

Publications

Labor and Employment Alert: New Employment Laws For D.C. Employers

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Several employment laws recently became effective in Washington, D.C. that impose new requirements on employers operating within the District on wage transparency, marijuana testing, pregnancy accommodations and concealed weapons. Employers should review their current operations and policies to ensure they comply with the new laws' requirements.

The Wage Transparency Act of 2014

Modeled after President Obama's Executive Order 13665 for federal contractors and subcontractors, D.C.'s Wage Transparency Act prohibits employers from requiring employees to refrain from inquiring, disclosing, comparing or discussing wages with other employees. The Act further prohibits employers from taking adverse employment action or retaliating against employees who discuss their wages with each other. The Act also protects employees from adverse action for lodging a complaint, testifying, or participating in an investigation related to a violation of the Act.

An employer may prohibit an employee with regular access to information regarding the wages of other employees in the course of the employee's work, such as a human resources employee, from sharing such information. An employer may not prohibit such an employee from disclosing information in response to an investigation, action, or hearing or when is a legal obligation for the employer to furnish the information.

Notably, the Act does not create a private right of action. Instead, enforcement is limited to civil fines assessed by the mayor of \$1,000 for the first violation, \$5,000 for the second violation and \$20,000 for each subsequent violation.

The law is expected to pass the Congressional 30-day review period and become effective on March 11, 2015.

Pre-Employment Marijuana Testing Temporary and Emergency Acts of 2014

In July 2014, D.C. decriminalized marijuana possession by removing all criminal penalties for possessing up to an ounce of marijuana. The criminal penalty is replaced with a \$25 civil fine. Of course, marijuana possession remains a crime under federal law.

Following that decriminalization, in December 2014, D.C. enacted the Pre-Employment Marijuana Testing Temporary and Emergency Acts of 2014. The Act prohibits employers from testing a prospective employee for marijuana use until after a conditional offer of employment has been extended, unless otherwise required by law. The Act does not (1) affect employee compliance with workplace drug policies; (2) require an employee to accommodate or permit the use, possession, transportation, display, or sale of marijuana in the workplace or at any time during employment; (3) interfere with federal employment contracts (the Drug Free Workplace Act, which applies to recipients of federal contracts, requires that employers prohibit controlled substances including marijuana in the workplace); or (4) prevent an employer from denying employment based on a positive drug test for marijuana.

The emergency version of the Act went into effect immediately; it will expire no later than March 18, 2015. A temporary version of the Act will remain effective for 225 days after it takes effect (but it is unclear when that will happen). A permanent version of this Act is under consideration by the D.C. Council.

The Protecting Pregnant Workers Fairness Act of 2014

The Protecting Pregnant Workers Fairness Act, which became effective on March 3, 2015, requires D.C. employers to provide reasonable accommodations to employees whose ability to perform their job is affected by pregnancy, childbirth, breastfeeding or related medical conditions. A “reasonable accommodation” may include more frequent or longer breaks, time off to recover from childbirth, modifying equipment or seating, a temporary transfer to a different position, a modified work schedule and job restructuring such as providing light duty. An employer need not provide an accommodation that causes an “undue hardship” – which means a significant expense or significant difficulty on the operation of the employer’s business. The Act requires employers to engage in a good faith and timely interactive process with any employee requesting an accommodation.

Employers are required to notify employees of the right to a needed accommodation related to pregnancy, childbirth, breastfeeding or related medical conditions by posting a notice of rights (in both English and Spanish) in a conspicuous place and by providing written notice to: (1) new employees when their employment begins; (2) all existing employees within 120 days after the effective date of the law (March 3); and (3) employees who notify their employer of pregnancy or other covered condition, within 10 days of notification. The employer must provide a translated notice to any non-English-speaking and non-Spanish-speaking employees.

The mayor is required to issue rules and procedures, including guidance on when and how an employer can prove “undue hardship,” within 60 days of the law’s effective date.

The issue of what, if any, accommodations employers must provide to pregnant employees with work limitations under the federal Pregnancy Discrimination Act will be decided by the Supreme Court this term in *Young v. United Parcel Service* (which was argued on December 3, 2014). We will report on the

Court's decision in *Young* as soon as it is announced.

Concealed Handguns

In October 2014, D.C. enacted a new concealed-carry law. The law requires that, after January 20, 2015, all private commercial property owners are presumed to permit a person holding a licensed to carry a concealed handgun to enter the owner's property with their handgun unless the property is posted with "conspicuous signage prohibiting firearms" or the property owner "communicates such prohibition personally" to the licensee. Consequently, employers who intend to prohibit firearms from their premises should post signs at the entrance to their offices or building and should include the prohibition ban in their employee handbook.

Contact your Vorys lawyer if you have questions about these laws and their impact on your business.