The lawsuit will test the civil-court ramifications of recent NLRB moves that could fundamentally reshape the relationship between big retailers and their franchisees.
- Uptick in state laws impacting joint-employer litigation: E.g., new California legislation provides that employers are jointly-and-severally liable with the labor contractor for violations of wage & hour laws. We expect to see more state law legislation like this in the upcoming year.

2015 Cybersecurity & BYOD Policies

- Since December 15, 2014, six putative class actions have been filed against Sony Pictures Entertainment, Inc. by current and former employees affected by the massive hacking attack which resulted in the publication of more than 47,000 employee names, addresses, SS #s, DOBs, passports, salaries, personnel records, criminal background checks, etc.
- The complaints claim that Sony has been the target of successful cybersecurity breaches in the past, but failed to take the necessary steps to protect its employees' confidential information.
- They state that Sony's offer of one year of identity-theft monitoring is inadequate to address the scope of the breach and seek over $5 million in damages and seek injunctive relief.
- These cases highlight the importance of securing confidential employee information and performing regular security audits to stay ahead of changing technology in this digital age of cybercrimes.

2015 BYOD Policies

- Bring Your Own Device to Work (BYOD) Policies: Another significant issue which will continue to challenge employers is the extent to which they can (or should) allow employees to use their personal electronic devices to conduct employer business. This is an area of law for which there is a great deal of risk and uncertainty.
- Employers wishing to adopt or manage BYOD policies should consult employment counsel to properly assess the potential risks unique to their organizations and to assist them, if appropriate, to adopt BYOD policies which are both practical and legally compliant, and recognizes the cyber-security risks inherent in allowing employee access to networks through their own devices.

QUESTIONS?