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HR Compliance Law Bulletin

Practical and Effective HR Management Advice

in this issue:

Spotlight

Making reskilling an HR priority for 2021

by Laura Scott, Esq.

Gartner for HR recently released *Top 5 Priorities for HR Leaders in 2021*, which reveals that 68% of the HR leaders polled said building skills and competencies is their top priority for 2021. Forty-six percent, 44%, 32%, and 28% said their top priorities for this year were organizational design and change management, current and future leadership bench, the future of work, and employee experience, respectively.

Since a majority of respondents named building skills and competencies as a top priority, let's take a closer look at the what that may mean in practice for the coming year.

WHY GARTNER CONCLUDED BUILDING THE SKILLS GAP SHOULD BE A PRIORITY

Gartner for HR concluded that there are five reasons why building critical skills and competencies is critical to top business priorities:

1) to improve operational excellence;
2) to grow the business;
3) to execute business transformations;
4) to innovate for success; and
5) to manage risk and regulatory demands.

FILLING THE SKILLS GAP

Among the 68% of respondents who said building skills and competencies was a top priority, 36% indicated that their organizations don't know what skills gaps their current employees have. Another 33% said they don't effectively integrate learning into employee workflow. And, 31% said they aren't able to create development solutions fast enough to meet the workforce's evolving skills needs.

But, right now the COVID-19 pandemic has made it challenging for HR professionals to properly address the reskilling challenges the workforce faces. "Traditional ways of predicting skill needs aren't working. Employees need more skills for every job, and many of those skills are new. Many employees aren't learning the right new skills—for their personal development or the benefit of the organization," the report states.

The fact is that the skills required for each job increases by 10% annually and one-third of the skills present in an average job posting in 2017 won't be necessary in 2021, the *2020 Gartner Shifting Skills Survey* noted. And, for 2021, close to 30% of the respondents to Gartner's *Coronavirus Polling on L&D* said more than 40% of the workforce will need new skills.

The report noted that with the changes the COVID-19 pandemic has brought to the way employees work has come the need to:

- deploy teams to new business areas;
- manage teams remotely;

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- cross train team members on different roles in case someone is sick or not everyone can be in the workplace at the same time; and
- take on new responsibilities due to staffing shortages.

GARTNER'S RECOMMENDATIONS

Launch a new imperative, Gartner recommended. That means "tak[ing] a dynamic approach to reskilling," the report explained. And, to accomplish this, Gartner said it's important to focus on three key areas:

- developing a skills-sensing network;
- targeting skills accelerators; and
- focusing on two-way skill transparency.

Developing a skills-sensing network—This means sharing "ownership for identifying and addressing skill needs with relevant stakeholders," "[m]onitor[ing] organizational intelligence on changing skills needs," and "[e]xplor[ing] how to leverage labor market data to address skill gaps."

Targeting skills accelerators—"Recognize and adapt existing resources to develop new skill solutions quickly" and "[i]dentify learning delivery opportunities that will have highest impact on application," Gartner explained.

Focusing on two-way skill transparency—To do this, "create channels for employee and organizational information exchange" and "[e]nable employees to make informed decisions that align their interests with organizational needs."

Gartner predicts that this three-pronged approach to reskills will result in three-quarters of employees being able to apply the new skills learned "(far more than with other approaches)," the global research and advisory firm stated. Also, it predicts that learning will begin sooner, "as needs are identified faster."

ACTION PLAN

Evaluate the skill sets your current workforce may be lacking. Then, assess the types of training programs that may help them close those skills gaps.

For management-focused employees in particular, consider tools like the Society for Human Resource Management's (SHRM) PMQ, or People Manager Qualification, which is designed to teach managers how to engage high performance teams—a skills that may be more important than ever in the COVID era where most employees are still working remotely. Also, consider that a recent study by PwC (*The Effectiveness of Virtual Reality Soft Skills Training*) concluded that organizations should not overlook the idea of using virtual reality to providing training on soft skills such as diversity, equity and inclusion, harassment prevention, and leadership, SHRM reported in a recently published article, *Virtual Reality Training for Managers in a Post-COVID-19 Workplace.*

Also, ensure that supervisors and managers are up to date on the issues most likely to spark legal liability for an organization. These include requests for accommodation on the basis of disability, religion, pregnancy, and other protected traits, discipline for time and attendance when an employee is entitled to protected leave, and properly tracking non-exempt employees work time.

Finally, recognize that certain employees may be better candidates for reskilling. eLearning provider iSpring Solutions Inc. (iSpring) noted that it may make sense to start with reskilling for self-starters who possess good time-management skills.

Additionally, iSpring explained there are five steps to developing any reskilling program:

1) **identify the skills a specific group** (e.g., managers, supervisors, or employees) needs to master;
2) **prepare a training program that "identif[ies] how each skill that needs to be trained should be delivered, the specific learning objectives, and how it will be assessed";**
3) **create the training materials;**

4) **deliver the training in a way that works for the employees—**right now, virtual learning via a learning-management system (LMS) may be a good option since an LMS may let the training material creator launch "learning tracks that are pathways for obtaining the skills applicable to different roles and resume courses, modules, and lessons to build these"; and

5) **measure and evaluate success,** iSpring stated—for instance, consider "standard LMS metrics, like quiz pass rates, learner progress, and course completion rates," which can provide insight into whether the intended audience got "most out of their reskilling experience."

Sources: *gartner.com*; *shrm.org*; *ispringsolutions.com*; *pwc.com*

Want More Information?

For more information, visit gartner.com; pmq.shrm.org/; ispringsolutions.com/blog/reskilling; and pwc.com/us/vlearning.

Laura Scott is an HR compliance writer and attorney based in Massachusetts. Content in this newsletter is provided for informational purposes and shall not be construed as legal advice of any kind.

Age Discrimination

Older applicant for pipefitter's job files suit after he's rejected as a candidate

Citation: *Flowers v. WestRock Services, Inc., 979 F.3d 1127, 2020 Fair Empl. Prac. Cas. (BNA) 439170 (6th Cir. 2020)*

The Sixth U.S. Circuit has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee.

Michael Flowers, age 71, worked for about 30 years as a pipefitter and welder for Graphic Packaging before retiring in 2013. Years later, Flowers became interested in a position at Westrock Services Inc. (Westrock) when a Westrock employee told him they were looking for pipefitters.

Westrock's online application for a "Journeyman Pipefitter" position included a section titled "Required Skills and Experience." The skills and experiences included welding along with "[s]electing [the] type and size of pipe and related materials according to job specifications, knowledge of system operation, and study of building plans [and] working drawings." Under "Additional Requirements," WestRock instructed that the applicant "[m]ust be able to read blueprints."

Flowers applied for the job, and Westrock's HR representative told him he looked "generally qualified." The HR representative then sent Flowers' application to the team lead and a supervisor (the decision makers) for further review.

The decision makers didn't think Flowers was a strong candidate for the role. One of them had worked with Flowers at Graphic and believed he had a poor work ethic. And, someone else at Graphic told them to "stay away" from hiring him.

Given the two negative references, Flowers was rejected as an applicant via Westrock's online portal. He received an automated response that the company had "decided to move forward with other applicants who more closely match the desired requirements and qualifications for the role."

After Flowers got this news, he learned from his friend that Westrock had hired a younger, less experienced worker for the role. He filed suit alleging he had been discriminated against, in violation of the Age Discrimination in Employment Act (ADEA).

Specifically, Flowers asserted that he was qualified for the "Journeyman Pipefitter" position and that "but for" his age, WestRock would have hired him. But, during discovery, Flowers admitted that he didn't know how to read building blueprints and didn't have experience with selecting the type and size of pipe. He also admitted that just a couple of years earlier, he had refused to get certified for certain welding activities because he "didn't want to be a welder anyway."

The lower court granted Westrock's request for judgment without a trial. It found that Flowers hadn't established a valid ADEA claim because he wasn't "otherwise qualified" for the position given his inability to read blueprints or select pipes and his unwillingness to weld. And, even if he had been able to assert a valid claim, he raise a triable issue of material fact as to whether the reasons Westrock gave for not hiring him were false.

On Flowers' appeal, the Sixth U.S. Circuit Court of Appeals affirmed the lower court's ruling because:

- he wasn't "otherwise qualified" for the journeyman pipefitter's role; and
- Westrock asserted a legitimate, nondiscriminatory reasons for passing on him as a candidate and he failed to show that the reasons were pretextual.

Under the ADEA, it was unlawful for an employer to "fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of an individual's age."

To demonstrate an ADEA violation, Flowers had to "prove by a preponderance of the evidence (which may be direct or circumstantial) that age was the 'but-for' cause of the challenged employer decision." He relied on circumstantial evidence to advance his argument, so the court analyzed his claim under the "burden-shifting framework."

This framework required Flowers to show that:

- he was over the age of 40 and thus protected under the ADEA at the time of the alleged discrimination;
- he was subjected to an adverse employment action;
- he was otherwise qualified for the position; and
- he was replaced by a younger worker.

If Flowers met that burden,

Westrock would have the opportunity to assert its legitimate, nondiscriminatory reason for its actions. And, if Westrock met that burden, Flowers would have to show that its explanation was not the true reason for the employment decision. "Put another way, Flowers must show it is more likely than not that WestRock's proffered reason is false and instead is pretext for discrimination," the court noted.

THE BOTTOM LINE

Flowers couldn't meet his initial burden of bringing a valid ADEA claim. His "failure to show he was 'otherwise qualified' for the job of Journeyman Pipefitter dooms his claim," the court ruled. He hadn't "demonstrated that his 'qualifications [we]re at least equivalent to the minimum objective criteria required for employment in the relevant field,' as set out in the job description."

By Flowers' own admission, he didn't "know how to select the size and type of pipes or read blueprints, two of the listed job requirements" And, he had indicated he was "disinterest[ed] in welding, another job duty," which led the lower court to find that he wasn't "otherwise qualified for the position." "We see no error in that conclusion," the appeals court wrote.

FINAL WORD

Westrock sought a "pipefitter who could read blueprints and select pipes, and who also had an interest in welding," the court explained. "Flowers missed the mark in each respect, the first two by his own admission, and the third due to his lack of interest in welding as much as 'seven days a week, twelve hours a day.' " "Rather than challenging those conclusions, Flowers instead challenge[d] the premise that these skills are necessary for the position," the court noted.

In Flowers' view, pipefitters didn't need to read blueprints and shouldn't be required to do so to make pipe selections. "But as the one who creates the position in question, the employer largely enjoys the right to decide the qualifications it prefers in one who holds the position and, it follows, whether an applicant lacks the necessary knowledge or experience," the court stated.

PRACTICALLY SPEAKING

Flowers didn't have the qualifications Westrock required for the open position. And, "outside of strict age-based considerations, the ADEA d[id] not empower job applicants to second-guess the qualifications preferred by a potential employer."

Test Your Understanding Of . . .

When inquiries into a trainee's medical situation could lead to legal claims

A corrections officer suffered from disk desiccation in his spine and osteoarthritis in his knees. Both conditions led to intermittent pain lasting weeks at a time.

The officer applied for and received a handicapped parking placard from the state in which he lived. His application identified his qualifying disability as osteoarthritis or a "knee condition." His application asserted that he could not walk without using an assistive device such as a cane or walker or receiving help from another person, and that the impairment was permanent.

The officer then applied for and was accepted into a training program that was a path for becoming a police officer with the sheriff's office that employed him as a corrections officer.

On the first day of training, an instructor noticed the handicapped parking placard hanging from the rearview mirror of officer's car. When the instructor asked about the placard, he said it was there for his wife.

A second official asked the officer about it, and he repeated that it was his wife's but said he also used it. Officials wanted to confirm that the officer was medically cleared to participate in the physical training, so they met with him. He explained that his doctor had approved the placard because of his osteoarthritis but that he was not requesting any accommodations in the academy course.

Due to the officer's inconsistent explanations for the placard, the Sheriff's Office opened a formal investigation into his acquisition and use of the placard. Ultimately, the investigator concluded that the officer had demonstrated an "inability to provide truthful responses to basic questions." And, given the fact that Sheriff's police officers were held to "the highest standards" and required to "lead by example," the investigator recommended that the officer should be dismissed from the academy.

After being dismissed and returning to his job as a corrections officer, he filed suit. He alleged that he had been discriminated against, in violation of the Americans with Disabilities Act (ADA), when the Sheriff's Office investigated his medical records and failed to engage in the interactive process. The Sheriff's Office stood by its decision to boot the officer out of the academy based on an honest belief about his dishonesty.

Q—Who is likely to prevail? Is the officer correct in asserting that the Sheriff's Office unlawfully snooped into his medical records and dismissed him from the training program?

Family and Medical Leave

Court's ruling underscores importance of confirming if employee seeking protected leave is really FMLA-eligible

Citation: *Arroyo-Horne v. City of New York, 2020 Wage & Hour Cas. 2d (BNA) 399241, 2020 WL 6112273 (2d Cir. 2020)*

The Second U.S. Circuit has jurisdiction over Connecticut, New York, and Vermont.

A recently decided case by the Sec-

ond U.S. Circuit Court of Appeals underscores the importance of tracking how many hours an employee has worked in a year for purposes of determining whether that employee is entitled to Family and Medical Leave Act (FMLA) protections.

FMLA entitles an *eligible* employee to 12 workweeks of unpaid leave annually due to a serious health condition that renders the employee "unable to perform the functions of the position" and "generally permits the employee to 'return to the position [s]he held before the leave or its equivalent,' " the Second U.S. Circuit Court of Appeals wrote.

If an employee is subjected to adverse employment action and files an FMLA interference or a FMLA retaliation claim, "[a] threshold issue . . . is whether [the] employee is eligible" for FMLA leave, it added. More specifically, for a FMLA interference claim to stick, an employee has to show eligibility to take FMLA leave. For a FMLA retaliation claim to be valid, the employee had to show the FMLA right had been exercised and that the employee was qualified for the job.

A CLOSER LOOK AT ELIGIBILITY

"To be eligible for FMLA leave, an employee must have been employed for at least [12] months by the employer from whom [the employee] is requesting leave, and . . . must have worked at least 1,250 hours with that employer in the [12] months prior to the beginning of . . . medical leave," the court explained.

The 1,250 hours of service requirement proved fatal to the employee's claim in this case before the Second Circuit. The employee, Monica Arroyo-Horne, an administrative aide for the New York Police Department (NYPD) since 2000, alleged that she had worked for the employer for at least 12 months. she alleged she had worked at the NYPD since March 2000. Arroyo-Horne "did not allege, however, that she had worked 1,250 hours in the 12-month period prior to her requests for FMLA leave," the court explained. As a result, the lower court properly dismissed her FMLA claims.

Retaliation

Nurse claims nefarious motive behind firing, which came shortly after reporting manager's alleged safety code violations

Citation: *Simoni v. Diamond, 2020 WL 6502977 (3d Cir. 2020)*

The Third U.S. Circuit has jurisdiction over Delaware, New Jersey, Pennsylvania, and the Virgin Islands.

Stephen Simoni took a job as a cardiac nurse at the Jersey Shore University Medical Center (JSUMC) in August 2010. But, his stint there was short lived.

JSUMC watched Simoni closely during his first three months on the job—just as it did with respect to all probationary employees. By the end of month one, a supervisor expressed concern over Simoni's performance. The supervisor told him he wasn't learning fast enough and wasn't taking guidance or criticism well.

CASE IN POINT

When the supervisor provided Simoni with this feedback, he lashed out at her. And, the following day, he reported the supervisor for violating hospital safety rules.

A manager also concluded Simoni's progress was "very slow" and that he got defensive when critiqued. When the manager brought her concerns to Simoni's attention, he said he thought she "had more integrity than" to criticize him as she did. She responded by telling him not to discuss the issue with his other supervisor, but that's exactly what he did, essentially accusing her, too, of not having integrity.

At that point, the supervisor and the manager recommended Simoni should be fired for not taking criticism well and for disobeying a direct order not to confront his supervisor. JSUMC followed their recommendations and terminated Simoni for his "inappropriate and insubordinate confrontation of" his supervisor. Simoni objected and threatened to sue.

CBA AT PLAY?

JSUMC had a collective-bargaining agreement (CBA) in effect with the Health Professionals and Allied Employees Union (HPAEU). The CBA required just cause to fire an employee, so Simoni asked HPAEU to file a grievance challenging his firing.

JSUMC denied the challenge and refused to appeal the denial to arbitration. It contended that as a probationary employee, Simoni had no grounds to challenge the decision.

The lower court agreed with JSUMC on Simoni's claim that his firing violated New Jersey's whistleblower law. On further review, the Third U.S. Circuit Court of Appeals agreed, too, affirming the lower court's finding that there wasn't any basis for Simoni's claim.

A CLOSER LOOK

Simoni claimed he was fired for reporting his first supervisor wasn't following JSUMC's safety code. "The [lower] [c]ourt rightly rejected that claim," the appeals court concluded because Simoni didn't show "a causal connection between his whistleblowing and his firing."

"Simoni's only proof of causation [wa]s temporal proximity," the court explained. "He stresses that he was fired soon after reporting the violations. But that is not enough for us to infer causation," the court added.

The bottom line: "Temporal proximity alone suffice[d] only when it [wa]s 'unusually suggestive of retaliatory motive.' " In this case, the timing wasn't "suggestive," the court found.

"Right after blowing the whistle on his first supervisor, Simoni was not fired. Rather, he went on to his second rotation with a new supervisor. Though he claim[ed] to have reported these violations again days before he was fired, the record does not support that claim. All it shows is that he made 'negative' comments, not whistleblowing complaints," the court concluded.

This case illustrates that just because an employee engages in a protected activity like reporting alleged

safety violations doesn't mean that worker is entitled to complete insulation from adverse employment action for a legitimate business reason. JCUMC "decided to fire Simoni right after he disobeyed the manager by telling his supervisor that she lacked integrity. The managers told him that was why they were firing him. Simoni admit[ted] that he did make that comment to his supervisor, even though the manager had told him not to. And he admits that the managers told him that was why they were firing him. He neither rebut[ted] this evidence nor offers any other evidence of causation beyond closeness in time."

PRACTICALLY SPEAKING

Simoni wasn't fired for reporting alleged safety violations. He was terminated for disobeying orders and confronting the second supervisor.

Case Note:

Simoni sought attorney's fees from JSUMC, but "no contractual provision or clear law entitle[d] him to recover them from his employer," the appeals court noted.

Test Your Understanding Of . . . (Answer)

When inquiries into a trainee's medical situation could lead to legal claims

A—The Sheriff's Office was more likely to prevail based on a recently decided case out of the Seventh U.S. Circuit Court of Appeals.

The lower court granted the Sheriff's Office judgment without a trial, and on appeal, the court found that the officer had been dismissed from training based on the honest belief that he had lied about his disability, not because he had a disability.

"[N]o reasonable jury could discount the Sheriff's Office's honest belief that [the officer] had been dishonest on the subject of his handicapped parking placard," the appeals court found. "Because [the officer] . . . failed to offer evidence that the Sheriff's Office dismissed him from the [a]cademy because of a real or perceived disability," his ADA claim failed.

Further, there were legitimate concerns about the officer's physical fitness and integrity based on the facts presented. The officer hadn't presented "evidence that would allow a jury to find that the Sheriff's Office's investigation violated the ADA," the court added. "The undisputed facts show[ed] that [officer] failed to provide a consistent account of his reasons for having and using a handicapped parking placard." Thus, the court agreed with the lower court "that the undisputed facts show[ed] that the decision to dismiss [him] from the [a]cademy was based on his inability to give honest and consistent answers to straightforward and legitimate questions, not because of any actual or perceived physical impairment."

But, did the Sheriff's Office overreach by seeking information from the officer, his doctor, and the secretary of state concerning his physical condition and his application for the handicapped parking placard? No, the court ruled. "The ADA limit[ed] the ability of covered employers to investigate the health of their employees or to test their physical fitness," the court explained. "These provisions of the ADA str[uck] a balance," though. For instance, "the law protect[ed] employees with disabilities from being screened out of jobs they could perform with or without reasonable accommodations." But, "many jobs [we]re physically demanding, and employers [we]re entitled to evaluate whether applicants for those jobs are physically capable of performing them."

The key takeaway: The ADA made it clear that tests and requirements had to "be job-related and 'consistent with business necessity.' " But, just because this employer didn't misstep doesn't mean *every* type of employer would be insulated from legal liabilities for similar situations. "[M]any employers might have little or no business investigating an employee's or applicant's use of a handicapped parking placard," the court wrote, reiterating that in this case, "a police force would seem to have good reason to raise the questions that the Sheriff's Office raised here about [the] ability to meet the physical demands of the [a]cademy and working as a police officer."

The case cited is Sandefur v. Dart, 979 F.3d 1145, 2020 A.D. Cas. (BNA) 427759 (7th Cir. 2020).

Technology Updates

New Paycor survey explores state of business in the United States

A recently released survey from Paycor, "The State of American Business: 2021," explores:

- **The relationship between HR and finance—**With 40% of respondents saying the two teams are working more closely together due to the pandemic, but HR sees its contributions as contributing more to the bottom line than finance does.
- **Remote work—**44% of respondents said transitions to remote work is a top priority and 30% said remote teams were more productive than they were when they worked into the office.
- **Benefits—**The survey reveals that 86% of organizations have concerns over their employees' mental health but 45% weren't sure how benefits could address those concerns.
- **Compliance—**Just 9% said HR technology was "very effective" in mitigating legal risks, which may be attributed to what Paycor described as "[c]lunky outdated HR software."

To download the survey, visit paycor.com/resource-center/hr-leaders-survey-american-business-2021?utm_source=dynamic&utm_medium=press_release&utm_campaign=state_of_american_business_survey_pr&utm_content=state_of_american_business_survey_pr.

Source: *paycor.com*

New report examines recruitment of college labor market

Michigan State University's Collegiate Employment Research Institute (CERI) has released *Recruiting Trends 2020-2021*, which indicates that for the first time in a decade, "the unforeseen COVID-19 [has] brought college recruiting to a standstill." "After an impressive 10-year run of continuous expanding opportunities for new college graduates, . . . [t]his year's outlook is more subdued with the labor market in a swoon with only the associate's degree seeing growth in opportunities," the report's introduction states.

One of the key takeaways from the report is that virtual recruiting "is here to stay and will shape the recruiting landscape for years to come."

To download the 48-page study, visit *https://ceri.msu.edu/_assets/pdfs/Recruiting-Trends-2020-21-report.pdf*.

Source: *ceri.msu.edu*

State Of The Law

Colorado

DLE adopts new rules concerning paid sick leave, COVID-19 safety whistleblowing and PPE, and more

In November 2020, Colorado's Department of Labor and Employment (DLE) adopted final rules concerning:

- **the state's paid sick days law (SB 20-205)—**the Healthy Families and Workplaces Act (HFWA), which was enacted on July 14, 2020;
- **its COVID safety whistleblowing and workplace PPE rights law (HB 20-1415)—**the Public Health Emergency Whistleblower Act (PHEW), which was enacted July 11, 2020; and
- **its state employee union law (HB 1153)—**the Colorado Partnership for Quality Jobs and Services Act, which was enacted June 16. 2020.

For more information on those rules, visit cdle.colorado.gov/press-releases/press-release-labor-dept-adopts-new-rules-around-equal-pay-paid-sick.

On November 10, 2020, the DLE also issued final Equal Pay Transparency Rules concerning job and promotional postings. The rules, which take effect January 1, 2021, clarify Colorado's Equal Pay for Equal Work Act (EPEWA), which applies to any employer with one or more Colorado-based employee. Under the EPEWA, an employer must "make reasonable efforts to announce, post, or otherwise make known all opportunities for promotion to all current employees on the same calendar day and prior to making a promotion decision."

The DLE explained in a press release that the final rules describe "[d]ifferent options employers have to comply with the new duty to list the pay in all job postings, and to publicize promotion opportunities to all employees."

"The EPT Rules detail how employers must implement these obligations," attorneys from Jackson Lewis explained in a recent legal alert. "One significant revision from the proposed rules is a dramatic reduction in geographic scope," they added. Specifically, the rules indicate that promotion-posting requirements don't "apply to employees entirely outside Colorado." Also, compensation posting requirements don't apply when the job is going to be performed completely out of state or the posting is for a job entirely outside of Colorado, they added.

Sources: *colorado.gov*; *jacksonlewis.com*

Florida

Amendment 2 passes to increase minimum wage to $15 per hour over several years

Amendment 2, which will increase the state's minimum wage to $8.65 per hour (up from $8.56 per hour), took effect January 1, 2021. Following 2021's nine-cent increase, additional increases will take place annually—to $10 per hour in 2022 and subsequently by $1 each following year until the minimum wage reaches $15 per hour in 2026, the law firm of FordHarrison explained in a recent alert.

After that, additional increases may occur depending on the consumer price index (CPI) for urban wage earners and clerical workers (CPI)—more information about the CPI can be found at bls.gov/help/one_screen/cw.htm.

Tipped employees in the Sunshine State will also get a pay boost. "Florida's minimum wage law applies to all employees in the state of Florida who are covered by the federal minimum wage law," wrote Shane Muñoz, a partner in FordHarrison's Tampa office. "For 'tipped employees' who meet eligibility requirements for the tip credit under the federal Fair Labor Standards Act (FLSA), employers may take a 'tip credit' of up to $3.02 per hour, for tips actually received by the employee, but must still pay employees a direct wage," he stated. This means that starting in January 2021, "the minimum direct hourly wage for tipped employees . . . will be $5.63." That will go up to $6.98 effective September 30, 2021, Attorney Muñoz noted.

To review the state's notice and posting requirements concerning the minimum wage, visit floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notices.

Source: *fordharrison.com*

New York

Federal court dismisses workplace safety claim against Amazon alleging COVID-19-related OSHA violations

A federal court in New York has dismissed a claim that online retail giant Amazon shirked its legal duty to keep workers safe during the COVID-19 pandemic. The case arose after employees at Amazon's JFK8 fulfillment center in Staten Island alleged the company's "time off task" (TOT) timekeeping policy gave them

reason to forego basic cleaning and ignore social-distancing protocols.

The employees also asserted Amazon didn't communicate that they may be entitled to paid leave related to COVID-19 and didn't properly compensate them for time off.

The dismissal of the lawsuit is not likely the end of the controversy, though. That's because the court ruled the federal Occupational Safety and Health Administration should be the one to determine if Amazon has done enough to safeguard its workforce during the pandemic.

There are a couple of key takeaways from this case, wrote Attorneys Simone Francis and Erik Mass of Ogletree Deakins in a recent blog post:

- **As the COVID-19 pandemic wages on, employers should be prepared to defend actions related to "workplace safety and compensation or benefit-related claims."** "While it is not yet known whether the plaintiffs will appeal or whether other courts will adopt Judge Cogan's analysis, the decision may signal a willingness by the judiciary to defer to OSHA and its agency expertise to address workplace safety cases seeking injunctive relief," the attorneys wrote.
- **Pay attention to your particular state's requirements concerning the payment of paid sick leave benefits.** In this case, the court's ruling "reconfirm[d] that paid sick leave benefits [we]re excluded" from New York law's "timely payment requirements." "Employers may still want to be aware of all frequency-of-pay requirements in their jurisdictions," the attorneys added.

The case cited is Palmer v. Amazon.com, Inc., 2020 WL 6388599 (E.D. N.Y. 2020).

Source: *ogletree.com*

From The Hill

EEOC seeks public comment on proposed updates to "Compliance Manual Section on Religious Discrimination"

In the last issue of *HR Compliance Law Bulletin*, we noted that the Equal Employment Opportunity Commission (EEOC) had voted to proceed with updating guidance on the "Compliance Manual Section on Religious Discrimination." In mid-November 2020, the EEOC sought public comment on the proposed updates to the guidance.

"The updated guidance describes in what ways Title VII of the Civil Rights Act of 1964 (Title VII) protects individuals from religious discrimination in the workplace and sets forth the legal protections available to religious employers," the EEOC stated in a press release. "The draft guidance is available for review at beta.regulations.gov/document/EEOC-2020-0007-0001."

As of print time, the 3-day input period was set to end on December 17, 2020. "After reviewing the public input received, the Commission will consider appropriate revisions to the draft guidance before finalizing it and replacing the 2008 version," the EEOC explained.

We will keep you posted on further developments.

Source: *eeoc.gov*

