Name:		

Phone:

Minimizing Legal Risk: Realistic, Practical, and Financially-Responsible Planning for 2017 and Beyond

Laura Friedel, Esq Levenfeld Pearlstein LLC lfriedel@lplegal.com *lplegal.com*

> Wednesday, Oct. 26 4–5 p.m.













FAILSTEIN, u.C.

Legal Risks Facing Staffing Firms

Four big areas we will not cover in depth today (cont.):

- 3. Paid Sick/Family Leave
 - Federal Contractor requirements
 - Final rule issued September 2016 provides for up to 56 hours/year
 State and local requirements
 - Chicago and Cook County very complicated provisions around carryover
- 4. OSHA Temporary Worker Initiative & Electronic Reporting
 - Record keeping requirements
 Personal Protective Equipment
 - Personal Protective Equipment
 Whistleblower protection
 - Safety and health training
 - Hazard communication

RARSTEN, uc



#1: Joint Employment & Union Organization

Poll:

What is your experience with unions?

- a. We have union employees or our employees have tried to organize in the past
- b. At least one of our clients is a union company or has had an organization effort
- c. Both we and our clients have had to deal with unions
- d. No, we stay as far away from unions as possible!

FEARLISTEIN, LIC











#1: Joint Employment & Union Organization

Ways to Mitigate Risk



- 1. Revisit client agreements
 - include clear compliance with laws language
 - consider explicit language regarding unfair labor practices
 make sure allocation of risk and indemnification obligations are fair
 - include opportunities to confirm compliance on both sides
 - include a cooperation provision





RANSTEN, uc

#2: Accommodations

Poll:

An employee who you've placed with a client comes to you and says that she's going to need to leave two hours early every Friday so that she can go to a medical appointment.

Do you consider her request?

- A. No, we're not covered by the FMLA, so we don't have to give her the time off
- B. No, there's no way our client would allow it, so why even engage in the conversation?
- C. Yes, I need to understand more about what she's asking for and why

ENTERNIER CONTRACTOR

#2: Accommodations

Disability

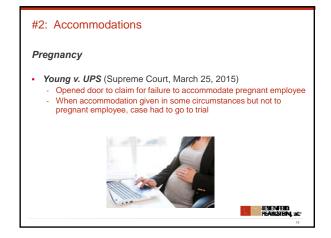
- ADA requires employers to provide reasonable accommodation to disabled employees
 - applies to all with 15+ employees
 - must provide unless creates an "undue hardship"
 - KEY = Interactive Process





production

RARSTEN, uc



#2: Accommodations

Pregnancy (cont.)

- EEOC Guidance issued June 25, 2015
 - Title VII / Pregnancy Discrimination Act require accommodation of pregnant employees in certain limited circumstances equal access to light duty
 - can't compel pregnant employee to take leave unless BFOQ (high bar) • must permit leave for those who need on same terms as non-pregnant employees
 - can't impose shorter maximum leave for pregnant employees than for other types of medical leave

Breastfeeding

can't take adverse action against employee for breastfeeding schedule
Also, ACA requires reasonable break time and no retaliation

FAALSTEIN, u.C.

#2: Accommodations

Pregnancy (cont.)

State Laws

ate Laws Requiring accommodation of pregnant employees California, Colorado, Connecticut, Delaware, DC, Hawaii, Illinois, Louisiana, Maryland, Minnesota, Nebraska, New Jersey, New York, North Dakota, Rhode Island, Utah, West Virginia Requiring accommodation of breastfeeding mothers • 27 states



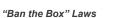








#3: Employment Applications





- Prohibit asking about criminal background until later stage in hiring process
- When you may ask depends on the particular law
- 9 states prohibit private employers from asking on job applications
- Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, and Vermont
 Many cities and counties as well
 - Even more for public employees
- In addition to EEOC Guidance on use of criminal history
 Asking causes disparate impact against certain minority groups

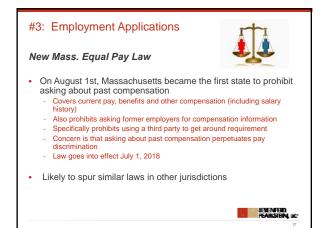
FAALSTEIN, u.C.

#3: Employment Applications

Poll:

- Do you ask applicants about their current pay?
- a. Yes, it's on our job application
- ${\bf b}. \ \ \, {\rm Yes},$ it's not on our job application, but we ask in an interview
- c. No, we only ask what pay they're looking for
- d. No, we don't ask about pay at all













Top 10 (Relatively) Easy Steps You Can Take to Minimize Legal Risk in 2017 and Beyond

- 7. Train interviewers on best practices and legal issues
- 8. Educate clients on steps you're taking to comply with laws and importance of partnership
- 9. Visit the workplace regularly
- 10. Communicate, communicate, communicate!





