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Employment Law Yearbook 2019

Timothy J. Long, Editor

Employment Law Yearbook 2019 details and analyzes recent legal developments, including:

California test for determining independent contractor status: The California Supreme Court has adopted a new test—the "ABC test"—to determine whether workers are to be classified as employees or independent contractors. Under this test, articulated in *Dynamex Operations West v. Superior Court*, workers are presumptively considered employees, but the employer may demonstrate a worker is more appropriately classified as an independent contractor if it proves all of several annunciated factors. **Chapter 1, Wage-and-Hour Issues, section 1:2.3[A], Independent Contractors.**

New York proposals on on-call scheduling and "right-to-disconnect": The New York Department of Labor has proposed rules to address the practice of "on-call" scheduling, including a requirement that employers pay employees a minimum of four hours of "call-in pay" in certain circumstances. And in New York City, a novel bill seeks to give workers the ability to ignore work communications during non-work hours. If passed, this "right-to-disconnect" bill, would be the first of its kind in the United States. **Chapter 1, Wage-and-Hour Issues, section 1:2.8[C], On-Call and Waiting Time Under the FLSA and New York Law.**

Transgender discrimination: The Sixth Circuit, in *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, became the first federal appellate court to hold that discrimination based on an employee's transgender status is sex discrimination under Title VII. A group of sixteen states has asked the Supreme Court to overturn the decision, but the Court has not yet decided whether to take up the case. **Chapter 3, Gender and Sexual Orientation Discrimination and Sexual Harassment, section 3:2.2, Sexual Orientation and Gender Stereotyping.**

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Practising Law Institute
1177 Avenue of the Americas
New York, NY 10036
#267498

Noncompete agreements: In August 2018, Massachusetts enacted a law that places limitations on noncompete agreements entered into on or after October 1, 2018. The law also adopts the Uniform Trade Secrets Act. **Chapter 9, Guarding Trade Secrets, section 9:3.1, Background.**

New standard for evaluating facially neutral policies: In *Boeing Co.*, the NLRB overturned the *Lutheran Heritage* "reasonably construe" standard and adopted a new balancing standard for evaluating facially neutral policies that potentially interfere with the exercise of section 7 rights. The NLRB delineated three categories of work rules based on the new standard. **Chapter 11, Employee Blogging and Social Media, section 11:4.1[B][1], The New Standard of Reasonableness.**

Arbitration: In 2018, in *Epic Systems Corp. v. Lewis*, the Supreme Court held that agreements containing class- and collective-action waivers stipulating that employment disputes must be resolved by individualized arbitration do not violate section 7 of the NLRA and must be enforced as written. Several cases decided since suggest the impact of *Epic Systems* will be far-reaching. The Supreme Court recently heard argument in two new cases that could further clarify the scope of arbitration clauses in employment settings. **Chapter 13, Arbitration, section 13:1, Introduction.**

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