

EEOC Transgender Case, New York City Labor Peace Agreements, Parental Leave: Employment Law This Week - August 29, 2016 [VIDEO]

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EEOC Loses Transgender Case in Michigan

Our top story: An employer wins a landmark case after firing a transgender employee. A funeral home in Michigan decided to terminate its director after he notified the business that he would be transitioning from male to female. The **U.S. Equal Employment Opportunity Commission (EEOC)** filed suit. On a motion to dismiss, a U.S. district court held that **Title VII** does not prohibit discrimination on the basis of transgender status or gender identity but allowed the EEOC to pursue a claim for sex stereotyping. The funeral home argued that it was protected under the **Religious Freedom Restoration Act (RFRA)**, and the district court agreed, granting the employer's motion for summary judgment.

"Once the employer is able to prove that they are entitled to a defense under the RFRA, the EEOC has a burden of not just establishing that the purpose of Title VII is a compelling government interest, but it also has to show that the means and application of Title VII was done in the least burdensome way possible. The EEOC failed to address this point in their briefing, and also failed to examine whether this was the least restrictive, or whether there was an alternative, way to enforce Title VII against this employer. . . . In order to be eligible to invoke the RFRA, an employer has to be a private, closely held corporation and cannot be a publicly traded corporation. Secondly, the RFRA can only be invoked if the party suing the employer is the government or a government agency. And third, if the employer is a government itself, they can't invoke that they have a religion, and therefore the RFRA is not applicable."

New York City Mandates "Labor Peace" Agreements

New York City is trying to force certain employers to sign "labor peace" agreements with unions. Mayor Bill de Blasio has signed an executive order mandating that a property developer receiving at least \$1 million in "Financial Assistance" require its large retail and food service tenants to accept "Labor Peace Agreements." These agreements would prohibit the companies from opposing union organization and provide what some consider to be affirmative support and assistance to unions. City Development Projects that were authorized or received "Financial Assistance" before July 14, 2016, are exempt from this order.

Lawmakers Urge Rejection of EEOC's Pay Data Proposal

Senators ask for a halt to the EEOC's pay data proposal. Three Republican senators have sent a letter to the Office of Management and Budget asking them to shut down a recent proposal from the EEOC. The proposal would expand pay data collection and require employers to categorize hours worked by sex, ethnicity, and race. The lawmakers argue that this kind of data collection would waste time and put significant new burdens on employers.

Parental Leave Requests Increase as School Year Starts

Parental leave requests are on the rise as kids head back to school. An increasing number of states now require that businesses grant unpaid leave to employees for school-related events and activities that happen during the workday. These laws apply to private employers in Washington, D.C., and in such states as California and Massachusetts. As the school year begins, employers will likely see more requests for parental leave and should consider checking the laws in their states to make sure they're in compliance.

Tip of the Week

Finally, it's time for our Tip of the Week. Ann Morris, Partner at Finn Partners, is here with some advice on developing a communications plan before a crisis.

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