Employment Law Update

By: Anne Mayette

Employment laws are constantly evolving and changing, and 2016 was no exception. Many new laws and updates to current laws took effect in 2016. Looking forward, especially with the Presidential administration change, 2017 will be no different. Employers will have to remain cognizant of the changes in the law as the new administration begins enacting policy. In the meantime, several important changes which apply to firms and companies of all sizes should be noted.

The New FLSA Overtime Rule

The U.S. Department of Labor has updated the salary threshold for employees' overtime pay eligibility. The changes were scheduled to go into effect on December 1, 2016. However, at the time this article went to print, a nationwide injunction was put into place by U.S. District Judge Amos Mazzant in Texas blocking the Department of Labor's enforcement at the new overtime rules. Employers should expect the Department of Labor to challenge this ruling and should monitor this ongoing litigation. Pursuant to the Fair Labor Standards Act, exempt employees are not eligible for overtime pay for hours worked over 40 hours per week based on their job duties and their rate of pay. Nonexempt employees must be paid overtime pay (time-and-a-half) for any hours worked over 40 hours in a workweek. The new overtime rules raise the salary level threshold for exempt employee status to $913 per week ($47,476 per year), up from $455 per week ($23,660 per year). This means any employee making less than $47,476 per year must be paid time-and-a-half for each hour worked over 40 hours in a workweek. In addition, the new rules changed the salary level for highly compensated employees. Highly compensated employees who generally do not have executive or decision-making authority will be eligible for overtime pay if they make less than $134,000 per year, up from $100,000 per year.

Employers should take note that the new rules do not apply to businesses with annual revenue of less than $500,000. Employers should also be aware that the new rules provide that the salary threshold for exempt status will be updated every three years; however, the rules are subject to pending lawsuits brought by several states so employers should continually monitor the rules for any changes in the interim.

The New Tax Filing Deadlines

Congress recently made several changes to the tax filing deadlines, as well as gave the IRS an increased audit period from three to six years for many cases. The changes were made via a non-tax law, H.R. 3236, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015. For tax years starting after December 31, 2015 (e.g., 2016 returns prepared during 2017) the following filing deadlines have changed:

Partnership tax returns (Form 1065) are now due on March 15 instead of April 15, and may be extended to September 15. If the partnership is not on a calendar year, the return is due on the 15th day of the third month following the close of the partnership's tax year.

C corporation tax returns are due on April 15 instead of March 15. If the C corporation is not on a calendar year, the return is due on the 15th day of the fourth month following the close of the tax year. C corporations with tax years ending on June 30 will continue to be due on September 15 until 2025; however, for years beginning after 2025, the due date for C corporation returns will be October 15.

The foreign information reporting (FinCen/FBAR) filing deadline is now April 15 and may be extended until October 15.

Forms W-2 and 1099 must continue to be furnished to recipients by January 31 and filed with the IRS and Social Security Administration by the last day of February for paper forms and March 31 electronically.

The April 15 deadline for filing individual tax returns did not change.

Pay Equity for All Act of 2016

Under a new bill entitled Pay Equity for All Act of 2016 (H.R. 6030), introduced before Congress on September 14, 2016, employers would no longer be allowed to ask job applicants about their salary history. The bill amends the Fair Labor Standards Act of 1938 to make it unlawful for an employer to: (1) screen prospective employees based on their previous wages or salary histories; (2) seek the previous wages or salary history of any prospective employee from any current or former employer of such employee; or (3) discharge or in any other manner retaliate against any current or prospective employee because the employee opposed any act or practice made unlawful by the Act, or made or is about to make a complaint relating to any such act or practice, or testified or is about to testify, assist, or participate in any manner in an investigation or proceeding relating to any such act or practice. **The law, if enacted, would allow the Department of Labor to assess fines up to $10,000 against employers who violate the law by asking for an applicant's salary history.** The law would also allow prospective or current employees to bring a private lawsuit against an employer who violated the law. In the private lawsuit, the employer could be liable for up to $10,000 in damages plus attorney's fees.

Illinois Freedom to Work Act

In light of the continuing state and federal scrutiny on non-compete agreements, Illinois has enacted the Illinois Freedom to Work Act (820 ILCS 90/5 *et. seq.*). Effective January 1, 2017, non-governmental employers in Illinois are prohibited from entering into covenants not to compete with low-wage employees. The Act defines low-wage employees as employees who earn less than the greater of (1) the hourly minimum wage under federal, state or local laws, or (2) $13.00 per hour. Current federal and state regulations mean that the Act will apply to any employee earning $13.00 per hour or below. Covenant not to compete is defined by the Act as agreements, "(1) between an employer and a low-wage employee that restricts such low-wage employees from performing: (A) any work for another employer for a specified period of time; (B) any work in a specified geographical area; or (C) work for another employer that is similar to such low-wage employee's work for the employer included as a party to the agreement." The Act is not retroactive. Any agreement entered into on or after January 1, 2017, that violates this Act is rendered illegal and void.

Updates to the Right to Privacy in the Workplace Act

Effective on January 1, 2017, several updates and changes will go into effect for the Illinois Right to Privacy in the Workplace Act (820 ILCS 55/1 et. seq.) The Act will prohibit employers from requiring that the employee invite the employer to access or join the employee's personal online account which means employers will be prohibited from asking employees to like an employer's Facebook page or to retweet the employer's tweets on Twitter. Employers who violate this provision of the Act could face fines and be found guilty of a petty offense. Several other important changes which expand the scope of the law have also been made to the Act and become effective on January 1, 2017. The Act has previously only generally restricted employers from soliciting information, such as user names and passwords, from employees for their "social networking websites." The changes to the Act now prohibit employers from soliciting information from employees for their "personal online accounts" which is defined as accounts "used by a person primarily for their personal purposes." This greatly expands the scope of coverage for the Act to cover not only social media accounts, but also many other accounts such as an employee's personal email account. The Act will now also prohibit employers from requiring an employee to access their personal online accounts in front of the employers and provides a cause of action for retaliation if the employee suffers an adverse employment action for refusing to share his or her personal online account information.

Anne Mayette is an Attorney at the law firm of Husch Blackwell, LLP in Chicago. Anne concentrates her practice on matters involving business and commercial litigation, with a specific focus on employment law. She has significant experience with employment law, including unpaid wages, minimum wage and overtime violations, FMLA, ERISA, employment contracts, breach of contract, shareholder derivative actions, and employment discrimination claims under Title VII, ADEA and ADA.