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The Bubbler – August 2018

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Employment Labor and Benefits at Mintz

We want to dedicate our August Bubbler feature to our readers, who have helped Mintz's blog achieve such an august reputation. This month's namesake (Emperor Caesar Augustus) would have been proud to see all of the activity out of the Empire State recently, as New York City's Office of Labor Policy & Standards recently released guidance on the new Temporary Schedule Change Law. The schedule change law was one of a number of laws passed in New York recently aimed at accommodating employees' personal obligations and improving work-life balance. The newly-released guidance is likely to intensify employer concerns, but with the law now in effect employers must work (once again) to update their policies, procedures and practices.

Always-busy California certainly didn't disappoint in July, but what may surprise some is a rare employer-friendly bill recently signed into law that creates new protections for employers, witnesses, and complainants from defamation lawsuits related to making, assisting, or discussing good-faith sexual harassment claims and investigations. The new law, effective January 2019, designates certain communications as "privileged" for purposes of defending defamation claims.

California also clarified some ambiguities in its salary history ban by permitting employers to inquire about "salary expectations" and consider current employee's salary in specified instances.

Down South (actually not too far from the city of Augusta) the Eleventh Circuit decided for the second time in a little over a year to reconsider its decades-old precedent that sexual orientation discrimination is not actionable under Title VII. The per curiam decision to dismiss the petition for *en banc* rehearing in *Bostock v. Clayton Cty. Bd. of Comm'rs* drew a fiery dissent from two of the circuit judges who believe the court should reverse its precedent as two circuits already have. The employee in that case has appealed the decision to the United States Supreme Court, where the case joins another out of the Second Circuit waiting for the high court to decide whether it will take up the issue next term.

Finally, employers in Massachusetts are watching closely after a non-compete bill passed by the Commonwealth's legislature has landed on the Governor's desk. Expected to be signed into law, it will take effect on October 1, 2018 and will significantly impact the drafting, implementation and enforcement of non-compete agreements in the Commonwealth.

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