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EMPLOYMENT LAW BULLETIN

A Monthly Report On Labor Law Issues

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NEW ADMINISTRATION PROVIDING EMPLOYER-FRIENDLY COMPLIANCE ASSISTANCE IN DOL ENFORCEMENT

The U.S. Department of Labor (DOL) has established a new web page for employers to submit requests for opinion letters to the Wage & Hour Division, Occupational Safety and Health Administration, the Employee Benefits Security Administration, and the Veterans' Employment and Training Service. A DOL opinion letter can serve as a legal defense in the event of a future lawsuit or investigation. These letters explain the legal interpretation of how the law would apply in a specific situation in response to a request from an individual employer. DOL's approach increasing the frequency of these letters marks a shift from the Biden Administration, which rarely issued opinion letters.

In another development, DOL announced in late June that it would no longer seek liquidated damages in Wage & Hour investigations, another shift from the Biden Administration. The Fair Labor Standards Act allows workers to sue to recover unpaid minimum wages or overtime compensation and also to seek an equal amount as liquidated damages. The DOL now takes the position that DOL will not supervise the payment of liquidated damages in administrative matters including investigations, but only in actual litigation.

In other developments, the Occupational Safety and Health Administration (OSHA) is in the process of narrowing its use of the general duty clause enforcing workplace safety regulations. The agency has referenced Justice Kavanaugh's dissent in *Sea World of Florida, LLC. v. Perez*, where the Justice argued the general duty clause does not authorize OSHA to regulate hazards from activities intrinsic to an occupation, such as professional sports or entertainment purposes. On the other hand, OSHA appears to be moving ahead in developing a potential federal heat standard. The government historically has tried to address certain hazards such as heat or ergonomics with the general duty clause rather than a specific clause.

DOL TO SHUT DOWN OFCCP AND TRANSFER DUTIES TO EEOC

For years the Office of Federal Contract Compliance Programs (OFCCP) was a formidable enforcer of equal employment and affirmative action applicable to federal government contractors. In May, DOL in the 2026 budget stated it would eliminate this office and transfer its duties to the Equal Employment Opportunity Commission (EEOC), although presumably this action would have to be approved by Congress. The consolidation has been considered for a number of years following the lead of Jimmy Carter in 1978 who transferred authority to enforce the age discrimination and equal pay laws from DOL to the EEOC.

MEANING OF SUPREME COURT RULING LIMITING NATIONWIDE INJUNCTIONS IN BIRTHRIGHT CASE

Readers may be confused about the significance of the U.S. Supreme Court rulings in *Trump v. CASA* and related cases, as part of the birthright litigation. In recent years, both political parties carefully selected jurisdictions in which a favorable judge would be most likely to grant an injunction against the application of federal power. For many years, Republican administrations went to certain districts in Texas, while Democratic administrations went to certain jurisdictions in California. The favorable jurisdictions and judges have shifted, but these tactics generated a second question, whether a federal judge could enjoin (prohibit) a federal action from taking place anywhere in the U.S., or only within the particular federal judicial district.

Republicans sought to limit federal actions during the Biden Administration in this manner, and now Democrats are taking such actions during the Trump Administration. In a 6-3 ruling, the Supreme Court did not decide the legality of the birthright issue, but put limits on the power of judges to issue nationwide injunctions. Justice Amy Coney Barrett wrote for the majority that, "Federal courts do not exercise general oversight of the Executive Branch." In the past, the administrations of both parties opposed universal injunctions, arguing that a single judge should not have the power to block a federal government policy nationwide. In the future, such injunctions will generally only apply to the federal judicial district in which the federal district court judge is hearing the case.

IN SPITE OF ADMINSTRATION CHANGES, MONITORING OF THE WORKPLACE CONTINUES TO CREATE LEGAL ISSUES

In the last month of the Biden Administration, the EEOC issued a fact sheet on wearable technology under the anti-discrimination laws, "Wearables in the Workplace: Using Wearable Technologies Under Federal Employment Discrimination Laws." The fact sheet was devoted to monitoring devices in the workplace, including wearables such as smart watches, glasses or helmets that monitor employees, sensors, and GPS devices that track location. The EEOC fact sheet suggested that the term "wearable" included "digital devices embedded with sensors and worn on the body that may keep track of bodily movements, collect biometric information, and/or track location."

The EEOC warns in the fact sheet that any wearable that collects information about an employee's medical status could be volitive of the Americans With Disabilities Act (ADA). The EEOC suggests such wearables could be classified as conducting medical exams or making disability-related inquiries, which are normally prohibited without a significant business need. While not addressed in the fact sheet, other privacy-related issues arise concerning the use of video cameras and similar devices monitoring truck drivers. Indeed, the area of employee privacy encompasses searching employee lockers and pocketbooks, etc.

In some respects, the new administration is backing off some of the technology-related restrictions of the Biden Administration, particularly concerning AI. Further, the National Labor Relations Board (NLRB) has also rescinded the prior administration's memorandum addressing various technologies, including wearables and monitoring of the workplace.

Nevertheless, there are many state common law principles that provide protection to privacy, including employee privacy. There are statutory protections against eavesdropping and wiretap laws. Issues have come up concerning some types of video surveillance, particularly in or around restrooms.

The bottom line is that employer monitoring of the workplace raises legal issues, and some companies, such as Amazon for example, consider their monitoring practices to be essential to productivity gains. Typical defenses to claims of privacy violations include notice to employees of the practices, and thus expressly or impliedly consent to the practices by remaining employed after such notice. Readers may notice signs posted in various places, including many commercial establishments, that video cameras are being used. This notice not only serves as a deterrent to wrongful activities, but also shows that the persons in the area have consented to such camera usage. For similar reasons, employers in their written policies often furnish notice of their monitoring or search and seizure methods during investigations, which show that employees have consented to such procedures by remaining in employment.

The main point here is to point out that these matters are controversial, not only legally, but also to employee senses of fair play. Employers should know what data they are collecting, where and for how long it is stored, and the business reasons for its use. Such actions are particularly desirable since various states have common-law doctrines granting employees certain privacy protections, and as many as 20 states regulate the tracking of individuals' locations. Illinois has a particularly tough law dealing with collecting biometric information, and there are related laws in Texas and Colorado.

THE IMPORTANCE OF CORPORATE CULTURE

The concept of company culture is important for most employers. It is important because it actually constitutes an operating system for employers. It assists in decision-making, and determines how people behave when the boss is not looking.

An example of the importance given to corporate culture is the pharmaceutical firm Novo Nordisk, which encourages its culture in a set of principles called the "Novo Nordisk Way." It is a set of 10 norms known as "essentials" and are meant to guide decision-making.

The type desired culture can vary significantly among companies. A couple of companies with high employee ratings have examples of different approaches. SpaceX does poorly on work-life balance, but scores highly for attributes likes innovation and perks. Lockheed Martin does well among its employees on work-life balance, but less well for being on the cutting edge. Some companies even have more aggressive cultures such as "we push past possible" and "we accept risks," used by another drug company, Moderna.

The bottom line is that companies should take culture seriously. This writer had a recent experience addressing workplace conduct such as fraternizing among employees and managers, and the practice of employees hugging each other and the like. In this day of employee sensitivity and harassment allegations, what type of workplace culture should the company promote?

SUPREME COURT RULING LIMITS TRANSGENDER RIGHTS

There have been several recent developments concerning transgender rights. Most interpret the Supreme Court's 2020 ruling in *Bostock v. Clayton County,* as including protection for sexual orientation and sexual identity under the prohibitions of "sex discrimination" under the nation's employment laws. However, the *Bostock* ruling expressly stated that it did not resolve all issues such as those associated with locker rooms and bathrooms.

On May 15, 2025, the U.S. District Court of the Northern District of Texas struck down portions of the EEOC's 2024 Guidance pertaining to sexual orientation and gender identity under Title VII, which prevented the use of the vacated portions of the 2024 Guidance across the country. *State of Texas v. EEOC*, U.S. District Court for the Northern District of Texas, Amarillo Division.

More recently, on June 18, 2025, the Supreme Court ruled that a public employee health plan's blanket coverage exclusion for gender dysphoria treatments did not violate the 14th Amendment's equal protection clause. U.S. v. Skrmetti, No. 23-477. Justice Roberts writing for the 6-3 majority stated that there were sincere concerns about these issues, but the Constitution does not resolve these disagreements and the task is best left to the legislature or Congress. The High Court had previously issued an emergency order allowing the administration to implement its ban on transgender individuals serving in the military. The result is that the future of gender treatments will be dependent on each state legislature, much like the abortion issue. The rationale of the opinion was that the Tennessee law, while it referenced sex, did not actually discriminate on the basis of sex. Instead, it focused on two distinctions: The age of the patient and the medical use of treatment such as puberty blockers.

The EEOC under the current administration recently halted work on transgender worker discrimination charges. However, on July 1, 2025, the agency's Director of the Office of Field Programs announced that the EEOC was "in the clear to continue processing" charges that "falls squarely under" the U.S. Supreme Court's *Bostock* ruling. The EEOC announcement indicated that the agency would process transgender charges applicable to employment issues such as hiring, discharge or promotion.

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