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2024

2025 Employment Law Update

CIRMA Meeting | January 31, 2025

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AGENDA

- Federal Legislative Update
- State Legislative Update
- Caselaw Update
- Question & Answer Session

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Federal Legislative Update

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EXECUTIVE ORDER AND EFFECT ON TITLE IX

- On January 20, 2025, Executive Order No. 14166 (regarding Title IX) was enacted
- The Order explicitly states the Administration's intent to limit the scope of the U.S. Supreme Court 2020 ruling in *Bostock v Clay County.*
- In *Bostock*, the Supreme Court held that Title VII of the Civil Rights Act of 1964's prohibition on discrimination "on the basis of sex" includes discrimination on the basis of sexual orientation and gender identity
- The prior administration had interpreted *Bostock* as requiring gender identity-based access to single-sex spaces under Title IX of the Educational Amendments Act
- The Executive Order rescinded prior EEOC Enforcement Guidance instructing employers that sex-based discrimination and harassment under Title VII includes discrimination based on sexual orientation and gender identity, and that using incorrect pronouns or denying access to a bathroom or other sex-segregated facility could constitute unlawful harassment
    - This is likely to have little to no effect on Title VII
- Connecticut law still recognizes claims of discrimination based on sexual orientation and gender identity

What We Learned

- Connecticut laws have its own provision addressing claims of discrimination based on sexual orientation and gender identity

- It is currently unclear how the administration will enforce this order as applied to federally-funded programs and educational settings

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FTC NONCOMPETE RULE

- In April 2024, the Federal Trade Commission (FTC) issued a final rule on non-compete clauses, adopting a comprehensive ban on new noncompete agreements with all workers, including senior executives

- Existing non-compete agreements would remain in force for senior executives, but would be non-enforceable for workers other than senior executives after the effective date

- In August 2024, the United States District Court for the Northern District of Texas in *Ryan LLC v FTC* issued an order stopping the FTC from enforcing the rule

- The FTC filed an appeal to the decision on October 24, 2024

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Department of Labor – Exempt Employee Final Rule UPDATE

- DOL regulations setting a new salary threshold to be exempt under the Fair Labor Standards Act (FLSA) was set to go into effect on January 1, 2025 after the final rule was issued July 1, 2024
- Rule would have increased the salary threshold for overtime exemptions to $1,128 per week ($58,656 annually)
- New calculation method would set the standard salary level at the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region
- In November 2024, the United States District Court for the Eastern District of Texas issued a decision in *State of Texas Plano Chamber of Commerce et. al., v United States DOL* invalidating the entirety of the overtime final rule and blocked its enforcement
- The Department of Labor filed an appeal to the decision on December 24, 2024

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Connecticut Legislative Update

- Paid Sick Leave Law
- Minimum Wage Increase

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Connecticut Minimum Wage

- As of January 1, 2025, Connecticut's minimum wage is $**16.35** per hour for all employers. This is more than double the federal hourly minimum rate.

- Certain employees do not have to receive the CT minimum wage, such as those who are exempt under federal or state law, such as seasonal workers, individuals who work in domestic service, employees of camps or resorts that are open six months out of the year or less, "learners," or employees who work in an executive or administrative capacity. (Please note that this list is not exhaustive.)

- For non-exempt employees, the state of Connecticut requires that the minimum wage be paid to each worker regardless of company size or location in the state.

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Connecticut Paid Sick Leave

- Effective January 1, 2025, the Connecticut Paid Sick Leave law was expanded to cover nearly all categories of employees, provides additional reasons for taking leave, and reduces hours needed to accrue leave

- Employers with 25 or more employees must provide paid sick leave. The number of employees required for coverage drops to 11 in 2026 and down to 1 in 2027

- Employees may use paid sick leave for his or her own mental health wellness day

- Employees may use paid sick leave for themselves **or** their family members: illness, injury or health condition; medical diagnosis; treatment of mental or physical illness injury or health condition; preventative medical care; to get services, treatment, or participate in legal proceedings resulting from family violence or sexual assault; or if the employer of the employee or employees family member or health care provider determines the employee or employee's family member poses a risk to others due to exposure to a communicable disease

- "Family member" means a spouse, sibling, child, grandparent, grandchild, or parent of an employee, or an individual whose close association the employee shows to be equivalent to those family relationships

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Caselaw Update

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E.M.D. Sales, Inc. Et Al., v. Faustino Sanchez Carrera, Et Al, No. 23-217 2025 U.S. LEXIS 364 (2025)

- EDM Sales Inc. is an international food product distributer who employs sales representatives to manage inventory and take orders at grocery stores that stock EDM's product. Multiple EDM sales representatives sued EDM claiming that EDM violated the Fair Labor Standards Act (FLSA) by failing to pay them overtime pay. EDM counter argued that the employees fell within the FLSA's outside-salesman exemption.

- The District Court of Maryland found for the employees reasoning that EDM failed to prove by "clear and convincing evidence" that the employees qualified as outside-salesmen. The Court of Appeals for the Fourth Circuit affirmed the decision.

- On certiorari, the Supreme Court of the United States reversed the prior court decision and remanded the case for subsequent review, holding that an employer only need to demonstrate that an employee is exempt from minimum wage and overtime provisions of the FLSA by the **preponderance of the evidence**.

Muldrow v. City of St. Louis, 601 U.S. 346 (2024)

- Resolves a long-standing circuit split regarding what degree of harm constitutes an "adverse employment action" in claims of discrimination

- The United States Supreme Court held employees only need to show that "some harm" came from the action taken, and that employees do not need to show the adverse action taken against them was material or substantial in nature.

- Lowered the threshold of what type of harm is actionable in a Title VII discrimination claim, but did not define what "some harm" means or whether the decision is limited only to job transfers, which was the specific issue being decided in *Muldrow*

- Still requires employees to show that an action was taken because of a protected characteristic.

- As legislators modeled other employment discrimination provisions after Title VII, the decision has also impacted claims brought under the Americans with Disabilities Act and the Age Discrimination in Employment Act

What We Learned

1) Where discrimination cases involve transfers, the “worse treatment” pertaining to the terms or conditions of employment cover more than the economic or tangible terms or conditions

2) Underwriting should take note that this decision may impact the amount of discrimination claims that are made

3) The standard adopted in *Burlington Northern & Santa Fe Railway v. White,* 548 U.S. 53 (2006) addressing Title VII § 2000e-3(a) anti-retaliation claims still stands and applies only when the retaliatory action is “materially adverse”, meaning that it causes “significant harm”

King v. Aramark Services, 96 F.4th 546 (2d Cir. 2024)

- King brought claims against Aramark alleging that Aramark subjected her to a sex-based hostile work environment, sex-based discrimination and retaliation due to her district managers mistreatment from 2015 until her termination in 2017

- The United States District Court for the Western District of New York granted Aramark summary judgement on King's Title VII hostile work environment claims, stating that they were time barred

- The Second Circuit Court of Appeals overturned the District Court's decision, holding that that a discrete discriminatory act done within the statute of limitations period may render a hostile work environment claim timely if it is found to be part of the course of discriminatory conduct underlying the claim pursuant to the continuing violation doctrine

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Yerdon v. Poitras, 120 F.4th 1150 (2d Cir. 2024)

- Plaintiff filed a complaint against the Defendants, the New York State Department of Motor Vehicles his former supervisor and another employee, alleging discrimination based on his disability and retaliation under the ADA

- After the district court dismissed Plaintiff's suit for failing to state a claim, he appealed to the Second Circuit Court of Appeals. The court considered the claims, and issued multiple determinations

- First, Sovereign immunity bars Plaintiff's Title I ADA claims against the DMV because neither Congress nor New York State have abrogated the states' sovereign immunity for claims arising under Title I of the ADA

- Second, Sovereign immunity also bars Plaintiff's Title V ADA retaliation claims predicated on an alleged violation of Title I

- Third, Title V does not allow for individual liability against the supervisor and employee for retaliation

- Fourth, Title I also does not permit suits against individual employees

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O'Reggio v. Comm'n on Hum. Rights & Opportunities, 350 Conn. 182 (2024)

- The Connecticut Supreme Court considered this appeal from the decision of the Appellate Court, which affirmed the trial courts determination that the defendant employer was not vicariously liable for the creation of a hostile work environment by another employee "K"

- Plaintiff claimed on the appeal that the Appellate Court had incorrectly applied the definition of the term "supervisor" as it was adopted by the United States Supreme Court in *Vance v Ball State Univ.*

- K had authority to assign work, approve leave requests, set employee schedules, provide training and conduct performance reviews, but not the authority to hire, fire, or otherwise discipline any employee

- The Connecticut Supreme Court affirmed the Appellate Court's decision, holding that the term "supervisor" as adopted in *Vance* is limited to employees empowered by their employer to take tangible employment actions against the victims of alleged discrimination

- Because there was no evidence in the record that "K" had authority to take tangible employment actions against the plaintiff, and there was evidence showing that the employer took prompt reasonable action to remedy the situation, the employer could not be held vicariously liable for K's creation of a hostile work environment

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Comm'n on Hum. Rights & Opportunities v. Travelers Indem. Co., 228 Conn. App. 803

- Plaintiff brought an action against an insurance company and a university, alleging age discrimination for each defendant's use of the phrase "recent college graduates" or "recent graduate" in published job advertisements.

- Plaintiff, a man in his fifties, claimed that the use of "recent college graduates" or "recent graduate" was discriminatory against individuals on the basis of age.

- The Appellate Court ultimately agreed with the Superior Court's decision holding that the job posting **did not** amount to discrimination *per se,* and that the use of the phrases "recent college graduate" and "recent graduate" did not express a preference for a younger class of applicants without a demonstration of discriminatory effect.

What We Learned

1) Use phrases like “recent college graduate” or “recent graduate” with caution when writing a job posting

2) Current EEOC guidelines specify that a help-wanted ad that seeks “recent college graduates” may discourage people over 40 from applying and may violate the law

3) Rose Kallor takes the position that the use of these types of phrases in job postings constitute disparate treatment discrimination

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Michel v. City of Hartford, 226 Conn. App. 98 (2024)

- Plaintiff was a Police Officer who supported a fellow employee "C" with his claim that he was being racially discriminated against by suggesting that "C" report the complaint to the police union and internal affairs after being told his commander that he was unable to help with the complaint. Plaintiff further supported "C" by testifying on his behalf at depositions in connection with C's CHRO complaint.

- After his show of support for C's discrimination claims, Plaintiff was removed from certain supervisory positions, taken off assignments that would result in overtime compensation, and assigned unfavorable shifts.

- Plaintiff appealed the decision from the Superior Court granting a Motion to Strike Plaintiff's claims of free speech retaliation under Conn. Gen. Stat. § 31-51q and 42 U.S.C. § 1983

- The Connecticut State Appellate Court determined that the Superior Court properly granted Defendant's Motion to Strike Plaintiff's § 1983 claims, finding that Plaintiff did not successfully plead facts sufficient to establish retaliation pursuant to an official policy, practice or custom, such that the defendant, as a municipality, could be held liable pursuant to § 1983

- However, the Appellate Court found the trial court improperly granted the Defendant's Motion to Strike Plaintiff's § 31-51q claims, finding that a plaintiff does not have to affirmatively plead his speech did not substantially or materially interfere with his job performance

What We Learned

1) Plaintiff's making claims pursuant to § 31-51q do not have an affirmative burden to plead noninterference

2) Defendants now must raise the issue of interference in a special defense

3) Testimony in a fellow employee's discrimination claim is considered "speech on a matter of public concern"

4) Plaintiffs have the burden of showing that action done pursuant to official municipal policy caused their injury in § 1983 claims

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CLOUTIER v. CITY OF TORRINGTON (2024)

- Plaintiff, a Police Officer for the City of Torrington, filed a lawsuit alleging discrimination against the City due to the Police Department's refusal to permit him to transfer to a permanent light duty position instead of retiring

- The City presented evidence at trial showing the assistance and accommodations it had provided Plaintiff over four years, but that Plaintiff was incapable of performing the essential functions of his job with or without an accommodation. Moreover, instead of terminating the Plaintiff, the police union and Plaintiff negotiated a disability pension

- Ultimately, the Jury found in favor of the City of Torrington that they did not discriminate against Plaintiff due to his disability or fail to provide him with reasonable accommodations

What We Learned

1) No good deed goes unpunished

2) Under no circumstances should **essential** job functions be eliminated as an accommodation. They can be accommodated but not eliminated

3) All job descriptions **must** be updated to include physical and mental capability expectations (i.e., ability to make a custodial arrest)

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Arriola v. Hampton Board of Education et al. (May 22,2024)

- Case was brought after Board of Education members objected when the Board permitted the Superintendent to attend an executive session discussion concerning a pending CHRO complaint when the Superintendent ultimately did not contribute to the discussion

- The Superintendent had been serving as a liaison between the Board and insurance counsel, and had participated in two prior executive sessions on regarding the CHRO complaint

- The Hearing Officer found that the Superintendents presence violated Conn. Gen. Stat. § 1-231(a), which provides that "[a]t an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion. . ."

- The Freedom of Information Commission affirmed the Hearing Officer's finding that the Hampton BOE violated the Freedom of Information Act by including the Superintendent because their presence was not limited to a time when their testimony or opinion was "necessary", and that because the Superintendent was not a member of the Board of Education § 1-231(a) applied to restrict their attendance until their testimony or opinion was necessary

What We Learned

1) The Freedom of Information Act statutory language should be strictly followed

2) Rose Kallor believes that the statutory language merits a more liberal application for when a non-member's presence may be necessary to provide their testimony or opinion

3) Boards must follow the Freedom of Information Committee guidance until it is overturned, however the decision in *Arriola* was never appealed

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Questions?

***DISCLAIMER**: This seminar is intended to be for informational and educational purposes only and does not constitute legal advice. If you have any questions about the content of these materials, or are in need of legal advice, please feel free to contact Attorney Michael J. Rose at Rose Kallor, LLP.*

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How Rose Kallor, LLP Can Better Assist Municipalities

- *Rose Kallor has established a "hotline" with the Connecticut Interlocal Risk Management Agency ("CIRMA") in which all CIRMA LAP members can participate.*
- *The hotline was developed to provide municipalities with a prompt response to emerging issues within the workplace.*
- *Each municipality who utilizes the hotline will receive up to one hour per month of complementary legal advice.*
- *If more than an hour is necessary to resolve the issue for which you used the hotline, services are billed at a negotiated rate through CIRMA.*
- *Plus, access to newsletters and legal updates relating to employment law.*

HOTLINE INFORMATION
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