

## NEWS YOU CAN USE: SIGNIFICANT LEGISLATIVE, ADMINISTRATIVE, AND JUDICIAL DEVELOPMENTS

Presented by:

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## NEWS YOU CAN USE: Significant Legislative, Administrative, and Judicial Developments

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## AGENDA

- EEOC Developments and Updates
- NLRB Developments and Updates
- Pittsburgh and Pennsylvania Legislative Updates



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# Updates at the EEOC



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## UPDATES TO EEOC GUIDANCE AND CHARGE PROCEDURES

- EEOC actively soliciting sex, race, and religious discrimination charges from majority groups
  - “Discrimination Against American Workers is Against the Law”
  - “200 Days of EEOC Action to Protect Religious Freedom at Work”
- Rescission of Biden Harassment Guidance
  - Gender identity issues
  - Interplay with federal case law holding sex includes sexual orientation and gender identity
  - State and local laws
- Change to Process for EEOC-initiated Litigation
  - Power shifts away from EEOC GC and field attorneys
  - Enables commissioners to pursue litigation touching on their own priorities

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## UPDATES TO EEOC GUIDANCE AND CHARGE PROCEDURES

- Expected Changes to PWFA
  - Courts considering constitutionality
  - EEOC Chair previously stated that final regulations need to be revised
- Investigations of Employer DEI Programs
  - New Assistant Attorney General Role
  - DOJ issues civil investigative demands on employers
- Internal Memo on Disparate Impact Claims
  - Stems from President Trump's EO
  - Instructed to discharge all disparate impact discrimination claims
  - Unclear how these claims will play out in court if litigation follows discharge at EEOC

## Updates at the NLRB



## NLRB UPDATES: SHIFTING PRIORITIES - GC MEMO 26-03

- Lower scrutiny of workplace rules
  - Rejects past pursuit of cases involving overbroad rules as inefficient
  - Discourages fishing expeditions unrelated to allegations
- New encouragement of settlements, limiting alternative remedies
  - Encourages regions to approve settlements and grant withdrawal requests more freely
  - “[W]hen parties agree to particular settlement parameters and the terms are lawful, regions should approve informal Board settlements and/or grant withdrawal requests based on non-Board settlements, irrespective of the allegations before the region.”
  - Discourages use of “enhanced remedies” such as public apologies, nationwide postings, etc.

## NLRB UPDATES: SHIFTING PRIORITIES - GC MEMO 26-03

- Aiming to address backlog from shutdowns
  - New Internal Docketing Protocol
  - Deferral of ULP Charges to CBA resolution processes
  - Narrowing of Document Requests
    - Won’t see evidence requests letters unless CP established *prima facie* case
    - Document requests must be specific, relevant, and bear on merits of case – *i.e.*, end of fishing expeditions

## OTHER NLRB UPDATES

- Reinstatement of 2020 Joint Employer Standard
  - Possesses AND exercises substantial, direct and immediate control
  - Sporadic, isolated, or de minimis control is excluded
- New Docketing Protocols
  - CPs to submit evidence within 14 days - Outline of events, relevant documentation, witness lists
  - ULPs not immediately assigned to investigators
    - Evidence must be received and evaluated first
    - Will not be assigned until an agent has capacity
  - Dismissal for failure to adhere to requirements
- Sixth Circuit reversed decision on bargaining orders
  - Ruling refused to enforce bargaining order issued under *Cemex*

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## State and Local Legislative Changes



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## AMENDMENTS TO PITTSBURGH PAID SICK LEAVE ACT

- Annual paid sick leave cap is increased
  - 72 hours for 15+ employees
  - 48 hours for < 15 employees
- Faster Accrual Rate
  - All employees accrue a minimum of one hour paid sick time for every thirty hours worked
- Accrued time must be carried over to following calendar year unless full amount frontloaded at beginning of calendar year
- Mandatory notification of amount of accruals (e.g., regular payroll statements or online system)

## NEW PROTECTED CLASS UNDER PHRA

- PA adds hair-based anti-discrimination protections to the PHRA
- PHRA now bans employment discrimination based on an individual's hair type or style if it is historically tied to their race or religion
- Exceptions exist for policies that are:
  - Necessary for health and safety
  - Nondiscriminatory purpose
  - Narrowly tailored
  - Applied equally
- Religion encompasses
  - Headcoverings and hairstyles associated with religious creeds
- Race encompasses "traits historically associated with race" including
  - Hair texture and protective hairstyles, such as locs, braids, twists, coils, Bantu knots, afros, and extensions

## CHANGES TO CRIMINAL BACKGROUND CHECKS IN PHILADELPHIA

- Amended Fair Criminal Record Screening Standards Ordinance – “Ban the Box”
- Expanded scope – applies to ICs and others
- Narrowed lookback periods
- Expunged or sealed records can’t be considered
- Notice requirements
  - Notice of background check
  - Notification and opportunity to rebut

Questions?



